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CHAIRPERSON: Good morning. Advocate Skinner.

ADV SKINNER: Chair, the next witness will be Mr Lionel Victor October.

CHAIRPERSON: Mr October, do you have an objection
5 taking the oath? Can you take an oath?

(Witness is sworn in.)

CHAIRPERSON: Thank you.

WITNESS NUMBER 7 (DTI) : MR LIONEL VICTOR OCTOBER
10 **(Hereinafter referred to as "MR OCTOBER"), GIVES**
EVIDENCE UNDER OATH

EXAMINATION IN CHIEF:

ADV SKINNER: Mr October, a statement was prepared for
you by the legal team of the Department of Trade and Industry
15 and your signed statement is before the Commission. You have
a copy of that statement do you?

MR OCTOBER: That's correct. Yes.

ADV SKINNER: Your signature appears on the last page,
it's undated this, as I understand it, it was signed by you
20 towards the end of last year, would that be right?

MR OCTOBER: I think it was signed on the
16th of January.

ADV SKINNER: Thank you. And other for the one page
which I will deal with shortly, that's page 7 but with the
25 exception of that page you confirm the contents of the

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statement as signed by you at the time?

MR OCTOBER: Yes.

ADV SKINNER: The change is to page 7 as I've indicated where certain figures have now been varied and I will deal with that when we get to that portion of the statement, but you have prepared an amended page which you are placing before the Commission, is that correct?

MR OCTOBER: That's correct.

ADV SKINNER: Mr Chair I'm not sure whether that page has reached the Commissioners or not? Thank you. Mr October returning to your statement you are the director-general of the Department, is that right?

MR OCTOBER: That's correct.

ADV SKINNER: And that's the most senior position in the Department?

MR OCTOBER: That's correct.

ADV SKINNER: You set out briefly your background that you joined the Department in 2001 and were appointed to the Industrial Participation Secretariat to the position of chief director.

MR OCTOBER: That's right.

ADV SKINNER: That was in 2001 and then in 2002 you were appointed to the position of deputy director-general responsible for the Enterprise and Industry Development Division.

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MR OCTOBER: That's right.

ADV SKINNER: You remained at the Department then until 2007 when you then served as a the Economic and Trade Diplomat at the South African Embassy in Brussels from 2007 to 2011.

MR OCTOBER: That's correct, and I was still an employee of the Department of Trade and Industry.

ADV SKINNER: So, effectively it was a secondment?

MR OCTOBER: That's correct.

10 ADV SKINNER: And then you returned from there to take up the post of director-general from 1 May 2011.

MR OCTOBER: That's correct.

15 ADV SKINNER: Mr October, in your statement you set out in paragraphs 10 to 12 the vision of the Department, the stated mission of the Department and the strategic outcomes orientated goals which the Department seeks to achieve. Where do those paragraphs derive from, are you referring a particular document or what did you have in mind there?

20 MR OCTOBER: In those paragraphs I set out the mission and the core objectives of the Department of Trade and Industry, some of those points are also reflected in the actual objectives of the National Industrial Participation Programme.

25 ADV SKINNER: What I'm getting at, are those set out in a particular document that you are quoting from or where do we derive these, the contents of these paragraphs?

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MR OCTOBER: As I indicated some of it derives from the DTI's mandate and core objectives which is set out in the DTI Annual Report and then some of it is derived from the Department's Industrial Policy Action Plan which is also adopted by Cabinet and then as I indicated some of the objectives derives from the actual National Industrial Participation Programme.

ADV SKINNER: Thank you. From paragraph 16 of your statement you then deal with the benefits which had been realised from the SDPP and as I indicated earlier there is a substitute page 7, so when I refer to the figures set out I'll be referring to the substitute page. Can I take you to then paragraph 16(a) where you indicate in the substituted page that:

"An amount of US\$978 386 610 together with an amount of €149 405 863 was directly invested into the economy".

Can you just explain to the Commission how those figures are arrived at?

MR OCTOBER: (a), it indicates the actuals which is the actual benefit, the actual investment benefit that was derived for the South African economy, so it would be a total of all the obligors, their actual investment and their investment which they caused, so it would be the total investment of all the obligors directly in the South African economy, so that figure is

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not credits but it's actual Rands and cents invested in the South African economy, or Dollars.

ADV SKINNER: Looked at another way the figure is, has been stripped of all multipliers and where one is getting effect
5 from other sources, it's the actual investment into the economy.

MR OCTOBER: Well, it would strip out all the multipliers but it would include both the investment by the obligors and the investment which they caused.

10 ADV SKINNER: You have before you, do you, a copy of the Annexure "F" which was originally part of Mr Zimela's statement.

MR OCTOBER: That's correct.

ADV SKINNER: So, if I can ask you to look at page 113 of
15 Exhibit "F", that's the page on which the grand totals appear and those are also then reflected on page 117, the slightly amended form, and the figure that is set out right at the foot of page 113 of Annexure "F" under the column "Total Actual Investments", that figure of US\$978 million, that's the figure
20 which appears in paragraph 16(a) of your statement.

MR OCTOBER: Yes that's correct, that corresponds to the actual total, total actual investments.

ADV SKINNER: And the same with the figure for Euro that's also reflected in the "Total Actual Investments" column
25 at page 113?

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MR OCTOBER: That's correct.

ADV SKINNER: In subparagraph (b) you deal with "Local Sales". Now what we've had up until now in Annexure "F" has simply been the sales credits. How have the figures for Local Sales and Export Sales been arrived at?

MR OCTOBER: (b) and (c) refers to, as indicated Local Sales and (c) is Export Sales, so within the records of the Industrial Participation Secretariat they have a breakdown of actual sales achieved by the obligors as well as actual exports. For the purposes of what you have as Annexure "F" those totals was combined and you have one column in Annexure "F" just for simplification to reflect total sales, but in my, I thought it was useful for the Commission to know what is the breakdown between sales and exports, especially because part of this programme's objective was to achieve export revenues or foreign currency for the country and that's why I had a breakdown between Local Sales and Export Sales.

ADV SKINNER: Yes than you, the breakdown is very helpful. I just want to understand it though, so what you have done is, you being the team from DTI, is the same exercise of stripping from the sales credits any multipliers or any package deals you've looked at the actual investment into the economy, is that right?

MR OCTOBER: Yes, we've looked at actual sales and actual export sales and we've also taken out the package deals

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where in a sense upfront sales credit was provided or in training projects where sales were given as a proxy. Those were taken out, so these would be actual sales in the economy.

ADV SKINNER: And that's why the actual amount for local sales and export sales, if added together, will be less than the sales credits that are reflected on page 113?

MR OCTOBER: That's correct.

ADV SKINNER: You see on my arithmetic if I add the figures for US Dollars in (b) and (c) I get a figure of approximately US\$5.463bn, which as you can see, is substantially less than the sales credits.

MR OCTOBER: That's correct, so it would be actual sales as I said. What we wanted to do was because obviously the way I understand is the task of the Commission is to identify what actual benefits were received for the country and then rather than speaking about credits one should talk about actual sales.

ADV SKINNER: Yes, so that certainly made sense. What I didn't understand was if I did the same exercise with the two figures for Euro, in other words if one takes the figure in (b) of €468 049 665 and adds that to the figure in (c) of €1774 583 075 I get a figure which is slightly but is somewhat more than the grand total reflected for sales credits on Annexure "F". Are you able to explain that?

MR OCTOBER: I'm not able to maybe explain that

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discrepancy, but all I can confirm is that the figures of (b) and (c) and what I asked for was to exclude the package deals from that, as I said I can't explain exactly the discrepancy.

ADV SKINNER: Alright, just for the record on my
5 calculations if one does that exercise for the Euro it comes to
€2.242bn as opposed to the figure on Annexure "F" page 113 of
€2.156bn, but maybe your team can give you some assistance
as we continue. Turning then to subparagraph (d) you set out
the number of direct jobs. Can you tell the Commission how
10 that figure was calculated?

MR OCTOBER: Again what I tried to indicate, as we know
in general there are, there is a, what is in economics called a
multiplier that any direct job also creates indirect jobs in
upstream and downstream industry. What is indicated in (d)
15 and (e) is the actual direct jobs created without any sort of
indirect jobs, that is so it's direct jobs indicated in the projects
and then just to explain further, (d) and (e) is, (e) is jobs that
were in a sense retained or saved by the investment.

ADV SKINNER: And the figures which appear in
20 subparagraphs (d) and (e) are the same as appear at the foot
of page 113 as grand totals for new jobs created and jobs
saved/retained.

MR OCTOBER: That's correct.

ADV SKINNER: And again just to clarify as I understood
25 the evidence I think it was of Mr Zimela, those were

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established either from the business plan or from directly liaising with the obligors and the companies concerned?

MR OCTOBER: That's correct.

ADV SKINNER: And as you've set out in subparagraph (e)

5 the jobs saved or retained refers to jobs that would have been lost had there been no involvement of the obligor, so in other words a business which without the project would possibly have gone other or been liquidated.

MR OCTOBER: That's correct, that is investment into

10 Brownfield projects where because of the new technology or new product the jobs were sustained or as indicated they may have been lost as in for example the one of Magwatee Estates that was mentioned.

ADV SKINNER: We may not all be familiar with the term

15 "Greenfield" and "Brownfield", can you explain to us what those are?

MR OCTOBER: A Greenfield, there are two kinds of

foreign direct investment, a Greenfield would be a completely new foreign direct investment, so it would be the establishment
20 of a new factory for example. A Brownfield investment is one where an existing facility is upgraded or expanded and so forth.

ADV SKINNER: Thank you. Then returning to your statement you indicate in paragraph 17 that"

25 *"An outcome of the DTI Internal Audit Review of the*

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SDPP projects and a broader review of the NIPP programme ...”.

Was that certain weaknesses were improved. Now if I can take that bit by bit. The Internal Audit Review, is that the document
5 which was annexed to Mr Zimela’s statement?

MR OCTOBER: That’s correct.

ADV SKINNER: And the reference to a “broader review of the NIPP programme”, what does that refer to?

MR OCTOBER: As we know the National Industrial
10 Participation Programme was introduced in 1996. In about 2010, 2011 the Minister requested that we do a total review of our entire procurement policy which includes the National Industrial Participation Programme and a range of other instruments used, so that review was conducted and a new
15 Industrial or a new NIP Programme, if you can call it that, was adopted in 2012, so that was an internal review after 15 years of running the programme, so that’s, a complete review was done.

ADV SKINNER: Now again could you help me Mr October,
20 your original page 7 of the statement after setting out that “certain weaknesses had been improved in the new NIP Policy approved by Cabinet in December 2012” had continued on to say that some of the weaknesses include, and one of them was the use of multipliers. Now that doesn’t seem to appear in the
25 substituted page 7. Can you just comment on that?

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MR OCTOBER: Sorry, could you just restate the question?

ADV SKINNER: What I'm saying is that in your statement as it was originally submitted on page 7 you had indicated that having had the Internal Audit Review and the broader review
5 certain weaknesses were improved upon and you then set out what some of those weaknesses were and in your original page 7 the first weakness referred to was the use of multipliers as opposed to specifying direct local content requirements. I was just commenting that that particular weakness doesn't seem to
10 appear in your amended page 7 and I'm just asking was it inadvertently omitted or are you saying it was not a weakness?

MR OCTOBER: No I think if there's any discrepancy, if I could just explain the multipliers was not a particular subject of the review but in the course of the Commission's dealings
15 the issue of multipliers arose and so that, just in my statement I have sort of inserted the discussion around multipliers, so as I said but the effect of the new policy is that we have ..., in a sense there would no longer be a need for multipliers in the new system, so I'm quite easy that if it was lost somewhere it
20 was just to illustrate.

ADV SKINNER: Was the use of multipliers perceived as a weakness in the system before the new NIP Policy or not?

MR OCTOBER: It was not multipliers per se but the initial policy that we had is what we called "Indirect Offsets". As was
25 explained by my colleagues Zikode and Zimela what happened

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is that we adapted a policy of, which was usually ... In the rest of the world they used something called "direct offsets" mainly in the defence industry, so for example if you build an Airbus or a plane different parts of that aircraft is done in different countries and that would be called direct offsets which is part of the main contract and the main object of procurement.

We adapted this policy of indirect offsets which means we use the purchase in one industry to create economic benefits in an entirely different industry which is indirect offsets and it's not related to the main contract as it were, but as was indicated we introduced that policy (a) because of the particular South African needs where we didn't want to just rebuild up our defence industry but we want to build up the civilian industry, so over the 15 years' period, but it is what is called a weaker form of offsets, so after now there is more policy space, after our experience with this programme we are moving now back to direct offsets, so all our procurement currently and what we envisage in our new policy is that we would have direct offsets.

Once you have direct offsets you no longer need a monitoring and an accounting methodology around credits in its entirety because it would be specified, if I could give an example we've just issued the tender for our locomotives by PRASA, Passenger Rail of South Africa, so there for example they bought a 100 locomotives.

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In terms of that contract 80% of those, of that procurement must be done in South Africa, so as you said we automatically in the main contract derive 80% local content. Now that would be what we would call direct offsets, so that's why I'm saying in the current system there wouldn't be a crediting methodology at all, in the new system, so it would include then no need for multipliers, also no need for an Industrial Participation Secretariat because it would be overseen by the, this one for example is overseen by Passenger Rail, they oversee the direct offsets, so we are returning to a much stronger form and that's why I'm saying it does away with multipliers, it does away with the whole crediting methodology but it's because of the nature of the programme has changed.

ADV SKINNER: Yes, I understand that in the new NIP Policy there will be no use of multipliers. I just am not sure that I understand why the fact that there has been a change to specifying direct local content does away with the use of multipliers.

MR OCTOBER: The reason as I indicated, usually in a direct offset when you buy the main product in terms of direct (indistinct) a certain portion of that contract must be done in another country, so if I take the UK System of offsets, when the UK, when they buy a product from the United States they would for example indicate that the electronic system would be done

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in the United Kingdom, so a part of the one package would be done in another country, so that is what is direct offsets. Once you have that you then specify in the main contract what part would be done in another country which means you don't need any system of discretion, multipliers or even an accounting methodology at all, so that's why I'm saying once you have local ...

Now in South Africa we have indicated under the "Preferential Procurement System" the Minister of Finance now can designate on the advice of the Minister of Trade and Industry, can designate any product or any sector for localisation and which we call the designations or local content specifications, so we would upfront now, for example in the renewable energy with solar and wind energy we upfront when they issue the tender they would say in that tender 45% of this purchase must be produced in South Africa, so that's why I'm saying once you have that system in place there is no need for any form of, let's say anything related to a system which is based on indirect offsets. I don't know if I make myself clear.

ADV SKINNER: Yes. Just jumping slightly ahead, what you're referring to is essentially what is summarised in subparagraph (a) appearing at page 8 of your statement, would that be right?

MR OCTOBER: Yes, that's correct.

ADV SKINNER: And the reference in sub (a) to the

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Minister being able in terms of the Regulations “to designate sectors or subsectors or products for local procurement to a defined threshold”, can you just explain that reference, “defined threshold”?

5 MR OCTOBER: Excuse me, which paragraph are you on?

ADV SKINNER: Page 8 of your statement in subparagraph (a) you start by talking about “Amendments to the Regulations of the Preferential Public Procurement Framework Act, and about four lines below that you talk about “a defined
10 threshold”.

MR OCTOBER: Yes. Before the Minister designates a particular sector as a, for example used locomotives we would conduct research into what is our local capabilities, what kind of skills we have, what kind of technology we have in the
15 country and then we would after that research, we would specify a particular percentage of local content, so for example your renewable energy is 45%, so that would be the threshold.

CHAIRPERSON: I’m sorry Advocate Skinner, just before we pass page 8, the third bullet point from the top page 8, ...

20 ADV SKINNER: Yes Mr Chairman if it’s any assistance I’m going to ask the witness to comment on all the bullet points in all ...

CHAIRPERSON: Yes even before he comments I was going (indistinct), I was not going to ask him to comment. I just want
25 to understand from the witness what does this letter stand for,

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“OEM”?

MR OCTOBER: “OEM” would be Original Equipment Manufacturers would be, which for example would a company like Airbus or British Aerospace Systems, they would be the original equipment manufacturers.

ADV SKINNER: Mr October, then if I can take you back to what is set out as the various bullet points in paragraph 17 of your statement we had dealt with some of them but you refer to:

“The lack of strategic and coherent approach across procurement levers”.

What are you referring to there as what was perceived as a weakness?

MR OCTOBER: As I indicated this programme is one of many where the state tries to use its buying power, it's purchasing power to be able to extract some additional benefits for the South African economy, so over the years since 1994 we have been in search of these tools in which we can use in our industrial policy toolkit. What has emerged is a number of different policies have emerged, for example we used the National Industrial Participation Programme, then the Department of Public Enterprises came up with a supplier development programme, that is where they would work for example with Eskom or Transnet and then Transnet will try to create opportunities for black enterprises in their Supply Chain

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or they would get foreign companies to create suppliers to Transnet. Similarly with the Black Economic Empowerment legislation and the codes of good practice we've also used government procurement to assist in terms of empowerment.

5 We've also used the buying power with regards to promoting small business, so what has emerged is about four or five instruments has emerged with leveraging procurement and it was in that context that Cabinet said you have all these different initiatives now that has emerged since 1994, can you

10 try to put it into a coherent policy framework for government, can you in essence codify all these instruments into one policy document and that is the review we undertook and that is why there was in a sense sometimes sort of conflict or let's say lack of integration between different levers, so that's what that

15 refers to.

ADV SKINNER: Okay, then the next bullet point you refer to as:

"The large quantum of domestic procurement not subject to any procurement levers".

20 What are you referring to?

MR OCTOBER: Yes, what we find emerging is as you know the DTI has obviously been the champion of this policy but other departments have their own imperatives, for example when Eskom gets, builds Medupi their key impediment is to

25 bring electricity to the country and to keep the lights on, so

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they, they for example in that particular project, they didn't, there was no offsets in that project, so we lost a lot to the country, but because of there was the urgency of that, so that is why the DTI has been championing that we have a coherent
5 policy so that many years in advance of any major purchases by the state we already define exactly that we derive some local benefit, so it was that but there's also urgent ones, for example Portnet or Transnet when they need cranes they usually come on the last minute and then we have to
10 immediately get these cranes just to keep Durban Port going and in that case there are no offset obligation on those ones and that as I said so we're losing a lot of, or from the DTI's point of view we are losing additional benefits which we could have.

15 ADV SKINNER: The next bullet point you refer to is the silence of the Municipal Financial Management Act and you say that creates uncertainties, now I don't profess to be an expert on that Act, can you explain roughly what you were referring to there?

20 MR OCTOBER: Yes. If you recall that the initial Industrial Participation Programme only applied to National Government Departments and to state-owned enterprises. The other entities, for example municipalities also procure large parts of, for example the buses used by Tshwane Metro, they are
25 purchased at the municipal level, so they are currently

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excluded from the National Industrial Participation Programme, so what we're doing with the new procurement legislation that I refer to the Preferential Procurement Act, we now cover national departments, provincial departments, municipalities and state-owned (indistinct), so we bring in Government's entire purchasing power as a lever.

ADV SKINNER: The next bullet point is the one that the chairman has already referred to:

"The use of third parties to tender for Government contracts by OEM's complicates enforcement".

What is that referring to?

MR OCTOBER: Here as I indicated with indirect offsets whilst we had a uniquely South African experiment with this system and we needed it to do that because of our absence of any policy tools in the early 1990's it was, we used this instrument of indirect offsets. The one weakness of an indirect offset is that you are asking the original equipment manufacturer for example to invest in the key industry, so they have to bring in a third party like they did in the South African case, they had to find a company in India who is involved in a tea business, they then have to bring them, interest them in South Africa and then they have to run a tea estate in South Africa. That has many weaknesses because you are not really leveraging the core business, BAE Systems has expertise in defence equipment, so you lose that because they have to bring

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in third parties to do their obligations, so that has a weakness because you are not utilising their strength and remember the purpose of this programme was to use these companies that we buy from to get them interested in the South African economy, 5 so that's why under the new system we will, most of the offsets will be in the core business of the company itself, so for example currently if we buy from General Electric they will do the locomotives in South Africa and they have their expertise in that area, so they don't need to use any third parties and that's 10 the explanation for third parties.

ADV SKINNER: And that links them to the last bullet point where you talk about companies undertaking NIP activities that are outside their core business.

MR OCTOBER: Yes, that's the similar point yes.

15 ADV SKINNER: Going back slightly, a further weakness identified was that:

"NIP requirements were not always enforced by state entities".

Can you explain further that?

20 MR OCTOBER: Yes, as I said there's obviously always a tension, a healthy tension I take it, between different state entities because state entities take you, you take the current purchase of South African Airways of a new fleet of equipment, of course they want to get the cheapest aircraft and the 25 quickest possible time and that is obviously their mandate, so

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you will find, and especially the early days of this programme we found a lot of resistance to this offset programme because people wanted to get to their business and now they were incumbent by this issue of trying to get additional benefits and they felt sometimes it delayed their actual procurement, so we found that many, many companies then applied for what we called exemption, they applied for exemption from this requirement Sir as I mentioned Transnet, SAA, Eskom usually applied for exemption and as I said obviously where there was a clear case for it we did grant those exemptions, but so the new policy is trying to take care of that problem of non-enforcement by that.

ADV SKINNER: And that would also link to the last bullet point that we haven't referred to where you refer to:

15 *"Lack of commitment to localisation as well as lack of cooperation on NIP by procuring entities".*

MR OCTOBER: Oh yes, that's the same point.

ADV SKINNER: Then your statement continues with setting out some of the developments in areas of government procurement, so what I understand you to be referring to here is that various of the weaknesses that you have identified and we discussed, have received attention and are now the subject of a somewhat different framework.

MR OCTOBER: Yes. If I could just explain the context, in 2011 the Minister of Finance issued these new regulations for

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the Preferential Procurement Act where we put into effect this new system of designations and local content requirements. The policy space opened up, as was indicated earlier most countries and most companies frowned on this policy of industrial participation because their view, including the World Bank, the IMF and most economists would say that the state mustn't interfere in a pure buyer and seller market relationship, we should just leave it for buyers and sellers to purchase the best, the cheapest equipment and so on, the state shouldn't impose any additional obligations on market transactions and that's why this programme was not very well accepted, but after the 2008 financial crisis this non-interference by the State in Government was reassessed and as we know the whole world then adopted the policy of intervening or assisting the market.

For example the United States bailed out General Motors and so on, so it was then all of a sudden acceptable to use these instruments and Government procurement. For example in the US they made a condition for the stimulus package that you had to buy American steel in those packages, so local content which used to be a frowned-upon term in the sort of profession has been now deemed acceptable, so it's in that context that we then had the policy space to amend our legislation, so now we have in law a codified system where we now legally define local content requirements.

As I said for all our purchases now we upfront

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indicate, before the tender is actually issued they say so much must be done in South Africa, so that is the amendments to the Preferential Procurement Regulations.

ADV SKINNER: Thank you. You then at the foot of page 8
5 of your statement refer to the Competitive Supplier Development Programme (CSDP). Can you explain what that is?

MR OCTOBER: Yes. As I said because of these
10 weaknesses that was identified with regard to the use of third parties in the Industrial Participation Programme we had many of the state-owned enterprises like Eskom and Transnet especially who said that they would rather want to have their own programme and rather than let's say getting the obligors to do the offsets outside of their industry they would like to keep
15 it within that industry and they can build up local suppliers into their supply chain. That also dovetailed with the new Black Economic Empowerment requirements where you are trying to, where Eskom is trying to integrate black suppliers into their supply chain, so that was in 2007 that the Department of Public
20 Enterprises adopted this Competitive Supplier Development Programme and therefore they were then exempted from the National Industrial Participation Programme, so a company could then choose, they rather do the CISDP or they do the NIP Programme.

25 ADV SKINNER: On page 9 of your statement you refer to

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the Procurement Accord adopted in 2011. Can you tell us more about that?

MR OCTOBER: As I indicated because under the World Trade Organisation Regulations you can, Government procurement you can specify for example local content requirements or you can have offset obligations but it's only, the freedom is only allowed for Government Procurement but it does not apply to the private sector, so we don't have the power to issue a regulation to say that if for example Government buys locomotives, then also Anglo American should also buy the locomotives used in the mining industry, so what was done, there was a, negotiations between business, government and labour within NEDLAC and there we reached a procurement accord where both business and labour says we will in a sense voluntarily copy Government's policy of localisation and therefore they then said they will also try to follow the same percentages as we have, but they would do so voluntarily, so legally it is captured in an accord which means the private sector and labour does it voluntarily and that is what is referred to as the Procurement Accord.

ADV SKINNER: Thank you. You then refer to the Revised NIP Policy which, if memory serves me, was an annexure to Mr Zimela's statement, so I want to then take you to subparagraph (e) where you refer to a four tier system comprised of Fleet Procurement, CSDP, Direct NIP and Indirect NIP. Can you take

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us through that, what is fleet procurement?

MR OCTOBER: Yes, the new policy has a four tier hierarchy and that hierarchy would also reflect, let's say, your best, best instrument would be the top one and the weakest would be the indirect, so fleet procurement is, as I mentioned
5 for example when we (indistinct) PRASA, when we buy a 100 locomotives or SAA buys 50 aircraft, so you, instead of buying one aircraft at a time we've asked government departments to bunch it together and in that way you can then maximise the
10 leverage of that particular procurement, so that is what is called fleet procurement, so that would include that system of designations.

Then the Competitive Supplier Development Programme is the one I mentioned with regard to Eskom and
15 Transnet where you build suppliers in your supply chain, the third one is direct, so for example if SAA now buys new Airbuses and they then specify that a certain part of that must be done within that industry, that would be direct and indirect would be where, as I said it would be for example Ferrostaal
20 supporting a film industry, that would be indirect offsets.

ADV SKINNER: Thank you, you then in paragraph 18 deal with the various effects of what you describe as this new suite of procurement instruments, most of those are self-explanatory but I just want you to comment on two of them, in subparagraph
25 (b) at page 10 you indicate that:

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“All sectors, subsectors or products designated for public procurement in terms of the PPPFA are automatically exempt from NIP and CSDP”.

What is the effect of that?

5 MR OCTOBER: As I indicated you have now a menu of four types, or the instruments are defined now, the four sets of instruments, so of course you can't have, you can't expect the company to do both or two of them, so once you opt for the best one, for example if a designation is done in the sector
10 which means then General Electric builds 80 of the locomotives in South Africa then they have, let's say, discharged their obligation and then they wouldn't be required to do the NIP which says that you must do 30% of the purchase or they don't have to then develop suppliers in addition to that, so it
15 basically means you're automatically exempted, but if you are not covered by that you're not covered and in the end we, so we will still have a system of indirect offsets but that will be the last option that we will go for, as I said probably it will be in the aircraft industry where we don't have capability perhaps
20 in civilian aircraft, then you will ask Airbus or Boeing to maybe do something in another industry.

ADV SKINNER: The other aspect I want you to comment on is subparagraph (e) where you say:

25 *“Procurement by SOC's (State Owned Companies) that have opted to follow the CSDP route but for*

which there are no supplier development plans ...”.

If I can pause there, what is a supplier development plan?

MR OCTOBER: Under that programme of Competitive Supplier Development Programme which was developed by
5 Department of Public Enterprises, they would require of companies opting for this programme, like as I said Eskom and Transnet especially, they are required by the Department of Public Enterprises to develop a supplier development long-term plan, that is then submitted to the board of Transnet or Eskom
10 and that refers to those plans. So, where they don't have those plans in place, then the NIP will still apply, so for example maybe South African Airways as far as I know is not part of the CSDP, so they would still do and IP and that's why are currently working on the current programme of SAA now.

15 ADV SKINNER: You conclude your statement in paragraph 19 by indicating that:

“All of these measures have been introduced as a result of lessons learnt through many years of implementation of the NIP programme”.

20 So, can I ask you this, that having identified certain of the weaknesses that you have now mentioned, does the present system cater for those by avoiding the weaknesses?

MR OCTOBER: As I said, we assessed the Government's entire policy and as I said there were many weaknesses, as I
25 said the use of third parties, the companies applying for

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exemption and so on, so the new policy does cater for it, but I think it's very important to mention that we obviously learnt both positive and lessons over the past 15 years of this programme but that is not to say that any of the programme, the National Industrial Participation Programme as it was then conceptualised, in terms of its own objectives, that was clearly achieved as I indicated earlier, it is just that we now have a policy space to have a, in a sense a much, much more effective system to capture it in the main contracts, so it's just ... So, some of it is the lessons but also many of it is just that we have a greater policy space, but also we have more experience in using this lever which, as I said, was cut off from South Africa and the world for a very long time.

ADV SKINNER: Chairman, I see we are about time for an adjournment. There are three general propositions I want to put to the witness and ask him to comment on, but we can take the adjournment if it's convenient at this stage?

CHAIRPERSON: I would suggest that let's proceed.

ADV SKINNER: Thank you Mr Chairman. Mr October, as the director-general of DTI I want to put three propositions to you and ask for your comment on that, you have been present throughout this hearing for the evidence of the witnesses relating to the offsets, in other words the DTI witnesses, is that correct?

MR OCTOBER: That's correct.

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ADV SKINNER: As I understand the general thrust of the DTI witnesses it's that the NIP guidelines which predate the SDPP contracts must still be applied in conjunction with the credit methodology set out in the SDPP contracts, have I understood that as a general proposition correctly?

MR OCTOBER: My understanding, and as I said fortunately my first job in the department was as the chief director for this programme, so I know some of the basics of the programme, my understanding is that the Cabinet adopted the original policy guidelines and as we can see by the word, and my understanding is it was guidelines, to deal with a very new policy instrument and that's why those guidelines are very broad, there's lots of, as I said lots of objectives, lots of criteria and so on, so my understanding is that that is the applicable policy that Government follows, because that was Cabinet adopted in 1996 and 1997, so that steers all contracts including special partnership agreements, strategic partnership agreement, defence, non-defence, but the core policy guidelines is what is given by Cabinet, so the SDP would just be one of many of hundreds of contracts in this area.

ADV SKINNER: Thank you. The second general proposition is that if for any reason the Commission were to conclude that multipliers should not have been utilised does it follow that South Africa then did not get the benefits it would otherwise have got?

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MR OCTOBER: I don't ... Well, I mean obviously the Commission will make its findings on this matter, but I think what I would say needs to be taken into account is firstly that in terms of, there was actual a material benefit which was derived by the country but also there was actual investments made into the South African economy, so if there is any unravelling of this programme it means then that those companies can have a legitimate claim to unravel those investments as well, but I think on the issue of the multipliers it's important to note that it was the evidence of Mr Pillay which was my predecessor in the Secretariat, even if those original 25 projects was implemented exactly as was the intention at the time of signing that agreement then those projects itself includes multipliers, so even if we ended up with full compliance by the obligors there would have been a multiplier effect built in, so I think that there's no way we can leave out this issue that there would be a multiplier in this programme.

ADV SKINNER: And then the last general proposition is as you know the Commission is tasked with various terms of reference, one of which is whether South Africa received the anticipated benefits from the offset programme, what is your view, did South Africa receive the anticipated benefits or not?

MR OCTOBER: I think that's why in the statement I've given the actual facts and so forth, as I indicated that was the

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actual investment on page 7, those are the actual material benefits which I thought I want to bring to the Commission to say what did South Africa derive from this programme, so that is the actual benefits.

5 I think that if one, maybe with one caveat is that I think sometimes the media, because they don't understand this very difficult policy instrument and they also don't understand this concept of multipliers and crediting methodology and so on, they obviously thought that a credit is equal to R1 of actual
10 investment, so I think there was, as I said, we've been giving reports to Parliament annually under this programme and constantly that question keeps coming up, there appears to have been a higher expectation of that, but if, as I said, if one just looks at it coldly on the facts I think that this programme
15 achieved a material benefit for the country, but not only that, it is a programme which was introduced by the Department at a time when this was nowhere acceptable either in South Africa or globally, so it was a very innovative policy instrument that was introduced and as I said this level of benefits, as I said
20 it's not the perfect instrument but it was the best tool we had at the time and I think it achieved that, that benefit.

ADV SKINNER: Thank you Mr Chairman, that's the evidence in chief of this witness.

CHAIRPERSON: Just one question from me. I see in the
25 benefits that you have mentioned that the country derived from

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these projects, you haven't mentioned anything about (indistinct). Are you in a position to give us some type of indication of more or less how many indirect jobs could have been created or were created by the various projects of the various obligors?

MR OCTOBER: The indirect jobs that we've calculated using a very conservative multiplier, but a multiplier as used in economics, it's about 26 000 indirect jobs, so in addition to the jobs there would be an additional about 26 000, would have been indirect jobs. I didn't want to mention the indirect jobs in this again because of as I indicated sometimes the public gets confused with the two and I thought I'll just what has actually been achieved, that you can go and count in these 100 projects, so that's why, but for your information yes, it's 26 000.

CHAIRPERSON: Thank you. I was asking that question because I realised on Annexure "F" they have mentioned a figure and you, in (indistinct) refer to dealing with the (indistinct) but then I understand where you are coming from.

Any person wants to cross-examine Mr October?

ADV SNYMAN: Yes thank you Chairperson, we wish to cross-examine Mr October. May we proceed?

CHAIRPERSON:

CROSS-EXAMINATION:

ADV SNYMAN: Mr October, in your examination in chief

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and subsequent questions which you have answered a lot was dealt with the jobs that have been created and in particular on page 7 of your witness statement, paragraph 16 (d) and (e) you listed the total direct jobs amounting to 12 965 and the total
5 jobs saved or retained as 12 541 and you've also confirmed that you derived these figures from Annexure "F" and the official reports of the DTI, is that correct?

MR OCTOBER: That's correct.

ADV SNYMAN: You also continued, and as we also
10 previously heard from Mr Zimela amongst others that the jobs created and the retained figures were based on projections included in the business plans of the obligors.

MR OCTOBER: Yes, the way I unders...

CHAIRPERSON: I'm sorry, that was not the evidence. The
15 evidence said that the figures were (indistinct) from business plans and engagement of the (indistinct) of the obligors, he never said that it was only from the business plans, just put the right propo..., the right question to the witness.

ADV SNYMAN: Thank you, I stand corrected.

20 CHAIRPERSON: Thank you.

ADV SNYMAN: Just to confirm that those figures are derived from the business plans and consultations of the obligors?

MR OCTOBER: Yes, as indicated by Commissioner Seriti
25 it's both. For most of it, it is actual, although it was not a

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requirement of the programme that you give job figures, as you know we only use the three systems, the three methods but we do have, because in most of our Parliamentary hearings we had to give job figures, so we have it for most of it, but in those cases where we don't have it directly both from the information but also from our own site visits and also we've done a few independent reviews of the programme as well by bringing an outside expert to assess the economic (indistinct), so we have a lot of the things ourselves, but as I said in those ones where we definitely don't have it we then use the business plans.

ADV SNYMAN: Mr October, as we also heard previously from Mr Zimela, or as I understood his evidence, the obligors may have been over-optimistic in their project of the jobs that would be created. Would you agree with this or do you have any other comment?

MR OCTOBER: No, the way I understand it when I arrived in the Department is that those initial projections was based on this 25 projects that was done, so those 25 projects as I indicated was assessed using the old multiplier system if we call it that, but also the direct jobs that would come out of those, as you remember there was some big steel projects and so forth, so all those figures were based on those projections and I think that was an accurate reflection of what we would have received if we had proceeded with those 25 projects. Of course we're living in the real world where supply and demand

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patterns change all the time and therefore when those projects change which was allowed for in the contract of course the job numbers would reflect the new projects, but I think if we look at, actually at the totals you will find that if you take direct, 5 indirect jobs you have about, let's say 38 000 plus another 26 000, plus another 25 000, so you have roughly about 50 000 jobs created and I think that's not way off the initial mark which I think was about 60 000 that was sort of thrown around in the media.

10 ADV SNYMAN: Thank you. We also have heard (indistinct) from previous witnesses and based on the internal audit report which you referred to that the jobs created or retained did not form a binding obligation on the obligors, or in other words they were not a metric to determine whether offset 15 has been fulfilled. My question is did the DTI conduct any internal or external audit to verify these figures?

MR OCTOBER: Yes, as I indicated we, this programme has been the most scrutinised programme, not only in South Africa but I think in the world, so we, as I said, we every year or 20 every few months we, especially in the early part of the programme we gave annual reports to Parliament and so we, secondly we conducted a number of independent audits of this programme including the internal audit but we also by 25 Moussaka which is an independent audit, we had Price Waterhouse Coopers doing an audit and in those ones they

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actually, the benefits are much more substantial than we've indicated, so for example the Moussaka report has much bigger, the economic impact is much bigger than (indistinct), but as I said for the sake of the Commission we thought we'll
5 just give actual and very conservative figures, so but also as you said whilst jobs was not in the measurement system it's obviously always an objective of Government to maximise employment creation but we think this programme then, as I said, we achieved our objectives, even in respect of job
10 creation.

ADV SNYMAN: Thank you. Then I just have one further general question which returns to an issue which we have also raised with your colleague. If I can take you to paragraph (a) of paragraph 17 on page 8 of your witness statement?

15 MR OCTOBER: Sorry, can you just repeat that again?

CHAIRPERSON: I'm sorry, which paragraph are you referring to?

ADV SNYMAN: It's paragraph (a) which is at the bottom of page 8 but it's from paragraph 17 which starts from the
20 previous page, but I'm referring to the paragraph (a) on page 8.

CHAIRPERSON: (a) on page 8.

ADV SNYMAN: At that paragraph Mr October there is a reference to the regulations of the Preferential Public Framework Act making, enabling provisions for the Minister to
25 make certain designations. Now we have heard from your

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colleagues Mr Zimela and Mr Zikode that the Minister had a discretion to apply multipliers for a number of obligors despite the NIP contracts making a provision for multipliers, so my question to you is can you confirm under what provision or authority, or any legislation or regulation the Minister had this discretion to apply multipliers at the time of the SDPP NIP Project?

MR OCTOBER: I think the Minister of Trade and Industry obviously as what is called in the Public Finance Management Act is the executive authority but also as part of the executive I think they have inherent powers with regards to developing policy for South African Government, so but in addition to that the guidelines adopted by Cabinet in 1996 and 1997, that gives the entire matter of not, as I said specifically multipliers, but the allocation of the credits is entirely within the discretion of the Industrial Participation Secretariat or the Industrial Participation Control Committee and ultimately it resides in the executive authority which is the Minister, so the powers derives, as I said it's inherent in the Minister's powers but in any event it is also specified that the entire credit allocation, both the creation of the credits and the dispensing of those credits is in the sole discretion of the Minister of Trade and Industry.

ADV SNYMAN: Then I just have two further questions on that point. The first is, is this your understanding from the

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reading of the legislation or were you told this by someone in the DTI?

MR OCTOBER: It has always been my understanding of the executive and as I said when I was employed in this programme it was, we always, always operated on the basis that credit allocation is the sole discretion of the Minister and of the DTI, but also that the contracts would mainly reflect what the seller is entitled to, so as I said under the SDP contracts the seller was only entitled to, in that case, 1 to 1, so they had no right to get the other multipliers, it was solely at the discretion of the Minister to give them more where he wanted to take them into strategic.

I also want to refer you to the guidelines of the NIP Programme which I, for your information is the, what is referred to as the DTI General Bundle 1 and there on page 98 for example just to lay out this question of discretion in page 98 and point 9 it says, this is now defining the role of the Industrial Participation Secretariat:

“To consider submissions from the seller that the National Industrial Participation Agreement or part thereof be amended, modified, extended, added to or deleted as the case may be in the light of new and unforeseen circumstances or experience and to submit such proposals to the Control Committee”.

So, as you can see from that paragraph it's an extremely wide

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discretion to take into account new circumstances. And then if you go further to the Industrial ..., this is Cabinet approved guidelines, if you take page 100 paragraph, point 6 it says: "To provide guidelines", and if you take the end of the paragraph it says:

"This may, but would not necessarily vary from contract to contract and will depend on the needs of the country as prioritised through research".

So, what you can see there, and this is obviously as I said, the inherent powers of the executive to, in terms of the economic realities, to adopt its policies and framework which is what Minister of Trade and Industry Alec Erwin always refer to is this programme must be regarded as a facilitator which means we must apply it flexibly and as I said that is codified in the actual (indistinct) that we have a wide range of flexibility too, as I said because the only thing we want at the end of the day, we want to create new investment in this country and from investment flows jobs, technology transfer, competitive and so on, so the same thing is not just to ..., it's not to get the credit, it's not to get even the Rands and cents, it's to get the actual investment in our country, that is the sole purpose, the tools you use, as I've said we've now moved from direct to indirect, supplier development, procurement accords, we use multiple instruments.

Cabinet does not require us to account for the use

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of the instrument, we have a system called, what's it, objectives, we have to, you must see whether you achieved your objective with the policy instrument, and as I said this programme must be assessed not on the tools we use, it must
5 be achieved on the outcomes. Sorry, it's outcomes based approached that Government follows.

ADV SNYMAN: Thank you Mr October. I have no further questions in cross-examination but I would just like to place on record that we don't have a copy of the bundles or of the
10 contracts (indistinct).

CHAIRPERSON: I didn't quite follow you, the last portion of your statement?

ADV SNYMAN: I just wanted to place on record that the contracts referred to by this witness in his answers, we don't
15 have copies of these, we have not had sight of these yet.

CHAIRPERSON: I'm not quite sure which copies you are referring to, because I also don't have such copies, except the documents that are in the bundles.

ADV SNYMAN: I'm referring to the NIP contracts.

20 CHAIRPERSON: I'm saying that we also don't have it.

ADV SNYMAN: Thank you.

CHAIRPERSON: So, I'm not quite sure how relevant they are at this point in time because you have finished with your cross-examination.

25 ADV SNYMAN: Yes, we have no further questions.

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CHAIRPERSON: Thank you. Mr October, ... Any re-examination?

ADV SOLOMON: Sorry Mr Chair, ...

MR OCTOBER: Excuse me, I didn't ...

5 ADV SOLOMON: ... Commissioner Musi, before re-examination I'd like to ask Mr October a few questions.

CHAIRPERSON: I'm sorry, it's just that the past few witnesses of DTI you never asked any questions, so I assumed that the same pattern would follow. I should have asked you whether you wanted to put any questions.

10 ADV SOLOMON: With such an auspicious witness as Mr October I couldn't let the opportunity slip by. Mr October, I just wanted to obtain some clarity on how the policy was applied. As I understand it you state that the applicable policy which we have seen which you referred to and the previous witnesses had referred to, was implemented in 1996, 1997, is that correct?

MR OCTOBER: It was implemented in 1996/1997 and carried on until 2012 when it was amended.

20 ADV SOLOMON: That was then the second part of my question. Moving on, you have indicated that the policy was applied in a flexible manner and it was objective driven, is that a correct summation of what you've intended to convey with regard to the policy?

25 MR OCTOBER: Yes that's correct, and as the evidence of

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our first director-general post 1994 Mr Rustomjee, because they were dealing with a very new instrument and a very, as I indicated an instrument which has not been generally used internationally the approach the way I understand it, is that they tried to make it as very flexible and that is why I understand, that is why they never introduced, they never turned it into an Act or into statute and that is why they were, what is called, so we always refer to it as guidelines, not even rules, and that indicates that flexible approach.

10 ADV SOLOMON: As I understand it at the time when these contracts were concluded the question of multipliers was excluded so that the obligors were placed in the most, potentially onerous position, and most favourable for the Government and the State, is that correct?

15 MR OCTOBER: The way I understand it yes, that the ministers or the Cabinet decided to set up the negotiating team and their mandate was to improve on the best and final offers of the bidders and in that sense they improved all components of the package which included the financing of the package, the actual terms of the package, but also the offset obligations was all improved and that was their mandate. As I understand it, to simplify the system of monitoring and because, as I indicated, this system of offsets is very complicated because of the crediting methodology that we had to introduce a uniquely
20 South African sort of crediting methodology, I think they went
25

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for the simplest method and therefore they then changed the measurement instrument simply, but as I said they never had any, and as mentioned by the Commission there was, their mandate was only to improve their final offers, they had no, let's say mandate to change policy of this programme.

ADV SOLOMON: And as I understand your evidence further the Minister retained the discretion on a case by case basis through negotiation with the obligors to reduce the obligation to make it less onerous and apply the multipliers within the discretion of the Minister?

MR OCTOBER: I don't think it's to make the obligation less onerous, as I said remember those initial credits, as you can see those credits far exceed the purchase price and normally in any national industrial participation programme it would be 30% of the imported content of a purchase, so that would be, the level of credits would be 30% of the total purchase. As you can see these credits is maybe three times the size of the purchase price, and as I said the reason for that high credits or what we perceive to be high, is because it was based on those actual 25 projects that was initially submitted to the Department, so what, the decision was taken after the Asian financial crisis and after 9/11 there was basically a slump in the global economy, there was a fall in the steel price and the obligors decided to go, to not go ahead with most of those big projects, it is in that context that we had to look at

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substitute projects and it is in that context, and as I said as the programme unfolded we had pressure to go into rural areas, there was black economic empowerment, there was new objectives emerging and we used the credits for that, but I think we still used, because we had this obligation and because this obligation was, there was such a high level of credits in this obligation I think we basically maximised the credit system to its fullest to create over a 100 projects, unprecedented for very long term projects which was unappetising for most commercial investors, so I don't think they were released from their obligation, I think we actually pushed them much more than they had done in any other country, we received a benefit which I don't think any of them have ever done in another country.

ADV SOLOMON: Yes, and if my figures are correct, looking at page 7 of your statement, I've just done a rough calculation in Dollar terms the direct benefit was approximately US\$6.4bn and in Euros the direct benefit to the Republic was €2.4bn, does that sound approximately correct?

MR OCTOBER: That's correct.

ADV SOLOMON: And that obviously excludes the DIP advantages and credits, that's not taken into account, I will make available certain witnesses who will be led by other evidence leaders who will deal with the DIP benefits, is that correct?

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MR OCTOBER: Yes. As was mentioned all of these contracts, as I say was, as I said the (indistinct) two DIPS which is direct offsets, so in terms of this total package there was the indirect, the NIP, which focused about plus minus 80% or more was there, but there was also substantial DIP's, direct offsets in part of that these companies had to do, so as you indicated yes, these companies had to do some of the core technologies in the defence industry, was also part of these obligations, but as I said that would have been what you would have achieved, what we were entitled to at the time, was direct offsets, but as I said, so in addition to that we also got these indirects.

ADV SOLOMON: As I understand it from the previous witnesses and what you have testified, South Africa was at the cutting edge of this indirect offset programme, not many countries were applying at the time.

MR OCTOBER: Yes, as I indicated we were at a slight advantage in two respects, the one was because it was in the 1990's that this was negotiated it was a buyers' market. As you know it was before 9/11 before there was an increase in defence purchases, but in that time I think we were probably the only buyer in the market and that's why we could extract, I mean all the sellers wanted to sell, so we had that advantage, but more importantly because we had the imperatives post 1994 of having a substantial defence industry under apartheid but we

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didn't want to just build the defence industry and continue that legacy we were, as I said the first to use this instrument in the non-defence sector.

In most cases where they have it in non-defence it would still be for example the only area where it's allowed globally or in civilian aircraft, because as you know companies like Boeing and Airbus are actually defence companies but they also do civilian aircraft, so usually you will get offsets in civilian aircraft and let's say military aircraft, but that was the extent to which offsets worked. In our context we were the first to really do it outside of the defence industry altogether, so in that sense we were the innovators and the guinea pigs.

ADV SOLOMON: Yes, thank you Mr October, Commissioner, Chair Commissioner Musi, no further questions.

CHAIRPERSON: Thank you. Mr Chowe.

ADV CHOWE: Thank you Mr Chairperson, we have no re-examination questions but maybe we should point out to page 7 of the, of Mr October's statement regarding the figures. Maybe if we can ask the Commission maybe to stand down maybe for tea just to correct those Euros which Mr Skinner has indicated that there might be a bit of discrepancies, maybe just to check with the Secretariat whether that figure can be corrected or should it stand as it is? It's just to reassure that figure, if it's possible.

CHAIRPERSON: Okay, maybe let's adjourn for 15 minutes

and then we'll come back after 15 minutes. Thank you.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Can the witness confirm that he is still
5 under oath?

MR OCTOBER: I confirm.

CHAIRPERSON: Thank you. Mr Chowe.

ADV CHOWE: Thank you Mr Chairperson. Mr October,
with reference to page 7, especially on subparagraph (b) and
10 (c) will you, can you please just explain to the Commission the
discrepancies which might have crept in, into the paragraph?

MR OCTOBER: Yes, thanks. After consultation with the
Secretariat and as I indicated the base document we are
working from is Mr Zimela's Annexure "F", the first one is
15 there's just a, the currency error. Where you see Euro it
should be Dollars.

CHAIRPERSON: I'm sorry, we are looking at paragraph (a)
which is at the top of page 7?

MR OCTOBER: I'm looking at, sorry Commissioner,
20 paragraph 3(b) and (c).

CHAIRPERSON: On page 7?

MR OCTOBER: On page 7.

CHAIRPERSON: Thank you. You were saying the first one?

MR OCTOBER: So, in terms of (b) and (c) where you see
25 Euro ... I'll explain, it should be Euros ..., it should be

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Dollars, and similarly (c) the Euro should be Dollars, not Euro. As I indicated, because we, the Ferrostaal was always in Dollars ..., in Euros, many times we did the conversion and, but for this purposes, so as I said that mistake crept in because, but ... So that's the clarification, it should be US Dollars. And then the second clarification is that for (b) and (c) those figures does include the packages, the Ferrostaal package deals, that was not excluded in those two figures, so I think my earlier testimony I indicated that like we did in (a) and so on, I thought that the package deals was stripped out, but I've been informed that no, those figures include the packages, so that would account then for the higher of, and the lower figure.

CHAIRPERSON: Let me make sure that I understand what you are saying to us. In paragraph (b) we say, it says that:

15 *"Local sales to the value of US\$1.7bn and €468 ..."*.

Now you are saying that the correct figures should be Dollars as they stand and US\$468 million again?

MR OCTOBER: That's correct.

CHAIRPERSON: Then in (c) you are saying that US\$3.6bn and US\$1.7bn?

MR OCTOBER: That's correct.

CHAIRPERSON: Those are the only two corrections that you wanted to make?

MR OCTOBER: That's the only correction that we needed to make to the figures, yes.

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CHAIRPERSON: Just before you finish, just to make sure that I understand you, this (a), that €149 million, this will be the figure relating to GSC?

MR OCTOBER: That's correct.

5 CHAIRPERSON: Thank you. Is there anybody who wants to ask any questions relating to the evidence that the witness has just given?

ADV SKINNER: Mr Chairman, may I just clarify the one aspect from the witness? Mr October, I understood you to say
10 then that the figures in (b) and (c) include the package deals? Is that right?

MR OCTOBER: That's correct.

ADV SKINNER: So that it's not quite a case of saying that export sales to that value or local sales to that value were
15 generated, if one has regard to the fact that there are some package deals included in there?

MR OCTOBER: That's correct Sir, it wouldn't be actual sales, it would be deemed sales as well.

ADV SKINNER: Thank you Mr Chairman.

20 CHAIRPERSON: Is there anybody who wants to ask questions relating to what the witness has just told us? Maybe I should excuse the witness. Mr October, thanks a lot for giving the evidence. You are excused.

MR OCTOBER: Thank you.

25 CHAIRPERSON: Advocate Skinner.

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ADV SKINNER: Mr Chairman, as indicated to the Commission yesterday we have no further witnesses at this stage. We anticipate still calling the two witnesses, one yet to be identified to prove the contracts and the relevant portions of them, and the second to be former Minister Erwin. The position regarding the former minister is that there have been discussions between Advocate Ndumbi and the legal representatives of the former minister and as I understand the upshot of them is that the consultation which I referred to yesterday will definitely be taking place this week, but that the former minister is committed to being out of the country for next week and that in the circumstances he would only be available on Monday the 17th of February, and while I am reluctant to accede to that, it does seem to be the practical solution which would allow us further time to try and resolve the issue of declassification of the relevant portions of the contract as well as preparing the former minister's statement and publicising the fact that he will be called and placing a summary on the website.

So, with that in mind I would request the indulgence of the Commission that we adjourn at this stage to the 17th of February when we will commence with the formal evidence regarding the contracts and then for as long as necessary call former Minister Erwin until his evidence is finished.

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CHAIRPERSON: Mr Chowe.

ADV CHOWE: Thanks Mr Chairperson, I have no objection to what Mr Skinner have said and requested.

CHAIRPERSON: Advocate Solomon.

5 ADV SOLOMON: I have nothing to add, I have no objection Chair, Commissioner Musi.

CHAIRPERSON: Advocate Snyman?

ADV SNYMAN: No objections Chair, thank you.

CHAIRPERSON: Thank you. I think the other issue
10 Advocate Skinner, we haven't been told who this witness is going to be who is supposed to deal with the contracts. I only hope that there won't be any confusion about that because I heard you yesterday saying that you are waiting for the Secretariat to tell who the witness is going to be, that I didn't
15 quite understand because I thought as the evidence leaders you are the ones who are identifying witnesses and then I didn't quite understand when you say you are waiting for the Secretariat to tell you which witness is going to deal with the question of the contracts. If at all I may make a suggestion, if
20 at all you want somebody to assist you to identify a witness who will deal with those contracts I think the DTI legal team are the best people to assist you and not the Secretariat.

ADV SKINNER: As the Chair pleases, we will certainly discuss the matter, it's simply a question of identifying who the
25 appropriate person is to be able to prove the formal contract.

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CHAIRPERSON: Thank you. Then in that case I suppose you have had the first consultation with the minister, with the former minister?

ADV SKINNER: Chair, we had an initial consultation with
5 him in about June, July last year before the problem arose about legal representation for all the ministers, and until that was resolved we could not unfortunately continue, so we had a preliminary discussion with him but that's as far as the matter had advanced.

10 CHAIRPERSON: Yes, I'm asking that because I just wanted to get a feel of more or less how long do you think he'll be in the witness box, and then two; this person who is going to deal with the contracts, how long do you think that person is going to be in the box?

15 ADV SKINNER: Mr Chairman, answering the second part first, I don't believe that the person called on the contracts will be very long because that evidence is really formal in nature simply to prove that these are the relevant pages of the contracts. As regards the former minister the issue of his
20 evidence that is relevant to the offset programme is fairly limited and I anticipate that that would probably be comfortably dealt with in the course of a day, if not less than a day but his legal team have indicated to us that they anticipate there may be several parties who wish to cross-examine him and his legal
25 team have suggested that we should probably work on the basis

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of three days.

CHAIRPERSON: I'll tell you why I was asking those questions, then in that case I think we might want to bring forward the evidence of Mr Nortjé, probably call Mr Nortjé also
5 that week, remember according to our timetable Mr Nortjé was supposed to come on the 24th, so in order to try and avoid wasting some few days during the course of that week because of the days that we are going to lose now I would suggest that maybe Advocate Ndumbi should try and talk to DoD and
10 ARMSCOR and all evidence leaders who are going to deal with the evidence of Mr Nortjé and obviously Dr Young who said that he might want to cross-examine Mr Nortjé, so that we deal with the evidence of Mr Nortjé during the week of the 17th. That might help us to, you know to recoup some few days that we
15 would have lost.

ADV SKINNER: Yes, as the Chair pleases. There are some practical problems that I know Advocate Solomon has raised with Advocate Ndumbi but we will certainly see if those can be resolved.

20 CHAIRPERSON: Advocate Solomon.

ADV SOLOMON: Thank you Chair, Commissioner Musi. Advocate Ndumbi did over the short adjournment discuss the question of moving Mr Nortjé's evidence forward. I did explain to him, and I think it's prudent to put on record there remains
25 two difficulties to potentially having him available to give

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evidence on the 17th or thereabouts, 17th or 20th. The one is the question of the declassification of documents. You will recall that was an issue the last time we proposed to call Mr Nortjé and we couldn't for amongst other reasons that
5 difficulty. That hasn't yet been resolved. We have from ARMSCOR's side submitted the requests for declassification of documentation requested by Mr Young or Dr Young, as well as other documentation that is necessary to form part of his evidence bundle, we are still awaiting a response from DoD,
10 there has been some correspondence exchanged but as at the present time they haven't attended to it and I was suggesting to Advocate Ndumbi that he put the necessary pressure upon DoD to make sure that that declassification process is expedited so that there are no further delays in that regard.

15 So I have explained to him it's out of my control, I've left it to my attorneys and representatives of the DoD, their legal representatives and through the Secretariat to have that process completed so that Mr Nortjé can refer comfortably to documents and we're mindful of what you said Chair in
20 regard to declassification of documents. That's the one problem that still remains, which is perhaps not insurmountable.

The other problem is the question of getting Dr Young to discuss, you may or may not be aware that the
25 Secretariat has formally requested Dr Young to make formal

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discovery of the documents he intends to use in the cross-examination of Mr Nortjé. I haven't, I saw the formal request in terms of the regulations, I haven't seen the response from Dr Young or his legal representative but I was advised during the short adjournment by Advocate Ndumbi that he's requested a period of a month in which to produce these documents. Now we frankly don't find that acceptable at all because it's clear from correspondence that we've seen that was exchanged between the Secretariat and Dr Young in regard to documents that Dr Young wants ARMSCOR to produce, that he obviously has these documents in his possession because he's able to describe them very accurately and then only someone who had the documents who was aware of the document dated and all the other relevant details would be able to do so, so he knows what he needs to produce, he knows which documents he wants to rely upon and we find this period of four weeks totally unsatisfactory.

The problem is I can't really for the smooth running of his evidence allow Mr Nortjé to go in without having seen Dr Young's documents, then Dr Young when he's finished his evidence wants to cross-examine him and produces a whole lot of documents that Mr Nortjé hasn't seen will then require a stand down, also prejudicial if he's given his evidence and he hasn't been given and seen the documents that Dr Young wishes to rely upon. So that is a practical difficulty, I'm not

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sure how we are going to overcome that. My learned junior Chair and Commissioner Musi has given me a note, ... Oh, also my learned junior points out that we have written to the counter parties, the suppliers or obligors in relation to the
5 overarching agreement that have been concluded between them, to give consent to producing those, as I understand it we haven't yet had a response from them, so that process is still unfolding and then the, I'm also told that Dr Young submitted a further request for documents from Mr Nortjé which we were
10 only given some three weeks after the request was made and he's, Mr Nortjé is busy attending to that. I've seen correspondence yesterday where he is saying he is busy trying to access these documents, so that really is the position of Mr Nortjé.

15 CHAIRPERSON: Thanks a lot. From where I'm standing I think the date that Mr Nortjé must testify he will testify, whether Dr Young is ready or not Mr Nortjé must testify, otherwise we will not proceed with this inquiry. Secondly from my understanding Dr Young, if he has not discovered any
20 document he will not be allowed to use that document to cross-examine Mr Nortjé. I don't think that is very complicated, he must discover in order to be in a position to use that document to cross-examine Mr Nortjé. Mr Nortjé was supposed to have testified in November, we are now four months down the line
25 and I don't think I'm going to allow a situation where we are

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going to delay further testimony of Mr Nortjé. Mr Nortjé will testify on the date on which he is supposed to and that is on the 24th (indistinct) from that day he will testify. If Dr Young hasn't discovered he will not be allowed to use any of those documents in order to cross-examine Mr Nortjé. I think Advocate Ndumbi, you have heard what I said and I think you must write a letter to Dr Young and advise him about my remarks that Mr Nortjé will testify on the date that we have arranged, two, Dr Young will not be allowed to use any document to cross-examine Mr Nortjé if he has not discovered that document. Advocate Skinner, do you want to add something?

ADV SKINNER: Nothing further, thank you Mr Chairman.

CHAIRPERSON: Thank you, then in that case we will adjourn until the 17th. Thank you.

(COMMISSION ADJOURNS)