CONTROLS ON EXPORTS TO SOUTH AFRICA

HEARINGS

BEFORE THE

SUBCOMMITTEES ON
INTERNATIONAL ECONOMIC POLICY AND TRADE
AND ON
AFRICA
OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

FEBRUARY 9 AND DECEMBER 2, 1982

Printed for the use of the Committee on Foreign Affairs

U.S. GOVERNMENT PRINTING OFFICE
17-326 O WASHINGTON . 1983

H 381-63.

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CONTROLS ON EXPORTS TO SOUTH AFRICA

TUESDAY, FEBRUARY 9, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEES ON INTERNATIONAL
ECONOMIC POLICY AND TRADE AND ON AFRICA,
Washington, D.C.

The subcommittees met at 10 a.m., in room 2200, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. The joint hearing will come to order.

This morning, we are meeting to hear testimony on the administration's position on foreign policy export controls and any plans it may have in changing the current regulations which expire on February 28.

As chairman of the African Subcommittee, I am particularly concerned about the administration's position on the existing foreign policy controls on South Africa. During the previous administration, the United States significantly strengthened its foreign policy controls on U.S. exports to South Africa because of that country's poor human rights record and its failure to relax its rigid apartheid laws. That stance was consistent with our foreign policy interest as well as our own principles of social justice and human decency.

Now, there are strong indications that this administration is thinking seriously about scrapping most—if not all—of the foreign policy controls on nonmilitary American exports to South African military, police, and security forces. If these reports are true, it would appear that this administration is no longer as concerned about human rights in South Africa as previous administrations and that our commercial policies toward that nation are being reshaped to coincide with the administration's new policy of constructive engagement toward the Pretoria government.

Given the current human rights climate in South Africa, I, for one, would be deeply troubled by any changes in the current foreign policy export controls toward that country. The human rights situation in South Africa is deplorable and growing worse—not better. During the past year alone, the South African Government has arrested and detained for political reasons over 300 black labor leaders, refused to allow Bishop Desmond Tutu, the most prominent black clergyman in South Africa, to travel abroad, closed down two major black newspapers, banned numerous black and white student leaders, forcibly relocated thousands of blacks from

the Cape Town area and continued its policy establishing so-called independent black homelands.

Moreover, according to the State Department's recently released human rights report on South Africa:

> The South African Government holds firm to its commitment to preserve separate residential areas, schools, churches and social institutions. It continues to reject egalitarian political structures and insists that the national political aspirations of Africans—involving those living and working in the urban areas—should be achieved only through elected township councils and homeland government institutions. The operation of these laws, although they are not always uniformly enforced, not only has deprived the black majority of South Africans of any voice in the national Government, but also has severely limited geographic mobility and education and access to employment opportunities, and denied them acceptance as equal members of South African society.

Given the magnitude of South Africa's continued repression of both its black and white citizens, I seriously wonder why this administration would be contemplating any changes in the export control regulations on South Africa.

I hope today's witnesses will give us the benefit of their wisdom on the utility of these controls and explain why they should or should not be changed. We also hope that our witnesses from the Departments of State and Commerce will be able to explain the administration's current export control policy and tell us what changes they may have in mind for South Africa.

At this point, I would like to call upon our cochairman of this hearing, Congressman Bingham.

Mr. BINGHAM. Thank you, Chairman Wolpe.

I would just like to add a footnote or two.

The controls, of course, in this case that we are reviewing today were imposed by the President under the authority of the Export Administration Act of 1979, and under the provisions of that act are subject to annual review, as are all so-called foreign policy controls.

At the end of last year, the administration extended all existing foreign policy controls for only 60 days. That was apparently because of unresolved interagency disagreements, indicating perhaps that significant changes in the regulations are being contemplated, but they were not ready yet to come forward with them.

I would note that the 60 days expires the end of this month.

In addition to the witnesses appearing before us today, the subcommittees wished to receive testimony from representatives of industry.

I want to note for the record that invitations to the arms, aircraft, machine, too, business equipment, computer and electronic industries' sectors, and to the U.S. Chamber of Commerce were declined.

I think it is, therefore, fair to conclude that those industries have no strong objections to the present export controls.

I would like to welcome our witnesses, and to urge them in their oral presentation, since we are pressed for time, to focus on the issue of controls and their effort to see their desirability. That is the subject of this hearing.

I notice from the prepared statements that a good deal of attention is devoted to developments in South Africa, and these are

indeed important, and that basically is why we are here, and the chairman, Mr. Wolpe, has touched on that.

I would urge the witnesses, in their oral presentations, to focus, if possible, on the issue of whether or not the present controls should be continued, modified, or otherwise.

That is the purpose of this hearing.

Mr. WOLPE. Thank you very much.

I would also like to just enter a special plea that the testimony, the direct testimony, be confined to no more than 10 minutes, and, if possible, even a shorter timeframe, to allow maximum opportunity for questions.

Mr. WOLPE. We do have a large number of witnesses this morning.

With that, I would like to call as our first witness Dr. Goler Butcher, board of trustees of the Southern African Lawyers Committee for Civil Rights Under Law.

STATEMENT OF GOLER TEAL BUTCHER, BOARD OF TRUSTEES, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Ms. BUTCHER. I wish first, Mr. Chairmen, to commend these hearings on the arms embargo against South Africa and to express the appreciation of the Lawyers' Committee for the opportunity to testify on the critical issue of U.S. adherence to our treaty obligation to enforce the arms embargo against South Africa.

Since its inception in 1963, the Lawyers' Committee for Civil Rights Under Law has enjoyed the support and active involvement of eminent members of our legal profession.

Cognizant that the domestic struggle for civil rights is inextricably linked to the worldwide struggle for human rights, the Lawyers' Committee formed its southern Africa project in 1967.

Gay McDougall, who is the director of the southern Africa project, was to accompany me today. She had to travel, however, to a meeting of lawyers in Zimbabwe on southern African problems.

I wish to ask that my full statement be set forth in the record.

Mr. WOLPE. I indicated the full statement of everyone would be laid in the record.

Ms. BUTCHER. I will first discuss the legal meaning of the arms embargo as established under the 1977 resolution of the U.N. Security Council:

> First, * * * The existing arms embargo must be strengthened and universally applied, without any reservations or qualifications whatsoever, in order to prevent a further aggravation of the grave situation in South Africa;
>
> Second, * * * A mandatory arms embargo needs to be universally applied against South Africa in the first instance.

Thus, U.S. Ambassador Young joined in the unanimous vote for Senate Concurrent Resolution 418 of 1977, which converted the earlier hortatory arms embargo into a mandatory solemn international legal obligation of all members of the United Nations; for, the resolution one, specifically invoked chapter VII of the charter; two, made the requisite article 39 determination with respect to the existence of a threat to the peace, and three, made the article 41 decision as to the method required to address the situation.

Senate Concurrent Resolution 418 defines an obligation under a Senate-approved treaty. The possible creation of just such a binding obligation was understood by the Senate when it advised and consented to the ratification of the charter.

The affirmative vote by the United States permitted passage of Senate Concurrent Resolution 418 and indicated that we indeed perceived the acquisition by South Africa of arms and related material to be a threat to the peace. Thus, it was by our own positive action that an obligation under international law was created for ourselves and for all States.

As a Nation founded on respect for the rule of law, we must recognize that this solemn obligation under the U.N. Charter necessitates rigorous enforcement of this resolution.

U.S. enforcement of these obligations is through, one, the prohibition against the export or re-export to South Africa of items on the munitions list, and two, the export restrictions defined by the regulations of the Department of Commerce.

You have asked us to comment on the legality and wisdom of the reported consideration of a relaxation of certain aspects of our regulations implementing U.S. obligations under Senate Concurrent Resolution 418.

One, clearly any loosening of the policy, which prohibits the export to South Africa and Namibia of certain arms and military equipment and materials used for their manufacture and maintenance which are not on the State Department munitions list—such as specially designed military vehicles and their components, would be in clear violation of the explicit injunction of Senate Concurrent Resolution 418. The quotation is from your letter.

Two, you raise the question of relaxation of the embargo on goods and technology for South African and Namibian military and police entities.

The export or re-export to South African military or police entities of goods and technology either of a military or police nature, or essential to the conduct of warfare and policing, is contrary to the express prohibitions of the resolution.

Similarly, goods and technology that would contribute to the operational capability of the police and military must be banned. Finally, the resolution has been interpreted by our Government to mean that the export to South Africa of any commodity and technology to, or for the use of, the police and military must be prohibited.

These regulations have clearly been held by our Government to be an integral part of U.S. compliance with our legal obligations.

Three, with respect to dual-use aircraft, conformity with Senate Concurrent Resolution 418 requires that we ensure that these U.S. origin items do not wind up with the South African military, paramilitary forces, or police. Accordingly, U.S. enforcement policy has been to obtain written "end-use" assurances from civilian consignors backed up by Embassy monitoring of actual end-use.

Extensive documentation shows, however, that the South African military has acquired numerous light aircraft of U.S. design or with U.S. components through the Air Commandos system and the Citizen Force.

In light of these infractions under the present regulations, clearly a solemn regard for our treaty undertakings would, one, permit no relaxation of these current rules, and two, require institution of more rigorous regulations.

Four, you ask about the export and re-export to South Africa of computers. The resolution bans "arms and related material of all types, including * * * military vehicles and equipment, [and] paramilitary police equipment * * *." Computers used by the military are military equipment; for they are a significant element of military planning, preparation, and operations. Computers for the South African military clearly come within the arms and related material language of Senate Concurrent Resolution 418.

Second, let's consider computers for nonmilitary consignees. Our Government has interpreted the resolution to prohibit the export of computers that would be "used to support the South African policy of apartheid."

The very purpose of the regulations is to avoid inconsistencies with the international legal obligations binding on the United States under the resolution. The raison d'etre of the arms embargo is the danger to international peace and security caused by the system of apartheid. Our official policy has therefore long been, even under the nonmandatory arms embargo, to prohibit the export of any commodities to South Africa where such commodities would directly support the implementation of apartheid, as, for example, the use of computers to enforce the invidious influx control regulations. Computers, as an essential element in the enforcement of the panoply of apartheid laws and policies of the South African Government, clearly are within this prohibition.

Since its inception, the purpose of the U.S. arms embargo policy has been to emphasize the message to the South African Government of the unacceptability of apartheid. Undoubtedly, if we were to move in the direction of relaxation, a different message would be sent. This would be especially deplorable in a year where the human rights situation in South Africa has deteriorated significantly.

Since the uprisings of 1976, South Africa has clearly been on a newly formulated collision course with its internal opponents and with the international community.

The response of South Africa's Government, representing the increasingly less than unanimous white minority, has been threefold: To prepare a package of minor modifications of apartheid to be presented to critics at home and to the world as substantive reforms, to maintain the basic structure and action of police repression and bureaucratic controls to enforce apartheid and to conduct military actions across South African borders.

The reforms have proven unacceptable to the majority of South Africans.

Repression for the enforcement of apartheid remains in full vigor.

In the past 2 years, the white minority government's response to black and white protest, nonviolent as well as violent, has been marked by large-scale violations of human rights. Police actions against opponents of apartheid reached a new peak in 1981 with

what the Associated Press called the toughest crackdown since the October 1977 suppression of black consciousness groups.

As 1981 ended, Government figures released in Parliament revealed that 179 people continued in detention on that date under various security laws—up from 92 detained on that date a year ago; 520 political prisoners were serving sentences under the security laws; and approximately 160 remained on that date restricted under banning orders. Those detained and banned in 1981 represent a cross-section of society: students, trade unionists, journalists, church and community leaders. See appendix D for partial list of recent detainees.

Statistics available for the 12 months of 1980 reveal that in that year more than 965 people were detained under one or more of South Africa's security laws, 36 of whom were sentenced to a total of 227 years' imprisonment for offenses under South Africa's Terrorism Act, which has been universally condemned as a gross violation of international standards of due process.

ACTIONS AGAINST TRADE UNIONISTS

The Government has attempted to stem the tide of independent black trade union activism by arresting virtually the entire leadership of two of South Africa's most active black unions. In 1981, there were more than 63 strikes throughout the country, resulting in the arrest of 15,000 black workers and more than 100 union leaders. At least 2,060 striking workers were deported to the homelands.

I am going to refer to the other areas very briefly.

DEATHS IN DETENTION

Deaths in detention have now reappeared.

Following the extraordinary exhibition of police methods and attitudes in the inquest in 1977 into the death of Steve Biko, deaths in detention appeared to have dropped away. The fate of the many unaccounted-for detainees remains problematic.

TRIALS UNDER APARTHEID LAW

The conduct of political trials shows evidence of increasing state interference in the judicial process. In this respect, the judicial process is clearly weighted in favor of the state.

Convicted political prisoners have had to face increasingly severe sentences.

REMOVALS OF COMMUNITIES AND MANIPULATION OF CITIZENSHIP

Over half a million have been forced to leave their homes in urban areas under the Group Areas Act; the people of Crossroads have been a most recent dramatization of this tragedy, and their reprieve seems to have been only temporary.

South Africa has by now made about 7½ million South Africans into aliens in their own land. We can see it in the arbitrary expulsion in detention without trials, and deaths and injuries suffered by persons while isolated and incommunicado in the hands of the police.

South Africa has violated the sovereignty of all of its neighbors, with a trail of terror aimed in the first instance at South African and Namibian refugees.

Finally, Mr. Chairman, I wish to state that given our legal obligations under S. Res. 418, and the appalling record set forth in detail in my testimony and alluded to just now, the very idea of relaxing our arms embargo is an anathema.

Finally, I would like to make some recommendations for further inquiry into practices under preexisting contracts, the transfer of dual-purpose light aircraft to civilians; third-country compliance with U.S. laws, and the extent to which foreign subsidiaries of U.S. firms, such as Mobil, Ford, and GM, are supplying the South African military or police with equipment which is banned under the resolution.

To end, I submit that the arms embargo regulations should not be amended or abridged without full opportunity for participation and constructive comment by interested groups.

Thank you, Mr. Chairman.

[Ms. Butcher's prepared statement follows:]

PREPARED STATEMENT OF GOLER TEAL BUTCHER ON BEHALF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

I wish first, Mr. Chairmen, to commend these hearings on the arms embargo against South Africa and to express the appreciation of the Lawyers' Committee for the opportunity to testify on the critical issue of U.S. adherence to our treaty obligation to enforce the arms embargo against South Africa.

Since its inception in 1963, the Lawyers' Committee for Civil Rights Under Law has enjoyed the support and active involvement of eminent members of our legal profession, including past presidents of the American Bar Association, former Attorneys General of the United States and law school deans,and has engaged in civil rights work aimed at eradicating discrimination whether based on race, creed, color or sex.

Cognizant that the domestic struggle for civil rights is inextricably linked to the world-wide struggle for human rights, the Lawyers' Committee formed its Southern Africa Project in 1967. The Project seeks: (1) to ensure that defendants in political trials in South Africa and Namibia receive the necessary resources for their defense including a competent attorney of their own choice; (2) to initiate or intervene in legal proceedings in the United States in order to deter official or private actions which are supportive of South Africa's policy of apartheid when such actions may be found in violation of U.S. law; (3) to serve as a legal resource for those concerned with promoting the human rights of South Africans, as of others; and (4) to heighten the awareness, especially by the American legal profession, of the erosion of the Rule of Law in South

Africa and that government's denial of basic human rights.

Since 1967, the Lawyers' Committee has been directly involved in or uniquely a source of information on virtually every major political trial in South Africa and Namibia. In that 15-year period, the Committee has found that the political trial is often a fairly reliable barometer in ascertaining the degree to which human rights are denied, as well as in indicating political trends within South Africa.

The Project's history of involvement includes such landmark cases as the trial of the 37 Namibians under the infamous Terrorism Act; the inquest into the death of Stephen Biko; the Mohapi civil suit in which the Project made available a leading FBI forensic scientist; the Solomon Mahlangu case in which the Project sought, though sadly without success, to prevent the young defendant's execution; and the lengthy Soweto Students Representative Council trial at which the Project Director served as an obser .

Gay McDougall, who is the Director of the Southern Africa Project, was to accompany me today. She had to travel, however, to a meeting in Zimbabwe of lawyers on southern African problems.

I will first discuss the legal meaning of the arms embargo as established under the 1977 Resolution of the United Nations Security Council.

> "In the interest of encouraging South Africa's leaders to embark on a new course, President Carter has now authorized me to state that the United States is prepared to join with other

> members of this Council in imposing a mandatory arms embargo (under Chapter VII of the Charter) on South Africa."

With that statement, U.S. Ambassador Andrew Young joined in the unanimous vote of the United Nations Security Council in favor of S.C. Res. 418, which imposes a mandatory arms embargo against South Africa. This Resolution was adopted explicitly under Chapter VII of the United Nations Charter. Two main objectives of the Resolution, as contained in its Preamble, are pertinent here:

> "1. ...The existing arms embargo must be strengthened and universally applied, without any reservations or qualifications whatsoever, in order to prevent a further aggravation of the grave situation in South Africa," (emphasis supplied) (3rd preambular paragraph),
>
> "2. ...A mandatory arms embargo needs to be universally applied against South Africa in the first instance," (emphasis supplied) (9th preambular paragraph).

In this Resolution, the Security Council first determined that "the acquisition by South Africa of arms and related material constitutes a threat to the maintenance of international peace and security" (operative paragraph 1), and then decided that

> "2. ...all States shall cease forthwith any provision to South Africa of arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and the spare parts for the aforementioned, and shall cease as well the provision of all types of equipment and supplies and grants of licensing arrangements for the manufacture or maintenance of the aforementioned;...."

(The full text of S.C. Res. 418 is attached as Appendix A.)

As the above statement by the U.S. Ambassador to the United Nations indicated, S.C. Res. 418 represents a significant step. For, from 1963 until 1977, States had voluntarily imposed their arms embargo against South Africa under a recommendatory resolution, S.C. Res. 181 (1963), of the Security Council acting under Chapter VI of the Charter. In that resolution, the Council had called upon "all States to cease forthwith the sale of shipments of arms, ammunition of all types, and military vehicles to South Africa." S.C. Res. 418 of 1977, however, converted this hortatory arms embargo into a mandatory solemn international legal obligation of all members of the United Nations; for, the Resolution (1) specifically invoked Chapter VII of the Charter, (2) made the requisite Article 39 determination with respect to the existence of a threat to the peace, and (3) made the Article 41 decision as to the method required to address the situation.

Since Article 25 of the Charter provides that "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter," the United States is legally obligated to comply with this Resolution. The United Nations Charter is an international treaty binding under international law on the United States, a party to the treaty. The Department of State has consistently expounded this view.

S.C. Res. 418, as a measure undertaken in accordance with procedures set out in the United Nations Charter, defines an obligation under a Senate-approved treaty. The possible creation of just such a binding obligation was understood

by the Senate when it advised and consented to the ratification of the Charter. S.C. Res. 418 war not thrust upon the United States. As one of the five permanent members of the Security Council, the United States, by the use of the veto power, could have prevented the creation of the obligation. The affirmative vote by the United States permitted passage of S.C. Res. 418 and indicated that we indeed perceived the acquisition by South Africa of arms and related material to be a threat to the peace. Thus it was by our own positive action that an obligation under international law was created for ourselves and for all States.

As a nation founded on respect for the Rule of Law, we must recognize that this solemn obligation under the United Nations Charter necessitates rigorous enforcement of this Resolution.

The gravity of the situation addressed in this Resolution is underscored by the fact that the Security Council has acted under Chapter VII in two situations: beginning in the mid-1960's, in Southern Rhodesia; and in South Africa, to wit, the massive violence against and killing of the African people by the South African government, its violation of human rights and the threat to the maintenance of international peace and security by virtue of South Africa's continued acquisition of arms and related material of all types.

Generally speaking, U.S. enforcement of these obligations is through (1) the prohibition against the export or re-export to South Africa of items on the munitions list and (2) the export restrictions defined by the regulations of the Department of Commerce.

You have asked us to comment on the legality and wisdom of the reported consideration of a relaxation of certain aspects of our regulations implementing U.S. obligations under S.C. Res. 418. (The regulations are attached as Appendix B.)

One, clearly any loosening of the policy, which prohibits "the export to South Africa and Namibia of certain arms and military equipment and materials used for their manufacture and maintenance which are not on the State Department Munitions List--such as specially designed military vehicles and their components, ammunition parts, military construction equipment, and non-military shot-guns--," would be in clear violation of the explicit injunction of S.C. Res. 418. (The quotation is from your letter.)

Two, you raise the question of relaxation of the embargo on goods and technology for South African and Namibian military and police entities.

The export or re-export to South African military or police entities of goods and technology either of a military or police nature, or essential to the conduct of warfare and policing, is contrary to the express prohibitions of the Resolution. Similarly, goods and technology that would contribute to the operational capability of the police and military must be banned. Finally, the Resolution has been interpreted by our government to mean that the export or re-export to South Africa of <u>any</u> commodity and technology to, or for the use of, the police and military must be prohibited. The Commerce Department regulations prohibit "the export or re-export to the Republic of South Africa or Namibia of <u>any</u> commodity, including commodities that may be exported to any destination in Country Group V under a general

license, where the exporter or re-exporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in these destinations or used to service equipment owned, controlled or used by or for such military or police entities." 15 C.F.R. 385.4(a)(2). These regulations have clearly been held by our government to be an integral part of U.S. compliance with our legal obligations. For, the regulations themselves underline "any" and include even general license exports within the ban on exports to the military and police.

Three, with respect to dual-use aircraft, conformity with S.C. Res. 418 requires that we ensure that these U.S. origin items do not wind up with the South African military, paramilitary forces, or police. Accordingly, U.S. enforcement policy has been to obtain written "end-use" assurances from civilian consignors backed up by embassy monitoring of actual end-use.

Extensive documentation shows, however, that the South African military has acquired numerous light aircraft of U.S. design or with U.S. components (see Testimony of Jennifer Davis before the "International Seminar on the Implementation and Reinforcement of the Arms Embargo Against South Africa" held under the auspices of the Special Committee Against Apartheid on April 1-3, 1981, p. 19). Slippage is occurring in two forms: either U.S. origin light aircraft is ending up in the South African military arsenal or is being used by "civilians" serving as part of the defense apparatus. (See attached documentation on the Air Commandos system and the Citizen Force, Appendix C.) South Africa has a 200,000 man citizen force

reserve of which from 25 to 35 percent may be on active duty at any one time. These troops may be mobilized in 24 to 48 hours.) In light of these infractions under the present regulations, clearly a solemn regard for our treaty undertakings would (1) permit no relaxation of these current rules and (2) require institution of more rigorous regulations.

Four, you ask about the export and re-export to South Africa of computers First, let's consider computers for the military. Operational paragraph 2 of the Resolution bans "arms and related material of all types, including...military vehicles and equipment, [and] paramilitary police equipment...." Computers used by the military are military equipment; for they are a significant element of military planning, preparation, and operations. Computers for the South African military clearly come within the "arms and related material" language of S.C. Res. 418.

Secondly, let's consider computers for non-military consignees. Our government has interpreted the Resolution to prohibit the export of computers that would be "used to support the South African policy of apartheid." 15 C.F.R. 385.4(a)(9). It is instructive to note that the obligation goes not to the export to a particular consignee but rather to the export of the items themselves. This illustrates that our obligation includes more than banning the export of items to the military or police.

The very purpose of the regulations is to avoid inconsistencies with the international legal obligations binding on the United States under the Resolution. The raison d'etre

of the arms embargo is the danger to international peace and security caused by the system of apartheid (preambular paragraphs 6 and 7 of S.C. Res. 418) (see also the statement by Ambassador Adlai E. Stevenson, U.S. Representative, in the Security Council Meeting of August 2, 1963 on the South African Question). Our official policy has therefore long been, even under the non-mandatory arms embargo, to prohibit the export of any commodities to South Africa where such commodities would directly support the implementation of apartheid, as for example, the use of computers to enforce the invidious influx control regulations. Computers, as an essential element in the enforcement of the panoply of apartheid laws and policies of the South African government, clearly are within this prohibition.

Five, you ask about the effect that a loosening of the commerce regulations would have on our leverage on South Africa to achieve meaningful political reform. Relaxation of the regulations would greatly impair our influence for forward movement on South African problems. Since its inception, the purpose of the United States arms embargo policy has been to emphasize the message to the South African government of the unacceptability of apartheid. Undoubtedly, if we were to move in the direction of relaxation, a different message would be sent. This would be especially deplorable in a year where the human rights situation in South Africa has deteriorated significantly.

SOUTH AFRICA'S RECENT RECORD ON HUMAN RIGHTS

Since the uprisings of 1976, South Africa has clearly been on a newly formulated collision course with its internal opponents and with the international community. An exodus of young people after June 1976 brought thousands of recruits into the armed wing of the liberation movements. International opposition became more openly defiant and wide-spread; students were joined in the streets by trade unionists, journalists, community and church leaders. The passion for majority rule was fueled by the defeat of Portuguese colonial rule in Mozambique and Angola, the attainment of majority rule in Zimbabwe, and apparent progress toward free elections in Namibia under U.N. Resolution 435. Internationally, the realization that apartheid was indeed a threat to international peace and security led to the unanimous vote in the U.N. Security Council to embargo the supply of arms and related material to South Africa.

The response of South Africa's government, representing the increasingly less than unanimous white minority, has been three-fold: to prepare a package of minor modifications of apartheid to be presented to critics at home and to the world as substantive reforms, to maintain the basic structure and action of police repression and bureaucratic controls to enforce apartheid and to conduct military actions across South African borders while strengthening the armed forces.

The "reforms" have proven unacceptable to the majority of South Africans. This has been clearly demonstrated by the

recent upsurge in mass defiance and protest. Consequently, South Africa has relied increasingly on military and police might, with increasing repression inside the country and increasing military raids across its borders on the neighboring independent States of southern Africa. Repression for the enforcement of apartheid remains in full vigor. Nominally color-blind, the laws through which the white minority operates in this area bear most heavily, but by no means exclusively, on the Blacks. In the past two years, the white minority government's response to black and white protest, non-violent as well as violent, has been marked by large-scale violations of human rights. Police actions against opponents of apartheid reached a new peak in 1981 with what the Associated Press called "the toughest crackdown since the October 1977 suppression of black consciousness groups." It was the government's resort to massive violence that helped trigger the move by the Security Council in 1977 from a recommendatory to a mandatory arms embargo, as the preamble of the 1977 Resolution testifies.

As 1981 ended, government figures released in Parliament revealed that 179 people continued in detention on that date under various security laws (up from 92 detained on that date a year ago); 520 political prisoners were serving sentences under the security laws; and approximately 160 remained on that date restricted under banning orders. Those detained and banned in 1981 represent a cross-section of society: students, trade unionists, journalists, church and community leaders. (See Appendix D for partial list of recent detainees.) Statistics

available for the 12 months of 1980 reveal that in that year more than 965 people were detained under one or more of South Africa's security laws, 36 of whom were sentenced to a total of 227 years imprisonment for offenses under South Africa's Terrorism Act, which has been universally condemned as a gross violation of international standards of due process.

Actions against trade unionists.

The government has attempted to stem the tide of independent black trade union activism by arresting virtually the entire leadership of two of South Africa's most active black unions. In 1981 there were more than 63 strikes throughout the country, resulting in the arrest of 15,000 black workers and more than 100 union leaders. At least 2,060 striking workers were deported to the homelands.

Deaths in detention.

Deaths in detention have now reappeared. Under the General Laws Amendments Act, the Internal Security Act and the Terrorism Act, the authorities are free to detain for varying periods and conditions. Under Section 6 of the Terrorism Act, detention may be indefinite in duration and unremitting police interrogation is permitted. The Courts may not intervene and the detainee may be held incommunicado--without access to lawyer, clergy, family, his doctor or his friends. Between 1963 and 1978, 50 persons died in detention and their deaths, especially where autopsies occurred in the presence of representatives of the deceased, were widely attributed to police torture.

Following the extraordinary exhibition of police methods and attitudes in the inquest in 1977 into the death of Steve Biko, deaths in detention appeared to have dropped away. But in December 1981, Tshifhiwa Isaac Muofhe, a former member of the Black People's Convention, died two days after he and nine others had been detained by security police in the bantustan of Venda. Muofhe was a member of the Lutheran Church. Four of the nine others, who are still detained, are members of the Lutheran clergy. They are reliably reported to have been brutally assaulted and taken to the hospital.

Most recently, on Friday, February 5, of last week, it has been reported that a white doctor, Neil Aggett, Secretary of the African Food and Cannery Workers Union, died in detention at John Vorster Square in Johannesburg. He is the first white to have so died. The police claim they found him hanging in his cell--an explanation frequently advanced and widely doubted in the past.

In reaction to the doctor's death, the Federation of South Africa Trade Unions (FOSATU) is reported to have said: "His hanging is one more scar on South Africa's security legislation. No one knows what horrors led to his death."

In a communication to the Minister of Police, Louis Legrange, the Parents Support Committee is reported to have said: "We cannot accept in any way that he took his own life. Why should detainees want to harm themselves if it were not because of lengthy detention in solitary confinement, intolerable pressures

under interrogation, threatening and even blackmail conditions without any recourse to outside help." They went on to call for immediate unconditional release of all detainees and abolition of detention legislation.

It is against this background that the recent report of the Rabie Commission, which is briefly summarized under a February 3 by-line by Allister Sparks in the Washington Post [offered for the record], will have to be examined. On the basis of newspaper summaries, the inadequacy of the Commission's recommendations is strongly suggested by the continuation of present removals of judicial remedies from the reach of an individual detained or banned.

With these two deaths, the total has risen within a couple of months from 50 to 52. (The fate of the many unaccounted-for detainees remains problematic.)

Trials under apartheid law.

The conduct of political trials shows evidence of increasing State interference in the judicial process. The Rabie Commission was appointed in 1979 to investigate internal security legislation in response to criticism that it was impossible for political prisoners to get a fair trial. The common practice of torture to secure admission of guilt is well attested from court records and evidence of lawyers--one recorded that 70 percent of his clients displayed evidence of assault. Many arguments in court over the admissibility of statements obtained under duress led to amendment of the Criminal Procedures Act in 1979, so that now admissions of guilt are to be assumed to have been freely given.

In this respect, the judicial process is clearly weighted in favor of the State.

Convicted political prisoners have had to face increasingly severe sentences. In April 1979, the South African authorities proceeded with the execution of Solomon Mahlangu, the first person to have been sentenced to death for a politically related offense for more than 10 years. In November 1979, a sentence of death was also imposed on James Mange, a member of the African National Congress, when he was convicted of treason. Mange's sentence was subsequently commuted to a lengthy prison term, as was the death sentence imposed on Marcus Kateka, a Namibian farmworker whose crime was his failure to tell his employer that freedom fighters were in the area. Currently, a total of 6 young black men are under sentence of death for politically related offenses. This appears to mark a determination on the part of the South African government to use the ultimate weapon of its judicial process to suppress political opposition.

One in every four adults is imprisoned every year, many for political activity, but even more to maintain the onerous mechanics of apartheid as enforced by the white minority government. Among them, at least eight million African men and women have been arrested and prosecuted under apartheid's universally condemned pass laws. More than 200,000 were so treated in 1980 alone. Thus, most of South Africa's population lives in a well-founded daily fear of arrest.

Actions against the press.

The press also came under renewed attack. The Post, the main newspaper for blacks since the banning of the World in 1977, was effectively suppressed by the government when it was banned in 1980. Additionally, several black journalists, largely the leadership of the Media Workers Association of South Africa (MWASA) were restricted under banning orders and thus prevented from working as journalists. In detention now is the MWASA President, Zwelakhe Sisulu, who is the son of jailed political opponent, Walter Sisulu, now serving a life sentence on Robben Island, and of Albertina Sisulu, also a veteran opponent of apartheid who until recently had been held under continuous banning orders for over 16 years.

Bannings.

A particularly vicious form of violation of human rights is banning, by which the expense of restrictions is thrust directly on the banned person, who is his or her own primary jailer and often excluded from an accustomed way of making a living. Bans run usually for five years and were renewed in 1981 for Helen Joseph and Winnie Mandela, most of whose adult lives have been spent under government restriction of one kind or another.

Removals of communities and manipulation of citizenship.

There has been no end to removals of people, among many arbitrary denials of the right of freedom of movement and residence. The plight of the victims is marked by loss of

established homes and employment opportunities and countless indignities and hardships attendant on relocation. The totality of the injuries inflicted is staggering. Three and a half million people have been forced to move in the three and a half decades of Nationalist Party rule. At least 1.4 million people have been forced off white-owned farms since 1960. Some 1.3 million have been "endorsed out" of city areas and into the bantustans since 1956. Over 400,000 have been forced out of long established homes in so-called black spots to permit those areas' consolidation with adjoining white areas. Over half a million have been forced to leave their homes in urban areas under the Group Areas Act; the people of Crossroads have been a most recent dramatization of this tragedy, and their reprieve seems to have been only temporary.

Growing out of the same policy of limiting access to the white areas, the evil of economically and legally enforced separation of the working spouse from his or her family persists unabated.

In 1981, through manipulation of blacks in relation to those relatively infertile, mineral-poor, non-industrialized and frequently overcrowded areas euphemistically referred to as homelands, the white minority government achieved the nominal transformation of the over 500,000 black people it allocates to the Ciskei area from South African citizens to citizens of the Ciskei, as it had previously done in relation to the Transkei, Venda, and Bophuthatswana. South Africa has by now made about

seven and one-half million South Africans into aliens in their own land. In the case of Ciskei, an opinion poll showed 90% opposed to so-called independence. By its manipulation, the government may hope to "justify" its unequal treatment of those among the over 7-1/2 million concerned who remain or come to work in the 87% of the country where the white man is a voting citizen, albeit greatly in the minority, and the black is both voteless and an alien. Likewise, they may hope, as most recently illustrated in relation to tiny Venda, also thrust into independence without the majority support of its people, that they may escape responsibility and public censure at home and abroad for arbitrary expulsions, detentions without trial, and deaths and injuries suffered by persons while isolated and incommunicado in the hands of the police.

Action against neighboring States.

South Africa has violated the sovereignty of all of its neighbors: Angola, Botswana, Lesotho, Mozambique, Swaziland, Zambia, and Zimbabwe--with a trail of terror aimed in the first instance at South African and Namibian refugees.

In July 1981 Joe Gqabi, chief representative of the African National Congress in Zimbabwe, was shot dead at point-blank range as he was driving from his home in Salisbury. South Africa had previously issued a stern warning to Zimbabwe against allowing officers of the African National Congress within its borders. The killing was described by police as "professional."

Earlier in the year South African forces struck in

Mozambique with a pre-dawn raid on houses of South African political exiles living in Matola, an industrial suburb of the capital. The death toll was twelve. Three African National Congress members were kidnapped: Motdi Ntshekang, David Tobela, and Selby Mavuso. The South African Commissioner of Police said they were being held under the Terrorism Act and that police were investigating a possible connection between them and the sabotage attack at the SASOL plant in 1980.

The most recent victim of South African agents was an African National Congress member in Swaziland, Daya Joe Pillay, who was abducted after a violent struggle in front of witnesses at the school where he taught. He was interrogated and tortured by South African security police at a secret location. In what appears to have been an "exchange deal," Pillay was returned under cover of darkness after the Swaziland police captured four of his abductors and released them to South Africa.

Finally, South African Defence Forces continue to hold approximately 118 Namibians captured in a 1978 cross-border raid on a refugee resettlement camp 250 kilometres inside Angola. More than 600 Namibian refugees were killed during that raid.

Those prisoners, generally known as the "Kassinga detainees, are being held at a detention camp near Hardap Dam in southern Namibia. The Kassinga detainees have been held incommunicado without charge for more than three years, without access to legal representation and, it is believed, in harsh conditions.

CONCLUSION

Given our legal obligations under S.C. Res. 418 and the appalling record set forth above, the very idea of relaxing our arms embargo is anathema.

Finally, we would like to make some recommendations.

First, we suggest that further Congressional inquiry is urgently needed to investigate:

-- Our practice with respect to the supply of spare parts for military equipment, particularly C-130's, sold to South Africa under contracts antedating the 1963 non-mandatory arms embargo;

-- Transfers of dual-purpose light aircraft to civilians in South Africa. (According to extensive documentation, the South African military has acquired U.S. design light aircraft such as Cessna 135's, Piaggio P-166 naval patrol planes and Aeromachi AM-3C's, Atlas C-4M's, and Swearingen Merlins. See Testimony of Jennifer Davis, cited supra p. 7, as set forth in Appendix E. See also Appendix F on the South African Government's Use of Civilian Transport Equipment);

-- Third-country compliance with U.S. laws on sales to South Africa of equipment containing U.S. components.

We also urge that a Congressional inquiry be initiated and focused specifically on the extent to which the foreign subsidiaries of U.S. corporations in South Africa and in other countries are supplying the South African military or police with arms or related materials or any other type of military-related assistance,

whether or not under licensing arrangements. This should include production activities inside South Africa by U.S. subsidiaries of goods that have a military or police-related end-use. (In response to 1981 church proxy resolutions filed with Mobil regarding the supply by Mobil's South African subsidiaries of products and services to the South African police and military, Mobil acknowledged such sales but countered in its March 23, 1981 Proxy Statement that U.S. regulations do not cover South African or other affiliates in third countries. Similar church proxy resolutions were filed with General Motors and Ford to halt their continued sales of non U.S.-origin equipment to the South African police and military through General Motors South Africa and Ford South Africa.)

It is significant that the Export Administration Act includes such subsidiaries in (1) the definition of "U.S. persons" (50 U.S.C. App. 2415(2)) and (2) in the meaning of "person subject to the jurisdiction of the United States"(see War or National Emergency-Residential Powers, P.L. 95-223, Title I, 91 Stat. 1625 (1977); see also Sen. Rept. No. 45-966, 95th Congr., 1st sess. (1977)). The existing regulations do not include these terms and are not interpreted by the Commerce Department to cover these subsidiaries, for the Department interprets its regulations to apply only to U.S.-origin exports. The regulations pertaining to the embargo against South Africa could therefore easily be tightened to cover these subsidiaries by merely having the regulations apply to "U.S. persons" or

"persons subject to the jurisdiction of the United States." We believe that the activities of these foreign subsidiaries of U.S. firms may provide significant military assistance and defense capability to South Africa.

Second, we submit that the arms embargo regulations should not be amended or abridged without full opportunity for participation and constructive comment by interested groups of citizens. The Export Administration Act, 50 U.S.C. App. §2401 et. seq., provides that the Secretary of Commerce should consult with the public before imposing export controls:

> (b) Public Participation--
> It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act...be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act...is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

In spite of this strong Congressional policy in favor of disclosure and public comment, the Departments of State and Commerce have treated the proposed amendments as classified matters and, far from encouraging public comment, have failed to provide basic information on the nature and rationale of the proposed amendments.

Appendix A

Resolution 418 (1977)

of 4 November 1977

The Security Council,

Recalling its resolution 392 (1976) of 19 June 1976, strongly condemning the South African Government for its resort to massive violence against and killings of the African people, including schoolchildren and students and others opposing racial discrimination, and calling upon that Government urgently to end violence against the African people and to take urgent steps to eliminate *apartheid* and racial discrimination,

Recognizing that the military build-up by South Africa and its persistent acts of aggression against the neighbouring States seriously disturb the security of those States,

Further recognizing that the existing arms embargo must be strengthened and universally applied, without any reservations or qualifications whatsoever, in order to prevent a further aggravation of the grave situation in South Africa,

Taking note of the Lagos Declaration for Action against *Apartheid*,[16]

Gravely concerned that South Africa is at the threshold of producing nuclear weapons,

Strongly condemning the South African Government for its acts of repression, its defiant continuance of the system of *apartheid* and its attacks against neighbouring independent States,

Considering that the policies and acts of the South African Government are fraught with danger to international peace and security,

Recalling its resolution 181 (1963) of 7 August 1963 and other resolutions concerning a voluntary arms embargo against South Africa,

Convinced that a mandatory arms embargo needs to be universally applied against South Africa in the first instance,

Acting therefore under Chapter VII of the Charter of the United Nations,

1. *Determines*, having regard to the policies and acts of the South African Government, that the acquisition by South Africa of arms and related *matériel* constitutes a threat to the maintenance of international peace and security;

2. *Decides* that all States shall cease forthwith any provision to South Africa of arms and related *matériel* of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, and shall cease as well the provision of all types of equipment and supplies and grants of licensing arrangements for the manufacture or maintenance of the aforementioned;

3. *Calls upon* all States to review, having regard to the objectives of the present resolution, all existing contractual arrangements with and licences granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them;

4. *Further decides* that all States shall refrain from any co-operation with South Africa in the manufacture and development of nuclear weapons;

5. *Calls upon* all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution;

6. *Requests* the Secretary-General to report to the Security Council on the progress of the implementation of the present resolution, the first report to be submitted not later than 1 May 1978;

7. *Decides* to keep this item on its agenda for further action, as appropriate, in the light of developments.

Adopted unanimously at the 2046th meeting.

Appendix B

§ 385.4 Country group V.

(a) *Republic of South Africa and Namibia.* In conformity with the United Nations Security Council Resolutions of 1963 and 1977, relating to exports of arms and munitions to the Republic of South Africa, and consistent with U.S. foreign policy toward the Republic of South Africa and Namibia, the Department of Commerce has established, as authorized by section 6 of the Export Administration Act of 1979, the following special policies for commodities and technical data under its licensing jurisdiction.

(1) An embargo is in effect on the export or reexport to the Republic of South Africa and Namibia of arms, munitions, military equipment and materials, and materials and machinery for use in the manufacture and maintenance of such equipment. Commodities to which this embargo applies are listed in Supplement No. 2 to Part 379.

(2) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of *any* commodity, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in these destinations or used to service equipment owned, controlled or used by or for such military or police entities.

(3) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of technical data, except technical data generally available to the public that meets the conditions of General License GTDA, where (a) the technical data relate to the commodities listed in Supplement No. 2 to Part 379, or (b) the exporter or reexporter knows or has reason to know that the technical data or any product of the data as defined in § 379.4(e) are for delivery to or use by or for the military or police entities of these destinations or for use in servicing equipment owned, controlled or used by or for these entities. In addition, users in the Republic of South Africa or Namibia of technical data that do qualify for export or reexport under the provisions of General License GTDR must be informed in writing at the time of the export or reexport of the data that the direct product of that data may not be sold or otherwise made available, directly or indirectly, to the military or police entities in these destinations. The term "direct product" is defined in footnotes in § 379.4(e).

(4) Parts, components, materials and other commodities exported from the United States under either a general or validated export license may not be used abroad to manufacture or produce foreign-made end products where it is known or there is a reason to know the end products will be sold to or used by or for military or police entities in the Republic of South Africa or Namibia.

(5) A validated export license is required for the export to the Republic of South Africa and Namibia of any instrument and equipment particularly useful in crime control and detection, as defined in § 376.14.

(6) General License *GIT* may not be used for any commodity destined for the Republic of South Africa or Namibia (See § 371.4(b)).

(7) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of medicines, medical supplies, and medical equipment not primarily destined for military or police entities or for their use.

(8) A validated license is required for the export to all consignees of aircraft and helicopters. Applications will generally be considered favorably on a case-by-case basis for such exports for which adequate written assurances have been obtained against military, paramilitary, or police use.

(9) A validated license is required for the export to government consignees of computers as defined in CCL entry 1565A, excluding those described under 1565A Note 7 in Supplement No. 1 to Part 385. Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of computers which would not be used to support the South African policy of apartheid.

15 C.F.R. 385.4 of the Commerce Department Regulations

COMMODITIES SUBJECT TO REPUBLIC OF SOUTH AFRICA AND NAMIBIA EMBARGO POLICY

(See § 379.4(e) and § 385.4(a))

(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, *except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than the following: (a) 0.0008 mm TIR (peak-to-peak) for lathes and turning machines; or (b) D x 2 x 10^{-4} mm TIR (peak-to-peak) where D is the spindle diameter in millimeters for milling machines, boring mills, jig grinders, and machining centers* (ECCN 1093);

(2) Equipment for the production of military explosives and solid propellants, as follows:

(a) Complete installations; and

(b) Specialized components (for example, dehydration presses; extrusion presses for the extrusion of small arms, cannon and rocket propellants; cutting machines for the sizing of extruded propellants; sweetie barrels (tumblers) 6 feet and over in diameter and having over 500 pounds product capacity; and continuous mixers for solid propellants) (ECCN 1118);

(3) Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of the arms, ammunition, appliances, machines, and implements of war (ECCN 2018);

(4) Construction equipment built to military specifications, specially designed for airborne transport (ECCN 2317);

(5) Vehicles specially designed for military purposes, as follows:

(a) Specially designed military vehicles, excluding vehicles listed in Supplement No. 2 to Part 370 (ECCN 2406);

(b) Pneumatic tire casings (*excluding tractor and farm implement types*), of a kind specially constructed to be bulletproof or to run when deflated (ECCN 2406);

(c) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use (ECCN 2406); and

(d) Specially designed components and parts to the foregoing (ECCN 2406);

(6) Pressure refuellers, pressure refuelling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and accessories, n.e.s. (ECCN 2410);

(7) Specifically designed components and parts for ammunition, *except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines* (ECCN 2603);

(8) Nonmilitary shotguns, barrel length 18 inches or over; and nonmilitary arms, discharge type (for example, stun-guns, shock batons, etc.), *except arms designed solely for signal, flare, or saluting use;* and parts, n.e.s. (ECCN 5998); and

(9) Shotgun shells, and parts (ECCN 6998).

Section 371.2 of the Commerce Regulations provides in part:

(c) Prohibited shipments. No general license may be used to effect an export to any destination if:

(11) The exporter or reexporter knows or has reason to know that the commodity is for delivery, directly or indirectly, to or for use by or for military or police entities in the Republic of South Africa or Namibia. This includes commodities for purposes of servicing equipment owned, controlled or used by or for such entities.

Appendix C. Excerpts from South African Legislation Relating to the Citizen Force and Air Commandos

1. Defence Act Number 44 of 1957, Civilians in the South African Defence Force, provides

1) Chapter II--Composition and Organization of the South African Defence Force and Reserve

5. Composition of the South African Defence Force.--The South African Defence Force shall consist of--
(a) the Permanent Force;
(b) the Citizen Force; and
(c) Commandos.

6. Composition of the Reserve.--The Reserve shall consist of--
(a) the Reserve of Officers;
(b) the Permanent Force Reserve;
(c) the Citizen Force Reserve;
(cA) the Commando Reserve; and
(d) the National Reserve.

[S.6 substituted by s.5 of Act No. 85 of 1967.]

2) Chapter IV--The Citizen Force

16. Composition and organization of Citizen Force--(1) The Citizen Force shall consist of--

(a) officers appointed thereto under this Act;
(b) persons allotted thereto in terms of Chapter VIII;
(c) citizens liable to render service in defence of the Republic who engage to serve in that Force; and
(d) citizens who are called up to render service in terms of Chapter X and are posted to that Force.

3) Chapter V--Commandos

32. Establishment of commandos--(1) There shall be established under such designations as the Minister may determine, a system of commandos so as to ensure that citizens liable to render service in defence of the Republic, and not serving in the Permanent Force, the Citizen Force, the South African Police or the Railways and Harbours Police and not being members of the Prisons Service as defined in section 1 of the Prisons Act, 1959 (Act No. 8 of 1959), shall as far as possible be proficient in the use of military weapons, and that as many of such citizens as possible shall be organized, trained, and available to be called up in terms of Chapter X at short notice.

(2) The system of commandos mentioned in sub-section (1) may include air commandos for providing air support.

33. Organization of commandos.
(2) Officers in the commandos required to render service in connection with the Cadet Corps, shall as far as may be practicable be selected from amongst persons on the staff of schools or other educational institutions.

35. Liability to serve in commandos.--(1) Every person allotted to the commandos in terms of Chapter VIII and every person who, on 31 December 1973, was a member of a commando (other than a member referred to in section 36 or 37) shall, subject to the provisions of this Act, be liable to serve in a commando over a period of ten years reckoned from 1 January of the year in which he commenced or commences service or training in a commando for the first time: Provided that any such person who for any reason whatever has not rendered any service to which he is liable in terms of section 44, shall remain liable to serve in a commando until he has rendered such service, unless the Minister or any person acting under his authority otherwise directs.

4) Chapter VI--The Reserve

46. Composition of Reserve of Officers.--The Reserve of Officers shall consist of citizens (other than members of the South African Defence Force, the Permanent Force Reserve or the Citizen Force Reserve) liable to render service in defence of the Republic, who hold commissions as officers and who undertake to serve in the Reserve of Officers and are in accordance with the regulations and with the approval of the Minister or a person acting under his authority, appointed thereto under such conditions as may be prescribed.

47. Composition of Permanent Force Reserve.--The Permanent Force Reserve shall consist of citizens who, having served in the Permanent Force for a period of not less than one year, are on the termination of their services therein required with the approval of the Minister or a person acting under his authority, and in accordance with regulations, to complete a period of service in the Permanent Force Reserve as may be prescribed: Provided that no person, other than an officer who has in terms of Section 86 tendered the resignation of his commission,

shall be required to serve in the said Reserve in a rank lower than that which he held in the Permanent Force at the termination of his service therein, and that no person shall serve in the said Reserve beyond his sixty-fifth year.

48. Composition of Citizen Force Reserve.--The Citizen Force Reserve shall consist of citizens who, having served in the Citizen Force, are, with the approval of the Minister or a person acting under his authority, and in accordance with regulations, required to complete a period of service in the Citizen Force Reserve as may be prescribed: Provided that no such citizen shall be required to serve in the said Reserve beyond his sixty-fifth year.

48A. Composition of Commando Reserve.--The Commando Reserve shall consist of persons who, having served in a commando, are, with the approval of the Minister or a person acting under his authority, and in accordance with regulations, required to complete such period of service in the Commando Reserve as may be prescribed: Provided that no person shall be required to serve in the said Reserve beyond his sixty-fifth year.

49. Composition of National Reserve.--The National Reserve shall consist of all citizens mentioned in paragraph (b) of section three who are not members of any of the forces constituting the South African Defence Force or of any other reserve established under this Act, and shall include all persons domiciled in the Republic who are citizens of any country specified by the State President by proclamation in the Gazette.

5) Chapter VII--The Cadet Corps

56. Establishment and organization of Cadet Corps.--

(1) There shall be a Cadet Corps which shall consist of such cadet detachments as may under such conditions as may be prescribed under the directions of the Minister or a person acting under his authority at any school or other educational institution.

(2) The Cadet Corps shall be organized in such manner as may be prescribed.

(3) Any cadet detachment established prior to the commencement of this Act elsewhere than at a school or other educational institution, shall be deemed to have been established under sub-section (1).

57. Liability for service as a cadet.--Every person domiciled in the Republic may, if he is a scholar or student at a school or other educational institution, be required between his twelfth and his seventeenth year, both included, to undergo training as a cadet in accordance with regulations, unless--

(a) his parent or guardian has objected thereto in writing; or

(b) he has been exempted from such training under prescribed conditions, and may voluntarily undergo such additional training as may be prescribed.

6) Chapter VIII, Section 63.

63. Registration.--(1) Every citizen shall apply to the registering officer for registration under this Chapter--

(a) during the period from the first day of January to the last day of February of the year in which he will attain the age of sixteen years; or

(b) in the case of a citizen who is outside the Republic during the whole of that period or who has for any other reason failed to apply for registration during that period, within thirty days after his return to the Republic or the disappearance of such other reason, unless he is then over the age of twenty-five years.

(2) Any person who becomes a citizen between the last day of February in his sixteenth year and the date upon which he attains the age of twenty-five years, shall apply for registration as aforesaid within thirty days after the date upon which he becomes a citizen.

(2A) Every citizen who has applied for registration under this section shall attend at his own expense and submit to the prescribed medical examination at the public expense at such time and place as may be notified to him by a prescribed person.

(3) The registering officer shall issue to every person who has under this section applied for registration a certificate of registration in such form as such officer may determine, and may issue to any such person pronounced by the prescribed medical authorities to be permanently unfit for military service in any capacity, a certificate of exemption from such service.

(4) Any person between the ages of sixteen and twenty-five years who without lawful excuse, the onus of proof whereof shall lie upon him, refuses or fails on demand by an officer or a non-commissioned officer of the Permanent Force or a policeman, to produce the certificate issued to him under sub-section (3), shall be guilty of an offence.

7) Chapter IX--Administration and General Powers of the State President, the Ministers and Officers.

89A. Transfer to Citizen Force or commandos.--The Minister or a person acting under his authority may at any time, in the interest of the South African Defence Force, transfer a member of the Citizen Force to the commandos or vice versa.

8) Chapter X--Provisions Applicable in Time of War or in Connection with the Combating of Terrorism or in Connection with an Armed Conflict outside the Republic or in Connection with Internal Disorder or Other Emergency.

90. Employment of Permanent Force.-- Subject to the provisions of this Act, the whole or any portion or member of the Permanent Force and the whole or any portion or member of the Citizen Force appointed or engaged for temporary whole-time service in terms of section twenty may at any time be employed on service as provided in sub-section (2) of section three.

91. Mobilization of Citizen Force, Reserve and commandos in time of war.--(1) The State President may in time of war by proclamation in the Gazette or in such other manner as he may deem expedient, call out the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of any commando for mobilization for service in defence of the Republic.

92. Mobilization of Citizen Force, Reserve and commandos for the combating of terrorism, internal disorder or other emergency.--(1) The State President may by proclamation in the Gazette or in such other manner as he may deem expedient call out the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of any commando for service in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in the Republic or in the preservation of life, health or property or the maintenance of essential services.

Appendix C.

2. Excerpts from Fact Paper on Southern Africa, No. 8, of the International Defense and Aid Fund

Selous Scouts, is the *Reconnaissance Commando*. This unit, known as the Recce's (sometimes spelt "reckies") has to date maintained a low public profile; they will no doubt play an increasingly important military role as the guerilla war develops.

Recce recruits have to sign up for a minimum of three years, the time it takes to complete a comprehensive training programme that includes parachuting, skydiving, deep sea diving, mountain climbing, unconventional and unarmed combat and advanced explosives. Most members of the unit are professional soldiers and include a number of foreigners.[12]

Late in 1979 it was revealed by the SADF that one of the Recce Commando's training bases is on the Donkergat peninsula at Langebaan Lagoon near Cape Town, where 4 Reconnaissance Commando is housed in old whaling station buildings. Troops here specialise in seaborne tasks, using large motorised rubber dinghies, in addition to their other training. Newsmen were told that the Donkergat base was established in July 1978. It was also disclosed that the Recce Commandos operate directly under the Chief of the SADF.[13] They thus operate outside standard operational structures, and are a law unto themselves.

The name Recce is to a certain extent misleading. Though they are called upon to carry out dangerous reconnaissance work, Recce's are usually deployed in small units assigned to specific combat tasks outside the framework of standard military operations. In operation they often do not wear SADF uniforms – for instance they were deployed in Angola in the guise of Portuguese mercenaries – and sometimes carry Soviet-made weapons.[14]

While few details are available, it is known that the Recce's are recruiting an increasing number of black troops.[15] Black Recce troops (and suitably disguised whites) have been deployed to masquerade as guerillas or other armed forces to perform acts of atrocity in the name of "terrorists".[16] The activities of the Rhodesian Selous Scouts are by now well enough documented to demonstrate the extent to which forces of this kind can be successful in creating confusion and mistrust among sections of the population and in providing adverse propaganda for the liberation forces.[17]

The Afrikaner guerilla units of the Anglo-Boer War have continued through the years to be a source of inspiration to the SADF. Although they carry the same name as their predecessors, the *Commandos* today play a different, yet crucial, role in the SADF.

The Commandos are localised militia groups that may to some extent be compared to the National Guard in the USA and the war-time Home Guard in Britain although the sophistication of organisation and level of mobilisation is far higher. Commandos are basically similar to CF infantry battalions without the full balance of support weapons. They consist largely of volunteers and although some units are deployed in the operational areas, their major task lies in defending the particular area in which they are permanently based.[18] Training concentrates on developing an intimate knowledge of the unit's geographical area of responsibility and regular military exercises with the object of ensuring that the unit is aware of all

potential guerilla strategies and the most effective means of countering them. With over 250 Commando units in a constant state of semi-mobilisation,[19] the potential of this arm of the SADF, which to date has not been put to the test, is substantial.

In rural areas the Commandos are in constant communication with the local farmers, most of whom are in fact members of their local unit, and are meant to be ready to move into operation whenever necessary. In the urban areas the Commandos are in touch with both local military authorities and civil defence organisations, also ready to respond at short notice.

An important development in the defence structure in the past few years has been the establishment of Commando units at many industrial sites. All plants recognised as key point industries are being encouraged to establish such units. An example of this development can be found in the 1977 document from General Motors (SA) which called for the establishment of a unit consisting of white and Coloured employees to defend their Port Elizabeth plant against sabotage or "civil disturbance."[20]

It is believed that once this structure reaches the peak of its present expansion, almost 90% of all white civilian males not serving in CF units will be members of Commandos, along with a growing number of white women and blacks,[21] who are being gradually accepted in supportive roles in a number of units.

One of the crucial elements of the SADF's "Total War" strategy is, as the name suggests, the involvement of every member of the white population in the process of defence. In this respect, in 1976 the regime instructed every municipality and local authority to establish and provide facilities and funds for the maintenance of a *Civil Defence* organisation.[22]

The main function of civil defence organisations is to be prepared and take responsibility for the maintenance of essential services within each community in times of natural and military emergency and, according to the SADF, this role excludes the use of military arms. However, given the fact that over 750,000 white South Africans possess civilian light arms[23] and given the broad legislative definition of civil defence " to provide for the protection of the Republic and its inhabitants in a state of emergency and for other incidental matters"[24], it is clear that CD organisations are also being established as second-line/vigilante groups for assisting the Commandos and police in the maintenance of "law and order" and the suppression of dissent.

There are now over 600 civil defence organisations based throughout the country,[25] operating in liaison with local authorities, Commandos, police and territorial commands. A blueprint laid out by the Chief of Staff (Operations) SADF in 1976 describes the extent of organisation involved in each civil defence area in the following manner: "The area is divided into two or more wards, normally according to geographic location. Ward leaders plus the Managers of Emergency Services could constitute the local civil defence committee under the chairmanship of the Chief of Civil Defence of the area. Every ward in turn is divided into a number of cells. The cell would normally comprise a limited number of families living in close proximity to one another. A cell leader is appointed to advise and co-ordinate the action of householders in his cell, and most important of all, to

initiate on-the-spot activity. In this way the civil defence organisation aims at involving every man, woman and child in the country."[26]

In March 1979 Mr. P. W. Botha announced that owing to operational commitments, the SADF could not use its own time or resources to assist civil defence, but stressed the urgent necessity for the fast development and smooth running of these new militias.[27]

THE SA AIR FORCE

The SA Army is supported by the SA Air Force (SAAF) which forms a modern, effective strike and support force that plays a crucial role in most military operations.

The SAAF has its HQ in Pretoria, operates through four commands – Strike, Transport, Maritime and Light Aircraft – and is in the process of expanding and modernising its major bases to maintain maximum operational potential. The completion of a new base in the Eastern Transvaal in 1978[28] was but one step in ensuring that every region of strategic importance, both in South Africa and the neighbouring states, is within easy reach of SAAF fighters deployed in minimal time.

Most members of the SAAF belong to the Permanent Force, although there are a number of volunteer CF pilots who serve on a regular part-time basis, as do the members of the Air Commandos. National servicemen in the SAAF serve on the ground in support and service capacities.

Largely based in the Transvaal, *Strike Command* has three major responsibilities; reconnaissance, interception and ground attack. High level and tactical reconnaissance is carried out by British BAC Canberras (also used as bombers) and French (manufactured in South Africa) Mirage IIIRZ's and R2Z's[29]. It is believed that the SAAF possesses some of the most up to date equipment and techniques for photo-reconnaissance work[30], which is of particular importance in the planning of pre-emptive strikes into the front-line states. Details of all aircraft and weapons are given in Table V.

For airborne interception, Mirage III CZ and F1 CZ interceptors, armed with French air-to-air missiles are deployed to protect South African air space and cover Air Force and Army operations from air attack in neighbouring territories.

Mirages, the F1 AZ and III EZ, also form the core of the SAAF's ground attack force, armed with air-to-surface missiles. The major targets of ground attack squadrons are guerilla bases and refugee camps, and the administrative and economic centres of front-line states. The SADF and Armscor's first major manufacturing success (under Italian licence), the Impala MB 325M Mk1 (a 2-seater jet trainer) and MB 326K Mk2 (a 1-seater ground attack fighter) have also proved to be effective in counter-insurgency operations.[31]

Transport Command plays a crucial role in enabling the Army to carry out its operations. American Lockheed C-130's and L-100's (sold by the USA as "civilian" planes) and European Transall C-160's make up the heavy

transport fleet that is used for moving troops, equipment and supplies. Douglas C-47 Dakotas (delivered from the USA in the 1950's) are still used extensively, notably for the transport of paratroopers. British Hawker Siddeley HS 125's and American Swearingen Merlin's (both delivered in the 1970's) are used to transport key personnel and small supply loads (see Table VI).

Maritime Command's major responsibility lies in patrolling the South African coastline and for this it employs ageing British Shackletons (recently refitted and resparred)[32] and Italian Piaggio Albatrosses. British Buccaneer S Mk50 jet fighter bombers are also employed for reconnaissance, as well as being held in reserve for strike capacities. In its attempt to convince NATO of the importance of the Southern Indian and Atlantic oceans, the SADF has for some time been urging the organisation of a more comprehensive and modern maritime fleet.

Light Aircraft Command has two components, a permanent operational wing and the Air Commandos. The permanent wing is deployed in operational areas performing tasks such as low-level tactical reconnaissance, casualty evacuation and light transport. It flies American Cessna CE-185's and Skywagons, Italian AM.3CM Bosboks and the Atlas C4M Kudus (this last designed and manufactured in South Africa, based on the Bosbok).

The Air Commandos consist of at least 12 volunteer squadrons of civilian owner-pilots who are trained to provide light support. Most of the aircraft flown in these units are believed to be of American origin.[33]

Though *Helicopters* perform tasks within the various commands, their role requires special attention. In March 1979 the Chief of the SAAF stated that the SADF now realised the importance of the role played by helicopters in counter-insurgency strategy.[34] These craft are deployed in direct conjunction with Army units and are used for a variety of tasks. The largest, the French Super Frelon SA-321 L, is used extensively for the transport of supplies and the dropping and retrieving of infantry patrols. Puma SA-330's and Alouette II SE 313's and III SA-316's (both French) are used as gunships, providing air cover and following up guerilla contacts, and for casualty evacuation. Pumas are also used to transport a section (10 men) of infantry into action.

A flight of British Westland Wasps are deployed by the Navy for off-shore transport and operation. It has also been claimed that the SAAF possesses German BO 105's[35] and US/Italian Agusta Bell helicopters[36] (now known to be in operation in Rhodesia[37]), but this has not been confirmed.

The Cactus surface-to-air missile, designed by the National Institute of Defence Research in the 1960's (see above) and manufactured and marketed internationally by France as the Crotale, has become the cornerstone weapon of the SAAF in *Air Defence*, supported by the British Tigercat missile (delivered to South Africa and thence to Rhodesia through Jordan in 1974)[38] together with Swiss anti-aircraft guns.[39] Every airfield of strategic importance is now apparently well-equipped and manned by an air defence unit which is slotted into the SADF's sophisticated radar system that monitors the air space of Southern Africa as a whole.[40]

Appendix D. Partial List of Recent Detainees.
From a new release of 12/16/81 of the Episcopal Churchmen for Southern Africa in New York City.
This is a list of some of those being detained by the security police in South Africa. Dates of their arrests are in brackets. Some are released within a comparatively short time; some are charged; others are kept on and on under interrogation without recourse to lawyers. Names are difficult to get because the South African Police under law can only confirm publication of those held. These then are some of the people in detention in South Africa at last word:

- Mr Zwelakhe Sisulu, president, Media Workers Association of South Africa, MWASA (19 June)
- Mr Thabo Ndabeni, national organizer, Azanian Peoples Organization, AZAPO (_____)
- Ms Emma Mashinini, general secretary, Commercial Catering & Allied Workers Union, CCAWU (27 November)
- Mr Sampson Ndou, president, General & Allied Workers Union, GAWU (27 November)
- Ms Rita Ndzanga, organizing secretary, GAWU (27 November)
- Mr Sam Kikine, general secretary, South African Allied Workers Union, SAAWU (27 November)
- Ms Debbie Elkon, 4th year medical student, Witwatersrand University, Johannesburg (27 Nov)
- Mr Nicholas Hayson, research officer, Centre for Applied Legal Studies; former president, National Union of South African Students, NUSAS (27 November)
- Dr Neil Aggett, secretary, Transvaal branch, African Food & Canning Workers Union (27 Nov)
- Mr Firoz Cachalia, banned Witwatersrand University student leader (27 November)
- Ms Liz Floyd, Industrial Aid Society, organization helping black workers (27 November)
- Ms Merle Favis, editor, South African Labour Bulletin (27 November)
- Mr Praveen Gordhan, executive, Natal Indian Congress, NIC (27 November)
- Mr Yunus Mohammed, NIC executive member (27 November)
- Ms Mary Ntseka, secretary, GAWU (27 November)
- Mr Cedric Mayson, former editor of PRO VERITATE, the Christian Institute magazine; he, the magazine and the Institute were banned in October 1977; his banning order was lifted last June (27 November)
- Mr Allan Fine, officer, Witwatersrand Liquor & Catering Employees Union (24 September)
- Mr Prema Naidoo, assistant secretary, South African Indian Council; his is one of South Africa's most persecuted families; his father was an adopted son of Mohatma Ghandi (27 November)
- Mr Thozamile Gqweta, president, SAAWU (9 December)
- Mr Sisa Njikelana, vice president, SAAWU (9 December)
- Ms Hanchen Koornhof, high school English teacher; neice of the South African Minister of Cooperation & Development, the regime's department which controls African lives and livelihood (27 November)
- Mr Mandla Mthembu, teacher with South African Committee for Higher Education-SACHED- which runs correspondence courses for black students (24 September)
- Mr Robert Adam, Turret College student (22 September)
- Ms Barbara Hogan, Witwatersrand student (22 September)
- Mr Auret van Heerden, former president, NUSAS (24 September)
- Mr Clive van Heerden, Auret's brother, industrial sociology students, Witwatersrand, and journalist with the independent South African Students Press Union, SASPU (24 October)
- Mr Keith Coleman, Witwatersrand graduate student and SASPU journalist (24 October)
- Mr Cedric de Beer, younger brother of David de Beer, associate of the late Bishop Colin O'Brien Winter; works for Environment Development Association (22 September)
- Mr Colin Purkey, graduate student, Witwatersrand (27 November)
- Mr Morris Smithers, rural development projects (24 November)
- Mr Stan Masako (24 September)
- Mr Robin Bloch, post graduate student, Witwatersrand (24 September)
- Ms Amanda Kwadi, social worker; member, Federation of South African Women (__April)
- Ms Don Socikwa, 3rd year medical student, University of Natal; father is consul of the Transkei bantustan in Cape Town (23 November)
- Ms K. Chetty, medical student, University of Natal (23 November)
- Mr Alexander Mbatha, field worker, Southern African Catholic Bishops Conference (___Oct)
- Ms Khosi Mbatha, Mr Mbatha's wife; she has suffered a heart attack while in detention and was last reported held under guard in hospital (___Oct)
- Mr Michael Pace, medical student, University of Natal (___November)
- Mr Johnny Issel, banned community leader, coordinator community newspaper GRASSROOTS in the Cape Town area; (2 November)
- Mr Jabulani Ngwenya, GAWU officizl (___November)
- Mr Oupa Monareng, teacher Morris Isaacson High School, Soweto (___October)

Appendix E.

Testimony, "U.S. Implementation of the Arms Embargo Against South Africa; A review of national legislation and enforcement procedures," prepared for the "International Seminar on the Implementation and Reinforcement of the Arms Embargo Against South Africa," held under the auspices of the Special Committee Against Apartheid, 1-3 April 1981, by Jennifer Davis and Richard Leonard of the American Committee on Africa.

"2. 'Dual-Use' Items

While restricting all export of all commodities from the U.S. to the South African military and police since 1978, the U.S. has continued to allow the sale of a variety of 'dual-use' items to South Africa under the control of validated licenses issued by the Commerce Department. Light planes continue to be licensed for sale to South Africa, yet many commercial light planes are virtually identical to their military models. The South African Airforce has 13 squadrons of Air Commandos who use their own privately-owned light planes for military exercises and when necessary for military duty. The U.S. has informed the Committee that it monitors the use of such 'dual-use' items through its embassy in South Africa, yet in 1977 Congressional testimony a Commerce Department representative admitted the difficulty in doing this: '...enforcement is a difficult matter in this area. Extraterritorial questions raise difficulties not only with respect to South Africa but other countries as well.' It is difficult to imagine that the disposition of hundreds of light planes could be easily monitored in South African rural areas where Air Commando units operate. The 1980 SIPRI register reported 80 Cessna light aircraft delivered to South Africa from the U.S. in 1979 alone." (p. 18)

Appendix F

SOUTH AFRICAN GOVERNMENT USE OF

CIVILIAN TRANSPORT EQUIPMENT

Statutes of the Republic of South Africa, Defense Act, No. 44 of 1957

102. Control and use of transport systems.--(1) The State President may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic, authorize any officer of the South African Defence Force to assume control over any railway, road, inland water or sea transport system or any air service, or any portion thereof, within the Republic.

(2) The Minister may during operations in defence of the Republic or for the prevention or suppression of terrorism or for the prevention or suppression of internal disorder in the Republic, requisition the authorities controlling any transport system or air service referred to in subsection (1), to supply suitable engines and rolling stock, vehicles, vessels, or aircraft for the conveyance of members of the South African Defence Force or other forces acting in co-operation therewith, or any auxiliary or voluntary nursing service established under this Act, and their guns, armament, ammunition, baggage, stores, supplies, vehicles, vessels and animals, and to convey the same by rail, road, water, or air to or from any point within or outside the Republic, as may be necessary.

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Mr. WOLPE. I would now call on Mr. John Chettle.

STATEMENT OF JOHN H. CHETTLE, DIRECTOR FOR NORTH AND SOUTH AMERICA, SOUTH AFRICA FOUNDATION

Mr. CHETTLE. Thank you, Mr. Chairman.

Mr. Chairman, it is with considerable pleasure that I appear at the invitation of this joint subcommittee hearing.

We believe that the foundation has been a catalyst in the process of change and reform in South Africa, and we try, as truthfully and objectively as we can, to reflect to those outside the country what is happening within it. Although the foundation has always avoided any participation in party politics, we have made it clear over the years that change is imperative.

I must also emphasize that I hold no brief for the Government. To be frank, many of the foundation's trustees are thoroughly impatient with it, not because they underestimate the reform which has already been achieved, or because they do not appreciate the courage with which members of the Government have acted in dealing with the resistance to reform of the extreme rightwing, but because they are all too conscious of how much still needs to be done. Like many South Africans, I am ashamed of some of the things my country does. I remember in particular with shame the events in Nyanga, when the Africa Subcommittee visited the area in August last year.

The chief effect of these politico-military restrictions has been to cause South Africa to build a formidable arms industry of its own, which now exports arms to a number of countries around the world; to reduce still further the leverage of the United States; and, as former Secretary of Commerce Philip Klutznick recognized in his annual summary of the restrictions in 1979, to further "South Africa's determination to achieve economic self-sufficiency and independence from any one foreign supplier," and to enable the major trading adversaries of the United States to be active "in turning the U.S. restrictions into strong points for their country's manufacturers."

In this testimony I shall try to give some sense of what is actually happening in South Africa, perhaps something that the foundation is uniquely qualified to do. I shall sketch briefly the role both of South African and of U.S. business in the process of liberalization and reform, analyze the trade restrictions that have been imposed, and consider their symbolism in South Africa as well as in Africa.

It is understandable that those genuinely wanting to know what is happening in South Africa should be confused. One of the barriers to understanding is the fact that the National Party has been in office since 1948. Although that party is very different today from the frankly segregationist one elected at that time, it has never been defeated and has never admitted to anything more than an adoption of policy. In other countries, changes of administration or government enable policy not merely to change but to be seen to change. In South Africa, a government very different from its early years continues in office, bearing the cumulative burden of more than 30 years of policy decisions. The necessity to propitiate var-

ious factions within the party has prevented the frank repudiation of much of that inheritance.

So has the existence of a powerful reactionary element within that party. For some years, opinion polls have shown that the majority of Afrikaners have been more liberal than the National Party. The Prime Minister showed himself conscious of this fact by moving sharply to the left once he was elected. But he felt obliged to obfuscate what he was doing: To make changes by stealth rather than in the open, by administrative fiat rather than by legislation, by commissions packed with his supporters rather than through Parliament or the bureaucracy. It could hardly be wondered that, in executing a strategy designed to confuse his opponents and keep them off balance, he should succeed in confusing everyone else.

This struggle within the ruling party, still poorly understood abroad, affects almost every facet of the national life:

First, it means that change itself has to be cautious and circumspect. The Government would find it embarrassing to admit that urban blacks can have freehold ownership of land, in the cities, for example, for this would violate the principle, long since abrogated in practice, that blacks are only "temporary sojourners" within the "white areas." Instead, there was an unsatisfactory compromise by which blacks were able to get a 99-year leasehold.

Second, it means that change can never be explained in an honest and straightforward way. As the present Assistant Secretary of State for African Affairs, Dr. Chester Crocker, has shrewdly observed,

> Changes in racial policy, when they occur, are typically clothed in legalistic and ideological formulas designed to make them either deniable or invisible—a tendency which only aggravates "misunderstanding". It requires an expert in the bizarre politics of Afrikanerdom to interpret what is really going on.

Often change is accompanied by rhetoric, intended to protect the political flank of the minister concerned, that not only makes it difficult to see that change has taken place, but that even arouses fear of retrogressive steps. Outsiders, though skilled in understanding the function of rhetoric in circumstances nearer to home, often fail to understand its use in South Africa and take such utterances at face value. As a result of the inability to communicate changes that have taken place, blacks are inclined to mistrust the evidence of change, and outsiders to discount it entirely.

Third, it means that it is difficult to grapple effectively with reactionary elements within the National Party who are skillful at presenting their dissent from policy changes in terms of a defense of the spirit and letter of established party policy.

Fourth, for the same reason, it is hard to deal with the bureaucracy, which, over the long period of Verwoerd's ascendency both as Minister of Bantu administration and Prime Minister was thoroughly imbued with his vision of territorial separation.

Similarly, legislation is often not repealed but merely circumvented. Years before job reservation was finally abolished, it had almost ceased to function as a result of large-scale exemptions or because of simple noncompliance.

The party leadership is apparently divided on issues pertaining to the pace, extent, and ultimate objectives of reform. The Prime Minister is faced by an opponent or colleague who leads the most

powerful of the provincial federal units of the National Party and who could break away with significant support in certain circumstances. For these reasons, the reform process has consisted in thoroughly preparing the ground for specific action in a particular field, and it has sometimes been accompanied by some rightist posturing. Some have described this process as being virtually reform by stealth. A good example of this is the progress being made by the Minister of Labour in opening up the trade unions to blacks, removing job reservations, and paving the way for ending discriminatory employment practices and the optimum development of all manpower resources.

This does not mean that the reform idea has been abandoned. What is being done appears to be a tactical adjustment.

It must also be remembered that there are important forces both within and outside the political arena which have developed considerable momentum in the direction of reform. There is, for example, the approach of the military, which regards it as vital to secure and maintain the good will of all sections of the population.

No less cogent are economic and demographic considerations. To avoid intolerable unemployment, the economy must be kept growing by at least 5 percent per annum. This means that we must have enough people to do the skilled jobs; they must be trained, and this, in turn, requires the reform of educational and training systems and the eradication of present defects and inequalities. The economic growth opportunities must be used where they exist, predominantly in the existing metropolitan areas. This means that there will be a continuing movement of black people into those areas, a recognition of their permanence in the urban areas and an end to their exclusion from political participation in the so-called white parts of the country. It means that we need to provide for increasing labor mobility, for the reform or the removal of influx control and the provision of housing on a vast scale.

Not least important is the necessity for the government to wait for the report of the Constitutional Commission of its own President's council. The Government has sought to speed up the report of the Constitutional Committee, which is now expected in March rather than July, and it has indicated a wish to produce a package of reform which would be meaningful both inside and outside the country, rather than make improvements piecemeal.

In making these points, I do not wish to leave the impression that reform is proceeding purely by government edict, and that the rest of the population, including the black population, are in the position of waiting obediently and patiently for whatever dispensation is made. Nothing, it seems to me, could be further from the truth. There is enormous dynamism built into the whole process of change.

THE ROLE OF BUSINESS

This paper would be intolerably long if I went in any detail into the role of business, but the issue must be touched on because it is precisely the business sector that is most affected by the restrictions in U.S. legislation. It is probably true that it took the riots of 1976 in Soweto to awaken business to the necessity not merely to

complain about the inadequacies of government policy, but to determine to make changes that were within its power. Thus, a number of businessmen, including trustees of the foundation, like Mr. A. M. Rosholt, the chairman and chief executive officer of Barlow Rand, which has 197,000 employees, twice the number employed by all the American corporations in South Africa put together, have insisted on recognizing black trade unions, even those which are not officially registered, if they genuinely represent the wishes of their workers.

EFFECT OF RESTRICTIONS

The trade embargo on police and military equipment was introduced by the Carter administration in February 1978, without any effort to seek public comment before it was issued. At the time, there were no statutory criteria for the institution of foreign policy based export controls. The language of the statute was both sweeping and vague. For example, it could mean that the incorporation of a single spark plug of U.S. origin in a car manufactured in Britain by a British-owned firm for which there is reason to know will be made available for use by some police unit in South Africa would be a violation of the embargo justifying the imposition of sanctions such as the denial of the right of the British firm to trade with the United States.

It is clear that none of this complies with the strict criteria required by Congress, itself, in the 1979 Export Administration Act to be met before restrictions on U.S. commercial exports could be imposed to attain foreign policy objectives. Among the criteria outlined in the Export Administration Act are the probability that such controls will achieve the intended foreign policy purpose and the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual U.S. companies and their employees and communities, including the effects of the control on existing contracts. Indeed, we estimate conservatively that, in the 19 years since the unilateral arms embargo was imposed, the United States has lost more than $14 billion in trade with South Africa and some three quarters of a million jobs in the United States, itself. These losses have occurred in the sale of defense and nuclear power station equipment alone.

Even more significant than that, however, is that boycotts and restrictions play into the hands of extremists on both sides—on the side of the extreme rightwing in South Africa, which argues that contact with the West will undermine the policy of apartheid; and on the side of the extreme left here and elsewhere, which sees violent revolution as the only solution to South Africa's problems. Restrictions serve only to weaken and undermine the moderate center, which argues that South Africa's historical destiny is to be alined with the West, who believe that South Africa must adapt its political system, not because the alternative would be international boycotts and sanctions, about which we are profoundly skeptical, but because it is the right thing to do, but also who believe that the

West will not spurn South Africa's efforts to reform, and will recognize change when it comes.

In view of your particular request that I not go over the 10 minutes allocated, I would like briefly to mention that in terms of symbolism, the trade of South Africa with Africa as a whole is growing very rapidly indeed; in fact, more rapidly than trade with the rest of the world, and that symbolism also must be considered in its relation to reform elements in South Africa, itself. Finally, I have made an analysis at the end of my testimony which some may find difficult and even harsh reading, but it seems to me that the cause of reform in South Africa is not assisted when the views of particular committees of the Congress are concentrated so exclusively on one single part of the African Continent. I draw respectfully to the attention of the Africa Subcommittee this analysis.

Thank you very much.

[Mr. Chettle's prepared statement follows:]

Prepared Statement of John H. Chettle, Director for North and South America of the South Africa Foundation

Mr. Chairman, it is with considerable pleasure that I appear at the invitation of this joint Subcommittee conveyed to me by Mr. Majak, and confirmed in a letter from Chairman Wolpe and Chairman Bingham.

As I am sure you are aware, the South Africa Foundation is a private, non-governmental, multi-racial foundation supported entirely by private and corporate donations. So determined is the Foundation to be independent and to be seen to be independent that, although we are a non-profit Foundation, we have not even requested the South African government to make donations to the Foundation tax deductible. The Foundation represents a cross section of all races and all shades of opinion in South Africa, ranging from those supporting the government to those bitterly opposed to it, and its Trustees include religious leaders like the Chief Rabbi of Johannesburg and the Roman Catholic Cardinal of Cape Town, trade union leaders like the black General Secretary of the Garment Workers Union and the General Secretary of the Trade Union Council of South Africa, educational leaders like the Rector of the Rand Afrikaans University and the Coloured Rector of the University of the Western Cape, and other eminent South Africans of all races, all religious affiliations and all political beliefs.

We believe that the Foundation has been a catalyst in the process of change and reform in South Africa, and we try, as truthfully and objectively as we can, to reflect to those outside the country what is happening within it. Although the Foundation has always avoided any participation in party politics, we have made it clear over the years that change is imperative. In 1975, for example, the then President noted that "The color of a skin cannot and should not be a reason for discrimination... Only merit and fair civilized standards should be the basic criteria in human relations." We have stood, over the years, for a respect for the rule of law, and for the complete abolition of racial discrimination.

I must also emphasize that I hold no brief for the government. To be frank, many of the Foundation's Trustees are thoroughly impatient with it, not because they underestimate the reform which has already been achieved, or because they do not appreciate the courage with which members of the government have acted in dealing with the resistance to reform of the extreme right-wing, but because they are all too conscious of how much still needs to be done. Like many South Africans, I am ashamed of some of the things my country does. I remember in particular with shame the events in Nyanga when the Africa Subcommittee visited the area in August last year.

I should, however, note one further point. I should not like to leave the impression that we are here to try to avoid at all costs the continuation of these politico-military restrictions. Fortunately or unfortunately, depending on one's perspective, it is not easy to obtain meaningful results in foreign policy by such restrictions.

Indeed, the chief effect of these actions has been to cause South Africa to build a formidable arms industry of its own, which now exports arms to a number of countries around the world; to reduce still further the leverage of the United States; and, as former Sec. of Commerce Philip Klutznick recognised in his annual summary of the restrictions in 1979, to further "South Africa's determination to achieve economic self sufficiency and independence from any one foreign supplier", and to enable the major trading adversaries of the United States to be active "in turning the U.S. restrictions into strong points for their country's manufacturers."

Edward Banfield of Harvard has written brilliantly about the unintended consequences of government action. I am afraid that the main unintended consequences of the action taken by the Carter Administration are that they have harmed the United States by reducing its influence, reducing its trade, and reducing its reputation for reliability as a supplier. In the single area where we clearly have suffered from the embargo, that of seapower, they have also seriously affected our ability to be a useful ally of the United States if there were a conflict in which the Cape Sea Route was of strategic importance.

In this testimony I shall try to give some sense of what is actually happening in South Africa, perhaps something that the Foundation is uniquely qualified to do. I shall sketch briefly the role both of South African and of U.S. business in the process of liberalization and reform, and analyze the trade restrictions that have been imposed, and their symbolism in South Africa as well as in Africa.

I can understand, because to some extent I share the feeling myself, the sense of frustration and impatience of members of Congress confronting a situation, which, though it is the domestic situation of another country, raises profound moral and ethical questions. Indeed, these concerns would be even more convincing if they were not so rigidly confined to one portion of the African continent. I think that it is very important, therefore, to try to convey to your Committees what I think is happening in South Africa. I am going to concentrate initially on what is happening on the government side, not because that is the sole reality, but because for the moment it is determinative.

It is understandable that those genuinely wanting to know what is happening in South Africa should be confused. One of the barriers to understanding is the fact that the National Party has been in office since 1948. Although that party is very different today from the frankly segregationist one elected at that time, it has never been defeated and has never admitted to anything more than an adaption of policy. In other countries, changes of administration or government enable policy not merely to change but to be seen to change. In South Africa, a government very different from its early years continues in office, bearing the cumulative burden of more than 30 years of policy decisions. The necessity to propitiate various factions within the Party has prevented the frank

repudiation of much of that inheritance.

So has the existence of a powerful reactionary element within that party. As in most political parties, activists tend to be more thoroughgoing in their ideology than rank and file supporters. Moreover, the activists have been influential in deciding who will represent the party in Parliament. For some years, opinion polls have shown that the majority of Afrikaners have been more liberal than the National Party. The Prime Minister showed himself conscious of this fact by moving sharply to the left once he was elected. But he felt obliged to obfuscate what he was doing: to make changes by stealth rather than in the open, by administrative fiat rather than by legislation, by commissions packed with his supporters rather than through Parliament or the bureaucracy. It could hardly be wondered that, in executing a strategy designed to confuse his opponents and keep them off balance, he should succeed in confusing everyone else.

This struggle within the ruling party, still poorly understood abroad, affects almost every facet of the national life:

(1) It means that change itself has to be cautious and circumspect. The government would find it embarrassing to admit that urban blacks can have freehold ownership of land, in the cities, for example, for this would violate the principle, long since abrogated in practice, that blacks are only "temporary sojourners" within the "white areas". Instead blacks are able to get only a 99-year leasehold.

(2) It means that change can never be explained in an honest and straightforward way. As the present Assistant Secretary of State for African Affairs, Dr. Chester Crocker, has shrewdly observed,

> "Changes in racial policy, when they occur, are typically clothed in legalistic and ideological formulas designed to make them either deniable or invisible - a tendency which only aggravates "misunderstanding". It requires an expert in the bizarre politics of Afrikanerdom to interpret what is really going on."

Often change is accompanied by rhetoric, intended to protect the political flank of the minister concerned, that not only makes it difficult to see that change has taken place, but that even arouses fear of retrogressive steps. Outsiders, though skilled in understanding the function of rhetoric in circumstances nearer to home, often fail to understand its use in South Africa and take such utterances at face value. As a result of the inability to communicate changes that have taken place, blacks are inclined to mistrust the evidence of change, and outsiders to discount it entirely.

(3) It means that it is difficult to grapple effectively with reactionary elements within the National Party who are skilful at presenting their dissent from policy changes in terms of a defense of the spirit and letter of established party policy. This phenomenon strengthens the suspicions of those at home and abroad who argue

that no substantive change has taken place.

(4) For the same reason, it is hard to deal with the bureaucracy, which over the long period of Verwoerd's ascendency both as Minister of Bantu Administration and Prime Minister was thoroughly imbued with his vision of territorial separation. This may be the greatest impediment of all to securing meaningful change. For several years the decision to grant rights of home ownership to blacks was systematically and skilfully frustrated by the very bureaucracy entrusted with the task of carrying it out. In this respect, South Africa is not unusual. Henry Kissinger once remarked that policy in bureaucratic societies "is implemented by individuals whose reputation is made by administering the status quo." This obstacle may well be one of the main reasons for the Prime Minister's drastic reconstruction of the civil service, including the reduction in government departments from 39 to 22.

Similarly, legislation is often not repealed but merely circumvented. Years before "job reservation" was finally abolished, it had almost ceased to function as a result of large scale exemptions or because of simple non-compliance.

There is, in fact, what might almost be called a tacit conspiracy: corporations and individuals break the law quietly, without drawing attention to what they are doing; factory inspectors wink at the illegalities; government departments carry on as if everything were normal; and the central government continues to defend a policy that is no longer being carried out. So long as no one says anything publicly, the charade continues. If someone should point out the contradiction, there is a brief flurry of action, policy is fervently reaffirmed, and after a while everything returns to its previous state of pre-legitimated practice.

The party leadership is apparently divided on issues pertaining to the pace, extent and ultimate objectives of reform. The Prime Minister is faced by an opponent or colleague who leads the most powerful of the provincial federal units of the National Party and who could break away with significant support in certain circumstances. For these reasons, the reform process has consisted in thoroughly preparing the ground for specific action in a particular field, and it has sometimes been accompanied by some rightist posturing. The Prime Minister has sought to secure the maximum of consensus and to take the requisite steps only when the political power bases seem firm enough. Some have described this process as being virtually reform by stealth. A good example of this is the progress being made by the Minister of Labour in opening up the trade unions to blacks, removing job reservations, and paving the way for ending discriminatory employment practices and the optimum development of all manpower resources. But the process can impose serious delays, as is illustrated by the delay in implementing important recommendations of the Riekert Commission, long accepted in principle by the Cabinet, which has sought to provide a greater mobility for black labor and to reduce the rigours of the influx control system.

The government has also lost a golden opportunity for making really

meaningful symbolic gestures towards improving relations across the color line, and great frustration has been caused to a number of moderate black, Coloured and Asian leaders who had put their own credibility in their communities at stake by serving on government appointed bodies with a view to securing peaceful reform.

This does not mean that the reform idea has been adandoned. What is being done appears to be a tactical adjustment. More time is being taken to inform and convince conservatives or waverers of the need to throw their weight firmly behind reform initiatives, an opportunity which would be lost if a showdown and consequent polarisation were brought about too soon.

It must also be remembered that there are important forces both within and outside the political arena which have developed considerable momentum in the direction of reform. There is, for example, the approach of the military, which regards it as vital to secure and maintain the good will of all sections of the population.

No less cogent are economic and demographic considerations. To avoid intolerable unemployment, the economy must be kept growing by at least 5% per annum. This means that we must have enough people to do the skilled jobs, they must be trained, and this in turn requires the reform of educational and training systems and the eradication of present defects and inequalities. The economic growth opportunities must be used where they exist, predominantly in the existing metropolitan areas. This means that there will be a continuing movement of black people into those areas, a recognition of their permanence in the urban areas and an end to their exclusion from political participation in the so called white parts of the country. It means that we need to provide for increasing labor mobility, for the reform or the removal of influx control and the provision of housing on a vast scale.

Not least important is the necessity for the government to wait for the report of the Constitutional Commission of its own President's Council. Were it to fail to do so, it would be rightly accused of snubbing that process. But the government has sought to speed up the report of the Constitutional Committee, which is now expected in March rather than July, and it has indicated a wish to produce a package of reform which would be meaningful both inside and outside the country, rather than make improvements piecemeal. The State President in his opening of Parliament a few days ago emphasized the necessity for a policy of renewal in political, social and economic matters and Afrikaans press speculation at the end of January, apparently reflecting leaks, posited an elected body composed of whites, Coloureds and Indians, to replace the President's Council. There are indications that the Constitutional Commission, in its report, will lay down certain guidelines by which blacks can be brought into the process, and that the Commission will also recommend the abolition of a great deal of discriminatory legislation.

In making these points, I do not wish to leave the impression that reform is proceeding purely by government edict, and that the rest of the population, including the black population, are in the posi-

tion of waiting obediently and patiently for whatever dispensation is made. Nothing, it seems to me, could be further from the truth. There is enormous dynamism built into the whole process of change. One significant area is of course the trade unions, which blacks, hitherto denied a political outlet, are using for social, economic and political purposes. The whole labor area is a turbulent one, and likely, in the view of many analysts, to become more so.

A second area likely to generate fundamental change is education. The government accepted the recommendation of the recent Human Sciences Research Commission that it had an obligation to provide equal opportunities in the educational sphere. While the government is still committed to the principle of segregated schools, its own Commission recommended that a way should be found to desegregate such schools, and in fact every single private school in the country is now integrated. The scale of educational improvement also should be noticed. Between 1975 and 1979 the number of class rooms for blacks increased from 62,560 to 80,679, and the number of pupils from 3,700,000 to 4,600,000. The potential impact of that change needs hardly to be underlined.

A similar reflection of black advance is indicated in another analysis by a leading firm of Johannesburg stockbrokers that between 1979 and 1985 private consumption expenditure by blacks will grow by 155%, and exceed white consumption by 18%. This of course reflects another great change that will take place in South African society, namely the increase in the population to about 50 million in the year 2000, and 73% of that number will be black.

The Role of Business

This paper would be intolerably long if I went in any detail into the role of business, but the issue must be touched on because it is precisely the business sector that is most affected by the restrictions in U.S. legislation. As such, it affects the most enlightened and liberalising sector in the country. It is probably true that it took the riots of 1976 in Soweto to awaken business to the necessity not merely to complain about the inadequacies of government policy, but to determine to make changes that were within its power, and to bend government legislation to the limit where that was necessary. Thus a number of businessmen, including Trustees of the Foundation like Mr. A.M. Rosholt, the Chairman and Chief Executive Officer of Barlow Rand, which has 197,000 employees, twice the number employed by American corporations in South Africa put together, have insisted on recognizing black trade unions, even those which are not officially registered, if they genuinely represent the wishes of their workers.

The development of the Sullivan Code led to other codes drawn up by the EEC, the Urban Foundation, Canada and a number of private institutions. Some of these codes went beyond the provisions of the Sullivan Code and have led, for example, to some employers making major expenditures to enable their black workers to buy their own houses.

In the most comprehensive book written on U.S. investment in South Africa, Mr. Desaix Myers, III, Executive Director of the Investor Responsibility Research Center, has said that the response to the codes has been"measurable and sometimes impressive. A number of the signers have taken tangible and often dramatic steps towards improving opportunities for black workers." They have recommended that "all forms of social discrimination written into existing labor legislation and associated regulations be eliminated, and that the principle of freedom of association apply to all workers of all population groups on a common basis." They have recommended changes to enable education and training of workers on an increased level.

But, without wishing to minimise the contribution of the Rev. Leon Sullivan, and his success in focussing attention on what needed to be done, most of those principles are now commonplace practice.

Effect of Restrictions

The trade embargo on police and military equipment was introduced by the Carter Administration in February 1978, without any effort to seek public comment before it was issued. At the time there were no statutory criteria for the institution of foreign policy based export controls. The language of the statute was both sweeping and vague. It prohibited the export to South Africa or Namibia of any commodity or non-public technical data whatsoever where the exporter "knows or has reason to know" that the item will be "sold to or used by or for" "military or police entities" in these destinations, or used to service equipment "owned, controlled or used by or for" such entities. Thus it has no limitations as to the categories of products or technical data. In the case of technical data, it further banned exports if the exporter "knows or has reason to know" that "any product of the data" will be sold to or used by or for police or military entities or service equipment owned, controlled or used by them. Finally, it bars re-exports to South Africa and Namibia of U.S. origin goods and technical data in third countries if the circumstances are such that direct exports would be banned. Thus, the incorporation of a single spark plug of U.S. origin in a car manufactured in Britain by a British owned firm which there is "reason to know" will be "made available for use" by some police unit in South Africa would be a violation of the embargo justifying the imposition of sanctions such as the denial of the right of the British firm to trade with the United States.

One of the least defensible aspects of this policy has been the application of it to products made in foreign countries and containing U.S. parts. The department has construed the provisions as barring foreign companies from exporting their products to police and military entities in South Africa if there is even the smallest part of U.S. origin. This has led not only to poor relations with such countries but also led them to purchase parts from suppliers other than the United States. Moreover, while the United States is not in a position to give adequate surveillance to such proposals, they serve to damage U.S. firms who comply with the law.

Not the least objectional aspect of the legislation is the vague and ambiguous "reason to know" test. The test was apparently derived from the Foreign Corrupt Practices Act. Theodore Sorenson, a supporter of that legislation, stated unambiguously that "No other provision of the (FCPA) has caused more confusion and deterred more export activity.... this phrase is a difficult, ambiguous test based even in legal literature on inferences, assumptions, unconscious knowledge and probabilities - not a fair standard, surely, in such a murky, unchartered area of the law such as this, which can impose criminal liability."

Similarly, the provision that a product "used by or for" police or military entities are covered by the embargo introduces an ambiguous concept of "use" which could apply to an automobile sold to a taxi company which gives rides to military personnel. It is clear that none of this complies with the strict criteria required by Congress itself in the 1979 Export Administration Act to be met before restrictions on U.S. commercial exports could be imposed to attain foreign policy objectives. Among the criteria outlined in the Export Administration Act are "the probability that such controls will achieve the intended foreign policy purpose" and "the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the control on existing contracts." Indeed, we estimate conservatively, that, in the 19 years since the unilateral arms embargo was imposed the United States has lost more than 14 billion dollars in trade with South Africa and some three quarters of a million jobs in the United States itself. These losses have occurred in the sale of defense and nuclear power station equipment alone. One wonders how many thousand jobs in Michigan, in New York and in California may have been lost as a result of such action. And this does not even begin to deal with the question how much business was lost in the non-defense area.

Business Week reported on April 20, 1981 that Burroughs Corporation, for example, "could not get approval from Washington to export an electronic patient monitoring system for military hospitals and had to withdraw from competition for the million dollar contract. It went to Siemens, which also grabbed a $600,000 order for electronic medical equipment from Hewlett-Packard Co."

Not only were these jobs lost, but, as Business Week also reported,

> "The restrictions have proved a bonanza to European companies - and in particular to companies with high technology products - which wasted no time exploiting the opportunity. Siemens, for example, in 1976 was in the midst of dismantling its marketing effort for computers and other advanced electronics equipment, because the U.S. had a lock on the market. But when the Carter Administration acted, Siemens hurriedly reversed its pullout - and has since benefited handsomely."

Even more significant than that, however, is that actions of this kind - boycotts and restrictions - play into the hands of extremists on both sides - on the side of the extreme right-wing in South Africa, which argues that contact with the West will undermine the policy of apartheid; and on the side of the extreme left here and elsewhere, who see violent revolution as the only solution to South Africa's problems. Restrictions serve only to weaken and undermine the moderate center, which argues that South Africa's historical destiny is to be aligned with the West; who believe that South Africa must adapt its political system, not because the alternative would be international boycotts and sanctions, about which we are profoundly skeptical, but because it is the right thing to do; but who also believe that the West will not spurn South Africa's efforts to reform, and will recognize change when it comes.

Symbolism

There is much talk of the symbolism of reducing the restrictions. What, it is argued, will Africa think of the actions of an Administration which reduces restrictions on South Africa? To be frank, Africa may be the very last continent which has any right to upbraid this country - least of all this country - for lack of a commitment to liberty. The Organisation of African Unity is the body which, as Senator Moynihan pointed out while he was Ambassador to the U.N., of its own volition, and at the very height of a career which led to the deaths of an estimated 250,000 human beings, elected Idi Amin as its President, and which this year has elected that other paragon of democratic practice, Colonel Gaddafi. I'm not sure that any large proportion of the American people feel the need to accept guidance in their foreign policy from the OAU and from Colonel Gaddafi.

Africa's Growing Trade with South Africa

Even more to the point, South Africa's trade with black Africa is growing more rapidly even than its trade with the rest of the world, including the United States. In the three years between 1978 and 1980, South Africa's exports to black Africa doubled to more than $1 billion. South Africa is in fact the breadbasket of the region, supplying roughly 36% of Africa's maize and 18% of its wheat. 47 of the 53 African countries alone bought maize and wheat from South Africa in 1980. The South African Financial Mail reported that "South African canned food, wine and other products, labeled in English and Afrikaans, are found on supermarket shelves in Zaire, Malawi and Zambia. Armour plating for Zambia, police helmets for Uganda and fresh meat for Marxist Guinea have all been on Africa's shopping list." Zimbabwe imports three times as much from South Africa as from any other country and South Africa is the major market for Zimbabwe's exports. When the Queen opened the Commonwealth Conference at Lusaka, the red carpet on which she walked was flown up from South Africa for the occasion. As the Times of London reported

> "Behind public posturing, African leaders know perfectly well that South Africa's immediate neighbours would be half starved and half strangled by such sanctions long before the Republic was seriously incommoded -- South

> Africa is a vital organ in the whole Southern African economy. Diseased that organ may be by the practice of apartheid, but stopping the heart as a cure for heart disease rarely benefits the patient. African governments are sophisticated enough to appreciate the complexity of the South African position. Publicly, they too thump the tub. Privately they are receptive to sensible ideas."

But in dealing with symbolism, the symbolism which tends so often to be forgotten is that of the symbolism of U.S. actions on reformers in South Africa. They have repeatedly to fight on two fronts. They must counter the opposition and obstruction of the extreme right-wing, which tries to prevent change at all costs, and they encounter the incomprehension and hostility of those who should understand their purposes abroad. All too often the "carrot" which is extended towards them consists merely in a cessation temporarily of beating them with the stick. Reformers, who have to cope with a situation of incredible complexity and delicacy, have a right to expect more understanding and sympathy from enlightened people abroad than they ever receive.

But I must say, Messrs. Chairmen, in all frankness, that the efforts for reform are not assisted where a suspicion arises about the sincerity of those in this country who urge that reform. Most of us believe that the concerns of committees like yours are legitimate, that your moral concerns are proper, and that South Africans should listen to what you are saying. But before I consented to appear I was asked to do an analysis to find out what other hearings the Africa Subcommittee had held. I find it hard adequately to express my concern with the findings.

The analysis was of all the hearings held by the Africa Subcommittee, directed towards the situation in particular countries, between 1970 and 1980. I should note, Mr. Chairman, that this was a period before you took over as Chairman of the Africa Subcommittee. More than 70 percent of those hearings were directed towards the situation in just three countries, South Africa, South West Africa and Rhodesia. There were an average of 7 individual hearings a year on these countries. Other countries, it is true, were dealt with in the course of hearings on the foreign aid appropriation, but this cannot be considered an adequate substitute for hearings over a period of time before the Africa Subcommittee. Yet, between 1970 and 1980

> There was not a single hearing on Ethiopia, where, according to Amnesty International, some 30,000 persons were executed for political reasons between 1974 and 1978 - 10,000 in 1977 alone; where Ethiopian police and army squads murdered some 5,000 grade school, high school and university students and imprisoned some 30,000 others; where, again according to Amnesty International, 12 year-old children were among those tortured.

- There was not a single hearing on Burundi, where the State Department concluded that the government was engaged in selective genocide; where, according to a Carnegie Endowment report, "there took place the systematic killing of as many as a quarter million people"; where, according to an American Universities Field Staff report, which U.S. officials uniformly judged accurate, the following were among the victims:

  "...the four Hutu members of the Cabinet, all the Hutu officers and virtually all the Hutu soldiers in the armed forces; half of Burundi's primary school teachers; and thousands of civil servants, bank clerks, small businessmen, and domestic servants; at present," according to the report, "there is only one Hutu nurse left in the entire country, and only a thousand secondary school students survive."

- There was not a single hearing on Tanzania, where, according to the Economist, beginning in 1973 something like 10 million or 11 million peasants were forcibly removed from their land.

- There was not a single hearing on Equatorial Guinea, although the black Roman Catholic Bishop of Bata came to Capitol Hill in 1978 "to beg you to do something for my people"; although, according to Vatican City sources, more than 15 percent of the population were murdered and perhaps a third fled as refugees; and although the country was a Soviet supply base during the Angolan War, and a base for 1500 Cuban soldiers.

- There was no hearing on Uganda until 1978, during a period in which Idi Amin had massacred a quarter of a million people, and during which the U.S., in buying a third of the Ugandan coffee crop, was one of the main supports of the Ugandan economy.

This lack of interest was not for want of notice to Congress. In 1974 the Secretary-General of the International Commission of Jurists gave brief testimony before the House Committee on International Organisations and Movements. He stated at that time:

"It is not here a question,as in so many countries today,of arrests and interrogation under torture,followed by prolonged detention without trial. It is a matter of liquidation, often in circumstances of great brutality, of any persons who attract the suspicion or displeasure of the authorities. It is a policy of arbitrary killing resulting in a reign of terror."

Despite that evidence in 1974, no hearing of the Africa Subcommittee occurred on Uganda until 1978, less than a year before the fall of Idi Amin. And in 1978 the Africa Subcommittee still refused to recommend any action on Uganda, and when the U.S. purchases of Ugandan coffee were finally cut off it was as a result of an amendment on the Senate side to the Financial Institutions Regulatory and Interest Rate Control Act.

Not the least depressing aspect of this analysis is to notice that, while Amnesty International and the International Commission of Jurists both testified about particular situations of this kind, at no time in any of the hearings did any of the other organisations which appear today give evidence of any brutalities in any black-ruled African country. Not Transafrica, not the American Friends Service Committee, not the Lawyers Committee for Civil Rights, nor for that matter the Washington Office on Africa, the African-American Institute, the National Council of Churches, Clergy and Laity Concerned or any of the other organisations which testify at hearings on South Africa.

I could go on, Mr. Chairman, but the point is clear enough. What am I to tell people back home who are sceptical of the good faith of critics in this country? What is one to say to those who contend that the only kind of injustice that really concerns critics is the injustices of whites over blacks?

South Africans of all races are a deeply patriotic people. They resent, even when they may know it is justified, what they see as the interference of others in their affairs. But when interference is also selective you take out of the hands of your friends any weapon that they may have. I am sure that this is not the wish of your committee, or of the organisations which testify before you. For I hope that we are agreed that the object of any policy should be to do good, and not merely to make one feel good.

Mr. WOLPE. Thank you very much.

I will now call on Mr. Thomas Conrad.

STATEMENT OF THOMAS CONRAD, AMERICAN FRIENDS SERVICE COMMITTEE

Mr. CONRAD. Mr. Chairman, I am happy to be here today.

I speak on behalf of the American Friends Service Committee, a Quaker organization which seeks to promote development, dialog, justice, and disarmament in the United States and other countries.

I am speaking here today for the AFSC on a matter of deep concern to our organization and to many Friends, although I do not purport to speak for all Quakers.

The AFSC is gravely concerned about the future of the U.S. arms embargo against South Africa and the regulations that implement it. We are now in the final stage of a critical evaluation of the embargo, focusing on high-technology sales which will be published soon. I would like to share some of our perspectives with the members here.

Before doing so, I would like to register the AFSC's concern about the increasing difficulties we, and other religious agencies, face in providing basic assistance to Kampuchea. Although relief work in Kampuchea is not the focus of these hearings, we are devoting attention here to export controls. This is obviously and clearly not a focus of these hearings, but it is of considerable importance.

I have to say that it is ironic and frustrating to us that the Government has made it difficult to send commodities such as basic tools, building supplies, pens and pencils to children and civilian adults in Kampuchea while a vast array of militarily useful high technology is exported by U.S. companies to South Africa.

We were astonished recently to learn that shortly before the Government turned down a request from the Mennonite Central Committee to send school supplies to Kampuchea, licensing officials gave permission for the sale of an advanced computer by Sperry to Atlas Aircraft. Atlas is one of the largest state-owned weapons makers in South Africa.

As you know, the United States has pledged to observe the international arms embargo against South Africa, first enacted in 1963 by the United Nations and made mandatory in 1977. Broadly and generally speaking, the regulations prohibited the export to South Africa of any weapons—even those for private use—and all items on the Munitions List; banned sales of any commodities to the police and military; subjected certain dual-use items to special reviews; and applied the same restrictions to reexports of U.S. origin commodities from third countries to proscribed end-users in South Africa.

We believe that these regulations represented a step in the right direction. They were, however, fraught with loopholes and blind spots that undermined the embargo; furthermore, they have apparently not been adequately enforced.

In 1981, the Reagan administration further weakened the embargo by lifting the ban on sales of airport safety equipment and medical supplies to military and policy agencies. If this relaxation of the

regulations and the administration's recent permission for the Sperry-Atlas deal are any indication, an already fragile embargo is likely to be eroded even further. This could be accomplished at the administrative level with little fanfare by means of a few slight changes in the Commerce Department regulations. The results would be disastrous for the embargo.

While the export of actual weapons may be the most dramatic violation of the embargo, an equally serious and alarming problem is the failure of the embargo to adequately restrict the export of a vast range of critical technology and know-how, including computers, electronics and communications gear, and information about these types of products. Although exports in this category are generally considered non-lethal, many of them have direct military application.

In all likelihood, the flow of high-tech equipment to South Africa is much larger than the flow of weapons. In the long run, exports of this type are probably more significant and pernicious than trafficking in actual arms, because they contribute to South Africa's entire infrastructure of repression.

As we see it, questionable high-tech exports to South Africa fall into three general categories: One, those which clearly violate the embargo; two, those which manipulate loopholes in the law that should be closed; and three, those which, however morally repugnant they may be, are legal, but should be halted because they support apartheid and are inconsistent with the spirit of the embargo.

Most of the examples cited in our written presentation fall into one of these categories.

High-tech equipment from U.S. companies is used throughout South Africa. It is safe to say that U.S. computer power plays a major role in keeping South Africa's government running efficiently and smoothly. We have found several examples which indicate that the United States is deeply and directly involved in the administration of white rule.

For instance, for several years IBM has knowingly rented a Model 370 computer system to the South African Department of the Interior, which is used for the regime's national identity system. The IBM machine stores files on seven million people the regime has designated as "coloreds," Asians, and whites. Information on people classified as blacks is stored on another computer.

U.S. technology is also used to run the segregated educational system, manage the country's biased tax system, operate the segregated transportation network, compile white-only voters' rolls and pay Government employees.

Sales to the overwhelming majority of South African Government agencies do not fall under the U.S. ban. This loophole, we believe, is a major flaw in the embargo.

Other evidence we have gathered indicates that the South African police, despite the arms embargo, have continued access to U.S. technology and know-how.

In 1978, after U.S. export controls were tightened, disk drives made by Control Data Corp. found their way into the hands of the South African police as part of nine high-speed computers. Control Data's subsidiary in the United Kingdom sold the subunits to its

business partner, ICL, which then built them into the larger processors destined for the South African police.

As part of our research on high-tech sales to South Africa, we have reviewed several relevant publications and periodicals from South Africa, including a major trade reference, the Computer Users Handbook.

According to the 1980 Handbook, IBM markets a police software system in South Africa through its General Systems Division. The package, which IBM calls its "Law Enforcement System", turned up in the handbook in a list of software programs available from the company's subsidiary in South Africa. After the existence of the program was publicized, IBM began to deny that it had ever made the system available in South Africa. The company said it did not know how the ad for the software system got into the handbook, but this denial has done little to dispel the skepticism surrounding this issue. The Commerce Department has started an investigation into this matter as well.

We also found reason to believe even the U.S. Government has helped to facilitate the flow of technology to the South African police. We learned recently that Major Hennie Reyneke of the South African police visited the United States for a course in electronic communications. Reyneke's visit was reported in the summer of 1980 in a South African police magazine.

U.S. controls on arms exports are supposed to cover not only commodities but also the transfer of technical information and training to foreign nationals, even if it occurs in the United States.

SUPPORT FOR SOUTH AFRICA'S MILITARY

The Commerce Department's 1978 controls banned the export of any commodity "for delivery directly or indirectly to or for use by or for military or police entities * * *."

Despite this injunction, U.S. technology continues to be available to the South African military establishment. For example, both IBM and Control Data have equipped South Africa's largest research organization with advanced computers. This agency, the Council for Scientific and Industrial Research—CSIR—located in Pretoria, helps oversee major R&D projects in military and strategic areas.

The CSIR's contributions to Pretoria's war effort have included the development of poison gases, advanced missile research, investigation of methods to store fingerprints, telecommunications research and the development of counterinsurgency vehicles. Through several of its satellite institutes, the CSIR also provides consulting and testing services for the state military corporation, ARMSCOR, and for the military.

These examples highlight another major flaw in the U.S. controls on exports to South Africa. It is ironic that the law prohibits arms exports but allows exports to arms makers.

Other examples of U.S. computer use by South African military manufacturers include:

Leyland-South Africa, a firm that produces Land Rovers for the security police, which rents seven computers from IBM;

Barlows-South Africa and its subsidiary Marconi, producers of electronics for military use, which use hardware from NCR, Burroughs, Hewlett-Packard and Data General;

Sandock-Austral, producer of strike craft and armored vehicles, which uses Burroughs computers;

The African Explosives and Chemicals Industry specializes in the production of explosives, ordnance, napalm and tear gas, which rents four IBM computers.

These companies are diversified, producing civilian and military products. It is difficult to determine exactly how these computer installations are being used at any one time.

We have just recently become aware that the Pretoria government has selected Control Data Corporation's South African subsidiary to work on a military communications project. In the spring of 1981, Control Data received a contract worth 200,000 rand—approximately U.S. $204,000—to work on a program Pretoria calls "Project Bowie". The exact nature of the work has not been made public. But it has been established that Project Bowie involves the Uitkijk Radio Center, located at Voortrekkerhoogte, South Africa's military headquarters situated near Pretoria.

The project is evidently the responsibility of the Second Signal Regiment. Control Data's involvement with Project Bowie raises serious questions about how seriously U.S. corporations take the embargo and how well the U.S. Government is monitoring the corporations' compliance. We hope these revelations will lead to a full inquiry into Control Data's participation in this military venture.

By rights, the embargo should cover products produced in the United States by local subsidiaries of foreign companies. However, in this area as well, measures to implement the Government's export controls appear to be lax or nonexistent. For example, the Dutch-owned Philips Corp. has five plants in the United States that manufacture military products, some of which are shipped to South Africa, according to the Dutch Anti-Apartheid Movement.

U.S. ARMY COLLABORATION

In addition to corporate transfers of U.S. military-related products and technology, the U.S. Army has been involved in an ongoing joint research program with a state-owned laboratory in South Africa. The program, which began a few years ago, has been continued under the Reagan administration. We first became aware of the program when South Africa's National Physical Research Laboratory—NPRL—publicly acknowledged the cooperation of the U.S. Army Armament Research and Development command—Aaradcom—in the laboratory's most recent annual report. The NPRL is an arm of the CSIR, which, as we explained above, is a major military R&D facility. Aaradcom is located at Dover, N.J.

A research scientist at Aaradcom's applied physics branch who works on the project confirmed that many of his experiments have been conducted in conjunction with researchers at NPRL's high pressure physics division, with whom he shares information regularly. He characterized the work as basic research on the behavior of certain metals when they are subjected to extreme pressure. Due to time constraints, I won't go into that any more.

We ask the members of the subcommittees to urge the Department of State and the Department of Commerce to conduct a full investigation of the transfers cited here, many of which we believe involve serious violations of the embargo or its intent.

We feel it would be very wise if the intent of the embargo is to restrict South African countries to U.S. technology, that the CoCom list be employed as a measure of measuring exportability to South Africa, and we also feel there are other yardsticks which could be used.

The Defense Department has a Qualified Products List [QPL].

These guidelines help measure the military utility of certain commodities, and we feel they should be employed in judging proposed exports to South Africa.

We feel exports to any South African Government, military or police agency, should be prohibited, and we feel that exports to South African companies that supply those agencies should also be prohibited.

The embargo would be strengthened if exports to end-users in South Africa would be permitted only when the U.S. exporter and the South African end-user can guarantee that the commodity under question has no military or repressive applications, and that it will not be made available to any embargoed users.

We believe it should be made clear that the U.S. embargo applies to products produced in the U.S. by foreign-owned countries and overseas by U.S. subsidiaries.

Finally, I think it is quite clear that no embargo, no matter how extensive nor how weak, is worth its salt if it is not adequately implemented and enforced.

We believe more resources must be devoted to the U.S. Government to scrutinizing proposed exports before they are licensed, and to monitoring the compliance of U.S. exporters.

We believe that the United States is morally obliged to oppose the wholesale victimization of South Africans by apartheid and to press for democratic rule. Therefore, we urge that U.S. export policy be realined and overhauled, so it will be consistent with these goals.

[Mr. Conrad's prepared statement follows:]

PREPARED STATEMENT OF THOMAS CONRAD, AMERICAN FRIENDS SERVICE COMMITTEE

My name is Thomas Conrad. I am a staff researcher with NARMIC, a project of the American Friends Service Committee (AFSC), on whose behalf I am here today. The AFSC is a Quaker organization which strives to promote development, dialogue, justice and disarmament in the United States and other countries. I speak here today for the AFSC on a matter of deep concern to our organization and to many Friends, although I do not purport to speak for all Quakers.

The AFSC is gravely concerned about the future of the U.S. arms embargo against South Africa and the regulations that implement it. We are now in the final stage of a critical evaluation of the embargo, focusing on high-technology sales which will be published soon. I would like to share some of our perspectives with the Members here. But before doing so, I would like to note that our research in this area, and our experiences in providing relief and development assistance to suffering people in a number of countries for over sixty years, have given us a certain insight into U.S. export controls. The strange way that politics influence principles produces some situations that are difficult to understand. For example, we find it frustrating and ironic that the government allows U.S. corporations to ship millions of dollars of sophisticated computers and advanced technology to South Africa for use by the repressive government in Pretoria, while at the same time, our efforts to get critically needed basic assistance to the people of Kampuchea (Cambodia) have been [illegible] of

Commerce and State under the International Emergency Economic Powers Act.

Many of our requests for licenses to purchase supplies for Kampuchea were granted in the early phase of the relief effort. Recently, we have not been so fortunate. In one instance, it was made clear we would not be able to obtain a license to purchase simple power tools, such as many Americans have in their homes, for use in building furniture for Kampuchean schools. Similarly, we did not submit a request for permission to purchase a small sawmill to provide the wood to rebuild schools after we learned that it would be denied. We did not contest these decisions because Australian Quakers were able to obtain Australian government funds to buy the needed equipment. Our interest was in helping people in need, not in confrontation with U.S. officials. But the government's increasingly restrictive decisions are making it virtually impossible to obey the law and still act with integrity.

Our friends at Church World Service and the Mennonites have encountered similar problems. The Commerce Department recently refused to issue the Mennonite Central Committee a license to export 86,000 pen and pencil sets for Kampuchean children. To our astonishment we learned that just a few weeks earlier, Commerce officials had just issued Sperry Corporation an export permit for an advanced computer destined for Atlas Aircraft, one of South Africa's largest government-owned manufacturers.

Reflect with me for a moment, if you will, on the irony of this situation: Why is it so difficult for non-profit religious organizations to get [illegible] supplies and tools to people who desperately need them, and so easy for [illegible] companies to ship computers to [illegible]

Controls on Exports to South Africa

As you know, the United States has pledged to observe the international arms embargo against South Africa, first enacted in 1963 by the United Nations and made mandatory in 1977. In 1978, the U.S. government extended its restrictions on sales to South Africa. Broadly and generally speaking, the regulations prohibited the export to South Africa of any weapons - even those for private use - and all items on the Munitions List; banned sales of any commodities to the police and military; subjected certain dual-use items to special reviews; and applied the same restrictions to re-exports of U.S. origin commodities from third countries to proscribed end-users in South Africa.

While these regulations represented a step in the right direction, they were fraught with loopholes and blindspots that undermined the embargo; furthermore, they have apparently not been adequately enforced. In 1981, the Reagan Administration further weakened the embargo by lifting the ban on sales of airport safety equipment and medical supplies to military and police agencies. If this relaxation of the regulations and the Administration's recent permission for the Sperry-Atlas deal are any indication, an already fragile embargo is likely to be eroded even further. This could be accomplished at the administrative level with little fanfare by means of a few slight changes in the Commerce Department regulations. The results would be disastrous for the embargo.

Unfortunately, the Sperry sale to Atlas Aircraft is not the only recent sign of slippage. For the first time in several years, just recently South African magazines have again begun to carry advertisements for U.S. weapons

One arms dealer's ad in a recent issue of the military magazine Paratus features Colt police revolvers and Remington riot shotguns. Another ad lists Winchester semi-automatic shotguns, Winchester pump-action riot guns, Smith and Wesson revolvers and Colt Army revolvers. Ammunition from Winchester, Federal and Remington are also available on the market in South Africa, according to the ads.

The continued availability of U.S. weapons in South Africa raises serious questions about the effectiveness of the embargo: How are these weapons reaching South Africa? Who is responsible for exporting them? Is the U.S. government aware of this apparent violation? Will the government move to stop transfers of this kind?

While the export of actual weapons may be the most dramatic violation of the embargo, an equally serious and alarming problem is the [redacted] embargo to adequately restrict the export of a vast range of critical technology and know-how, including computers, electronics and communications gear, and information about these types of products. Although exports in this category are generally considered "non-lethal", many of them have [redacted] In all likelihood, the flow of high-tech equipment to South Africa is much larger than the flow of weapons. In the long run, exports of this type are probably more significant and pernicious than trafficking in actual arms because they contribute to South Africa's entire infrastructure of repression. We have all heard the old adage, "Give a man a loaf of bread and he'll feed himself for life." The same principle is equally true when turned around and applied to the arms embargo: Give the Pretoria government weapons and it will turn them against its own people. But give Pretoria computers and electronics and it [illegible] to design its own weapons and equip its state apparatus with awesome repressive powers.

As we see it, questionable high-tech exports to South Africa fall into three general categories: 1) those which clearly violate the embargo; 2) those which manipulate loopholes in the law that should be closed; and 3) those which -- however morally repugnant they may be -- are legal but should be halted because they support apartheid and are inconsistent with the spirit of the embargo.

Support for Government Agencies

As the Members may know, it is difficult to get any but the most general type of information about the sale of high-tech equipment to South Africa and how it is used there. A great deal more investigation is needed. However, even based on our limited inquiry in this area, we can show that numerous exports to South Africa from U.S. corporations contradict the arms embargo and directly involve the United States in administration of white rule. Several examples bear this out.

For several years IBM has knowingly rented a Model 370 computer system to the South African Department of the Interior which is used for the regime's national identity system. The IBM machine stores files on seven million people the regime has designated as "coloureds", Asians and whites. Information on blacks is stored on another computer. Since IBM owns the equipment and leases it to the government, it could withdraw from the arrangement, but has declined to do so. Despite the fact that the IBM-based system helps facilitate the scheme of racial classification that apartheid is based on, the embargo has had no effect on this transaction.

U.S. hardware is also used in some branches of the Plural Affairs Department, the Department of the Prime Minister, the Department of State [illegible] other central government agencies. This technology is used to run the computer

educational system; manage the country's biased tax system; operate the segregated transportation network, compile white-only voters' rolls and pay government employees.

Local government bodies, as well, rely on computers from U.S. manufacturers. In many cases, U.S. corporations are supplying computer hardware to the very same agencies that are responsible for the legally enforced indignities inflicted on blacks, Indians and Asians who live in official white areas. The white-run government in Boksburg has an entire computerized municipal administration system based on a Univac machine from Sperry. NCR, which has played a strong visible role in computerizing white-run local governments in South Africa, has provided hardware to Pietersburg, Stellenbosch, Rustenburg and other cities. Mohawk has helped outfit Johannesburg and Germiston with hardware. IBM machines are used in Pinetown, Randfontein, Richards Bay and at the Pretoria "Peri-Urban Areas Board".

Sales to the overwhelming majority of South African government agencies do not fall under the U.S. ban. This loophole, we believe, is a major flaw in the embargo.

Support for South Africa's Police

Other evidence we have gathered indicates that the South African Police have continued access to U.S. technology and know-how in spite of the arms embargo. We were shocked, for example, to find that 15 South Africans are members of the International Association of Chiefs of Police (IACP), an organization of senior law enforcement officials with headquarters in Gaithersburg, Maryland. In [illegible] the Reagan Administration gave two South African police officials visas, [illegible] them to travel to the United States to attend the IACP [illegible].

police have earned worldwide condemnation for their brutality; it is unconscionable that they are privy to exchanges with law enforcement officials in the United States, courtesy of the IACP.

We have also found evidence of other apparent transfers of police technology to South Africa:

o In 1978, after U.S. export controls were tightened, disk drives made by Control Data Corporation found their way into the hands of the South African Police as part of nine high-speed computers. Control Data's subsidiary in the United Kingdom sold the subunits to its business partner, ICL, which then built them into the larger processors destined for the South African police. Control Data insists that its sales to ICL are in compliance with U.S. law. ICL acknowledges using many components from U.S. producers in its computers. Since ICL is a major supplier of the South African military and police, there is reason to believe that thousands of dollars of U.S. technology are reaching embargoed agencies in South Africa via manufacturers in third countries. This matter has been the subject of a Commerce Department investigation for three years.

o In 1979, RCA began exporting a radio system known as TAC to South Africa. The same system is used in the United States by police and businesses. A month after TAC was introduced to the South African market, a Johannesburg newspaper reported that the police were setting up an advanced new communications network covering the entire region around Johannesburg. Its name: TAC. RCA claims that somebody else outfitted the police with the equipment using the same name. The company insists that its hardware is not being used by the police and maintain

that its exports to South Africa have all been legal. A representative of RCA acknowledged, however, that the company was not able to monitor how its equipment was being used within South Africa. The Commerce Department has started an investigation into the matter.

o As part of our research on high-tech sales to South Africa, we have reviewed several relevant publications and periodicals from South Africa, including a major trade reference, the Computer Users Handbook.

According to the 1980 Handbook, IBM markets a police software system in South Africa through its General Systems Division. The package, which IBM calls its "Law Enforcement System", turned up in the Handbook in a list of software programs available from the company's subsidiary. After the existence of the program was publicized, IBM began to deny that it had ever made the system available in South Africa. The company said it didn't know how the ad for the law enforcement package got into the Handbook but this denial has done little to dispel the skepticism surrounding this issue. The Commerce Department has started an investigation into this matter as well.

o Our survey indicates that many other kinds of security equipment from the United States are available in South Africa, despite the embargo. The list is too lengthy to detail here but it includes surveillance systems, sensors, devices to detect clandestine radio transmitters, security training packages and lie detector training. It takes little imagination to envision how commodities like these can be used as instruments of repression in the context of South Africa.

o Even the U.S. government has helped to facilitate the flow of technology to the South African Police. We learned recently that Major Hennie Reyneke of the South African Police visited the United States for a course in electronic communications. Reyneke's visit was reported in the summer of 1980 in a South African Police magazine, which noted that communications play a critical role in police operations. In order to participate in the program, Reyneke, who is head of technical training at the Police College, received a visa from the U.S. government. U.S. controls on arms exports are supposed to cover not only commodities but also the transfer of technical information and training to foreign nationals, even if it occurs in the United States.

Support for South Africa's Military

The Commerce Department's 1978 controls banned the export of any commodity "for delivery directly or indirectly to or for use by or for military or police entities..." Prior to this restriction, IBM had supplied the South African Defence Force with at least four large computers. IBM says that it has not sold any new machines to the military since the 1978 restrictions but a loophole in the embargo allows IBM and other U.S. corporations to provide maintenance and spare parts for military installations as long as these commodities don't originate in the United States.

Shortly after U.S. export restrictions were expanded in 1978, one South African specialist suggested that agencies such as the military that were unable to trade directly with U.S. companies could get U.S. supplies through front organizations. The use of third parties in this way has apparently caught on. Two South African firms, Infoplan and Logtek, which do [illegible] reportedly act in this capacity. IBM, and possibly other U.S. firms, [illegible]

business with Infoplan and Log-On, supplying parts and services, as well as training and technical data. IBM claims these transactions are legal and insists that the firms do not use its products for military-related work. However, it is virtually impossible to determine how U.S. technology is actually put to use once it is out of the control of the companies who sell it. As long as the law allows U.S. subsidiaries to service military installations under "pre-embargo commitments" and to sell equipment and know-how to local companies that have links to the military, the embargo will be ineffective.

U.S. firms not only are involved in servicing and furnishing spares for existing military installations, they have also been supplying new technology to South Africa's military establishment:

o In August 1979, it was revealed in the United Kingdom that computers made by the Massachusetts-based Digital Equipment Corporation were sold to the South Africans as part of a sophisticated radar system manufactured by Plessey, a British arms-maker. Furthermore, the Foreign Office confirmed that South African Air Force personnel had been trained on the hardware in Britain. In April of 1981, Plessey sent a follow-on shipment of air defense equipment to South Africa, which may have contained U.S. technology. Despite repeated requests, the U.S. government has refused to supply details of these transactions or to announce that any action has been taken to stop them. Such re-exports of U.S. products from third countries are supposed to be covered by the embargo. However, this case and others similar to it indicate that the United States has far to go in enforcing the embargo.

o Both IBM and Control Data have equipped South Africa's largest research organization with advanced computers. This agency, the Council for Scientific and Industrial Research (CSIR), located in Pretoria, helps oversee major R&D projects in military and strategic areas. The CSIR's contributions to Pretoria's war effort have included the development of poison gases, advanced missile research, investigation of methods to store fingerprints, telecommunications research and the development of counter-insurgency vehicles. Through several of its satellite institutes, the CSIR also provides consulting and testing services for the state military corporation, ARMSCOR, and for the military.

The CSIR's links to the military have not discouraged U.S. corporations from outfitting it with advanced hardware. CSIR's nerve center is its computer network which is based on large machines supplied by Control Data Corporation and IBM. These companies also provide training for computer personnel. CSIR researchers also have access to other U.S. hardware including computers from Perkin-Elmer, Hewlett-Packard, Digital Equipment Corporation and Calcomp. It is our understanding that the Commerce Department is currently considering a request from Control Data for permission to export an even more powerful computer in its Cyber range to update the CSIR facility.

These examples highlight another major flaw in the U.S. controls on exports to South Africa. The regulations implementing the embargo have had little apparent effect on the flow of high-tech equipment to [illegible] and corporations engaged in military R&D and production. It is ironic that the law prohibits arms exports but allows exports to [illegible] the U.S. corporations to do business with the CSIR is apparently only the tip of the iceberg.

For example, although the regulations expressly prohibit exports of any type to ARMSCOR, the state-owned weapons manufacturer, they apparently do not prohibit sales to subsidiaries of ARMSCOR, one of which, Atlas Aircraft, was the recent recipient of the Sperry computer mentioned above, said to be planned for use only in inventory control.

Other examples of U.S. computer use by South African military manufacturers include:

o Leyland-South Africa, a firm that produces land rovers for the security police, which rents seven computers from IBM;

o Barlows-South Africa and its subsidiary Marconi, producers of electronics for military use, which use hardware from NCR, Burroughs, Hewlett-Packard and Data General;

o Sandock-Austral, producer of strike craft and armored vehicles, which uses Burroughs computers;

o The African Explosives and Chemicals Industry, specialized in the production of explosives, ordnance, napalm and tear gas, which rents four IBM computers.

Like corporations that do military work in other countries, these companies are diversified, producing civilian and military products. It is difficult to determine exactly how these computer installations are [illegible] at any one time. Once the computers are in place, however, it is virtually impossible to control their application.

In addition to the sale and rental of these computers to South African arms-makers, we have just recently become aware that the Pretoria government has selected Control Data Corporation's South African subsidiary to work on a military communications project. In the spring of 1981, Control Data received a contract worth 200,000 Rand (approximately U.S. $204,000) to work on a program Pretoria calls "Project Bowie". The exact nature of the work has not been made public. But it has been established that Project Bowie involves the Uitkijk Radio Center, located at Voortrekkerhoogte, South Africa's military headquarters situated near Pretoria. The Project is evidently the responsibility of the Second Signal Regiment. Control Data's involvement with Project Bowie raises serious questions about how seriously U.S. corporations take the embargo and how well the U.S. government is monitoring the corporations' compliance. We hope these revelations will lead to a full inquiry into Control Data's participation in this military venture.

Most of the high-tech transfers cited here thus far involve transactions that have occurred or are occurring. However, the scope of the problem is probably much larger. We have found additional evidence which shows that U.S. military-specification equipment is widely accessible on the open market in South Africa. For example, since the 1978 restrictions, we have found ads in specialized journals for military electronics components from U.S. companies. One ad listed "filters for use in aerospace, military and similar applications", made by Telonic/Berkeley, a California company. Another listed detectors for use in electronic warfare systems made by the U.S. company, TRW. Another electronics publication recently [illegible]

Kistler Instrument, a division of Sundstrand Corporation. The device available in South Africa is used for measuring ballistic gas pressure on small arms, guns and detonation chambers. Products of this kind have clear and immediate applications in weapons systems, military communications and arms manufacture, but as long as they are exported to civilian South African purchasers, the U.S. government apparently refuses to interfere.

By rights, the embargo should cover products produced in the United States by local subsidiaries of foreign companies. However, in this area as well, measures to implement the government's export controls appear to be lax or non-existent. For example, the Dutch-owned Philips Corporation has at least five plants in the United States that manufacture military products, some of which are shipped to South Africa, according to the Dutch Anti-Apartheid Movement. In 1979, a South African electornics journal carried an ad for Philips Pyroelectric Vidicon, a thermal imaging device which is used in military night vision equipment. The Philips system was displayed at a military electronics exhibit in Europe the same year it came onto the South African market. It is manufactured at a Philips facility in Slatersville, Alabama. The Dutch organization also discovered that military-specification semiconductors made by the Philips U.S. subsidiary, Signetics, are also available to weapons-makers in South Africa. These exports will undoubtedly make a significant contribution to Pretoria's military potential. We believe they should be halted immediately.

U.S. Army Collaboration

In addition to corporate transfers of U.S. military-related products and technology, the U.S. Army has been involved in [illegible] joint research project with a state-owned laboratory in South Africa. The project, which [illegible]

years ago, has been continued under the Reagan Administration. We first became aware of the program when South Africa's National Physical Research Laboratory (NPRL) publicly acknowledged the cooperation of the U.S. Army Armament Research and Development Command (AARADCOM) in the Laboratory's most recent annual report. The NPRL is an arm of the CSIR, which, as we explained above, is a major military R&D facility. AARADCOM is located at Dover, New Jersey.

A research scientist at AARADCOM's Applied Physics Branch who works on the project confirmed that many of his experiemtns have been conducted in conjunction with researchers at the NPRL's High Pressure Physics Division, with whom he shares information regularly. He characterized the work as basic research on the behavior of certain metals when they are subjected to extreme pressure, and indicated that the goal of AARADCOM's work in this field was to develop a material that can be added to propellants to reduce the residue left in a firing chamber after a projectile is fired, a substance, as he explained in lay terms, that will cause a "self-cleaning out of gun tubes". The Army researcher maintained that his collaboration with the South Africans did not involve the actual application of his experiments, but it appears that results from the U.S. Army's work could easily be transferred to the development of ordnance in South Africa.

This collusion is not only objectionable on moral grounds because of its potential for South Africa's war machine: it also appears to be a serious breach of U.S. law.

Conclusion

Many of the cases cited here are being made public for the first time. We suspect that they represent only a small part [illegible]

problem. We ask the Members of the Subcommittees to urge the Department of State and the Department of Commerce to conduct a full investigation of the transfers cited here, many of which we believe involve serious violations of the embargo or its intent. We also believe there is a critical need to examine the exports by Philips' U.S. subsidiaries to South Africa, and the sales of products by Control Data, Digital Equipment Corporation and other U.S. corporations to ICL and Plessey and other foreign companies known to do business with the South African Police or military. We urge the Subcommittees to request that the Department of Defense put an immediate end to the collaboration between AARADCOM and South Africa, as well as any other joint projects with South Africa.

Is the U.S. arms embargo against South Africa working? From all appearances, it is at best an occasional and very mild irritant to the apartheid system. We hope the Members of the Subcommittees will agree with us that now is not the time to consider softening the arms embargo against South Africa. We believe the United States should move to end all forms of collaboration with South Africa which bolster the apartheid state, or contribute to its internal security apparatus or military potential.

The AFSC believes that economic pressure on South Africa to end apartheid must go far beyond the embargo. Based on the principle of rejecting profits from apartheid, the AFSC refuses to invest in firms with subsidiaries in South Africa and we encourage others to do likewise.

The AFSC supports the embargo, while recognizing that it does not go far enough. If the embargo is to have any integrity at all, Congress and the Administration must see to it that the existing restrictions are adequately [illegible]

and that the embargo is expanded in ways consistent with its purposes. Several steps would help accomplish these goals:

o Items on the Commodity Control List (known as the "CoCom List") should not be exported to any end-users in South Africa. The CoCom List details many commodities with actual or potential military uses. Unfortunately, the United States has neglected to apply the criteria on the list to most exports destined for South Africa. We also believe the military utility of products proposed for export to South Africa could be evaluated by using the Defense Department's Qualified Products List and the "Mil-Spec" classification system.

o Exports to any South African military or police agency, local, regional and central government agencies, government research organizations and government-owned corporations should be prohibited.

o Exports to South African companies that supply the military, police or government should be prohibited.

o Exports to other end-users in South Africa should be permitted only when the U.S. exporter and the South African end-user can guarantee that the commodity has no military or repressive applications, and that it will not be made available to any embargoed users.

o The embargo should cover products produced in the United States by foreign-owned companies, as well as commodities sold by U.S. companies to foreign purchasers who re-sell them to South Africa.

o At present, well over half of the computers sold in South Africa by U.S. corporations come from their manufacturing facilities outside the United States. The provisions of the existing embargo make it relatively easy to evade

U.S. scrutiny by using foreign plants to ship from. We believe the embargo should cover the operations of foreign-based subsidiaries of U.S. corporations.

o The embargo must be adequately enforced. More resources must be devoted to scrutinizing proposed exports before they are licensed and to monitoring the compliance of U.S. exporters, their overseas subsidiaries and South African end-users.

To address the problem of high-tech exports to South Africa is to confront a confusing array of hardware, electronics systems and technical specifications, a world devoid of human spirit. However, we cannot allow the question of the arms embargo to stay at the level of mere technology. We must never lose sight of how our technology effects the lives and aspirations of the people of southern Africa: A simple off-the-shelf electronic component can help guide a deadly missile toward its human prey...An automated requisition and rail transport system based on U.S. computers can help insure the bondage of Namibia by keeping South African forces there equipped with weapons and ammunition... ..S.-made night vision equipment and computers can be used to track down Pretoria's political opponents and keep South Africa's blacks subjugated...

We believe the United States is morally obliged to oppose the wholesale victimization of South Africans by apartheid, and to press for democratic rule. Therefore, we urge that U.S. export policy be realigned so it will be consistent with these goals.

Mr. WOLPE. Thank you very much.

I now would like to invite to testify Mr. Charles Burton Marshall.

STATEMENT OF CHARLES BURTON MARSHALL, SYSTEM PLANNING CORP.

Mr. MARSHALL. I appear here purely as an individual representing no association.

I served the Committee on Foreign Affairs as staff consultant in the 80th and 81st Congresses. In 1950, I went on to various other things—a policy planner in the State Department, political adviser to a foreign government, a professor under various academic appointments, and so on.

In 1966, I testified on invitation before the Subcommittee on Africa. That must have been the precedent for my being invited again today in a letter of February 1 from the two subcommittee chairmen.

Incidentally, the letter reached me last Thursday, February 4. My time that day and the next was preempted by other professional obligations. I got opportunity to get updated on the topic only Sunday, February 7; to set down my ideas yesterday, February 8; and to get them reproduced this morning. The stipulations in the letter concerning advance copies were unfulfillable.

The focus of concern on that occasion in 1966 was an array of schemes for withholdings and discriminations reputedly designed to bring about a rectification of conditions in South Africa. I was then just back from the second of my six visits to South Africa and Southwest Africa—three of them with my wife along—and I filled the subcommittee in with pertinent observations.

I also commented skeptically on a parcel of proposals under review—and in this respect was in a minority of one among the day's witnesses. Fortunately—I think—the schemes then at issue were, in general, not subsequently adopted as U.S. policies. It is now 8 years since my last trip to South Africa and Southwest, or Namibia. I have no fresh particulars to share.

Also, I am in no sense a specialist on the region concerned. I am—just as I was when consultant to the full committee here, as a member of the State Department, and as professor of international politics—a generalist.

What I said about the sundry schemes for commercial denials before the subcommittee 16 years ago reflected general premises. First of all, by their very nature—by definition, so to speak—foreign affairs pertain to matters beyond the country's span of jurisdiction. The capacity to affect affairs in someone else's domain by selective interdictions of commerce is marginal at best and in particular instances likely to be quite problematic. Yet a persistent and widespread misapprehension about foreign policy concerns the notion of achieving great transformations in other societies by commercial manipulations.

Back in my decade as a professor, I used to encounter among my students the notion of using administered variations in the flow of commerce to gain huge leverage on the structure of governance or the focus of authority in some country at far remove.

I used to tell my students: If you aspire to get direction over general affairs in some other country, then start out by fastening jurisdiction upon it—attacking, invading, conquering, and occupying the country and then keeping it in charge. If you are not willing to do all those things, the reconcile to being frustrated—which is the common lot of nations, anyway, with grand and sweeping designs for other societies. In any event, do not humor yourself with the idea of using commercial manipulations as a bloodless substitute for bloody conquest.

Commercial deprivations of great scope and depth—taking the characteristics of economic warfare applied in connection with military hostilities of an allout character and enforced against third-country commerce with the targeted enemy—can leave considerable potential. Even so, the results on balance may be questionable. The late Dean Acheson, who as Assistant Secretary of State for Economic Affairs in World War II, had a directing hand in economic warfare, wondered later on whether the effects had been worth the cost and concluded, as I recall, that at best the United States broke about even on the effort.

Deprivations administered to try to determine the internal behavior of other countries in conditions short of literal hostilities are subject to miscarrying in myriad ways. Many sorts of unintended results are produced. The targeted country may learn to do without whatever is being withheld or to find substitute sources elsewhere, to develop sources of its own, or to contrive to obtain the interdicted items through indirect channels involving the agency of third parties.

The ultimate effect may be inconvenience and extra expense but nothing so drastic as to coerce the targeted country to knuckle under and ask for terms. The targeted country's success in resisting depends on the degree of its adaptiveness. That, in turn, is a function of organization, inventiveness, and material resources.

At the time of my earlier testimony, in 1966, the main U.S. deprivation operating against South Africa was an embargo on armaments and munitions in keeping, as I recall, with a U.N. General Assembly resolution of 1962 and a Security Council resolution of 1963. I was able to fill in the subcommittee with some details about the ways South Africa was making do without the withheld items—demonstrating its considerable capacity for organization and a degree of inventiveness and applying its own material resources. The two main drawbacks then had to do with developing uniform velocities and trajectories for ammunition to fit the preponderantly U.S.-made rifles used for hunting marauding elephants and predatory nocturnal cats and also with a lack of aerial flares used for sea-rescue work. Both difficulties were subsequently solved.

The February 1 letter from Chairman Wolpe and Chairman Bingham prompted me to get updated on the status of pertinent interdictions and on the pending decision in the executive branch as to whether and just how to go ahead with the interdictions now in effect under the Export Administration Act of 1977. I have learned no particulars not already well known to the subcommittees.

I was astounded at the looseness of definition in the last administration's orders articulating the policy. I was encouraged to learn

of the present administration's modifications, already made, sloughing off some of the obviously undesirable effects.

If those who are making decisions on the phase ahead should ask for my advice—a contingency totally beyond my expectations—I should: encourage them (a) to move still further along the same line, (b) to resolve all their doubts in favor of lessening the existing restrictions, (c) to put aside any notions of using the remnant restrictions as leverage for coercing or enticing South Africa into submission to outsiders' preferences, and (d) to desist from the folly of thinking that the thing to do with a line of policy that, because of faulty premises, is not achieving its purposes is to redouble the effort.

I would add one thing, if I knew of any way to continue by some policy of withholding to bring about a rational solution of the many difficulties and paradoxes, some of them highly undesirable in my view, of that country, I would be all for it, but to think that there is such a way occurs to me to be sheer romance.

[Mr. Marshall's prepared statement follows:]

PREPARED STATEMENT OF CHARLES BURTON MARSHALL, SYSTEM PLANNING CORP.

My name is Charles Burton Marshall. I served the Committee on Foreign Affairs as staff consultant in the 80th and 81st Congresses. In 1950 I went on to various other things—a policy-planner in the State Department, political adviser to a foreign government, a professor under various academic appointments, and so on. In 1966 I testified on invitation before the subcommittee on Africa. That must have been the precedent for my being invited again today in a letter of February 1 from the two subcommittee chairmen. Incidentally, the letter reached me last Thursday, February 4. My time that day and the next was preempted by other professional obligations. I got opportunity to get updated on the topic only Sunday, February 7; to set down my ideas yesterday, February 8; and to get them reproduced this morning. The stipulations in the letter concerning advance copies were unfulfillable.

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What I said about the sundry schemes for commercial denials before the subcommittee sixteen years ago reflected general premises. First of all, by their very nature—by definition, so to speak—foreign affairs pertain to matters beyond the country's span of jurisdiction. The capacity to affect affairs in someone else's domain by selective interdictions of commerce is marginal at best and in particular instances likely to be quite problematic. Yet a persistent and widespread misapprehension about foreign policy concerns the notion of achieving great transformations in other societies by commercial manipulations.

I often find this notion cropping up when I speak to general audiences. The term usually used by people for that sort of thing is "sanctions." It is a nice-sounding word—cognate with sanctity and sanctification. As a sweet lady in an audience once said to me—"I am all against boycotts, embargoes, and harsh things of that sort. I just want sanctions." Back in my decade as a professor I used to encounter among my students the notion of using administered variations in the flow of commerce to gain huge leverage on the structure of governance or the locus of authority in some country at far remove. I used to tell my students: if you aspire to get direction over general affairs in some other country, then start out by fastening jurisdiction upon

it—attacking, invading, conquering, and occupying the country and then keeping it in charge. If you are not willing to do all those things, then reconcile to being frustrated—which is the common lot of nations, anyway, with grand and sweeping designs for other societies. In any event, do not humor yourself with the idea of using commercial manipulations as a bloodless substitute for bloody conquest.

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Mr. WOLPE. Thank you, Mr. Marshall.

I will now call on Mr. Randall Robinson.

STATEMENT OF RANDALL ROBINSON, EXECUTIVE DIRECTOR, TRANSAFRICA

Mr. ROBINSON. I will just read parts of my statement in the interest of time.

I would like to associate myself at the beginning with the statements made by Ms. Butcher and Mr. Conrad.

Mr. Chairman and members of the joint committee, I welcome this opportunity to speak before you on the issue of export controls to South Africa/Namibia.

On February 16, 1978, the U.S. Government promulgated regulations barring the export and reexport of U.S.-origin products and technical data to the military and police forces of South Africa. The restrictions also applied to the export of aircraft and computers unless certain determinations were made.

These regulations were intended to discourage consistent South African human rights violations and to strengthen U.S. adherence to the U.N. mandatory arms embargo of 1977 and the voluntary embargo of 1963.

At both times, the American Government sought to distance itself from the abhorrent practices of apartheid by limiting access by that government to instruments of enforcement. The 1978 Commerce regulations, coming in the wake of the Soweto riots and the ensuing suppression of dissident activity, was another signal of U.S. disapproval. Throughout 1977, the international press brought to our attention repressive actions taken by the South African Government—murders, beatings, torture, mass arrests, detentions without trial. The victims were guilty only of pursuing an end to racial discrimination; many times they were minors.

Mr. Chairperson, the justifications for controls remain as cogent today as they were 4 years ago. This administration contemplates allowing the sale of nonmilitary goods to the police and defense forces. We have also learned that there is interagency debate on whether or not to forgo end-user guarantees on the deployment of light aircraft and helicopters.

The reasoning runs along two tracks. Some within the administration argue that nonmilitary goods are readily available from other sources; therefore, the regulation is meaningless and unnecessary. Others argue that U.S. leverage in South Africa is limited by self-defeating blanket restrictions such as EAR-175. By allowing for case-by-case review of marginal goods, the United States can either show its pleasure or displeasure in response to developments in Pretoria as they unfold.

We strongly oppose any relaxation of the export controls. First, the moral, legal, and political considerations override any short run economic return to a few private firms. Second, the United States risks greater damage to its already soiled image abroad by appearing so blatantly hypocritical and inconsistent.

Whereas the U.S. pressures other industrialized Western countries to cooperate on Polish/Soviet sanctions, it laments how unenforceable and untenable sanctions are in the case of South Africa.

Such a position is suspect. The problem seems to be not one of capability but of concern and resolve. This administration seems cognizant only of human rights violations in Communist-dominated countries. The suffering peoples in South Africa, El Salvador, Guatemala, Argentina, Chile, and the Philippines seem somehow fundamentally different from the peoples of Russia, Poland, Cuba, Kampuchea, and Afghanistan. To allow even minor sales to the South African police and military would obviate President Reagan's statement that "human rights considerations are important in all aspects of our foreign policy."

Beyond the hypocrisy and selective vision, the United States stands to violate the spirit, if not the letter, of its international obligations. Under U.N. Security Council Resolution 418, the manda-

tory arms embargo, the sale of "related materiel" that would contribute in any way to the effective operation of the security forces is expressly forbidden. Furthermore, given the numerous calls for comprehensive economic sanctions against South Africa in the U.N. General Assembly by African states, the United States should not be retreating from its obligations or treating them cynically.

If one issue galvanizes and unifies black Africa, it is the feverish desire for majority rule in the last bastion of minority rule and racism on the continent, South Africa.

A move to loosen controls of exports to the South African security forces by the leader of the Western bloc would appear insensitive, if not duplicitous, to the black African States.

At a time when the Botha regime has moved sharply to the right, countervailing pressure from the western trading partners is needed more than ever. Every effort should be made to strengthen current export controls and to persuade other nations to do likewise.

Even if we accede to the administration that the "nonmilitary goods" being considered for exemption are "marginal," how lucrative will such sales be to U.S. manufacturers and how could such sales act as levers on South African policy when they are admittedly inconsequential? More clearly consequential, a relaxation of export regulations on South Africa would be a further indication of the moral and political bankruptcy of our stated policy of abhorrence to apartheid. Already, the much touted policy of "constructive engagement" has been mistaken as weakness by the South Africans. Consequently, recalcitrance and even defiance has been encouraged. While the American Government continues to issue "carrots," of which weakened export controls would be another, South Africa relentlessly pursues its own goals—entrenchment of white privilege and continued dominance in the region.

On the next few pages I have detailed point, counterpoint, action, and response, actions by the administration and response by the South Africans since the beginning of this administration.

We see clearly here a pattern of South African movement to the right as American declarations of friendships increase, and we do this in a rather clear chronology here.

On the one hand, beginning with President Reagan's declaration of friendship of South Africa, and the definition of South Africa as a friendly and reliable ally, we have seen invasions of Mozambique, Angola, continued occupation of Namibia.

Most recently, and this is something not included in my testimony, we see a particular case of another signal sent by this administration to the South Africans that will bring for us a bit of unrest.

I speak of the case of Donald de Kieffer. For 9 years, he was a registered agent for the South African Government, from 1972 until 1981.

Now, Mr. de Kieffer is the General Counsel to the Trade Representative's Office, one of the three agencies cooperating and collaborating on the administration side on proposals to alter or adjust these trade restrictions.

The interagency task force has been participated in heavily by Mr. de Kieffer taking the same position of reduction or relaxation of these restrictions as he took when he represented the interests

of the South African Government to the American Government for 9 years during the decade of the seventies.

Mr. Chairman, I think this represents at best a tremendous conflict of interest. At worst, it means that a South African agent is participating directly in the policy affairs of the American Government.

I think it makes a mockery of this system, but, more importantly, I think in consistency with what I have said before, that it sends to the South Africans a signal that they shall get from this administration precisely what they want.

These facts speak for themselves. The South African regime, in response to a soft U.S. line, has only become more emboldened. The reassuring gestures, or what the State Department calls confidence building measures have been met by concerted action to decapitate the black trade union movement, the stifling of dissent, and the invasions of two neighboring countries. Moreover, no progress has been made on the issue on which the United States has invested the credibility of its entire Africa policy; namely, Namibian independence. Instead of tackling the nettlesome specifics of transferring power under the agreed-to U.N. transition plan, a measure designed to insure white minority rights has been entertained, further complicating, and delaying the peace settlement.

The U.S. policy of constructive engagement is proving to be a simplistic attempt at realpolitik. It falters because it assumes that Prime Minister Botha is committed to change and that he is in control. Mr. Botha is a pragmatic politician, not a bold visionary. He will not do anything he does not have to do.

With the resurgence to the rightwing elements of his party, his reformist mandate has been undercut and his room to maneuver severely reduced. Interested foremost in his own survival as a leader and the cohesion of Afrikaanerdom, he is lurching backward by overseeing another campaign of oppression hoping to regain an equilibrium.

It is clear that change in South Africa will not come by liberal abdication of privileges; it will only come by internally and externally generated crises. Gentle persuasion is of little value. The challenge for the United States and the West becomes one of how to creatively force the white South Africans to do what is best for all involved.

In South Africa, it is no longer fashionable to talk about desegregating public bathrooms. As the Botha regime slides to the right, the United States can least afford to further mortgage itself to this dying order.

Forceful diplomacy is grievously needed in dealing with South Africa. In the last months, the United States has become the unwitting protector and abettor of Pretoria. It is time for the South Africans to be forthcoming on issues of mutual concern; otherwise, the United States stands to experience a major setback in its relations with the other 50 countries on the continent, many of whom possess vital natural resources. If the Commerce Department export controls are loosened further, Pretoria will perceive the move as another green light.

Apartheid has been ruled a crime, a threat to international peace and security. By selling nonmilitary goods and eliminating

end-user guarantees on the use of light aircraft, would we not be encouraging in some way the further intransigence of a Pretoria Government that has not wavered from its course in over 30 years?

Before I close, I would like to enter into the record a letter signed by 63 leaders representing diverse sectors and political opinion stating their firm opposition to any proposed weakening of Commerce Department export controls on South Africa.[1]

This committee needs to consider regulations that close the loopholes that now exist, that make these export restrictions as effective as they might otherwise not be.

The worst thing we could do would be to further weaken restrictions that only serve as a mild signal to South Africa of America's disapproval of their policies.

Thank you.

[Mr. Robinson's prepared statement follows:]

[1] See p. —.

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Mr. Chairperson and members of the joint committee, I welcome this opportunity to speak before you on the issue of export controls to South Africa/Namibia.

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Mr. Chairperson, the justifications for controls remain as cogent today as they were four years ago. This administration contemplates allowing the sale of "non-military goods" to the police and defense forces. We have also learned that there is interagency debate on whether or not to forego end-user guarantees on the deployment of light aircraft and helicopters. The reasoning runs along two tracks. Some within the administration argue that "non-military goods" are readily available from other sources therefore the regulation is meaningless and unnecessary. Others argue that US leverage

in South Africa is limited by self defeating blanket restrictions such as EAR-175. By allowing for case-by-case review of "marginal goods", the US can either show its pleasure or displeasure in response to developments in Pretoria as they unfold.

We strongly oppose any relaxation of the export controls. First, the moral, legal, and political considerations override any short run economic return to a few private firms. Second, the US risks greater damage to its already soiled image abroad by appearing so blatantly hypocritical and inconsistent. Whereas the US pressures other industrialized Western countries to cooperate on Polish/Soviet sanctions, it laments how unenforceable and untenable sanctions are in the case of South Africa. Such a position is suspect. The problem seems to be not one of capability but of concern and resolve. This administration seems cognizant only of human rights violations in communist-dominated countries. The suffering peoples in South Africa, El Salvador, Guatemala, Argentina, Chile and the Phillipines seem somehow fundamentally different from the peoples of Russia, Poland, Cuba, Kampuchuea, and Afghanistan. To allow even minor sales to the South African police and military would obviate President Reagan's statement that "human rights considerations are important in all aspects of our foreign policy."

Beyond the hypocrisy and selective vision, the US stands to violate the spirit, if not, the letter of its international obligations. Under UN Security Council Resolution 418, the mandatory arms embargo, the sale of "related materiel" that would contribute in any way to the effective operation of the security forces is expressly forbidden. Furthermore, given the numerous calls for comprehensive economic sanctions against

South Africa in the UN General Assembly by African states, the US should not be retreating from its obligations or treating them cynically. If one issue galvanizes and unifies black Africa it is the feverish desire for majority rule in the last bastion of minority rule and racism on the continent, South Africa. A move to loosen controls of exports to the South African security forces by the leader of the Western bloc would appear insensitive, if not duplicitous, to the black African states. At a time when the Botha regime has moved sharply to the right, countervailing pressure from the Western trading partners is needed more than ever. Every effort should be made to strengthen current export controls and to persuade other nations to do similarly. Even if we accede to the administration that the "non-military goods" being considered for exemption are "marginal", how lucrative will such sales be to US manufacturers and how could such sales act as levers on South African policy when they are admittedly inconsequential? More clearly consequential, a relaxation of export regulations on South Africa would be a further indication of the moral and political bankruptcy of our stated policy of abhorrence to apartheid. Already, the much touted policy of "constructive engagement" has been mistaken as weakness by the South Africans. Consequently, recalcitrance and even defiance has been encouraged. While the American government continues to issue "carrots", of which weakened export controls would be another, South Africa relentlessly pursues its own goals--entrenchment of white privilege and continued dominance in the region.

Let us briefly review the diplomatic overtures the US made in the last year and salient South African responses and developments.

US Initiatives/Developments

1. On November 4, 1980, a conservative, Ronald Reagan was elected President. The new administration is expected to make marked changes.

3. In late January, US-southern Africa policy is placed under review. South Africans are informed by diplomatic cable that they will not be "steamrolled on Namibia".

5. In a March 3rd interview with Walter Cronkite, President Reagan terms South Africa a "friendly country" and an ally.

6. Five senior South African military officials enter the US the week of March 13 under misleading circumstances and meet with National Security Council members and counterparts at the Defense Department. One meets with UN Ambassador Jean Kirkpatrick, violating the policy on such contacts dating back to 1963.

SA Responses/Developments

2. South Africans anticipate a respite with the election of a conservative American President. On Jan. 12, 1981, South African delegation walks out of Namibian peace talks in Geneva.

4. On January 30th, South African commando unit raids African National Congress safehouses in a suburb of Maputo, Mozambique, killing 12 South African refugees.

7. On April 16th the passport of Bishop Desmond Tutu, General Secretary of the South African Council of Churches, is withdrawn after he made critical remarks about apartheid overseas.

8. On May 15th, President Reagan receives South Africa's Foreign Minister, Pik Botha, as the first dignitary from sub-saharan Africa.

9. In late May-June close to 200 people are detained for security reasons among them Thozamile Gqweta, President of the South African Allied Workers Union; Zwelakhe Sisulu, a black journalist; and Wantu Zentili, a student leader. Sammy Adelman and Andrew Boraine, two white student leaders are banned in the crackdown.

10. On May 31, TransAfrica leaked State Department memoranda revealing a thaw in US-SA diplomatic relations. The US pledges to help remove South Africa's "polecat status" in return for cooperation on arriving at an internationally acceptable settlement in Namibia. Documents also disclose that military attaches are to be exchanges and the US is to begin training the SA Coast Guard.

11. On June 30, the Commerce Department removes airport security equipment and medical supplies from the embargoed list of goods that can be sold to South Africa. Humanitarian interest and concern with international terrorism (air hijackings) are cited.

12. State Department issues visas to South African national rugby team, the Springboks, for a three city tour of the US on July 13.

13. On July 31, African National Congress official Joe Gqabi is assassinated in Salisbury, Zimbabwe. Zimbabwean authorities blame the slaying on the South African government. According to the Associated Press the US government had prior intelligence reports of South Africa assembling and training an assassination squad whose targets would be ANC leaders.

14. Throughout August disputes with Cape Town squatters fester. On August 11th, the South African government levels the shacks of

400 or so squatters leaving them in the cold winter rain without shelter. A visiting Congressional delegation is denied access to the area by the police.

15. On August 19th 1,300 squatters in the black township of Nyanga near Cape Town are arrested and sent back to the Transkei, a black homeland. The vast majority are women and children, dependents of male workers in the Cape Town area.

16. On August 22nd the Washington Post reports that the US government refused to join a French-initiated move to have the diplomatic corps protest the handling of the Cape Town squatters.

17. On August 24th, four to five thousand South African troops invade southern Angola, penetrating 130 km. The assault force is supported by aircraft and armor.

The US vetoes a UN resolution condemning South Africa for its invasion of Angola on August 31

In an accompanying statement, the US placed the invasion in a "full context" in which Cuban presence was a contributive factor to the violence in the region. No Cubans have ever been reported as making an incursion into South African-controlled Namibia.

19. In a speech in Honolulu, Chester Crocker, Assistant Secretary of State for Afri an Affairs, outlined the Reagan Administration's southern Africa policy on August 29th. He stated that the US will not "choose between black and white" in South Africa. Implicit in the address was that the US ranks Soviet containment and access to strategic minerals higher than political justice for blacks in the region.

20. On September 5th, 205 trade unionists are reportedly detained in East London-Ciskei area for "singing freedom songs".

21. On October 21st the Washington Post reported a team of US government nuclear experts was visiting South Africa to discuss how full scale international inspection of South Africa's nuclear enrichment facilities would be carried out.

22. In early November, American Lutheran officials and the West German government protest the torture of four Lutheran ministers by South African homeland officials while in detention. One minister was hospitalized in critical condition. A Lutheran parishioner and leader of the Black Peoples' Convention, an anti-apartheid group, Tshifhwea Minothe, who was arrested at the same time with the ministers died during the second day of detention.

On November 13 the press reports that South Africa was successful in obtaining enriched uranium in Western Europe to keep its nuclear power plants in action until its own enrichment facilities

became operational in the mid-1980's. US policymakers are disappointed because with the purchase, South Africa is unlikely to sign the Nuclear Proliferation Treaty.

24. On November 27th, in an attempt to cripple independent black trade unions, 18 leading labor organizers and activists were detained. Among those apprehended were Emme Mashinin, general secretary of the Commercial, Catering, and Allied Workers Union; Rita Ndzanga, organizing secretary of the union; Sam Kikine, general secretary to the South African Allied Workers Union; Merle Favis, editor of the South Africa Labour Bulletin; and Cedric Mayson, former editor of the banned Christian Institute Pro Veritate.

25. On December 2nd South Africa released without charges 39 of the 44 mercenaries who hijacked a plane in the Seychelles after their coup attempt failed. The other five including the leader, Col. Mike Hoare, were charged

with kidnapping, a lesser offense, and set free on bail.

26. On December 4th the Ciskei became the fourth black homeland in South Africa to become independent.

27. In early December the US government criticized the South African government for lax treatment of the Seychelles mercenaries and noted that South Africa is a party to the Hague Convention against hijacking. The Convention requires signatories to prosecute or extradite alleged hijackers. The US government also termed the creation of the Ciskei, "ludicrous" and "cruel".

28. On December 10th, Assistant Secretary of State Chester Crocker testified before the House Subcommittee on Human Rights. On South Africa he said, "while the basic structure of apartheid remains intact, there was some impr... in practice on some human rights fronts through non-enforcement of some existing racial laws." As

examples of improvements, he cited recognition of black trade unions and increased government participation by coloreds and Asians.

29. On December 23rd the South African government announces it will probe alleged financial irregularities within the South African Council of Churches. The organization under the leadership of black Anglican Bishop Desmond Tutu has worked on behalf of black grievances against apartheid.

30. On December 30th, banning orders on Winnie Mandela, the wife of imprisoned black nationalist leader Nelson Mandela, were renewed for another five years.

31. On January 5th, 1982 the South African government rearrests the Seychelles mercenaries and reportedly charges them under South Africa's hijacking law after strong pressure from Western countries.

32. Helen Suzman, opposition member of parliament, reports at year's end that 179 people are detained under various security laws, up from 92 in 1980. She also stated

that during 1981, 160 people were silenced under banning orders. During the year, 520 persons were tried and convicted under vague security laws.

33. On February 4th, the Washington Post reports that South African authorities have no plans of relaxing security detention laws.

34. On February 6th, Neil Aggett is found dead in his prison cell. He is the first white political detainee to die in detention.

These facts speak for themselves. The South African regime in response to a soft US line has only become more emboldened. The reassuring gestures or what the State Department calls "confidence building measures" have been met by concerted action to decapitate the black trade union movement, the stifling of dissent, and the invasions of two neighboring countries. Moreover, no progress has been made on the issue on which the US has invested the credibility of its entire Africa policy, namely Namibian independence. Instead of tackling the nettlesome specifics of transferring power under the agreed to UN transition plan, a measure designed to insure white minority rights has been entertained further complicating and delaying the peace settlement.

The US policy of "constructive engagement" is proving to be a simplistic attempt at realpolitik. It falters because it assumes that Prime Minister Botha is committed to change and that he is in control. Mr. Botha is a pragmatic politician not a bold visionary. He will not do anything he does not have to do. With the resurgence to the right wing elements of his party his reformist mandate has been undercut and his room to maneuver severly reduced. Interested foremost in his own survival as a leader and the cohesion of Afrikaanerdom, he is lurching backwards by overseeing another campaign of oppression hoping to regain an equilibrium. It is clear that change in South Africa will not come by liberal abdication of privileges, it will only come by internally and externally generated crises. Gentle persuation is of little value. The challenge for the US and the West becomes one of how to creatively force the white South Africans to do what is best for all involved.

In South Africa it is no longer fashionable to talk about desegregating public bathrooms. As the Botha regime slides to the right, the US can least afford to further mortgage itself to this dying order.

Forceful diplomacy is grieviously needed in dealing with South Africa. In the last months, the US has become the unwitting protector and abettor of Pretoria. It is time for the South Africans to be forthcoming on issues of mutual concern, otherwise the US stands to experience a major setback in its relations with the other 50 countries on the continent, many of whom possess vital natural resources. If the Commerce Department export controls are loosened further, Pretoria will perceive the move as another greenlight.

Apartheid has been ruled a crime, "a threat to international peace and security". By selling "non-military goods" and eliminating end user guarantees on the use of light aircraft, would we not be encouraging in some way the further intransigence of a Pretoria government that has not wavered from its course in over 30 years?

Before I close I would like to enter into the record a letter signed by 63 leaders representing diverse sectors and political opinion stating their firm opposition to any proposed weakening of Commerce Department export controls on South Africa.

Thank you.

Mr. WOLPE. Thank you very much. That was a useful backdrop for us, and helps us to better understand the issues before us as we look at the whole question.

Mr. Marshall, you really articulated a very forceful position against the wisdom of any kind of export controls.

Would you also articulate the same opposition to any kind of sanctions, for example, in connection with the present crisis with respect to Poland and the Soviet Union?

Mr. MARSHALL. That is quite a different sort of a situation.

I think that the measures we have taken, vis-a-vis Poland, so far are not likely to produce any very great determinative effects on the Polish situation.

I think, also, that there are things which the United States and certainly its allies have withheld with respect to the question of declaring Poland in default of its debts, and so on, which might have a much, much greater impact.

Now, I think we have refrained from doing that, and certainly with deference to the positions of our allies, because we see that these things cut two ways.

That is all I gather from reading about it in the newspapers.

We have from many critics' point of view been timid. Others would say we have been acting imprudently, but there is no question with respect to South Africa of the kind of heavy financing that the West has been supplying to Poland, and has got our banks in a certain pickle.

That is not at issue.

It is a question of some marginal withholdings of export items to South Africa, and all I say is, that does not have all that kind of an effect on South Africa, and that kind of thing is not going to produce any redesign of this situation in Poland.

Mr. WOLPE. Are you, therefore, equally opposed to the application of export controls with respect to Poland or the Soviet Union for the same reason?

Mr. MARSHALL. I think that the United States should very much tighten up on export controls to the Soviet Union, which have the effect of enriching the Soviet Union technologically.

Mr. WOLPE. Are you saying that somehow the export controls applied to the Soviet Union, that we have more leverage and more power to influence Soviet behavior than we have——

Mr. MARSHALL. I did not say anything of that sort.

I said that the Soviet Union is a strategic rival, an adversary of the United States, and there are certain things in the area of technology that I don't want the Soviet Union to be availed of. I would say the same thing of South Africa, if that is the kind of equation you want me to draw.

Is there something in the export control such that the United States is going to spill out all of its technological lead to South Africa? I found no evidence of that.

If that were the case, why, then, we have a very different sort of an issue, but, sir, if your question to me is, am I trying to make a theoretical, uniform application of the question of export controls, I would say with respect to that, and respecting anything else in the field of foreign policy, I don't go for universals. I examine things case by case, and I tried to make the case that with respect to

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South Africa, I thought these things were of marginal impact over the situation.

Mr. WOLPE. I appreciate that.

Mr. MARSHALL. If you want me to come back someday and discuss commercial policy toward the Soviet Union, I would be glad to.

Give me about an hour.

Mr. WOLPE. I would be pleased to do that on another occasion.

Let me indicate that the reason I ask that, the focus of your remarks was primarily upon whether it was effective, whether export controls in South Africa are effective. There are too many ways around them, and they did not have the desired impact that we would like them to have.

It was only in that context that I was asking whether or not the same argument would apply to the Polish and Soviet Union situation.

Mr. MARSHALL. I understood your question perfectly well, Mr. Congressman, the first time you asked it.

I have to regard the situations as quite severable. If you want me to come back to talk about Poland and the Soviet Union, I would be glad to, but I don't want to engage in that irrelevancy today.

Mr. WOLPE. Thank you very much.

One other question: With respect to your assessment of the situation that is occurring at the moment in South Africa, I heard a positive thrust, and I would like to think that it is an accurate view of what is happening.

When we were in South Africa in August, we encountered a very different set of reports coming from everyone inside and outside the Government, opposition, as well as Afrikaners who were concerned about Government policy.

The Government had backed away from its reformist directions and very recently we have seen this kind of report, crackdown on South African unions seen, which it details the enormous accelerations of banning, and detentions, and I did not hear you focus upon that, and I wonder how you would assess those reports that we received in South Africa, and the most recent one, in the context of what you said.

Mr. CHETTLE. I was in South Africa the same time as you were.

I can never remember having been in South Africa at such a stage when it seemed to me there was so sharp a divergence between the kinds of things the government people were saying and the kinds of things the opposition were saying.

You would always expect some kind of diversion and interpretation of views on both sides which would not coincide with the people who hold those views, themselves, but it seems to me that, and perhaps I might just refer in passing to Mr. Robinson's testimony, because it seems to me that this goes really to the thrust of both what you and Chairman Bingham were saying, and that is, is there not a move to the right?

Are things in South Africa more oppressive now than they were, or are they not?

It seems to me that there are a whole number of areas of change, for example, the instances I gave on the labor regulations.

In that very month that you were there, in August, legislation was introduced into the South Africa Parliament which almost totally removed the concept of race from South African labor legislation.

By no criteria can that be called a move to the right, and a more repressive society.

You can't be talking about the same thing.

Mr. Robinson said there was no movement on Namibia.

The New York Times gave further acknowledgment of error to say that perhaps the administration's policy, which they have criticized as being more forthcoming to the South African Government, actually was producing results in Namibia.

The article said, "Don't look now, but the administration may be closer to the policy on Namibia than expected."

Mrs. FENWICK. You brought up the matter of the 170,000 employees in Barlow Rand. Could you tell us what proportion are black among those employees and whether or not the government has cracked down on the unions?

Mr. CHETTLE. I would not even pretend to defend action when it is repressive on union leaders, but, quite clearly, the government is faced with an increasingly turbulent labor movement, and the reason why is because blacks have been denied political equality over the years.

They use their union to express political, social and economic aspirations.

Some of them may well go too far.

Mrs. FENWICK. How many are black?

Mr. CHETTLE. Roughly three-quarters.

Mrs. FENWICK. Has the Government cracked down?

Mr. CHETTLE. No, it has not. Barlow Rand has issued instructions to all their companies that black unions are to be recognized and negotiated with, regardless of whether they are recognized by the government if they genuinely represent the issues of the black employees.

Mrs. FENWICK. Are there secret ballots?

Mr. CHETTLE. As far as I know, there has been no problem at all in that representation.

Mrs. FENWICK. Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Chettle.

I would like to call on Mr. Bingham.

Mr. BINGHAM. It would be useful for me at this point to comment a bit on the background of the controls we are talking about, because I detect both among the witnesses and among members of these subcommittees an unfamiliarity with the framework of the Export Administration Act, and the kinds of controls these are.

First of all, in the Export Administration Act of 1979, we tried to draw a distinction; we did draw a distinction between national security controls and foreign policy controls.

National security controls apply really, as far as I can recall, exclusively to the Soviet Union. That has no bearing on the problem with South Africa.

Other types of controls are the foreign policy controls, and, Mr. Chettle, you refer, on page 8 of your statement, to the criteria that were mentioned in connection with foreign policy controls, but you

are mistaken in saying that they are required to be met before foreign policy controls can be imposed.

What the provision says is that these considerations should be taken into account, looked at.

The question of foreign availability, the question of whether they are going to be effective, and so on, should be looked at, but the administration is clearly given the power to go ahead and impose foreign policy controls, regardless of those issues, if they choose to.

In the case of South Africa, aside from the possible application of Security Council Resolution 418, and that is really a separate issue, what the administration was getting at, as distinct from many other foreign policy controls, was not to try to influence South Africa's policy in any way.

We knew that this was a miniscule thing as far as South Africa was concerned.

They were clearly going to be able to buy these things elsewhere. They could make them, themselves. What we were saying was, we don't want to be associated with the type of repression that these items that we are exporting represent.

We don't want to have any part in selling police equipment, or something that the police may use in the oppression of the black majority in South Africa, and, because of that, it makes no difference whether the South Africans are going to be influenced in one way or another by these controls. Nobody thought they were going to be. That is totally irrelevant.

We can argue all day as to whether things have gotten better or worse in South Africa, but the argument should be, does the United States of America want to go back to the day when it was selling items that were used in the imposition of the apartheid system. That is really what the issue is all about.

Let me just point out one other thing.

In your statement, Mr. Chettle, you criticize this committee, and I am not sure it is relevant to this hearing, but you do severely criticize this committee for not looking at human rights violations in other parts of Africa.

I would like to correct your statement on one point.

The top of page 12, you say that the subcommittee still refused in 1978 to recommend any action on Uganda. Not true.

On April 26, 1978, this subcommittee and the Subcommittee on International Economic Policy reported favorably House Congressional Resolution 612, urging the President to take action, including economic sanctions, against Uganda.

That resolution subsequently passed the House, but the action that eventually took place, and which you do refer to, was based on action taken on the Senate side. So the House went along with that.

Mr. WOLPE. I thank the gentleman for that observation.

All of you know this committee is also in the forefront of the effort to terminate aid to the Central African Republic.

I want to commend you for your testimony.

There is another foreign policy interest dimension, which is the impact or failure to impose controls on the rest of the continent as well.

Mr. BINGHAM. I certainly agree with that, and that is a consideration that, whether or not the situation has gotten better or worse in South Africa, is also irrelevant to the question of whether we should weaken the controls.

Mr. CHETTLE. May I respond to that?

Mr. BINGHAM. Yes.

Mr. CHETTLE. Your first point: the Export Administration Act lays down certain criteria that should be taken into account, and that is what I meant by strong criteria.

They are a strong criteria, and I tried to suggest that those criteria are not met by the proposed legislation.

As far as the second point——

Mr. BINGHAM. Excuse me, you do say on the fifth line of page 8 that the strict criteria required by Congress, itself, to be met before restrictions in the act can be imposed.

Mr. CHETTLE. Should be taken into account.

Mr. BINGHAM. Different.

Mr. CHETTLE. As far as the points that I made about the Africa Subcommittee are concerned, this is something that seems to me to have enormous impact outside this country, because the problem is that people who are in favor of reform in South Africa are undercut by appearances before the Africa Subcommittee, or the subcommittee that is concerned with these matters.

Looking through that whole period, it is not a particularly pretty spectacle for those of us who urge South Africa to take cognizance of the concerns of committees such as yours.

There was not a single hearing on Tanzania, Equatorial Guinea.

Mr. BINGHAM. I think my time has expired. I don't happen to be a member of the Africa Subcommittee.

The Africa Subcommittee has been one of the busiest subcommittees up here and had a great many hearings on situations in individual countries.

I really don't think it sits very well for you to sit there and list the countries that it did not have hearings on.

Mr. WOLPE. Thank you very much, Mr. Bingham.

Mr. Lagomarsino.

Mr. LAGOMARSINO. I think Mr. Chettle's point was merely, what impact that had in South Africa. Whether that is right or wrong is for us to decide.

With regard to the comparison between Poland and South Africa, with respect to this hearing, it seems to me that one difference is that with regard to Poland and the sanctions that have been imposed on it and on the Soviet Union, if you want to call them sanctions, the actions taken might be a better description, everybody clearly realizes that is not going to change the situation.

However, I think it is kind of like dropping the first shoe, and I think that the Polish regime and the Soviet regime know full well that the next one that is dropped is not going to be a shoe, but a pretty heavy boot.

They know that, and they also know, should they go forward, the Soviet Union particularly go forward, there probably will be a grain embargo and an embargo of many other things, and this time, unlike the Afghanistan embargo, a lot of nations will join

with us and make it a lot more effective and might not bring about the desired result.

You heard Mrs. Fenwick's questions about the Barlow Rand company. Would you disagree what Mr. Chettle has said about Barlow Rand?

Mr. ROBINSON. I am not familiar with the details of the Barlow Rand situation.

Mr. LAGOMARSINO. As he reports it, there is 197,000 employees, three-quarters of whom are black, and they have insisted on recognizing black trade unions, and the Government has objected to that.

Mr. ROBINSON. That may be the case.

Let me say something about the general government response to the trade union movement in South Africa.

Much has been made of the South African Government commitment to recognize and acknowledge registered African trade unions.

One ought to understand the motive for so doing. It was not out of any liberal motion on the part of the South African Government, but yet another effort to divide and destroy, if not to weaken, the South African trade union movement, so that many of the unions were recognized so as to bring them under the oversight and control of the Government.

One assumes that that is the case here as well. I have not looked at that specifically, but every evidence that we have been able to read in all of the magazines that discuss this, the economists—and there are long articles on this situation—don't paint the same picture as Mr. Chettle paints; that obviously the intent of the Government is not to encourage trade unionism amongst the African workers.

One other look at what is happening to those unions that are, for the most part, black-controlled, take a more progressive position than do those that have been recognized, the Government has dropped a heavy foot on those unions and has refused recognition, so that there is a good body of literature to support a real hard challenge to what Mr. Chettle was saying.

Mr. LAGOMARSINO. Well, Mr. Bingham gave a very good history of why these particular sanctions were imposed for foreign policy reasons, but does that mean necessarily that they should not be changed if the situation is improved? In other words, by doing this, we expressed our abhorrence of that system and what it was doing. Everybody agrees that that was the reason.

Does that mean that unless there is a complete change there, that there should be no recognition of, and, again, I am not asking you to say that there has been an improvement.

Mr. ROBINSON. It is hard to even begin to discuss that. We have been hurdling so far in the rightward direction in the last year, it is hard to imagine the conditions about which you pose your question.

One ought to talk at the same time about what the sanctions still allow, what these restrictions still allow. They don't explicitly address rentals to the South African military police, time-sharing of electronic data processing equipment, or forbid sales to municipal government agencies, any number of things, so these things are in

such a weak state now, it is hard to imagine how one would weaken them and still provide any signal at all; so a weakening would make them disappear as a sanction virtually altogether.

Mr. LAGOMARSINO. Mr. Conrad, as I understand your organization, and its objectives, is it fair to say that your organization is generally against any arm sales to any country?

Mr. CONRAD. That is correct.

Mr. LAGOMARSINO. On pages 7 and 8, you give some examples of, I guess, violations of our own policies. Is that correct?

Mr. CONRAD. They can be characterized as infractions, apparent violations.

Mr. LAGOMARSINO. I notice the dates were all 1978, 1979, and 1980, so I would imagine you are saying that there are apparently violations of the rules that were laid down by the Carter administration. Is that correct?

Mr. CONRAD. Yes.

Mr. LAGOMARSINO. What other countries maintain export controls for South Africa similar to the United States?

Ms. BUTCHER. Under the Security Council resolution, all states are supposed to maintain controls on arms exports to South Africa. If you want an exact list, I can submit it.

Mr. LAGOMARSINO. As I understand the situation, the United States went beyond that requirement.

Ms. BUTCHER. I would not say so, Mr. Congressman.

What I would say is that beginning with the imposition of the voluntary arms embargo, in 1963, we tried to adhere to it scrupulously.

In 1977, our actions to enforce it would be an effort to comply with the law and with the spirit of the resolutions.

Mr. LAGOMARSINO. I am advised, for example, categories 2 through 6 go beyond the U.N. arms embargo, but are in support of that embargo, categories 2 through 6.

Ms. BUTCHER. Of the regulations?

Mr. LAGOMARSINO. Yes; helicopters, et cetera.

Ms. BUTCHER. No, I would disagree, Mr. Congressman, because, if you read this regulation, and put it side by side with the resolution, what you will see is that section 2, for example, is a good-faith effort to interpret the meaning of the language that arms and related material is to be banned.

I would not say at all that it goes beyond it.

Mr. LAGOMARSINO. This would refer back to the question I asked you a moment ago.

If that interpretation is correct, in other words, that everything that we have embargoed is within the U.N. resolution, then is it not true that many other countries are not very scrupulously following the U.N. directive?

Ms. BUTCHER. Yes. May I comment on a previous question, a question to Mr. Robinson, because the reason that we have imposed the embargo under the foreign policy controls section of the Export Administration Act is referred to in section 6(h) of that act, where it says the President may "exercise the authority contained herein in order to fulfill obligations of the United States pursuant to treaties."

Mr. LAGOMARSINO. Tell me about the position of other southern African countries. Are they complying faithfully, and in all respects, with the U.N. resolution as you interpret it?

Ms. BUTCHER. I would imagine that they are. I could submit further material on that, if you wish.

Mr. WOLPE. Thank you very much.

I would like to call on Mr. Crockett.

Mr. CROCKETT. I am afraid I have very few questions for this panel, because I share the sentiment expressed by almost everyone, except, of course, Mr. Marshall.

The point has already been made of the comparison that exists between what the President of the United States and what our Government seems to be calling for, as far as the situation in Poland is concerned, and what we are not calling for as far as the situation in South Africa is concerned.

I find especially good the specificity contained in the testimony given by Mr. Conrad.

While I was aware that many of our American corporations are fiddling in a round-about way, violating our export restrictions on trade with South Africa, it really was not until today, assuming the correctness of his testimony, that I knew that one of my rather large constituents, the Burroughs Corp., is engaged in that nefarious trade.

I will be only too happy to comment upon that upon my return to Detroit.

I would suggest, Mr. Chairman, that with respect to Mr. Conrad's testimony, we make a copy of it available to both the State Department and to Commerce, and request specific comments by them with respect to the instances that he mentions here.

I also found extremely helpful the manner in which the testimony of Mr. Robinson had been addressed to what was occurring on the part of our State Department vis-a-vis South Africa, and their response on the part of the Government of South Africa.

I think most of us knew or suspected that we were making very little headway in that area, but you visualize it in such a manner that it becomes extremely helpful, and I suggest that you give it as much publicity to that kind of paralegal presentation as is possible.

Now, frankly, I am bothered by the fact that we don't have the State Department or the Commerce Department representatives here.

Mr. WOLPE. That is the next panel.

Mr. CROCKETT. I would much prefer to save my time and my questions for the next panel.

Thank you, Mr. Chairman.

Mr. WOLPE. Mr. Erdahl.

Mr. ERDAHL. I thank you, members of the panel, for being with us today.

As we look at our international policies and how we try to influence to some degree the acts of other countries, we work in the area of levers, carrots and sticks, and South Africa is in view by the world.

I would like to make some statements and have you react.

It seems to me it is extremely difficult for us as a nation to act purely in a unilateral way with any nation, certainly with South

Africa, because it seems that the policy and positions that our government has are very important, not only in that we might influence them to take a certain course of action, but also in the perceptions that we create, the signals we emit that certainly are listened to, and properly so, by other nations in Africa, especially those that are struggling for economic viability and political independence.

A question I would have and an observation before that, one of the great sins of humanity has been to remain silent in the face of social injustice, and, just because we can't do everything, does it mean that we should do nothing?

Even though we heard some arguments today that what we might do has very little effect on the policies of South Africa, it seems to me that it might have some effect, and, at the same time, give signals that are very important as we deal with a lot of other nations in the world, not only in Africa, Asia, South America, and other places as well, and I wonder if any members of the panel would like to disagree, or expound, or comment, on the observations I just made.

Mr. MARSHALL. Well, if I may sir?

Mr. ERDAHL. Certainly.

Mr. MARSHALL. South Africa, like a lot of other countries, needs a lot of criticism, a lot of suggestions.

It has to be encouraged if and when it does something right; it has to be made aware of disapproval, that it has done something very wrong and harsh, and all that sort of thing.

These things don't have to be done necessarily by palpable material acts of withholding that have not much cutting edge to them.

They could be done in private counsel, and I believe from my own recollection when I was a member of the State Department that there is a continuing kind of interchange between the United States and South Africa.

Now, I happen, well, I certainly have never withheld my own views from the persons in South Africa, from the Ministers on down, that I have talked to.

They know perfectly well from candid expressions from me what I think of this, that, and the other.

I am all for this sort of thing, and I think that it is perfectly a part of the interchange among nations that this sort of thing go on, and I certainly wouldn't except South Africa from it.

Mr. ERDAHL. You are a strong proponent of what we hear referred to as silent diplomacy?

Mr. MARSHALL. Well, yes, I think a great many things can be done in confidentiality that can't be done overtly.

I could give you a long account of this from my own experience, but I think I agree with the thrust of your statements.

Mr. ERDAHL. Yes, ma'am.

Ms. BUTCHER. Mr. Chairman, I would just reiterate that the question here is not so much one of diplomacy. The diplomacy was decided upon when we supported the current Council resolution. Any loosening would run astride of the law both with respect to the express language of the resolution, and with respect to its spirit; and it would send the wrong message to South Africa.

Mr. ERDAHL. Thank you very much.

Mr. WOLPE. Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman.

It is good to sit in on this very important subcommittee hearing that is taking place.

I would like to ask a couple of questions as a visitor to the committee today.

First, to Mr. John Chettle. You spoke of recent arrests of labor union leaders and appear to justify them by saying that the leaders went too far by asking for more than wages.

What exactly did Emma Mashinini, head of the 12,000 members of the Commercial Catering Union do that went too far?

Mr. CHETTLE. That was just the kind of misrepresentation of my position that I was afraid would occur.

We do not approve of anything of this kind, but one should understand the situation in which it is occurring; one of extreme turbulence in the labor sphere, which certainly moved into the political arena as well.

It may be, and I put it no more strongly than that, that political turbulence was what the Government was fearing.

But such arrest are reprehensible.

I believe that the whole thrust of the Government's legislation providing for the emergence of black trade unions which hitherto were not recognized by the law, was to accept that this was a legitimate part of the process of labor negotiation; and that if they are to make arrests when power is exercised, it undercuts the very object behind the legislation. So we are in total opposition to action which negates the object of such legislation.

Mr. GRAY. Maybe I did not hear your answer, or perhaps you did not hear my question.

I think I heard you respond to one of the questions posed by the members of the committee, and I don't want to ask the reporter to go back and get the exact wording. However, you used the words to describe the situation among labor people as "having gone too far." I was wondering what you meant by the use of the term "going too far" when a member of this committee today asked about the labor situation and the arrests that had been made. You used the words that they had gone too far.

Would you explain what you meant?

Mr. CHETTLE. The context of what I said was that it may be that the Government thought that these particular people had gone too far, but, again, I don't want to say that this is either right or this is my view.

Mr. GRAY. Do you have a view on that? Do you think that the labor unions went too far?

Mr. CHETTLE. It is very difficult indeed from this distance, and you must feel the difficulty, yourself, to see exactly what is going on. Even though I have spoken to a number of people who are very intimately involved in the whole labor area, there is a good deal of dispute as to what is actually going on.

It is a volatile and very rapidly changing area.

Mr. GRAY. Do you have any information that you can shed with the committee as to the South African Government arrests of some of the labor leadership? I have information that better than one-third of the independent black union leaders have been arrested. Leaders of the South African Allied Workers Union, the Black Mu-

nicipal Workers Union, the Media Workers Union, the Motors Workers Union, and others have been victims. Can you shed any light on the rationale for those arrests since the South African Government has not stated any reason for those arrests? Also the Ford Motor Co. did not believe that leaders of the Macwusa Union violated any rules. Could you perhaps give us some information as to the arrests?

Mr. CHETTLE. I have no information on that.

Mr. GRAY. Do you see those arrests as being contradictory in terms of a government that "quietly is moving toward reform"?

Mr. CHETTLE. I don't think it achieves that object at all. I think it is contradictory; yes.

Mr. GRAY. Would you not also agree, based upon the history of labor movements around the world, not just in South Africa, but right here in the United States, that labor unions have always articulated concerns other than wages, that those nonwage issues are a legitimate concern of labor unions throughout the history of civilization?

Mr. CHETTLE. You know, Mr. Congressman, that the role which labor unions have played has been very different in different countries. Before World War I, in France, there was the growth of the syndicalist movement, which had a different approach to the way in which leaders should be dealt with than say, the U.S. trade union movement in its approach to policy.

I think we are in our first very faltering steps indeed in this problem. When I was back in August, I discussed this with a number of people who have had personal roles in the negotiations that have gone forward, and, one, for example, who is the president of a large firm that is concerned with the sugar interests, and personally engaged in this kind of negotiation. He said that the kind of misunderstanding which exists between management and labor is also increased and exacerbated by the misunderstanding that exists on a cultural level, and the only answer to it is to sit down for hours and days at a time to find out what the real problems are. This is increasing the part of the requirements for leadership in business companies. This is the sort of reality with which we are having to deal.

Mr. GRAY. Could I have just one more question?

Any member of the panel can respond to it—perhaps Mr. Robinson. Is there any rational means of discriminating between different agencies of the South African Government in allowing exports to enforce and maintain apartheid?

Mr. ROBINSON. It is all a part of the whole.

The South Africans have a general tender acquisition board that acquires goods of the kind about which we speak, and distributes those through a maze of South African channels and agencies so that they wind up in the right place.

One has to understand in the maintenance of the whole apparatus of apartheid, that there are nonmilitary and military components, and when we increase the capacity of one, we increase the strength of the whole to maintain itself, so that I think it is absurd for us to try to distinguish in the way that we have between what is clearly military, and what is not so clearly, assuming in the process that the twain do not meet, when we have the clearest evi-

dence, particularly from Mr. Conrad's testimony, through the use of computers, to keep that sophisticated machinery well oiled and running.

I think that testimony makes clear how absurd these fine distinctions are.

Mr. GRAY. Thank you, Mr. Chairman.

Mr. WOLPE. Thank you very much, Mr. Gray.

Mr. BINGHAM. I would like to thank all the witnesses for their participation and their testimony and, for the record, I think we should say it is nice to welcome Ms. Butcher back.

She was a former staff director of the Africa Subcommittee and made a real contribution here today.

I would like to also compliment Mr. Conrad on a really remarkable statement in terms of specificity, the great deal of research that has gone into the preparation of that paper, and I notice much of it has not been made public before, and I hope that the Department of State and the Department of Commerce, which are currently trying to arrive at a policy in this respect, will pay close attention to the material in that statement. It is a truly remarkable job.

Mr. WOLPE. Thank you, Mr. Bingham, and I want to add my own voice of thanks to the contributions of each of you to the deliberations of the subcommittee.

It would be useful actually if we can invite the State and Commerce Departments to respond specifically to Mr. Conrad's detailed presentation of some of the practices that apparently escaped the net, as intended, at least.

I intend to pursue that with the following witnesses.

Mr. BINGHAM. The subcommittees will please be in order. We are pleased to hear the witnesses for the administration, Mr. William Root, the Department of State.

Mr. Root has appeared before our subcommittee on many occasions, and I welcome him back, and we appreciate the fact that, because of certain uncertainties, that these statements had to be prepared in something of a crisis atmosphere.

Which of you would like to go first?

Mr. Denysyk.

STATEMENT OF BOHDAN DENYSYK, DEPUTY ASSISTANT SECRETARY FOR EXPORT ADMINISTRATION. DEPARTMENT OF COMMERCE

Mr. DENYSYK. Thank you very much.

On behalf of the administration and the Department of Commerce, I appreciate the opportunity to appear before the Subcommittee on International Economic Policy and Trade and the Subcommittee on Africa of the Committee on Foreign Affairs to discuss our export controls imposed for foreign policy purposes, particularly those which affect South Africa.

We are in the process of conducting a comprehensive review of our foreign policy controls. Therefore, it would be inappropriate for me to discuss details at this time. The administration will announce its foreign policy controls, including those for South Africa, at the end of February. At the conclusion of my remarks, I will, of

course, be happy to answer questions, but, more importantly, the administration is very interested to hear your comments about foreign policy controls regarding South Africa. Your views will be a valuable contribution to our review process.

You have expressed a desire to obtain a better understanding of the existing regulations and the effect of proposed changes on our relations with South Africa and other African nations. I am pleased to have the opportunity to discuss our regulations with you.

As you know, the Department of Commerce shares the responsibility for foreign policy controls with the Department of State. The following foreign policy controls are currently in existence:

HUMAN RIGHTS

Equipment designated as "crime control and detection" equipment is controlled to all countries except NATO, Japan, Australia, and New Zealand

SOUTH AFRICA AND NAMIBIA

There are embargoes on arms and the equipment to make them, and on anything for military and police use. Aircraft and helicopters are also embargoed.

ANTITERRORISM

National security-controlled items valued at $7 million or more for military end-users, aircraft valued at $3 million, helicopters over 10,000 pounds are controlled to Syria, Iraq, Libya, and PDR Yemen.

REGIONAL STABILITY

Specific commodities going to specific countries are controlled—for example, all off-highway wheel tractors over 10 tons going to Libya.

NORTH KOREA, VIETNAM, KAMPUCHEA, AND CUBA

We have a general embargo, with limited exceptions—gift parcels less than $200 in value.

U.S.S.R.

Equipment and technical data for oil and gas exploration and production are controlled, and diesel engine assembly lines for the Kama Truck Plant are embargoed. All goods and technology requiring a validated export license are embargoed.

NUCLEAR NONPROLIFERATION

The administration is concerned with proliferation of technology which could be used for nuclear weapons. This includes dual-use technology which could be used for nuclear powerplants and all phases of nuclear energy production. We will continue a case-by-case approach on the export of nuclear commodities and technologies to prevent nuclear proliferation.

When imposing, expanding, or extending foreign policy controls, the Export Administration Act mandates that the following six criteria be considered.

Mr. BINGHAM. I suggest you skip those; we are familiar with them.

Mr. DENYSYK. OK, fine.

I will pick up with point 6.

No one criterion drives the decision to impose, maintain, or expand foreign policy controls. Rather, there must be a balance of all six. The previous administration was accused of cursorily reviewing and balancing those six issues that have been mandated by Congress. I can assure you that each will be examined in great depth.

Pursuant to the Export Administration Act, our foreign policy controls are reviewed yearly and lapse on December 31, unless extended by the Secretary of Commerce, under the authority of the President, with notification to the Congress. In 1981, we extended these controls until March 1, for two reasons.

One, events in Poland and the subsequent sanctions imposed against that country's Government and against its controlling agent, the U.S.S.R. made significant demands upon Departments of Commerce and State staff and upon other decisionmakers in the export policy field.

Second, this is the first opportunity that the Reagan administration has had to reach its own determination regarding these foreign policy export controls, and it wishes to do so in a deliberate and comprehensive manner. The administration intends that export controls form a coherent element of an integrated overall U.S. foreign policy.

Consequently, the Reagan administration is currently conducting a broad-based review of existing foreign policy controls. We are examining these controls to determine if they are effectively promoting the foreign policy of the United States. The review also takes into account whether American business is being unfairly disadvantaged by some of these controls.

We also plan to coordinate better with our allies on the imposition of future foreign policy controls. We also plan to coordinate better with our allies on the imposition of future foreign policy controls. In the past, our allies have complained that we have imposed these controls arbitrarily and without prior notice to them. All of the controls, including those for South Africa, are being carefully reviewed with an eye toward reducing the regulatory burden of U.S. business which achieving the stated foreign policy objectives.

The review, once completed, should produce a set of controls that reflect the three key criteria that this administration strives for in all of its export controls: clarity, predictability, and timeliness. It serves no one's purpose for businessmen to spend precious marketing funds only to be told several months later that he cannot sell the commodity. This administration is processing cases on time now, after reducing a backlog of over 2,200 cases to virtually zero. We now must structure a framework that is clear and predictable.

As you know, this administration supports the principle of equal and fair treatment of all workers and has encouraged U.S. companies operating in South Africa to adhere to the Sullivan principles, a

private initiative which calls for equal and fair treatment as well as advancement of black workers. Since their implementation in 1977, 137 U.S. companies have signed the Sullivan principles, and these firms have about 80 percent of the employees of U.S. firms in South Africa.

These principles are an important force for social change in South Africa and are having a positive impact. As a result of the Sullivan principles, other countries such as Canada and the United Kingdom have developed codes of conduct concerning employment practices of their firms operating in South Africa.

Also, this administration has publicly and privately informed the Government of South Africa that their practice of apartheid is repugnant. We are encouraging change by what Assistant Secretary Chester Crocker calls constructive engagement, and we will continue this policy.

Also, this administration will adhere to all U.N. resolutions that we are committed to upholding. The export controls that emerge on February 28, 1982, must reflect this policy of constructive engagement. Another issue that we are considering is the extent that our allies and trading partners impose controls on South Africa. The controls should be as uniform as possible.

The issue of export controls on South Africa is a complex one that balances many vital U.S. foreign policy objectives: human rights, strategic, political, and trade. All will be carefully weighed before final decisions are taken.

Thank you, Mr. Chairman.

[Mr. Denysyk's prepared statement follows:]

PREPARED STATEMENT OF BO DENYSYK, DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

Mr. Chairman, on behalf of the administration and the Department of Commerce, I appreciate the opportunity to appear before the Subcommittee on International Economic Policy and Trade and the Subcommittee on Africa of the Committee on Foreign Affairs to discuss our export controls imposed for foreign policy purposes, particularly those which affect South Africa.

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You have expressed a desire to obtain a better understanding of the existing regulations and the effect of proposed changes on our relations with South Africa and other African nations. I am pleased to have the opportunity to discuss our regulations with you.

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When imposing, expanding, or extending foreign policy controls, the Export Administration Act mandates that the following six criteria be considered:

1. The probability that the controls will achieve the foreign policy goal in light of foreign availability as well as other factors; and whether the embargoed country will receive the controlled goods regardless of our controls;
2. The controls' compatibility with other U.S. foreign policy objectives including strategic interests and countering international terrorism, and with overall U.S. policy toward the country which is the proposed target of the controls;
3. The reaction of other countries to the imposition or expansion of such export controls by the U.S.;
4. The likely effects of the proposed controls on the export performance and competitive position of the U.S. in the international economy, and on U.S. companies' reputation as reliable suppliers;
5. The ability of the U.S. to effectively enforce the controls;
6. The foreign policy consequences of not imposing the controls.

No one criterion drives the decision to impose, maintain, or expand foreign policy controls. Rather, there must be a balance of all six. The previous administration was accused of cursorily reviewing and balancing those six issues that have been mandated by Congress. I can assure you that each will be examined in great depth.

Pursuant to the Export Administration Act, our foreign policy controls are reviewed yearly and lapse on December 31, unless extended by the Secretary of Commerce, under the authority of the President, with notification to the Congress. In 1981, we extended these controls until March 1, for two reasons.

One: Events in Poland and the subsequent sanctions imposed against that country's government and against its controlling agent, the U.S.S.R. made significant demands upon Departments of Commerce and State staff and upon other decision-makers in the export policy field.

Secondly, this is the first opportunity that the Reagan administration has had to reach its own determination regarding these foreign policy export controls and it wishes to do so in a deliberate and comprehensive manner. The administration intends that export controls form a coherent element of an integrated overall U.S. foreign policy.

Consequently, the Reagan administration is currently conducting a broad-based review of existing foreign policy controls. We are examining these controls to determine if they are effectively promoting the foreign policy of the United States. The review also takes into account whether American business is being unfairly disadvantaged by some of these controls. We also plan to coordinate better with our allies on the imposition of future foreign policy controls. In the past, our allies have complained that we have imposed these controls arbitrarily and without prior notice to them. All of the controls, including those for South Africa, are being carefully re-

viewed with an eye towards reducing the regulatory burden of U.S. business which achieving the stated foreign policy objectives.

The review, once completed, should produce a set of controls that reflect the three key criteria that this administration strives for in all of its export controls: clarity, predictability, and timeliness. It serves no ones purpose for businessmen to spend precious marketing funds only to be told several months later that he can't sell the commodity. This administration is processing cases on time now, after reducing a backlog of over 2,200 cases to virtually zero. We now must structure a framework that is clear and predictable.

We issued a notice in the Federal Register in October of 1981, which informed the public that we are engaged in an extensive review of export controls for foreign policy purposes. In accordance with section 13(b) of the act, meaningful opportunity for public comment was provided. We have received many comments ranging from increasing the controls to lifting them altogether. These comments are being considered as part of our comprehensive reivew. I look forward to hearing your perspectives.

As you know, this administration supports the principle of equal and fair treatment of all workers and has encouraged U.S. companies operating in South Africa to adhere to the Sullivan principles, a private initiative which calls for equal and fair treatment as well as advancement of black workers. Since their implementation in 1977, 137 U.S. companies have signed the Sullivan principles, and these firms have about 80 percent of the employees of U.S. firms in South Africa. These principles are an important force for social change in South Africa and are having a positive impact. As a result of the Sullivan principles, other countries such as Canada and the United Kingdom have developed codes of conduct concerning employment practices of their firms operating in South Africa.

Also, this administration has publicly and privately informed the Government of South Africa that their practice of apartheid is repugnant. We are encouraging change by what Assistant Secretary Chester Crocker calls constructive engagement and we will continue this policy. Also, this administration will adhere to all U.N. resolutions that we are committed to upholding. The export controls that emerge on February 28, 1982 must reflect this policy of constructive engagement. Another issue that we are considering is the extent that our allies and trading partners impose controls on South Africa. The controls should be as uniform as possible.

The issue of export controls on South Africa is a complex one that balances many vital U.S. foreign policy objectives: human rights, strategic, political, and trade. All will be carefully weighed before final decisions are taken.

Mr. BINGHAM. Thank you, Mr. Denysyk.

Mr. Root.

STATEMENT OF WILLIAM ROOT, DIRECTOR, OFFICE OF EAST-WEST TRADE, DEPARTMENT OF STATE

Mr. ROOT. Mr. Chairman, I have no prepared statement. I have provided for the committee written responses to the questions in the letter of invitation, which may be of interest to the committee.

Mr. BINGHAM. Mr. Root, I suggest that you go over those, summarizing your answers, if you will.

Mr. ROOT. The first question from the committee was that we review existing U.S. foreign policy restrictions on exports to South Africa and compare them with restrictions called for by the United Nations.

There are six categories of restrictions on exports to South Africa, the first one of which is the U.N. arms embargo, itself, with which we fully comply by denying all applications of all items subject to that embargo.

The other five support the U.N. embargo, but are not strictly within its terms. They do go beyond the U.N. embargo while supporting them.

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The aircraft and helicopter category is controlled. Cases are approved when we have assurances that the aircraft would not be used for not only military and police use, but paramilitary use, also.

There is a general policy of denial for military and police, but we do approve on a case-by-case basis various medical items and also items for deterring acts of unlawful interference with international civil aviation.

Computers for government consignees: These are generally considered favorably if the computers would not be used to support the South African policy of apartheid.

Crime control and detection instructions equipment, denial except on a case-by-case basis.

The second question was the effectiveness of the existing export controls applicable to South Africa.

We feel they are generally effective in the context of their objectives which were to strengthen the arms embargo, to distance the United States from the practice of apartheid, and promoting racial justice in South Africa.

The third question asked us to describe major options considered in the review of export controls.

The U.N. arms embargo will be, of course, continued, and the human rights and nuclear nonproliferation controls which apply to very many more countries than South Africa will also be allowed to continue pursuant to relevant legislation.

The other three categories, the aircraft, military, police and computers, are being reviewed in the context of not only the criteria to which Mr. Denysyk referred, but also various declarations of policy in the Export Administration Act.

You asked for a description of changes contemplated with respect to requiring end-use certificates for civilian aircraft which could be used for military or paramilitary purposes.

We do not intend to authorize the export of civilian aircraft which would be used for military or paramilitary purposes.

A further question, changes being considered in U.S. policy on selling civilian articles to the South African military police and security forces.

The details on this matter are not yet resolved.

A question concerning whether current foreign policy export controls cover the sales of civilian goods to such agencies as ARMS COR and its subsidiaries, and they do.

Will the regulations effective on March 1 prevent or allow American companies to sell civilian items to these organizations?

This matter is not yet resolved.

You had asked for the reasons given in 1978 for the imposition given in foreign policy controls.

These are similar to the ones I referred to as the objectives in current controls.

You asked why the administration is interested in modifying these regulations at this time.

The act requires us to consider modification once a year in the context of the required renewal.

Have circumstances changed in South Africa to warrant modification? This obviously must be studied in the context of our current review.

Are there other reasons for these changes? Can you list those starting with the most important?

Quite clearly, the criteria must be considered in this context, the criteria that is stated in the act.

Are computer sales permitted to the South African Government or government agencies? And are they permitted under the existing regulations?

As I mentioned, yes, they are, unless it is believed they would be used to support apartheid.

How would contemplated changes affect computer sales? This has not yet been resolved.

How does our current approach on foreign policy export controls program differ from that which is being contemplated for South Africa? Three of the controls do not differ, the arms embargo, the crime control equipment controls, and the nuclear nonproliferation controls.

The other three differ markedly. They stem from quite different circumstances.

The new Polish controls are in response to the imposition of martial law on December 13. The South African controls go back two decades.

That, in summary, is our response.

[The material follows:]

QUESTIONS SUBMITTED IN WRITING TO WILLIAM A. ROOT, DIRECTOR, OFFICE OF EAST-WEST TRADE, DEPARTMENT OF STATE, AND RESPONSES THERETO

A. Answers to questions from the January 29 letter of invitation to the Department of State:

1. Review existing U.S. foreign policy restriction on exports to South Africa and compare them with the restrictions called for by the United Nations.

Answer: U.S. foreign policy restriction on exports to Souty Africa are as follows:

(1) Items controlled pursuant to the United Nations arms embargo of South Africa.

Licensing policy: Denial.

(2) Aircraft and helicopters.

Licensing policy: Generally considered favorably on a case-by-case basis if assurances have been obtained against military, paramilitary or police use.

(3) All items for military and police entities.

Licensing policy: Denial except, on a case-by-case basis, for medicines, medical supplies, and medical equipment to any end user and for equipment to be used in the prevention of acts of unlawful interference with international civil aviation.

(4) Computers for government consignees.

Licensing policy: Generally considered favorably on a case-by-case basis for computers that would not be used to support the South African policy of apartheid.

(5) Crime control and detection instructions and equipment.

Licensing policy: Denial except, on a case-by-case basis, for dual-use items for other than law enforcement applications.

(6) Items of significance for nuclear explosive purposes.

Licensing policy: Take into account stated end-use, sensitivity, availability elsewhere, assurances or guarantees, South Africa's non-adherence to the Nuclear Non-Proliferation Treaty.

Categories (2) through (6) go beyond the United Nations arms embargo but are in support of that embargo.

2. Assessment of the effectiveness of existing export controls applicable to South Africa.

Answer: These U.S. controls were established in order to strengthen the United Nations arms embargo, to distance the United States from the practice of apartheid, and to promote racial justice in southern Africa. They are furthering the objectives of strengthening the arms embargo and distancing the United States from the practice of apartheid. They are also a factor that the Government of South Africa must weigh in considering issues related to racial justice. They are consistent with the

longstanding U.S. commitment to the improvement of internationally recognized human rights, particularly with regard to the apartheid policies of the South African Government.

The arms embargo is generally effective. The United States has established a position of moral leadership since the voluntary U.S. arms embargo was established in 1962. Through scrupulous adherence by the United States to the mandatory 1977 U.N. arms embargo, a standard has been established that is recognized by other major trading countries.

The other controls are not as effective in denying to South Africa the listed items. Only a few other nations impose controls that go beyond the arms embargo. However, we have earned the respect, especially by African states, for our forthright moral stand on this issue. This reaction has furthered general U.S. foreign policy objectives.

3. Description of the major options considered in the review of export controls applicable to South Africa in preparation for the December 31, 1981, renewal of export controls required by the Export Administration Act. What issues are unresolved?

Answer: The United States will, of course, continue to comply with the United Nations arms embargo. Crime control equipment and nuclear non-proliferation controls are applicable to exports to many countries, not just South Africa, and will continue pursuant to Section 6(j) of the Export Administration Act of 1979 and Section 309(c) of the Nuclear Non-Proliferation Act of 1978, respectively. There is no specific international obligation or statutory requirement for the other three controls: aircraft, military and police, and computers.

In reviewing these latter three categories of controls, the declaration of policy in the Export Administration Act provides guidance, particularly—

Section 3(2)(B): ". . . restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States . . ."

Section 3(3)(A): ". . . apply any necessary controls to the maximum extent possible in cooperation with all nations . . ."

Section 3(10): ". . . export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, and (C) are administered consistent with basic standards of due process."

Section 3(11): ". . . minimize restrictions on the export of agricultural commodities and products."

Several details are unresolved.

4. Description of changes contemplated with respect to requiring end-use certificates for civilian aircraft which could be used for military or paramilitary purposes.

Answer: The United States does not intend to authorize the export of civilian aircraft which would be used for military or paramilitary purposes.

5. Description of changes being considered in U.S. policy on selling civilian articles to the South African military, police and security forces.

Answer: Details on this matter are unresolved.

6. Do the current foreign policy export controls cover the sales of civilian goods to such South African Government agencies as ARMSCOR and its subsidiaries?

Answer: Yes.

7. Will the regulations effective on March 1 prevent or allow American companies to sell civilian items (which may have military or security application) to these organizations?

Answer: Details on this matter are unresolved.

8. What reasons did the Departments of Commerce and State give for the 1978 imposition of foreign policy export controls toward South Africa?

Answer: The reasons given were similar to those provided in the first paragraph of the answer to question 2 above.

9. Why is the Administration interested in modifying these regulations at this time?

Answer: Section 6(a)(2) of the Export Administration Act requires review no less frequently than annually.

10. Have circumstances changed in South Africa to warrant modification?

Answer: This matter is now under study.

11. Are there other reasons for these changes? Can you list these reasons starting with the most important?

Answer: In renewing foreign policy controls, the criteria in Section 6(b) of the Export Administration Act are taken into consideration, namely, probability of achieving the intended foreign policy purposes, compatibility with the foreign policy objectives of the United States, reaction of other countries, likely effects on U.S. ex-

ports and the U.S. economy, enforceability, and foreign policy consequences of not imposing controls.

There has not yet been a decision for changes.

12. Are computer sales permitted to the South African Government or to South African Government agencies under the existing regulations?

Answer: Yes, unless it is believed that they would be used to support apartheid.

13. How would contemplated changes in the regulations affect future computer sales to the South African Government?

Answer: There has not yet been a decision for changes.

14. How does our current approach on foreign policy export controls toward Poland differ from that which is being contemplated for South Africa?

Answer: In the absence of a decision on changes for South Africa, this answer will compare controls on exports to Poland with existing controls on exports to South Africa.

There are some features which Polish and South African controls have in common, namely an arms embargo, crime control equipment controls, and nuclear non-proliferation controls. Other foreign policy export controls are imposed on a selective basis, taking into account the special situation in the country concerned. All aircraft and helicopters are controlled to South Africa because of concerns for paramilitary use; only aircraft with avionics or engines embargoed for security reasons are controlled to Poland. Military and police and computer controls are broader for the South African Government consignees affected than are comparable Polish controls; but Polish controls on security items apply to exports to all consignees in the country.

B. State Department comment on questions included in the January 28 letter of invitation to the Department of Commerce:

1. Is the Subcommittees' information correct that a principal reason for the continuation of existing export controls for 60 days beyond the December 31, 1981, renewal date set by the Export Administration act was interagency disagreement over controls that should, in the future, be applicable to South Africa?

State comment: No. The foreign policy controls under intensive review include not only South African controls but also human rights controls, anti-terrorism controls, regional stability controls, and USSR controls. It was not possible to complete the review of all these existing controls by the December 31, 1981, deadline for renewal because the Polish crisis required priority attention during the latter part of December. The 60-day extension was designed to provide time not only to complete the review but also to permit advance consultation with the Congress.

2. How does our approach on foreign policy export controls toward Poland differ from that toward South Africa? There are indications that the Commerce Department and the State Department are arguing for tighter controls on U.S. exports to Poland because of the serious restrictions on human rights and political freedoms in that country. At the same time, both the Departments of Commerce and State are said to be advocating a relaxation of foreign policy export controls on South Africa at a period when that nation is increasing its political and human rights restrictions on the majority of its population. How accurate is this assessment?

State comment: The situations for the two countries are quite different. As one of the measures in response to the December 13, 1981, imposition of martial law in Poland, President Reagan announced on December 23, "We are proposing to our Allies the further restriction of high technology exports to Poland." With respect to South Africa, the United States imposed a voluntary arms embargo in 1962, complied with the mandatory United Nations arms embargo in 1977, and imposed additional controls in 1978.

Mr. BINGHAM. Thank you, Mr. Root.

I would like to ask both of you to take a look at Mr. Conrad's statement. Do you have it in front of you there?

Mr. ROOT. No, we don't.

Mr. BINGHAM. The first question I would like to address to you, Mr. Root, and you may not be in a position to answer this because of your responsibilities.

I wanted to ask you what you know about this cooperation between South Africa's physical research laboratory and the U.S. Army Armament Research and Development Command.

This is mentioned at the top of page 15 of Mr. Conrad's statement.

Mr. ROOT. I am not familiar with that, Mr. Chairman.

Mr. BINGHAM. Could we ask the department to submit a statement on that for the record?

You have stated that computers are not licensed if they would be used to support apartheid.

Mr. Conrad has gone into considerable detail with regard to what would appear to be violations of that policy, and I think it would be helpful to have the department's comments on it, and I appreciate you can't do it now, but in due time, on those statements.

Mr. ROOT. Be happy to do so.

Mr. BINGHAM. What happens in your administration of export controls when you find that something, let's say, a computer which you had licensed for export is being used in the administration of the apartheid system; what would be done?

Mr. ROOT. If a computer or any other item was being used in violation of the terms or conditions of the export license, this would be a matter for the Compliance Division of the Department of Commerce.

Clearly, the situation you describe might or might not be in violation of the conditions of the license, and one would have to take into account the specific circumstances.

Mr. BINGHAM. Would the fact of such use, if it turned out to be the case, affect another ensuing decision for export of a similar type of product?

Mr. ROOT. It clearly would; yes.

Mr. BINGHAM. What about that, Mr. Denysyk? Would you agree?

Mr. DENYSYK. Let me make a general comment.

We have, as you probably know, a number of investigations in progress, as we have commented before.

We treat the diversions, if you will, from the state of use to unauthorized use, cases from South Africa, to every other case of diversion. We have a set of laws we are bound by law to uphold, and if we are made aware of violations through which every source, information from the private sector or intelligence sources, we investigate that case and make a determination.

If we find there is indeed a violation, we can take any number of actions, some administrative, some criminal, and we are investigating a number of cases, and if there is other information that other parties have, we will be more than happy to accept it and look into it.

Mr. BINGHAM. Supposing the diversion, though, occurs after the product has left the control of the American exporter, and you may not have criminal jurisdiction in that case. What do you do then?

Mr. DENYSYK. We always have criminal jurisdiction, if you will. We may not have reach, and may not have reciprocal agreements with certain countries to extradite people who violate our export control laws, but apart from the criminal, we do have administrative sanctions that we can and, in fact, do impose.

I can cite several cases recently for Libya, where we issued a denial order prohibiting U.S. companies from exporting to certain parties.

We feel that that has sufficient weight that U.S. companies would not participate in diversions or violations of our export administration regulations.

Mr. BINGHAM. But the actions that you take in that circumstance, you have not mentioned the possibility that the next time around with an application for export of that type of commodity, you might deny the license rather than grant it?

Mr. DENYSYK. Absolutely, Mr. Chairman. We would treat the issue of diversion as we treat it in any other country, most notably, the Soviet Union. If, in fact, we do have information that an item has been diverted, that a certain end-user is using it for military use, we put that end-user on the so-called blacklist, and we screen applications a lot more closely for applicant and would considerably deny all cases to that applicant if we have a finding of that.

Mr. BINGHAM. Mr. Root, you were in the State Department when the tighter controls were imposed?

Mr. ROOT. Yes.

Mr. BINGHAM. Could you tell us, could you look at the criteria on page 4 of Mr. Denysyk's statement. I would like to call your attention to two or three of these, and ask you if they were considered important in the actions that were taken.

Number three, the reactions of the other countries to the imposition or expansion of such export controls by the United States.

Mr. ROOT. The South African controls were tightened in 1978.

These criteria were added to the Export Administration Act the following year. Factors such as this were considered, but not by virtue of their being included in the legislation.

The reaction of other countries to the imposition of such controls was definitely considered, especially in terms of enhancing our moral standing, if you will, in terms of taking a clear position on the subject of apartheid.

There was little prospect at the time, and I suspect little prospect now, that many other countries would join us in these tighter controls. I do not say this pejoratively, and a question was asked earlier, Zimbabwe imposing similar controls. The geographical situation of that country and other countries in the area would make it very difficult indeed for them to impose extreme trade controls, without endangering their own economy.

Nevertheless, we did believe that even though other countries might not be joining us, that it was important to take these measures.

Mr. BINGHAM. And would you say that as of today, as you consider whether or not these foreign policy controls should be extended, that criteria is an important one?

Mr. ROOT. It is still an important criteria, and we must consider it in both respects, that is, the views of other countries concerning our measures, and also the extent to which other countries might join us to make them more effective.

Mr. BINGHAM. I would call attention, also, to criteria 6, the foreign consequences of not imposing the controls. Surely that is an important item, particularly when what apparently is being considered is the possible softening of the controls.

Mr. Wolpe.

Mr. WOLPE. Thank you very much, Mr. Chairman.

Mr. Denysyk, how many companies have been investigated for violations of the export control regulations since 1978?

Mr. DENYSYK. I don't have that number handy right now.

Mr. WOLPE. With respect to South Africa?

Mr. DENYSYK. I don't have that number broken out, but I can supply it for the record.[1]

Mr. WOLPE. We would appreciate getting a specific response for the record.

Mr. DENYSYK. I think we have approximately nine investigations ongoing currently.

How many we have opened and closed prior to the current ones, I just don't know.

Mr. WOLPE. Could you give us a detailed accounting for the record of those investigations?

Mr. DENYSYK. I will not be able to do that, Mr. Chairman. I am not at liberty to provide details of investigations until they are brought before a grand jury or an administrative law judge for possible sanctions. It is like any other enforcement matter.

I will be able to give you general information, numbers of cases that we have, but I will not be able to disclose the details.

Mr. WOLPE. Are there any cases that have been brought to the point to which you indicate you can publicly disclose the details?

Mr. DENYSYK. Not as of this time.

Mr. WOLPE. Since 1978, is that true?

Mr. DENYSYK. That is correct.

Mr. WOLPE. There has been no successful prosecution to this point?

Mr. DENYSYK. To the best of my knowledge, that is correct.

Mr. BINGHAM. Will the chairman yield for a moment?

Mr. WOLPE. Surely.

Mr. BINGHAM. Does the company that you are investigating know that you are investigating?

Mr. DENYSYK. Some do; some don't. It depends on which stage of the investigation we are at.

Mr. WOLPE. Mr. Conrad indicated that the investigation of Control Data with respect to deliveries of equipment to the police had taken some 3 years.

Is that inaccurate?

Mr. DENYSYK. I am not at liberty to comment on specific investigations. It takes time to develop a case.

Evidence has to be gotten here, and sometimes abroad, and it does take time to develop a sound, solid case.

Mr. WOLPE. Mr. Root, you indicated in response to a question that, as far as your understanding was concerned, the current foreign policy export controls did, in fact, cover the sale of civilian goods to South African and government agencies such as Armscor and subsidiaries.

You responded in the affirmative, were you troubled at all by the allegation, at least, that the computer equipment, Sperry Univac computer, had been transferred, sold to Atlas Aircraft, which is a wholly owned subsidiary of Armscor?

Mr. ROOT. Such a case would be reviewed very carefully, and we would appreciate the opportunity of commenting on that for the record.[2]

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[1] Material not supplied.

[2] Material not supplied.

I am not familiar with the details in particular.

Mr. WOLPE. Is there a loophole, in your view, with respect to rentals of equipment with respect to existing law?

Mr. ROOT. Not in terms of the law, perhaps. As to the regulations, I would defer to Commerce.

Mr. WOLPE. Your understanding of the law at least is that rentals are encompassed as well as sales?

Mr. ROOT. I think that is true.

Mr. DENYSYK. That is correct. A lease arrangement is no different from a sale from our perspective, but very different from the company's perspective.

It is a transfer of a U.S. article, a commodity.

Mr. WOLPE. We would appreciate—in the course of Mr. Conrad's testimony, there are several examples of U.S. computer use by South African military manufacturers which were cited, Leyland-South Africa, a firm that produces for South Africa Land Rovers for security police, which apparently rents seven computers from IBM.

That would also be encompassed by the controls?

Mr. DENYSYK. In a situation like that, it would be; yes. IBM, or any other company, would require a license to ship their computers to South Africa.

Mr. WOLPE. If indeed a firm is, would a computer sale to a firm that produces Land Rovers for the security police be exempt from export controls, or unless it can be shown that it would have direct military application, or would that automatically fall within an export control?

Mr. DENYSYK. We examine cases like that very carefully. If we can convince ourselves that that type of commodity would not be used in military production or in support of proscribed entities within South Africa, there is a possibility we would approve that.

On the other hand, if we could not, we would probably deny that. There is a top-secret prohibition of disclosing information publicly, and we would be able to supply some information for the record, if the chairman makes a formal request.

Mr. WOLPE. Had you been aware up to this point of the testimony this morning of the concern that has been raised with respect to Control Data Corp.'s South Africa subsidiary, which has been selected to work on the military communications project called "Bowie." "Bowie."

Mr. DENYSYK. I am not familiar with that project.

Mr. ROOT. I have not heard that.

Mr. WOLPE. There is a whole series of examples in this testimony with a great deal of precision, actually.

I would hope there would be a detailed response to each of these concerns, and investigation will be instantly triggered in the event that these are new allegations about which Congress was unaware of previously.

Are there concerns that either of you have with respect to the legal authority of the present regulations to effectively enforce the export controls?

Mr. DENYSYK. It is not clear to me which question you are asking. Do we feel we have the authority to expand and contract——

Mr. WOLPE. Let me ask you more generally. Do you feel that the export controls are essentially being avoided in many instances right now under current enforcement procedures?

Mr. DENYSYK. We don't know what we don't know.

If we get information about a case, we do investigate it.

There have been allegations made with respect to a lot of countries that goods are going to, for items and uses that they should not be.

All I can say is the sooner we find out about it, we investigate them.

Mr. WOLPE. One last question: Section 12(c) of the act requires, as I understand it, Commerce to submit information to our subcommittee, even on an ongoing investigation, at least on a classified basis, and I think that this committee may very well wish to have testimony presented in executive session, if necessary, with respect to these ongoing investigations.

It seems to me that these allegations are very serious, and we have some obligation to understand whether or not investigation is being pursued aggressively, and the status of the investigation and precisely what is at stake.

We will be establishing such a mechanism to receive that report from Commerce.

Last question: Is the Office of the Trade Representative involved in the discussions on the foreign policy export controls?

Mr. DENYSYK. We have consulted with other agents in Government, but the prime responsibility lies with the two departments, as mentioned before—Commerce and the State Department.

Mr. WOLPE. Has the Office of Trade Representative been consulted in some way?

Mr. DENYSYK. I believe they have.

Mr. WOLPE. Is Mr. de Kieffer the General Counsel at the Office of the Trade Representative? [1]

Mr. DENYSYK. Mr. de Kieffer is at that office.

Mr. WOLPE. Is he involved in the discussions on South Africa?

Mr. DENYSYK. Let's see; I don't remember whether he was attending meetings or not.

Mr. ROOT. I don't believe so.

He has been associated with the overall question of foreign policy export review, but I do not recall him participating specifically on this.

Mr. DENYSYK. I just don't remember, Mr. Chairman.

Mr. WOLPE. Thank you very much.

Mr. Erdahl? Oh, Mr. Crockett was here first.

Mr. CROCKETT. I gather from the testimony of you gentlemen that each of your respective departments is engaged in reexamining the whole export provisions with respect to South Africa.

I am afraid I am not naive enough to believe that you examine them for the purpose of tightening them or strengthening them; so I conclude that your reexamination really is intended to see to what extent they can be relaxed. Am I correct in that respect, Mr. Root?

Mr. ROOT. When we review these controls, we are concerned about all of the criteria, and one of the criteria, of course, is effectiveness.

[1] Written response submitted by Mr. deKieffer to telephone inquiry made by Subcommittee on Africa in app. 2.

Effectiveness might be achieved either by tightening or perhaps liberalizing on a more rational basis. We do not preclude going in either direction.

Mr. CROCKETT. Do you feel that the controls, as they presently exist and are applied, are effective?

Mr. ROOT. They are effective in the context of the rather limited objectives which they have, primarily to disassociate the U.S. Government from the practice of apartheid.

That assumes the control was imposed; it is effective in that regard. That does not tell you much about what happens thereafter.

The fact that we have had a degree of success in stopping exports under the controls, we would all agree that that point, at least, would indicate that the objective of disassociation has continued with some degree of effectiveness.

In terms of stopping these commodities from reaching the consignees in South Africa, which are the targets of the controls, I don't think we could claim very much effectiveness. It never was anticipated that it would be particularly effective there except in the arms area, because other countries are not joining us with similar controls.

Mr. CROCKETT. Who monitors the operation and the effectiveness of the controls? Is it State, or is it Commerce?

Mr. ROOT. It is a joint activity, sir.

Mr. CROCKETT. I take it it is done through the American Embassy?

Mr. ROOT. They are involved.

Mr. CROCKETT. Now, when you get an application for license to sell any of these items in South Africa that conceivably could be used in violation of the controls, do you customarily ask for an investigation and report from the Embassy?

Mr. ROOT. Formally, the Embassy is involved in an investigation. Sometimes an investigator from Washington would pursue the matter in another country.

Mr. CROCKETT. Are you content with just that initial investigation and report, or are there periodic followups?

Mr. ROOT. You are really getting into an area which is Commerce's responsibility, and I should defer to Commerce.

Mr. DENYSYK. Again, if we get information about a potential violation, our first approach would be perhaps to the U.S. company here. If they have any information, we could go to the embassy and ask them to look into the matter.

If some of the allegations have, in our opinion, substance, we will then start an active investigation where we assign an agent to it, and the agent investigates the matter in much more detail, much greater depth, and then we will make a determination, if there is a positive finding, that we are convinced there has been a violation, we can go either administratively against the company, or criminally, if we deem that there has been criminal violation of the act.

Mr. CROCKETT. I get the impression mainly from reading the press, I suppose, that the scope of our controls and the zealousness with which we enforce those controls with respect to Cuba is far greater than it is with respect to South Africa.

Can either one of you gentlemen comment on that, and, if so, tell me why?

Mr. DENYSYK. Sounds like a foreign policy question; I will defer to Mr. Root.

Mr. ROOT. The controls are much more extensive in the case of Cuba, since we have a total embargo for all consignees from Cuba, and, in this sense, it is more extensive.

As for prosecuting violations, there have been some cases where Cuban prosecutions, Cuban cases, have been prosecuted recently. You probably are referring to news accounts of those.

Statistically, there may be something in what you say. I don't know what your conclusions are, and you may have had more information to go on.

Mr. CROCKETT. Mr. Denysyk, in your prepared statement, I get the impression that you think very highly of the Sullivan principles, and that you are satisfied that American companies in South Africa are, by and large, adhering to those principles.

I don't exactly share those conclusions, based on our own meeting with the American Chamber of Commerce in Johannesburg a few months ago, but I am concerned; we do have before this committee some legislation which would make it mandatory that American companies in South Africa adhere to the Sullivan principles.

What is the position of your department in Commerce, and then I would like for Mr. Root to express the position of his department in State on the question: Should we legislate the Sullivan principles into law?

Mr. DENYSYK. Let me address the first part of your comment. This administration fully supports the Sullivan principles, and is encouraging our companies to comply with those. As to whether it should be legislated or not, I am not familiar with the legislation, and we can supply an answer for the record, if you would like.

Mr. CROCKETT. You are familiar with the Sullivan principles.

Mr. DENYSYK. Very much so. We support his concept, both here domestically, as well as internationally. I had the pleasure of meeting him.

Mr. ROOT. We believe the Sullivan principles have been constructive in providing a means of improving to some extent the racial situation in South Africa.

We do not believe that that laudable objective can be furthered by legislating the principles, if that was the burden of your question.

Mr. WOLPE. I relinquished the Chair; I forgot.

Mr. BINGHAM. Mr. Erdahl.

Mr. ERDAHL. Just a quick question for both of our guests today.

Mr. Denysyk, you mention that you are in the process of conducting a comprehensive review of our foreign policy controls, and so forth, and, if I could get you to elaborate without going into details, what will you ultimately base your decision on policy control on—public or congressional reaction, reaction of other nations to economic impact, or U.S. companies and foreign companies? What goes into that process, if it should be modified or adhered to, or strengthened or weakened? What goes into your process of deciding that?

Mr. DENYSYK. Reiterating what I said before, all of the six criteria that are mandated by the act are being looked at in great depth.

All of the issues are being looked at, and the reaction of black Africa, the reaction of U.S. business, the effect of controls and enforcement of controls.

It is incumbent upon us to look at all aspects of our relationships and balance them. How the final answer will come out, I simply don't know. We are still in the process of doing that review.

Mr. ERDAHL. I would hope, without sounding to be naive, one of the moving forces in determining your decision would be to do what is morally right. I am not saying that you are not doing that.

Mr. DENYSYK. Are you suggesting we are amoral or immoral?

Mr. ERDAHL. I am suggesting some of these things in all seriousness, because we had a representative of the State Department talking about the question of South Africa; he would not choose between black and white. That was taken out of context. We in elected office, we have to choose sometimes between right and wrong, and sometimes it is hard to see which is which, and where one leaves off and the other begins, but I hope that will be a part of our policy decision. I trust it is a part of this administration's goal.

Mr. DENYSYK. Very much so. If things could be cast in black and white terms, the decision would be simple. It seems to be a lot more gray than black and white.

Mr. ERDAHL. I know all of us use words and idioms that maybe at times convey an unintended meaning, but earlier, you said—I don't know if you were referring to nations or companies—you said companies or nations, getting on a blacklist.

Without using too much of a pun, is South Africa on this administration's blacklist?

Mr. DENYSYK. It is a company list. If we have information that this company has some violations, that we should screen licenses much more carefully, and then we put them on a blacklist, a company list.

Mr. BINGHAM. Thank you, Mr. Erdahl.

I would like to associate myself with your comment. We sometimes forget that should be part of government decisions, and I would like to add, I know Mr. Root was here when I spoke earlier at some length, but I don't know whether you were in the room when I expressed my views on the type of controls we have here; that what really is important in this case is the issue of doing anything that can be construed as cooperating with the police and other agencies engaged in the oppression of apartheid, and, in that connection, I said that I felt, while they are in the criteria, that the question of foreign availability really is not relevant.

The question of whether other countries do it or not is not particularly relevant, as it is in other types of situations.

Here it is a question of whether we, as a country, want to be seen as in any way making it possible for these agencies to do their dirty work, and so I would hope that since you were kind enough in your statement to say you were interested in the views of this committee on this subject, I would hope you would take back a strong message from the members of these two committees, at least

it is the consensus, I believe, these controls should certainly not be weakened and possible should be strengthened.

I have one other matter, and that is to ask unanimous consent that all members may have the right to submit written questions to particularly the administration witnesses, including members that were not here, and I assume that you would be willing to supply us with answers.

Mr. DENYSYK. Of course.

Mr. BINGHAM. Without objection, and I will turn back the Chair to Mr. Wolpe.

Mr. WOLPE. I have a couple of questions.

I would like to give greater emphasis to Mr. Bingham's comment he just made. I notice in the latter part of Mr. Denysyk's statement the following two sentences appear.

> The export controls that emerged on February 22, 1982, must reflect this policy of constructive engagement and another issue that we are considering is the extent that our allies and trading partners impose controls on South Africa.

I guess one point that I think emerges is the issue of uniform controls is really irrelevant to the reason we imposed sanctions on South Africa in the first place. I hope that is not subject to change.

Mr. DENYSYK. The intent is to have multilateral agreement on imposition. That is not only true for South Africa, but across the board.

This administration is a strong supporter of the multilateral control system.

Mr. WOLPE. That is correct, but you have also advocated a whole host of controls and sanctions that have not been met by the multilateral cooperation.

Mr. DENYSYK. We are working on it.

Mr. WOLPE. That is fine. I would hate to see South Africa become the first instance in which we would use the absence of the uniformity of controls as the rationale for the withdrawal of their imposition.

Mr. DENYSYK. A point made and taken.

Mr. WOLPE. Beyond that, I am intrigued by the sentence that the export controls that emerged on February 28, 1982 must reflect this policy of constructive engagement.

Does that suggest that something is required to loosen up these controls?

Mr. DENYSYK. A decision has not been taken as to the actual form of controls.

It is a stated policy of this administration that there will be so-called constructive engagement across the board.

The statement that I have made simply subsumes one part of our relationship with South Africa.

Mr. WOLPE. Mr. Root, there is, on page 3 of your written testimony, we ask for you to describe changes that were contemplated with respect to requiring end-use certificates for civilian aircraft which could be used for military or paramilitary purposes.

The answer that was supplied is, the United States does not intend to authorize the exercise of civilian aircraft which could be used for military or paramilitary purposes.

Was that change in the word from "could" to "would" of significance, or is it a typographical error?

Mr. ROOT. The answer was not completely responsive, I grant, Mr. Chairman. This matter, as all the other matters in connection with the existing controls, is still under study.

Far more important than any particular form of assurance or documentation is the atmosphere in which the control operates. For instance, we had an assurance from the Libyans that 727's would not be used for military purposes, and the particular 727 which was subject to the assurance was not, but another 727 was, and this is hardly a reassurance, even though we had their assurance.

We are much more interested, frankly, in obtaining a voluntary cooperation of the importer that the aircraft will not be used for military purposes than we are in trying through some document to guarantee it. As to whether or not we continue to document it, I cannot answer that question.

Mr. WOLPE. You indicated that you were still in the consultative process. I sometimes doubt or question what that involves. At least as one member, and only one member of the subcommittee, it would be terribly ill-advised for the State Department and the Commerce Department to now contemplate a relaxation of controls with respect to exports to South Africa.

I cannot think of a more inappropriate signal coming at a time when there is an abundance of evidence that the regime is moving toward a consolidation of the apartheid and its growing repression.

To think, that you would even contemplate a change in our export policy at this point boggles the mind.

You ought to be examining whether these present controls are being enforced as carefully as they ought to be.

With that, Mr. Crockett?

Mr. CROCKETT. Thank you, Mr. Chairman.

Recently, Mr. Erdahl and I were part of a congressional delegation to Israel, and a high-ranking member of the Israeli general's staff was assigned to give us a briefing on the military situation.

He was very critical of what he regarded as a lack of support on the part of our Government for South Africa.

I am wondering to what extent that kind of criticism has been transmitted to the State Department and may possibly have a bearing on the present contemplated relaxation in the export controls with respect to South Africa? Would you care to comment on that?

Mr. ROOT. I am not informed of that particular development.

Mr. CROCKETT. I think in this year's foreign aid bill, we have authorized in excess of $1 billion in military equipment to Israel, and, again referring to the media, I gather from reading the Washington Post that next year's proposal from the State Department will be to increase that by something like 25 percent.

Considering the level of armaments that you have in Israel now, including their own armament manufacturing capability, what assurance do we have that part of this enormous amount of military aid given to Israel is not being shared by Israel with South Africa?

Mr. ROOT. I am sure that we are conditioning our aid to Israel on equipment being used by Israel. As for the particular means whereby we assure ourselves on this point, I am not informed.

Mr. CROCKETT. Do we limit the extent to which military aid that we give to any other country may be transmitted to South Africa? Do we monitor that?

Mr. ROOT. I am sure that there is intelligence on this point available in the Government.

Mr. CROCKETT. Rumor, and it may be fact, is currently that there is very close collaboration between Israel and South Africa with respect to nuclear matters.

Is the State Department aware of that?

Mr. ROOT. I am personally not aware of details in this area.

We are, of course, very intent on pursuing the objectives of the nuclear nonproliferation, particularly the act which calls for exports to further those objectives, and that is indeed one of the categories of controls which is scrupulously observed in connection with South Africa.

Mr. CROCKETT. Coming from Detroit, I am particularly concerned about the condition of the automobile industry.

I notice that in South Africa—particularly over at Fort Elizabeth—we have a couple of very large and thriving automobile assembly plants, one by General Motors and the other by Ford.

I gather there are no export restrictions on sending automobile or automobile parts, and so forth, to South Africa.

Mr. ROOT. Not per se.

It is conceivable, well, it is more than conceivable, it is factual that a direct export to the police or military in South Africa would be prohibited under the existing regulations.

Mr. CROCKETT. On the other hand, I visited Cuba, and I find that there is a great shortage of automobiles, automobile parts, and equipment, and those schoolchildren have to go back and forth to school in dilapidated buses made here in the United States 15 or 20 years ago.

Do you think it is serving any useful purpose to impose a complete boycott on the sale of American automobiles to Cuba?

Mr. ROOT. The Cuban situation is entirely different from South Africa. The objective of Cuban embargo is much more than disassociation from catastrophe activities.

We have many interests there that perhaps can be furthered through a proper utilization of the trade control level, such as leverage on the Castro regime to compensate for expropriation, and that sort of thing.

It is an entirely different thing in South Africa, where the control there is disassociation with a particular practice of the Government.

Mr. CROCKETT. But when you put, on one hand, what is happening in the automobile industry, the unemployment that is resulting from our inability to make sales, and then put, on the other hand,

what you claim is the advantage of not increasing the automobile market by permitting sales to Cuba, do you think the last outweighs the former?

Mr. ROOT. The question of sales to Cuba must be weighed in terms of our overall interests.

Mr. CROCKETT. Sales of automobiles, automobile parts, and equipment.

Mr. ROOT. I understand. It could be that the economic health of the automobile industry could be marginally improved by sales to Cuba, but that would have to be weighed against economic disadvantages, giving away leverage for compensation, for instance, which is also in our economic interest.

Mr. CROCKETT. Is our embargo or the trade restrictions with respect to Cuba based entirely upon the question of expropriation of American properties?

Mr. ROOT. No, it is not. It is also based on Cuban activity, foreign adventures, such as Angola, and indeed there was some hope that we might be able to gradually give some greater degree of normality in our relations with Cuba until the Cuban foreign activities prevented that from a political point of view.

Mr. CROCKETT. But if this Cuban adventure in Angola is invited by that Government, and if, as Cuba has stated, Angola has stated this adventure will terminate when the Angolan Government requests that it be terminated, why should that concern us with respect to whether we are going to increase employment opportunities in Detroit by allowing our automobiles to be sold in Cuba?

Mr. ROOT. That is a reasonable point of view from your perspective, no doubt. Cubans are active in countries other than Angola, and I am sure that if Cuban activities in places such as Angola were to be terminated, we could take another look at this situation.

Mr. CROCKETT. No further questions, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Crockett.

Mr. Erdahl.

Mr. ERDAHL. No further questions.

Mr. WOLPE. I would like to insert, without objection, a letter that was sent to President Reagan and signed by a number of this country's most prominent citizens, urging again that the export controls that are presently in effect be effectively enforced.

I would ask that that letter also be inserted in the record at this point.

[The material referred to follows:]

TRANSAFRICA,
Washington, D.C., February 3, 1982.

Hon. RONALD REAGAN,
President of the United States,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: Commerce Department export controls on the sale of arms, aircraft, computers, technical data, and other US-origin commodities and components to South African/Namibian parties have been extended until the end of Feb-

ruary. This prolonged period of review leads us to believe that significant changes are being contemplated. We the undersigned urge the Administration to extend these strictures unchanged and to better monitor compliance.

Either allowing the regulations to lapse or to be weakened would signal US acquiescence with the unjust and segregationist form of government prevailing in South Africa. Any short run economic benefit to private US firms will be more than offset by the negative long-term consequences. The central issue confronting South African society is political and economic power-sharing across racial lines. As long as the vast majority of the population is denied basic civil liberties and fair economic opportunity, that society will slide toward violent conflagration. US policies based on the maintenance of an inflexible minority regime and on access to minerals will alienate the African masses and boomerang in the long run.

Despite reformist rhetoric, the Pretoria regime has not instituted serious changes but rather has increased domestic repression with the number of detentions, arrests, and bannings of social critics and labor organizers spiralling in the last months. The renewal of any sales to South African defense and law enforcement authorities would belie American concern for racial justice and stability in the region. Measures should be taken to facilitate the demise of *apartheid*, not to reinforce it.

During the fall, approximately 200 interested persons communicated their views to Mr. Richard Isadore, a Commerce Export Administration official, advocating maintenance of the restrictions. We join them and ask that US policymakers not betray our democratic traditions or foreshorten the dialogue begun with black Africa by lifting these controls. A number of sanctions were levied against the Polish and Soviet governments in response to the ongoing repression in Poland. The very least the US Government could do is retain existing strictures against South Africa, a country even more guilty of brutalizing its people.

Sincerely yours,

Bishop John Adams, Chairperson, Congress of National Black Churches; Hon. Hannah Atkins, Former State Representative, Oklahoma; Mona Bailey, President, Delta Sigma Theta Sorority; Harry Belafonte, Belafonte Enterprises; Rev. Isaac Bivens, Board of Global Ministries; Hon. William Booth, Chairperson, American Committee on Africa; Hon. Edward Brooke, Bishop Hartford Brookins, A.M.E. Church; Rev. Amos Brown, Third Baptist Church, San Francisco, Calif.; Dr. John Clarke, Hunter College; Rev. Charles Cobb, UCC Commission for Racial Justice; Gayla Cook, African American Institute; Courtland Cox, Minority Business Opportunity Commission; Hon. Charles Diggs; Adwoa Dunn, Co-Chairperson, Southern Africa Support Project; Hon. Robert Farrell, Councilman, City of Los Angeles; Hon. Walter Fauntory, Chairman, Congressional Black Caucus; Victor M. Goode; National Conference of Black Lawyer; Dr. Carlton Goodlett, Chairman, National Black United Fund; Otho Green, President, Pacific Consultants; Hon. Nancy Hanks; Hon. W. Averell Harriman; Hon. Richard Hatcher, Mayor, City of Gary, Ind.; Dr. Dorothy Height, President, National Council of Negro Women; J. Herman, Chairperson, Committee to Fight Apartheid and Racism; Hon. Benjamin Hooks, Executive Director, N.A.A.C.P.; Rev. William Howard, President, National Council of Churces; Annett Hutchins-Felder, National Board of YMCA; Hon. Samuel Jackson, Council of 100; Dr. Willard Johnson, Massachusetts Institute of Technology; Rev. William Johnston, Episcopal Churchmen for South Africa; Dr. Maulana Karenga, Kawaida Groundwork Committee; Richard Lapchik, A.C.E.S.S.; Rev. Joseph E. Lowery, Southern Christian Leadership Conference; William Lucy, Coalition of Black Trade Unionists; Gay MacDougall, Lawyer's Committee for Civil Rights Under Law; Howard Manning, Manning and Roberts; Loren Monroe, State Treasurer of Michigan; R. Prexy Nesbitt, WCC Program to Combat Racism; Demetrius Newton, National President, Phi Beta Sigma; Hon. Basil Paterson; Vel Phillips, Secretary of State, Wisconsin; Sidney Poitier; John Procope, President, National Newspaper Publishers Association; Julia B. Purnell, The Links, Inc.; Bishop Hubert N. Robinson, A.M.E. Church; Randall Robinson, Executive Director, TransAfrica; Frank Savage, Vice President, Equitable Life Assurance; Jean Sindab, Executive Director, Washington Office on Africa; Dr. Calvin Sinnette, Howard University; Timothy Smith, Executive Director, Interfaith Center on Corporate Responsibility; Marc Stepp, Vice President, International Union, United Auto Workers; Rev. Leon Sullivan, Pastor, Zion Baptish

Church, Philadelphia; Hon. Percy Sutton, Board Chairperson, Inner City Broadcasting Corp.; Alice Swain, Sigma Gamma Rho Sorority, Inc.; Dr. James Turner, Cornell University; Rev. Wyatt Tee Walker, Canaan Baptist Church; Dr. Ronald Walters, Howard University; Hon. Maxine Walters, Member, California State Legislature; Robert White, President, N.A.P.F.E.; Hon. Franklin Williams, President, Phelps-Stokes Fund; Margaret Bush Wilson, Board Chairperson, N.A.A.C.P.; Addie L. Wyatt, United Food Workers, International Union, AFL-CIO.

Mr. WOLPE. I want to thank both of you for your testimony this afternoon, and we look forward to hearing detailed response to the earlier testimony presented before this committee.

Thank you very much.

[Whereupon, at 1:15 p.m., the subcommittees adjourned, to reconvene at the call of the Chair.]

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CONTROLS ON EXPORTS TO SOUTH AFRICA

THURSDAY, DECEMBER 2, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEES ON INTERNATIONAL
ECONOMIC POLICY AND TRADE AND ON AFRICA,
Washington, D.C.

The subcommittees met at 10:15 a.m. in room 2255, Rayburn House Office Building, Hon. Howard Wolpe (chairman of the Subcommittee on Africa) presiding.

Mr. WOLPE. The hearing will come to order.

This morning the Subcommittees on Africa and on International Economic Policy and Trade are meeting to hear testimony from key administration officials on the constructive engagement interpretation of U.S. export policy with respect to South Africa.

The hearing is designed to serve as a midterm assessment of the effectiveness of U.S. export policy and will focus, for the most part, on the effectiveness of current restrictions on the export of crime control equipment, current nuclear export policy particularly in the area of dual use technology, the reforms under consideration by the Department of State for strengthening enforcement of the U.S. arms embargo against South Africa, and other related matters.

Let me make a parenthetical note about the last hearing. We had an earlier hearing sometime last year into the breaking of the export embargo by the illegal export of munitions by the Space Research Corporation. That particular hearing developed a number of problems with respect to the system of monitoring of the export controls and we are anxious today to find out what the State Department has done in response to the disclosures at that point.

The task before the subcommittees today will be to attempt to assess not only the effectiveness of the current export controls on South Africa, but also the degree to which these policies promote the foreign policy objectives of the United States.

Of course I believe that we all share the view that unnecessary Government regulations which inhibit foreign trade should be eliminated. However, for overriding human rights and foreign policy reasons, it has been established American policy that restrictions should be applied to some countries. One of those countries is South Africa.

During the previous administration, the United States significantly strengthened its foreign policy controls on U.S. exports to South Africa because of that country's poor human rights record and its failure to relax its rigid apartheid laws. That stance was

consistent with our foreign policy interests as well as our principles of social justice and human decency.

In the nearly 2 years that the Reagan administration has been in office, it has initiated a number of changes with respect to American policy toward South Africa. These changes have been an integral part of the administration's new approach of constructive engagement toward the Pretoria regime.

These changes have given impetus to the charge that this administraton is tilting toward South Africa and that our commercial policies toward that country have been reshaped to coincide with the administration's new policy of constructive engagement.

If I could for the record cite a few examples of changes that have taken place in the export policy arena:

In June 1981, the administration changed the foreign policy export controls to permit the sale of medical equipment to the South African military and to permit the sale of crime control devices to the South African Government. In this particular case the device was used to detect potential plane hijackings.

In March 1982, the administration amended the foreign policy export controls to permit the sale of nonlethal items to the South African military. police, and security forces. The previous administration had denied American companies permission to sell any items to the South African police or military.

The amended regulations issued in March also made it easier for American companies to sell computers to those agencies and ministries in South Africa responsible for enforcing apartheid as long as the computers were used for internal administrative purposes rather than for enforcing apartheid. In fact, since January 1981, the Commerce Department has approved licenses for computing equipment designated for use in South Africa at a value of more than $162 million.

Three American aircraft companies have been told by the Department of Commerce that they could compete for the sale of six turbojets to the South African Air Force for use as air ambulances. The turbojets are the civilian version of aircraft purchased by the U.S. military.

In March 1982, the administration granted an export license to an American company to sell a Cyber 170/750 computer to the South African Government-controlled Center of Scientific and Industrial Research (CSIR) which does defense-related work. The Cyber 750 is one of the most advanced computers made in the United States and, most experts agree, can be used for advanced nuclear research to model nuclear explosions and for breaking sophisticated encripted codes. The export of this very computer had been rejected by NSC during the Carter administration and was held up for the first 14 months of the Reagan administration. In March 1982, the export was approved. Five months later, the Amdahl computer with similar capabilities was approved for export to the same institute.

Early this year, the administration made public its intention to adopt, and I quote from a letter from Commerce Secretary Baldrige.

[A] more flexible policy with respect to approvals of exports to South Africa of dual use commodities and other materials and equipment which have nuclear related end uses in areas such as health and safety uses.

In this connection, the administration has approved the export of Helium 3 to South Africa which can be used to make tritium, a form of hydrogen used in thermonuclear weapons. Yet, South Africa has not accepted full IAEA inspection of all its nuclear facilities nor has it agreed to sign the Nonproliferation Treaty.

In early September, we discovered that a license had been approved in early April for the export of 2500 shock batons to South Africa contravening the human rights provisions of the law.

These are just a few of the more controversial exports that have taken place over the course of the past 2 years. There may be others. In fact, in preparation for this hearing, our subcommittees requested from the Commerce Department a complete list of all exports that had been approved for South Africa since January 1981.

We received a rather extensive volume, the contents of which cannot be discussed in public session.

In closing, I would simply like to state that I fear we have made some very serious mistakes in allowing several of the aforementioned exports to go forth. I fear that in terms of some of the nuclear exports we have come dangerously close to compromising the nuclear nonproliferation policies and objectives of the United States.

We look forward to the administration's comments on the status of United States-South African nuclear relations, and a full explanation of the objectives of our nuclear policies with respect to South Africa.

The subcommittees also look forward to this opportunity to gain a better understanding of the events which led to the approval of the export of the shock batons to South Africa.

With that, I would like to welcome our witnesses this morning. We are particularly privileged to have with us this morning our colleague, Charlie Rangel, who has recently introduced legislation which would prohibit the export of nuclear materials and technology to the Republic of South Africa.

I might also add that Congressman Rangel has introduced a resolution condemning the export of shock batons to South Africa which now enjoys the support of over 33 cosponsors. We are looking forward to his testimony.

I would also like to welcome our administration witnesses this morning, Mr. Bohdan Denysyk, Deputy Assistant Secretary for Export Administration at the Department of Commerce; Mr. Princeton Lyman, Deputy Assistant Secretary for African Affairs at the Department of State; Mr. Harry Marshall, Principal Deputy Assistant Secretary of the Bureau of OES at State; Mr. George Bradley, Principal Deputy Assistant Secretary for International Affairs at the Department of Energy; Mr. James Shea, Director of the Office of International Programs at the Nuclear Regulatory Commission; and finally Mr. Carl Thorne, Chief of the Internal Division at the Arms Control and Disarmament Agency.

Let me indicate we have compressed what we had originally scheduled as two separate hearings for morning and afternoon ses-

sions because of scheduling difficulties. That is why we have so many witnesses appearing at one time.

We also had originally been scheduled into a somewhat larger committee room and I apologize to all the people who are so crowded this morning.

Because of the number of witnesses I am going to ask that every witness and I really mean it quite seriously this morning, I never enforced it with the zeal I intend to enforce it this morning to restrict his verbal testimony to 5 minutes.

We will notify you with 30 seconds to go. I think it is the only way we can move to the number of questions that I and other members of the committee would like to propound.

The full text, of course, of all your written testimony will be incorporated into the record. In some instances you have already supplied in advance very extensive detailed responses to specific questions that were put to each of you and we thank you for that.

In a few other instances the testimony only arrived this morning. In any event, all that testimony will be incorporated in the record in its entirety.

We will begin the testimony of the administration witnesses with the understanding that when Congressman Rangel arrives we will ask that the administration witnesses defer to Congressman Rangel for his testimony.

Mr. Denysyk, would you like to begin.

STATEMENT OF BOHDAN DENYSYK, DEPUTY ASSISTANT SECRETARY FOR EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. DENYSYK. Thank you, Mr. Chairman. With your indulgence, I would like to submit for the record my full statement. I will try to confine my comments to 5 minutes, although when I was working this morning on it I tried to limit it to 10 minutes.

Mr. WOLPE. I will not have you speak for more than 5.

Mr. DENYSYK. Fair enough. I will improvise and ad lib.

On behalf of the administration and the Department of Commerce, I appreciate this opportunity to appear before the Subcommittee on International Economic Policy and Trade and the Subcommittee on Africa, to discuss our export controls applicable to South Africa on foreign policy grounds. This is a timely subject in view of the fact that the Department of Commerce is in the process of conducting a comprehensive review of our foreign policy controls in preparation for the annual foreign policy report to Congress.

The foreign policy controls in general are designed and when implemented are based on the consideration of six criteria which I won't bother to recite, but are ones that we require to be considered and in fact have in all our controls so far.

With respect to South Africa, the U.S. Government has over the last 20 years repeatedly demonstrated its disapproval of South Africa's apartheid system. The Reagan administration finds apartheid abhorrent and is continuing the policy of distancing the United States from that practice.

The fact of the matter is that U.S. export controls toward South Africa remain the most restrictive among western industrialized

nations. We, alone, have gone clearly beyond the U.N. arms embargo by prohibiting significant dual use of U.S. exports to the South African military and police.

Mr. Chairman, a great deal of attention has been focused on export regulations pertaining to crime control equipment for South Africa because of the Department's inadvertent issuance of a license for shock batons.

I would like to take the opportunity to explain this error and assuage any concerns you may have on this particular incident, particularly with respect to Department of State review of license applications for crime control equipment.

First, whenever the Department receives a license application for crime control equipment for South Africa, the licensing officer sends the application to our Office of Policy Planning which, in turn, examines the application and refers it on to the Department of State for review.

In this instance, the Office of Policy Planning determined that the application lacked sufficient information. The application was therefore not sent on to State, but rather was returned to the licensing officer with instructions to return the application to the exporter for additional data. Unfortunately, a clerical oversight occurred at this point and a license was inadvertently issued.

I would like to stress that mistakes such as this are extremely rare. Recognizing that it is human to err, however, we have taken steps to institute procedures which would minimize any such mistakes in the future. The Department of State is working with us to formulate a memorandum of understanding that would clarify the procedures for cases which require Department of State review.

With respect to the Department of Commerce's role in the control of exports for nuclear nonproliferation reasons, I would like to begin by giving a brief overview of the administration's nonproliferation and peaceful nuclear cooperation policy, as announced by President Reagan on July 16, 1981.

At that time, President Reagan stated that preventing the spread of nuclear explosives to additional countries remains a fundamental objective of the United States; therefore, the U.S. nonproliferation policy objectives, which have been in place over the past 3 decades, will continue under this administration. What has changed, however, is the approach on how best to achieve these objectives.

The United States will also continue to inhibit the transfer of sensitive nuclear material, equipment, and technology, particularly where the danger of proliferation exists, and seek to work more effectively with other countries to forge agreement on measures for combating the risks of proliferation.

In implementing the administration's policy, the Department of Commerce carefully reviews the dual use commodities and related technical data under its control that, if used for purposes other than the stated end use, could be of significance for the production or development of nuclear explosives, or which could be used directly or indirectly for designing, developing, fabricating, or operating sensitive nuclear facilities such as those intended for uranium enrichment, the production of heavy water, the separation of isotopes of source and special nuclear material, and the fabrication of nuclear reactor fuel containing plutonium.

In addition, the Department of Commerce, as required by the implementing regulations, specifically takes into account the following information in reviewing nuclear applications:

One, the stated end use of the component;

Two, the sensitivity of the particular component and its availability elsewhere;

Three, the types of assurances or guarantees given in the particular case; and

Four, the nonproliferation credentials of the recipient country.

The current procedures used by the Department of Commerce to implement section 309(c) of the Nuclear Nonproliferation Act of 1978 (NNPA) were published in the Federal Register of June 9, 1978.

Under these procedures, Commerce must consult, as appropriate, with the Departments of Energy, State, Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission. sion.

I would like to point out that the very strictest controls are applied to exports destined for all countries that are not a signatory of the Nuclear Nonproliferation Treaty, such as South Africa, or where there are particular proliferation concerns. In fact, in those cases where nuclear concerns exist, the general policy is to deny the export.

At this time, I would also like to touch upon our export policy on two commodities which has raised congressional concern: Specifically, the export of Helium 3 and hot isostatic presses.

Although Helium 3, when irradiated, produces tritium, a material of proliferation concern, it is neither a cost effective, nor efficient way of obtaining tritium. It is far more practical to produce tritium by irradiation of lithium and South Africa has reserves of lithium (as well as uranium).

A common use of Helium 3 is to test the safety of prototype power reactor fuel elements. Such use of Helium 3 is well established in countries with advanced civil nuclear programs, such as Sweden and Belgium.

The export of hot isostatic presses has also come under close and careful review. HIPs, as they are commonly known, are a classic example of a dual use commodity, having innumerable uses besides nuclear weapons application. HIPs are used to manufacture such things as compressor blades, drill bits, and equipment for the fabrication of machine tools, anything, in fact, that requires special shapes and density.

Because of the HIPs' essential role in nuclear weapons fabrication, however, the U.S. policy is one of denial for the larger size HIPs to countries with nuclear programs of proliferation concern.

Mr. WOLPE. We will try to get into the rest of the testimony in the question period.

[Mr. Denysyk's prepared statement follows:]

PREPARED STATEMENT OF BOHDAN DENYSYK, DEPUTY ASSISTANT SECRETARY FOR EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

MR. CHAIRMAN,

ON BEHALF OF THE ADMINISTRATION AND THE DEPARTMENT OF COMMERCE, I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE AND THE SUBCOMMITTEE ON AFRICA, TO DISCUSS OUR EXPORT CONTROLS APPLICABLE TO SOUTH AFRICA ON FOREIGN POLICY GROUNDS. THIS IS A TIMELY SUBJECT IN VIEW OF THE FACT THAT THE DEPARTMENT OF COMMERCE IS IN THE PROCESS OF CONDUCTING A COMPREHENSIVE REVIEW OF OUR FOREIGN POLICY CONTROLS IN PREPARATION FOR THE ANNUAL FOREIGN POLICY REPORT TO CONGRESS.

IN YOUR LETTER OF INVITATION TO TESTIFY, MR. CHAIRMAN, YOU EXPRESSED A DESIRE TO OBTAIN A CLEARER UNDERSTANDING OF ALL THOSE CONTROLS IN ORDER TO ASSESS THE EFFECTIVENESS OF CURRENT LICENSING PROCEDURES FOR SOUTH AFRICA FOR CRIME CONTROL EQUIPMENT, NUCLEAR RELATED EXPORTS, AND OTHER RELATED MATTERS. WITH YOUR INDULGENCE, I WOULD LIKE TO BEGIN BY PRESENTING YOU WITH A GENERAL OVERVIEW OF FOREIGN POLICY CONTROLS. AS YOU KNOW, FOREIGN POLICY CONTROLS ARE MAINTAINED BY THE DEPARTMENT OF COMMERCE WITH THE CONCURRENCE OF THE DEPARTMENT OF STATE. WHEN IMPOSING, EXPANDING, OR EXTENDING FOREIGN POLICY CONTROLS, THE EXPORT ADMINISTRATION ACT MANDATES THAT THE FOLLOWING SIX CRITERIA BE CONSIDERED:

1) THE PROBABILITY THAT THE CONTROLS WILL ACHIEVE THE FOREIGN POLICY GOAL IN LIGHT OF FOREIGN AVAILABILITY AS WELL AS OTHER FACTORS; AND WHETHER THE EMBARGOED COUNTRY WILL RECEIVE THE CONTROLLED GOODS REGARDLESS OF OUR CONTROLS;

2) THE CONTROLS' COMPATIBILITY WITH OTHER U.S. FOREIGN POLICY OBJECTIVES INCLUDING STRATEGIC INTERESTS AND COUNTERING INTERNATIONAL TERRORISM, AND WITH OVERALL U.S. POLICY TOWARD THE COUNTRY WHICH IS THE PROPOSED TARGET OF THE CONTROLS;

3) THE REACTION OF OTHER COUNTRIES TO THE IMPOSITION OR EXPANSION OF SUCH EXPORT CONTROLS BY THE U.S.;

4) THE LIKELY EFFECTS OF THE PROPOSED CONTROLS ON THE EXPORT PERFORMANCE AND COMPETITIVE POSITION OF THE U.S. IN THE INTERNATIONAL ECONOMY, AND ON U.S. COMPANIES' REPUTATION AS RELIABLE SUPPLIERS;

5) THE ABILITY OF THE U.S. TO EFFECTIVELY ENFORCE THE CONTROLS; AND

6) THE FOREIGN POLICY CONSEQUENCES OF NOT IMPOSING THE CONTROLS.

NO ONE CRITERION DRIVES THE DECISION TO IMPOSE, MAINTAIN, OR EXPAND FOREIGN POLICY CONTROLS; RATHER, AS MANDATED BY CONGRESS, ALL SIX CRITERIA MUST BE CAREFULLY WEIGHED.

WITH RESPECT TO SOUTH AFRICA, THE U.S. GOVERNMENT HAS OVER THE LAST TWENTY YEARS REPEATEDLY DEMONSTRATED ITS DISAPPROVAL OF SOUTH AFRICA'S APARTHEID SYSTEM. THE REAGAN ADMINISTRATION FINDS APARTHEID ABHORRENT AND IS CONTINUING THE POLICY OF DISTANCING THE U.S. FROM THAT PRACTICE. THE FACT OF THE MATTER IS THAT U.S. EXPORT CONTROLS TOWARD SOUTH AFRICA REMAIN THE MOST RESTRICTIVE AMONG WESTERN INDUSTRIALIZED NATIONS. WE, ALONE, HAVE GONE CLEARLY BEYOND THE U.N. ARMS EMBARGO BY PROHIBITING SIGNIFICANT DUAL USE U.S. EXPORTS TO THE SOUTH AFRICAN MILITARY AND POLICE. BY DUAL USE I MEAN ANYTHING THAT CAN BE USED BY BOTH THE CIVILIAN AND MILITARY SECTORS.

AT THE SAME TIME, HOWEVER, WE ARE ENCOURAGING MORE MEANINGFUL IMPROVEMENTS IN SOUTH AFRICA'S SOCIAL CONDITIONS BY WHAT ASSISTANT SECRETARY CHESTER CROCKER CALLS CONSTRUCTIVE ENGAGEMENT. THIS POLICY OF CONSTRUCTIVE ENGAGEMENT -- WHICH I AM SURE WILL BE ADDRESSED IN GREATER DETAIL BY THE DEPARTMENT OF STATE REPRESENTATIVE -- ALONG WITH CONSIDERATION OF THE SIX CRITERIA I OUTLINED EARLIER, LED TO LAST YEAR'S MODIFICATION OF THE EXPORT CONTROLS FOR SOUTH AFRICA.

ITEMS NOW ALLOWED FOR SHIPMENT TO THE SOUTH AFRICAN MILITARY AND POLICE AS A RESULT OF THE REVISED REGULATIONS ARE NON-SENSITIVE IN NATURE AND INCLUDE SUCH CATEGORIES OF ITEMS AS FOOD, PERSONAL-USE GOODS, OFFICE EQUIPMENT, AND GENERAL INDUSTRIAL EQUIPMENT. I WOULD LIKE TO STRESS THAT THESE ITEMS ARE READILY AVAILABLE FROM OTHER FOREIGN SOURCES, AND CAN EVEN BE EXPORTED UNDER GENERAL LICENSE TO THE SOVIET MILITARY.

BECAUSE OF THEIR WIDESPREAD AVAILABILITY, WE FOUND THAT UNILATERALLY RESTRICTING EXPORT OF THESE PRODUCTS HAD NO IMPACT IN DISCOURAGING APARTHEID; RATHER, CONTROLS ON THOSE ITEMS HAD RESULTED IN A NEGATIVE IMPACT ON AMERICAN EXPORTERS. THEREFORE, SINCE OUR POLICY GOALS WERE NOT SERVED BY CONTROLS ON THESE ITEMS, AND THE EXPORT OF THESE ITEMS WOULD NOT CONTRIBUTE TO APARTHEID OR PROLIFERATION, CONTROLS ON THEM WERE REMOVED, ENABLING U.S. BUSINESSES TO MORE EQUALLY COMPETE WITH THEIR FOREIGN COMPETITORS.

MR. CHAIRMAN, A GREAT DEAL OF ATTENTION HAS BEEN FOCUSSED ON EXPORT REGULATIONS PERTAINING TO CRIME CONTROL EQUIPMENT FOR SOUTH AFRICA BECAUSE OF THE DEPARTMENT'S INADVERTENT ISSUANCE OF A LICENSE FOR SHOCK BATONS. I WOULD LIKE TO TAKE THE OPPORTUNITY TO EXPLAIN THIS ERROR AND ASSUAGE ANY CONCERNS YOU MAY HAVE ON THIS PARTICULAR INCIDENT, PARTICULARLY WITH RESPECT TO DEPARTMENT OF STATE REVIEW OF LICENSE APPLICATIONS FOR CRIME CONTROL EQUIPMENT.

FIRST, WHENEVER THE DEPARTMENT RECEIVES A LICENSE APPLICATION FOR CRIME CONTROL EQUIPMENT FOR SOUTH AFRICA, THE LICENSING OFFICER SENDS THE APPLICATION TO OUR OFFICE OF POLICY PLANNING WHICH, IN TURN, EXAMINES THE APPLICATION AND REFERS IT ON TO THE DEPARTMENT OF STATE FOR REVIEW. IN THIS INSTANCE, THE OFFICE OF POLICY PLANNING DETERMINED THAT THE APPLICATION LACKED SUFFICIENT INFORMATION. THE APPLICATION WAS THEREFORE NOT SENT ON TO STATE BUT, RATHER, WAS RETURNED TO THE LICENSING OFFICER WITH INSTRUCTIONS TO RETURN THE APPLICATION TO THE EXPORTER FOR ADDITIONAL DATA. UNFORTUNATELY, A CLERICAL OVERSIGHT OCCURRED AT THIS POINT AND A LICENSE WAS INADVERTENTLY ISSUED.

I WOULD LIKE TO STRESS THAT MISTAKES SUCH AS THIS ARE EXTREMELY RARE. RECOGNIZING THAT IT IS HUMAN TO ERR, HOWEVER, WE HAVE TAKEN STEPS TO INSTITUTE PROCEDURES WHICH WOULD MINIMIZE ANY SUCH MISTAKES IN THE FUTURE. THE DEPARTMENT OF STATE IS WORKING WITH US TO FORMULATE A MEMORANDUM OF UNDERSTANDING THAT WOULD CLARIFY THE PROCEDURES FOR CASES WHICH REQUIRE DEPARTMENT OF STATE REVIEW.

WITH RESPECT TO THE DEPARTMENT OF COMMERCE'S ROLE IN THE CONTROL OF EXPORTS FOR NUCLEAR NON-PROLIFERATION REASONS, I WOULD LIKE TO BEGIN BY GIVING A BRIEF OVERVIEW OF THE ADMINISTRATION'S NON-PROLIFERATION AND PEACEFUL NUCLEAR COOPERATION POLICY, AS ANNOUNCED BY PRESIDENT REAGAN ON JULY 16, 1981. AT THAT TIME, PRESIDENT REAGAN STATED THAT PREVENTING THE SPREAD OF NUCLEAR EXPLOSIVES TO ADDITIONAL COUNTRIES REMAINS A FUNDAMENTAL OBJECTIVE OF THE UNITED STATES; THEREFORE, THE U.S. NON-PROLIFERATION POLICY OBJECTIVES, WHICH HAVE BEEN IN PLACE OVER THE PAST THREE DECADES, WILL CONTINUE UNDER THIS ADMINISTRATION. WHAT HAS CHANGED, HOWEVER, IS THE APPROACH ON HOW BEST TO ACHIEVE THESE OBJECTIVES.

UNDER ITS ANNOUNCED POLICY, THIS ADMINISTRATION SEEKS TO PURSUE NON-PROLIFERATION MORE EFFECTIVELY BY PLACING GREATER EMPHASIS ON:

1) THE NEED TO IMPROVE REGIONAL AND GLOBAL STABILITY AND TO REDUCE MOTIVATIONS THAT CAN MOVE COUNTRIES TOWARD NUCLEAR EXPLOSIVES;

2) THE NEED FOR INTERNATIONAL COOPERATION AS AN ESSENTIAL PART OF STRENGTHENING THE INTERNATIONAL NON-PROLIFERATION REGIME; AND

3) THE NEED TO ESTABLISH THE U.S. AS A RELIABLE NUCLEAR SUPPLIER UNDER AN EFFECTIVE REGIME OF SAFEGUARDS AND NON-PROLIFERATION CONTROLS.

THE U.S. WILL ALSO CONTINUE TO INHIBIT THE TRANSFER OF SENSITIVE NUCLEAR MATERIAL, EQUIPMENT AND TECHNOLOGY, PARTICULARLY WHERE THE DANGER OF PROLIFERATION EXISTS, AND SEEK TO WORK MORE EFFECTIVELY WITH OTHER COUNTRIES TO FORGE AGREEMENT ON MEASURES FOR COMBATTING THE RISKS OF PROLIFERATION. THIS INCLUDES WORKING ACTIVELY WITH OTHER NATIONS TO ACHIEVE UNIFORM NON-PROLIFERATION CONDITIONS FOR NUCLEAR SUPPLY. IN PARTICULAR, THE ADMINISTRATION WILL WORK TO PREVENT TRANSFERS TO NON-NUCLEAR-WEAPON STATES OF ANY SIGNIFICANT NUCLEAR MATERIAL, EQUIPMENT OR TECHNOLOGY THAT WOULD NOT BE SUBJECT TO INTERNATIONAL SAFEGUARDS.

WHILE ACTIVELY WORKING TO REDUCE THE RISKS OF PROLIFERATION, HOWEVER, THE ADMINISTRATION IS ALSO DESIROUS OF ESTABLISHING THE UNITED STATES AS A RELIABLE SUPPLIER OF EQUIPMENT FOR PEACEFUL NUCLEAR USES UNDER APPROPRIATE AND ADEQUATE SAFEGUARDS. THIS ACTION IS RESPONSIVE TO THE MANY FRIENDS AND ALLIES OF THE UNITED STATES FOR WHOM NUCLEAR POWER IS THE MOST VIABLE SOLUTION TO THEIR ENERGY NEEDS AND WHO HAVE, DURING RECENT YEARS, LOST CONFIDENCE IN THE ABILITY OF OUR COUNTRY TO RECOGNIZE THEIR NEEDS.

THE PRESIDENT BELIEVES THAT A POLICY WHICH WOULD ESTABLISH THE UNITED STATES AS A PREDICTABLE AND RELIABLE PARTNER FOR PEACEFUL NUCLEAR COOPERATION IS ALSO ESSENTIAL TO U.S. NON-PROLIFERATION GOALS FOR, IF WE ARE NOT AN ACTIVE PARTNER, OTHER COUNTRIES WILL TEND TO GO THEIR OWN WAYS. THIS WOULD REDUCE OUR INFLUENCE AND, THUS, OUR EFFECTIVENESS IN GAINING THE SUPPORT WE NEED TO PURSUE OUR NON-PROLIFERATION OBJECTIVES.

IN IMPLEMENTING THE ADMINISTRATION'S POLICY, THE DEPARTMENT OF COMMERCE CAREFULLY REVIEWS THE DUAL-USE COMMODITIES AND RELATED TECHNICAL DATA UNDER ITS CONTROL THAT, IF USED FOR PURPOSES OTHER THAN THE STATED END USE, COULD BE OF SIGNIFICANCE FOR THE PRODUCTION OR DEVELOPMENT OF NUCLEAR EXPLOSIVES, OR WHICH COULD BE USED DIRECTLY OR INDIRECTLY FOR DESIGNING, DEVELOPING, FABRICATING, OR OPERATING SENSITIVE NUCLEAR FACILITIES SUCH AS THOSE INTENDED FOR URANIUM ENRICHMENT, THE PRODUCTION OF HEAVY WATER, THE SEPARATION OF ISOTOPES OF SOURCE AND SPECIAL NUCLEAR MATERIAL, AND THE FABRICATION OF NUCLEAR REACTOR FUEL CONTAINING PLUTONIUM.

IN ADDITION, THE DEPARTMENT OF COMMERCE, AS REQUIRED BY THE IMPLEMENTING REGULATIONS, SPECIFICALLY TAKES INTO ACCOUNT THE FOLLOWING INFORMATION IN REVIEWING NUCLEAR APPLICATIONS:

1. THE STATED END USE OF THE COMPONENT;
2. THE SENSITIVITY OF THE PARTICULAR COMPONENT AND ITS AVAILABILITY ELSEWHERE;
3. THE TYPES OF ASSURANCES OR GUARANTEES GIVEN IN THE PARTICULAR CASE; AND
4. THE NON-PROLIFERATION CREDENTIALS OF THE RECIPIENT COUNTRY.

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THE CURRENT PROCEDURES USED BY THE DEPARTMENT OF COMMERCE TO IMPLEMENT SECTION 309(C) OF THE NUCLEAR NON-PROLIFERATION ACT OF 1978 (NNPA) WERE PUBLISHED IN THE FEDERAL REGISTER OF JUNE 9, 1978.

UNDER THESE PROCEDURES, COMMERCE MUST CONSULT, AS APPROPRIATE, WITH THE DEPARTMENTS OF ENERGY, STATE, DEFENSE, THE ARMS CONTROL AND DISARMAMENT AGENCY AND THE NUCLEAR REGULATORY COMMISSION. THE SUBGROUP ON NUCLEAR EXPORT COORDINATION (SNEC), WHICH CONSISTS OF THESE AGENCIES INCLUDING DOC AND CHAIRED BY THE DEPARTMENT OF STATE, WAS SET UP TO PROVIDE THE NECESSARY CONSULTATION FOR COMMERCE'S CASES AS WELL AS FOR NUCLEAR EXPORTS LICENSED BY OTHER AGENCIES.

MR. CHAIRMAN, I WOULD LIKE TO GIVE A QUICK SUMMARY OF REVIEW PROCEDURES FOR COMMERCE-CONTROLLED NUCLEAR-RELATED EXPORTS. AS WE RECEIVE CASES, WE DETERMINE FIRST WHETHER NUCLEAR CONTROLS APPLY. SPECIAL NUCLEAR CONTROLS APPLY TO:

(1) COMMODITIES (AND CERTAIN RELATED TECHNICAL DATA) ON THE "NUCLEAR REFERRAL LIST." THIS LIST COVERS DUAL-USE COMMODITIES REQUIRING A VALIDATED LICENSE WHICH HAVE BEEN IDENTIFIED AS HAVING POTENTIAL SIGNIFICANCE FOR NUCLEAR EXPLOSIVES PURPOSES OR FOR USE IN ONE OR MORE OF THESE SENSITIVE NUCLEAR PROCESSES: CHEMICAL PROCESSING OF IRRADIATED URANIUM OR PLUTONIUM, PRODUCTION OF HEAVY WATER, SEPARATION OF ISOTOPES OF URANIUM, OR FABRICATION OF PLUTONIUM FUELS;

(2) ANY ITEM WHEN THE LICENSE APPLICATION SHOWS A NUCLEAR END-USE OR END-USER; AND

(3) ITEMS NORMALLY EXPORTED UNDER GENERAL LICENSE BUT WHICH REQUIRE A VALIDATED LICENSE BECAUSE THE EXPORTER KNOWS OR HAS REASON TO KNOW THEY WILL BE USED FOR NUCLEAR EXPLOSIVES PURPOSES OR IN ONE OF THE FOUR SENSITIVE NUCLEAR PROCESSES.

I WOULD LIKE TO POINT OUT THAT THE VERY STRICTEST CONTROLS ARE APPLIED TO EXPORTS DESTINED FOR ALL COUNTRIES THAT ARE NOT A SIGNATORY OF THE NUCLEAR NON-PROLIFERATION TREATY, SUCH AS SOUTH AFRICA, OR WHERE THERE ARE PARTICULAR PROLIFERATION CONCERNS. IN FACT, IN THOSE CASES WHERE NUCLEAR CONCERNS EXIST, THE GENERAL POLICY IS TO DENY THE EXPORT.

MOREOVER, THE DEPARTMENT OF COMMERCE SOLICITS THE REVIEW OF ALL NUCLEAR CASES BY THE DEPARTMENT OF ENERGY, WHICH SENDS AN OFFICER WEEKLY TO REVIEW THE APPLICATIONS. A CERTAIN NUMBER OF THESE CASES ARE SENT TO DOE FOR MORE DETAILED STUDY. SUCH STUDY MAY INCLUDE REFERRAL TO THE WEAPONS LABORATORIES AND OTHER DOE FACILITIES THROUGHOUT THE COUNTRY.

CASES THAT RAISE POLICY OR TECHNICAL PROBLEMS THAT DOE DETERMINES SHOULD NOT BE HANDLED UNILATERALLY, OR ONES WHERE COMMERCE DOES NOT AGREE WITH ENERGY'S RECOMMENDATION, ARE SENT TO THE SNEC. AFTER A CONSENSUS IS ACHIEVED, THE SNEC RECOMMENDS ACTION TO COMMERCE. IN INSTANCES WHERE THE SNEC CANNOT ACHIEVE A CONSENSUS OF ITS MEMBERS, THE CASE WOULD BE ESCALATED TO A HIGHER LEVEL FOR RESOLUTION.

I WOULD LIKE TO REITERATE THAT APPROVAL OF EACH NUCLEAR-RELATED EXPORT IS GRANTED ONLY AFTER THE CAREFUL REVIEW PROCESS I HAVE OUTLINED FOR THE SUBCOMMITTEE, AND, WHERE NECESSARY, CONDITIONED UPON THE RECEIPT OF APPROPRIATE NON-PROLIFERATION ASSURANCES FROM THE APPROPRIATE GOVERNMENT. IT IS THE DEPARTMENT OF COMMERCE'S POSITION THAT, IN VIEW OF THE VERY SMALL NUMBER OF NUCLEAR REFERRAL LIST EXPORTS WHICH HAVE BEEN GRANTED TO NUCLEAR END-USERS IN NON-NNPT SIGNATORY COUNTRIES, AND THE STRINGENT LIMITATIONS PLACED UPON SUCH EXPORTS, THEY HAVE NOT UNDERMINED U.S. NON-PROLIFERATION OBJECTIVES.

AT THIS TIME, I WOULD ALSO LIKE TO TOUCH UPON OUR EXPORT POLICY ON TWO COMMODITIES WHICH HAS RAISED CONGRESSIONAL CONCERN: SPECIFICALLY, THE EXPORT OF HELIUM-3 AND HOT ISOSTATIC PRESSES. BOTH THESE ITEMS HAVE BEEN UNDER EXTENSIVE REVIEW BY THE DEPARTMENT OF ENERGY'S RESEARCH LABORATORIES, AND I WILL DEFER TO THAT DEPARTMENT TO PROVIDE YOU WITH A MORE COMPREHENSIVE EXPLANATION OF THEIR NUCLEAR APPLICATIONS.

IN GENERAL, HOWEVER, I WOULD LIKE TO POINT OUT THAT HELIUM-3 IS CONTROLLED FOR NATIONAL SECURITY RATHER THAN NUCLEAR NON-PROLIFERATION REASONS. ALTHOUGH HELIUM-3, WHEN IRRADIATED, PRODUCES TRITIUM, A MATERIAL OF PROLIFERATION CONCERN, IT IS NEITHER A COST-EFFECTIVE, NOR EFFICIENT WAY OF OBTAINING TRITIUM. IT IS FAR MORE PRACTICAL TO PRODUCE TRITIUM BY IRRADIATION OF LITHIUM -- AND SOUTH AFRICA HAS RESERVES OF LITHIUM (AS WELL AS URANIUM). A COMMON USE OF HELIUM-3 IS TO

TEST THE SAFETY OF PROTOTYPE POWER REACTOR FUEL ELEMENTS. SUCH USE OF HELIUM-3 IS WELL ESTABLISHED IN COUNTRIES WITH ADVANCED CIVIL NUCLEAR PROGRAMS, SUCH AS SWEDEN AND BELGIUM.

AFTER CAREFUL CONSIDERATION, THE SNEC HAS RECOMMENDED APPROVAL OF THIS EXPORT ON THE BASIS OF THE RESULTS OF A TECHNICAL REVIEW, AND BECAUSE THE CASE APPEARED RELATED TO THE SAFETY OF CIVILIAN NUCLEAR REACTOR PLANTS. A LICENSE HAS NOT YET BEEN ISSUED. PLEASE BE ASSURED, HOWEVER, THAT IF THE EXPORT OF HELIUM-3 TO SOUTH AFRICA WERE APPROVED BY THE DEPARTMENT OF COMMERCE, IT WOULD BE CONDITIONED UPON PRIOR RECEIPT OF STRONG NON-PROLIFERATION ASSURANCES FROM THE GOVERNMENT OF SOUTH AFRICA.

THE EXPORT OF HOT ISOSTATIC PRESSES HAS ALSO COME UNDER CLOSE AND CAREFUL REVIEW. HIPS, AS THEY ARE COMMONLY KNOWN, ARE A CLASSIC EXAMPLE OF A DUAL USE COMMODITY, HAVING INNUMERABLE USES BESIDES NUCLEAR WEAPONS APPLICATION. HIPS ARE USED TO MANUFACTURE SUCH THINGS AS COMPRESSOR BLADES, DRILL BITS, AND EQUIPMENT FOR THE FABRICATION OF MACHINE TOOLS -- ANYTHING, IN FACT, THAT REQUIRES SPECIAL SHAPES AND DENSITY. BECAUSE OF THE HIPS' ESSENTIAL ROLE IN NUCLEAR WEAPONS FABRICATION, HOWEVER, THE U.S. POLICY IS ONE OF DENIAL FOR THE LARGER SIZE HIPS TO COUNTRIES WITH NUCLEAR PROGRAMS OF PROLIFERATION CONCERN. WE WILL CONSIDER APPROVAL OF EXPORTS OF SMALL HIPS -- OF THE 3 X 5 INCH SIZE -- ON A CASE-BY-CASE BASIS, TO SUCH COUNTRIES FOR NON-SENSITIVE END USERS, CONDITIONED UPON PRIOR RECEIPT OF GOVERNMENT-TO-GOVERNMENT NON-PROLIFERATION ASSURANCES. TO DATE, HOWEVER, WE HAVE CONTINUED TO DENY EXPORT OF LARGE HIPS TO COUNTRIES WITH NUCLEAR PROGRAMS OF PROLIFERATION CONCERN.

THE SUBCOMMITTEES HAVE ALSO ASKED FOR VIEWS ON H.R. 7220, A BILL SPONSORED BY REPRESENTATIVE RANGEL WHICH WOULD PROHIBIT THE EXPORT OR TRANSFER OF NUCLEAR MATERIAL, EQUIPMENT, AND TECHNOLOGY TO SOUTH AFRICA UNLESS IT AGREES TO ACCEPT FULL SCOPE SAFEGUARDS AND RATIFIES THE NON-PROLIFERATION TREATY. THE DEPARTMENT OF COMMERCE OPPOSES THIS BILL FOR SEVERAL REASONS.

FIRST, THE ATOMIC ENERGY ACT, AS CURRENTLY AMENDED, PRECLUDES ANY SIGNIFICANT NUCLEAR EXPORTS TO SOUTH AFRICA. THEREFORE, THE EFFECT OF H.R. 7220 WOULD BE TO DENY U.S. EXPORTERS THE ABILITY TO EXPORT WIDELY AVAILABLE DUAL-USE ITEMS OR NON-SENSITIVE TECHNOLOGY.

SINCE OTHER NATIONS ARE ABLE AND WILLING TO SUPPLY SUCH COMMODITIES -- I WOULD LIKE TO POINT OUT HERE THAT THE U.S. HAS THE STRICTEST CONTROLS IN THE WORLD ON DUAL-USE ITEMS; OTHER COUNTRIES SIMPLY DO NOT CONTROL MANY OF THESE ITEMS BECAUSE OF THEIR NUMEROUS, NON-NUCLEAR USES -- THE NET EFFECT OF H.R. 7220 WOULD MANIFEST ITSELF IN A NEGATIVE ECONOMIC IMPACT ON U.S. COMPANIES WHO WOULD LOSE THOSE SALES TO THEIR FOREIGN COMPETITORS.

SECONDLY, IF U.S. EXPORTS OF DUAL-USE ITEMS AND NONSENSITIVE TECHNOLOGY ARE PRECLUDED, NON-U.S. SUPPLIERS WOULD STEP IN AND MAKE THE SALES WITHOUT THE CONDITIONS AND SOUTH AFRICAN GOVERNMENT ASSURANCES THAT THE U.S. REQUIRES OF SUCH EXPORTS. THEREFORE, SUCH AN EMBARGO WOULD CONSIDERABLY DIMINISH U.S. ACCESS TO, AND INFLUENCE UPON SOUTH AFRICA'S NUCLEAR PROGRAM.

FINALLY, WE BELIEVE THAT THIS BILL WOULD UNDERMINE U.S. NON-PROLIFERATION OBJECTIVES WITH RESPECT TO SOUTH AFRICA SINCE ITS PASSAGE WOULD ELIMINATE OUR OPPORTUNITIES FOR MEANINGFUL NUCLEAR DISCUSSIONS WITH SOUTH AFRICA FOR ACCEPTANCE OF FULL-SCOPE SAFEGUARDS AND RATIFICATION OF THE NON-PROLIFERATION TREATY.

IN SUMMATION, MR. CHAIRMAN, I WOULD LIKE TO STRESS THAT THE DEPARTMENT OF COMMERCE IS WELL AWARE OF ITS FOREIGN POLICY AND NUCLEAR NON-PROLIFERATION RESPONSIBILITIES. THE ISSUE OF EXPORT CONTROLS ON SOUTH AFRICA IS A COMPLEX ONE THAT BALANCES MANY VITAL U.S. OBJECTIVES. PLEASE BE ASSURED THAT WE CAREFULLY WEIGH ALL FACTORS AND CONSULT WITH ALL APPROPRIATE AGENCIES IN FULFILLING OUR LICENSING RESPONSIBILITY.

I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. DENYSYK. Thank you.

Mr. WOLPE. Now we are pleased to welcome Congressman Rangel. We are pleased to have you with us this morning.

Congressman Rangel has been a leader in the efforts to focus attention on American South African policy, particularly with respect to export practices.

We are delighted to receive you at this point.

STATEMENT OF HON. CHARLES B. RANGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RANGEL. Thank you, Mr. Chairman. I thank the subcommittee, for their interest in this matter on behalf of the Congress and certainly the Nation.

I am extremely concerned, as all of you are who are here today, about the Reagan administration's policy of constructive engagement, of giving South Africa what they want because we think somehow this will prod concessions from them.

It does not appear it has prodded any type of concessions from the Republic of South Africa. Rather, it appears to have strengthened apartheid. What goes on in South Africa runs against everything we stand for in America. It mocks democracy, it mocks fundamental rights, it mocks human dignity.

It is hard to believe that South Africans as human beings, if they happen to be black, cannot marry who they want to marry, cannot say aloud what they want to say, cannot worship where they want to worship and cannot vote at all, they can't meet with people they want to meet with, can't travel where they want to travel, can't learn or work where they want to learn and work.

Every day the basic human rights that we hold so true in our own Nation are being flaunted by the Republic of South Africa, which has not shown itself to be a friend of democracy or a friend of human liberty or a friend of Africa generally, a country that we are attempting to work over with a carrot instead of a stick.

Now the word is out they are attempting to build an atomic bomb. A lot of us in the Congress believe there are too many nations with atomic bombs. It seems to me that when we find a nation with a reputation of unjustly repressing its people, then the United States should not feel proud as a Nation that we participated in this being done.

The Reagan administration, for reasons that we find hard to understand, somehow believes that we should relax the restrictions on sharing nuclear technology with South Africa. We have no business in working with the Republic of South Africa on these types of programs.

If the Republic of South Africa expands its technology in the area of nuclear bombs, then certainly the majority of the people there who are now being oppressed will not be able to expect that international pressure will be capable of winning for them the freedom that we enjoy here and that they should expect in their homeland.

As you know, my bill, H.R. 7220, attempts to plug the flow of nuclear related goods and technology to South Africa. Because there are so many different Departments and agencies that have respon-

[1] See app. 8.

sibility for nuclear related exports, the bill appears to be complex. But it forbids all those with responsibility in our Government for nuclear export to approve licenses for export to South Africa.

In addition, my bill directs the Nuclear Energy Commission, the Department of Commerce, the Department of Energy, the Department of State, each to draw up a list of goods that if exported to South Africa would aid in their nuclear program. This includes the so called dual use items about which I am sure we will hear more from the administration.

The bill would require involvement of all these different branches of Government up front for a particular reason, to avoid the type of confusion we have seen between State and Commerce which allowed the export of shock batons to South Africa.

In that case the State Department indicated that it was horrified that it had not been consulted about it ahead of time and had they been consulted, they would have recommended against granting the license. We believe that this type of mixup as relates to our national defense, as it relates to the oppression of human rights, is not the type of thing that a great Nation like ours or our Departments of State or Commerce should be allowed to explain away.

The bill is aimed at turning back just once more the thrust of this so-called constructive engagement, but I think it is a very dangerous thrust, not only what it represents in substance, but what it represents to nations who watch and see what the greatest Nation in the world is prepared to do as relates to a nation that has completely disregarded the human rights of so many people in the Republic of South Africa.

It just bothers me sometimes to try to find out whether our great Nation has an African policy at all and, if indeed we do have an African policy, how does it relate to the oppression of black people in their homeland Africa?

Are we anxious that the Republic of South Africa have an atomic bomb? Do we consider that in our national interest? Certainly even though the administration has expressed a different view on human rights than the previous administration, is there not some basic ground floor level that this country is not prepared to sink below as it does business with another country that so openly violates the human rights of other people?

I think when it reaches the point we are talking about, nuclear technology and nuclear material, then perhaps the subject matter is important enough to excite the entire world. For me, I believe that I am not alone in thinking that if we were just talking about wheat, food, and medicine, that we should also be concerned with the rights of the people of the nation which would receive this type of assistance.

So let me thank this committee for focusing attention on this issue. I am really surprised at the overwhelming number of people that have come here to indicate the type of interest that we see this morning. I wonder how many represent interests of the Republic of South Africa, but I don't think that is a proper question for a Member of Congress.

I do laud this committee for taking time out for what is a real hard working lameduck session to hold hearings on this sensitive, but most important matter.

Thank you, Mr. Chairman.

Mr. WOLPE. Let me thank you for your testimony.

We will take questions at this point and then propound questions to all the witnesses at the end of the process.

Again I apologize because of the compressed nature of two hearings into one. We are going to have to adhere to the time limit strictly today.

Mr. Rangel, two of the arguments that are often made by the administration in support of the new policies are, first, that this constructive engagement effort should be understood as a tactical change rather than representing a new accommodation with apartheid, that it is a way of gaining more influence with the South Africans if we normalize our relationships with them.

The second argument advanced with respect to the export controls is that if we simply restrict exports, for example, in the nuclear area the other countries will fill the void and there will be no impact from those controls.

Will you respond?

Mr. RANGEL. If this administration had any credibility with blacks at home or abroad, I would assume that this was not simply a new accommodation of apartheid. But we have not had, this administration or the previous administration, any African policy that has had any credibility.

We are the ones who have supplied the arms and supported a nation that has indeed suppressed human freedom and the right of blacks to majority rule. We should let Africa know that we are a nation that stands behind human rights.

If we had an honorable reputation in Africa, then whenever we changed our tactics toward the Republic of South Africa the nations of the world would say: "In good faith, we will try another approach because the other ones didn't work." We just haven't earned that trust and respect.

If I can only hear from my President that he is prepared to do for the millions of black Africans what he was prepared to do with that pipeline, as silly as that was, I think that then we would know that our sister nations recognize that we do have a foreign policy, we do mean business and that when you interfere with that policy we are prepared to retaliate.

We don't operate that way. We don't have a framework of references in terms of our historic support for majority rule. Therefore, the administration is merely following a policy that has unfortunately been consistent with American policy, which is supporting the Republic of South Africa.

Mr. WOLPE. Thank you very much.

Congressman Lagomarsino.

Mr. LAGOMARSINO. The administration in the part of the testimony that Mr. Denysyk did not quite get to talk about, dual use items in regard to nuclear power, tries to make the point that if we preclude those kinds of sales that are available from other countries, not only do we lose the business, but we lose the ability to control and to have conditions applied that some other countries don't apply.

How do we resolve it? We have a dichotomy, we have the dual use thing on the one hand and the question of proliferation of nuclear weapons which affects everybody in this world.

Mr. RANGEL. Is that the same problem that we have with India?

Mr. LAGOMARSINO. I don't know. Mr. Denysyk?

Mr. RANGEL. Are we doing business with India?

Mr. DENYSYK. We treat cases where there are concerns, and there are concerns in both countries, in similar fashion.

Mr. RANGEL. On the question of whether we sell or someone else sells, if we deal with the moral question unequivocally, we should not be participating. If you are talking about if we don't do it, someone else will, they have not signed any treaty, the Indians haven't signed any treaty.

We still do business with France. I don't recall our President or our State Department raising these questions with our friends saying that peace loving nations should come together for human dignity, for world peace, and to make certain that we don't play one nation against the other for economic reasons.

I am saying, Mr. Congressman, that had we explored all of these areas, if our position was known throughout the free world as to what we stood for on human rights, what we stood for on world peace, then I would admit the questions you are raising would be very sensitive questions. But first, we must get our own house in order.

Let us establish a record as to what this country stands for. I don't think anyone in the Congress can be particularly proud of our lack of opposition to the Republic of South Africa's record against the right of black people and majority rule.

Mr. LAGOMARSINO. Thank you.

Mr. WOLPE. Congressman Crockett.

Mr. CROCKETT. I pass.

Mr. WOLPE. Congresswoman Fenwick.

Mrs. FENWICK. The question that Congressman Lagomarsino has raised is an interesting one. India is interesting too. I agree with you we ought to be clear as to what we really care about. I think that that is important. How do you handle it?

When we try to establish a policy that is going to affect our allies we are promptly told that we are not the government of the world and that they are not interested in what we want that they are independent. And of course there will be repercussions from Moscow attempting to promote division between the allies.

What could we say publicly without endangering NATO and the whole system of alliances? Could we tell them that this was our policy, that we were determined to see that apartheid was discouraged could we ask them to join with us in saying that nothing will be provided to any company in South Africa that does not adhere to the Sullivan Code as we have tried to make sure that they do. Could we make some public statement as to that, because I don't think we are going to stop other countries.

We can damage our relations with our allies without accomplishing anything. I was against sanctions for that reason; we didn't do anything for the Polish people.

It seems to me that we can insist on the application of the Sullivan Code which has been proved to operate where it is applied.

Many of the South African companies which employ far more people than any of our companies do, have arranged for cadet schools and so on, so that education will be extended.

I would like to hear if you think there is any way for us through that avenue.

Mr. RANGEL. I only support the Sullivan principles because it just shows no matter how much you give you don't get support for it anyway. I would hate for Reverend Leon Sullivan to believe that anything he promotes in terms of improved relationship between this country and the Republic of South Africa has been rejected.

But when you talk about what could we do if we meet privately, who are "we"? You are talking about a great nation and we can't meet privately. We are saying to other nations that the things that we have fought for, the things that this nation stands for, Republicans, Democrats, are the things that we are not backing off on and we want all nations to recognize that we went to war to protect these rights.

Mrs. FENWICK. I agree, we can state that.

Mr. RANGEL. We have not stated it, that is my point. If we have not stated it publicly, then I am fearful of stating it privately.

Mrs. FENWICK. We state it every day in the committee. It does not seem to result in any action.

Mr. RANGEL. You do, Mrs. Fenwick, but I read the papers and Whitehouse releases and I am saying I don't know today whether we support the Republic of South Africa. Do you know?

Mrs. FENWICK. That is specific, that never gets said.

Mr. RANGEL. These things should be said.

Mrs. FENWICK. The fact that we support human rights has been said over and over, but does not seem to add up to anything.

Mr. RANGEL. I am having a hard time convincing my district, so I don't expect the nations of the world are going to believe it, but I sleep better at night knowing that other nations know what we stand for and we are prepared to lose a lot of friends for principle.

I don't remember, Mrs. Fenwick, when we have lost a lot of anything economically as relates to principle. We have lost a lot of men, a lot of troops, but I don't know whether we have lost any contracts.

Mr. LAGOMARSINO. I think we did lose on the Polish matter. I think that was for principle. You can argue whether it was an appropriate principle.

Mr. RANGEL. The President is sending subsidized wheat to Russia, subsidized butter. He promised farmers he was going to renew the wheat contract with Poland. We send technology to the Soviet Union. I am against the Communists. I fought against them. I got shot by them. I don't believe in sending those types of things to enemies of democracy, and I include South Africa on that list.

Mr. LAGOMARSINO. I do, too, but the steel contract cancellation certainly hurt our workers.

Mr. STUDDS. Maybe we should wait until we have a chance for the administration to respond to your questions. You are surrounded by a half dozen apologists for the administration.

I think under the circumstances you have been remarkably calm. I agree with everything you have said. I wish we could all feel differently about the impression conveyed by our country abroad with

respect to South Africa. I think that is the key regardless of the individual hemming and hawings, it was a clerical error here and a slip of the tongue here.

We are dealing in symbols. We are dealing fundamentally with the question of moral principles. The symbols being conveyed by America are inconsistent with what this Nation stands for. There ought to be no debate of any kind as to the ones that are fundamental and under consideration here.

I can't wait for the administration to explain the difference between the Soviet pipeline and South Africa. It makes me sad and angry.

Mr. WOLPE. Congressman Shamansky.

Mr. SHAMANSKY. I would just like to pursue the idea and as I have always found myself describing French foreign policy, the first word that comes to mind is craven for some reason over the years. Interestingly, they maintain very close relations with the Francophone, former colonies in Africa.

Are you satisfied that the French policy vis-a-vis South Africa is appreciably different? In other words, the French are now supplying fuel for the Indian facility that we are not going to supply fuel to.

I am not using this as an alibi, but I am trying to be realistic as to our good friends, the French, when it comes to the potential sale of things and still maintain relations with the Francophone clients, I will say, in Africa.

Do you have any insight?

Mr. RANGEL. No, sir, I don't. If I were satisfied that our own Nation was establishing a relationship based on principles that our country believed in, I certainly would take a harder look at France.

Once we know clearly what we stand for and what we are prepared to do, then the questions that have been raised by this committee should be addressed. It will be difficult to respond as to the depth of the sanctions we should have against friends who somehow don't see that question as clearly as we do.

That is something that your committee wrestles with every day. Every country can't have democracy as we know and understand it. We accept that from other countries, but we don't accept any deviation from that standard for our own. And I don't want to compare our standards with any other country until we know we, ourselves, are not deviating.

Mr. WOLPE. Thank you very much. I just want to really affirm your testimony this morning. The thing has become clear over the years, not just this administration, but previous administrations as well, it has been a double standard which has been applied in our evaluation of policy with respect to South Africa and policy with respect to other regimes that appear to be equally abhorrent.

We are unable to take anywhere near the dimension of risk or cost that we have been willing to assume in these other instances. I think that policy speaks for itself.

Thank you.

Mr. RANGEL. Thank you, Mr. Chairman, for giving me this opportunity.

Mr. WOLPE. We will recess for about 10 minutes.

[Recess.]

Mr. WOLPE. We will now resume with our testimony from the remaining administration witnesses.

Again, I do not mean to be discourteous and I understand the difficulty that the time constraints are putting each of you under, but I am sure you understand the reasons for it.

I would like to call on Mr. Princeton Lyman.

STATEMENT OF PRINCETON LYMAN, DEPUTY ASSISTANT SECRETARY FOR AFRICAN AFFAIRS, DEPARTMENT OF STATE

Mr. LYMAN. Mr. Chairman, I will try to summarize within the timeset.

Chairman Wolpe and Chairman Bingham, the administration welcomes this opportunity to testify before your respective subcommittees concerning U.S. policy toward South Africa and the role that economic, trade, and investment policy play in United States-South African relations.

In the context of this hearing I would like to begin by responding to the subcommittees' interest in the broader approach of U.S. relations with South Africa, our policy of constructive engagement. To put the economic issues in perspective, let me then begin with an overview of administration policy.

U.S. policy objectives toward the Republic of South Africa include: Fostering movement toward a system of government by consent of the governed, and away from the racial policy of apartheid, both as a form of racial discrimination and national political disenfranchisement of blacks, one of the key objectives; continued access to four strategic non-fuel minerals where the United States and OECD countries are either import or price dependent on South Africa; assuring the strategic security of the Cape Sea routes through which pass vital U.S. oil supplies from the Middle East; and regional security in southern Africa.

Peace and stability are needed so that this key region can develop and prosper, so that peaceful change can occur in South Africa, and so that the region does not slide into an escalating cycle of destructive cross border violence exploited by our adversaries as we are pursuing these goals.

Our objectives are pursued through a regional policy of constructive engagement, constructive engagement not only with South Africa, but with all the states of the region. The specific components of our regional approach include:

First, internationally recognized independence for Namibia;

Second, internationally supported programs of economic development in all the developing countries of the region;

Third, a negotiated framework that will permit agreement on the issue of withdrawal of Cuban troops from Angola;

Fourth, détente between South Africa and the other states in the region; and

Fifth, peaceful, evolutionary change in South Africa itself away from apartheid and toward a system of government to be defined by South Africans themselves, but firmly rooted in the principle of government by consent of the governed.

Mr. Chairman, I will not go into this, but as you know, we are leading a major diplomatic effort on the Namibia issue and Angola

issue. I will save time by not going into that. I know you are familiar with it.

Let me, however, address very specifically administration policies in regard to apartheid.

President Reagan indicated that the U.S. views the apartheid system as repugnant to basic U.S. values. He has stated that as long as there is a sincere and honest effort to move away from apartheid in South Africa, the United States should be helpful in encouraging that process.

On this basis the United States has indicated to South Africa that relations with the United States are based on the commitment of the South African Government to reform away from apartheid and on South African cooperation in moving toward an internationally recognized settlement for Namibian independence.

The United States has no blueprint for a future political system for South Africa. Nor would we have a right to attempt to impose such a plan if we had one. We do have a right to ask South Africa to respect the same universal principles of human rights and human freedoms that we seek for peoples everywhere.

The subcommittees have asked for an explanation of how trade controls relate generally to this policy. The United States has restricted trade with South Africa since 1961 to a greater or lesser extent as a means of denial and symbolic disassociation from its racial system. A strict U.S. arms embargo was followed by a mandatory U.N. arms embargo in 1977.

The decision of the Carter administration to go beyond the mandatory arms embargo to also restrict all exports to the police and military was not similarly emulated by other nations. A call by oil exporting countries for a boycott of oil shipments to South Africa met with very mixed adherence.

Experience presents questions that may legitimately be asked with regard to the use of trade controls as a coercive instrument of foreign policy with regard to South Africa.

What, then, has been the effect of trade controls on internal change in South Africa? There are some rather particular results.

Over the course of the past 20 years, South Africa has developed the world's tenth largest arms industry and is now becoming an exporter of arms. Over the course of the past 10 years, South Africa has become a world leader in synthetic fuel production. Over the course of the past 5 years, South Africa has made giant strides toward nuclear self-sufficiency, as regards the production and fabrication of low-enriched uranium.

The logic of this sequence does not lead to the conclusion that all controls should be abolished. On the contrary, this administration has continued to implement a wide set of controls on trade and exports to South Africa.

But we do need to question seriously the efficacy of particular controls, to look carefully at them to see whether they are indeed fulfilling their objective, and, in some cases, whether the objective is better addressed by other policy tools.

Mr. Chairman, in the written testimony, we have provided a full summary of the kinds of controls that are now in place. I think it demonstrates that there is a wide variety of controls still in place, supported and implemented by this administration. Where changes

have been made, they have been made because we feel they were counterproductive to our objective.

Thank you, Mr. Chairman.

[Mr. Lyman's prepared statement follows:]

PREPARED STATEMENT OF PRINCETON LYMAN, DEPUTY ASSISTANT SECRETARY OF STATE FOR AFRICAN AFFAIRS

CHAIRMAN WOLPE AND CHAIRMAN BINGHAM, THE ADMINISTRATION WELCOMES THIS OPPORTUNITY TO TESTIFY BEFORE YOUR RESPECTIVE COMMITTEES CONCERNING UNITED STATES POLICY TOWARD SOUTH AFRICA AND THE ROLE THAT ECONOMIC, TRADE AND INVESTMENT POLICY PLAY IN US-SOUTH AFRICAN RELATIONS. IN THE CONTEXT OF THIS HEARING I WOULD LIKE TO BEGIN BY RESPONDING TO THE COMMITTEES' INTEREST IN THE BROADER APPROACH OF US RELATIONS WITH SOUTH AFRICA, OUR POLICY OF CONSTRUCTIVE ENGAGEMENT. TO PUT THE ECONOMIC ISSUES IN PERSPECTIVE LET ME THEN BEGIN WITH AN OVERVIEW OF ADMINISTRATION POLICY.

U.S. POLICY OBJECTIVES TOWARD THE REPUBLIC OF SOUTH AFRICA INCLUDE: FOSTERING MOVEMENT TOWARD A SYSTEM OF GOVERNMENT BY CONSENT OF THE GOVERNED, AND AWAY FROM THE RACIAL POLICY OF APARTHEID BOTH AS A FORM OF RACIAL DISCRIMINATION AND NATIONAL POLITICAL DISENFRANCHISEMENT OF BLACKS, CONTINUED ACCESS TO FOUR STRATEGIC NONFUEL MINERALS WHERE THE U.S. AND OECD COUNTRIES ARE EITHER IMPORT OR PRICE DEPENDENT ON SOUTH AFRICA, ASSURING THE STRATEGIC SECURITY OF THE CAPE SEA ROUTES THROUGH WHICH PASS VITAL U.S. OIL SUPPLIES FROM THE MIDDLE EAST, AND REGIONAL SECURITY IN SOUTHERN AFRICA. PEACE AND STABILITY ARE NEEDED SO THAT THIS KEY REGION CAN DEVELOP AND PROSPER, SO THAT PEACEFUL CHANGE CAN OCCUR IN SOUTH AFRICA, AND SO THAT THE REGION DOES NOT SLIDE INTO AN ESCALATING CYCLE OF DESTRUCTIVE CROSS-BORDER VIOLENCE EXPLOITED BY OUR ADVERSARIES AS WE ARE PURSUING THESE GOALS. OUR OBJECTIVES ARE PURSUED THROUGH A REGIONAL POLICY OF

CONSTRUCTIVE ENGAGEMENT, CONSTRUCTIVE ENGAGEMENT NOT ONLY WITH SOUTH AFRICA BUT WITH ALL THE STATES OF THE REGION. THE SPECIFIC COMPONENTS OF OUR REGIONAL APPROACH INCLUDE: FIRST, INTERNATIONALLY RECOGNIZED INDEPENDENCE FOR NAMIBIA; SECOND, INTERNATIONALLY SUPPORTED PROGRAMS OF ECONOMIC DEVELOPMENT IN ALL THE DEVELOPING COUNTRIES OF THE REGION; THIRD, A NEGOTIATED FRAMEWORK THAT WILL PERMIT AGREEMENT ON THE ISSUE OF WITHDRAWAL OF CUBAN TROOPS FROM ANGOLA, FOURTH, DETENTE BETWEEN SOUTH AFRICA AND THE OTHER STATES IN THE REGION; AND FIFTH, PEACEFUL, EVOLUTIONARY CHANGE IN SOUTH AFRICA ITSELF AWAY FROM APARTHEID AND TOWARD A SYSTEM OF GOVERNMENT TO BE DEFINED BY SOUTH AFRICANS THEMSELVES BUT FIRMLY ROOTED IN THE PRINCIPLE OF GOVERNMENT BY CONSENT OF THE GOVERNED.

THE U.S. IS PRESENTLY LEADING A MAJOR DIPLOMATIC EFFORT DESIGNED TO ACHIEVE INDEPENDENCE FOR THE TERRITORY OF NAMIBIA BASED ON IMPLEMENTATION OF UN SECURITY COUNCIL RESOLUTION 435.

IN A SEPARATE BUT PARALLEL NEGOTIATING PROCESS THE U.S. IS SEEKING TO RESOLVE THE RELATED ISSUE OF THE PRESENCE OF CUBAN FORCES IN ADJACENT AGNOLA, WITH THE IMPACT THAT THEIR PRESENCE HAS IN TERMS OF SOUTHERN AFRICAN REGIONAL SECURITY.

THE US BELIEVES THAT A RESOLUTION OF THESE CONFLICTS IS ESSENTIAL TO BUILD A REGIONAL CLIMATE CONDUCIVE TO CONSTRUCTIVE CHANGE INSIDE SOUTH AFRICA AWAY FROM APARTHEID. US POLICY TOWARD SOUTH AFRICA IS THUS BOTH A BILATERAL POLICY AND ALSO AN IMPORTANT PART OF OUR POLICY TOWARD A KEY REGION, A REGION ALSO VITAL IN GLOBAL TERMS.

PRESIDENT REAGAN INDICATED THAT THE US VIEWS THE APARTHEID SYSTEM AS REPUGNANT TO BASIC US VALUES. HE HAS STATED THAT AS LONG AS

THERE IS A SINCERE AND HONEST EFFORT TO MOVE AWAY FROM APARTHEID IN SOUTH AFRICA, THE US SHOULD BE HELPFUL IN ENCOURAGING THAT PROCESS. ON THIS BASIS THE US HAS INDICATED TO SOUTH AFRICA THAT RELATIONS WITH THE US ARE BASED ON THE COMMITMENT OF THE SOUTH AFRICAN GOVERNMENT TO REFORM AWAY FROM APARTHEID AND ON SOUTH AFRICAN COOPERATION IN MOVING TOWARD AN INTERNATIONALLY RECOGNIZED SETTLEMENT FOR NAMIBIAN INDEPENDENCE.

THE UNITED STATES HAS NO BLUEPRINT FOR A FUTURE POLITICAL SYSTEM FOR SOUTH AFRICA. NOR WOULD WE HAVE A RIGHT TO ATTEMPT TO IMPOSE SUCH A PLAN IF WE HAD ONE. WE DO HAVE A RIGHT TO ASK SOUTH AFRICA TO RESPECT THE SAME UNIVERSAL PRINCIPLES OF HUMAN RIGHTS AND HUMAN FREEDOMS THAT WE SEEK FOR PEOPLES EVERYWHERE.

FOR ALL SOUTH AFRICANS, AS FOR PEOPLE EVERYWHERE, WE ASK GOVERNMENT BASED SQUARELY ON THE FREELY EXPRESSED CONSENT OF THE GOVERNED. SOUTH AFRICA'S PRESENT SYSTEM OF GOVERNMENT IS NOT, ALTHOUGH THERE ARE SIGNS OF A WILLINGNESS TO MOVE TOWARD SUCH GOVERNMENT.

THE SUBCOMMITTEE HAS ASKED WHETHER, AS A RESULT OF ITS APARTHEID POLICY, THE DEPARTMENT CONSIDERS SOUTH AFRICA TO BE A GROSS VIOLATOR OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. THE DEPARTMENT'S VIEW WITH RESPECT TO THE HUMAN RIGHTS SITUATION IN SOUTH AFRICA IS EXPRESSED IN SOME DETAIL IN OUR ANNUAL HUMAN RIGHTS REPORT TO CONGRESS. THE DEPARTMENT WOULD NOT ARGUE THAT SOUTH AFRICA IS NOT A VIOLATOR OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS. HOWEVER, THE DEPARTMENT DOES NOT ADVOCATE A FORMAL DETERMINATION THAT SOUTH AFRICA (OR ANY OTHER COUNTRY) IS A GROSS VIOLATOR, BECAUSE SUCH DETERMINATIONS ARE BARRIERS TO DIALOGUE

THAT MIGHT SERVE TO INDUCE THE HUMAN RIGHTS IMPROVEMENTS THAT WE SEEK. IN SITUATIONS WHERE THERE IS A CONSISTENT PATTERN OF GROSS VIOLATIONS THE INTENT OF THE LEGISLATION IS BEING CARRIED OUT BY REFRAINING FROM SECURITY ASSISTANCE AND FROM ISSUANCE OF LICENSES FOR CRIME CONTROL EQUIPMENT. HOWEVER, FORMAL DESIGNATIONS WOULD LARGELY ROB THE LEGISLATION OF ITS DESIRED EFFECT BY SIGNALLING TO THE DESIGNATED PARTY THAT THE UNITED STATES SAW NO HOPE FOR IMPROVEMENT.

APARTHEID IS BY NO MEANS THE ONLY SYSTEM BY WHICH CONTEMPORARY GOVERNMENTS DENY CITIZENS FREEDOM OF SPEECH AND ASSEMBLY, THE RIGHT TO DEMOCRATIC PARTICIPATION IN GOVERNMENT AND EQUALITY UNDER THE LAW. GOVERNMENT BY AND WITH THE CONSENT OF THE GOVERNED REMAINS A RARE COMMODITY IN OUR WORLD. THE PRINCIPLES OF FREEDOM, EQUALITY, DEMOCRACY AND THE STANDARDS OF HUMAN RIGHTS WHICH SO MANY ENDORSE FOR SOUTH AFRICA ARE ALSO UTTERLY ABSENT FROM THE POLITICAL PRACTICE OF MANY OTHER NATIONS NOT SIMILARLY SUBJECT TO EITHER THE SCRUTINY OR SANCTIONS APPLIED TO SOUTH AFRICA. THIS DOUBLE STANDARD HAS ITSELF HINDERED CONSTRUCTIVE CHANGES IN THAT COUNTRY BY PERSUADING SOME SOUTH AFRICANS THAT THEIR COUNTRY WILL ALWAYS BE SINGLED OUT FOR NEGATIVE PRESSURE AND BE HELD ACCOUNTABLE TO STANDARDS NOT APPLIED UNIFORMLY ELSEWHERE, AND BY PERSUADING OTHERS THAT CONSTRUCTIVE CHANGE, WHEN IT DOES OCCUR, WILL NOT BE HONESTLY RECOGNIZED FOR WHAT IT IS.

THE UNITED STATES IS LOOKING BEYOND MERE EXPRESSIONS OF SYMPATHY AND OUTRAGE TOWARD PRACTICAL AND EFFECTIVE MEANS TO HELP END APARTHEID. THIS HEARING FOCUSSES SPECIFIC ATTENTION ON THE EXPORT OF SEVERAL ITEMS TO SOUTH AFRICA BUT MIGHT BE SAID TO ADDRESS THE GENERAL ISSUE OF WHAT INFLUENCE WE HAVE TO FOSTER CHANGE IN SOUTH AFRICA. THE REAL ISSUE IS WHETHER A POLICY OF DENIAL IS, IN AND OF ITSELF, GOING TO CAUSE SUCH DISRUPTION IN THE SOUTH AFRICAN ECONOMY THAT THE SOUTH AFRICAN GOVERNMENT WILL HAVE NO CHOICE BUT TO ABANDON APARTHEID. WE BELIEVE THAT THE CHANGE WE WISH TO SEE IN SOUTH AFRICA IS MORE LIKELY TO TAKE PLACE IN A RELATIONSHIP OF MUTUAL CONFIDENCE.

THE COMMITTEES HAVE ASKED FOR AN EXPLANATION OF HOW TRADE CONTROLS RELATE GENERALLY TO UNITED STATES RELATIONS WITH SOUTH AFRICA. I SPEAK TO THIS QUESTION AND TO THE QUESTION OF WHAT ROLE A REGIME OF TRADE CONTROLS CAN PLAY HAS IN THE EFFECTIVE PURSUIT OF PEACEFUL, EVOLUTIONARY CHANGE IN SOUTH AFRICA AWAY FROM APARTHEID.

THE UNITED STATES HAS RESTRICTED TRADE WITH SOUTH AFRICA SINCE 1961 TO A GREATER OR LESSER EXTENT AS A MEANS OF DENIAL AND SYMBOLIC DISASSOCIATION FROM ITS RACIAL SYSTEM. A STRICT US ARMS EMBARGO WAS FOLLOWED BY A MANDATORY UN ARMS EMBARGO IN 1977.

THE DECISION OF THE CARTER ADMINISTRATION TO GO BEYOND THE MANDATORY ARMS EMBARGO TO ALSO RESTRICT ALL EXPORTS TO THE POLICE AND MILITARY WAS NOT SIMILARLY EMULATED BY OTHER NATIONS. A CALL BY OIL EXPORTING COUNTRIES FOR A BOYCOTT OF OIL SHIPMENTS TO SOUTH AFRICA MET WITH VERY MIXED ADHERENCE.

EXPERIENCE PRESENTS QUESTIONS THAT MAY LEGITIMATELY BE ASKED WITH REGARD TO THE USE OF TRADE CONTROLS AS A COERCIVE INSTRUMENT OF FOREIGN POLICY WITH REGARD TO SOUTH AFRICA. IT WOULD SEEM A FAIR ASSUMPTION TO MAKE THAT SYMBOLISM PER SE IS NOT THE ONLY OBJECTIVE OF TRADE CONTROLS IMPLEMENTED FOR FOREIGN POLICY PURPOSES. TRADE CONTROLS ARE ALSO EXPECTED TO HAVE A SUBSTANTIVE IMPACT ON THE SITUATION WHICH ONE IS TRYING TO AFFECT, IN THIS INSTANCE, SOUTH AFRICA'S APARTHEID POLICIES.

WHAT, THEN, HAS BEEN THE EFFECT OF TRADE CONTROLS ON INTERNAL CHANGE IN SOUTH AFRICA? THERE ARE SOME RATHER PARTICULAR RESULTS. OVER THE COURSE OF THE PAST TWENTY YEARS SOUTH AFRICA HAS DEVELOPED THE WORLD'S TENTH LARGEST ARMS INDUSTRY AND IS NOW BECOMING AN EXPORTER OF ARMS. OVER THE COURSE OF THE PAST TEN YEARS SOUTH AFRICA HAS BECOME A WORLD LEADER IN SYNTHETIC FUEL PRODUCTION. OVER THE COURSE OF THE PAST FIVE YEARS SOUTH AFRICA HAS MADE GIANT STRIDES TOWARD NUCLEAR SELF-SUFFICIENCY AS REGARDS THE PRODUCTION AND FABRICATION OF LOW ENRICHED URANIUM.

THE LOGIC OF THIS SEQUENCE DOES NOT LEAD TO THE CONCLUSION THAT ALL UCONTROLS SHOULD BE ABOLISHED. ON THE CONTRARY, THIS ADMINISTRATION HAS CONTINUED TO IMPOLEMENT A WIDE SET OF CONTROLS ON TRADE AND EXPORTS TO SOUTH AFRICA. BUT WE DO NEED TO QUESTION SERIOUSLY THE EFFICACY OF PARTICULAR CONTROLS, TO LOOK CAREFULLY AT THEM TO SEE WHETHER THEY ARE INDEED FULFILLING THEIR OBJECTIVE -- IN SOME CASES WHETHER THE OBJECTIVE IS BETTER ADDRESSED BY OTHER POLICY TOOLS. THE CRITERIA SHOULD BE THE IMPACT THESE CONTROLS HAVE ON EVENTS IN THE COUNTRY. THE RECORD SHOWS THAT CONTROLS HAVE ENCOURAGED GREATER SELF-SUFFICIENCY, AND THAT THEY HAVE NOT IN THEMSELVES BEEN SUFFICIENT TO ENCOURAGE A PROCESS OF CHANGE.

THE POINT OF OUR POLICY IS NOT MERELY TO CRITICIZE OR SEEM TO CRITICIZE PRACTICES OF A GOVERNMENT. IF OUR VIEWS ARE TO HAVE EFFECT, OUR OBJECTIVE MUST BE TO DEVISE AND IMPLEMENT AN EFFECTIVE AND CONSTRUCTIVE MEANS POLICY BY WHICH THE UNITED STATES CAN ENCOURAGE GENUINE CHANGE IN SOUTH AFRICA.

AS DESCRIBED EARLIER, THE OBJECTIVE OF CONSTRUCTIVE ENGAGEMENT IS TO CREATE A CLIMATE OF CONFIDENCE IN WHICH PERSONS CAN BE ENCOURAGED TO MAKE DIFFICULT CHANGES, ON NAMIBIA AND ON DOMESTIC CHANGE. IN SPECIFIC REFERENCE TO EXPORT CONTROLS, WE NEED TO MAINTAIN THOSE CONTROLS WHICH SERVE AS AN INSTRUMENT FOR SYMBOLICALLY AND SUBSTANTIVELY DISASSOCIATING OURSELVES FROM THE APARTHEID REGIME IN SOUTH AFRICA. AT THE SAME TIME, WE DO NOT BELIEVE THAT A REGIME OF CONTROLS OR COERCIVE LEVERAGE BY ITSELF IS A SUFFICIENT MEANS TO ENCOURAGE THE PROCESS OF CHANGE IN SOUTH AFRICA. IN THAT REGARD, WE OPPOSE PROPOSALS FOR TOTAL EMBARGOES TO SOUTH AFRICA.

THE U.S. HAS IDENTIFIED THREE AREAS WHERE SIGNIFICANT CHANGE IS UNDERWAY IN SOUTH AFRICA AND WHICH CAN LEAD TO MEANINGFUL REFORM AWAY FROM APARTHEID: ECONOMIC GROWTH, EDUCATION, AND TRADE UNION DEVELOPMENT. IN ORDER TO HELP INSURE THAT THE CHANGE WHICH IS BEGINNING TO TAKE PLACE MOVES IN A PEACEFUL DIRECTION AWAY FROM APARTHEID, THE ADMINISTRATION HAS MOVED TO SUPPORT PEOPLE AND PROGRAMS BOTH INSIDE AND OUTSIDE THE GOVERNMENT IN SOUTH AFRICA SEEKING TO DEVELOP A NEW NON-RACIAL SYSTEM. AS THIS HEARING FOCUSSES ON TRADE CONTROLS AS AN INSTRUMENT OF FOREIGN POLICY, LET ME ADDRESS THE RELATIONSHIP BETWEEN ECONOMIC GROWTH AND MOVEMENT AWAY FROM APARTHEID AS IT AFFECTS OUR POLICY AND THE ACTIVITIES OF THE U.S. PRIVATE SECTOR.

THE SOUTH AFRICAN GOVERNMENT AND ITS BUSINESS COMMUNITY EVEN MORE SO RECOGNIZES THAT IT IS NOT POSSIBLE TO SEGREGATE SOUTH AFRICA ECONOMICALLY INTO SEPARATE ECONOMIES. THE GROWTH OF THE ECONOMY HAS RESULTED IN A GROWING DEMAND FOR SKILLED MANPOWER. WHILE SOUTH AFRICA'S ECONOMIC GROWTH WAS HISTORICALLY BASED ON THE EXPLOITATION OF UNSKILLED BLACK LABOR, THE DEVELOPMENT OF A MODERN DIVERSIFIED ECONOMIC SYSTEM REQUIREST THAT BLACKS BE INCLUDED ON AN EQUAL WAGE BASE WITH WHITES. ECONOMIC GROWTH, THEREFORE, RENDERS INNEFECTIVE THE APARTHEID POLITICAL SYSTEM. THE U.S. HAS TRADITIONALLY SUPPORTED AMERICAN PRIVATE SECTOR TRADE AND INVESTMENT IN SOUTH AFRICA. WHILE NOT PROMOTING U.S.TRADE AND INVESTMENT IN SOUTH AFRICA, WE OPPOSED DISINVESTMENT BY U.S. FIRMS FROM SOUTH AFRICA AND HAVE SUPPORTED THE SULLIVAN PRINCIPLES, A VOLUNTARY CODE OF FAIR EMPLOYMENT PRACTICES.

THE REAGAN ADMINISTRATION BELIEVES THAT U.S. FIRMS CAN HELP TO FOSTER MEANINGFUL CHANGE AWAY FROM APARTHEID. U.S. ECONOMIC INTERESTS IN SOUTH AFRICA ARE SUBSTANTIAL. TWO-WAY TRADE TOTALED OVER $5.3 BILLION IN 1981, WITH THE U.S. HOLDING ITS POSITION AS SOUTH AFRICA'S LEADING TRADING PARTNER. U.S. DIRECT INVESTMENT IN SOUTH AFRICA NOW STANDS AT OVER $2.5 BILLION. OVER 200 U.S. FIRMS, AFFILIATES AND SUBSIDIARIES DO BUSINESS IN SOUTH AFRICA. WHILE THE U.S. CONTINUES TO FULLY ADHERE TO THE ARMS EMBARGO, THE VAST MAJORITY OF U.S. EXPORTS TO SOUTH AFRICA ARE UNAFFECTED BY ANY SPECIAL EXPORT CONTROLS.

I HAVE PREPARED FOR THE COMMITTEE A DETAILED DESCRIPTION OF THE LEGISLATIVE AND ADMINISTRATIVE MECHANISMS OF CONTROLS WHICH ARE CURRENTLY BEING ADMINISTERED. IN THE DETAILED DESCRIPTION, IT WILL BE EVIDENT THAT THE EXISTING CONTROLS ARE SUBSTANTIAL. THE ARMS EMBARGO REMAINS FULLY IN FORCE, AND REMAINS AN IMPORTANT SYMBOL OF DISASSOCIATION FROM APARTHEID. WHERE

CHANGES HAVE BEEN MADE IN OTHER CONTROLS, SUCH AS THOSE MADE EARLIER THIS YEAR AND DISCUSSED WITH THIS COMMITTEE, THEY WERE MADE BECAUSE THEY WERE FOUND TO BE COUNTERPRODUCTIVE AND TO BE HAVING NO EFFECT IN ENCOURAGING THE PROCESS OF CHANGE.

CURRENT RESTRICTIONS ON EXPORTS TO SOUTH AFRICA

LET ME, THEN, REVIEW FOR THE COMMITTEES WHAT SPECIFIC CONTROLS DO AFFECT U.S. EXPORTS TO SOUTH AFRICA.

U.S. EXPORT RESTRICTIONS OF IMPORTANCE TO OUR POLICY TOWARD SOUTH AFRICA FALL VERY GENERALLY UNDER THREE SEPARATE REGULATORY REGIMES: THAT ADMINISTERED BY THE STATE DEPARTMENT UNDER THE ARMS EXPORT CONTROL ACT (AECA) AND THE INTERNATIONAL TRAFFIC IN ARMS REGULATION (ITAR); THAT ADMINISTERED BY THE COMMERCE DEPARTMENT PURSUANT TO THE EXPORT ADMINISTRATION ACT OF 1979 (EAA), THE NUCLEAR NON-PROLIFERATION ACT OF 1978 (NNPA) AND THE EXPORT ADMINISTRATION REGULATIONS; AND THAT ADMINISTERED BY THE NUCLEAR REGULATORY COMMISSION (NRC) AND THE DEPARTMENT OF ENERGY (DOE) UNDER THE NUCLEAR NON-PROLIFERATION ACT AND REGULATIONS PROMULGATED THEREUNDER. NUCLEAR NON-PROLIFERATION-RELATED CONTROLS ARE DISCUSSED IN DETAIL IN THE TESTIMONY OF THE OTHER AGENCIES. I WILL CONCENTRATE HERE ON CONTROLS PROMULGATED UNDER THE AUTHORITY OF THE ARMS EXPORT CONTROL ACT AND THE EXPORT ADMINISTRATION ACT.

ARMS EMBARGO

THE U.S. HAS SINCE 1962 ENFORCED AN EMBARGO ON THE SALE OF MILITARY EQUIPMENT TO SOUTH AFRICA. FROM 1963 TO 1977, THE U.S. OBSERVED A VOLUNTARY ARMS EMBARGO PURSUANT TO SCR 181 AND SCR 182 (1963). IN 1977, THE UNITED NATIONS SECURITY COUNCIL, WITH U.S. SUPPORT, ESTABLISHED A MANDATORY EMBARGO ON THE EXPORT OF ARMS AND RELATED MATERIAL TO SOUTH AFRICA.

SCR 418 (1977) PROVIDES IN PERTINENT PART THAT THE SECURITY COUNCIL "DECIDES THAT ALL STATES SHALL CEASE FORTHWITH ANY PROVISION TO SOUTH AFRICA OF ARMS AND RELATED MATERIAL OF ALL TYPES, INCLUDING THE SALE OR TRANSFER OF WEAPONS AND AMMUNITION, MILITARY VEHICLES AND EQUIPMENT, PARA-MILITARY POLICE EQUIPMENT, AND SPARE PARTS FOR THE AFOREMENTIONED, AND SHALL CEASE AS WELL THE PROVISION OF ALL TYPES OF EQUIPMENT AND SUPPLIES AND GRANTS OF LICENSING ARRANGEMENTS FOR THE MANUFACTURE AND MAINTENANCE OF THE AFOREMENTIONED....."

THE USG HAS IMPLEMENTED THE ARMS EMBARGO PRIMARILY THROUGH CONTROL OF ITEMS ON THE UNITED STATES MUNITIONS LIST. UNDER THE PROVISIONS OF THE ARMS EXPORT CONTROL ACT OF 1976 AND THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) PROMULGATED PURSUANT TO THE ACT, NO ITEM ON THE MUNITIONS LIST MAY BE EXPORTED WITHOUT A LICENSE ISSUED BY THE DEPARTMENT OF STATE. THE ITAR ALSO REQUIRE SUCH A LICENSE FOR THE EXPORT OF TECHNICAL DATA USEFUL IN THE PRODUCTION OF MUNITIONS LIST ITEMS, AND STATE DEPARTMENT APPROVAL FOR MANUFACTURING LICENSE AGREEMENTS AND TECHNICAL ASSISTANCE AGREEMENTS RELATING TO ITEMS ON THE MUNITIONS LIST. APPLICATIONS FOR LICENSES OR OTHER APPROVALS FOR EXPORTS TO SOUTH AFRICA, WITH VERY RARE EXCEPTIONS FOR ITEMS FOR NON-MILITARY USE ARE DENIED.

IN ADDITION, SECTION 385.4(A)(1) OF THE EXPORT ADMINISTRATION REGULATION PROVIDES THAT:

> "AN EMBARGO IS IN EFFECT ON THE EXPORT OR RE-EXPORT TO THE REPUBLIC OF SOUTH AFRICA AND

NAMIBIA OF ARMS, MUNITIONS, MILITARY EQUIPMENT AND MATERIALS AND MATERIALS AND MACHINERY FOR USE IN MANUFACTURE AND MAINTENANCE OF SUCH EQUIPMENT. COMMODITIES TO WHICH THIS EMBARGO APPLIES ARE LISTED IN SUPPLEMENT NO. 2 TO PART 379." 15 C.F.R. SECTION 385.4 (A)(1).

THE COMMODITIES LISTED IN THAT SUPPLEMENT ARE ITEMS ON THE COMMODITY CONTROL LIST (AND SO NOT ON THE MUNITIONS LIST) THAT ARE MILITARY-RELATED OR CAPABLE OF MILITARY USE. THEY INCLUDE MACHINERY FOR THE MANUFACTURE OF ARMS AND MILITARY EQUIPMENT, MILITARY CONSTRUCTION EQUIPMENT DESIGNED FOR AIRBORNE TRANSPORT, CERTAIN VEHICLES DESIGNED FOR MILITARY PURPOSES, AMMUNITION COMPONENTS, NONMILITARY SHOTGUNS AND SHOTGUN SHELLS.

THESE CONTROLS DESIGNED TO IMPLEMENT THE UN ARMS EMBARGO WERE NOT ALTERED BY THE 1982 REVISION OF THE TRADE CONTROLS.

THE SUBCOMMITTEES HAVE ASKED FOR THE DEPARTMENT'S VIEWS REGARDING ENFORCEMENT OF THE DEPARTMENT'S EXPORT CONTROL REGULATIONS AND THE ARMS EMBARGO AGAINST SOUTH AFRICA. YOU REQUESTED OUR REACTION TO A STAFF STUDY OF THE SUBCOMMITTEE THAT WAS PUBLISHED AS AN APPENDIX TO THE HEARING ON "ENFORCEMENT OF THE UNITED STATES ARMS EMBARGO AGAINST SOUTH AFRICA," AND INQUIRED ABOUT ACTIONS TAKEN SUBSEQUENTLY TO STRENGTHEN THE ENFORCEMENT OF EXPORT CONTROLS AND EMBARGOES.

THE DEPARTMENT ATTACHES GREAT IMPORTANCE TO ITS STATUTORY FUNCTIONS AND RESPONSIBILITIES UNDER THE ARMS EXPORT CONTROL ACT. AS YOU KNOW, UNDER THE SUPERVISION OF THE DIRECTOR, BUREAU OF POLITICO-MILITARY AFFAIRS, THE DIRECTOR OF THE OFFICE OF MUNITIONS CONTROL (OMC) IS RESPONSIBLE FOR CARRYING OUT THE FUNCTIONS ASSIGNED TO THE DEPARTMENT BY LAW TO CONTROL THE COMMERCIAL EXPORT OF DEFENSE ARTICLES AND SERVICES. IN DISCHARGING THESE FUNCTIONS, OMC IS DIRECTLY CONCERNED WITH ENFORCING EXPORT CONTROL REGULATIONS. IT IS STANDARD PROCEDURE TO REFER TO REPORTS OF VIOLATIONS, WHICH OMC OBTAINS FROM A VARIETY OF SOURCES INCLUDING THE INTELLIGENCE COMMUNITY, TO THE U.S. CUSTOMS SERVICE FOR INVESTIGATION. OMC PROVIDES APPROPRIATE SUPPORT TO CUSTOMS AND OTHER LAW ENFORCEMENT AGENCIES IN THE INVESTIGATION AND PROSECUTION OF ALLEGED VIOLATIONS. THIS SUPPORT TAKES THE FORM OF RECORD SEARCHES AND CERTIFICATIONS, RESEARCHING MATERIAL RELATED TO ALLEGED VIOLATIONS, AND TESTIFYING BEFORE GRAND JURIES AND COURTS.

IN DIRECT RESPONSE TO YOUR INQUIRY, I WOULD LIKE TO APPRISE YOU SPECIFICALLY OF THE DEPARTMENT'S RECENT EFFORTS TO IMPROVE AND STRENGTHEN EXPORT CONTROL ENFORCEMENT. INTERAGENCY CONSULTATION AND COORDINATION THROUGH ESTABLISHED CHANNELS HAVE BEEN INCREASED ON A WIDE RANGE OF ENFORCEMENT-RELATED MATTERS. OUR FOREIGN SERVICE POSTS, HAVING BEEN REMINDED OF THE IMPORTANCE OF OMC'S ENFORCEMENT FUNCTION, HAVE BEEN PROMPT IN REPORTING ALLEGED OR POSSIBLE VIOLATIONS. OMC HAS ALSO INITIATED MORE FREQUENT END-USE

CHECKS THROUGH OUR POSTS IN ORDER TO VERIFY PROPOSED EXPORTS. DURING THE SUMMER, OMC CONDUCTED A REVIEW OF THE LICENSING HISTORY OF CERTAIN WEAPONS-RELATED ITEMS TO SELECTED COUNTRIES TO ASCERTAIN THE LIKELIHOOD OF DIVERSION TO OTHER THAN THE AUTHORIZED END-USERS.

IN THIS CONNECTION, YOU SHOULD KNOW THAT THE DEPARTMENT IS DEEPLY INVOLVED IN OPERATION EXODUS, A U.S. CUSTOMS SERVICE ENFORCEMENT PROGRAM DESIGNED TO STOP THE ILLEGAL EXPORT OF DEFENSE ARTICLES AND DUAL-USE TECHNOLOGY. TO THIS END, OMC ACQUIRED A CUSTOMS OFFICER ON DETAIL, WHICH HAS MARKEDLY INCREASED ITS CAPABILITY TO SUPPORT OPERATION EXODUS AND A WIDE RANGE OF RELATED ENFORCEMENT EFFORTS, AND HAS ENHANCED THE ALREADY CLOSE COLLABORATION BETWEEN THE DEPARTMENT AND THE CUSTOMS SERVICE. TO DATE THERE HAVE BEEN 765 SEIZURES OF ALL KINDS UNDER OPERATION EXODUS, INCLUDING 10 SHIPMENTS DESTINED FOR SOUTH AFRICA.

WE HAVE NOTED THE RECOMMENDATIONS OF THE STAFF STUDY REGARDING THE ORGANIZATION AND MISSION OF THE DEPARTMENT'S ENFORCEMENT FUNCTION. IN THIS REGARD, WE BELIEVE THAT THE REINFORCED ORGANIZATIONAL ARRANGEMENTS AND INCREASED LEVEL OF EFFORT WITHIN THE DEPARTMENT, THE MORE ACTIVE PARTICIPATION OF FOREIGN SERVICE POSTS IN ENFORCEMENT, AND ENHANCED INTERAGENCY COLLABORATION ARE ADEQUATE TO CARRY OUT OUR STATUTORY EXPORT CONTROL RESPONSIBILITIES, INCLUDING ENFORCEMENT OF THE ARMS EMBARGO AGAINST SOUTH AFRICA.

RESTRICTIONS ON EXPORTS TO THE MILITARY AND POLICE

IN 1978 THE U.S. UNILATERALLY WENT BEYOND THE REQUIREMENT OF THE 1977 UN ARMS EMBARGO AND IMPOSED A TOTAL BAN ON ALL EXPORTS OF GOODS AND TECHNICAL DATA TO THE SOUTH AFRICAN POLICE AND MILITARY. IN 1979 ONE EXCEPTION WAS ESTABLISHED FOR THE EXPORT OF MEDICINES, MEDICAL SUPPLIES AND MEDICAL EQUIPMENT, AND RELATED TECHNICAL DATA, AND PARTS AND COMPONENTS NOT PRIMARILY DESTINED FOR THE SOUTH AFRICAN POLICE AND MILITARY. IN 1981 TWO EXCEPTIONS WERE ESTABLISHED TO PERMIT MEDICAL EXPORTS TO THE POLICE AND MILITARY AND TO PERMIT THE EXPORT OF COMMODITIES, DATA, PARTS AND COMPONENTS "TO BE USED IN EFFORTS TO PREVENT ACTS OF UNLAWFUL INTERFERENCE WITH INTERNATIONAL CIVIL AVIATION (I.E., AIRPORT X-RAY SCANNING EQUIPMENT.)

ON MARCH 1, 1982, FURTHER MODIFICATIONS WERE INTRODUCED THAT HAVE THE EFFECTS OF: RETAINING THE BAN ON EXPORTS TO THE POLICE AND MILITARY AS TO THOSE GOODS AND TECHNICAL DATA CONTROLLED FOR NATIONAL SECURITY PURPOSES; PERMITTING THE EXPORT OF FIVE CATEGORIES OF GOODS AND DATA TO THE MILITARY AND POLICE UNDER A GENERAL LICENSE; PERMITTING THE EXPORT OF ALL OTHER GOODS AND DATA UNDER A VALIDATED LICENSE SUBJECT TO A DETERMINATION THAT THE EXPORT WOULD NOT "CONTRIBUTE SIGNIFICANTLY TO MILITARY OR POLICE FUNCTIONS," AND ESTABLISHING TWO DE MINIMIS PROVISIONS: ONE ALLOWING THE EXPORT OF U.S. COMPONENTS THAT WILL CONSTITUTE UP TO 20 PERCENT BY

VALUE OF GOODS ASSEMBLED OVERSEAS AND SOLD TO THE SOUTH AFRICAN MILITARY OR POLICE, AND THE OTHER PERMITTING REEXPORT OR RESALE TO THE MILITARY OR POLICE OF INSUBSTANTIAL PORTIONS OF ITEMS ORIGINALLY SOLD TO PURCHASERS OTHER THAN THE MILITARY AND POLICE IF THE ITEM WOULD NOT CONTRIBUTE SIGNIFICANTLY TO MILITARY AND POLICE FUNCTIONS.

ON SEPTEMBER 15, 1982, THE REGULATIONS WERE FURTHER MODIFIED TO ALLOW COMPANIES WHICH HAVE SOLD EQUIPMENT TO THE POLICE AND MILITARY UNDER APPROVED LICENSE TO SUPPLY SERVICE MANUALS WITHOUT SUBMITTING A SEPARATE LICENSE APPLICATION, TO PLACE AIR AMBULANCES UNDER THE EXCEPTION FOR MEDICAL EQUIPMENT, AND TO ALLOW THE EXPORT WITHOUT LICENSE OF ITEMS FALLING UNDER THE "BASKET ENTRIES" OF THE CCL, NAMELY MISCELLANEOUS ELECTRONIC PRODUCTS AND OTHER PRODUCTS NOT ELSEWHERE SPECIFIED. IN ADDITION, SUBSIDIARIES OF THE SOUTH AFRICAN PARA-STATAL ARMS MANUFACTURING ORGANIZATION, ARMSCOR, WERE SPECIFICALLY DEFINED AS MILITARY ENTITIES.

CRIME CONTROL EQUIPMENT

SECTION 385.4 (A)(5) OF THE EXPORT ADMINISTRATION REGULATIONS REQUIRES A VALIDATED LICENSE FOR THE EXPORT TO ANY END-USER IN SOUTH AFRICA OR NAMIBIA OF "ANY INSTRUMENT AND EQUIPMENT PARTICULARLY USEFUL IN CRIME CONTROL AND DETECTION....." THE COMMODITIES CONTROLLED UNDER THIS SECTION ARE LISTED IN EAR SECTION 376.14. THIS RESTRICTION IS NOT UNIQUE TO SOUTH

AFRICA; PURSUANT TO SECTION 6(J) OF THE EXPORT ADMINISTRATION ACT, A VALIDATED LICENSE IS REQUIRED FOR THE EXPORT OF SUCH EQUIPMENT TO ANY COUNTRY EXCEPT NATO MEMBERS, JAPAN, AUSTRALIA AND NEW ZEALAND. EAR SECTION 376.14 PROVIDES THAT APPLICATIONS FOR VALIDATED LICENSES WILL GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS "UNLESS THERE IS EVIDENCE THAT THE GOVERNMENT OF THE IMPORTING COUNTRY MAY HAVE VIOLATED INTERNATIONALLY RECOGNIZED HUMAN RIGHTS AND THAT THE JUDICIOUS USE OF EXPORT CONTROL WOULD BE HELPFUL IN DETERRING THE DEVELOPMENT OF A CONSISTENT PATTERN OF SUCH VIOLATIONS OR IN DISTANCING THE UNITED STATES FROM SUCH VIOLATIONS."

THE DEPARTMENT DOES NOT VIEW FAVORABLY THE PROPOSAL TO TRANSFER ALL CRIME CONTROL EQUIPMENT TO THE U.S. MUNITIONS LIST. THE MUNITIONS LIST, WHICH DERIVES ITS AUTHORITY FROM THE ARMS EXPORT CONTROL ACT, COVERS ARMS, AMMUNITION, AND IMPLEMENTS OF WAR. CRIME CONTROL EQUIPMENT, SUCH AS HANDCUFFS OR LIE DETECTORS, DO NOT LOGICALLY FALL INTO THESE CATEGORIES.

IN ADDITION, PURSUANT TO SECTION 107 OF THE INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1981, THE MUNITIONS LIST IS SUBJECT TO PERIODIC REVIEW TO DETERMINE WHETHER ANY ITEMS SHOULD BE REMOVED FROM IT AND PERHAPS TRANSFERRED TO THE COMMERCE COMMODITY CONTROL LIST. STATE'S OFFICE OF MUNITIONS CONTROL, IN CONSULTATION WITH THE DEPARTMENT OF DEFENSE, THUS ENDEAVORS TO LIMIT THE MUNITIONS LIST TO DEFENSE ARTICLES AND DEFENSE SERVICES. TO ADD ITEMS WHICH ARE ARGUABLY NOT DEFENSE ARTICLES WOULD NOT BE CONSISTENT WITH THIS EFFORT.

THE OTHER TWO TYPES OF EXPORT CONTROLS, NON-PROLIFERATION AND SHORT SUPPLY, ALSO AFFECT TRADE WITH SOUTH AFRICA. SHORT SUPPLY CONTROLS RESTRICT THE EXPORT OF COMMODITIES OF WHICH THERE IS A CRITICAL SHORTAGE IN THE UNITED STATES. THE NUCLEAR NON-PROLIFERATION CONTROLS EFFECTIVELY SUPLEMENT THOSE ADMINISTERED BY THE NRC AND DOE.

IN PROCESSING APPLICATIONS FOR VALIDATED LICENSES, THE COMMERCE DEPARTMENT MUST CONSULT "TO THE EXTENT NECESSARY" WITH OTHER INTERESTED AGENCIES. THE SECRETARY OF STATE HAS THE RIGHT TO REVIEW ANY APPLICATION FOR EXPORT OF COMMODITIES CONTROLLED FOR FOREIGN POLICY PURPOSES.

AIRCRAFT

SECTION 385.4(A)(8) OF THE EAR STATES THAT A VALIDATED LICENSE IS REQUIRED FOR THE EXPORT TO ANY SOUTH AFRICAN CONSIGNEE OF AIRCRAFT AND HELICOPTERS. APPLICATIONS FOR EXPORTS FOR CIVIL USE ARE GENERALLY CONSIDERD FAVORABLY ON A CASE-BY-CASE BASIS, SUBJECT TO A LICENSE CONDITION THAT THE AIRCRAFT WILL NOT BE PUT TO MILITARY, PARA-MILITARY, OR POLICE USE. THIS PROVISION THUS ASSISTS IN ENFORCING THE ARMS EMBARGO IN THE CLASSIC "GREY AREA" OF NON-MILITARY AIRCRAFT AND ADDRESSES THE PROBLEM OF SOUTH AFRICA'S PARA-MILITARY AIR KOMMANDOS.

COMPUTERS

SECTION 385.4(A)(9) OF THE EAR REQUIRES A VALIDATED LICENSE FOR THE EXPORT OF COMPUTERS AS DEFINED IN CCL ENTRY 1565A TO THE

MINISTRY OF COOPERATION AND DEVELOPMENT, THE DEPARTMENT OF THE INTERIOR, THE DEPARTMENT OF COMMUNITY DEVELOPMENT, THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF MANPOWER, AND ADMINISTRATIVE BODIES OF THE "HOMELANDS" THAT CARRY OUT SIMILAR FUNCTIONS. APPLICATIONS FOR VALIDATED LICENSES WILL GENERALLY BE CONSIDERED FAVORABLY ON A CASE-BY-CASE BASIS FOR THE EXPORT OF COMPUTERS THAT WOULD NOT BE USED TO ENFORCE THE SOUTH AFRICAN POLICY OF APARTHEID.

Mr. WOLPE. Thank you very much.
Now, Mr. Marshall, would you like to proceed?

STATEMENT OF HARRY R. MARSHALL, JR., PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF OCEANS AND INTERNATONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. MARSHALL. Chairman Wolpe and members of the subcommittees, I would like to initially point out that the Cyber 170/750 export did not come up during the Carter administration at all. It was first presented for export early in the Reagan administration and was only more recently approved.

Also, we have not had export action completed on helium 3. These items I can discuss in greater detail during the questions and answers.

What I would like to emphasize, however, is our current nuclear export policy regarding South Africa. As you are aware, this administration announced a strong nuclear nonproliferation policy in 1981, one that is supported by a foundation of effective export controls.

As part of the policy, we are committed to continuing efforts to persuade South Africa and other nations which have not ratified the Nonproliferation Treaty to do so and to accept International Atomic Energy Agency safeguards on all their nuclear activities (full scope safeguards). We have told the South African Government on several occasions that this is our position for the basis on which supply of uranium fuel could take place.

I want to make clear that, until South Africa accepts full scope safeguards and takes other steps to meet the requirements of U.S. law, no export from the United States will be made of uranium fuel or any nuclear equipment licensed by the Nuclear Regulatory Commission (NRC) pursuant to the Atomic Energy Act. I find this position contrary to what has been said already this morning; to be a rather significant policy of denial.

It is, however, this administration's view that approval of a few carefully selected exports of nonsensitive, nuclear related commodities, for use in safeguarded South African nuclear facilities for purposes related to health and safety, or of nonsensitive dual-use items, can make a contribution to U.S. nonproliferation efforts.

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We believe that these few export approvals for the South African nuclear program can assist the United States in maintaining a dialog with South Africa regarding nonproliferation issues and objectives. Our ability to influence other nations to act in accordance with our nonproliferation objectives requires that we continue to talk to them and that they listen with some receptivity to what we say.

We believe that a willingness to consider favorably a small, carefully selected number of nonsensitive exports to South Africa for its nuclear program can help to persuade South Africa to be more forthcoming on nonproliferation issues.

I should emphasize that no equipment will be exported unless it is to be used in a safeguarded facility in South Africa.

With respect to the role of the Department of State in the export review process, we are responsible, under the Atomic Energy Act, for the preparation, coordination, and transmittal to the NRC of executive branch views on applications for NRC export licenses.

Also, under the Atomic Energy Act, the concurrence of the Department of State is required for approval of so-called subsequent arrangements authorized by the Department of Energy (DOE). This term of art applies to transactions such as retransfers of U.S.-origin spent nuclear fuel for reprocessing or the conclusion of a DOE-enrichment contract with a foreign entity.

Department of State concurrence is also needed for nuclear technology transfers approved by the Secretary of Energy pursuant to section 57b of the Atomic Energy Act (part 810 of title 10, Code of Federal Regulations) and for approvals of Department of Commerce licenses for export of commodities, including nuclear-related and dual-use items, which require interagency review.

The substance of this export approval activity is the work of the Subgroup on Nuclear Export Coordination, known as the SNEC. The operations of the SNEC were described in testimony before Congressmen Zablocki and Bingham's subcommittees by the current SNEC Chairman, Carlton Stoiber, Director of the Office of Nuclear Export Control in the OES Bureau.

My testimony, submitted for the record, contains a detailed description of the SNEC. Let me summarize quickly by noting that the SNEC is a smoothly operating institution composed of representatives from the relevant executive branch agencies and the NRC. It operates essentially on a consensus basis and under established procedures which permit resolution of disputes at higher levels. It meets regularly (about every 3 weeks) and considers anywhere from 200 to 300 cases a year.

I would like now to turn to the subcommittees' question about the acquisition by South Africa of fuel to start up the Koeberg nuclear power station.

ESCOM (Electricity Supply Commission of South Africa), the South African utility which is to operate the two French-built reactors sited near Cape Town, concluded contracts with the predecessor to DOE on August 16, 1974, for the enrichment of South African uranium at U.S. facilities. ESCOM thus became obligated to deliver natural uranium, and DOE was obligated to enrich it to approximately 3 percent for delivery to ESCOM at the DOE enrichment facility.

ESCOM was obligated to obtain the necessary export licenses for shipment from the United States. However, as is well known, because of unsafeguarded nuclear activities in South Africa, export criteria in U.S. law are not now met by South Africa to permit the NRC to issue export licenses for nuclear fuel.

Numerous meetings on this issue have taken place between the two governments; however, the U.S. position has remained firm: the executive branch would not recommend NRC issuance of any export license until all South African nuclear activities were subjected to IAEA safeguards and South Africa adhered to the Non-Proliferation Treaty.

The French firm, FRAMATOME, built the reactors at Koeberg. In addition, ESCOM concluded a contract in the midseventies with a French Government-controlled company for the fabrication of low-enriched uranium into fuel elements for the reactors. The United States has been aware of this contract and has held discussions with French Government officials about our position on supply of nuclear fuel to South Africa.

The Govenment of France told us that it would not at this time enter into any new supply obligations with South Africa. Their contract for fabrication was a preexisting obligation.

In 1981, ESCOM acquired, in a private transaction, previously enriched uranium located in Europe. ESCOM then delivered this material to the French fabrication facility for production of fuel elements for the initial core of one of the two reactors.

The Department of State and other concerned U.S. agencies have carefully examined the activities of Edlow International, Inc., a Washington-based firm, in connection with the acquisition of this low-enriched uranium. We concluded that there was no violation of U.S. law or regulations. I will be happy to talk more about this later.

The subcommittees have asked for our views on H.R. 7220, which would prohibit the export or transfer to South Africa of nuclear material, equipment, and technology.

It is clear, while we deplore apartheid and we strongly oppose the further proliferation of nuclear weapons, the administration feels strongly we will have to oppose this bill for the very reason that its enactment would significantly undermine important U.S. nonproliferation objectives.

I should express our broader concern about the impression that passage of such legislation gives other countries. We have had troubles abroad with countries who perceived previous legislation as being unilateral, and our position is that enactment of this bill would send the same signal again. This would destroy the consensus we are attempting to create and improve upon with the foreign suppliers.

Mr. Chairman, that concludes my abbreviated presentation. I will be happy to elaborate on the points I have touched on, as well as the ones I have skipped over, later on.

Thank you.

[Mr. Marshall's prepared statement follows:]

PREPARED STATEMENT OF HARRY R. MARSHALL, JR., PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. Bingham and Mr. Wolpe and Members of the Subcommittees:

I appreciate the opportunity to discuss with your Subcommittees the nuclear policy aspects of this country's relations with South Africa. Mr. Lyman has presented an overview of United States policy toward that country and has reviewed several non-nuclear matters on which you requested the Department's views. Because of the division of responsibilities within the State Department for the handling of these matters, we felt the interests of the Subcommittees would be best served by dividing our presentation into two parts, with representatives of the two relevant Bureaus present to address the particular aspects of our South African relations for which they bear primary responsibility.

Let me begin by describing for you current U.S. nuclear export policy regarding South Africa and the role of the Department of State in the review and approval of nuclear exports. As you are aware, this Administration announced a strong nuclear non-proliferation policy, in 1981 - one that is supported by a foundation of effective export controls. As part of the policy we are committed to continuing efforts to persuade South Africa and other nations which have not ratified the Non-Proliferation Treaty to do so and to accept International Atomic Energy Agency safeguards on all their nuclear activities (full-scope safeguards). We have told the South African Government on several occasions that this is our position for the basis on which supply of uranium fuel could take place.

I want to make clear that, until South Africa accepts full-scope safeguards and takes other steps to meet the requirements of

U.S. law, no export from the United States will be made of uranium fuel or any nuclear equipment licensed by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act.

It is, however this Administration's view that approval of a few carefully selected exports of non-sensitive, nuclear-related commodities, for use in safeguarded South African nuclear facilities for purposes related to health and safety, or non-sensitive dual use items, can make a contribution to U.S. non-proliferation efforts.

Approval of such a narrow range of non-sensitive exports is subject to careful case-by-case interagency review. Further, approvals of dual-use commodities have been conditioned upon the receipt of written South African Government assurances of no nuclear explosive use and no retransfer for another use without prior consent of the U.S. Government. One example of such exports is a hydrogen recombiner for the safeguarded nuclear power plant which was approved because it could be used only at the Koeberg plant to meet health and safety objectives identified in the Three Mile Island reactor accident investigation.

We believe that these few export approvals for the South African nuclear program can assist the United States in maintaining a dialogue with South Africa regarding non-proliferation issues and objectives. Our ability to influence other nations to act in accordance with our non-proliferation objectives requires that we continue to talk to them and that they listen with some receptivity to what we say. We believe that a willingness to consider favorably a small, carefully selected number of non-sensitive exports to South

Africa for its nuclear program can help to persuade South Africa to be more forthcoming on non-proliferation issues.

With respect to the role of the Department of State in the export review process, we are responsible, under the Atomic Energy Act, for the preparation, coordination and transmittal to the NRC of Executive Branch views on applications for NRC export licenses. Also under the Atomic Energy Act, the concurrence of the Department of State is required for approval of so-called subsequent arrangements authorized by the Department of Energy. This term of art applies to transactions such as retransfers of U.S.-origin spent nuclear fuel for reprocessing or the conclusion of a DOE enrichment contract with a foreign entity. Department of State concurrence is also needed for nuclear technology transfers approved by the Secretary of Energy pursuant to section 57b. of the Atomic Energy Act (Part 810 of Title 10 Code of Federal Regulations) and for approvals of Department of Commerce licenses for export of commodities, including nuclear-related and dual-use items, which require interagency review.

The substance of this export approval activity is the work of the Subgroup on Nuclear Export Coordination - known as the SNEC. The operations of the SNEC were described in testimony before Congressmen Zablocki and Bingham's Subcommittees by the current SNEC Chairman, Carlton Stoiber, Director of the Office of Nuclear Export Control in the OES Bureau.

My testimony submitted for the record contains a detailed description of the SNEC. Let me summarize quickly by noting that the SNC is a smoothly operating institution composed of respresentatives

from the relevant Executive Branch agencies and the NRC. It operates essentially on a consensus basis and under established procedures which permit resolution of disputes at higher levels. It meets regularly (about every three weeks) and considers anywhere from 200 to 300 cases a year.

The SNEC was established in the summer of 1977 as a Subgroup to the National Security Council (NSC) Ad Hoc Group on Non-Proliferation to meet the need for a "working level" (i.e. Office Director) forum within the Administration where controversial or sensitive nuclear export matters and issues could be reviewed and discussed.

Participants in the SNEC are: 1) the Department of State which chairs; 2) the Department of Energy (DOE); 3) the Department of Commerce (DOC); 4) the Department of Defense (DOD); 5) the Arms Control and Disarmament Agency (ACDA); and 6) the Nuclear Regulatory Commission (NRC). Information from the U.S. Intelligence Community has always been available to the SNEC, and recently representatives of intelligence agencies have become regular participants in SNEC meetings. If circumstances warrant, other agencies are invited to participate. There are no restrictions on the number of participants from each agency, within reason, provided all have appropriate security clearances. There is no quorum, although the SNEC normally operates on a consensus basis with the concurrence of all participating agencies needed for export approvals.

The Nuclear Non-Proliferation Act of 1978 which amended the Atomic Energy Act of 1954, provided in sections 126a(1) and 57b a

statutory basis for an interagency coordinating body to monitor nuclear exports licensed by the NRC or authorized by the Department of Energy. The role of SNEC as a body to resolve interagency differences on nuclear exports was set forth under Section 5 of the Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978.

The SNEC acts on an advisory basis only and its recommendations are not formally binding upon any agency. Subgroup agendas, minutes and discussions during meetings are classified and are exempt from release under Section (b)(5) of the Freedom of Information Act for the protection of predecisional interagency views which are an integral and necessary part of the review process, quite apart from the specific national security classification of a matter under discussion. Final recommendations on specific applications including reasons for denials and conditions, if any, for approvals, are unclassified.

The SNEC meets at intervals of approximately three weeks to review proposed nuclear-related exports which could conceivably pose proliferation risk. The SNEC, as noted, serve as a forum for review and discussion of nuclear export policy issues and specific case applications. The SNEC can review NRC license applications, DOE subsequent arrangements and 10 CFR 810 applications and Department of Commerce licenses. However, most of the cases reviewed are Department of Commerce export license applications, since Commerce controls a far wider range of commodities and technology that either DOE or NRC.

All Commerce export license applications that have any actual or potential nuclear-related use are reviewed by DOE. In this review process, DOE follows policy guidance from the State Department, the SNEC and other sources. DOE refers most of the cases it reviews back to Commerce for licensing action because the country, end use, end user or the nature of the items in question make clear the lack of any proliferation significance. For some cases where it is clear that an item would present a proliferation concern, or where export would be contrary to U.S. policy, denial is recommended. The remaining cases which raise some questions of proliferation significance are referred by DOE to the SNEC for consideration. DOE reviews about 8000 cases a year. Of that number, only about 200 to 300 are referred to the SNEC. Other agencies may also refer cases to the Subgroup for review.

In reviewing license applications for exports of possible proliferation concern the SNEC takes into account a range of factors, including: 1) past practice concerning supply of the commodity in question to the intended recipient country and end-user; 2) equivalent commodities already in the recipient country and available to the end-user; 3) foreign availability; 4) intelligence information regarding activities of proliferation concern on the part of the recipient country and the end user; 5) technical capabilities and significance of the commodity to be exported; 6) foreign policy considerations; and 7) applicable statutory criteria.

If, on the basis of its review of the factors described in the preceding paragraph and any other relevant considerations, the SNEC

determines that the proposed export involves significant proliferation risk, a recommendation for denial of the export will be made to the licensing agency.

If participating agencies are unable to reach agreement regarding the disposition of a particular export application in the SNEC, the Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978 provide a series of steps which can be taken to resolve the disagreement. The matter can be referred to the successor to the NSC Ad Hoc Group on Non-Proliferation, a body comprised of Assistant and Deputy Assistant Secretaries charged with oversight of nuclear proliferation and export control responsibilities in each of the concerned agencies. If resolution of the disagreement proves impossible at that level, the matter can be referred to the cabinet level and even to the President.

The Subcommittees have asked about the status of an "intensive study" focusing on South African non-proliferation issues. Although it is not possible to say now that the study will be completed when originally anticipated, progress has been made in clarifying many of the concerns involved. The issues under consideration in the study are those which we have been addressing for some time, such as the question of supply to South Africa of Commerce-licensed nuclear related items needed for the safe or environmentally sound operation of the Koeberg nuclear power plant. An overall objective of the study is to develop further our policy goals vis-a-vis South Africa.

I would like now to turn to the Subcommittees' question about the acquisition by South Africa of fuel to start up the Koeberg

nuclear power station. ESCOM, the South African utility which is to operate the two French-built reactors sited near Cape Town, concluded contracts with the predecessor to DOE on August 16, 1974 for the enrichment of South African uranium at U.S. facilities. ESCOM thus became obligated to deliver natural uranium and DOE was obligated to enrich it to approximately 3 percent for delivery to ESCOM at the DOE enrichment facility. ESCOM was obligated to obtain the necessary export licenses for shipment from the United States. However, as is well known, because of unsafeguarded nuclear activities in South Africa, export criteria in U.S. law are not now met by South Africa to permit the NRC to issue export licenses for nuclear fuel.

Numerous meetings on this issue have taken place between the two governments; however, the U.S. position has remained firm--the Executive branch would not recommend NRC issuance of any export license until all South African nuclear activities were subjected to IAEA safeguards and South Africa adhered to the Non-Proliferation Treaty.

ESCOM and the South African Government have continued efforts to obtain the necessary NRC export licenses. In fact, ESCOM has carefully complied with the enrichment contracts and has delivered feed material to DOE which has been enriched and stored at a DOE enrichment facility.

The French firm FRAMATOME built the reactors at Koeberg. In addition, ESCOM concluded a contract in the mid-seventies with a French-controlled company for the fabrication of low enriched uranium into fuel elements for the reactors. The United States has

been aware of this contract and has held discussions with French Government officials about our position on supply of nuclear fuel to South Africa. The Government of France told us that it would not at this time enter into any new supply obligations with South Africa. Their contract for fabrication was a pre-existing obligation.

In 1981, ESCOM acquired, in a private transaction, previously enriched uranium located in Europe. ESCOM then delivered this material to the French fabrication facility for production of fuel elements for the initial core of one of the two reactors. The Department of State and other concerned US agencies have carefully examined the activities of Edlow International, Inc., a Washington based firm, in connection with the acquisition of this low enriched uranium. We concluded that there was no violation of U.S. law or regulations. These services provided by Edlow are readily available from non-U.S. companies, could have been performed by ESCOM itself and, to our knowledge, are not controlled by any other government. Officers of Edlow apprised us that they had been in contact with ESCOM officials and had arranged for the purchase by ESCOM in Europe of non-U.S., previously enriched uranium. We were not advised by them of additional details of this arrangement. We were aware, of course, that South Africa desired to find another source of fuel for Koeberg. We told the South African officials that as a matter of policy, we were asking all supplier governments not to enter into new commitments for significant nuclear supply with any non-nuclear weapons state which engaged in unsafeguarded nuclear activities. We had such discussions with France and, as i

have testified, France did not conclude any new commitment. We do not believe that the actions of Edlow have significantly undermined the influence or non-proliferation policies of this Administration.

You may ask why did the United States not try to prevent this arrangement from going forward. In answering this question, let me first emphasize again that no nuclear material subject to US control was involved in this transaction, and therefore the United States possessed no jurisdiction over it. At the end of the previous Administration our non-proliferation discussions with South Africa were at an impasse. By contrast, however, this Administration, sought to develop and carry on a dialogue with South Africa in order to foster our non-proliferation and other objectives in that country. To that end, we are willing to consider, on a case by case basis, the export of non-sensitive, Commerce-licensed commodities--but not, as I have mentioned, nuclear fuel in the absence of full-scope safeguards. And this policy has had some tangible benefits. We have had very useful technical discussions with South African officials on the application of safeguards to enrichment facilities. In addition, South Africa is moving toward development and use of reduced enriched fuels for its Safari research reactor.

The Subcommittees have also asked for an assessment of the likelihood of South Africa adopting full-scope safeguards and adhering to the Non-Proliferation Treaty. Frankly, we do not expect favorable action by South Africa toward ratification of the NPT or acceptance of full-scope safeguards, in the near term. However, we

continue to raise this issue with officials in Pretoria in an effort to persuade the Government there that it would be in its own self interest to adhere to the treaty and to accept international safeguards on all is nuclear activities. While we have not received any indication that they are inclined to take such action, in the near term, this assessment will not lead us to abandon our effort or to view it with less urgency. Nuclear non-proliferation is not an undertaking for the short run. It is a fundamental, longterm policy objective, and we will continue to use our best efforts to persuade other nations, including South Africa, to take actions to prevent the spread of nuclear weapons.

The Subcommittees have asked for our position on the April 1982 application by Transnuclear, Incorporated to the NRC for authorization to export low-enriched uranium to South Africa.

The application was referred to the Executive Branch by the NRC but is not under active consideration as the export criteria in the law are not met. No exports of this nuclear fuel from the United States to South Africa would be authorized by this Administration until the criteria are satisfied.

While the law does provide for Presidential waiver of licensing criteria to permit exports under Executive Order in cases of overriding national interest, such actions must be submitted to the Congress for review. No consideration is being given to proposing such a Presidential waiver.

The Subcommittees' question regarding the current status of the DOE-ESCOM contract will be answered in detail by the Department of Energy. In sum, the situation is that ESCOM, the South African

utility, and DOE are still obligated to comply with the terms of the enrichment services contract, but for reasons already explained, ESCOM is unable to obtain an export license for transfer of any of the enriched uranium from the U.S. to South Africa. As you can imagine, this rather peculiar contractual situation raises a number of legal and policy difficulties which we desire to resolve. A solution to the contractual impasse, which would not involve export to South Africa of any U.S. nuclear fuel except on the basis I have mentioned, is under review, as part of the study I referred to earlier.

The Subcommittees have asked if the Administration foresees a time when the export of enriched uranium to South Africa would be approved short of our current stated requirements of full-scope safeguards and ratification of the Non-Proliferation Treaty. This is our position which we have communicated to South Africa's and I do not see any likelihood that we would change this view in the near future.

The Subcommittees have asked for the Department of State's views on H.R. 7220, which would prohibit the export or transfer to the Republic of South Africa of nuclear material, equipment and technology. The Administration strongly opposes this bill, because its enactment would significantly undermine important U.S. non-proliferation objectives. In preface to my comments on the likely effects with respect to South Africa, let me express our broader concern about the impression that passage of such legislation would give to other countries, in particular those which cooperate with

the United States both in nuclear commerce and in attempting to achieve shared non-proliferation goals. Adoption of the Non-Proliferation Act was viewed by many as a non-discriminatory, unilateral and retrospective changing of export conditions. Rightly or wrongly this perception caused problems for us with our allies abroad. To deal with this situation, this Administration set as a high priority the re-establishment of the U.S. reputation as a reliable nuclear partner. We believe a great deal has been accomplished in countering the impression of unreliability and, more importantly, in developing credibility in furthering international consensus on supplier restraint.

Passage of H.R. 7220, however, would reawaken those earlier concerns, abroad. We would be seen by many as remaining prepared to unilaterally modify our conditions [illegible] nuclear co[illegible]ation -- even when no substantive favorable impact can be anticipated. The resulting damage to our reliability and credibility would, we fear, be severe. Enactment would also seriously undercut achievement of our nonproliferation objectives in South Africa. Despite its apparent aim of forcing South Africa to sign the NPT and accept full-scope safeguards, passage of this bill would eliminate the possibility of any meaningful nuclear dialogue with South Africa and in fact effectively destroy any chance of our influencing them to accept full-scope safeguards and to ratify the Treaty.

First, it must be appreciated that significant nuclear commerce

with South Africa effectively precluded by the Atomic Energy Act. Therefore, the only effect of H.R. 7220 would be to preclude export of dual-use or nuclear-related items or non-sensitive nuclear technology which are widely available from non-U.S. suppliers. Almost no leverage would therefore result from such a step, particularly in view of the negative political reaction to such a law which can be expected from South Africa. Since other nations are quite able and very willing to supply such commodities, the only practical effect of the bill would be to transfer trade and work from U.S. companies and American workers to foreign firms.

It is also important to note that U.S. dual-use exports to South Africa to nuclear and other governments end-users have been carefully conditioned upon receipt of assurances regarding end-use, no retransfer and, when appropriate, inspection rights. If U.S. exports are embargoed, there is every likelihood that non-U.S. suppliers will provide these commodities to South Africa without such conditions. An embargo of all exports and other forms of non-sensitive nuclear cooperation with South Africa would eliminate U.S. access to and influence upon South Africa's nuclear program.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to the Committees' questions.

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Mr. WOLPE. Thank you very much.
Mr. Shea.

STATEMENT OF JAMES R. SHEA, DIRECTOR, OFFICE OF INTERNATIONAL PROGRAMS, NUCLEAR REGULATORY COMMISSION

Mr. SHEA. Thank you, Chairman Wolpe.

Mr. Chairman, I am prepared today to provide the Commission's comments regarding U.S. nuclear export policy with respect to South Africa. While the Commission, unlike the executive branch, does not formulate U.S. nuclear export policy, we have nevertheless been involved in implementing this policy through monitoring and reviewing nuclear exports—including those to South Africa—in carrying out NRC's responsibilities under the Nuclear Nonproliferation Act of 1978 (NNPA).

Under the NNPA, NRC is directly responsible for determining that NRC-licensed commodities meet the export licensing criteria in the NNPA. In addition, the NNPA requires that NRC be consulted on Commerce Department-licensed nuclear-related exports and on nuclear technology exports and nuclear material retransfers administered under the Department of Energy.

Before addressing specific issues involving South Africa, I would like to discuss briefly the scope and nature of NRC's export-licensing responsibilities.

NRC is responsible for administering export controls over (1) special nuclear material, including low- and high-enriched uranium fuel; (2) natural uranium and thorium source material; (3) radioactive byproduct material, such as cobalt 60 and other medical isotopes; (4) nuclear reactors; (5) uranium enrichment facilities; (6) spent fuel reprocessing facilities; (7) specially designed or prepared components for nuclear reactors and other NRC-licensed nuclear facilities; (8) heavy water; and finally; and (9) nuclear grade graphite.

These NRC-licensed commodities form the core of the proliferation-sensitive items currently in nuclear commerce around the world. Indeed, this list of items conforms closely to the international nuclear suppliers' group export control list of sensitive nuclear items—the so-called "Trigger List."

Fairly rigorous export control criteria have been established under the NNPA regarding most of these items. For example, exports of reactor fuel cannot be approved until the United States has received formal assurances from the importing country that the fuel (1) will be subject to IAEA safeguards; (2) will not be used for any nuclear explosive-related purpose; (3) will be subject to adequate physical protection measures; (4) will not be retransferred without U.S. permission; and (5) will not be reprocessed (in order to recover plutonium) without U.S. permission.

In addition, the importing country, if a nonnuclear weapons state, must agree to place all of its nuclear facilities under IAEA safeguards and must not be engaging in certain prohibited activities, such as attempting to develop a nuclear explosives capability.

Depending on the nature and sensitivity of the commodities involved, DOE-administered nuclear technology exports and retransfers are subject to similar export criteria. These criteria are

much more stringent than those applicable to the nuclear-related or dual-use items licensed by the Commerce Department. Commerce exports are subject simply to a broad determination as to whether the export is in the interests of the United States.

NRC works with the Commerce Department, DOE, and other executive branch agencies in determining the appropriate licensing jurisdiction for nuclear-related items. This is primarily accomplished under the aegis of the interagency Subgroup on Nuclear Export Coordination (SNEC), which meets every 3 to 4 weeks. The SNEC is also responsible for facilitating the interagency review of sensitive nuclear export requests submitted by any of the nuclear export administering agencies (NRC, Commerce, or DOE).

For exports licensed by Commerce or DOE, NRC's role is one of consultation, in which our views are solicited and considered by the executive branch, but the exports can proceed without our views. This consultation role contrasts with procedures used for NRC-licensed exports, where an NRC failure to make a positive decision results in the exports being referred to the executive branch for a possible Presidential override of NRC's decision and subsequent review by Congress.

In reviewing NRC-licensed items, the Commission looks at two basic factors:

First, does the proposed export meet the detailed licensing criteria in the NNPA, such as safeguards applicability and no nuclear explosives use?

Second, if the detailed statutory criteria are met, does the proposed export conform with the U.S. Government's current export policy?

Turning now to South African exports, I can report that, since the establishment of NRC, only one NRC export license application for South Africa has been approved. This involved the export in 1978 of 15 microcuries of the isotope neptunium 237 for use in an ore analyzer by a mining company.

With regard to other NRC export license applications, such as nuclear fuel exports, South Africa does not meet the full scope IAEA safeguards criterion of section 128 of the NNPA. Until this criterion is met, there is, accordingly, little likelihood that Transnuclear, Inc.'s recent Koeberg reactor fuel license application or any other nuclear fuel export license application for South Africa will receive favorable executive branch recommendations and be approved by NRC.

Furthermore, for all other pending NRC export license applications for South Africa, such as minor quantities of heavy water, the executive branch has withheld approval recommendations while undertaking a study of the nuclear situation regarding South Africa.

This review will also address South Africa's alleged nuclear explosives intentions and the corresponding relevance of the provisions of section 139 of the NNPA, which preclude the approval of NRC exports if the importing country is found to be engaging in the development of a nuclear explosives capability.

Consequently, no action has been taken in recent years by either the executive branch or NRC to approve any NRC licensed nuclear exports to South Africa.

Turning to Commerce Department-licensed nuclear-related exports to South Africa, for which the export licensing criteria are less stringent, no Commerce-licensed exports to South Africa have been approved in recent months.

Mr. WOLPE. Thirty seconds.

Mr. SHEA. Two Commerce-licensed cases have received some attention and have been referred to NRC for review. These are the proposed export of Helium 3 to South Africa's Safari Research Reactor and a hot isostatic press to a producer of drill bits.

I would like to conclude by commenting on Representative Rangel's proposed bill, H.R. 7220, which would place further restrictions on all NRC, DOE, and Commerce-administered nuclear-related exports to South Africa by requiring full-scope safeguards and NPT adherence before such exports could be approved. This is similar to a provision in Chairman Bingham's pending bill, H.R. 6032, on which the Commission has previously provided comments with respect to those areas in which NRC is involved.

It is the Commission's general view that the existing provisions of the NNPA with regard to NRC licensed exports provide an adequate basis for implementing a rigorous U.S. nuclear export policy toward South Africa as well as toward any other country which raises potential proliferation concerns.

The Commission defers to the executive branch with respect to the effect of H.R. 7220 on nuclear exports administered by Commerce and DOE.

Thank you. That concludes my statement.

[Mr. Shea's prepared statement follows:]

Prepared Statement of James R. Shea, Director, Office of International Programs, Nuclear Regulatory Commission

Mr. Chairman, I am prepared today to provide the Commission's comments regarding U.S. nuclear export policy with respect to South Africa. While the Commission, unlike the Executive Branch, does not formulate U.S. nuclear export policy, we have nevertheless been involved in implementing this policy through monitoring and reviewing nuclear exports -- including those to South Africa -- in carrying out NRC's responsibilities under the Nuclear Non-Proliferation Act of 1978 (NNPA). Under the NNPA, NRC is directly responsible for determining that NRC licensed commodities meet the export licensing criteria in the NNPA. In addition, the NNPA requires that NRC be consulted on Commerce Department licensed nuclear-related exports and on nuclear technology exports and nuclear material retransfers administered under the Department of Energy.

Before addressing specific issues involving South Africa, I would like to discuss briefly the scope and nature of NRC's export licensing responsibilities. NRC is responsible for administering export controls over (1) special nuclear material, including low and high-enriched uranium fuel; (2) natural uranium and thorium source material; (3) radioactive byproduct material, such as cobalt-60 and other medical isotopes; (4) nuclear reactors; (5) uranium enrichment facilities; (6) spent fuel reprocessing facilities; (7) specially designed or prepared components for nuclear reactors and other NRC-licensed nuclear facilities; (8) heavy water; and

FINALLY, (9) NUCLEAR GRADE GRAPHITE. THESE NRC-LICENSED COMMODITIES FORM THE CORE OF THE PROLIFERATION-SENSITIVE ITEMS CURRENTLY IN NUCLEAR COMMERCE AROUND THE WORLD. INDEED, THIS LIST OF ITEMS CONFORMS CLOSELY TO THE INTERNATIONAL NUCLEAR SUPPLIERS GROUP EXPORT CONTROL LIST OF SENSITIVE NUCLEAR ITEMS - THE SO-CALLED "TRIGGER LIST". FAIRLY RIGOROUS EXPORT CONTROL CRITERIA HAVE BEEN ESTABLISHED UNDER THE NNPA REGARDING MOST OF THESE ITEMS. FOR EXAMPLE, EXPORTS OF REACTOR FUEL CANNOT BE APPROVED UNTIL THE U.S. HAS RECEIVED FORMAL ASSURANCES FROM THE IMPORTING COUNTRY THAT THE FUEL (1) WILL BE SUBJECT TO IAEA SAFEGUARDS; (2) WILL NOT BE USED FOR ANY NUCLEAR EXPLOSIVE-RELATED PURPOSE; (3) WILL BE SUBJECT TO ADEQUATE PHYSICAL PROTECTION MEASURES; (4) WILL NOT BE RETRANSFERRED WITHOUT U.S. PERMISSION; AND (5) WILL NOT BE REPROCESSED (IN ORDER TO RECOVER PLUTONIUM) WITHOUT U.S. PERMISSION. IN ADDITION, THE IMPORTING COUNTRY, IF A NON-NUCLEAR WEAPONS STATE, MUST AGREE TO PLACE ALL OF ITS NUCLEAR FACILITIES UNDER IAEA SAFEGUARDS AND MUST NOT BE ENGAGING IN CERTAIN PROHIBITED ACTIVITIES, SUCH AS ATTEMPTING TO DEVELOP A NUCLEAR EXPLOSIVES CAPABILITY. DEPENDING ON THE NATURE AND SENSITIVITY OF THE COMMODITIES INVOLVED, DOE ADMINISTERED NUCLEAR TECHNOLOGY EXPORTS AND RETRANSFERS ARE SUBJECT TO SIMILAR EXPORT CRITERIA. THESE CRITERIA ARE MUCH MORE STRINGENT THAN THOSE APPLICABLE TO THE NUCLEAR-RELATED OR "DUAL-USE" ITEMS LICENSED BY THE COMMERCE DEPARTMENT. COMMERCE EXPORTS ARE SUBJECT SIMPLY TO A BROAD DETERMINATION AS TO WHETHER THE EXPORT IS IN THE "INTERESTS OF THE UNITED STATES".

NRC WORKS WITH THE COMMERCE DEPARMENT, DOE, AND OTHER EXECUTIVE BRANCH AGENCIES IN DETERMINING THE APPROPRIATE LICENSING JURISDICTION FOR NUCLEAR-RELATED ITEMS. THIS IS PRIMARILY ACCOMPLISHED UNDER THE AEGIS OF THE INTERAGENCY SUB-GROUP ON NUCLEAR EXPORT COORDINATION (SNEC), WHICH MEETS EVERY THREE TO FOUR WEEKS. THE SNEC IS ALSO RESPONSIBLE FOR FACILITATING THE INTERAGENCY REVIEW OF SENSITIVE NUCLEAR EXPORT REQUESTS SUBMITTED BY ANY OF THE NUCLEAR EXPORT ADMINISTERING AGENCIES (NRC, COMMERCE, OR DOE).

FOR EXPORTS LICENSED BY COMMERCE OR DOE, NRC'S ROLE IS ONE OF CONSULTATION, IN WHICH OUR VIEWS ARE SOLICITED AND CONSIDERED BY THE EXECUTIVE BRANCH, BUT THE EXPORTS CAN PROCEED WITHOUT OUR VIEWS. THIS CONSULTATION ROLE CONTRASTS WITH PROCEDURES USED FOR NRC-LICENSED EXPORTS, WHERE AN NRC FAILURE TO MAKE A POSITIVE DECISION RESULTS IN THE EXPORTS BEING REFERRED TO THE EXECUTIVE BRANCH FOR A POSSIBLE PRESIDENTIAL OVERRIDE OF NRC'S DECISION AND SUBSEQUENT REVIEW BY CONGRESS.

IN REVIEWING NRC-LICENSED ITEMS THE COMMISSION LOOKS AT TWO BASIC FACTORS. FIRST, DOES THE PROPOSED EXPORT MEET THE DETAILED LICENSING CRITERIA IN THE NNPA, SUCH AS SAFEGUARDS APPLICABILITY AND NO-NUCLEAR EXPLOSIVES USE? SECOND, IF THE DETAILED STATUTORY CRITERIA ARE MET, DOES THE PROPOSED EXPORT CONFORM WITH THE U.S. GOVERNMENT'S CURRENT EXPORT POLICY? TURNING NOW TO SOUTH AFRICAN EXPORTS, I CAN REPORT THAT, SINCE THE ESTABLISHMENT OF NRC, ONLY ONE NRC EXPORT LICENSE APPLICATION FOR SOUTH AFRICA HAS BEEN APPROVED. THIS INVOLVED THE EXPORT IN 1978 OF 15 MICROCURIES OF

THE ISOTOPE NEPTUNIUM-237 FOR USE IN AN ORE ANALYZER BY A MINING COMPANY. WITH REGARD TO OTHER NRC EXPORT LICENSE APPLICATIONS, SUCH AS NUCLEAR FUEL EXPORTS, SOUTH AFRICA DOES NOT MEET THE FULL-SCOPE IAEA SAFEGUARDS CRITERION OF SECTION 128 OF THE NNPA. UNTIL THIS CRITERION IS MET THERE IS, ACCORDINGLY, LITTLE LIKELIHOOD THAT TRANSNUCLEAR INCORPORATED'S RECENT KOEBERG REACTOR FUEL LICENSE APPLICATION OR ANY OTHER NUCLEAR FUEL EXPORT LICENSE APPLICATION FOR SOUTH AFRICA WILL RECEIVE FAVORABLE EXECUTIVE BRANCH RECOMMENDATIONS AND BE APPROVED BY NRC. FURTHERMORE, FOR ALL OTHER PENDING NRC EXPORT LICENSE APPLICATIONS FOR SOUTH AFRICA, SUCH AS MINOR QUANTITIES OF HEAVY WATER, THE EXECUTIVE BRANCH HAS WITHHELD APPROVAL RECOMMENDATIONS WHILE UNDERTAKING A STUDY OF THE NUCLEAR SITUATION REGARDING SOUTH AFRICA. THIS REVIEW WILL ALSO ADDRESS SOUTH AFRICA'S ALLEGED NUCLEAR EXPLOSIVES INTENTIONS AND THE CORRESPONDING RELEVANCE OF THE PROVISIONS OF SECTION 129 OF THE NNPA, WHICH PRECLUDE THE APPROVAL OF NRC EXPORTS IF THE IMPORTING COUNTRY IS FOUND TO BE ENGAGING IN THE DEVELOPMENT OF A NUCLEAR EXPLOSIVES CAPABILITY. CONSEQUENTLY, NO ACTION HAS BEEN TAKEN IN RECENT YEARS BY EITHER THE EXECUTIVE BRANCH OR NRC TO APPROVE ANY NRC-LICENSED NUCLEAR EXPORTS TO SOUTH AFRICA.

TURNING TO COMMERCE DEPARTMENT LICENSED NUCLEAR-RELATED EXPORTS TO SOUTH AFRICA, FOR WHICH THE EXPORT LICENSING CRITERIA ARE LESS STRINGENT, NO COMMERCE-LICENSED EXPORTS TO SOUTH AFRICA HAVE BEEN APPROVED IN RECENT MONTHS. TWO COMMERCE-LICENSED CASES HAVE

RECEIVED SOME ATTENTION AND HAVE BEEN REFERRED TO NRC FOR REVIEW. THESE ARE THE PROPOSED EXPORT OF HELIUM-3 TO SOUTH AFRICA'S SAFARI RESEARCH REACTOR AND A HOT ISOSTATIC PRESS TO A PRODUCER OF DRILL BITS.

I WOULD LIKE TO CONCLUDE MY STATEMENT BY BRIEFLY COMMENTING ON REPRESENTATIVE RANGEL'S PROPOSED BILL, H.R. 7220, WHICH WOULD PLACE FURTHER RESTRICTIONS ON ALL NRC, DOE AND COMMERCE-ADMINISTERED NUCLEAR-RELATED EXPORTS TO SOUTH AFRICA BY REQUIRING FULL-SCOPE SAFEGUARDS AND NPT ADHERENCE BEFORE SUCH EXPORTS COULD BE APPROVED. THIS IS SIMILAR TO A PROVISION IN CHAIRMAN BINGHAM'S PENDING BILL, H.R. 6032, ON WHICH THE COMMISSION HAS PREVIOUSLY PROVIDED COMMENTS WITH RESPECT TO THOSE AREAS IN WHICH NRC IS INVOLVED. IT IS THE COMMISSION'S GENERAL VIEW THAT THE EXISTING PROVISIONS OF THE NNPA WITH REGARD TO NRC LICENSED EXPORTS PROVIDE AN ADEQUATE BASIS FOR IMPLEMENTING A RIGOPOUS U.S. NUCLEAR EXPORT POLICY TOWARDS SOUTH AFRICA AS WELL AS TOWARDS ANY OTHER COUNTRY WHICH RAISES POTENTIAL PROLIFERATION CONCERNS. THE COMMISSION DEFERS TO THE EXECUTIVE BRANCH WITH RESPECT TO THE EFFECT OF H.R. 7220 ON NUCLEAR EXPORTS ADMINISTERED BY COMMERCE AND DOE.

THIS CONCLUDES MY PREPARED TESTIMONY. I AM PREPARED TO ADDRESS ANY QUESTIONS YOU MAY HAVE.

Mr. Wolpe. Mr. George Bradley, Principal Deputy Assistant Secretary for International Affairs for the Department of Energy.

STATEMENT OF GEORGE BRADLEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF ENERGY

Mr. BRADLEY. Thank you, Mr. Chairman. Thank you for the opportunity to appear before the subcommittees.

With your permission, I would like to comment in 5 minutes on some of the key issues and let my written statement be submitted for the record.

As a representative of the Department of Energy [DOE], I shall focus on the nuclear-related aspects of this issue. I would like to deal with DOE's view of the administration's current nuclear export policy toward South Africa, DOE's involvement in the process, with how U.S. current contacts with South Africa have manifested themselves in the area of nuclear exports and the approach the Commerce Department is taking in processing dual use items to that country and to comment for DOE on Representative Rangel's bill which in essence would bar all U.S. nuclear commerce, trade, and technology exchanges with South Africa until South Africa agrees to full scope safeguards and adheres to the NPT.

The Department of Energy has important responsibilities in the field of nuclear export and nuclear weapons, in nonproliferation as well as civil nuclear cooperation. We are the agency that provides uranium enrichment service and controls transfers of nuclear technology to other countries.

We also assist the Commerce Department in reviewing proposed exports of dual use items from the standpoint of their nonproliferation significance.

We are also actively concerned with nuclear nonproliferation policy formulation including support of international safeguards and we have the lead responsibility for processing subsequent arrangements, including approvals of retransfers of U.S.-controlled special nuclear materials between cooperating nations.

The broad support for nonproliferation has been a key component in U.S. foreign policy for many years and, as I understand your letter to us, the concerns you have expressed relate to whether the United States has changed its policy that South Africa adhere to the NPT and full scope safeguards and conditions for obtaining U.S. fuel supply, whether the few export transactions that have occurred with South Africa are significant from a nonproliferation standpoint, and whether we are making progress in our nuclear nonproliferation dialogue with South Africa and whether current or future progress would be impaired if we moved to an even more restricted U.S. policy; namely, absolute embargo on essentially all nuclear contacts and commerce with South Africa.

First, outlining U.S. policy as I see it, I believe it is important to stress that in this administration DOE is giving the same high priority to nuclear nonproliferation as has been given by all previous administrations. We are strong supporters of the NPT and of effective international safeguards and prudent export controls.

More importantly, we share the view that exports to countries of proliferation concern must be approached with great caution. In the case of South Africa it has remained the firm U.S. policy that no direct export of nuclear fuel and significant nuclear equipment to that country should take place unless and until it accepts full scope safeguards.

We have continued to urge South Africa to adhere to the NPT to achieve that objective.

Mr. WOLPE. Could you conclude your statement, please.

Mr. BRADLEY. Mr. Chairman, I will just submit the statement for the record. I have summarized our position in saying that we see no change in terms of our belief that we should be cautious in approaching such legislation.

[Mr. Bradley's prepared statement follows:]

PREPARED STATEMENT OF GEORGE BRADLEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL AFFIARS, DEPARTMENT OF ENERGY

Mr. Bingham and Mr. Wolpe,

A. Introduction

Thank you for the opportunity to appear before your two subcommittees and to comment on the effectiveness of the US export policy as it relates to South Africa. I am here today to represent the Department of Energy (DOE) on these matters and I shall focus on the nuclear related aspects of this issue. I shall try to supplement, and not duplicate, the testimony that you are receiving this morning from representatives of the Department of State, the Department of Commerce, the Arms Control and Disarmament Agency and the Nuclear Regulatory Commission and will focus my remarks on the specific questions that you addressed to Secretary Hodel in your letter of November 19, 1982.

In that letter you requested DOE's comments on a number of topics. You requested that we describe the Administration's current nuclear export policy towards South Africa and DOE's involvement in the approval process for nuclear exports; to comment on how current contacts with South Africa have manifested themselves in the area of nuclear exports, to comment

on the approach the Commerce Department is taking in processing dual use items to that country, to comment on the prospects that the Executive Branch will now move to recommend modifications to the NNPA to exclude from the "full-scope" safeguards clause in Section 128 contracts entered into prior to the Act's Enactment, to comment on the current status of DOE's enriched uranium contract with the South African utility ESCOM, and to comment, for DOE, on Representative Rangel's Bill, H.R. 7220, which, in essence, would bar all US nuclear commerce, trade and technological exchanges with South Africa until South Africa agrees to full-scope safeguards and adheres to the NPT.

B. Policy Framework

The Department of Energy, of course, has important responsibilities in the fields of nuclear exports and nuclear weapons, non-proliferation policy development and implementation and civil nuclear cooperation. Few areas have been more difficult or required more attention. DOE, as you know, is the Agency that provides uranium enrichment services and that controls transfers of nuclear technology to other countries. We also assist the Department of Commerce in reviewing proposed exports of dual use items from the standpoint of their nuclear non-proliferation significance. We are also actively concerned with nuclear non-proliferation policy formulation, including the support of international safeguards, and we have the lead responsibility for processing subsequent arrangments including approvals of retransfers of US controlled special nuclear materials between cooperating nations.

We also support technological programs having international significance, such as US efforts to substitute low for highly enriched uranium in research reactors. These are activities that affect several DOE offices besides International Affairs and I am accompanied here today by representatives of some of the other offices most involved. For example, our Office of International Security Affairs, in Defense Programs, is the focal point for reviewing Commerce export requests as well as implementing DOE's regulations (namely 10 CFR 810) that control transfers of unclassified nuclear activities outside the United States.

The broad support for nuclear non-proliferation has, of course, been a key component in US foreign policy for many years. As I understand your letter, the concerns you have expressed relate to:

- whether the Administration has changed its policy that South Africa adhere to the NPT and accept full-scope safeguards as a condition for obtaining US fuel supply;

- whether the few export transactions that have occurred with South Africa in nuclear related areas are significant from a non-proliferation standpoint;

- whether we are making progress in our nuclear non-proliferation dialogue with South Africa;

- and whether current or future progress would be impaired or assisted if we were to move to an even more restrictive US policy, namely, an absolute embargo on nearly all nuclear contacts and commerce with South Africa.

I shall try to respond to your concerns by first outlining the current US policy framework as I see it, and then I shall respond to your specific questions.

First, I believe it is important to stress that the current Administration is giving the same high priority to nuclear non-proliferation as has been given by previous Administrations. We believe that this is an area of foreign policy that must be approached in a bipartisan spirit. The Reagan Administration is a strong supporter of the NPT, of effective international safeguards and prudent export controls. While we have differed somewhat from those policies of the prior Administration which was somewhat hostile to certain aspects of the civil nuclear programs in Western Europe and Japan, we have shared the view that exports to countries of nuclear proliferation concern must be approached with great caution.

Accordingly, in the case of South Africa, it has remained the firm US policy that no direct exports of nuclear fuels and significant nuclear equipment to that country should take place unless and until it accepts full-scope safeguards and we have continued to urge South Africa to adhere to the NPT to achieve that objective.

This is consistent with the policy and practice that was adhered to by the past two Administrations and I foresee no relaxation in the US stance at this time. Relatedly, with reference to the questions that you raised in your November 19 letter about possible amendments to the NNPA, I do not foresee any near term efforts by the Administration to modify the provisions of Section 128 of the law so as to make that section no longer applicable to contracts prior to enactment of the NNPA. While there are aspects of the NNPA that obviously are less than ideal and that have created concern abroad, it is our current intention to live with the law and to avoid further, disruptive changes. Accordingly, under these circumstances I foresee little prospect that the export license application for the first reload for Koeberg unit 1 that has been submitted by the Transnuclear Corporation will be recommended by the Executive Branch for approval by NRC unless South Africa modifies its position on accepting full-scope safeguards.

Moreover, I expect the US to continue to urge other nuclear suppliers to require "full-scope" safeguards as a condition of approving significant new exports to South Africa. This too is consistent with past practice. However, as you know, not all other suppliers share the US view that insistence on such a policy is desirable in all case since some believe that there may be instances where cooperation is desirable even if this test has not been met.

So from my perspective, current US non-proliferation policy towards South Africa remains as firm as it has been in the past and I believe it is erroneous to imply that we are dropping our guard. On the other hand, I do believe that our current willingness to talk to South Africa about our serious differences is producing some modest, but encouraging, results in the non-proliferation area.

In particular, in 1981, we reestablished technical contacts with the South Africans which, in time, might contribute to accommodations on the broader issues to which I have referred. I say this without any false illusions since I believe that we and the South Africans are still far apart on the NPT question. In particular, we exchanged visits and initiated technical discussions related to developing effective international safeguards for enrichment plants. Also, we initiated technical discussions on modifying research reactors to use fuels of lower enrichments. South Africa, as you know, has established its own pilot enrichment plant at Valindaba and is building a larger enrichment plant to follow. Also, since it has been unable to acquire enriched uranium for several years from the US, it has successfully fabricated some of its own enriched uranium into fuel elements for its SAFARI research reactor.

From my perspective nothing is being lost in maintaining these contacts, plus there may be some gains, and I do not see how we can make progress unless we have some minimal contacts and some limited cooperation in non-sensitive areas. For this reason, I

believe the complete legislatively mandated cut-off in contacts that would be occasioned by Mr. Rangels bill would be seriously harmful to our non-proliferation objectives.

Thus, while we are still very far apart from the South Africans on the fundamentals of joining the NPT, we, at least, are talking to them in the hope that our differences will narrow.

In particular, if H.R. 7220 was enacted, it would affect our technical talks with the South Africans on enrichment plant safeguards which have been designed to overcome their resistance to such controls. We also would have to reconsider our discussions aimed at demonstrating that lower-enriched fuels can be used in the SAFARI reactor. Further we would be prevented from furnishing to the South Africans any components or unpublished information relevant to the safety of the Koeberg nuclear stations. If there were any nuclear accidents in South Africa, we would be precluded from helping even though the affects would pose problems for all the people there. More broadly, even if the bill (H.R. 7220) admittedly is aimed only at South Africa, I believe it could harm us significantly in our dealings with other nations since it tends to illustrate once again that US nuclear export policies still have not stabilized and that we are still too prone to make unilateral changes in the law without consultations with those who may be affected by those changes.

Further, I should note that in some respects the nuclear review and approach procedures that now are being proposed by the

Administration as they apply to a nation like South Africa will be tighter than those that have previously been applied. I am referring here specifically to the proposed new revisions to DOE's regulations 10 CFR 810 with which the members of the Committee are familiar. Specifically, under the terms of our new regulations all transfers of unpublished, unclassified nuclear technology to non-nuclear weapon states that are not signators of the NPT or the Treaty of Tlatelolco and do not accept full-scope safeguards--such as South Africa--hereafter will have to be specifically authorized by the Secretary of Energy following coordination with State Department and consultation with the other interested agencies. Thus, even though the contacts, between our two nations in the nuclear field are minimal we will have a better picture of non-governmental activities by US persons to help assure that none of these activities contribute to any South African nuclear explosive activities. We also will be able to differentiate between transfers that appear warranted and those of greater sensitivity. Thus, more effective regulations will soon be in force which I believe is another reason for arguing that there is no necessity for H.R. 7220.

C. Specific Questions

I should now like to turn to some of the specific questions that you raised in your letter of November 19, 1982 to Secretary Hodel.

First, with reference to DOE's role in the process, I already have summarized some of the major ways in which we are involved. I would like to comment further on our interface with other interested agencies. DOE provides its views to the Department of State on proposed exports licensed by NRC. We work closely with State Department on a variety of international nuclear issues, and we, of course, look to State for overall guidance on foreign policy issues. Both the State and Commerce Departments look to us for advice and guidance on the technical and non-proliferation significance of various exports.

The Department of Commerce controls dual-use technology and commodities under the Export Administration Act of 1979 and denies export requests when it believes approval would be contrary to US non-proliferation policy and objectives. We review all such requests that are on the nuclear referral list from their nuclear non-proliferation standpoint; and we periodically review and update the list to reflect continuously changing technologies. From our perspective the overall program as it applies to nuclear exports is being administered in a prudent manner and as part of our input we consult with technical experts in our laboratories and program offices to assess the implications of a particular case, and form judgments whether US interests would be advanced or not in approving an export, taking into account a number of factors such as the sensitivity of the item and the readiness of its availability from other sources. We do not believe that the policy of approving nuclear-related

exports in areas such as health and safety, as it is being implemented, is serving to undermine US non-proliferation policies.

Regarding the Subgroup on Nuclear Export Coordination, I believe the Subgroup is operating very effectively and efficiently in fulfilling its intended role in the implementation of US non-proliferation policy. It does so by providing a regular forum for the various agencies concerned with proliferation issues to fully and frankly exchange views and expertise on proposed nuclear-related exports. It is a body of working level officials rather than policy level officials and when sensitive issues arise that require policy guidance, those issues are referred to the appropriate persons.

As for recommendations to improve the SNEC, I have none now, but want to call your attention to two recent improvements that should enhance the review process of the SNEC. First, SNEC representatives are now encouraged to bring along their agency experts when their opinions will substantially contribute to discussion of a case or group of cases. For example, State may bring in an expert from one of its country desks to discuss foreign policy aspects of nuclear cooperation with that country, or DOE may bring in experts from its national laboratories to discuss the technical aspects of equipment proposed for export. The SNEC members are, therefore, given direct access to specific experts within member agencies for consultation purposes. Second, the Central Intelligence Agency and the National Security Agency now have observer

status in SNEC and, therefore, can contribute intelligence information to SNEC deliberations quickly and directly.

With reference to the NNPA, I already have noted that the Administration has no immediate plans to propose modifications to the NNPA. Indeed, as has been explained on several occasions in the past, the paper prepared by Mr. Malone that you have referred to was a working paper for internal discussion purposes. Also, I do not foresee the Executive Branch recommending that the President waive the full-scope safeguards requirement under Section 128 unless there is a significant change in South Africa's position. Thus, unless South Africa moderates its opposition to the NPT or full-scope safeguards, I see little change in the current situation which prevents us from exporting the enriched uranium to that country.

With reference to the status of the DOE enrichment contract with ESCOM, the first delivery of enriched uranium associated with one of two uranium enrichment contracts signed in 1974 by ESCOM was made at Portsmouth, Ohio, in August 1981. This material (which was to be the initial core for unit 1) was not exported to South Africa but instead was sold by ESCOM at a financial loss on the secondary market. The enriched uranium for the initial core for unit 2 was delivered to ESCOM in this country in August 1982 and the involved enrichment services were valued at $34 million. This material is in storage at Portsmouth, Ohio. The next delivery of DOE enriched uranium is scheduled to be made in August 1983 for use as the first reload in unit 1. The request

from Transnuclear for an export license for this reload was received in April 1982, and to date no action has been taken by the Executive Branch on that request.

We remain at an impasse, where DOE is obligated to deliver in the US and ESCOM is obligated to accept enriched uranium, but no export licenses for the enriched uranium for use in the Koeberg reactors have been approved or are likely to be approved.

That concludes my prepared statement, Mr. Chairman, and I hope that my comments have been responsive to your interests.

My colleagues and I shall be pleased to answer any questions that you may have on these matters.

Mr. WOLPE. Thank you very much, Mr. Bradley.

Mr. Carl Thorne, Chief of the Nuclear Affairs Division of the Arms Control and Disarmament Agency.

STATEMENT OF CARLTON E. THORNE, CHIEF, INTERNATIONAL NUCLEAR AFFAIRS DIVISION, NUCLEAR AND WEAPONS CONTROL BUREAU, ARMS CONTROL AND DISARMAMENT AGENCY

Mr. THORNE. Thank you, Chairman Wolpe and Chairman Bingham. I am pleased to have this opportunity to appear before these distinguished subcommittees and discuss nuclear export policy with respect to South Africa. I know all of us share a deep and abiding concern regarding the problem of nuclear proliferation.

One region of principal concern to us is Africa and especially the Republic of South Africa. For a number of years one of the fundamental objectives of U.S. policy concerning South Africa has been to convince that state not to develop or manufacture nuclear explosives.

South Africa has declared that it has no intention of acquiring nuclear weapons. However, South Africa is located in a region of instability. South Africa is not a party to the Nonproliferation Treaty and it has no formal international treaty obligation to forego nuclear explosives development.

Further, South Africa has been unwilling to place all of its nuclear facilities under international atomic energy safeguards.

In designing a comprehensive U.S. policy regarding nuclear relations with South Africa the administration has sought to define areas in which cooperation may be in our mutual interest. By law of course the United States cannot license the export of nuclear fuel or reactors to any state, including South Africa, which does not accept international safeguards on all of its nuclear facilities.

However, there are a limited number of areas in which we believe that approval of Commerce Department-licensed exports of so-called dual use equipment to South Africa nuclear facilities provides a basis for encouraging a more constructive dialog.

In particular, approval of a few carefully selected exports of non-sensitive commodities for use in safeguarded South Africa nuclear facilities for purposes such as health and safety offers a means to facilitate this dialog.

We believe this approach is the best means of encouraging a constructive nuclear dialog with South Africa while assuring that any items provided by the United States are provided under the strictest possible controls against their misuse.

It should also be noted these commodities are available from alternate suppliers who may not seek comparable assurances.

ACDA is, of course, actively involved in the implementation of U.S. nuclear policy toward South Africa through the work of our Nuclear and Weapons Control Bureau and through our full participation in the interagency Subgroup on Nuclear Export Coordination (SNEC).

ACDA believes that the subgroup plays an important role in reviewing proposed U.S. nuclear related exports to countries of proliferation concern, and that it performs well. Cases of proliferation concern are referred to the SNEC, and this serves an extremely valuable function by focusing interagency attention on the proliferation issues associated with particular exports.

Back in June several witnesses came and appeared before one of these subcommittees and in that briefing they gave a considerable amount of information about the SNEC. I won't go into that now except to repeat what I feel to be one important point.

The U.S. system of nuclear export controls is probably the best of any nuclear supplier nation in terms of its effectiveness and comprehensiveness. The U.S. review process for dual use exports, which includes the evaluation of both end users and end uses is the most comprehensive and has in fact been emulated by many countries.

As an additional consideration, it should be noted that subgroup actions also serve as a basis for international efforts to prevent sensitive nuclear exports from going to states of proliferation concern. Whenever the subgroup turns down an export, it considers foreign availability and, when appropriate, will transmit export alerts to other supplier states requesting their cooperation.

The United States is taking a number of steps that we hope will eliminate those factors contributing to South African reluctance to accept full scope safeguards. In particular, we are working with South Africa to demonstrate to them the feasibility and acceptability of applying safeguards to facilities involving sensitive technology.

To this end, we exchanged information in 1981 regarding the application of safeguards to their commercial uranium enrichment plant now under construction at Valindaba. We remain hopeful about the prospects of South African acceptance of full scope safeguards.

Finally, Mr. Chairman, with regard to Congressman Rangel's bill, H.R. 7220, I would note simply that the approach advocated in

this bill to deny any U.S. nuclear cooperation with South Africa until it adheres to the NPT and accepts full scope safeguards has not produced the desired results in the past.

There is no obvious reason to believe that resumption of this policy of total denial by the United States now would move us closer to our objective of increasing South Africa's acceptance of nonproliferation obligations.

Mr. WOLPE. Would you conclude the statement, please?

Mr. THORNE. Yes, sir. Mr. Chairman, this does conclude my testimony. I appreciate your indulgence in listening to so many people testify this morning.

I welcome any questions you might have.

[Mr. Thorne's prepared statement follows:]

PREPARED STATEMENT OF CARLTON E. THORNE, CHIEF, INTERNATIONAL NUCLEAR AFFAIRS DIVISION, NUCLEAR AND WEAPONS CONTROL BUREAU, U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Mr. Chairman:

I am very pleased to have this opportunity to appear before these distinguished subcommittees to discuss US nuclear export policy with respect to South Africa. I know that all of us share a deep and abiding concern regarding the problem of nuclear proliferation. We are all aware of the profoundly destabilizing effects which the introduction of nuclear weapons into additional states would have for continuing efforts to maintain regional stability and world order. Whether we are ultimately successful in fostering our non-proliferation objectives will depend on our ability to improve regional and global stability and to reduce those motivations that cause a country to seek to acquire nuclear weapons.

One region of principal concern to us is Africa, especially the Republic of South Africa. For a number of years one of the fundamental objectives of US policy concerning South Africa has been to convince it not to develop or manufacture nuclear explosives.

As we know, there are a number of countries, including South Africa, which possess the technical ability to make nuclear explosives. However, in virtually all cases, these countries have recognized that their security interests would not be served by the acquisition of nuclear explosives, and have made a conscious decision not to develop such explosives. In conjunction with this decision, the vast majority of these countries have adhered to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and thereby undertaken a specific international treaty obligation not to produce nuclear explosives.

South Africa has declared that it has no intention of acquiring nuclear weapons. However, South Africa is located in a region of instability, is not a party to the NPT and

has no formal international treaty obligation to forego nuclear explosives development. Further, it has been unwilling to place all its nuclear facilities under International Atomic Energy Agency (IAEA) safeguards.

Thus, South Africa poses a major challenge to the global non-proliferation regime. Its unwillingness to accept widely supported international measures such as the NPT promotes suspicion regarding the intentions of South Africa, and further heightens tensions and instability in southern Africa. This situation could over the long run pose a major threat to the goal of an Africa free of nuclear weapons. Furthermore, these suspicions could in the long term lead other African states to question their non-proliferation commitments.

The previous administration employed a policy of total denial of nuclear cooperation in part as a means to induce South Africa to undertake additional non-proliferation obligations. This policy was unproductive. South Africa took no steps toward greater acceptance of safeguards or toward adherence to the NPT. Communication and exchange between the United States and South Africa in the nuclear area became strained and one-sided.

It is clear that perpetuation of the stalemate which has characterized US-South African nuclear relations in recent years will not produce any significant progress toward achievement of US non-proliferation objectives. In view of this impasse, the Reagan Administration has sought to define a different approach to our nuclear relations with South Africa.

In designing a comprehensive US policy regarding nuclear relations with South Africa, the Administration has sought to define areas in which cooperation may be in our mutual interests. By law, of course, the US cannot license the

export of nuclear fuel or reactors to any state, including South Africa, which does not accept international safeguards on all of its nuclear facilities. However, there are a limited number of areas in which we believe approval of Commerce Department-licensed exports of so-called dual-use equipment to South African nuclear facilities provides a basis for encouraging a more constructive dialogue with South Africa on nuclear issues. In particular, approval of a few carefully selected exports of non-sensitive Commerce-licensed dual-use commodities for use in safeguarded South African nuclear facilities for purposes such as health and safety offers a means to foster this dialogue, which we hope will in turn support our non-proliferation objectives regarding South Africa. We believe that our approach is the best means of encouraging a constructive nuclear dialogue with South Africa while assuring that any items provided by the United States are provided under the strictest possible controls against misuse. It should also be noted that these commodities are available from alternate suppliers who may not seek comparable assurances.

Inherent in this policy is the US recognition that events have transpired to reduce significantly the ability of the United States to influence South Africa's willingness to accept non-proliferation constraints through nuclear exports. South Africa's indigenous technological capabilities in the nuclear area have increased significantly. Alternate external suppliers of nuclear fuel and equipment are now available. Thus, the United States must seek to exercise its remaining limited influence as effectively as possible. We are seeking to encourage greater South African responsiveness in its nuclear policies by promoting a more forthcoming, albeit still very limited relationship with the United States in the nuclear area.

Simultaneously, this Administration has worked vigorously to achieve progress in resolving the problem of Namibia, and to reduce the South African sense of isolation from the international community. By such actions, we hope to reduce the defensive posture of the South African Government and to cultivate a more positive climate for greater South African acceptance of non-proliferation obligations.

ACDA is, of course, actively involved in the implementation of US nuclear policy toward South Africa through the work of our Nuclear and Weapons Control Bureau and through our full participation in the interagency Subgroup on Nuclear Export Coordination (SNEC). ACDA believes that the Subgroup plays an important role in reviewing proposed US nuclear-related exports to countries of proliferation concern, and that it performs well. Cases of proliferation concern are referred to the SNEC, and this serves an extremely valuable function by focussing interagency attention on the proliferation issues associated with particular exports.

Several Executive Branch witnesses testified June 24, 1982, on the issue of nuclear export control before the Subcommittees of International Economic Policy and Trade and International Security and Scientific Affairs. A considerable amount of information was provided at that hearing on the role and procedures of the SNEC. I will not repeat those details which are in the record except to reiterate one very important point. The US system of nuclear export controls is probably the best of any nuclear supplier nation in terms of its effectiveness and comprehensiveness. The US review process for dual-use exports, which includes evaluation of end users and end uses, is the most comprehensive and has, in fact, been emulated by other states.

As an additional consideration, it should be noted that Subgroup actions also serve as a basis for international efforts to prevent sensitive nuclear exports from going to states of proliferation concern. Whenever the Subgroup turns down an export, it considers foreign availability and, when appropriate, will transmit export alerts to other supplier states requesting their cooperation.

With respect to your question concerning a memorandum allegedly prepared for the use of Foreign Minister Botha with Secretary Haig, I am not in a position to discuss confidential diplomatic exchanges. Consequently, I defer to the State Department for a response to your question.

The United States is taking a number of steps that we hope will eliminate those factors contributing to South African reluctance to accept full-scope safeguards. In particular, we are working with South Africa to demonstrate to them the feasibility and acceptability of applying safeguards to facilities involving sensitive technology. To this end, we exchanged information in 1981 regarding the application of safeguards to their commercial uranium enrichment plant now under construction at Valindaba. We remain hopeful about the prospects of South African acceptance of full-scope safeguards.

You have asked about any report which may have been written on US-South Africa safeguards discussions. The activities and progress made on the safeguards issue as a result of the respective visits of nuclear experts in August and October of 1981 have not been summarized in a separate report. However, participants in this dialogue did file standard diplomatic reports on the visits.

In the first half of 1982, the relevant Executive Branch agencies decided on an inspection approach for commercial enrichment facilities of the centrifuge type, a step which was necessary to be able to proceed with international discussions on how to implement effective safeguards at such facilities while minimizing the risk of the dissemination of sensitive technology. When the US and other countries with commercial enrichment plants under safeguards reach final agreement on this inspection approach, we will be in a position to follow up the previous exchange with South Africa with additional detailed discussions. In particular, we will discuss what the safeguards inspection measures applicable to the new commercial plant at Valindaba might be if South Africa were to submit the plant voluntarily to IAEA safeguards.

When one urges South Africa to accept full-scope safeguards, one should remember that such safeguards are applied by the International Atomic Energy Agency. Continued efforts to curtail South African participation in the IAEA or to isolate South Africa from the international community run counter to our interest in increasing safeguards coverage in South Africa.

With regard to Rep. Rangel's bill (H.R. 7220), I would note simply that the approach advocated in this bill to deny any US nuclear cooperation with South Africa until it adheres to the NPT and accepts full-scope safeguards has not produced the desired results in the past. There is no obvious reason to believe that resumption of this policy of total denial by the US now would move us closer to our objective of increasing South Africa's acceptance of non-proliferation obligations.

With respect to conventional arms, the Arms Control and Disarmament Agency has not been assigned the task of overseeing the arms embargo against South Africa. However, pursuant to

the Arms Export Control Act and Foreign Assistance Act of 1961, as amended, the Director of ACDA advises the Secretary of State and, as appropriate, the President, on the extent to which proposed arms transfers to any destination could:

-- contribute to an arms race;

-- increase the possibility of outbreak of escalation of conflict; or

-- prejudice the development of bilateral or multilateral arms control arrangements.

ACDA, in this regard, participates in implementing the long-standing embargo on arms transfers to South Africa.

Thank you very much. I will now answer any questions you may have.

Mr. WOLPE. Let me thank all the witnesses for your testimony, particularly for your willingness to testify under the limitations we have placed on you this morning. I am terribly sorry for that.

Mr. Lyman, does the State Department view South Africa as a gross violator of human rights?

Mr. LYMAN. Mr. Chairman, we would certainly not defend the proposition that they are not a violator of human rights, nor that they have not shown a pattern of consistent violation of rights.

As a matter of policy on human rights, the Department has not wanted to designate countries formally in that category. But we do apply restrictions on countries where we see that kind of pattern.

Mr. WOLPE. That creates something of a dilemma, does it not, in terms of the legislation? You will note the letters that were received from Mr. Baldrige, the Secretary of Commerce, specifically stipulated that the export restrictions with respect to gross violators of human rights did not apply with respect to Commerce's evaluation of exports to South Africa because South Africa had not been designated as a gross violator of human rights.

Are you saying that that provision of the law which was written by the Congress, and the intent is pretty clear, is totally inoperative if the administration fails to make any such determination?

Mr. LYMAN. I think the law is very important and has a very significant effect. We do look at the pattern of human rights violations in all these cases, as you know, from human rights reports.

Mr. WOLPE. I don't think we can hear you.

Mr. LYMAN. I am sorry. I have a cold.

You know from human rights reports that we submit that we have detailed quite clearly human rights violations. The question of formal designation gets into triggering automatic types of ac-

tions and complicated relationships with countries which we formally designate.

We have taken the legislation quite seriously. We do limit exports to South Africa on the crime control list in a variety of ways because of the concern over the human rights situation.

Mr. WOLPE. The language of the legislation, section 502(b) states that:

> Licenses may not be issued for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violation of internationally recognized human rights.

Does South Africa constitute a government that engages in a consistent pattern of gross violations of internationally recognized human rights?

Mr. LYMAN. Our judgment is that there is a pattern of violation of human rights.

Mr. WOLPE. It is consistent with the statutory language here?

Mr. LYMAN. It is consistent in the sense that we have denied the export of those items.

Mr. WOLPE. So that when the Department of Commerce tells us that they are not obligated to adhere to this section, you are telling me that the Department of Commerce is in violation of the law then?

Mr. LYMAN. I think it is a question of their looking for a formal determination, but in practice the human rights violations in South Africa are looked at in these particular export license actions. I know it sounds like an arcane point.

Mr. WOLPE. Let me turn to Mr. Denysyk.

Do you feel obligated by the language of that particular statute or not?

Mr. DENYSYK. There are two points that should be made.

The first is that if there is a specific designation, then certain other things have to happen, as Mr. Lyman pointed out. Not only denial of export licenses, but a lot of certain other actions, foreign students, for example.

The point of designation therefore is sometimes counterproductive in terms of dialog. If a determination were made, however, then our hands would be tied. That is, certain actions would have to be taken and we would have complied fully with the law.

The designation has not been made; therefore, on the technical point that particular provision of the Foreign Assistance Act does not apply. Cases have to be, by our regulations, handled on a case-by-case basis.

Mr. WOLPE. I will be pleased to yield to Congressman Bonker.

Mr. BONKER. I think we have to reconcile the statements just presented to the subcommittees.

Mr. Lyman has in effect stated that South Africa, pursuant to the provisions of section 502(b) of the Foreign Assistance Act, is a consistent and gross violator of internationally recognized human rights.

You state there is no official designation. There is not. There is no official designation of any particular country. That is very much in the abstract. The law provides that a consultation exists between the Commerce Department and the State Department, spe-

cifically the Bureau of Human Rights and Humanitarian Affairs, on foreign policy considerations.

You are not complying with the judgment that has been put forth by the State Department. I don't believe it is up to the Department of Commerce to make a determination on a foreign policy matter. It is up to the State Department. You are instructed to consult with them, Mr. Denysyk.

If you are going to wait around until there is an official designation of any country that is a gross violator of human rights, you are going to have a long wait, and there would be no substance to the provision of the law. I think you are in violation of the administration's own policy determination on this matter.

Mr. DENYSYK. Congressman Bonker, I don't think there is a contradiction of what Mr. Lyman just said.

Mr. BONKER. There is contradiction. He stated South Africa is a violator. You are saying there is no official designation. That is a contradiction.

Mr. WOLPE. If I may reclaim my time, the issue that is being presented by Mr. Baldrige's statement, and I quoted section 502(b) of the Foreign Assistance Act, does not apply in the case of South Africa since the Department of State has not identified South Africa as a country which engages in a consistent pattern of gross violation of human rights.

That is the essence of the language.

Mr. DENYSYK. Technically that is not a good statement, Mr. Chairman. The law provides for a designation by the Secretary of State for a given country. That has not happened. That does not mean we do not consult on a regular basis with the Department of State and we work for consensus. We have not had differences of opinion on these types of cases.

Mr. SHAMANSKY. I see these people playing legal games. Mr. Lyman from the State Department says we know they violate human rights, but we choose not to make the formal designation.

Arbitrarily they choose not to make it, which permits this gentleman to say, "Gee, they did not make the formal designation, although in substance we will consider it."

The State Department is refusing to do that which it says it ought to be doing, and everybody hides behind their dereliction of duty.

Mr. WOLPE. I thank the gentleman for that observation.

Let me enter into the record at this point this piece of legislative history.

Secretary Baldrige wrote to the Subcommittee on Human Rights and International Organizations that if the State Department designates a country as a gross violator, notification to the Congress is required.

The Congress, I might add, never intended a formal list of human rights violators. The conference report language to the legislation indicated the following:

The conference amendment to section 502(b) is not intended to require the executive branch to publicly identify those countries which are consistent violators of human rights. Rather it is the intent of the Committee of Conference to place emphasis on human

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rights as a major factor that must as a matter of law be taken into account.

The obligation to notify the Congress under that section is operative with or without the formal designation which Mr. Baldrige has asserted is requisite.

I would ask that the Department of Commerce take a second look at that legislative history.

Chairman Bingham.

Mr. BINGHAM. Thank you.

Can you point to anything in the law that leads you to believe that a formal designation is necessary to bring that sanction into effect?

Mr. DENYSYK. Mr. Chairman, I don't have a copy of the law with me. If I recollect properly, it states that the Secretary of State shall designate a country and once that happens——

Mr. BINGHAM. No, that is not correct. I have it in front of me. There is no such designation. Are you thinking of the case where a country is designated as being a country that provides support for acts of international terrorism? That is a category with which we are familiar, but that is a different category.

In this case, as my colleagues have pointed out, there is no requirement for a formal designation. I am forced to agree that the Department of Commerce is misreading the act. I support their position that the Commerce Department policy should be reviewed.

I would like to pursue for a minute, Mr. Denysyk, your testimony with regard to the efforts of the Department of State to formulate a memorandum of understanding in consultation with Commerce on export control cases.

Can you tell us whether such a memorandum has been drafted?

Mr. DENYSYK. Yes, Mr. Chairman, a draft does exist. It was done by the Department of State. We are currently reviewing it and intend to get back to the Department of State in the next few weeks.

So we are making some good progress in that direction, Mr. Chairman.

Mr. BINGHAM. Can you give us some idea what is in the memorandum, what kind of cases will be covered?

Mr. DENYSYK. It is a general treatment of foreign policy control cases. It not only deals with human rights and nuclear nonproliferation, but other controls that are imposed for foreign policy reasons. There has been a procedure for escalation of these types of cases.

In the national security area there is a formal procedure for escalation of cases called the ACEP system. Mr. Brady, my boss, is chairman of it. I chair one level and there is one step beyond that, something called the EARB which Commerce chairs. Such procedures do not exist for foreign policy cases. But the MOU will establish a similar procedure for those cases; there will be a systematic escalation process.

Mr. BINGHAM. The foreign policy controls expire on January 20, 1983, is that correct?

Mr. DENYSYK. Yes.

Mr. BINGHAM. Do you have plans for consulting with the committee on the matter of whether controls will be extended?

Mr. DENYSYK. Yes, sir, we have plans to not only consult, but consult well in advance of the expiration date. As you may recall, last year there was a bit of a harried experience right around that time that we renewed them. We are well underway in our review process now and expect to have an administration position within the next few weeks which will give us adequate time to consult with the Congress.

Mr. BINGHAM. Can you tell us what suggestions for changes have been made by interested parties and in public comments on the regulations you are receiving?

Mr. DENYSYK. Mr. Chairman, I have not seen all of them, but it is the normal set of responses, ranges from eliminating all controls to imposing everything on a lot of different countries. It is literally the spectrum of opinion.

I will be glad to supply either for the record or under separate cover the specific responses if you would like.[1]

Mr. BINGHAM. Please.

Mr. BINGHAM. Could you tell us whether any applications for licenses to export shock batons have been considered since the September 8 license for shock batons for South Korea was approved?

Mr. DENYSYK. I can't answer that, Mr. Chairman. I don't know the details, but I do know that for South Africa it is not being considered. I am sure we have not had applications since then for South Africa.

Mr. BINGHAM. Would you submit that statement for the record, please?

Mr. DENYSYK. Yes.[2]

Mr. BINGHAM. No further questions.

I just would like to say that I know that Mr. Denysyk and I are making our final appearances with the subcommittee. We have had some differences on policy matters, but I do want to thank him for his cooperation with the subcommittee.

Mr. DENYSYK. It has been my pleasure working with you, Mr. Chairman.

Mr. WOLPE. If there is no objection, Mr. Bonker.

Mr. BONKER. Mr. Denysyk, I am troubled by Commerce's role with respect to South African cases before us, but also the Korean case on which we have had similar hearings previously. It seems to me that the Department of Commerce has taken liberties with its role as it relates to foreign policy considerations that ought to be with the State Department.

I think that at best the Commerce Department is inept in this matter. You have referred to clerical errors and oversights and so forth. It seems a little strange to me that on something that is as important as the issuance of an export license for these devices, under the circumstances, that is more than just a clerical error.

Somebody must be held accountable at a higher level. At worst I think that possibly you are subverting, if not the State Department's intent, at least the congressional intent and that is a serious matter.

We can go back and forth on interpretation of committee language in the act, committee reports, correspondence that has gone

[1] Material not supplied.
[2] Material not supplied.

back and forth. I am looking more at the spirit and the motive that underlies these decisions.

The Export Administration Act comes up for reauthorization in the next session of Congress. If the Department of Commerce cannot be trusted, if it is going to sidestep and ignore the State Department in its informal consultations, then I think we are going to have to find a procedure that will reduce your discretion on these matters so that State can clearly have a stronger voice on foreign policy considerations.

I think that the problem is more than just a matter of clerical error. I think that the Department of Commerce has gone beyond its discretion.

So, perhaps as your last comment on the matter, do you think that I am out of line on that judgment and the Department of Commerce is fully within its rights on making these judgments that no changes in the law are required?

Mr. DENYSYK. Congressman Bonker, we are now in the process of trying to come up with an administration position on the Export Administration Act renewal. I am not free to comment on specific portions of the act.

However, on the specific case you referred to in terms of the clerical error, it was a clerical error. While we try to have a system which is 100 percent foolproof, in processing 90,000 cases I can't guarantee that there won't be additional errors.

What we can do and what we have done is try to improve the system when problems do occur. We have taken additional control procedures which I feel comfortable with and hopefully we will prevent mistakes in the future.

Mr. BONKER. May I suggest for the benefit of your colleagues who may be here today that if you are in the process of coming up with new procedures, you should expedite that effort because we will be going into committee hearings on this matter.

I certainly hope that you won't still be in the process at that time because if you don't come up with some suggestions for procedures, perhaps the committee will.

Mr. DENYSYK. Very specifically on foreign policy control cases we do have a draft between our two agencies which will normalize or systematize the procedure for foreign policy control cases.

Mr. BONKER. I would hope so.

You might also look at the crime control list and how items are placed on and taken off that list.

Mr. DENYSYK. Certainly.

Mr. WOLPE. Thank you very much, Mr. Bonker.

Mr. Erdahl.

Mr. ERDAHL. I have no questions at this point. Thank you.

Mr. WOLPE. Mr. Studds.

Mr. STUDDS. Thank you, Mr. Chairman.

I am tempted to revive a variation of the old light bulb joke and ask, with no disrespect to the individuals here, how many agencies does it take to screw up a law?

I must say you have come up with a foolproof way of guaranteeing that the statute has no substance or meaning and never can, the way you interpret it. It requires, according to you, a formal designation to take effect, while the Department with such responsi-

bilities says they have no such procedure. If that is not a catch 22, I have never heard of one. There is no way, as the Department of State and Commerce have described their understanding of the statute and the way it is to be implemented, that it could ever be implemented under any circumstances.

The State Department says it does not believe in formal designation of countries as gross violators. And Commerce says it does not believe the scenario pertains.

Can somebody tell me of a scenario in which the statute has any meaning?

Mr. DENYSYK. On a case-by-case basis we do take into account——

Mr. STUDDS. The law does not ask you to take it into account. The law is an outright explicit statutory prohibition. It does not say you shall take into consideration. It says you shall not.

What meaning, the way you interpret it, does that law possibly have under any circumstances?

Mr. DENYSYK. At the risk of dragging my heels, I would suggest that we will review the comments made by the chairman, Mr. Bonker, and yourself and work with the Department of State to work on a procedure on these types of cases.

Mr. STUDDS. I don't know about the rest of the committee, but I don't find myself reassured by that. You have been considering it for 2 years now.

Does the State Department want to respond? Am I being unfair? Is this statute rendered meaningless by your interpretation of it?

Mr. LYMAN. Congressman, if the consultation procedures work, and Commerce and State are consulting now on better procedures as Mr. Denysyk has said, and if the procedures work and the consultation procedures work effectively, then the law does indeed get applied because we look at it in the same way as the chairman indicated when he read the committee report, taking into account the human rights situation.

Mr. STUDDS. It does not say take into account. It says don't.

Mr. LYMAN. Let me clarify. In the case of, let us say of crime control items, they would be denied to a country that had a consistent pattern of such violation. In effect the law operates.

So I don't think that the absence of formal designation keeps the law from being effective if the procedures and consultation procedures are working. I think there was an error in one case.

Mr. WOLPE. What happens in Korea?

Mr. LYMAN. Of Korea I am afraid I can't speak.

Mr. STUDDS. What about Guatemala?

Mr. LYMAN. Maybe there is somebody else here to speak, but I can't.

Mr. STUDDS. It was a New Englander that made that famous observation about consistency, so I can hardly hit you with that, but I am tempted to with regard to the Soviet pipeline. There is no country on Earth that has been designated a gross violator by statute.

Mr. LYMAN. In a formal way.

Mr. WOLPE. My understanding is that what happened in the Korea case is the State Department in fact did issue an advisory not to allow the approval of shock batons, yet the Commerce De-

partment overruled, ignored the State Department advisory and went ahead with the export of shock batons to Korea.

Is that not an accurate history?

Mr. DENYSYK. One of the reasons we are considering getting a formal escalation process in place for cases like this.

Mr. STUDDS. Those are extra strength flashlights, you understand.

Mr. Lyman, on page 4 of your testimony you state:

> The standard of human rights which so many endorse for South Africa are also utterly absent from the political practice of many other nations not similarly subject to either the scrutiny or sanctions applied to South Africa.?

You refer to that in the next sentence as a double standard and suggest that we are being unduly and disproportionately unfair in singling out South Africa.

What other nations do you have in mind in making that statement?

Mr. LYMAN. There are a lot of countries that are in significant violation of human rights. I think they come up in the human rights report. We don't focus on all of them in the same way.

Mr. STUDDS. What other countries are we considering that might come in that category aside from Guatemala?

Mr. LYMAN. South Africa, for example, is singled out for specific kinds of export controls. Very few other countries in the world are.

Mr. STUDDS. What about the Soviet Union?

Mr. LYMAN. They are singled out for certain kinds of control. South Africa is singled out for others.

Mr. STUDDS. Do you think the President was exercising an unreasonable double standard in the pipeline incident with the Soviet Union?

Mr. LYMAN. The context in which I made the statement in the testimony was that in terms of trying to move the South Africans along and create a climate in which they will make different changes, their perception of the double standard is a problem.

In fact, they can point to the fact that there are other governments that violate rights that are not singled out. That is the point.

Mr. STUDDS. You have heard Congressman Rangel's comment that he would leave the room a better legislator and a better man if someone could tell him an instance of real concrete progress by the Government of South Africa.

Mr. Lyman, your statement is strewn with hints and suggestions that there are many encouraging, sincere, honest efforts by South Africa. What can we tell Mr. Rangel to make him a better man as a result of 2 years of the administration's efforts to reverse apartheid in South Africa?

Mr. LYMAN. He said he would be better if he knew our Government made its position clear.

Mr. STUDDS. He also said that.

Mr. LYMAN. I would comment we have made our position clear on that. In terms of change in South Africa there are portents of change underway. There are elements in the Government that are trying to change. It is not the kind of change that we feel or

anyone in this room would feel constitutes movement toward consent of the governed or majority rule. We have not seen that yet.

We have seen people talking about changing systems. We have seen recognition that economically apartheid in the homeland will not work for South Africa. We have tried to tailor some of the programs that the committee has provided to encourage the change.

Mr. STUDDS. Does the administration take any credit for that?

Mr. LYMAN. Not in a direct sense because I think that puts a different interpretation on the policy. If the climate created is encouraging that, yes.

I would not like to say that we take credit for all those things.

Mr. STUDDS. Thank you for your patience. I am afraid he is going to have to remain the same legislator that he was.

Mr. WOLPE. Thank you very much.

Mr. Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman.

Mr. Chairman, as I listen to these witnesses and notice generally their countenance, I sympathize with them and I suspect all my colleagues do also.

You are called upon to be apologists for administration policy that I am satisfied none of you believe in and all of you recognize to be morally deficient. Yet we Congressmen insist that you come here and tell us something about it and you do the best that you can.

It is unfortunate that we don't have the makers of the policy before us instead of you appointees whose jobs depend on the extent to which you are able to justify that policy.

I have only one question.

I think the basic assumption of this whole policy of constructive engagement is that by pursuing it we will eventually bring South Africa around to what it is that we want. We want them to accept safeguards as far as nuclear energy is concerned and they certainly have not done that yet.

We want them to come in line with internationally accepted principles of human rights. They have not done that.

We want them to abide by the U.N. resolution and get out of Namibia. They have not done that.

We have tried this policy for 2 years. Is there any among you who can give me one concrete positive result that we have achieved toward the attainment of those objectives?

Mr. LYMAN. Congressman, at the risk of trying to satisfy what I understand is a deep concern on measuring the progress, I can say that on specific issues related to the independence of Namibia a great deal has been achieved, a great many objections previously raised with regard to the implementation of 435 have been set aside.

That is a specific example in the context of negotiations. It is not complete. If you ask: does that produce results? No, but we think it moves it closer. We have engaged in discussions with the Government on a number of other issues.

I am hesitant to point to specific results because I don't think the process is one in which you put up something and they give something back in return to us because changes that you want inside

South Africa are not going to be as concessions to the United States.

They are going to be made when the people of South Africa are going to be moved and motivated to make changes that must be made. If we can promote that atmosphere, we will have done a lot. That makes it hard, however, to point to the kind of concrete progress that you talked about.

I do think that we are in a position now to be able to move ahead and I am sorry it has taken us as long as it has on some of the programs that the subcommittee passed in regard to promoting education and other changes in South Africa. I think we are able to make arrangements to do that.

There are other indications like that. They are not big changes that we are all looking for, but I think they are some.

Mr. CROCKETT. Meanwhile, however, we have antagonized every other nation in the southern part of Africa. That is one part of the price we have paid. Yet what you tell us now is exactly what Mr. Crocker told us 2 years ago: is that he hoped to accomplish U.S. foreign policy objectives by giving South Africa everything that South Africa wants.

Periodically you come before us and say you believe that some progess is being made, but you are unable to point to any concrete step taken by the Government of South Africa toward making that progress. Instead their position seems to have hardened.

They seem now to jump from the idea of waiting until you can work out some system that will protect the white vote in Namibia to saying no, we won't do anything now until after you have been able to remove all the Cuban forces from Angola.

Mr. LYMAN. There are two elements to negotiation. On the Namibia side, on the specific item relating to implementation of 435, there is a great deal of progress.

Mr. WOLPE. If the gentleman will yield on that point, the fact that there has been so called progress on the other conditions with respect to U.N. Resolution 435 is essentially irrelevant if in fact there is a new and different issue that was never even raised or contemplated at the time of the discusions previously; namely, the Cuban troop question in Angola.

Mr. LYMAN. Mr. Marshall has some other aspects to the original question.

My answer is that the negotiation is related to a number of issues which are blocking 435. Say that we are making progress on some, but not on all, I can't say that there is no way to answer your question because we have made progress on a number of issues that were in the way of implementing 435 before.

The issue on regional security was a major issue. It is articulated now in a way it was not articulated then. It certainly was an issue at the time.

Mr. MARSHALL. I would just like to add something, Mr. Chairman.

We feel that we have made progress in the nuclear area with South Africa.

Maybe I should digress for a moment by pointing out that South Africa provides a great deal of electrical power to neighboring countries. I know there are other things, including trade relation-

ships between South Africa and the other African countries, which we need to bear in mind.

With respect to the safeguards issue, there has been the facility at Valindaba—a small pilot enrichment plant built by the South Africans some years ago. They have more recently proceeded to build a slightly larger plant without the aid of any foreign suppliers. We have had, I feel, productive talks to encourage them to place the larger plant under international inspection. Indeed they have taken the steps which will enable them to protect proprietary information if they were to make a decision to place it under safeguards. They have also lowered the enrichment levels of the uranium they are using in their research reactor which we find to be a positive step.

Mr. WOLPE. Mr. Shamansky.

Mr. SHAMANSKY. Thank you, Mr. Chairman.

As a lawyer, I was forced to go back and read the section 502(b)(a)(2) of the Foreign Assistance Act of 1961. The difficulty I have is in understanding where responsibility lies, and I see where these gentlemen have really not too much problem avoiding responsibility. The language says the Government security assistance may not be provided, et cetera, to a government which is engaged in a consistent pattern of gross violations of internationally recognized human rights unless the President says something.

What I don't see the statute's saying is fixing responsibility for making that determination.

In the next paragraph of our letter from the Chairman of the Subcommittee, Mr. Wolpe, there is a reference to:

> Given the sensitive nature of such exports, it is the expectation of the Committee of Conference that the State Department will participate in the review process with the Secretary of Commerce concerning the exports of crime control and detection instruments and equipment.

Again, you must infer from that a positive duty to have an evaluation based on something. I am afraid that you haven't established clearly the responsibility for making that determination.

No bureaucrat worth his salt is going to initiate that on his own. He is not going to do it. So, we are holding these fine people to standards which they wouldn't in their right mind try to do.

If you are going to cite the statute, Mr. Chairman, you had better see what it says. They don't have to do that, and they are not doing it.

Mr. WOLPE. The Conference Committee language clarified the legislative intent in that regard. The Department of State was the proper agency to make this kind of judgment. I don't think the Department of Education has been called upon or the Labor Department.

Mr. SHAMANSKY. It is not normal for me to be an apologist for the Department of State because that is not my intention. I am not sure that the Conference language is itself clear.

Mr. BONKER. I think you have raised a valid point. I think Congress must share the blame for this confusion because we have not been explicit enough in our language. Therefore, I think we ought to consider one of several options in the future legislative deliberations on the reauthorization of the Export Administration Act which is coming up next year.

One possibility is removing completely from the Department of Commerce the crime control list and placing it with the Department of State along with the arms export control program.

They are fully capable of administering that program. They have an excellent track record on exports of the police equipment on the munitions list. They have not encountered any difficulties with our committee in the administration of that program and it takes Commerce out of it completely.

Mr. SHAMANSKY. I say the basic error remains that you still have to place an explicit responsibility on somebody to make a determination.

Mr. BONKER. We place the responsibility for the judgment on human rights violations with the Department of State, which they have made. The responsibility for implementing export controls on crime equipment rests with the Department of Commerce.

Mr. SHAMANSKY. They say that they have not made that explicitly.

Mr. BONKER. My idea is to transfer the administration of the crime control and detection equipment to the Department of State so that the implementation of that provision rests with the judgment to be made by that Department.

Mr. SHAMANSKY. Will you charge them in the statute with the responsibility of making a determination? Until you do that, they are not going to make it.

Mr. BONKER. Both the Carter and Reagan administrations have not attempted to officially designate countries as gross violators. It is something that is handled in a more informal and institutional way.

The Carter administration set up the Christopher Group to evaluate recipient countries for their human rights records and they would identify countries with gross violations of human rights and use that to terminate aid to these countries, but the Commerce Department cannot make judgment on foreign policy consideration.

The Department of State can and I trust the Department of State on this matter. Why confuse the process by bringing in the Department of Commerce?

Mr. WOLPE. Would the gentleman yield further?

Mr. SHAMANSKY. Yes.

Mr. WOLPE. I think there is substantial merit in the suggestion made by the gentleman from Washington, not because of the obvious ambiguity in the law. I think ambiguity is much more apparent than real.

I don't think there is any question that the reason the Bureau of Human Rights was established in the State Department is because it was assumed that was the agency that was going to have some responsibility in the human rights area.

Perhaps we should have said it again, but I don't think that was very mysterious. The point is that these agencies have not wanted to see implemented that statutory language and therefore it is a requirement clearly to improve upon it.

I hope that we will certainly take that up in the next session.

Mr. SHAMANSKY. If I may reclaim my time to make this observation, you are not going to get anyone to do that unless you make it clear that there is a responsibility to do that.

Mr. WOLPE. In fact, that is simply not the case. Under the previous administration there was a mechanism for making these determinations. That was respected and followed and we did not have these kinds of cases arise.

Mr. SHAMANSKY. The point I am trying to make is that it will strictly depend on the will of the individual administration. I thought you were seeking not to make it dependent on the will of the particular administration, but to make it an obligation of every administration.

Mr. WOLPE. Clearly that will be necessary.

Mr. CROCKETT. Mr. Chairman, will you yield?

I think we have here one of those situations where judgment as far as foreign affairs are concerned dictates that we not make an explicit written record by the Government of who we think are the bad guys and who we think are the good guys.

That is why we left it to the State Department in more or less general language, relying on their good judgment and good sense. I think that is what my colleague, Mr. Bonker, is saying.

What my colleague, Mr. Shamansky, is saying is that we made a mistake in doing that and that we should specify by amending the statute that the State Department shall declare, and that would mean publicly, I take it, who are the bad guys, to that extent exports would not be made to the bad guys.

So it is a policy judgment that I think this subcommittee will have to recommend to the full committee. The full committee, if it goes along with it, our recommendation can then present it in a bill on the floor.

Mr. SHAMANSKY. My concern is, and I am sure there are good reasons and I am willing to accept there are good reasons not to be that explicit, but if you accept that and not make it an explicit responsibility, don't be surprised when you get this kind of result.

That is all I am trying to say. You can't have it both ways. You have to make up your mind. If you want to make it explicit, then we should not have what we have been seeing here. The minute you say you don't have to make that designation, then we are going to have this situation.

Mr. BONKER. The question is not whether there is an explicit determination. There has been by the Department of State.

Mr. SHAMANSKY. Is that what Mr. Lyman said, there has been explicit determination about South Africa?

Mr. BONKER. No. In their judgment South Africa has engaged in a pattern of gross violation of human rights.

Mr. SHAMANSKY. But not down on paper.

Mr. BONKER. Well, in testimony before this committee. The same existed with respect to Korea and the Department of Commerce chose to ignore the recommendation. So, I think that we want to stay away from designating countries as gross violators.

If you ask this administration to designate such countries, they would all be on the list. I think we ought to allow discretion within the Department of State for these determinations.

If the Department of Commerce is going to ignore the recommendations and fail to implement the law, then I think we simplify it by taking away from the Department of Commerce that discretion and put the whole matter into the Department of State so that we

can put an end to this confusion. We will have some hearings on this.

Mr. WOLPE. I would like to begin the second round of questioning with a different set of issues. I want to begin with a few questions to Mr. Denysyk with respect to the shock baton episode.

You indicated in your testimony that the manufacturer says that the shock batons have already been sold within South Africa.

Has the Department of Commerce committed any resources whatever to reclaiming the shock batons?

Mr. DENYSYK. Mr. Chairman, thus far we have notified the exporter that there was a clerical error. We have asked them to take whatever steps are possible to reclaim them, to bring them back into the country.

We realize that they, in fact, have been exported. Beyond that, Mr. Chairman, I don't believe we have the authority to go into a country to reclaim things that have been sold.

Mr. WOLPE. In other words, whenever there is a violation of something that occurred after the fact you simply ask the exporter to try to retrieve it and if they can't, there is nothing else that can be done?

Mr. DENYSYK. The procedures are different if there is a violation. There was a mistake made in this instance. To the best of our knowledge, there was no violation per se of the regulations.

The exporter went through the proper procedures, applied for it and upon receipt of a validated license, then they shipped.

If they shipped without a validated license, then there would have been a violation and we would have taken additional steps.

Mr. WOLPE. Let us pursue the question further with respect to the exporter that was at issue within this country.

The application for the license submitted to the Department of Commerce by the manufacturer described the item for which the license was being sought as a rechargeable flashlight with self defensive capability when activated to emit impact energy.

Was that the description that was applied in the application by the commercial firm or did anyone within your agency assist in the development of the descriptive language?

Mr. DENYSYK. Mr. Chairman, as you know, specific details on cases I cannot discuss because of 12(c) confidentiality restrictions in the Export Administration Act.

I can say, however, that particular license was supposed to be returned because of inadequate information. I can't comment on whether what in fact you read was on the license or not because that is official information on the license.

I can say that our intent was to return the application because of inadequate information.

Mr. WOLPE. Let me add this is in the public domain, this has been widely reported. So I am not laying on the record anything that is not on the record.

The question I am putting to you or was about to put to you perhaps as a hypothetical, I would argue that that kind of language applied to application is indicative of an intent to deceive or intent to obscure the real content of the item for which an export license was being sought.

Do you regard that language in the same way?

Second, if so, does the Department have any procedures with respect to subsequent export licenses being sought by firms to attempt to describe items in that fashion?

Mr. DENYSYK. The procedure is if the description is unclear, and let us assume for the time being that what you read was in fact on the license, we would return it because there was not adequate information on the application or disclosure of information to make a determination whether we wanted to approve it or even process it.

In this instance there was inadequate information.

Mr. WOLPE. You don't think there was any intent to obscure the content of the item?

Mr. DENYSYK. I can refer the matter to Enforcement to see if there is intent there. Thus far we have not felt there was intent to violate the regulations.

Mr. WOLPE. Let me ask what you would do if you concluded there was intent here. What would be the procedure within the Department?

Mr. DENYSYK. It would be like any other violation. If there is violation, we would proceed either administratively or criminally. There are two paths, and both paths have options within themselves.

Mr. WOLPE. Let me turn now to the question of the arms embargo policy and its implementation by the Department of State.

Last March the Subcommittee on Africa had a hearing on the apparent breakdown of the U.S. embargo. The hearing was the result of a 2-year subcommittee study which indicated that the CIA, State Department, and Defense Department had essentially failed to adequately enforce and implement the arms embargo in the case of the Space Research Corporation which successfully concluded a $90 million arms deal with South Africa.

This study found that SRC's activities were not detected or prevented because there was at that point no systematic effort within the U.S. Government to enforce the arms embargo.

The subcommittee made several recommendations on the way the enforcement could be improved, including designation of a lead State Department office, increased staff expertise, and there were other suggestions that emerged in the course of the subcommittee hearing.

What are the Department's specific actions and specific reforms that have been taken as a result of the subcommittee study and has the Department adopted any specific procedures designed to improve its ability to move to more effectively implement the embargo?

I am going to ask you to delay your response and we will give you time to reflect so that we might go and vote. We will return shortly.

[Recess.]

Mr. WOLPE. The hearing will resume.

Mr. Lyman, I am sure you have had an opportunity to prepare a more concise response.

Mr. LYMAN. I can save some time by referring to pages 11 and 13 in the testimony where we answer that question.

The Department has taken a number of steps on procedures, on relations with Customs, on alerting our foreign service posts with

special attention to the problem of arms export control and some studies that have engaged in special operations.

I could go through that here or you may ask specific questions.

Mr. WOLPE. Let me zero in on a couple specific issues.

One of the recommendations that the subcommittee had made was that the Office of Munitions Control be beefed up with additional permanent personnel. As I read your testimony, there has been no additional permanent personnel. Even the Office of Munitions Control agreed on that particular need.

Why has that not happened?

Mr. LYMAN. I am afraid I am going to have to get back to you on that. Let me take that question and get back to you specifically on that.

Mr. WOLPE. I would appreciate that.

[The information referred to follows:]

As noted in the Department's letter of December 1, 1982, incorporated into our prepared statement, a U.S. Customs Officer has been detailed indefinitely to the Office of Munitions Control to support Operation EXODUS and other enforcement-related efforts. We believe this long-term reinforced effort, together with the other actions take to strenthen enforcement, are adequate to carry out the Department's responsibilities in this area.

Mr. WOLPE. Another recognized need that is recognized by the testimony of administration witnesses as well as by the subcommittee in its own recommendations was for new procedures that would provide for some effective coordination among the CIA, State, the other agencies involved, and more particularly the necessity for a lead agency to take responsibility for all aspects of the prevention of embargo violations, not simply the licensing and prosecution, the whole mechanism of the implementation of the arms embargo itself.

As I read your testimony, there still is no lead agency that has been designated for overall coordinating responsibility. There is an absence of mechanisms to coordinate among all the various agencies.

Mr. LYMAN. There are several agencies involved. I suppose that in answer to your question no one of the controls would put overall the functions that exist. OMC has specific responsibility.

Mr. WOLPE. That was true before the hearing.

Mr. LYMAN. And Customs Service has responsibility. While we have strengthened the coordination and consultation and information exchange among them, we have not put one in charge totally.

Mr. WOLPE. Why is there no move to identify a lead agency so that the lines of accountability can be made clear so that what happened before will not happen again?

Mr. LYMAN. I would like to take that question and get back to you with a more specific answer on that. There are a number of bureaucratic and legal problems involved. Let me get a more specific answer on that.

Mr. WOLPE. I hope that you will do so and I hope there is still at least pending some serious consideration of that suggestion. I believe, as I said, that even administration witnesses essentially acquiesced in the notion it might be a helpful device to try to insure more effective implementation of the embargo.

We are talking about an academic question here. I think you are aware that the technology at stake was very substantial in its importance to the South African military arsenal. It involved simply a sale of equipment, but actually a transfer of technology.

Indeed, South Africa recently showed off at an international fair its latest version of the space research gun which it had developed on the basis of this illegal export that was permitted to take place. It is announcing now its intention to sell this technology to other countries.

I would be curious whether the United States has communicated anything in regard to its reactions to that proposed sale to other countries, the countries themselves, or to South Africa.

Mr. LYMAN. I am not sure on that. I don't think we have specifically. Again, I will want to check that and come back to you.

[The information referred to follows:]

Mr. Wolpe asked about identifiying a lead agency to take responsibility for all aspects of the prevention of embargo violations. The Department of State, through the Office of Munitions Control, is the agency primarily responsible under law and executive order for controlling the commerical export of defense articles and services. OMC initiates and coordinates enforcement efforts with other offices within the Department and with other agencies as appropriate. OMC's responsibility and authority in enforcement matters is well-recognized, and the established system of interagency liaison and coordination works smoothly and effectively.

With regard to the question of communicating American reactions to South Africa's proposed sale of its 155mm gun, we have not been approached by any potential purchaser nor have we discussed sales or potential sales with the South African Government.

Mr. WOLPE. Mr. Denysyk, in your testimony you indicated that SNEC has recommended approval of Helium 3, but that a license has not yet been issued.

When do you expect a license will be issued and what type of nonproliferation assurances from the Government of South Africa will the United States receive?

Mr. DENYSYK. On the Helium 3 issue specifically the SNEC recommendation was based on technical grounds. The license, however, is still being reviewed at the policy level. A decision has not been taken yet whether to issue a license or not.

If a decision is taken to issue it, then we will start designing, if you will, a series of conditions and assurances for that particular case. We have not done that yet, Mr. Chairman.

Mr. WOLPE. Will you consult with the committee with regard to the conditions that you have in mind should you make a decision to move ahead with the sale?

Mr. DENYSYK. Certainly, Mr. Chairman.

Mr. WOLPE. Mr. Marshall, I would like to go back to the question of the enriched uranium that South Africa obtained from Europe as a consequence of the brokering activity of two American firms.

Have you or anyone else from your Bureau ever met directly with representatives of Edlow and SWUCO?

Mr. MARSHALL. Yes, we have had meetings with them from time to time. You are referring to this particular matter?

Mr. WOLPE. That is right, with respect to this particular matter.

Mr. MARSHALL. In my prepared statement I pointed out that during the discussions we were having with the South African Government on this issue, we asked how they were going to get en-

riched uranium to start up their new reactors when they had not been able to get it from the United States. They suggested they might go to France to get the enrichment services. During that period of time

Mr. WOLPE. Who suggested they might go to France?

Mr. MARSHALL. Their suggestion.

Mr. WOLPE. South Africa?

Mr. MARSHALL. They had, I would imagine, thought about various places where they might obtain enrichment services in lieu of getting it from the Department of Energy. There would be only two places they might deal with.

Mr. WOLPE. If I may interrupt you at this point for the purpose of continuity of the discussion.

As you know, the committee obtained a copy of a secret memorandum within the South African Government that was developed for Mr. Botha on the occasion of his meeting with Mr. Haig in which Mr. Botha was supposed to raise with Mr. Haig this general issue and was supposed to indicate that if the United States was unwilling to permit the fulfillment of the materials of this contract because of the nonproliferation provisions, that the United States should assist South Africa by communicating directly to France, that France should assist South Africa in that regard.

That was the game plan that the South Africans were going to pursue apparently in discussions with the Secretary.

The question to you is what was our response to that?

Mr. MARSHALL. This was referred to in your letter. This was the first time I had even heard anything about this. I had never seen any such document.

Mr. WOLPE. If I may interrupt for a moment, Mr. Lyman, have you seen that particular document?

Mr. LYMAN. Mr. Chairman, we cannot comment on documents that are purportedly leaked and I cannot make any comment on it.

Mr. WOLPE. It is not leaked from the United States.

Mr. LYMAN. I know, but I cannot speak on the authenticity or other points.

Mr. MARSHALL. I am not sure it is terribly relevant to your question. The point you are getting at is what would be the U.S. position if such a proposal were raised by South Africa.

I think I have covered this in my testimony by indicating that our position with the Government of France on this issue, as it was with any other supplier, was that we didn't think any supplier should enter into a new commitment with South Africa or any country that did not have full scope safeguards.

We told the French this. There was a period of review within the French Government and ultimately at the beginning of the Mitterand Government they said they would not enter into any new commitments and that included the enrichment services to South Africa.

Mr. WOLPE. Now I am turning to American firms and the advice you gave them in that regard.

Were you involved personally in that meeting?

Mr. MARSHALL. Yes, as a matter of fact, I was, as were other people from the executive branch.

Mr. WOLPE. Who were the other people?

Mr. MARSHALL. I can't recall the names of all of them. I am not sure that is really relevant.

Mr. WOLPE. Let us make the determination of what is relevant. Could you submit it for the record?

Mr. MARSHALL. Yes. I can supply it for the record.

[The information referred to follows:]

EXECUTIVE BRANCH OFFICIALS

Harry R. Marshall, Jr., Department of State.
Frederick McGoldrick, Department of Energy.

NOTE.—There may have been one or two other officials who attended the meeting.

Mr. MARSHALL. As I pointed out before, we are in touch with firms like Edlow from time to time because of the nature of their business. They came in that particular day to inform us of the fact that they had been in touch with ESCOM officials and that they thought there would be an arrangement made whereby ESCOM would acquire previously enriched uranium and they told us it was not United States supplied uranium and it was already in Europe.

Mr. WOLPE. Did this conversation take place in advance of the consummation of the agreement between the South African Government and these firms?

Mr. MARSHALL. I can't tell you precisely whether they had already concluded the deal. They informed us in such a way that indicated it had been arranged.

Now, whether in fact the final document had not been signed, I don't know.

Mr. WOLPE. Why did they inform you?

Mr. MARSHALL. We have had a good relationship with the nuclear industry and quite frankly, they keep us currently advised on a number of issues in areas of concern to the State Department.

Mr. WOLPE. Did you take the initiative to discourage consummation of the agreement?

Mr. MARSHALL. We were not asked precisely by them for approval.

Mr. WOLPE. Were you asked indirectly for approval?

Mr. MARSHALL. No, we weren't. It was a conversation where statements of fact were made.

Mr. WOLPE. Why did the conversation take place? Were they not there to make certain their action would not compromise the credibility of your agency?

Was it not their desire to have a conversation to make sure that relationship would not be put in jeopardy?

Mr. MARSHALL. I suppose that is possible. I tell you, though, that we considered this.

Mr. WOLPE. Did you try to prevent that?

Mr. MARSHALL. Yes, I can answer that question.

First of all, I think you are aware that there is not any jurisdiction for the United States to intervene legally in such a situation. I presume there is no question about that in your mind.

Mr. WOLPE. We are not raising here the question of the legality of the transaction that eventually took place. The company was clearly not in violation of the law.

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I am raising a question as to whether the nature of the conversation which took place was designed to facilitate the intent, the honoring of the intent of the nonproliferation law or whether indeed we tacitly acquiesced to the development of the transaction which had the effect of weakening the credibility of the nonproliferation effort?

Mr. MARSHALL. You have to understand what the intent is of the nonproliferation law. We have the Nonproliferation Act which terminated U.S. cooperation for nuclear fuel and reactors to a country such as South Africa. That is what the law provides. The basic intent of the law, however, is to try to attain certain nonproliferation objectives by bringing about sanctions in a case of a country that is not abiding by rules such as full scope safeguards.

Mr. WOLPE. That is right.

Mr. MARSHALL. U.S. policy on promoting the full scope safeguards issue is that we feel other suppliers should not enter into new commitments to supply major nuclear items.

This is different than attempting to go to a country and saying you have a contract which you entered into 5 years ago, you should break that.

Mr. WOLPE. That is not the issue I am raising at this point either.

Mr. MARSHALL. Maybe I missed your point then.

Mr. WOLPE. I am simply trying to point out whether we effectively, essentially acquiesced to the notion that these American companies should assist South Africa by brokering this agreement with Europe?

Mr. MARSHALL. We were not assisting in any way.

Mr. WOLPE. Did you do anything to discourage that transaction from taking place?

Mr. MARSHALL. I would say we did not discourage that transaction. I will give you a reason.

I mentioned the fact that we had no jurisdiction to do this. We feel that we can achieve our objectives better—our nonproliferation objectives—with South Africa by not engaging in unnecessary activities which would produce a deteriorating relationship.

Mr. WOLPE. You just said, if I heard you clearly, that you can enhance the achievement of our nonproliferation objectives if we don't take those objectives in the law very seriously, that is, if we don't really try to impose sanctions on countries, or make effective, rather, sanctions that were designed by law.

Mr. MARSHALL. What sanctions do you think we should enforce in such a case?

Mr. WOLPE. The whole issue here is whether or not we desire to see South Africa get access to enriched uranium in a situation where they are unable to accept full scope safeguards and sign the Nonproliferation Treaty.

As I understand to have taken place here is a conversation between American exporters and yourself charged with the implementation of that law. What you told me is that you made no effort to discourage the transaction from taking place that clearly was designed to assist South Africa in developing and achieving access to the enriched uranium that it desired.

If I am in error, tell me so.

Mr. MARSHALL. No, I think you have stated a fact, but I should like to add that you have to take into account what you can reasonably expect to accomplish in a given situation and what is going to be the downside of setting off to do something where you have no reasonable expectation of success.

Mr. WOLPE. You referred a moment ago to a meeting in which you and other members of the executive branch participated, may well have taken place, you are not certain, in advance of the consummation of the transactions.

Were there any other such meetings with the firm involved?

Mr. MARSHALL. Regarding that particular transaction?

Mr. WOLPE. Regarding the American position in regard to transactions of that type?

Mr. MARSHALL. Yes, there have been. We talked to that firm and others similarly situated. We have been rather frank with them that we did not want the intent or spirit of the Atomic Energy Act violated and if they were thinking of any kind of arrangement which was going to involve a swap involving U.S. fuel, even though U.S. fuel was not directly involved, that they should forget about it because we would find means and ways to deal with that situation.

We are talking about an arrangement which was so remote from U.S. control and you take that and view that in the context of what we were trying to do with South Africa.

Mr. WOLPE. What were you trying to do with South Africa, to facilitate acquiescence of enriched uranium by the South African Government?

Mr. MARSHALL. No. We were trying to keep a dialog going with them to achieve our nonproliferation objectives there.

Mr. WOLPE. By allowing enrichment of uranium?

Mr. MARSHALL. That is not the word.

Mr. WOLPE. Facilitate?

Mr. MARSHALL. Facilitate is not correct either. What you are saying is why did I not get damn mad at the fellow at Edlow and tell him he was a traitor or something?

Mr. WOLPE. I am simply asking if you attempted to point out to them that South Africa's acquisition of enriched uranium would be to the detriment of American national interests and would be to the detriment of our effort to assure achievement of the nonproliferation objectives? Did you say that much?

Mr. MARSHALL. I tell you frankly this conversation took place some time ago. I am basing my testimony on a recollection of what I believe transpired. I recall that after they provided these facts for us that we did discuss with them things of that nature.

I think what you are getting at is there is something that the State Department or other agencies can do right on the spot to bring down a big barricade and prevent the transaction from taking place. The answer to that is there is none.

Mr. WOLPE. The report is that Edlow and SWUCO identified two sources of fuel from South Africa. The supply from the Swiss now in South Africa, and a Belgian source which has not yet been shipped to South Africa.

Apparently, however, the problems involving the Belgium transaction have been resolved and the fuel is expected to be shipped to South Africa sometime in 1983.

Is the administration aware of that proposed transaction?

Mr. MARSHALL. I can tell you what we are aware of and that is the fact that the French fabrication facility will take the enriched uranium from whatever source, fabricate it in fuel elements in accordance with a previously concluded ageement with ESCOM, and ship it to South Africa at such time that the fuel is fabricated.

The other details which you pointed out are not matters of which I have specific knowledge.

Mr. WOLPE. Is the French company the manufacturer of Belgium fuel, is that correct?

Mr. MARSHALL. The only fabricator is a French company. It is a French-controlled company located in France. They are taking this previously enriched uranium which was, as I understand primarily from reading news reports, excess enriched uranium that utilities in Europe had no need for, which is not an unusual phenomenon, I might point out.

Mr. WOLPE. Has your Department intervened in that transaction in any fashion?

Mr. MARSHALL. The enriched material is in France. I am not sure what you mean by intervene.

Mr. WOLPE. Attempt to discourage the consummation of that transaction, shipment of the fuel?

Mr. MARSHALL. We discussed this with the Government of France and told them what our position was. They told us what they intend to do. They were not going to breach a contract that they concluded with South Africa in the midseventies, quite frankly.

Mr. WOLPE. Did we ask them to?

Mr. MARSHALL. Well, the word "ask" has different meanings.

Mr. WOLPE. Suggest? Hint? Intimate?

Mr. MARSHALL. I am not sure I would want to characterize it that way. What you have to understand here is that we are dealing with a situation where cooperation with France, Germany, Switzerland, and other suppliers is vital to achieving our overall nonproliferation objectives.

Mr. WOLPE. How are our overall nonproliferation objectives achieved if countries continue to ship enriched uranium with tacit American acquiescence to South Africa?

Mr. MARSHALL. There are not going to be a lot of shipments to South Africa, first of all. If you go in and you insist that countries, with which you have to cooperate down the road, break their contracts that they concluded years ago, when they don't even have the mechanism to do this, you are not going to achieve cooperation that is vital for dealing with proliferation in places like Pakistan.

That is the No. 1 proliferation problem we have right now in the world today—dealing with Pakistan. We feel this administration has succeeded in building a viable consensus among the suppliers, one that didn't exist previously to deal with this situation.

Mr. WOLPE. Let me say when it came to the question of the pipeline, the Soviet European pipeline, this administration did not seem terribly reluctant to ask that contracts be abrogated that had been entered into.

I might suggest that it is precisely this kind of double standard when it comes to South Africa that is I think a growing concern to this committee and I hope a growing concern to the administration.

Mr. MARSHALL. With the pipeline you have to bear in mind there is a totally different situation.

Mr. WOLPE. I appreciate that.

Mr. MARSHALL. If anything, we have taken the U.S. vendors out of the South African situation entirely as we sought to do in the pipeline case.

Mr. WOLPE. I have long exceeded my time. There are only two of us at this point.

Mr. CROCKETT. I have a couple of questions for Mr. Denysyk.

First of all, we have been referring to shock batons. Is there any difference between the shock batons for which your Department issues a license and the cattle prods that became so prominent during the civil rights struggle in the south that we saw on TV being used in Alabama against the followers of Dr. King?

You saw the shock batons, did you not?

Mr. DENYSYK. Yes. I have tried them on myself to see what the effects are, quite honestly. While I don't purport to be an expert on shock batons, my understanding is that there are substantial differences, technical differences, which quite honestly, I won't pretend to know how to describe.

Mr. CROCKETT. The end result in the event they are used on human beings is the same, isn't it?

Mr. DENYSYK. My information is that it is not, Congressman. Cattle prods are a lot more powerful than so called shock batons that we have been dealing with.

Mr. CROCKETT. But both of them produce an electrical shock, is that right?

Mr. DENYSYK. Both produce electrical shock, that is correct.

Mr. CROCKETT. Do you think that the shock batons have a milder electric shock?

Mr. DENYSYK. That is my information.

Mr. CROCKETT. That leads me to another question.

There was an article that appeared in *Africa News* a few months ago, actually on October 18, 1982, by James O'Connor and Joe McCrane. I think those are the two individuals who were responsible for handling the sale of these shock batons, is that right?

Mr. DENYSYK. Will you please repeat the names?

Mr. CROCKETT. James O'Connor and Joe McCrane. Do you know them?

Mr. DENYSYK. No, I don't. Let me hasten to add, Mr. Congressman, that this license was issued, as I mentioned before, in error. If it were submitted to the Commerce Department today, we would not approve it.

Mr. CROCKETT. Let me go on with my question.

The article stated that James O'Connor and Joe McCrane were responsible for handling the sale of the batons and that they met with you, Mr. Denysyk, on September 17. According to that account, Mr. O'Connor stated, and I quote: "They," referring to Mr. Denysyk and another official, "sort of seemed to accept the rationale that this is the sort of thing we should encourage in South

Africa because, instead of controlling violent situations with a gun, you can control them with a weapon that doesn't hurt anyone."

My question is whether or not that argument was made by you or in your presence and if you were persuaded by it?

Mr. DENYSYK. As a matter of policy, Mr. Congressman, I don't comment on private conversations I have had with exporters, the discussions between them and myself.

Mr. CROCKETT. In other words, you neither admit nor deny it?

Mr. DENYSYK. That is one way of putting it. If you make the general argument to me right now, I will reiterate what I said before, that if those batons, those shock batons, were submitted for export to South Africa, we would deny them regardless of the argument.

Mr. CROCKETT. Now you also issued a license, I think, for the export to South Africa of some civilian aircraft to be used as ambulances and that those aircraft can be easily converted for military and police use. Is that right?

Indeed, in some countries the same aircraft are used for that purpose.

Mr. DENYSYK. We have issued licenses for small aircraft to South Africa. That is a matter of record.

Mr. CROCKETT. Do you have procedures where you export items which you refer to as dual purpose? Do you have any followup procedures to make sure that they are not being used in violation of the purpose for which the license was granted?

Mr. DENYSYK. Yes, sir, we do.

Mr. CROCKETT. What are those procedures?

Mr. DENYSYK. It depends on the case. If it is a computer, there is a certain set of audits required; inspections. On others, like aircraft, there is a written statement required of the exporter. It depends on the commodity.

Mr. CROCKETT. Does the license customarily carry a provision that prohibits resale of the exported article?

Mr. DENYSYK. As a general statement, that is correct.

Mr. CROCKETT. Is there any mechanism or procedure by which you followup to find out if there has been such a resale?

Mr. DENYSYK. Again, it depends on the type of commodity. We have followed up in certain computer cases. I can't speak directly whether we followed up on aircraft sales, but I can say that we do pursue violators very aggressively.

If word comes to us that there is a potential, from whatever source, through intelligence, through the U.S. Ministry, or whatever source, we do pursue it very vigorously.

Mr. CROCKETT. Thank you, Mr. Chairman.

Mr. WOLPE. Thank you, Mr. Crockett.

Mr. Bradley, I understand that the South African Government has enlisted the assistance of SWUCO, one of the American companies we were referring to earlier, to locate American utilities that would be interested in buying some of South Africa's enriched uranium that is currently being held at Oak Ridge until the issue of export license for enriched uranium is resolved.

Does this undertaking violate the terms of the contract that ESCOM has with DOE for enrichment services?

Mr. BRADLEY. Under the contract, the customer has the responsibility for securing an NRC export license, thus giving the U.S. Gov-

ernment the authority to restrict the movement of materials to South Africa. No material has gone to South Africa that has been authorized for shipment by the Department of Energy.

Mr. WOLPE. That is not responsive to the question. I am referring to the agreement which has been entered into by the South African Government with an American firm to identify American utilities that will buy some of South Africa's enriched uranium currently being held at Oak Ridge.

I am trying to get a sense of whether that undertaking is in any way violative of the contract.

Mr. BRADLEY. As far as conversations that have taken place between SWUCO and some private company, Mr. Chairman, I am not aware of them.

Mr. WOLPE. Granted as a hypothetical, if there were such an agreement, would it violate the terms of the contract?

Mr. BRADLEY. If there were such an agreement, it would not, depending on the circumstances, necessarily violate the terms of the contract. But that is really not the right question. The right question is——

Mr. WOLPE. Sorry, I will try harder next time.

Mr. BRADLEY. The right question is, if we consider it to be of concern, whether or not we have the authority and the provisions within the contract to exercise our rights. What I am saying is that we do.

Mr. WOLPE. The issue I am really raising here is a broader question. If someone argued that the United States has any leverage in South Africa in terms of its nuclear program, that leverage rests with the DOE contract for supply of enriched uranium.

Would the sale of South Africa's uranium to American utilities compromise that leverage?

Mr. BRADLEY. If we are talking within the broader foreign policy context, because that is how I hear this question, then I think the State Department should respond to that. I don't think we are in a position to repond to that.

Mr. WOLPE. I wish we had time to allow a response from the State Department. You will be pleased to know that we don't. However, we would like to get a response from the State Department to that question, and there are a number of other questions, but time simply will not permit us to ask them during the hearing.

We will put them in writing to a number of you who are testifying today. We would hope that you might respond to those additional questions in writing for purposes of the subcommittee's record.

I want to indicate one final statement, and that goes to the issue of the double standard that Mr. Lyman alluded to in saying one of the problems has been that there has been a double standard in our dealings with South Africa.

That creates problems with respect to racism in South Africa. I can't think of a more outrageous situation. South Africa is the only country in the world, of all the human rights violators, that has institutionalized racism as a matter of constitutional doctrine in its political system. It is unique. We have to begin to recognize the uniqueness of that situation.

Second, with respect to the issue of progress, my concern is not only that I don't think there is evidence of any progress, whatsoever. Certainly, with respect to internal change in South Africa, as Mr. Crockett was pointing out earlier, there is a greater danger, and that danger is the present policies, the messages, the constructive signals that we have been attempting to send out as a way of gaining even larger leverage.

In my view, there has not been any progress in South Africa because, through their American signals, we have enforced some of the most intransigent elements there. South Africa's destabilizing efforts in Mozambique and Angola have increased.

However good the intentions may have been, and I believe there were good intentions associated with the constructive engagement efforts, the messages we have been sending out, in my view, have been heard differently than perhaps they were intended to be, to the great detriment of internal change in South Africa, stability in that area, and to the great detriment of America's self-interest.

I want to thank all of you for your testimony today. You have been forthcoming. I certainly appreciate your assistance.

Thank you very much.

Mr. DENYSYK. Thank you, Mr. Chairman.

[Whereupon, at 1:35 p.m., the subcommittees adjourned.]

APPENDIX 1

Letter to Secretary of Commerce Malcolm Baldridge, From Subcommittee Chairmen Jonathan B. Bingham and Howard Wolpe, Concerning Foreign Policy Controls on American Exports to South Africa

December 17, 1981

The Honorable
Malcolm Baldrige
Secretary of Commerce
Department of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

As Chairmen and members of the Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee, we are writing to express our serious concern about the Department of Commerce's position of extension of the foreign policy controls on American exports to South Africa.

According to our information, the Department of Commerce plans to recommend to the President that he decline to renew all existing American export controls on non-military goods being sold to South Africa when the current regulations expire on December 31, 1981. We are firmly opposed to the Department's position and believe that the existing regulations should be renewed in their present form.

In principle, we agree that unnecessary government regulations which inhibit foreign trade should be eliminated. However, for overriding human rights and foreign policy reasons, we believe restrictions should be applied to some countries. One of those countries is South Africa.

South Africa is one of the most repressive states in the world. Under its unique system of racial separation, over 20 million black, coloreds, and Asians are systematically denied their legal and human rights, excluded from participating in their country's political processes, and forced to live in legally segregated communities. In addition, detentions, bannings, and arrest without trial are common place thoughout South Africa. As long as these conditions persist, we do not think the United States should in any way relax its current regulations on trade with that nation. Such relaxation certainly will not enhance our diplomacy or commercial opportunities in key black African states, since those states would view it as another U.S. move to strengthen economic ties with South Africa.

Under the changes being proposed by the Commerce Department, American companies would be permitted to sell a wide variety of goods and services directly or indirectly to the South African police and military, as well as to other South African government agencies and companies operating in the

fields of nuclear energy, internal security and weapons development. Among the items that might routinely be sent to South Africa under a liberalized policy would be computers, vehicles, electronic equipment, and various types of machinery. In our view, the United States government should not permit the sale of any goods to South Africa which have the effect of strengthening that country's internal or external security capacity or bolstering that country's ability to continue its practices of apartheid. On the contrary, the Administration should be tightening its policies to prevent U.S. exports to the growing number of South African companies which are subsidiaries of quasi-government agencies.

In completing your review of the American export regulations to South Africa, we hope that you determine, as we have, that it is not in our national interest to change the existing regulations with respect to South Africa.

Sincerely,

Jonathan B. Bingham
Chairman
Subcommittee on International
Economic Policy and Trade

Howard Wolpe
Chairman
Subcommittee on Africa

cc: The Honorable Alexander M. Haig, Jr.
Secretary of State
The Honorable Lionel Olmer
Under Secretary for International Trade, Department of Commerce

APPENDIX 2

WRITTEN RESPONSE SUBMITTED BY MR. DONALD E. DEKIEFFER, OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT

February 12, 1982

Mr. Steve Weisman
Subcommittee on Africa
Committee on Foreign Affairs
United States House of Representatives
705 House Annex I
Washington, D.C. 20515

Dear Mr. Weisman:

In further reference to our telephone conversation, I would like to reiterate some of the points you raised concerning my prior representation of South Africa.

From 1974 through 1979 I was a registered agent for the Department of Information of the Republic of South Africa pursuant to the terms of the Foreign Agents Registration Act. As such, I reported all my activities to the Department of Justice on a semi-annual basis as required by law.

In March, 1981, I assumed my present responsibility and immediately prepared a list of issues and clients on whose behalf I had worked in the past. These lists were distributed to all relevant officials at the Office of the United States Trade Representative as well as my staff together with explanatory memoranda. Copies of these documents are attached. South Africa was one of the entities noted on these forms, even though neither my previous law firm nor I had represented South Africa directly in trade matters.

During the course of the past year, issues specifically related to South Africa have arisen on several occasions. In these cases I have referred such matters either to other attorneys in the office of the General Counsel or other appropriate officials in the Office of the U. S. Trade Representative.

On one occasion, (5 January 1982) I attended an interagency meeting with regard to overall U.S. export policy and the extension of human rights export controls to a number of our trading partners. This policy was and is under intensive interagency

review and revisions will be announced in the near future. During the course of that meeting, the issue of South Africa was specifically raised. While I had participated fully if general policy discussions, I did not feel it appropriate to discuss the specific questions with regard to South Africa. I therefore stated to all participants in the meeting that I believed it would be inappropriate for me to participate in discussions specifically related to South Africa. Further, during a majority of the conversation with regard to South Africa I excused myself from the meeting and returned only at the latter part of the discussion. Again, I did not participate in any of the discussions with regard to specific export controls which might or might not be imposed upon South Africa.

I believe, therefore, that my conduct not only with regard to South Africa but the other issues on the attached recusal list, complies not only with the letter but the spirit of the various ethics rules. As I noted in our telephone conversation, I do not intend to participate in specific decisions with regard to the matters listed on my recusal statement.

I hope this explanation clarifies any questions you might have had with regard to this matter and would be pleased to respond to any other inquiries you may have.

Very truly yours,

DONALD E. de KEIFFER

Enclosures

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

6 March 1981

MEMORANDUM TO: AMBASSADOR WILLIAM E. BROCK
AMBASSADOR DAVID MACDONALD
ALL GENERAL COUNSEL STAFF
ASSISTANT U.S. TRADE REPRESENTATIVES

FROM: DONALD E. deKIEFFER

SUBJECT: Conflict of Interest

Attached is a statement regarding potential conflicts of interest which may arise with regard to my prior representation of clients. This statement has been cleared by the White House ethics office; supporting documents are available in my office.

cc: Jim Frierson
Mike Baroody
Steve Saunders

STATEMENT OF DONALD E. deKIEFFER

ON

CONFLICTS OF INTEREST

Donald E. deKieffer hereby disqualifies himself from all of the following matters:

1. Any matter as required by 18 U.S.C. §208.

2. Any matter in which deKieffer, Berg & Creskoff directly represents any party which representation in such matter existed during the time I was a partner of deKieffer, Berg & Creskoff (July 1980-February 1981).

3. Any matter in which I was directly involved either as a partner with deKieffer, Berg & Creskoff or as a partner associated with Collier, Shannon, Rill & Scott (September 1971-July 1980).

4. Any other matter I deem is in the best interest of the United States of America that I, in my sole discretion, so disqualify myself so my conduct should be free from impropriety or the appearance of impropriety.

5. Attached herewith are Annexes A and B listing product lines and companies which I will review on a case-by-case basis. The listing of these items does not necessarily mean I will disqualify myself but merely that I wish to review them to determine whether such disqualification is appropriate. Further, this list is not intended to be inclusive and is merely a representative list of companies and products which will be reviewed for the possibility of conflict of interest and from which I may wish to recuse myself.

ANNEX A

CONFLICT OF INTEREST STATEMENT

So I can make a determination as to whether my disqualification is appropriate I would like to be immediately informed of issues presented to this office which would have a direct effect upon the following products or producers thereof:

- Nonrubber Footwear
- Tool Steel
- Metal cookware
- Wire Rope/Specialty Cable
- Carob
- Television receivers
- Stainless steel wire, wire rod, plate, sheet, tube, strip and ingots
- High carbon ferrochrome
- Leather wearing apparel
- Pipe Fittings
- Lightweight carbon steel I-beams
- Carbon steel pressure and boiler tube
- Tanned hides
- Tuna
- Mushrooms
- Large pressure valves

ANNEX B

CONFLICT OF INTEREST

ORGANIZATIONS

Allegheny Ludlum Industries

Allegheny Ludlum Steel Corporation

American Footwear Industries Association

Babcock & Wilcox

Armstrong World Industries

Connors Steel Company

ATARI

Tool and Stainless Steel Industry Committee

Committee to Preserve American Color Television (COMPACT)

Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers

Adidas

Stainless Steel Wire Industry of the United States

Ralph Edwards Sportswear

National Outerwear and Sportswear Association

Tanners' Council of America

Association of Food Distributors

P.L. Thomas & Company

Shipbuilders Council of America

Amalgamated Clothing & Textile Workers Union (AFL-CIO)

American Pipe Fittings Association

Valve Manufacturers Association

Republic of South Africa

APPENDIX 3

A. Questions and Answers Requested by Subcommittees Concerning Thomas Conrad's Testimony

1. Q. Why are high-technology items permitted to South Africa whereas licenses are refused for charitable donations for Kampuchea? Why is not the export to South Africa of all technology of military applicability prohibited?

   A. In advising the Commerce Department on which licenses should be approved for exports to Kampuchea, the Department of State uses as its guideline Public Law 96-110, in which the Congress authorized an exception to the total embargo on trade with Kampuchea to permit U.S. Government emergency aid. That legislation states that aid is to be for "victims of famine and disease" and should be directed toward providing food, medicine, clothing, temporary shelter, and other items "to save lives." It was the clear intent of Congress that exceptions be limited to emergency aid to meet conditions of famine and disease. Items which meet these needs are licensed (e.g., Mennonite wheat flour). However, other exports which might assist in the legitmization of the Vietnamese occupation of Kampuchea are denied.

   Controls on exports to South Africa are far less extensive than the virtually total embargo of Kampuchea. This is because the United States is not questioning the legitimacy of the South African Government, but is only using trade controls to (1) support the UN arms embargo and (2) supplement the arms embargo with other collateral controls to further our objective of distancing ourselves from the practice of apartheid. A wide range of technology of some direct or indirect military applicability is not subject to the UN arms embargo.

2. Q. Why did the United States "weaken" the embargo by lifting the ban on sales of airport safety equipment and medical supplies to military and police agencies?

   A. Airport safety equipment is in everyone's interest as a means to discourage terrorism in the form of hijackings. Controls on medical supplies were removed for consistency with the spirit of the Export Administration Act provision (Section 6(f)) that no new controls on medical supplies are authorized by this Act.

3. Q. Do ads in a South African magazine for Colt police revolvers, Remington riot shotguns, Winchester semi-automatic shotguns and pump-action riot guns, Smith and Wesson revolvers, Colt Army revolvers, and ammunition from Winchester, Federal, and Remington indicate availability of U.S. weapons in South Africa in violation of the UN arms embargo?

   A. They may, if the items are already in South Africa. An inquiry has been initiated as a result of Mr. Conrad's testimony.

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4. Q. Why are computer sales to local governments permitted?

A. The principal government agencies enforcing the national system of apartheid are central government agencies.

5. Q. Was controlled technology transferred to two South African police officials issued visas in 1981 to attend a convention of the International Association of Chiefs of Police in Gaithersburg, Maryland?

A. An inquiry has been made as a result of Mr. Conrad's testimony.

6. Q. Did Major Hennie Reyneke, head of technical training at the South African Police College, who was issued a visa in 1980 to visit the United States for a course in electronic communications, receive technical information in violation of U.S. export controls?

A. As a result of Mr. Conrad's testomony, we have asked the U.S. Embassy in South Africa for information on this case.

7. Q. Can the South African military obtain IBM and other U.S. supplies through front organizations such as the South African firms, Infoplan and Log-On?

A. The South African military can obtain U.S. supplies from many sources. License applications for exports to organizations suspected of being fronts for such purchases are reviewed with particular care.

8. Q. Why are U.S. computers permitted to be sold to the Council for Scientific and Industrial Research?

A. CSIR is engaged in a wide variety of research. Computer cases for CSIR are reviewed individually to ascertain the extent of risk that the computer might be used for such purposes as nuclear proliferation.

9. Q. Does a CDC contract in the spring of 1981 to work on a military communications "Project Bowie" violate U.S. controls (the project is said to be the responsibility of the Second Signal Regiment and to involve the Uitkijk Radio Center, located at Voortrekkerhoogte, South Africa's military headquarters situated near Pretoria)?

A. An inquiry has been initiated as a result of Mr. Conrad's testimony.

10. Q. Do the following ads in specialized South African journals indicate availability of U.S. military electronic components in violation of U.S. controls: Telonic/Berkeley "filters for use in aerospace, military and similar applications"? TRW detectors for use in electronic warfare systems? Kistler Instrument (a division of Sunstrand) device for measuring ballistic gas pressure on small arms, guns and detonation chambers? Philips facility in Slatersville, Alabama, pyroelectric vidicon, a thermal imaging device used in military night vision equipment? Philips U.S. subsidiary Signetics milspec semiconductors?

A. The ads themselves do not necessarily mean that the items available are of U.S. origin. It is possible that they are produced overseas with no U.S.-origin parts and not, therefore, subject to U.S. export controls. However, an inquiry has been initiated as a result of Mr. Conrad's testimony.

11. Q. Does publicly acknowledged cooperation by the U.S. Army Armament Research and Development Command at Dover, New Jersey, with South Africa's National Physical Research Laboratory on the behavior of certain metals to develop a material that can be added to propellants to reduce the residue left in a firing chamber constitute a violation of U.S. controls?

A. An official of the Army Armaments Research and Development Command published two articles in the professional journal Physica Status Solidi, the first in 1975 and the second in 1977. Both articles dealt with the melting behaviour of Group (6)A metals. In response to these publications officials of South Africa's National Physical Research Laboratory wrote the author of the articles posing certain questions and indicating that similar research was being undertaken by that organization.

The information contained in the Physica Status Solidi articles which was the subject of the exchange with the National Physical Research Laboratory was both unclassified and in the public domain. It was therefore not subject to and specifically exempt from the embargo on technical data exports according to Section 385.4 (a)(3) of the Department of Commerce Export Administraiton Regulations, which excludes "technical data generally available to the public."

The Commerce Department will respond to those questions raised by Mr. Conrad regarding specific cases and current investigations.

B. Answers to Inquiries Made by Congressmen Lagomarsino and Bonker

1. Q. To what extent are you constrained by law to maintain foreign policy controls on South Africa? How much leeway do you have in imposing or relaxing foreign policy controls based on the Export Administration Act?

A. Under Sections 6(a) and 6(h) of the Export Administration Act of 1979 (EAA) and the United Nations Participation Act, the President is authorized to impose foreign policy export controls pursuant to international obligations, such as those contained in United Nations resolutions. Accordingly, the United Nations Arms Embargo is reflected in the Export Administration Regulations concerning South Africa. The Executive Branch has complete discretion whether or not to impose the other foreign policy export controls on exports to South Africa authorized by Section 6 of the EAA.

2. Q. Could the action of relaxing controls imply more than the Administration intends?

A. Changes in U.S. controls on exports to South Africa do not imply a change in U.S. policy towards South African apartheid practices. All controls pursuant to the United Nations Arms Embargo as well as controls on all items of significance for military or police functions will be maintained in effect. Thus, the new regulations continue the strong symbolic and practical disassociation of the United States from the South African enforcement of apartheid.

3. Q. What would be the likely reaction of other African nations? Would the benefits gained from relaxing controls outweigh the costs?

A. The Organization of African Unity has predictably already spoken out against the new regulations. However, the new, modestly revised U.S. controls remain substantially more restrictive than those of other countries, including African countries. Under these circumstances the benefits of liberalizing some controls on exports having no significant relationship to military or police functions outweigh the slight costs we sustain in the form of easily refuted criticism from other nations.

4. Q. To what extent would the U.S gain influence with the Government of South Africa by relaxing controls? Would that give the United States any leverage in dealing with South Africa on the issue of apartheid?

A. The trade controls are intended not as leverage, but as a statement of the United States position and determination not to be associated with practices such as apartheid which we regard as abhorrent.

5. Q. Does the U.S. officially avoid the arms embargo to South Africa on the basis of fulfilling pre-existing contracts or for reasons of preserving international peace and security.

A. The so-called Stevenson exceptions to the voluntary U.S. embargo of 1963 fell away when the United States adhered to the mandatory UN arms embargo of 1977. The embargo is believed to further objectives of international peace and security.

6. Q. To what extent are you aware of dual-use items being diverted from civilian use to military use in South Africa.

A. The Department of Commerce will respond.

7. Q. Would the prohibition of all dual-use U.S. exports to South Africa result in any significant disadvantage for South Africa?

A. No, the prohibition of all dual-use U.S. exports to South Africa would not result in any significant disadvantage for South Africa, because most dual-use items are available from foreign sources and are not subject to restrictions comparable to U.S. export controls. Thus the South Africans would probably simply turn to foreign suppliers, and the main effect of broader U.S. controls would be to hurt U.S. exporters.

8. Q. Do other countries apply restrictions against South Africa that are any more strict or less strict than the U.S.? What is the nature of Israel's trading relationship with South Africa?

A. It is difficult to compare United States trade controls with those of other nations. In many areas of international commerce the United States enjoys a predominant position. Our influence is, therefore, more strongly felt, and trade controls may be seen as an effective instrument of foreign policy. Other countries whose international trade position may not be similar may not view trade controls as an effective foreign policy instrument.

Israeli exports to South Africa in 1978 were estimated at $37.7 million, and Israeli imports from South Africa were estimated at $86.6 million. South African diamond exports to Israel are not included in these figures (estimated at $1 billion in 1978).

9. Q. To what extent are U.S. subsidiaries in South Africa -- or those in other locations outside the United States -- subject to U.S. export restrictions?

A. U.S. controls apply to re-exports or re-sales of U.S.origin item from U.S. subsidiaries located abroad but do not apply to items not of U.S.-origin from such subsidiaries.

10. Q. Have there been cases of violations of export controls to South Africa that have been prosecuted by the U.S.? What has been the outcome?

A. There have been no violations of controls on exports of non-munitions list items to the police and military which have been prosecuted. However, one case involving a violation of the arms embargo was prosecuted and resulted in the conviction of the defendants and another arms embargo case is now pending trial in Houston.

11. Q. Would you care to comment on the allegations of extensive evasion of U.S. export control laws? Supposedly with the collusion of the Department of Commerce?

A. To our knowledge, there has not been extensive evasion of U.S. export control laws. The Department of Commerce has in no way aided any evasion that may have taken place.

Answers to Congressman Bonker's Questions

1. Q. What steps are taken to make sure that equipment sold under license for civilian use are not refitted or diverted to use by the military?

A. The Department of Commerce will respond.

2. Q. What are the criteria used by the Commerce Department to justify issuing licenses for crime control equipment after the State Department had recommended that the licenses be denied?

A. The Commerce Department occasionally issues licenses for denial based on such criteria as consistency with previous licensing actions and limited substantive significance of the export.

C. Letter From Edward G. Law, Director of Export Regulations, World Trade Corporation, I.B.M

February 18, 1982

Mr. William A. Root, Director
Office of East-West Trade
EB/TDC/EWT
Room 3819
U.S. Department of State
Washington, D.C. 20520

Dear Mr. Root:

As you requested, following are comments on specific points in the testimony of Mr. Thomas Conrad before the House Sub-Committee on Africa and Sub-Committee on International Economic Policy and Trade on February 9, 1982. In each case the comment is referenced by page and paragraph number to the printed copy of Mr. Conrad's testimony.

Page 5 - Paragraph 3:

The IBM system to which Mr. Conrad refers was installed with the Department of Interior in April of 1974. He is incorrect in stating that it is a leased machine which could be withdrawn; the machine was purchased by the Department of Interior. It was approved by the U.S. Government for delivery. It is important to note again and emphasize that this machine is used for the national identity system. The black "passbook" application is not run on an IBM system.

Page 6 - Paragraph 1:

The IBM systems referred to are to our knowledge used in standard local government applications such as payrolls, tax rolls, etc. The Pretoria "Peri-Urban Areas Board" is roughly equivalent to what we here in the U.S. call county government, and is again very close to the same use made by county as well as municipal government units here in the U.S.

Page 8 - Paragraph 2:

IBM does not market in South Africa the police software system referred to by Mr. Conrad. The handbook containing this system was put out by an independent publishing house called Systems Publications PTY Ltd. which attempted to provide

computer users with information on what various manufacturers have developed. In this particular instance they obtained information about an IBM software package which was available in the U.S. and Canada and which, theoretically at least, could have been obtained on request by other IBM subsidiaries. However, the "law enforcement system" was not obtained by IBM South Africa nor was it offered to their customers. If it had been requested by any South African customer, which it was not, IBM South Africa could not have supplied it without U.S. Government approval because police entities are embargoed for software as well as hardware. Even if such request had come from any other customer, IBM would still have treated it as requiring U.S. approval because of its nature.

In summary, Mr. Conrad is incorrect on many counts. First, mention of this package was made not by IBM but by someone else apparently because of its availability elsewhere in the world. Second, it was not offered by IBM in South Africa nor was it requested by any customer. Third, even if it had been requested as a result of its being mentioned in this handbook, IBM's own controls in South Africa would have prevented it from being delivered to anyone without a special license. Finally, the entry in this handbook was not an "ad" but simply a listing of software programs available somewhere in the IBM company worldwide. Incidentally, this software system is not listed in the 1981 edition of that handbook.

Page 9 - Paragraph 2:

Mr. Conrad refers to a provision in the embargo allowing IBM and other U.S. companies to provide maintenance and spare parts for military installations as long as the parts did not originate in the U.S. Even if manufactured abroad, parts with any U.S. content shipped after the embargo date cannot be used. In IBM's case maintenance was provided for the military systems only until the military could make other arrangements. This was done after discussion with the U.S. Department of Commerce and with their approval using only parts and technical information which were not embargoed. IBM took care not to provide or use any new technical information during that period which ended for the central sites in June of 1978 and for some remote terminal sites by the 3rd quarter of 1980. IBM has not provided maintenance for the military since those dates.

Page 9 - Paragraph 3 and the top of Page 10:

Mr. Conrad is incorrect when he states that IBM has insisted that Infoplan and Log-On are not involved in military-related work. IBM has treated both Infoplan and Log-On as embargoed entities and consequently has not supplied them with

anything covered by the embargo. All transactions with them have been scrupulously monitored to make certain that there was no violation.

Page 11 - Paragraph 1:

The IBM system installed with the Council for Scientific and Industrial Research (CSIR) was delivered in January of 1975, well before the 1978 embargo. It was approved for delivery by the U.S. Government under the regulations which pertained at the time. CSIR is not an embargoed entity even today. It does much of its research in standard industrial and scientific areas having nothing at all to do with the purposes of the embargo. In any case, any delivery of a similar system to them would require U.S. review and approval.

Page 12 - Paragraph 2 - Example (1):

Leyland-South Africa, a subsidiary of British Leyland, is engaged in manufacturing a broad range of commercial cars and trucks in South Africa. Land rovers are only a part of that production, and the majority of those are used by mining and other private companies where the terrain is rough, again for purposes having nothing to do with the embargo. IBM's computers installed with Leyland-South Africa are used in standard manufacturing and distribution applications.

Page 12 - Paragraph 2 - Example (4):

The African Explosives and Chemicals Industry is a private company owned fifty percent by Imperial Chemical, Inc. and fifty percent by Debeers. It produces a wide range of agricultural and industrial chemicals. Its explosives are produced to a large extent for the mining industry in South Africa. It is not covered by the embargo.

Page 17 - Paragraph 1:

Mr. Conrad is incorrect in his reference to the CoCom List. It has nothing to do with exports by anyone to South Africa.

Page 17 - Paragraph 6:

Mr. Conrad's statement that it is relatively easy to evade U.S. scrutiny by shipping from foreign plants is misleading, and his assertion that the embargo does not cover operations of foreign based subsidiaries is incorrect. IBM has always treated product produced in plants abroad as being covered by the embargo because of the probable inclusion of U.S. content. IBM has never assumed

that foreign based subsidiaries were free of U.S. control, and extensive internal controls reflect that. IBM does some of its manufacturing abroad simply to have access to markets abroad. It has nothing to do with securing freedom from any controls.

In conclusion, let me assure you again that IBM has always been very attentive to the special country controls reflected in the above points. We have expended a great deal of time and effort at all levels and locations to assure that IBM would remain in full compliance. Please let me know if I can supply any additional information that would be useful to you.

Sincerely,

E. G. Law

Edward G. Law,
Director of Export Regulation

EGL:ep

cc: Mr. B. Denysyk
U.S. Dept. of Commerce

APPENDIX 4

LETTER FROM THOMAS CONRAD TO MR. WILLIAM ROOT, DEPARTMENT OF STATE, IN RESPONSE TO EDWARD G. LAW'S LETTER

February 25, 1982

Mr. William Root, Director
Office of East-West Trade
EB/TDC/EWT
Room 3819
U.S. Department of State
Washington, D.C. 20520

Dear Mr. Root:

I have received comments from Edward G. Law, Director of IBM's Export Regulation division, concerning the testimony I made on behalf of the American Friends Service Committee at hearings on the U.S. arms embargo against South Africa, held by the House Sub-Committee on Africa and the Sub-Committee on International Economic Policy and Trade. I understand that you are interested in my reaction to Mr. Law's comments. It is evident from his response, that Mr. Law has mis-read and mis-interpreted portions of my testimony so I appreciate the opportunity to offer additional background and comment. Those cases requiring extensive comments are deal with individually. Others that are similar to each other are joined together.

Page Five, Paragraph 3

Mr. Law challenges our statement that the IBM installation at the Department of the Interior was leased and could have been withdrawn had the company so desired. Mr. Law also claims that the IBM system was installed in 1974. Both these statements appear to be inaccurate and misleading.

The enclosed excerpt from Hansard, which publishes the proceedings of the South African legislature, makes it clear that the IBM installation at the Department of the Interior used for the population registry was in operation during 1971-72. It also establishes the fact that this was indeed a rented system, despite Mr. Law's assertion to the contrary. The system was apparently upgraded in the meantime. The new installation, based on two sophisticated IBM 370/158 computers, was also rented from IBM, according to the South African Computer Users Guide 78/79, a local trade reference published by Management magazine. Perhaps IBM subsequently sold this hardware outright to the Department; but it is clear from 1971 to 1978, that IBM owned the equipment and it could have withdrawn from this arrangement. I am sure that Mr. Law knows that the Department of the Interior installation has been controversial. On more than one occasion, religious organizations in the United States have urged IBM to dend its complicity with the Interior Department's identity system by pulling out its computers. IBM has turned a deaf ear to such requests.

Turning now to the application of IBM's hardware in this context, I am shocked at Mr. Law's inference that this system is not objectionable because it does not host the black passbook system. The fact that details about Africans designated as "Bantus" or "blacks" are stored on another computer (manufactured by ICL) makes IBM's participation in the Department of the Interior system no less reprehensible. The ICL-and IBM-based national identity system puts awesome and far-reaching technological potential at the disposal of the South African regime.

The IBM system used in the Department of the Interior's portion of the national identity scheme helps facilitate the very system of racial classification and segregation which makes apartheid possible. According to the National Register of Service-Rendering Information Centres and Of Data Banks, a South African government publication, the Department's IBM system stores details on some seven million South Africans who are considered by the state to be citizens. These include so-called Coloured, Cape-Coloured, Malay, Chinese, Indian, Griqua and white population groups. The register stores detailed information about people the government assigns to these racial categories, including their addresses, photos, marital status, participation in elections and identity numbers. It is my understanding that members of these groups must now also submit compulsory fingerprinting for the identity system, a requirement which previously applied only to those classified as blacks. The IBM-based registry also serves as the foundation for the identity document -- which has been known as the "Book of Life" -- issued to all those groups not classified as black. The role of identity documents and racial classification and their overarching significance in the lives of South Africans needs no explanation here.

The fact that the U.S. government may have approved of the export of this equipment for use in the population registry does not exculpate IBM. This transaction may have been legal; but it does not relieve IBM of the moral responsibility it bears for knowingly participating in such a venture. As stated in the original testimony, the fact that exports to the Department of the Interior and most other agencies are not prohibited by U.S. regulations represents a major loophole in the embargo.

Page Six, Paragraph 1

IBM does not dispute the facts we cite here but rather appears to imply that the hardware is used for routine applications by the government, and is therefore not objectionable. Apartheid cannot be taken out of the context in which it permeates. It is not an activity which is perpetrated by only one state department and not others. Apartheid undergirds and permeates the entire system of government of South Africa. Since race pervades virtually every transaction between state departments and agencies and individual South Africans, support for the government helps to maintain inequality and oppression. We believe that the use of U.S. computers by the government for applications some might characterize as "routine" or "mundane" such as voters' rolls, administration and taxes, helps to perpetuate the status quo.

Page Eight, Paragraph 2

I am familiar with IBM's denial that its South African subsidiary markets a police software system and I reported this in my original testimony. However, it has not been independently corroborated whether in fact the package is available. Since this may involve a serious violation of the embargo, we have asked for an investigation by the U.S. Commerce Department and understand that this is underway.

The facts do appear to indicate that the IBM police software product is available in South Africa. Mr. Law does not dispute the fact that the software system turned up in a list of locally available packages published in South Africa. Although he claims that it was not available from IBM, he offers no explanation as to how it came to be listed in the Computer Users Handbook. The editors of the Handbook indicated that the information was obtained from the companies. In the introduction to this section, they wrote: "All information was supplied by the companies and vouched for as accurate by them." (page E-21).

On February 11, 1981, I wrote IBM requesting copies of promotional literature used in South Africa to market the police package, a municipalities software system, and others. Mr. J.H. Grady replied on March 11 (copy enclosed) that such material was not available since IBM marketing staff used other methods to promote these packages. IBM did not begin to deny that its police system was available in South Africa until later.

Incidentally, Mr. Law is incorrect to imply that I said that mention of the package was made by IBM. I believe the record of my testimony will show that I stated clearly that the police system was listed by the Computer Users Handbook. Mr. Law objects to my use of the word "ad" in reference to the listing. However, in reviewing my notes of a telephone discussion with an IBM representative on June 19, 1981, I find that IBM also refers to the entry as an "ad." "All we can say firmly is that we don't know how the ad got into the Computer Users Handbook," a company spokesperson told me on that date. It was not surprising to learn that the IBM police package had been dropped from the 1981 issue of the Handbook in view of the interest in this issue. However, we believe the absence of the listing from the new issue, and IBM's inability to explain how the entry appeared in the first place, do not dispel the controversy.

Page Nine, Paragraph 2 and 3; Top of Page Ten

As you know, U.S. law does not forbid the foreign subsidiaries of U.S. companies from supplying non-U.S.-origin technology to embargoed South African users such as the police and military. I stated this clearly in the original testimony. In response to a request for information from the AFSC, Mr. J.H. Grady indicated on

February 13, 1981 (copy enclosed) that IBM had supplied parts which did not contain U.S. components (which are not embargoed) to South African users that are off-limits. Mr. Law corroborates this in his letter.

Mr. Grady noted further that maintenance of IBM hardware in the hands of the police and military is now being conducted by the agencies themselves and by third parties. It appears that Infoplan and Log-On operate in such a manner. In his letter, Mr. Law says that I am incorrect in stating that "IBM has insisted that Infoplan and Log-On are not involved in military-related work." If you read my testimony, you will see that I said nothing of the kind. IBM is fully aware that both of these South African firms have links to the military and IBM has not denied this. However, Mr. Law's statement that IBM treats these companies "as embargoed entities" is misleading because IBM does indeed do business with them. Let me again refer you to the February 13th letter from IBM in which Mr. Grady discussed the company's sales to Log-On and Infoplan. Mr. Grady asserted that IBM treats the two companies as embargoed "with regard to their contracts to supply data processing services directly to the [South African] Department of Defense." However, IBM has provided the companies with products ostensibly for use in non-military work. Infoplan has received parts, services, education and technical data IBM claims are not covered by the embargo; Log-On has received published manuals. IBM is unable to control how the products and services it provides to these firms and others are used, and powerless to prevent its products from being diverted to military applications.

Page 11, Paragraph 1

The Council for Scientific and Industrial Research IBM installation was put in place in 1975 but the Council is planning to update its facilities with newer IBM hardware. The CSIR also uses Contol Data hardware which is slated to be updated. Mr. Law is correct in pointing out that the Council is not an embargoed agency and this, we believe, is a serious loophole in the embargo.

To pretend that the CSIR is purely a civilian organization is to ignore reality. Several CSIR agencies and institutes perform military work, spanning several fields. For example, two CSIR researchers were awarded police medals in 1981 "for combatting police terrorism" for their development of the Casspir series of advanced armored carriers and control vehicles; several military officials are involved with another CSIR branch, the National Electrical Engineering Research Institute, virtually all of whose work is classified; the National Institute for Telecommunications Research, another arm of the CSIR, which uses an IBM 1130 in addition to its access to the central CSIR computer facility, has played a role in South Africa's air defense system. Much of the Institute's work is "classified as it relates to defense," according

to a recent annual report; CSIR also has an Institute for Defense Research. As the enclosed ad from CSIR/NIAST which appeared in the local military magazine Paratus indicates, NIAST concentrates on aeronautics support, and uses computers in this field.

The IBM and Control Data hardware at the central CSIR computer facility is at the disposal of anyone the government chooses to give access to. This clearly includes researchers and institutes engaged in military work, despite Mr. Law's inference to the contrary.

Page Twelve, Paragraph Two

Mr. Law does not dispute the fact that both Leyland and African Explosives and Chemicals Industry use IBM computers. Nor do I dispute the fact that both of these companies manufacture non-military products in addition to products for the South African Defense Force. If you read my testimony, you will see that I neither stated nor implied that Leyland and AECI (or other similar companies) produce products only for military use. The fact remains that the terms of the U.S. embargo do little to prevent these companies from diverting this IBM hardware for use in military applications. We believe the failure of the U.S. export controls to prevent this possibility seriously weakens the embargo.

Page Seventeen, Paragraph One

Mr. Law contends that my reference to the CoCom list is "incorrect." He should re-read what I wrote about it. I mentioned the CoCom list in a part of our testimony suggesting ways to strengthen and expand the embargo so it fulfills its purpose. It is obvious that most CoCom controls do not apply to South Africa. For this very reason, a great deal of strategic technology from the U.S. is still available to South Africa's government and military establishment. We believe, and I stated in the testimony, that items on the CoCom list should not be permitted to be exported to South Africa.

Page Seventeen, Paragraph Six

While I made no specific reference to IBM in this portion of my testimony, Mr. Law responded by saying that I am incorrect in saying the embargo does not cover the operations of foreign-based subsidiaries of U.S. companies. In fact, as I stated above, the ban does not apply to non-U.S.-origin technology exported from third countries to South Africa. In other words, the law does permit foreign subsidiaries to sell anything to anyone in South Africa as long as it does not contain products or technical information of U.S. origin. We believe the U.S. should expand the embargo so as to cover all the exports of foreign-based subsidiaries.

I appreciate the opportunity to reply to Mr. Law's comments and look forward to receiving your response.

Sincerely,

Thomas Conrad

Enclosures: as stated

cc: Mr. Law
Mr. Denysyk
House Africa Subcommittee
Congressional Monitoring Group on S.A.
Dept. of State Africa Desk
Dept. of Commerce Africa Desk
Transafrica

TC:jb

APPENDIX 5

STATEMENT SUBMITTED BY L. H. GANN, SENIOR FELLOW, HOOVER INSTITUTION, STANFORD, CALIFORNIA

"A sound conservative government?" asked Mr. Taper, a wheeler-dealer in one of Disraeli's political novels, "I understand--Tory men and Whig measures!" Having suffered a major defeat at the polls, the more intelligent of American liberals would apply Mr. Taper's insight to politics in the United States today. The Reagan Administration, they believe, should--in the name of "realism" or "higher statesmanship" abandon the conservative program on which President Reagan was elected and continue on the Carter course. Reagan could do so all the more effectively since he needs not fear attacks from the right, unlike his predecessor. There is plenty of historical support for such a thesis; only a de Gaulle could manage to pull out of Algeria; only Mrs. Thatcher could drop Bishop Muzorewa in favor of Marxist guerrillas in Zimbabwe without causing a serious comotion in British politics; only a Reagan Administration, the argument continues, should practise Realpolitik by firmly aligning the United States on the side of "Black" Africa. Washington, the argument continues, can best pursue this aim by using trade as a weapon against Pretoria.

This witness, however, is firmly convinced that these assumptions are mistaken. South Africa, for all its ills, is not the world's worst country. South Africa--unlike the Soviet Union and its allies--is not a declared enemy of the U.S.A.; neither does South Africa attempt to export its social system to the rest of the world. Boycotts will not work against South Africa; on the contrary, they are likely to be counter-productive. Far from boycotting South Africa we should attempt to strengthen mercantile and even links with Pretoria.

South Africa's present regime, many liberals argue, is about to be overthrown. Oddly enough, the South African Communist Party does not share this assumption. According to its experts, riots such as the former out-

bursts at Soweto, cannot by themselves overturn a well-established regime. Revolution will come, but it will be "a complex, immensely difficult and at times contradictory process;"[1] the walls of Jericho are not about to cave in.

1) Free Africa Marches, Prague, 1978, p. 16-17. "The Way Forward from Soweto: Political Report Adopted by the Plenary Session of the Central Committee of the South African Communist Party", April 1977, The African Communist, V. 70, Third Quarter 1977, p. 31-32; and L.H. Gann and Peter Duignan, Why South Africa Will Survive. Cape Town, Tafelberg; London, Croom Helm; and New York, St. Martin's Press, 1981, and L.H. Gann and Peter Duignan, South Africa: War, Revolution or Peace, Stanford, Hoover Institution Press, 1978.

Revolutions require in fact certain well-defined conditions for their success. The ruling group should be disunited and demoralized; the economy should be in shambles or at least in trouble. The military forces of the incumbent regime should have been defeated in war, or--at any rate--weakened by internal demoralization, or by a growing rift between themselves and the civilian population. The revolutionaries, on the other hand, should be united and led by a disciplined party with a clear notion of how to take over and hold onto power. Revolutionary guerrilla groups should secure and control extensive base areas within the country they plan to conquer, establish an effective civilian administration, complete with the appurtenances of a counter-state operating underground.

These conditions do not apply to South Africa.[2] Proponents of the South African revolution sometimes cite the Rhodesian precedent. But South Africa is immensely more powerful both in economic and military terms than Rhodesia ever was. (In 1978, the GNP and defense expenditure for the two

2) In this respect the massive study headed by the President of the Ford Foundation, a liberal study, South Africa: Time Running Out: Report of the Study Commission on U.S. Policy Toward Southern Africa. University of California Press, 1981, agrees with this witness.

countries amounted respectively to $US 3.1 billion and 0.149 billion for Rhodesia, $43.8 billion and 2.6 billion for South Africa.) Even so, the UDI regime --contrary to most expert forecasts--remained in power for nearly sixteen years.

South Africa is a divided land--multi-ethnic and multi-racial, a country where the First World has been superimposed on the Third. Coloureds, blacks and Indians do not necessarily see eye to eye, any more than do whites and blacks. (Indians, for instance, are aware of the unhappy fate suffered by their compatriots in independent black countries such as Uganda.) The blacks are divided on linguistic, ethnographic and class lines. (The emergent black middle class and the petty bourgeoisie is far from happy with developments, say in Mozambique.) The present urban unrest among other things pits workers in employment against unemployed youths and students. There are no disciplined cohesive cadres to lead a revolution. Armed intervention on the part of other African states is not feasible at present.

Far from being decadent, South Africa remains the industrial giant of the African continent. The size both of its military expenditure and its GNP vastly exceeds that of any other country in Sub-Saharan Africa; as made apparent by the following table. [Table follows, see p. 4.] South Africa's industrial complexity and sophistication goes far beyond that of its African competitors; so does the rate of its economic expansion. (Between 1980 and 1981, the South African GNP grew at a rate of nearly 8 percent, a rate that would have been envied not merely by every other African government but also by every European government both east and west of the Iron Curtain as well as by the United States.

Estimated GNP and Defense Expenditure of Selected Countries

in Sub-Saharan Africa

	Estimated GNP (in bill $)	Defense Expenditure
South Africa	54.3 (1979)	2.56
Ethiopia	3.0 (1979)	0.385 (1980)
Ghana	10.8 (1979)	0.155 (1979-80)
Kenya	6.3 (1979)	0.168 (1977)
Mozambique	16.0 (1978)	0.177 (1978)
Nigeria	35.0 (1978)	1.70 (1980)
Zambia	2.54 (1978)	0.387 (1979)
Zimbabwe	3.3 (1978)	0.44 (1980-81)

Source: International Institute of Strategic Studies, The Military Balance 1980-1981. (London, 1980)

Given the relative strength of the economy, the country's military expenditure does not constitute an insupportable burden. (Defense accounts for under 6.00 percent of the GNP, less than in the USA, not to speak of the USSR.) European morale is good. The whites feel rightly convinced that their country, despite its deficiencies, has been managed with infinitely less bloodshed than African countries like Nigeria, Ethiopia, the southern Sudan, Zamzibar, Uganda, the Congo, or Angola. The Indians are only too conscious of the fact that their fate in white South Africa compares favorably with the fate of the Indian minorities in East Africa. The Bantu-speaking Africans have many grievances. But there is no black emigration; few South African blacks vote with their feet to leave the republic. On the contrary many hundred thousands of foreign Africans have chosen of their own free will to live and work in South Africa.

Not that all is well with South Africa. The Bantu homelands policy, for example, suffers from a variety of unresolved contradictions. (It is certain, for instance, that they will require more capital, that they will have to be much enlarged in the future, and that the whites will also have to concede municipal home rule to urban Africans.) Yet by African standards, they have not done too badly. (Between 1970 and 1976, the Gross domestic products of the homelands grew from 300,851,000 Rand to 997,910,000 Rand.) The Transkei's per canita income at the time was estimated to be larger than that of Togo, Tanzania, Sudan, Rwanda, and several more independent African states.

But the problems of South Africa are not of a kind that are likely to be resolved by economic boycotts. The advocates of trade embargos have a mistaken trust in their efficiency, for they have rarely worked in the past. (The Soviet Union failed to bring Tito into line by cutting off trade; the

U.S. has been equally ineffective in attempting to use economic means against Castro.) The supporters of economic boycotts unconsciously assume that a foreign government will rather grant political concessions than suffer economic loss.

The history of South Africa does not support this interpretation. South Africa, moreover, is economically in a much stronger position than many of its critics assume. The prevailing image of South Africa still widely derives from an earlier stage of South Africa's development, from a stage that today would be styled "neo-colonial," when the country mainly relied on the export of primary products, and when the country depended to a considerable extent on foreign (mainly British) capital and technology. South Africa has since moved far beyond this stage. (In certain branches of technology, such as in refinements of the coal-to-oil processes, and in specific fields of nuclear engineering, South Africa's technological knowledge may in fact be more sophisticated than that used at present in the U.S. Widespread misconceptions notwithstanding, South Africa now generates the bulk of its domestic capital at home (an estimated 92%). South Africans supply the country with nearly all the technical and managerial skill required.

South Africa has a productive system of agriculture; it is one of the few food exporters left on the continent; South Africa could in fact aim for self sufficiency. South Africa is one of the world's major mineral producers, a subject to which we shall return. South Africa is now also a major industrial country, one that manufactures the bulk of its armaments at home. South Africa is an important producer of coal and uranium; South Africa is the world's main producer of gold. South Africa has stockpiled oil supplies for several years, and is not therefore immediately vulnerable to an oil boycott. South Africa could be self-

sufficient in capital, albeit at the expense of its rapid growth rate. South Africa is the wealthiest country in sub-Saharan Africa. A ban on exports to South Africa would not bring down the whites, who would be the last to suffer. On the contrary, sanctions might--in the short run--produce an import substitution boom of the kind initially experienced by Rhodesia after the Unilateral Declaration of Independence.

The chief victims of a boycott would certainly be South Africa's neighbors. All of them--Lesotho, Swaziland, Botswana, Namibia, Mozambique, Zimbabwe, and even Zambia--depend on South Africa for capital, markets, and a wide range of imported goods, for railroad, port, and air facilities, for financial and technical skills, and in many cases for the employment of migrant workers.[1] Apartheid or no apartheid, hundreds of thousands of

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1) See for instance Economist Intelligence Unit, Interdependence in Southern Africa: Trade and Transport Links in South, Central and East Africa. London, July 1976.

Africans still vote with their feet to come to South Africa. There is no way--for the time being--by which the various members of this South Africa-centered state system can be made self-sufficient and independent from South Africa. The Tan-Zam Railway, once extolled by both liberal academicians and communist agitprops as the supreme example of socialist generosity and socialist enterprise, has proved a miserable failure; it has failed to decrease Zambia's dependence on its southern neighbors for rail transport. Where are the resources to come from to construct an alternative transportation system not linked to South Africa? How would new markets be developed--except with South African help?

In addition, a boycott of South Africa would have wider consequences;

Western Europe would also be seriously affected, especially Great Britain. According to a study completed by the British Association of Industries in 1977, a boycott of South Africa would increase British unemployment and deprive Britain of a prosperous market (£600 million a year would have to be sacrificed). The sterling area still accounts for South Africa's largest share of foreign investments (about 58% in 1978). South Africa accounts for about 9 percent of Britain's foreign lendings and 14 percent of her overseas earnings. Given Britain's precarious financial position, the loss of its South African markets and investments would be a disastrous blow. France and Germany likewise have a stake in South Africa. (A study by the economic planning division of the German Foreign Office shows that 48 minerals essential to German industries were imported from South Africa. Their loss would have the most serious consequences on German industry, and cause mass unemployment. The French likewise depend heavily on South Africa; they have no oil and little coal; hence they must invest heavily in nuclear power; they need South African uranium.)[1)]

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1) For details see L.H. Gann and Peter Duignan, Why South Africa Will Survive, New York, St. Martin's Press, 1981, specially p. 246-7.

A boycott would of course also hit South Africa. A South African economist, Arnt Spandau, has estimated that a 20 percent reduction in exports could cause unemployment in South Africa--whites, 90,000; blacks, 340,000. Incomes would drop by 1 million rand. Furthermore, unemployment and decline in income would hit all the states of Southern Africa. The questions to be answered, then: Is the cost worth the objectives to be gained? Would the objectives be gained even after all this suffering?

Boycotts or embargos raise other complex problems. Liberal churchmen

and academicians make a special point of calling for "disinvestment" of American capital from South Africa. But they do not always realize the economic consequences of disinvestment. "Disinvestment," say, on the part of a university or a church, implies the rapid and artificially continued sale of stock, often at prices lower than those that might be obtained, had the seller not been put under sudden pressure. What happens to the stock thus sold ? It is purchased by other concerns, possibly by those very South African capitalists that the boycotters wish to injure.

In discussing the boycott question, it is hard, moreover, not to be impressed by the extraordinary double standard involved in dealing with the Eastern bloc countries on the one hand, and South Africa on the other. The Soviet Union and its Warsaw Pact partners pose a dangerous military threat both to this country and to the West as a whole; indeed they menace our very existence. The communist parties that rule these countries are committed to the international class struggle; they believe that "detente" or "peaceful coexistence" must indeed serve as instruments for intensifying the international class struggle.[1)]

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1) For details see for instance the proceedings of the 25th and the 26th Party Congresses of the CPSU, and specially the International Meeting of Communist and Workers' Parties: Moscow, 1969 (Prague, Peace and Socialism Publishers, 1969.)

The communists are honest men. They mean to bury us, and they have said so again and again. Yet the United States and its allies have loaned to the Soviet Union and its Warsaw Pact partners over $100 billion; we export grain; we export technology; we provide scientific expertise. Poland is a case in point. Private American banks hold $1.7 billion of the Polish debt. Poland

owes to the U.S. government another $1.9 billion.[1] Americans, in other

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1) John S. DeMott, "An Uneasy Vigil on Poland," Time, February 8, 1981.

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words have invested in a good deal more money in Poland than in South Africa. We have helped to finance a member of the Warsaw Pact, a potential enemy. Yet experts warn us that we must not force the Polish government into bancruptcy by calling in our loans. Poland of course is no exception. The American taxpayer supplies aid to all and sundry, even Nicaragua, a self-proclaimed Marxist-Leninist state that pursues policies hostile to this country. We do so on the grounds that foreign aid provides a lever to influence Nicaraguan policy. Experts enjoin us not to cut off our trade with the Soviet Union, lest we injure American exporters, and lest we deprive ourselves of a means of "softening up the Soviet regime."

Conservatives on the campuses, however, incur widespread censure when they apply similar arguments in favor of trading with South Africa.

South Africa is far from being a happy country. In my own view, South Africa can begin to solve its problems only by moving in the direction of a truly free market economy where the color of a man's skin becomes irrelevant, where men may buy and sell their labor and their merchandise whenever and wherever they please, where men and women may live where they like, and marry whom they please. South Africa has a long way to go to dismantle the apartheid system, a system both unworkable and contrary to all good sense. Campus rhetoric notwithstanding, South Africa is not, however, the world's worst society; it does not even rank anywhere near the top on the scale of evil. South Africa, despite its authoritarian streak, is nothing as repressive as Cambodia, Cuba, or any member of the Warsaw bloc. White South Africans have often been harsh in their dealings with Black people. But there is nothing

like the mass terror characteristic of communist countries and of many African states such as Angola and Ethiopia where enemies of the regime are jailed or executed en masse. South Africa does not indulge in mass expulsions. (Few of Africa's estimate 8,000,000 refugees are of South African provenance.) South Africa--unlike Poland, the USSR, or the People's Republic of China--does not keep tens of thousands, even hundreds of thousands of its citizens in jail. (A recent Amnesty International Publication otherwise most critical of the Pretoria government, stated that there were 450 political prisoners in South Africa. This figure, if true, still compares most favorably with the number of persons imprisoned for political reasons in countries with which the U.S. enjoys normal relations.)

South Africa is unusual in the Third World in that it has a free opposition press. (Practically all English-speaking newspapers oppose the government.) South Africa has free universities. (Few outspoken supporters of the government even hold jobs in English-speaking universities.) Abuses (such as the death of Steve Biko, an African opponent of the government) are freely investigated and openly debated in parliament.

Trade with South Africa, in the eyes of the country's censors, nevertheless bears a moral taint, more so than trade with communist countries. Yet American commerce with and American investment in South Africa are a matter that affect only the private risk taker. We furnish no foreign aid to South Africa; the American government does not guarantee loans made to South Africa at the taxpayer's expense, unlike many loans made to communist governments.

U.S. investment in South Africa is relatively small in size; as stated before; fewer American dollars have been loaned to South Africa than to Poland. (U.S. investments in South Africa are estimated at about $2 billion; they amount to no more than 18% of South Africa's foreign holdings as a whole.)

Yet investments in South Africa are somehow regarded on the campuses and in Congress as a moral problem--even though South Africa poses no conceivable threat to the U.S., does not try to export its social institutions, and does not regard itself as the universal model for the world to follow.

Boycotts are not likely to disrupt South Africa. But even if they could wreck the country, its disruption in fact, would violate our best interests. South African minerals would not be easy to replace, if they were denied to the West, or if they were to fall under Soviet influence.

Should South Africa succumb to revolutionary violence of the kind advocated by the ANC (African National Congress), the consequences for the West would be grim. Some Liberals argue that the ANC would in fact maintain some degree of independence from Moscow, in the event of a revolutionary victory. But given the tight and "indissoluble" links between the ANC and the South African Communist Party (SACP), given the complete loyalty of both organizations to Moscow on every domestic and international issue (including even Poland and Afghanistan), a victorious ANC would certainly serve as Moscow's catspaw.[1)]

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1) For a detailed discussion, see "Long Live the ANC-SACP Alliance", The African Communist [Organ of the SACP], no. 87, Fourth Quarter 1981, which gives detailed policy statements on the part of both organizations.

The danger to Western Europe and the West would be heightened by the fact that Soviet and South African mineral resources are in some measure complimentary. The Soviet Union and South Africa between them possess the bulk of the world's resources in the platinum group of metals; gold, manganese (more than 90 percent); chrome ores (more than 84 percent, with substantial additional resources located in Zimbabwe); gold (more than 60 percent).

A left-wing revolutionary government might, of course, in its own economic interests, continue to sell raw materials to the West. An anti-Western government would, however, be under a strong temptation to employ such exports as a political lever, in the same way as the oil-producing states of the the Middle East have used access to oil as a political weapon to influence Western Europe's stance with regard to Israel.

What then should the Reagan Administration do? We should take a leaf out of the book of the other African states who have no compunction in dealing with Pretoria whenever it suits their interests. Zambia, Mozambique, Zimbabwe--all trade with South Africa both over and under the counter, no matter what their public rhetoric. We should disregard threats of the kind made by Nigeria to cut off Western oil supplies. Nigeria is in no condition to wage economic war against the United States, for Lagos heavily depends on oil revenue to pay for its bloated public expenditure, all the more so at a time when the oil shortage has turned, at least temporarily, into a glut. We can take lessons even from the Soviet Union which does not hesitate to deal with South Africa over the marketing of minerals and mining technology.[1)]

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1) "How Moscow and Pretoria Carve Up the Mineral Ma' ts", Guardian, London, August 23, 1982.

The United States should encourage South Africa to make moderate reforms. The stick--in the form of boycotts, speeches in the United Nations, sermons, diplomatic pressures-has failed to work; why not try the carrot also? The United States should quietly press for improvements in return for ending the arms embargo. But far from weakening South Africa, we should try to strengthen the country.

South Africa is, and has been a strategic asset to the West. During World War II, Britain could hardly have continued the struggle had the sterling Area been deprived of South Africa's gold, and had the British failed to control the Cape route, vital for continued British operations in the Middle East.

Since World War II, South Africa's strategic importance has grown. By 1981, for example, a total of 2,300 ships passed the Cape route on the average per month. 600 of these were oil tankers--dependent to a surprisingly large extent on repair and docking facilities in South Africa. South African expertise in this field is likely to increase, as tankers go up in size. (At this moment a million-ton tanker is being built in South Korea.) Tankers of this size cannot of course go through the Suez Canal. South Africa, as indicated before, is a major reservoir of strategic minerals. (See appended table.) South Africa lastly forms the only available base area in the southern part of the Indian Ocean provided with a network of ports, airfields, supply depots, factories, and a host of other facilities. At the very least, we cannot permit this major strategic asset to pass into the hands of our enemies or of their surrogates.

On the contrary, we should pursue a policy that takes account of the changing strategic situation in the world at large. According to Moscow policy makers, the international "correlation of forces" has now shifted in favor of the "socialist" and against the "capitalist" camp. On the face of it, Moscow has reason for its confidence. Over the last decade, the military, naval, air power of the Soviet Union, its nuclear potential, its technological strength have grown apace. The Soviet military doctrine stresses--not defense--but the merits of surprise and of a sustained and unrelenting offensive. Soviet military might need not be used in war; its deployment alone tends to strengthen the revolutionary forces throughout

the Third World, thereby in turn enhancing the Soviet Union's military might.[1)]

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1) For more detailed discussions see, for instance, F. Hahn and Alvin J. Cottrell, Soviet Shadow over Africa. Miami, FL., University of Miami, Center of Advanced International Studies, 1976, p. 14-22, and Hans-Christian Pilster, Friede und Gewalt: Der Militärische Aspekt der sowjetischen Koexistenzpolitik, Stuttgart, Seewald Verlag, 1977.

Soviet policy now aims at making the change in the world's balance of power "irreversible." In its struggle, the Soviet Union places special emphasis on "proletarian internationalism," a priminent concept in Soviet thought since 1975. Proletarian internationalism currently stresses the solidarity of the world communist movement and the various "liberation" groups, the primacy of the USSR and of the CPSU within this global movement, and the manner in which the interests of local communist parties and individual communist-ruled countries converge in the greater cause of the world revolution. Proletarian internationalism provides a rationale for direct military assistance to "liberation movements" in other parts of the world through Soviet proxies like Cuba and East Germany, thereby opening "vast new revolutionary vistas." This is made easier now that the Soviet navy has the capability of assisting "wars of liberation."

In formulating their plans, Soviet experts allot particular importance to Africa, and especially to its southern portion. They regard Southern Africa as strategically important. They also stress the increasing dependency of the United States and its allies on imported raw materials at a time when Western capitalism is going through a crisis which, according to Soviet experts, cannot be resolved within a capitalist framework. Revolutionaries

must strive to intensify this crisis by tying the emergent countries of the Third World to the Soviet bloc, by "Finlandizing" the states of Western Europe, by controlling the West's access to raw materials--all this designed to isolate the United States. Socialist revolutions in Africa will play a valuable part in weakening world capitalism by making it more dependent on imports that it can no longer control. The expansion of Soviet military power will make this objective more easily attainable. As Marshal Grechko put it:

> At the present state, the historical function of the Soviet Armed Forces is not restricted merely to their function of defending the Motherland and the other socialist countries. In its foreign activity, the Soviet state actively and purposefully...supports the national liberation struggle, and resolutely resists imperialist aggression in whatever distant region of our planet it may appear.[1)]

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1) Marshal A.A. Grechko, "The leading role of the CPSU in building the army of a developed socialist society," Voprosy Istorii KPSS, no. 5 (May 1974), as translated in USA/FN Soviet press translations, no. 74-7 (31 July 1974), cited in Hahn and Cottrell, Soviet Shadow, p. 22.

Marshall Grechko's warnings sound all the more ominous given the dependence of the Western powers on Middle East oil and on the growing threat to Western transmaritime communications. The Soviet Union now aims at denying South Africa's resources to the NATO powers. The loss to the Western world of Southern Africa's minerals port facilities, and similar resources, would be serious enough in itself; but were these riches to be added to the Soviet sphere, the USSR would obtain a staggering addition to its economic strength.

By some quirk of nature, the Soviet Union and South Africa are major sources of several vital minerals. Together they produce more than 90 percent of the world's platinum, 60 percent of the world's gem diamonds, 40 percent of its industrial diamonds, about 80 percent of the world's gold, and

sizeable percentages of the global supply of asbestos, uranium, fluorspar, and other minerals. Soviet control over the Cape route would also enable the Kremlin to pressure NATO and OPEC (Organization of Petroleum Exporting Countries) states by a Soviet threat to hamper or interrupt maritime traffic by denying docking and repair facilities to Western vessels, especially those super-large oil tankers that depend on the Cape route.

There may be even more ominous threats in store for the West. In the event of full-scale war, Soviet facilities in Angola or Mozambique would increase the operational range of Soviet missile-carrying submarines. Soviet ships have mapped out the ocean floor and the currents of the Indian Ocean to learn where their submarines can hide from anti-submarine forces, and are doing similar work in the South Atlantic. They have learned, for example, that sonar-detection devices may be ineffective under certain hydrographic conditions in the Indian Ocean. Submarines concealed in these areas would form a potent strategic threat.

At present the U.S. has denied to itself the use of South African ports and airfields. If we were to reverse our presen licy, if we were to supply arms to South Africa, we could secure new and permanent facilities from which American ships and aircraft could operate. Ships and crews would not have to be shuttled from the United States or from Europe to the Indian Ocean, and from Atlantic to Indian Ocean ports, if South Africa's ample supply, surveillance, tracking, and repair facilities were made available. U.S. naval forces would save on fuel and resupply requirements as well as on man-hours and ship-hours lost in transit. Crews could be changed periodically through the use of aircraft. The U.S. strategic position in the Indian Ocean and the South Atlantic would be strengthened. Surveillance and defense of the Cape route would be vastly facilitated. The United States could rely on an extensive industrial and military infrastructure and on substantial local forces.

The advantages of South African cooperation are now denied to the West because of internal and external policy. No black African government is willing or able to provide the kind of facilities that South Africa could furnish to the Western alliance in the South Atlantic and Indian Ocean. We should therfore ponder whether we should not rather expand our trade with South Africa to strengthen our military position both in the Indian Ocean and the South Atlantic.

No doubt, an expansion of American trade with South Africa and a resumption of former military contacts would lead to bitter opposition from other African countries. We are entitled, however, to remind them that many African states such as Zambia, Zimbabwe, even the Marxist-Leninist republic of Mozambique themselves all trade with South Africa; if they are entitled to pursue their national interest in a spirit of Realpolitik, so is the United States. Our Western European allies may complain; but they between them have themselves a considerably larger stake in South Africa than the United States.

Liberals on American campuses, in the media, and in the mainline churches would seek to make an issue out of widening American contacts with South Africa. But in terms of political advantage, the present Administration has no reason to humor its liberal opponents. Liberals form but a minority within the American electorate, perhaps one fifth. The bulk of American voters think primarily in domestic terms. African issues on their own cut no ice in American politics. (When Senator Dick Clark, a militant liberal, head of the powerful Senate Committee on Foreign Affairs, and a militant opponent of South Africa, failed to be reelected in 1978, his defeat owed little or nothing to his African policies, but derived mainly from internal issues, such as the "taxpayers' revolt" and, above all, the "right to life" issue.) Anti-South African militants on the campuses, in the news-

paper offices of the so-called progressive journals, in Bohemia, and so forth are not ultimately concerned with South Africa, their foremost enemy is "Middle America," that part of the nation that cast a majority vote in Reagan's favor. When the leftists denounce South Africa, they are inclined in fact to project their hostility against Middle America upon the African screen. Their proclivity for doing so helps to explain their double standard with regard to atrocities committed by Africans against other Africans.

It is a point that bears repeating. The massacres carried out in the past by the Tutsi against the Hutu in Burundi, for instance, were infinitely more horrible than the worst outrages perpetrated by whites against blacks in South Africa. But the mass liquidations in Burundi aroused no indignation among progressive clergymen, student activists, or among "sensitive" or "compassionate" professors in Women's Studies or Ethnic Studies Programs. The reason is simple. None of these men or women could possibly have identified the Tutsi with the "Ugly American" drawn from the ranks of American businessmen and blue-collar workers who, as we all know--my dear--live "meaningless" lives, perform "meaningless" labor, and live in "meaningless" and "regimented" conditions in a permanent state of "false consciousness." Nothing would therefore be more foolish on the part of the Reagan Administration than to try and reconcile the irreconcileables.

To conclude, this witness is no friend of apartheid, a system of government that he has repeatedly criticized in print. It will ultimately have to be dismantled, hopefully I believe by the reformer-minded within the present ruling party. Good sense, however, requires us to choose between the greater and the lesser evil. In World War II we rightly allied ourselves with the Soviet Union against Nazi Germany--despite Stalin's crime. We are entitled to make a similar choice with regard to South Africa.

In seeking a solution, the present Administration would be ill-advised to resort to trade boycotts and embargos, but should stand behind the verligtes, the reformers within the Nationalist Party. South Africa faces a difficult task; in general it deserves the Reagan Adminstration's sympathy rather than its contempt. Let us stop supporting our enemies; for a change let us back our friends.

South Africa's Role In Selected World Mineral Reserves, 1979
(estimated as a percentage of Western World and World Reserves)

Mineral Commodity	Reserves (metric tons)	Western World Rank	Western World ± %	World Rank	World ± %
Manganese Ore *(in situ)*	12 139 800 000	1	9[illegible]	1	78
Vanadium (Metal, 30 m depth)	7 760 000	1	90	1	49
Platinum Group Metals (Metal, 600 m depth)	30 200	1	89	1	75
Chrome Ore (300 m depth)	3 096 830 000	1	84	1	81
Gold (Metal)	16 500	1	64	1	51
Fluorspar (CaF_2 content)	31 400 000	1	46	1	35
Aluminum Silicate Refractories (Andalusite, Kyanite, Sillimanite)	104 000 000	1	45	1	34
Diamonds (carats)	72 000 000	2	23	2	21
Vermiculite (Crude)	73 000 000	2	30	2	29
Antimony (Metal)	300 000	2	18	3	5
Uranium (Metal, up to $ 50/1 b U_3O_8)	391 000	2	18	NA	NA
Asbestos (Fibre)	8 500 000	2	8	4	5
Phosphate (Contained concentrate)	1 796 000 000	3	9	3	9
Zinc (Metal)	12 067 000	4	10	5	8
Lead (Metal)	6 157 000	4	5	5	4
Nickel (Metal, 600 m depth)	5 830 000	5	8	7	6
Titanium (Metal)	33 256 000	3	17	3	15
Silver (Metal)	8 700	5	6	6	4
Coal (Largely bituminous)	82 000 000 000	4	10	6	6
Iron Ore (30 m depth)	9 500 000 000	6	6	7	3
Copper (Metal)	6 400 000	11	2	13	2
Zirconium (Metal)	4 000 000	2	12	4	10

Source: South Africa Department of Mines

APPENDIX 6

STATEMENT SUBMITTED BY THE AMERICAN MARITIME OFFICERS SERVICE

We understand that the Department of Commerce is considering the adoption of controls on exports to South Africa which are more practical and less harmful to U.S. export jobs and enterprise, and which bring our policy into line with our major trading partners. We support this approach and believe that it will serve an important American interest -- the safety of American merchant seamen and vessels.

The Cape of Good Hope is one of the world's most heavily traveled -- and most dangerous -- sea lanes. Supertankers carrying Persian Gulf oil to the United States and Western Europe must round the Cape since they are too large for the Suez Canal. Numerous freighters and container ships pass the Cape on routes connecting the West and the Far East. American crews aboard the U.S. flag lines as well as the U.S. crews on American-owned oil supertankers sail regularly in the Cape region. Mountainous seas are created by the strong westerly winds at the Cape's latitude (the "howling 40's" in nautical tradition). Sailors of all nationalities are exposed to the dangers of shipwreck and loss at sea as their vessels proceed around the tip of Southern Africa.

In December 1977, two American-owned supertankers collided in waters off South Africa. Prompt rescue operations by air-sea rescue units of the South African Air Force Maritime Patrol Division brought the ships' sailors to shore and assisted in saving the ships. Other shipping accidents have occurred in the past and may take place in the future. It is our understanding that the South African Maritime Patrol will continue to conduct humanitarian rescue operations in the Cape of Good Hope shipping lanes for ships and seamen of all nationalities.

South Africa participates in the United States Coast Guard Search and Rescue ship tracking system (AMVER - Automated Merchant Vessel Emergency Reporting System). South Africa provides six

coastal radio stations which receive ship position reports and relays these reports to the U.S. Coast Guard central computer, which can then dispatch nearby ships to a vessel in distress.

The ability of the South African Maritime Patrol, as well as other elements of the South African military that support search and rescue operations in the shipping lanes and waters surrounding South Africa, to acquire equipment for search and rescue operations is vital to the safety of American seamen and vessels.

In urging the current blanket embargo on exports to such South African military rescue units be allowed to expire, we do not indicate the slightest support for apartheid in South Africa. We fully agree with President Reagan that apartheid is abhorrent and that the U.S. must disassociate itself from that policy. We believe that this objective can be reached by means which are less damaging and impractical than the present overbroad and inflexible embargo.

In the interest of Maritime safety and humanitarian concerns, for both American seamen and those of other nationalities, we urge that the current embargo be modified or allowed to expire so as to permit South African rescue forces to be in the best possible position to conduct search and rescue operations in South African waters.

APPENDIX 7

LETTER FROM THE LAW OFFICES OF GLOTTA, ADELMAN, DINGES, DAVIS & RILEY CONCERNING FOREIGN POLICY CONTROLS ON AMERICAN EXPORTS TO SOUTH AFRICA

LAW OFFICES OF

GLOTTA, ADELMAN, DINGES, DAVIS & RILEY, P.C.

FOURTH FLOOR HARTZ BUILDING / 1529 BROADWAY / DETROIT MICHIGAN 48226

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RONALD D GLOTTA
ROBERT J DINGES
HUGH M DAVIS
IVY THOMAS RILEY
GAIL L ANDERSON
CHUI KAREGA
SYLVIA A JAMES

OF COUNSEL
MICHAEL ADELMAN
HATTIESBURG MISSISSIPPI
DIANE MIDDLETON
LOS ANGELES CALIFORNIA

March 2, 1982

Hon. Howard Wolpe
United States Congressman
Chairman, House Foreign Affairs
Sub-Committee on Africa
Capitol Hill
Washington, D.C.

RE: U. S. Trade Restrictions with South Africa

Dear Congressman Wolpe:

I recently learned of the intentions and proposals of the Reagan Administration's decision to promulgate new regulations making it easier for United States businesses to export goods to the South African police and military forces.

One need not go into great detail about the deprivation of human rights by the military and police forces of South Africa. To say the least, the South African system of apartheid makes martial law in Poland look like a temporary unintentional deprivation of civil liberties.

There can be little question that the sole purpose of the military and police forces in South Africa is to maintain human slavery in its cruelest form of the 20th Century. I am appalled that United States businesses would even want to participate in such an inhumane experience.

However the case may be, the United States Government should have some moral opposition to acquiescing in the establishment of White Supremacy on the African Continent.

I urge you and your colleagues to block the new regulations being proposed by the Reagan Administration.

Sincerely,

GLOTTA, ADELMAN, DINGES, DAVIS & RILEY, P.C.

Chui Karega

CK:ajb

APPENDIX 8

H.R. 7220 AS INTRODUCED BY MR. CHARLES RANGEL IN THE 2ND SESSION OF THE 97TH CONGRESS

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97TH CONGRESS
2D SESSION

H. R. 7220

To prohibit the export or other transfer to the Republic of South Africa of nuclear material, equipment, and technology.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1982

Mr. RANGEL introduced the following bill; which was referred to the Committee on Foreign Affairs

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A BILL

To prohibit the export or other transfer to the Republic of South Africa of nuclear material, equipment, and technology.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Congress finds that—
4 (1) the Government of South Africa has not
5 signed the Treaty on Nuclear Non-Proliferation;
6 (2) the Government of South Africa has not
7 agreed to the fullscope safeguards of the International
8 Atomic Energy Agency, that is, IAEA inspections of
9 all nuclear facilities;

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1 (3) the Government of South Africa has not re-
2 nounced its intent to build nuclear weapons or to use
3 them in Africa;
4 (4) no other country in sub-Saharan Africa has
5 become a nuclear power; and
6 (5) it is in the national interest of the United
7 States to contain the development of nuclear energy
8 for nonpeaceful purposes.
9 SEC. 2. Cooperation of any kind provided for in the
10 Atomic Energy Act of 1954 is hereby prohibited with respect
11 to the Republic of South Africa.
12 SEC. 3. The Nuclear Regulatory Commission may not
13 issue any license or other authorization under the Atomic
14 Energy Act of 1954 for the export to the Republic of South
15 Africa of any source or special nuclear material, any produc-
16 tion or utilization facility, any sensitive nuclear technology,
17 any component, item, or substance determined to have sig-
18 nificance for nuclear explosive purposes pursuant to section
19 109 b. of the Atomic Energy Act of 1954, or any other mate-
20 rial or technology requiring such a license or authorization.
21 SEC. 4. The authority of the Atomic Energy Act of
22 1954 may not be used to distribute any special nuclear mate-
23 rial, source material, or byproduct material to the Republic of
24 South Africa.

1 SEC. 5. No department, agency, or offical of the United
2 States Government may enter into any subsequent arrange-
3 ment under the Atomic Energy Act of 1954 which would
4 permit the transfer to or use by the Republic of South Africa
5 of any nuclear materials and equipment or any nuclear tech-
6 nology.

7 SEC. 6. The Secretary of Energy may not provide any
8 authorization (either in the form of a specific or a general
9 authorization) under section 57 b. (2) of the Atomic Energy
10 Act of 1954 for any activity which would constitute directly
11 or indirectly engaging in the Republic of South Africa in ac-
12 tivities which require an authorization under that section.

13 SEC. 7. (a) The Secretary of Commerce may not issue
14 any license under the Export Administration Act of 1979 for
15 the export directly or indirectly to the Republic of South
16 Africa of any goods or technology—

17 (1) which are intended for a nuclear related end
18 use or end user;

19 (2) which have been identified pursuant to section
20 309(c) of the Nuclear Non-Proliferation Act of 1978 as
21 items which could, if used for purposes other than
22 those for which the export is intended, be of signifi-
23 cance for nuclear explosive purposes; or

1 (3) which are otherwise subject to the procedures
2 established pursuant to section 309(c) of the Nuclear
3 Non-Proliferation Act of 1978.
4 (b)(1) In addition, the Secretary of Commerce shall use
5 the authority of the Export Administration Act of 1979 to
6 prohibit any export directly or indirectly to the Republic of
7 South Africa of any goods and technology contained on any
8 of the lists prepared pursuant to paragraph (2) of this subsec-
9 tion. Export controls shall be imposed pursuant to this para-
10 graph without regard to the requirements otherwise applica-
11 ble to the imposition of export controls under the Export Ad-
12 ministration Act of 1979.
13 (2) Not later than six months after the date of enact-
14 ment of this Act, the Nuclear Regulatory Commission, the
15 Secretary of Commerce, the Secretary of Energy, and the
16 Secretary of State shall each prepare a list of all goods or
17 technology, whose transfer to the Republic of South Africa is
18 not otherwise prohibited by this Act, which in their judgment
19 could, if made available to the Republic of South Africa, in-
20 crease the ability of that country to design, develop, fabri-
21 cate, test, operate, or maintain nuclear materials, nuclear
22 facilities, or nuclear explosive devices. Such lists shall include
23 goods or technology which, although not intended for any of
24 the specified nuclear related end uses, could be diverted to
25 such a use.

1 SEC. 8. No officer or employee in any department or
2 agency of the executive branch (including the Nuclear Regu-
3 latory Commission) may make available to the Republic of
4 South Africa, directly or indirectly, any technology or other
5 information which could increase the ability of that country
6 to design, develop, fabricate, test, operate, or maintain nucle-
7 ar materials, nuclear facilities, or nuclear explosive devices.
8 This section does not require that an officer or employee
9 withhold information in published form which is available to
10 the public from such officer or employee.
11 SEC. 9. Any license or authorization described in this
12 Act which was issued prior to the enactment of this Act is
13 hereby terminated.

APPENDIX 9

LETTER FROM THE SECRETARY OF COMMERCE, MALCOLM BALDRIDGE, CONCERNING THE EXPORT OF SHOCK BATONS TO SOUTH AFRICA

NOV 1 0 1982

Honorable Howard Wolpe
Chairman, Subcommittee on Africa
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your cosigned letter regarding the licensing of exports of shock batons to South Africa. I assure you that the Department of Commerce is concerned about human rights violations.

The error leading to the licensing of the export of shock batons occurred after the licensing officer realized that there was insufficient information supplied on the export license application about the equipment from which to make an informed decision. (The equipment was described as "rechargeable flashlight with self-defensive capability when activated to emit impact energy.") The application was slated to be returned to the exporter for additional data. Because of an administrative error, the application was advertently processed, and a license was issued.

In light of these circumstances, the license application did not go through the normal review process and the opportunity for consultation with the Department of State (DOS) and Congress never arose. There was certainly no attempt to violate U.S. law or Congressional intent in the area of human rights. When the exporter was notified that the export license was issued in error and it was being revoked, he was directed to return the export license and to make every effort to secure return of the equipment.

As of November 5, the exporter had not returned the export license and informed my staff that the license itself was given to the freight forwarder at time of shipment on September 3. The equipment has arrived in South Africa, and the consignee has informed the exporter that most of the goods have been sold (the stated end-use was sale to the public). The exporter is currently attempting to secure and return the license.

Section 502B of the Foreign Assistance Act does not apply in the case of South Africa, since the DOS has not identified South Africa as a "country which engages in a consistent pattern of gross violations of internationally recognized human rights." Therefore, the DOS' counsel in these cases is advisory only. However, we are working with the DOS and other agencies to develop a consistent policy on export controls and their relationship to human rights.

Responses to your specific questions are enclosed.

Sincerely,

Malcolm Baldrige

Secretary of Commerce

RESPONSES TO SPECIFIC QUESTIONS

-- Have there been any previous licenses approved for the export of shock batons to South Africa during the course of the past six years? Have licenses for the export of any other item on the crime control list been approved during the same period of time?

One sample "source" baton valued at $225 was approved with State concurrence for export to a South African firm in September 1980. There were only three other items now on the crime list that were licensed (all with State concurrence) for export to South Africa. They were as follows:

(1) $590 worth of security flashlights with chemical dispenser was licensed in May 1981 to a private firm for sale to the public for self protection.

(2) A pyschological stress evaluator valued at $4,900 was licensed in August 1981 for export to a South African firm to screen job applicants and employees.

(3) $20 worth of shotguns parts for repair of one privately owned shotgun was licensed in June 1979. The order was subsequently cancelled and the license was returned unused to Commerce.

-- Why were shock batons placed on the crime control list?

The U.S. Government began to control the export of equipment which is particularly useful in crime control and detection to communist countries in 1974. An illustrative list, which did not include shock batons, was drawn up at that time. In 1975, the items on that list were included in the Commodity Control List, under entry 5998B, which covers such items as shotguns, stun-guns, shock batons and other discharge type arms. Shock batons were included in the second list because their use was determined to be solely for crowd control and police work. In 1978, Congress passed legislation extending controls over these items to all countries except NATO members, Japan, Australia and New Zealand.

-- In this specific case, what does the South African purchaser intend to do with the shock batons?

The stated end use is: "to be sold to the public of South Africa."

-- Does the license provided allow the South African purchaser to resell the shock batons within South Africa? To the military and police? Specifically, what are the conditions placed on the license provided?

There were no specific conditions placed on the revoked license. However, the Export Administration Regulations prohibit sales to the police or military and require that the invoice and bill of lading of equipment exported to South Africa contain a statement that informs the purchaser that "resale to or delivery, directly or indirectly, to or for, use of by, or for military or police entities is prohibited."

— Did the President in fact utilize the certification provision waiving the restrictions pursuant to Section 502B (a)(2)?

As noted in the Secretary's letter, Section 502B of the Foreign Assistance Act does not apply in the case of South Africa, since the Department of State has not identified South Africa as a "country which engages in a consistent pattern of gross violations of internationally recognized human rights".

Has the shipment of the 2500 shock batons to South Africa actually taken place? If so, when was the shipment delivered?

The equipment was shipped on September 3, and is in the possession of the consignee.

— Does the Department of Commerce consider South Africa to be a gross violator of internationally recognized human rights?

The legal authority for such designations lies within the purview of the Department of State.

-- What is the capability of the shock batons requested by the South African purchaser? Is it true that this particular model is larger and more powerful than those proposed for export to South Korea?

The Source model shock baton, which was shipped to South Africa has a power output of 35 watts. The Source model is more powerful than the 20 watt model PB Shok Baton requested by the South Koreans.

— Does the Department of Commerce currently hold other applications for licenses for equipment on the crime control list designated for South Africa.

Three applications are currently pending. Two are for the export of civilian chemical mace, and one is for rifle scope fittings. Negative Consideration Letters are currently being prepared to inform the exporters that the Department of Commerce intends to deny granting the export licenses and will do so within 15 days of the date of the letter unless the exporter supplies sufficient information to cause a change in disposition.

-- What is the Department's justification for failing to fully consult the State Department of this particular case?

As noted in the Secretary's letter, the export license was issued in error, so the opportunity for consultation with the Department of State never arose.

APPENDIX 10

Responses to Questions From the November 15 Letter of Invitation to the Department of Commerce to Testify Before the Subcommittees on International Economic Policy and Trade and on Africa

Question: Please explain the sequence of events which led to the Department's approval of a license for the export of 2500 shock batons to South Africa, and the absence of any meaningful State Department role in the review process.

Response: The error leading to the licensing of the export of 2500 shock batons occured after it was determined that there was insufficient information on the application from which to make an informed decision. The equipment was described as "rechargeable flashlight with self-defensive capability when activated to emit impact energy". The application was slated to be returned without action to the exporter requesting additional information. Because of an administrative error, the application was inadvertently processed and a license issued. The application, therefore, did not go through the normal review process and the opportunity for consultation with the State Department never arose.

Question: What does the South African purchaser intend to do with the shock batons? We understand that the Department has revoked the license and urged the manufacturer to attempt to retrieve the batons. Has there been any progress in this area? What resources has the Department committed to this effort?

Response: The South African consignee intended to sell the shock batons to the public of South Africa. The license was revoked on September 20, 1982. The applicant was urged to retrieve the shock batons, but the sale had been consummated and batons already sold to the public. There is no legal recourse to return the shock batons. The Department has again requested that the applicant return the license, but has been advised that the freight forewarder surrendered it to the U.S. Customs officials, which is not the usual procedure. Efforts are continuing to resolve the matter.

Question: What are the Department's recommendations on reforms that could be implemented to avoid such mishaps occuring in the future? What is the status of the memorandum of understanding being developed by the Departments of Commerce and State to improve coordination between the two Departments in reviewing crime control equipment export license applications?

Response: The Department had strenghtened the review process to preclude a reoccurance of the shock batons error. Licensing personnel are required to obtain the signature and clearance of a senior licensing officer prior to moving the application forward. The procedures have been clarified and check points established throughout the system to identify sensitive applications. The Departments of State and Commerce are currently in the final stages of negotiating a Memorandum of Understanding (MOU) by which crime control export applications will be reviewed. Departmental and statutory responsibilities will be specified, including procedural aspects of the review process. The MOU should be agreed to by December 30, 1982.

Question: What is current U.S. policy on exports, both nuclear-related and non-nuclear, to South Africa? Please include in your assessment how the policy of "constructive engagement," a policy which seeks to improve relations with South Africa through a series of positive gestures, has manifested itself in U.S. export policy with respect to South Africa.

Response: The U.S. policy on exports to South Africa is covered by Sections 6 and 3(2)(B) of the Export Administration Act of 1979.

Foreign policy controls apply to exports to South Africa and Nambia of; 1) items controlled pursuant to the United Nations arms embargo, 2) aircraft and helicopters to all consignees, 3) all U.S. origin commodities and technical data destined for military and police entities, except food, medicines, certain chemical and industrial equipment, home computers and office equipment, and other non-strategic equipment that would not make a significant contribution to military or police functions; and 4) computers for certain South African government entities.

U.S. nuclear policy towards South Africa and other countries where there is nuclear proliferation concern is to review carefully commodities and related technical data that could be of significance for nuclear explosive purposes and that could be used directly and indirectly for designing, developing, fabricating, or operating sensitive nuclear facilities, such as uranium enrichment, the production of heavy water, the separation of isotopes of source and special nuclear material, and the fabrication of nuclear fuel containing plutonium.

In reviewing nuclear applications, the Sub-Group on Nuclear Export Coordination (SNEC) takes into consideration the stated end use of the component, its sensitivity and availability elsewhere, the types of assurances or guarantees given, and the non-proliferation credentials of the recipient country.

The policy of "constructive engagement" has been articulated by the Department of State. They would be the appropriate agency to determine if that policy has been effective.

Question: Earlier this year James Malone, then Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs, indicated that his bureau had begun an "intensive study" focusing on the South Africa/Non-Proliferation issue. This analysis was to be completed by the end of December 1982, resulting in a new policy initiative. Has the Department been consulted during this review, and will the study affect licensing of nuclear-related exports by the Department of Commerce?

Response: The Department of State is conducting an "intensive study" of the South Africa/Non-proliferation issue. Commerce expects to be involved in this study, but we are advised that only preliminary internal meetings within the Department of State have taken place. Results of this interagency study will probably affect the licensing of dual-use nuclear related exports to South Africa.

Question: Of all the applications for nuclear-related exports submitted to the Commerce Department, what percentage are referred to the Sub-Group on Nuclear Export Coordination (SNEC)? Are you satisfied with the way in which the SNEC currently operates? If not, what changes would you recommend?

Response: Approximately 8000 nuclear related cases are reviewed annually by the Department of Energy. Of that number, only about 200-300 are referred to the SNEC. The SNEC functions as the reviewing group for proposed nuclear and dual-use exports which may pose proliferation risks. It was established in 1977 and acts on an advisory basis only. Its recommendations are not formally binding upon any agency. The SNEC meets at intervals of approximately three weeks. Most, but not all, of the cases reviewed are Department of Commerce export applications, since Commerce controls a far wider range of commodities and technology than DOE or the Nuclear Regulatory Commission. In view of the statutory procedures established for the operation of the SNEC, and the level of technical and policy requirements in their review process, the SNEC has been most effective in their deliberations and making recommendations on nuclear related or dual-use exports. Though minor administrative improvements may be appropriate, the SNEC contributes significantly in implementing U.S. nuclear non-proliferation policy.

Question: To what extent are end-use assurances required in connection with nuclear-related exports licensed by the Department? Please assess the ability of the U.S. to monitor such assurances.

Response: A narrow range of non-sensitive exports to South Africa are subject to careful case-by-case interagency review. Approvals of dual-use commodities have been conditioned upon the receipt of South African government assurances of no nuclear explosive use and no retransfer for another use without prior consent of the U.S. government. These assurances are monitored

and reviewed periodically by qualified U.S. personnel from the American Embassy. In specialized cases, the U.S. exporter participates by providing U.S. authorities access to the equipment and verifiable evidence of proper use. The primary responsibility of obtaining nuclear assurances rests with the Department of State. They would, therefore, be able to indicate more completely the ability to monitor such assurances.

Question: Please provide the Departments comments on Rep. Rangel's bill, H.R. 7720, which would prohibit the export or transfer of Nuclear materials, equipment, and technology until South Africa adopts full-scope safeguards and agrees to sign the Nuclear Non-Proliferation Treaty.

Response: The Department of Commerce opposes this bill. It would significantly undermine U.S. non-proliferation initiatives with respect to South Africa. Passage of this bill would virtually eliminate any meaningful dialogue with South Africa on nuclear issues. Current U.S. efforts to induce South Africa to accept full-scope safeguards and ratify the Non-Proliferation Treaty would be terminated with almost no political leverage remaining.

U.S. exporters would suffer the most from enactment of this bill. There is usually foreign availability for the commodities in question and other nations are willing and able to supply such commodities to South Africa. An embargo of all exports and other forms of non-sensitive nuclear cooperation with South Africa would eliminate U.S. access to and influence upon South Africa's nuclear program.

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