OPENING ADDRESS

1.

The current phase of the hearings of the Commission is concerned with paragraphs 1.3 and 1.4 of the Terms of Reference. These paragraphs provide as follows:

> *1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all and:*
> *1.3.1 if they have, the extent to which they have materialised; and*
> *1.3.2 if they have not, the steps that ought to be taken to realise them.*
> *1.4 Whether off-sets anticipated to flow from the SDPP have materialised at all and:*
> *1.4.1 if they have, the extent to which they have materialised; and*
> *1.4.2 if they have not, the steps that ought to be taken to realise them.*

2.

The programme sets out the list of witnesses to be called. These witnesses are either current or former employees of the Department and Industry and include Mr Alexander Erwin the former Minister of Trade and Industry.

3.

In order to establish what job opportunities and off-sets were anticipated to flow from the Strategic Defence Procurement Package ("SDPP") the logical starting point is an address to Parliament by the then Minister the late Mr J Modise on the 9th of March 1999 in which he spelt out to Parliament what the expectations were. The relevant portion of his address reads as follows:

> *"In return for our expenditure, our economy will benefit by:*
> *an estimated 110 billion Rands of new investment and industrial participation programmes;*
> *and the creation of approximately 65 000 jobs.*
>
> *The sceptics have suggested this is wishful thinking.*
>
> *The following breakdown has been very carefully calculated with the Department of Trade and Industry.*
>
> *Of the 110 billion Rands:*
> *Over R26 billion is made up of direct investment into the project;*
> *R25 billion is estimated revenue from local sales stemming from the business projects that will be established; and*
> *R59 billion will be derived from export sales".*

4.

On the basis of Mr Modise's address to Parliament the expectation raised was that the economy would benefit by 110 billion rand of new investment and Industrial Participation Programmes and that 65 000 jobs would be created. What was actually delivered by the SDPP in terms of off-sets and jobs has therefore to be tested against this benchmark.

5.

SDPP off-sets were divided into two components:

(a) The National Industrial Participation Programme (NIPP) which was administered by the DTI and;

(b) The Defence Industrial Participation Programme (DIPP) which was administered by the Department of Defence and Armscor. The DIP component of the off-sets will be dealt with at a later stage when the Armscor witnesses will be called to give evidence.

6.

The question as to whether the off-sets contemplated by the SDPP have been realised is not one which is without difficulty. A National Industrial Participation Programme administered by DTI was already in existence at the time when the SDPP process commenced. The policy applicable thereto and the operating guidelines of the programme had been approved by cabinet by the 30th of April 1997.

7.

The issue of off-sets or National Industrial Participation (as it is referred to in the local context) was one of three criteria in the final scoring of tender submissions and attracted an overall rating of 33% towards the final scoring for bidders. The other two criteria were the suitability of the Arms purchased and the financing terms. It is extremely important to note that the SDPP NIP terms did not include an obligation to deliver on job creation to earn credits. Accordingly although numerous business plans of the various projects gave an estimate of the number of jobs that were created, this was not monitored and supervised by the DTI because it was irrelevant to the function of assessing the NIP credits to be awarded and whether the obligors had accordingly complied with their obligations.

8.

It will be necessary to draw a distinction between the ordinary NIP programme and the NIP programme under the SDPP and to avoid confusion reference will be made to the former in the evidence as “ordinary NIP” and the latter as “SDPP NIP”. DTI effectively ended up administering both the ordinary NIP programme as well as the SDPP NIP programme notwithstanding that the agreements with the obligors contemplated that an agency called the “NIP implementing mechanism” would in due course be formed and administer the NIP SDPP programme.

9.

Although there are large degrees of overlap between ordinary NIP and SDPP NIP in terms of which the NIP obligations were administered and implemented there are certain very important differences to which brief reference will be made in this address but which will be more extensively canvassed in the evidence.

10.

Both ordinary NIP and SDPP NIP had similar objectives. They both in effect sought to impose an obligation upon foreign obligors who had been awarded lucrative contracts to invest in the South African economy as a quid pro quo to off-set the negative effects of these purchases upon the economy and the balance of payments account and to help grow the economy. The National Industrial Participation Programme was therefore a scheme through which these off-set obligations were implemented and administered. In the context of SDPP NIP it was also a way of ensuring that the country could afford to purchase the armaments by the boost to the economy generated by the various projects.

11.

The evidence will demonstrate that there were inter alia three critical differences between ordinary NIP programme and the SDPP NIP programme. These were the following:

(a) The ordinary NIP programme was regulated by a policy and operating guidelines and therefore had a degree of flexibility. The terms of the SDPP NIP agreement were the product of an agreement negotiated over an extended period between an agency of State created for that purpose , namely the International Offers Negotiating Team (IONT), and the obligors and had fixed provisions in respect of categories for awarding credits and the credit methodology.

(b) The NIP obligation under the ordinary NIP programme was calculated in accordance with the NIP policy which provided that all state purchases with an imported content of 10 million dollars or more attracted an obligation equal to 30% of the imported content value. In the case of SDPP NIP the extent of the NIP obligation was also negotiated between the IONT and the obligors.

(c) The allocation of NIP credits under the NIP programme was determined in accordance with whether the project met one of more of nine criteria including job creation, historically disadvantaged individuals, SMMES, Research and Development and technology transfer. Projects could obtain credits in more than one of these categories some of which themselves allowed for two credits to be awarded for each unit of currency invested. For the SDPP projects only three categories counted for credits – investments, export sales and local sales.

(d) The allocation of SDPP NIP credits ("the NIP crediting methodology") are significantly different to that under ordinary NIP. Essentially the contracts with obligors (with minor variations in some of the contracts) made provision for the allocation of NIP credits as follows:

(i) 1 NIP credit is awarded for each euro or dollar of net export revenues earned by any of the projects in the NIP project;

(ii) 1 NIP credit is awarded for each euro or dollar of investments by the investor in the course of establishing and progressing any projects; and

(iii) 1 NIP credit is awarded for each euro or dollar earned in respect of local sales of products produced in any project in the NIP project.

12.

In summary under the SDPP NIP programme credits are allocated to only three of the nine scoring criteria. Furthermore the rate of credit was limited to 1 NIP credit for each euro or dollar in respect of all three categories and no multipliers were applicable.

13.

Evidence will be presented that these changes in the NIP credit allocation system were initiated by the International Offers Negotiating Team whose objective was to get the maximum benefit for the country and who decided pursuant thereto to eradicate the multipliers which the existing NIP guidelines provided for. This new system of NIP credit allocation and the fact that there would be no multipliers whatsoever was, according to the evidence which will be led, expressly discussed with and reluctantly accepted by each obligor in turn.

14.

The evidence will reveal that the SDPP NIP obligations undertaken by the obligors were far in excess of the contract price of the armaments they had undertaken to supply. This was because an obligor was entitled in terms of the NIP contracts to obtain credit for all investments and sales of a project even though it only contributed as little as 10% of the investment in a project – this will be explained in some detail in the evidence with reference to the contract provisions of “causality” and “additionality”.

15.

The evidence will demonstrate that as a matter of fact the DTI applied multipliers in awarding NIP credits to a number of the projects submitted by obligors which assisted these obligors in discharging their obligations. These multipliers ranged from a factor of 2 to 192.

16.

The Justification which will be advanced by some of the DTI witnesses for the use of multipliers is that strategic considerations warranted multipliers being used such as:

(a) Projects which were risky and commercially unattractive and which were highly unlikely to be funded by the market;

(b) Projects which contributed towards the development of essential skills especially needed in the economy particularly in the poorer areas of South Africa and;

(c) Projects promoting economic transformation and promoting the participation of historically disadvantaged individuals.

17.

Much of the inquiry at this stage will therefore be concerned with the question as to whether those responsible for implementation of SDPP NIP had the power to override the provisions of the contract.

18.

Finally it is pointed out that it is only after the Armscor evidence has been led on Defence Industrial Procurement (DIP) that an analysis can be made as to the extent to which the off-sets contemplated to flow from the SDDP have materialised.