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CHAIRPERSON: Good morning everybody. Advocate Skinner.

ADV SKINNER: Thank you Mr Chairman and Commissioner Musi. The first witness this morning will be the former Minister  
5 Mr Alexander Erwin.

CHAIRPERSON: Can the witness take the oath?

ADV SKINNER: Mr Chairman, the witness has indicated he will affirm rather than take the oath.

**(Witness affirmed.)**

10 CHAIRPERSON: Thank you.

**WITNESS NUMBER 8 : MR ALEXANDER ERWIN (Hereinafter referred to as "MR ERWIN"), GIVES EVIDENCE UNDER OATH  
EXAMINATION IN CHIEF:**

15 ADV SKINNER: Mr Erwin, you, with the assistance of your legal team have submitted a written submission to the Commission, is that correct?

MR ERWIN: That is correct Advocate Skinner.

ADV SKINNER: And you confirm the correctness of the  
20 contents of that document?

MR ERWIN: I do.

ADV SKINNER: I'm not going to take you through the entire document but I will refer to certain passages in it. If I can commence by referring you to paragraph 2 of the  
25 submission you indicate there that you were first appointed as

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deputy minister of Finance and served as such from 1994 to 1996 and then as minister of Trade and Industry from 1996 to 2004. I just want to place that in context, so would I be correct then that you were the minister of Trade and Industry at the time that the Cabinet approved of the National Industrial Participation Policy?

MR ERWIN: That is correct Sir.

ADV SKINNER: And you were therefore also the minister at the time that the SDPP contracts were negotiated through the International Offers Negotiating Team and at the time that the contracts were concluded?

MR ERWIN: I was.

ADV SKINNER: At the end of the third paragraph of your submission you indicate that this submission is made in your capacity as a member of the Committee which you indicate is the Cabinet Subcommittee referred to as the Inter-ministerial Committee, I just want to clarify that some of the views expressed in your submission as I understand it, are those of the Committee and the others relate to you personally in your capacity as the former minister, is that correct?

MR ERWIN: That's correct Advocate Skinner, I think the contents will indicate that where I'm acting as a member of the Committee, I speak as such but in specific instances we come across it would be my line function as minister of Trade and Industry.

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ADV SKINNER: In paragraph 4 you set out fairly briefly certain of the appointments that you've held, I just want to refer you to two of them in particular, one of them you indicate that you are a member of the Dispute Panel of the World Trade Organisation. I take it then you are familiar with the organisation and what its standpoints are?

MR ERWIN: In the sense that I was part of the negotiating process in the World Trade Organisation and subsequently was asked to become a member of what was called a disputes panel, so I'm reasonably familiar with it, I wouldn't claim to be the absolute expert on it.

ADV SKINNER: You also indicate at the end of paragraph 4 that some years back you were a lecturer in the Department of Economics, can you just inform the Commission what your qualifications are?

MR ERWIN: I have an Honours degree in Economics and an Honorary Doctorate in Economics.

ADV SKINNER: In paragraph 6 you indicate that in making this submission you represent the collective effort of the members of the committee to which I've referred, the Inter-Ministerial Committee and that the Committee reserves the right to make further submissions as and when necessary. You continue in paragraph 7 which in summary you indicate that in your evidence you will rather deal with the specific matters that relate to the Department of Trade and Industry rather than the

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defence and financial aspects of the procurement, is that correct?

MR ERWIN: Yes Advocate, I think the view of the Committee is that we act as a committee and where matters affect that committee we should attempt to answer as that, so I would not deal with specific line functions of the other ministries, to the extent that they're cutting across the whole of the Committee we would attempt to deal with that as the Committee (indistinct).

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10 ADV SKINNER: If I can then refer you to paragraph 11 of your submission you set out there that in the Department of Trade and Industry ministerial decisions were made on the basis of submissions prepared by officials of the department and signed by the director-general or on fairly rare occasions by a deputy director-general. You also indicate that you are not sure where the submissions have been kept for as long as 15 years, that presumably is why there are relatively few documents in the form of submissions by the Department to you as minister. Can you recall whether this was a frequent occurrence that submissions were made to you or was it only on very isolated instances?

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25 MR ERWIN: The number of submissions coming before the minister of Trade and Industry would be pretty massive across the whole spectrum of things coming in 10, 20 a day sometimes. With regard to the NIPP and the NIP as I've

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referred to them, those submissions would almost invariably be related to a policy choice as opposed to any specific administrative or detail on a particular aspect.

ADV SKINNER: Thank you. You from paragraph 18 of your written submission deal with in brief the evidence that has already been tendered by officials of the DTI and you comment in paragraph 20 that the officials have testified on the offsets that were negotiated and you set out then three subparagraphs as to, as I understand it, the purpose was of the offsets, would that be correct?

MR ERWIN: Yes Advocate, I agree with the testimony given by the officials, it accords with my understanding of the process.

ADV SKINNER: And you then record in paragraph 22 that not just yourself but the Inter-Ministerial Committee is in broad agreement with the policy framework set out in the evidence that's been given by the officials from the Department of Trade and Industry.

MR ERWIN: Yes Chairperson, sorry, I've been advised I should have been addressing you Sir, my apologies. Chairperson yes, the policy was known to the members of the Committee as has appeared in much of the documentation, there were aspects of it discussed in that committee and there has been extensive public presentations made by the Department during my time as well to various parliamentary

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committees.

ADV SKINNER: You indicate that you believe it is apposite to include in the material before the Commission what you refer to as a fuller briefing on the National Industrial Participation and rather the Non-Defence Industrial Participation and its implementation and you then go on to comment in paragraph 24 that the Non-Defence Industrial Participation is located within the broader economic policy of Government and more particularly within the Industrial Policy of that period and you say in the result a review of various pre-1994 policies was undertaken. You go on in paragraph 25 to talk about various aspects that relate to the policy framework, have I understood that correctly?

MR ERWIN: Yes.

ADV SKINNER: And you say that the mechanism for implementing the SDPP was developed in the 1996 White Paper on Defence in the Defence Review of 1998, the National Industrial Participation Programme and its operating guidelines and then the NIP and related policy documents. Is that correct?

MR ERWIN: That is correct.

ADV SKINNER: That was really by way of background. You then start referring to the role and function of the Inter-Ministerial Committee and you identify its members as the-then deputy president and later President Mr Thabo Mbeki who was

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the chairperson, the Minister of Defence, the Minister of Finance, the Minister of Public Enterprises and yourself. That was the constituency of the Committee, is that correct?

MR ERWIN: Chairperson that is correct, as I look at it initially the first Minister of Public Enterprises was Minister Stella Sigcau. We should have picked that up, Minister Radebe has succeeded her, I can't recall the exact date.

ADV SKINNER: Thank you. You say that the members were appointed to have oversight over the SDPP process, was that the sole purpose and function of this Cabinet Subcommittee?

MR ERWIN: The purpose was certainly to have oversight and to deal with the fairly complicated negotiating process and I think as I indicate elsewhere in the statement to ensure that we coordinated the different line function ministries within this deal.

ADV SKINNER: How often would this Inter-Ministerial Committee meet?

MR ERWIN: Chairperson, I would, could have recourse to the record I think but there were times when we met more frequently, certainly once a month, particularly around about the concluding period and times before that would which would have been more and frequent but we could establish that from the record.

ADV SKINNER: Since it was a Cabinet subcommittee would

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the Inter-Ministerial Committee have to report back to the Cabinet on decisions taken or did it have its own independence to make decisions?

MR ERWIN: Chairperson, it ... Within the scope of the  
5 mandate from Cabinet and the decisions taken the Committee did at times make certain decisions but on the key issues defined by the Cabinet mandate they reported back to Cabinet.

ADV SKINNER: You indicate as one would expect that with regard, and this is paragraph 29, with regard to specific areas  
10 of responsibility the Minister of Finance for instance would lead the discussions on financial aspects and the Minister of Public Enterprises on aspects relating to that and yourself as Minister of Trade and Industry had executive responsibility for the National Industrial Participation Programme but you go on  
15 to say that all members of the Committee were at liberty to discuss any aspect of the inputs made, is that correct?

MR ERWIN: That is correct Sir, and we, it's for that reason that we saw ourselves as a committee and acted collectively and reported to Cabinet collectively.

ADV SKINNER: And indeed in paragraph 30 you refer to it  
20 as a collective approach which was standard procedure for the committee.

MR ERWIN: That is correct Chairperson, subcommittee of the Cabinet reports as a subcommittee in the event, it never  
25 occurred in my time but in the event of a member not agreeing

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they would have to indicate that but that never occurred in my time.

ADV SKINNER: You again in paragraph 32 indicate that in November 1998 after a fully participative parliamentary driven public consultation process Cabinet took a decision to procure the SDPP from selective preferred bidders and you indicate in the subsequent paragraph that Cabinet formed the view that it was in the best interests of the country to harness the opportunities for economic growth and development that these procurement packages presented. To what extent was the procurement packages part and parcel of what became known as the offsets or the countertrade initiatives?

MR ERWIN: Chairperson as I indicated, and I haven't repeated evidence given I think most comprehensively by Dr Rustomjee, the National Industrial Participation Policy was adopted in 1997 after initially being presented to Cabinet in 1996, therefore it applied to all such procurements, however, its application to defence procurements was new, I think as Rustomjee indicated the previous process of what were then called offsets rather than industrial participation was somewhat different in the defence sector and this was the first time that we had harmonised the two. I don't know Chairperson whether I should go into the fuller account of it at present because the exact status of the NIP packages were dependent upon the procurement of the military equipment so they followed from it,

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they were not an exact part of it, but I'm quite happy to go into more detail on that at a later stage.

ADV SKINNER: Thank you. In paragraph 34 you summarise the main function of the Inter-Ministerial Committee as being "to render executive oversight and policy guidance to the procurement process and to report to Cabinet and that the Committee acted as a collective in evaluating proposals and reports placed before it". That would be in a nutshell how the Committee saw itself as its function, is that right?

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MR ERWIN: Chairperson that is correct, again I have not set out a great deal of the detail that the Department of Defence and Trade and Industry have indicated but there were committees and structures within the Department of Defence, committees and structures within the Department of Trade and Industry, so there was a relatively elaborate reporting process which was then pulled together in the Ministerial Committee, evaluated and recommendations or proposals made either for further action or where it was appropriate referred back to Cabinet for a decision.

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ADV SKINNER: And in that context you indicate at the end of paragraph 34 that: "the ultimate decision-making structure to which the Committee reported was Cabinet".

MR ERWIN: Chairperson that is correct, Cabinet took all the final decisions.

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ADV SKINNER: On paragraph 35 you refer to various

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structures that reported to the Committee and you give an instance of that as being the International Offers Negotiating Team. Can you also indicate the kind of other structures that you are referring to that would report to the Committee?

5 MR ERWIN: I'll briefly mention them, I think they are recorded more fully in the documentation but the key ones, and I can't immediately recall its proper name but the, within the Department of Defence there was a committee that was assessing the defence needs within the Department of Trade  
10 and Industry there was an Industrial Participation Secretariat, Industrial Participation Control Committee, as it's reported in some of the documentation the director-general of Defence, Trade and Industry and Finance also acted as an oversight, so there were fairly extensive structures within departments and  
15 between departments that reported to us.

ADV SKINNER: Your submission then has a section dealing with what is referred to as the "Applicable legal framework", the source and context of the Committee's mandate and you set out in paragraph 37 that:

20 *"The authority of Cabinet to develop and implement policy has its legal source in section 85 of the Constitution".*

To what extent are you of the view that that is the same for the subcommittee?

25 MR ERWIN: Chairperson, I'm not a legal expert but as I

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would understand it the subcommittee, in this case a Special Purpose Subcommittee received a mandate from Cabinet and therefore it had delegated powers, I would refer to them as, and as ministers in that committee I believe we acted as the executive authority in our own line ministries as well.

ADV SKINNER: You reflect in paragraph 38 of your submission that:

*“In taking decisions the members of the Committee gave content and effect to the objectives of industrial policy of Government and of the National Industrial Participation Policy, as adopted by Cabinet on 30 April 1997”.*

MR ERWIN: Yes Chairperson, here I am referring specifically to the NIPP but clearly there were other policy imperatives which I’m sure either the Committee as a whole or my colleagues will address, so with specific reference to the National Industrial Participation Policy this was agreed as an objective by Cabinet, it was agreed as an objective by the Committee and we addressed it as such.

ADV SKINNER: You state in paragraph 39 of your submission that:

*“The Committee met and discussed all aspects relating to the SDPP”.*

Would I be correct from what you’ve given evidence on that the Committee then was not just dealing with policy but with

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specific matters relating to the SDPP?

MR ERWIN: I think Chairperson one would have to clarify exactly what you're referring to here, what is evident is that you had a process that led up to preferred bidders and generally speaking the Inter-Ministerial Committee would not deal with the detail of those processes, it dealt with the decision to endorse the recommendation to Cabinet as to who the preferred bidders would be, it then had the second process which we covered, I cover quite in more detail later where we attempted to obtain the final offers conventionally called best and final offers through the International Offers Negotiating Team and we would then be receiving reports from that team again seldom about the specifics of any particular project but about the total obligation or nature of the total package any one of the supply companies may be putting forward.

ADV SKINNER: In that same paragraph 39 you state that:  
*"The Committee considered reports furnished to it and gave guidance on the principles to be applied in the negotiation process".*

Now clarify what you are referring to there about guidance on the principles to be applied in the negotiation process.

MR ERWIN: Chairperson, I think the best example of that is the one that comes up quite extensively later and that was a proposal by the International Offers Negotiating Team that for purposes of simplifying the detailed negotiation, that

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we restrict the NIP or NIPP criteria to 3, that was put in a report from the International Offers Negotiating Team and endorsed by the Ministerial Committee as to being an appropriate strategy, again we may want to deal with that in  
5 much more detail later.

ADV SKINNER: Yes, I'll return to that aspect presently but you say, just to clarify your answer, the there criteria, those as I understand it from the evidence that's been led are simply the criteria of investment, export sales and local sales, is that  
10 whatyou are referring to?

MR ERWIN: That is correct, and as the previous DTI witnesses have indicated the, obviously the process was also discussed or the recommendation also discussed within the Department of Trade and Industry as well as discussed in the  
15 report back to the Inter-Ministerial Committee.

ADV SKINNER: In paragraph 40 of your submission you refer to recommendations being made on the economical opportunities that could be realised by applying the National Industrial Participation policy to the SDPP and you talk further  
20 about the financial obligations that are likely to rise were thoroughly interrogated as attested in the Affordability Report that was tabled before the Committee and high level decisions were recommended to Cabinet for its approval and adoption. I just want to understand what you are referring to there, is this  
25 the time when the International Offers Negotiating Team were

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reporting back to the Committee?

MR ERWIN: Chairperson, this would cover the period before as well as is evident from the record and as I state in my statement, at the time that the preferred bidders were  
5 chosen the projects within the NIP were somewhat different from those that emerged subsequent to the selection of the preferred bidders, this was a negotiating process and as I indicate in my statement, and it's appropriate to make the point here, some of the projects that we were fairly, saw as very  
10 important, for example an integrated steel mill, when it became clear that the economic and market risks of such a project were looming larger we would have indicated we don't want to force such a project upon the suppliers or the obligor since it may not be successful, so we began changing.

15 Again within the IONT process the second phase dealing with now the preferred bidders, probably the most, there were a number of decisions across the whole spectrum of issues but with regard to NIP the key one was probably the guidance we gave on restricting the nine criteria that used to  
20 exist in the guidelines of the NIPP, restricting that to 3.

ADV SKINNER: Thank you. You refer in paragraph 42 to the SDPP as "being the largest procurement process Government had ever undertaken" and you commented with regards to that "the focus of the Industrial Participation Policy  
25 was on finding and creating opportunities for economic growth

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and development at a broad societal level". You explain further that [the SDPP then presented what seemed to be the appropriate opportunity to put government's industrial policy imperatives and strategies to the test". The Industrial Policy at that stage hadn't yet been implemented on a wide scale, had it?

MR ERWIN: No, it say it had, as appeared in previous evidence from Dr Rustomjee and Dr Jourdan and others, we had actually implemented the process, they make specific reference to the purchase of aircraft with SAA and the purchase of aircraft engines, so yes, it had been applied, the NIPP had been applied with regard to broader industrial policy and maybe at this point Chairperson let me just state how I use the terminology, the broader industrial policy covers a whole range of policies from small and medium enterprise development, auto industry, a range of issues which I outline in my statement, national industrial participation programme specifically deals to the policy adopted in 1997 and the NIP, the Non-Defence Programme or package deals specifically to those aspects linked to the SDPP. So, I would say industrial policy had been relatively extensively applied, I would say that NIPP had also been fairly extensively applied even though it was fairly recent, but what was relatively new was its application to the defence industry.

ADV SKINNER: Thank you. In paragraph 43 of your

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submission you return to the theme of the Committee being a subordinate to Cabinet and you indicate that the primary policy decisions relating to the SDPP were therefore taken at Cabinet level, but the Committee then used its discretion to give effect to Cabinet's policy choices. You talk in the next sentence of "using our executive discretion to give effect to those policy choices". Can you just explain further what you are referring to there?

MR ERWIN: Let me refer Chairperson specifically to myself, the policy that was being applied in this case was the National Industrial Participation Programme, we had a number of choices to make. I indicate further in my statement that we attempted in the first phases to get projects that related to our mineral wealth to manufacturing, this is over and above the programme for the defence related participation programme, so the process of deciding on those projects has been described in some detail by the DTI where projects were identified, committees formed to see whether those projects would be useful or not, I later in my statement describe some of the issues we had to be careful about and watch, so what we were implementing was the NIPP and we used discretion, I think probably the most important one which has emerged in this Commission's hearings, although up until now it had been taken for granted I think by us, that we used a particular negotiating strategy in regard to the IONT, particular negotiating strategy

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in those final negotiations with the preferred bidders.

ADV SKINNER: Can you just explain that further, the reference to the particular negotiating strategy?

MR ERWIN: The IONT had to address a wide range of  
5 issues that I've indicated and I won't stray over into the other areas but in regard to the NIPP or the NIP it set itself a very detailed work programme that included verifying and determining with the obligors that the projects that they were offering did meet the criteria of additionality and sustainability  
10 and causality, as I indicate in my statement extensive additional expertise was brought in to assess those projects and see whether they would stand muster according to our NIPP processes, so the, in the process they were having to deal with the large number of projects across a wide range of  
15 criteria, nine criteria.

As has appeared in previous evidence and as is quite clearly stated in the documentation of the IONT they proposed that this was complicating negotiations causing delays in trying to ascertain whether these projects could  
20 comply with these nine criteria and therefore recommended that we should restrict it to three of the criteria, investment sales, local sales and exports and after discussing in DTI and in the committee we agreed with that, our intent in doing that I'm happy to deal with now or we could try and deal with it later.

25 ADV SKINNER: As you wish, if you wish to deal with it now

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please go ahead.

MR ERWIN: Because we deal with some of the issues around credits and what credits were, it might be easier to deal with it later you know if you don't mind.

5 ADV SKINNER: I was referring you to paragraph 43 of your submission where you indicate that in using the executive discretion to give effect to the policy choices of Cabinet you say "some variations to the terms and conditions agreed to in contracts were made". I just want to understand what you are  
10 saying there that it is your evidence that "although there were the SDPP contracts concluded, there was still an executive discretion to change certain terms and conditions in those contracts", have I understood that correctly?

MR ERWIN: I think one would have to be fairly precise  
15 here. The, in the NIP if one looks at the record of those negotiations it's inherent in it that projects can change, that there is an ability to substitute one project with another over time, so the actual package of projects was not a contractual matter, it's the total obligation that was contractual and which  
20 was not varied to the best of my knowledge at any time. So, the variations that were occurring in the NIPP were essentially variations around the detail of the package of projects and as I'll argue in my statement at a later point this has to be inherent in a programme, National Industrial Participation  
25 Programme if your criteria are that you want these projects to

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add additional investment, to be sustainable and that causality is involved in the process, so I would say that we have to distinguish the NIP from for example the contracts that covered the financing terms or the contracts that covered the exact delivery of jets or submarines or others. This inherent in the NIPP was an ongoing process of adjusting the projects to meet the criteria we wanted.

ADV SKINNER: Your statement in paragraph 43 goes a little further than that where you refer specifically to "some variations to the terms and conditions agreed to in contracts were made as attested in the use of multipliers". So, do I understand correctly that you are saying that the use of multipliers of which there's been extensive evidence, was a variation of the written SDPP contracts?

MR ERWIN: My understanding of the multiplier is that it's a formula that says for US\$1 of investment you get US\$1 credit, so it's inherent in the three criteria used that in each of those three areas you would have got US\$1 credit, giving you, if you like, a multiple of 3 on the original purchase price. That was because we chose as a target to get the investment roughly equal to the purchase price as is set out in the documentation. What I think has come up in the Commission is that in subsequent projects where we brought in the other criteria larger multipliers for each US\$1 were given and there we did use our discretion in doing that. I would not have seen

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these as variations of the initial contract and certainly it would seem to, I would contend that the process was the two parties reaching new agreements and documenting those new agreements.

5 ADV SKINNER: Can I ask you just to explain a little further your last answer where you say you would not see that as a variation of the contract?

MR ERWIN: The ... It seems to me that as is clear projects changed over time, so project would be put forward, it would be assessed, either it would be agreed by the IPS or the  
10 IP., the control committee and say okay, we accept this project, that becomes then an agreement between the two parties to do the project. If a project fails or they wish to substitute it they would put forward new proposals, so it was  
15 inherent in the NIPP process that there was an ongoing dialogue and discussion. As the DTI officials made clear in fact that dialogue went on well after I had left the Ministry, in fact some of the dialogue was as late as after 2008 if I recall from some of the evidence. So, it was an ongoing process of  
20 discussion about these projects would actually be implemented and it's for that reason that it's fairly clear that there could have been no absolute precision in the initial contract, the thing that was contracted was that envelope of obligations. It was against failure to meet that envelope that the possibility of  
25 performance bonds could be called in and I think that's

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inherent in this NIPP process.

ADV SKINNER: And you conclude that paragraph by stating that:

5                   *“The context of these variations was the ability of parties to a contract to vary the terms thereof if both agreed to the variation and effected the amendments in terms of the contract”.*

MR ERWIN: Agreed Chairperson, and as I've just argued it seems to me that's absolutely inherent in the whole  
10 NIP process, it's absolutely inherent in the NIPP in many cases and as I've stressed and as I think Dr Rustomjee pointed out the actual form of the NIP is the same in structure as what is called a strategic partnership agreement which is allowed for in the NIPP and as Dr Rustomjee outlined inherent in a strategic  
15 partnership agreement over many years with a particular supplier would be the need for flexibility to make adjustments in that partnership and I believe that's exactly what we were doing here in the NIP.

20                   What would have been a substantial change in the contract would have been if we had altered the envelope of obligation as I've referred to, that's the total Dollar credits, credit Dollars as I call them that have been signed and against which if they don't perform the performance bond could be called in.

25                   ADV SKINNER: You conclude that section of your

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submission by submitting that:

*“The decisions taken by the Inter-Ministerial Committee were therefore within the proper competence of the National Executive”.*

5 That’s your view, is that?

MR ERWIN: Chairperson, it would certainly be my view, I would say decisions that I was asked specifically take, which appear later in this statement, I believe were within my competence and at no time was I ever advised by any of my  
10 legal advisors, state law advisors or anyone else that I was acting outside my competence.

ADV SKINNER: And you go on to say that:

*“The use of discretion in tailoring solutions to fit the practical challenges that may arise is inherent in the power afforded the National Executive to  
15 initiate and develop policy, coordinate the inter-related objectives of state departments and take executive decisions that are mandated in legislation or the Constitution”.*

20 MR ERWIN: Chairperson I believe that to be the case, I’ve also been advised that is the case, subsequently in my statement I’ve made more specific reference to slightly different types of policy, quite clearly where one has to comply with the Public Finance Management Act there’s not room for  
25 discretion where we have specific procedures either dealing

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with tariffs or tax allowances or depreciation allowances there are very specific procedures for two departments to interact with each other and reach agreement, but in a case like this which is essentially a facilitatory programme where there's no  
5 expenditure of public funds where the purview of the action falls within one department and ministry, I believe that we exercised our discretion correctly in this case.

ADV SKINNER: You then turn to "The objectives of the National Industrial Participation Policy" and in paragraph 47 of  
10 your submission you say you would "like to elaborate on some of the inherent tensions in these policies that have to be accommodated in their actual implementation and adjusted for over time". Can you explain what you were referring to there?

MR ERWIN: Chairperson yes, there are subsequent  
15 paragraphs going into more detail but let me summarise what I'm arguing. If you're buying equipment of the military type or energy or many other large equipment areas, in essence the only economic logic that can exist for the suppliers of that equipment to take extra efforts to encourage investment or to  
20 encourage others to invest in your economy must be the advantages in supplying that equipment to a government, and in a large project like this in essence what you are looking at in economics I would contend is there's a certain economic rent in being the supplier to government of that equipment, an  
25 economic rent would be an amount over and above profit and

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other costs that arises from your special position of being the only supplier of that equipment because you don't chop and change the purchase of jets from day one to day two, so it's a very long-lasting position. Now as a policy maker you have to accept that there must be some limit to the value of the rent that the suppliers would put on that contract. If you attempt to get them to invest more or spend, expend more effort or do, bring other parties into the investment process over and above what they would see as reasonable obviously their response must be to try and increase the price of the product to recover some of that expenditure and we had to guard for that, if you check on the IONT one of the key things we were looking at was to check that the lifetime costs of these products was competitive with others, I think the Ministry of Defence would have spoken on that, the, we had to check that the projects we were getting in terms of NIP were economically sustainable, so one has to balance, this is not a situation here I buy a product and then I expect the supplier to do a whole lot of other things, spending a whole lot of other money, it's a fairly intricate policy, a fairly sophisticated policy, it has strengths and weaknesses which I'm sure we will come to later.

ADV SKINNER: Paragraph 48 of your submission you comment on how industrial participation policies are viewed within the World Trade Organisation as you say critics often argue that these policies are banned. Can you explain more

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what you are referring to there?

MR ERWIN: Well, I think since I wrote this Mr October has also spelt out more information but let me summarise. Government procurement is a specific chapter dealt with in the  
5 World Trade Organisation in the general agreement on tariffs and trade, governments are allowed to put certain local content conditions on their purchases, they have to do this within a growing body of precedent and law that is currently being dealt with in the World Trade Organisation. There is within the  
10 World Trade Organisation an agreement between a number of the parties, it's not a multilateral agreement, it's an agreement between the parties, it's called a plurilateral agreement where governments have agreed to specific rules for government procurement between themselves and in those agreements  
15 generally they are agreements within the European Union and within the OECD countries, there are not many developing countries that have signed onto these, in those agreements they have often agreed not to have industrial participation programmes between themselves, that's an agreement within  
20 the context of themselves.

For example it doesn't make a great deal of sense for members of the European Union to be trying to do this when they've got a common market, so the GPA replies specifically to that but finally in any event the purchase of military  
25 equipment is seen as a strategic issue for government and by

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enlarge is not covered in any way by the World Trade Organisation, these are policy matters for the member states.

ADV SKINNER: In paragraph 50 of your submission you say that:

5                   *“Many lessons were learnt as we proceeded and there is no doubt that with hindsight we might have done some things differently, in fact I will deal with concrete examples of this within my own knowledge”.*

10           What are you referring to there?

MR ERWIN: Chairperson the, as I have indicated in my statement, as is indicated in some of the documentation we did begin contemplating some adjustments as early as 2004 as a result of the negotiating process around substituting policies  
15           and as the Mr October has indicated in fact an adjustment has been made to the NIPP, could I just correct that date, as I understand it the date of 2010 in paragraph 50 is the date at which a review was undertaken of the NIPP in a broader context of Government procurement and I think the policy if I’m  
20           not mistaken was actually introduced in 2012.

                  The specific issue I’m referring to in my own experience was that in 2004 I became Minister of Public Enterprises, shortly thereafter we began the process of planning for the large electricity build contracts with Eskom for  
25           the large contracts for procuring rolling stock for the railways

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and as a result of our experience, my personal experience and some of the people that we were involved with in the department who had also been involved in trade and industry, we began a process of developing a new package, a policy  
5 package called a competitive supplier development programme, I'm happy Chairperson if you wish to explain it in more detail but in essence it's very close to what Mr October was outlining yesterday and it's very close to the DIP, the Defence Participation, that is that you attempt to develop investment or  
10 partnerships or supplier relations within the sector that you are procuring.

Another way of looking at it in the current debate around the world you look for more direct participation as opposed to indirect participation, indirect participation being  
15 where the obligor attempts to find a third party to invest within your economy rather than doing it themselves. So, the competitive supplier development programme relates to attempting to build a supplier base for power station equipment for transportation equipment. South Africa does have capacity  
20 in those areas and therefore we use the new procurement to try and develop that capacity which is similar to the DIP, we have defence capacity, we use the procurement to develop that defence capacity to a higher level, defence industry capacity, sorry.

25 ADV SKINNER: You make the point in paragraph 50 that in

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respect of NIP you are dealing with what are essentially industrial policy issues as opposed to the precision of contractual obligations that characterise the purchase of equipment and the financing of contracts.

5 MR ERWIN: Yes. Most certainly the equipment, I mean the military would have specifications of what they want that equipment to do, how it, what it's lifetime costs of operation and many other things should be, so those specifications are critical for the functionality of the equipment. In the NIP we're  
10 not dealing with any critical equipment, we're dealing with the negotiated process of trying to attract investment or increase exports or achieve some of the other objectives set out in the NIPP.

ADV SKINNER: You conclude that paragraph by saying you  
15 will allude to some of the distinct features of the DIP that differ from the NIP, what are you referring to there?

MR ERWIN: I think it's what I've just indicated, that the DIP relates to investments within the defence industries and therefore is closer to the kind of, it's similar to the policy  
20 of a competitive supplier development within the industry, so its objective is to increase the industrial and competitive capacity of the defence related industries, the NIP had a much wider objective, it was applicable across most parts of the economy.

25 ADV SKINNER: And you conclude that section of your

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submission by referring to the subsequent policy initiatives that have been set out in both the DTI and Department of Public Enterprises. If you say in that paragraph that you will draw some lessons for future policy that arise from your own  
5 experience, do you wish to expand on that?

MR ERWIN: Fortunately I think the lessons have already been drawn and Mr October did spell out in some detail what those lessons are. The key lesson I think is exactly what we've incorporated and what we immediately did when I had  
10 another opportunity at a policy level to address this matter and that was to narrow down the process to closer to the core sector of your procurement, so if you are purchasing civilian aircraft, attempt to get local supply into that civilian aircraft or local manufacturer or components into that aircraft where it's  
15 feasible from a technical and economic and financial point of view and I think generally the other aspect that Mr October dealt with at some length is that there were a number of policies dealing with government procurement and it was necessary to pull these together, coordinate them and  
20 streamline them and that would certainly be what I would agree with very much as well that one needs to have an overall coherent approach to the utilisation of government procurement as an instrument of industrial policy, it's a very powerful instrument, widely used but it's probably more effective if you  
25 focus it around the sectors within which you're procuring.

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ADV SKINNER: Mr Chair, I've gone somewhat over the normal time for the adjournment in view of the slightly late start, does the Commission wish to take an adjournment?

CHAIRPERSON: We'll adjourn for about 20 minutes or so.

5 Thank you.

**(Commission adjourns.)**

**(Commission reopens.)**

CHAIRPERSON: Mr Erwin, do you confirm that you will tell the truth?

10 MR ERWIN: I do Chairperson.

CHAIRPERSON: Thank you.

ADV SKINNER: Sir, the next section of your submission relates to the heading of economic and industrial policy and you set out what the position was relating to the South African economy in 1994 and the changes that was still to take place, I believe most of that is self-explanatory and follows without too much problems, so can I take you to the, towards the end of that section, paragraph 60 where you say that you provide this background to illustrate two major points, firstly that NIP, the  
15  
20 Non-Defence Industrial Participation is in every respect a subset of the National Industrial Participation Policy and essentially an instrument of industrial policy. Can you just explain what you are referring to there?

MR ERWIN: Yes Chairperson, the, if I may just make  
25 one brief comment about the total economic context, I think we

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do sometimes underestimate how much more difficult our economic circumstances were in 1999, at that stage we were not receiving a great deal of incoming foreign investment, so that leads me to answering more directly Advocate Skinner's question, I mean I think as I've spelt out for our industrial policy we were attempting to attract foreign investment to help us modernise the economy, open new markets for us, bring in new technology and we were seeking investment, so what I'm indicating here is that those imperatives of broad industrial policy were what was driving us in the NIPP, that's the National Industrial Participation Programme and then in the NIP, so we were looking for investment, we were looking for a modernisation of the economy and as we negotiated the projects over time we did bring back as is evident from the documentation some of the criteria such as regional development, job creation and technology improvements and we did that I think because of the overall framework of our industrial policy which was to modernise the economy, bring about investment and wherever we could, create employment, and more specifically as we will deal with it later I'm sure, try and create employment in some of the more depressed areas of our economy.

ADV SKINNER: The second major point that you wish to stress in that paragraph is that the credit obligations contained in the procurement contracts were treated as an envelope within

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which the industrial policy objectives could be achieved, can you explain further what you were referring to there?

MR ERWIN: Yes Chairperson. Once again as I've indicated, inherent in the negotiating process as is evident  
5 from the documentation but at a moment's reflection makes it clear that what was being committed to by the obligor was a quantum of credits expressed in Dollar or Euro terms, that they would attempt to reach over fixed time periods 7 and 11 years periods, because within that quantum against which there was a  
10 performance bonus, within that quantum as is so evident from the documentation and inherent in the programme and policies as I've indicated we had to negotiate specific projects and those specific projects could be substituted over time, could be changed over time, so not all projects that were subsequently  
15 implemented were agreed at the point of signing the contract, a very protracted process emerged as time went on to try and finalise and get the projects to be implemented, so we may have in my statement caused some of the confusion because in a sense the basic contract, the obligation of the number of  
20 credits to be met was not being altered, what was being discussed was the actual projects that would be implemented on a project by project basis and that process of implementing projects over time is inherent in the policy approach as I've tried to spell out in more detail because we had certain criteria  
25 as to what the projects should meet before they were accepted

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as part of the commit, the fulfilment of the credit envelope.

ADV SKINNER: The next section of your statement is headed "Industrial Participation Programmes" and you say in paragraph 62 that:

5                    *"Industrial Participation Programmes are essentially driven by two economic factors; ..."*.

Now the second one in subparagraph 62.2 is the balance of payments which is fairly straightforward but can I ask you to explain fairly slowly what you are referring to in subparagraph  
10 62.1, you've referred in passing to rent but it's a fairly complex theory and I just want some clarity as to what you are saying there.

MR ERWIN: Forgive me for that, I do have a background as an economics lecturer, so forgive me if I was  
15 being a little bit pedantic in it, but Chair I think it's quite an important point because it's often people ask well, how can it be that you sell equipment and government buys military equipment in this particular case and in addition you are expecting those same suppliers to do additional things, and the  
20 only reason that can be the case is that it's in the interests of those suppliers to do those additional things in order to get the order and in economics that would be considered a rent, the reason we talk about rent on land is because land is scarce, so the scarcity factor or a specific position in the economy is seen  
25 to convey a rent to the economic actor in that sector, so in this

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case where there's a large amount of equipment, military equipment being sold, it's being sold over protracted periods of time, that's a very important position to have as a supplier of defence equipment, so to get that position they are prepared to

5 take additional actions to secure their position. Governments understand this well, this policy is not new, it's not from the 1990's, this was used quite extensively, particularly after the 2<sup>nd</sup> World War, particularly by the developed countries, so it's saying to the supplier look, we're buying your equipment, this

10 conveys an economic rent to you, therefore we would expect you to facilitate other investment or exports or sales in our economy.

As I indicate with two examples there the obligor can do one of two things, and I simplify a little bit here

15 because there are other things that can be done, but they could either attempt, either invest in a project so they would look at a project, say look, this is economically viable, it's in our interest to invest in it, we will put up some money for that project because it's within the economic rent envelope, it's in

20 our interest to do that, the other way that they could do it is to find a third party and persuade that third party to invest or buy from the South African economy.

Now why I wanted to stress at the beginning the context, the economic context at that time recall that South

25 Africa had been under sanctions, many of our markets have

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been closed to us, many international companies were unfamiliar with the South African economy, didn't know what was happening, so what we were effectively doing was to take very big companies, be it BA Systems or many other of the suppliers and say you should attempt to persuade other potential investors to come into South Africa, they could do this either as I indicated in those examples by providing some of the capital for their investment, they could do it either, they could do it through agreeing to purchase some of the equipment. In a case like SAAB it was quite interesting, they were able to persuade companies within the much bigger investor group in Sweden to purchase motor car componentry from South Africa, so what they used was their own economic and business links in their home countries to find investment opportunities.

I have explained that in doing that we would put up suggestions but at the end of the day the responsibility for proposing an actual project had to come from the obligor, so sorry to go into that detail but if one doesn't see that there are limits to how much you can get in terms of industrial participation, this is not an open-ended thing that you can negotiate anything you want because the danger of doing that is that then you will force your suppliers to somehow find a way of recovering the money they have had to spend and they are going to do that in the maintenance and many other lifetime

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costs of their craft, so as you will see from the work of the International Negotiating Team, the IONT, a great deal of work was done to assess that there was real merit in the projects and that we were not trying to ask too much beyond this what  
5 I've loosely called the rent envelope.

ADV SKINNER: While we're still dealing with that topic can I then take you to paragraph 69.1 of your submission, you say in the first sentence:

10 *"There is economic logic for the seller to surrender the rent component".*

What are you referring to there?

MR ERWIN: I'm referring to the fact that by being the final supplier of the equipment there is a rent component in that transaction which could either go to the supplier or a  
15 government could attempt to claw back that rent component to achieve other objectives and that's the essential basis, economic basis for these programmes.

ADV SKINNER: And you summarise that in the following subparagraph by saying:

20 *"Another way of putting the above tension is that if the price paid for the defence equipment is too high in order to get some form of industrial participation, then there is a sub-optimal policy conflict".*

Can you just explain that last reference there?

25 MR ERWIN: I think one of the inherent dangers in

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these programmes is the one I've just alluded to, that you could end up getting purported investment in terms of a participation programme but paying for that investment in more expensive equipment, so that's really a policy clash, you are  
5 paying more for the equipment that you need, you think you're getting an investment but actually it's investments being recovered in the higher price of the equipment, so clearly this is one of the very legitimate criticisms of these programmes and as I indicate in my statement a well-run programme has to  
10 be extremely vigilant that what they're getting is value for money in the equipment and what they are getting in terms of the projects has economic merit in its own right and I think one has to elaborate slightly on that here, the argument many critics make of these programmes and it's an argument with a  
15 factual basis, and that is that well, if market forces, the working of market forces haven't seen these opportunities why are you trying to fabricate or manufacture or bring them into being when the market hasn't seen it.

Well, there's some merit in that argument, one has  
20 to be cautious, but it does then depend on the assumption that markets will always see opportunities and I think certainly the approach of our government at that time, and I believe it would be the same today, is that markets are not capable of seeing all opportunities, that it is possible that there were  
25 opportunities that had not been evident to the market and what

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we attempted to do in DTI, and I believe serious, very serious efforts were made on that, was to ensure that when we proposed a project that it had economic merit to it and that the reason it was not being invested in already was because the market didn't have the information necessary to do that and we attempted wherever possible to provide that.

So, this is a little bit of an ideology clash in economics, there are those who believe markets are paramount and infallible and those who argue that markets have many imperfections and in essence industrial policy is premised on the assumption that markets are not perfect, that government intervention can and does bring about economic activity.

ADV SKINNER: You conclude that section of your submission in paragraph 71 by saying that:

*"The policy was not a total success but it was a success in our view and that success was better than the nothing that would have resulted from doing nothing through fear of the risks".*

What are your reservations when you say the policy was not a total success?

MR ERWIN: Chairperson, I can only validly comment on the period that I was minister, thereafter I think the DTI officials have given a considerable amount of evidence as to the subsequent progress of the policy and its success and I think have reached a similar sort of conclusion. For us and for

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me as minister at that time I think in the previous paragraphs I explained that we would have preferred the NIP to have contained many of the larger what we call structural projects, the beneficiation of our minerals, the strengthening of our defence-related industries, the strengthening of our automotive industries, the strengthening of our aerospace industries, we were able to do some of that but not entirely able to get the much larger projects in, so I think that for me personally the problem that emerged was that instead of dealing with a limited number of large and significant projects we ended up with a fairly lengthy negotiation about many smaller projects, some of which I think prove to be very successful, others of which were very problematic, so the breadth of the negotiation caused us some difficulties.

I think that the expectation that a policy like this can be a complete success would have been somewhat unrealistic, I think our expectations were always that we would not succeed absolutely but that what we did succeed in should be positive and constructive for the economy. My assessment of the period that I was minister responsible for this, I can't really capture my views better than the report of the NIPP for 2006 which spells out I think where we feel we succeeded and where some of our difficulties were, so it was not a perfect policy but I certainly in no way regret that we implemented that policy because I believe some of the achievements were very

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positive and would not have occurred if the policy had not been there.

ADV SKINNER: Your submission then goes on to deal with the role of the International Offers Negotiating Team and in paragraph 79 you set out the Terms of Reference of the IONT and after saying in paragraph 80 that you believe the IONT succeeded in an exceptional manner you deal with certain other aspects where you say in paragraph 82 that :

and after saying in paragraph 80 that you believe the IONT succeeded in an exceptional manner you deal with certain other aspects where you say in paragraph 82 that:

*“We had set an internal target to attempt to get the investment commitment somewhere near the purchase price”.*

Could you just explain more what the thinking was in relation to that investment commitment?

MR ERWIN: Well, I need to briefly elaborate on something I've been indicating, when we agreed that the criteria that we would utilise in the final negotiations, the IONT negotiations would be restricted to the three, we then look to see what the largest possible envelope could be of that, those three, bearing in mind some of the caveats that I state in my statement that this is not just an open-ended thing, you've got to be careful that you're not over-playing your hand in these negotiations, and what was a very useful suggestion as I recall

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it, coming from the Department of Finance was well, if we set an internal target that we get the investment component close to the purchase price, then we're going to be able to get a multiplier of roughly 3 because we had had local sales and export sales, there are complications in that but let's ..., it's an accurate approximation to say that that would end up as three times the purchase price.

Now this sounds a bit strange but one has to consider that the obligor does not have to put up all that money and also when you are talking about local sales over a number of years, if you are talking about exports you are talking about exports over many years, so although the export in year one might be 10, after 10 years it's going to be a 100 and that explains why you can get a situation where an obligor would be prepared to commit to credits in the terms of local sales or exports that are larger than the actual purchase price, the same with the investment, the obligor is not responsible for all those investments, they can get credits for investments that they themselves did not make but they encouraged someone to make, so that was the internal target, as I say from Treasury's point of view you were looking at mitigating factor for the expenditure, from Trade and Industry's point of view you were looking at the prospects of leveraging, and I use that word quite often, leveraging investments off this credit envelope.

ADV SKINNER: And in relation to your last answer that is

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what you referred to in paragraph 83 of your submission where you say that the total obligations would be roughly three times the purchase price since each component of the project earned one unit of currency for one credit.

5 MR ERWIN: That is correct and that is why we say that we felt this negotiation was a success because we were dealing with a significant envelope of credits, subsequently when we implemented the various projects, as an evaluation mechanism we used other of the nine criteria to evaluate which project to  
10 accept and which not, these were subsequent negotiations about the project acceptability.

ADV SKINNER: Then in paragraph 84 of your submission you say that what is crucial is that this was a negotiating strategy and it did not override the overall policy objectives of  
15 the NIP or the larger NIPP. Can you explain further what you are referring to there?

MR ERWIN: Yes Chairperson, as I've indicated by reducing the number of evaluating criteria we had to use when we were looking at these projects we simplify the negotiation  
20 by limiting it to the three and attempting to get the best out of those important criteria. We also in our view obtained a simpler obligation from the suppliers and I stress again and again our target is obviously the maximum envelope that we're looking for without overplaying our hand and I stress that as  
25 well, it's not possible to think you can get everything you want

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in a negotiation like this, so we, the strategy of simplifying the negotiation, getting an envelope and then being able subsequently in terms of your policy to evaluate the specific project using a wider set of criteria in our view was one of the successes of the IONT process. I'm sure my colleagues will indicate some of the other very significant successes of the IONT process in the realm of financing and other areas.

ADV SKINNER: Towards the end of the main portion of paragraph 84 of your submission you say:

10 *"If we stuck only to those three credits ...".*

That's the investments, export sales and local sales:

*"... it would have taken us much longer to find projects and secondly we may in fact have been working against our interests in the following ways; ...".*

15 And you then set out several points. So, as I understand what you are saying there is that the decision was then taken by the DTI and yourself that the nine original criteria would still continue to apply, is that a fair summary?

20 MR ERWIN: Yes, in practice as one sees from the process that I've stressed earlier we reach an agreement on the obligation and we agree that there then has to be a process of projects coming forward to fill in particularly in those cases where substitution projects for the big ones like the steel plant  
25 had to be brought in, so as that negotiating process unfolded

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we began, as is evident from the record, we began implementing the nine criteria as we evaluated those projects. As I clarify in my statement at a later stage we made two subsequent adjustments which at a ministerial level I was asked to adjudicate on, one regarding training and the other regarding allowing a Ferro-alloy project in.

ADV SKINNER: You say in specifically in paragraph 84.4 of your submission that:

*"It was practical to retain the nine criteria and apply these as and when the occasion merited".*

Now I just want to understand the context in which we are talking about, we know there were the nine criteria which are contained in the original NIP guidelines that the Cabinet approved and that you have referred to, is that correct?

MR ERWIN: Yes.

ADV SKINNER: Then we had the situation of the SDPP contracts being negotiated particularly by the IONT.

MR ERWIN: Correct.

ADV SKINNER: We know from the evidence, particularly of Dr Jourdan that the IONT was of the view that all multipliers should be scrapped and that as Dr Jourdan put it, if multipliers were to be permitted then the target that was set for obligors would have been that much higher, do you agree with that evidence?

MR ERWIN: No, as I indicate in my statement there

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were, there was a debate within the department but what Dr Jourdan was saying is this, that if you had attempted to bring in all the other multipliers you may or may not have got to a higher level, if you restricted it to a 3 he argued you could get to a higher level. In my statement I've indicated well, that's a balance of judgement, whether it will be possible to get to a higher level or not. Multiplier in the sense that you are using it here I think we need to be fairly careful, it is the one for one for each of the criteria, so if a project has got investment in it, it's got local sales, it's got exports and it might have regional development it's going to be eligible for four of your criteria, therefore you've got four one for one's in it, so the total package of credits would be a multiple of the possible investment, so it's a relatively complex issue and as I read the evidence of Dr Jourdan he was essentially arguing what is stated quite clearly in the reports of the IONT that attempting to deal with all of these criteria in the negotiation was proving to be counterproductive.

ADV SKINNER: The evidence has further been that the contracts that were concluded have a specific section called credit methodology which refers to one credit per unit of currency invested and similar provisions for export sales and local sales, it doesn't, as I understand it, refer to credits being granted for any of the other criteria from the original NIP guidelines but you are saying in paragraph 84.4 that those

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original nine criteria still remained and could be taken into account.

MR ERWIN: That is definitely our understanding of the process and I think that's borne out by the subsequent negotiations which immediately begin addressing the balance of the criteria and at no point did the suppliers object to that because I think it had been so much part of the process of discussion and negotiation and I think over the years in many, many presentations that we've made to Parliament, reports we've given, this has been built into the process, so it was assumed between the parties this is how we were going to conduct ourselves and we then proceeded to conduct ourselves in that manner.

ADV SKINNER: Jumping somewhat ahead but just in the light of your last answer can I take you to paragraph 100 of your submission. You sum up the position by saying:

*"... the principled approach was that of using the National Industrial Policy to inform the negotiations on the NIPP. The policy was sufficiently broad to accommodate the application of discretion in adjusting the nine criteria or credits that obligors were expected to meet".*

MR ERWIN: That is my understanding and I think the DTI officials support that. As I've indicated at one of the paragraphs in my statement one could say that by doing this we

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may have made the attainment of the total envelope a little easier for the obligors but as I've indicated we felt there was good reason to do that and that the objectives we were seeking to meet overrode that possibility that we made it slightly easier.

ADV SKINNER: Then taking you back slightly you've already referred in your evidence to the two instances where approaches were made to you in your capacity as minister, that is of training and of Ferro alloys and that you deal with in paragraph 91 of your written submission. Can you explain to the Commission the situation as to why it was necessary for a decision to be made by you in relation to training and Ferro alloys?

MR ERWIN: Yes, as I think both Dr Rustomjee and Dr Jourdan outlined, and I would agree with what they stated, that we had said that certain sectors, and let me deal first with Ferro alloys, South Africa's one of the world's largest chrome producers, therefore there's no particular need to try and attract investment into that sector, this is the additionality argument because it's a strong sector, however, in the specific circumstances that we confronted sometime later there was the prospect that a significant chrome smelter plant as I recall it may have gone into liquidation and we were looking to prevent that happening, so it seemed to us an important objective to rescue or save those jobs in whichever way we can, this was in

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the North West province at a time when the employment levels of the current platinum industry were not as large as they are, so we adjusted the guideline, the guideline was you can't come into Ferro alloys chrome and this is why the decision came to myself because I was making an adjustment saying okay, in this particular case the priority or the objective of saving jobs is more important than our previous reasons for excluding it from the NIP. On training, training is a difficult one to quantify and monitor, so generally speaking we were a little bit reluctant to do that unless it was extremely advanced training that was more easily identifiable but Atlantis had a very specific history, it is one of the previous decentralisation zones of the previous policy and at the time it had gone through very severe economic downturn, some of its biggest factories, the Engen plant, Television plant had closed and there was a great deal of social pressure in that area to see if we could do something to assist them and through a process of dialogue with the Committee I was eventually asked to make an exception and allow for a training project to be put into Atlantis, and I acceded to that.

ADV SKINNER: And just for the record purposes that's what you refer to in paragraphs 93 and 94 of your submission?

MR ERWIN: That's correct. I see that I also make reference to Magwa Tea Estate which was a large tea plantation in the former Transkei and Eastern Cape where there

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were severe economic problems and we were approached to assist them by trying to find a partner through the use of the NIP to rescue that estate and save a large number of jobs. As I recall it this process probably started in my time, I'm not sure  
5 if the project was finalised in my time but certainly I would have been supportive of a project like that to try and prevent the loss of significant employment in a rural area in the Eastern Cape.

ADV SKINNER: Can I conclude your evidence in chief by  
10 asking you about one area. There has been evidence as you have already read from the transcripts of certain instances where there were, what was referred to as package deals, in other words that it was agreed between the DTI and the obligor and the party concerned that a certain number of credits would  
15 be granted upfront. How does that relate to the ideal of the contract where there is specific credit methodology that you get credit once you have invested or once a sale has taken place?

MR ERWIN: As I understand the evidence given by the DTI it accords with my own understanding of what we were  
20 talking about and I do mention this in my statement. As we went through this process of dealing with project by project you would very often have a situation where the obligor would be prepared to provide some benefit to the project, it might be investment package, it might be purchases or some other form  
25 of assistance to the project but for them to do that they wanted

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some form of advanced credit for potential sales of some type or a potential future event and I don't recall this ever being specifically dealt with by myself but I would say it's because, the reason for that is very simple that as I say in my statement

5 we had to negotiate these projects by project and if it took us, required of us that we give some advance credit for those credits and we then got a project on the ground, I supported the judgement that we should accept that and move forward, and again I would stress that these projects were negotiated

10 over a period of time and as we saw with the strategic partnership agreements you had to build in a degree of flexibility, I go into a bit more detail in my statement pointing out that this was essentially a commercial negotiation and to get all the parties to undertake the investment.

15 If it took us having to give them some advanced credits we exercised our discretion and said let us do that, so we get the project moving rather than carry on looking for new projects and not have projects on the ground, so it was an exercise of our discretion.

20 ADV SKINNER: Finally Mr Erwin, at the start of the proceedings I indicated that I was simply going to highlight certain aspects of your statement rather than take you through it paragraph by paragraph, in so doing there may be areas that I have inadvertently omitted that you feel you wish to

25 specifically comment on. Is there anything that you wish to

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draw to the attention of the Commission other than the areas I have already referred you to?

MR ERWIN: Chairperson as I reflect on it right at the moment I don't see anything, I've tried to touch on some of the other issues and clearly what I've indicated in my statement also would stand but I can't think of anything right at the moment that I could canvass more.

ADV SKINNER: Mr Chairman that is then the evidence in chief of this witness.

10 CHAIRPERSON: Thank you. Is there anybody who intends cross-examining Mr Erwin?

ADV DE VOS: Mr Chairperson, I'm Anne-Marie De Vos, I appear together with my learned junior Ms Snyman and we are here on behalf of Lawyers for Human Rights, instructed by Mr Feinstein, Van Vuuren and Holden. We would like the opportunity to cross-examine Mr Erwin, I'm going to ask the indulgence of this Commission to give me the opportunity to prepare some of the cross-examination and I want to explain why that is so, I received the statement this morning shortly before the proceedings started and in view of the fact that my learned fiend only chose to rely on certain of the paragraphs attested to by Mr Erwin I would need a moment just to peruse the statement and obviously see which parts of it I would need to cross-examine on or not.

25 Secondly it is my submission that by giving us the

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opportunity to look at his evidence it may very well be that it will curtail the cross-examination rather than broaden it in some way, I do not intend to particularly long with Mr Erwin, there are certain aspects of his evidence that I know my clients  
5 would want me to cross-examine him on and I just need to know narrow that down to the specifics.

Then thirdly there is a problem as far as reference to two sets of documents are concerned, the first is the Affordability Report which is referred to in paragraph 40 of Mr  
10 Erwin's evidence. Now that Affordability Report is attached to my summary that is filed with this Commission and my instructions are to use it in cross-examination and as Mr Erwin has referred to it I would submit that that would be fair. I see, however, that it specifically states that this report has yet to  
15 be declassified.

I've taken the opportunity to discuss it with my learned friends and I was told that there has been a request to have it declassified but they have not received an answer as far as that particular report is concerned and I will ask the  
20 guidance of this Commission as to how to proceed on that. There is also the second problem and that is that the contacts which form the, I would say the part of the evidence of Mr Erwin, there was supposed to be a witness this morning to deal with the particular contracts and we were hoping to get at least  
25 certain terms of the contracts from that evidence so that I

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could use it in my cross-examination and that (indistinct). I understand that those contracts are also still not declassified and obviously I would like to make use of at least some parts of those contracts and we also need some form of guidance  
5 from this Commission as to how to go about that.

CHAIRPERSON: Advocate De Vos, did I understand you to be saying that your clients did have a copy of the Affordability Report?

ADV DE VOS: Yes, yes Mr Chair we do, and it has been  
10 attached to the submissions filed in this Commission.

CHAIRPERSON: The Affordability Report which according to the statement of Mr Erwin has not been declassified.

ADV DE VOS: Yes I only saw it today when I got the statement.

15 CHAIRPERSON: So your clients do have documents which are not declassified, is that what you are saying to us?

ADV DE VOS: Well, that seems to be the position. Whether it has been declassified in the meantime or not I'm not sure because I do know that there has been a request for  
20 declassification and where the answer has been given or not I'm not sure.

CHAIRPERSON: I'll tell you why I'm saying so because yesterday evening when I looked at the statement of Mr Erwin and saw that (indistinct) Affordability Report has not been  
25 declassified and I thought this was what you were saying to me

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that you know, the other difficulties are that you know you are still waiting for the declassification of the Affordability Report which (indistinct), is that my understanding?

ADV DE VOS: That is my understanding Mr Chairperson.

5 CHAIRPERSON: Then the second question is I'm not quite certain if from the evidence that you have led up to now whether anything turns around the question of contracts, I've heard that you know Advocate Skinner wants to have certain portions of those contracts to be read out although I'm not  
10 quite certain if at all there is anything which turns around the contracts, not as far as the evidence that has been led to now. I'm not quite sure that what do you want to deal with the question of the contract because as I understand your evidence there seems to be a difference about the (indistinct) that was  
15 supposed to be used as contained in the contract and (indistinct) as contained in the (indistinct), that seems to be the only (indistinct) and from what I understand from the evidence that has been led that seems to be common cause that the NIP Policy document, as far as the criteria of credit is  
20 concerned differs from the criteria of providing for the NIP contract and the NIP (indistinct). So if that is the issue what would be the purpose of trying to get those contracts?

ADV DE VOS: Mr Chair, until I see the terms of the contracts it's very difficult for me to comment on that, it's clear  
25 that the evidence by Mr Erwin, well Mr Erwin is relying on

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certain terms and conditions in the contract in explaining why he felt that he had a discretion and that his department had a certain discretion and to enable us to give evidence before this Commission showing either that he was correct in making use  
5 of his discretion or on the other hand that he was not correct, I obviously need the terms of the agreements as far as it turns around that particular question of multipliers and criteria that should or shouldn't be used, otherwise it would be impossible for me to cross-examine on that particular issue.

10           It may be that Mr Erwin is correct and then that will be the end of the story, maybe that is not and then if I don't get to see the contracts this Commission will not be in a position to weigh his evidence properly with due respect.

CHAIRPERSON:       Okay maybe before I come to Advocate  
15 Skinner maybe let me hear what Advocate Moerane has got to say.

ADV MOERANE:       Chair, I do place myself on record together with my learned colleague (indistinct). I have some problems in understanding the reference, particularly to two issues, that  
20 is the contracts and the affordability report. Quite clearly as far as the affordability report is concerned that document has not been declassified, I do not know how my learned colleague's clients' have that document in their possession when it's not been declassified. Secondly with regards to the  
25 contracts those are not contracts of the DTI, essentially they

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are contracts really relating to the DoD and Mr Erwin has not made any reference to the contents of those contracts, except for the issues which seem to being dispute as with great respect Mr Chairman has alluded to, so I really do not see the need for standing down for those two particular issues. Thank you.

ADV SKINNER: Mr Chairman, as far as the affordability report is concerned my instructions from the Secretariat of the Commission is that approaches have been made for quite a while in an endeavour to get that document declassified. It has not been declassified as far as I'm aware at present. It has certainly been referred to in passing by several witnesses including the witness who is presently before the Commission and to that extent I understand my learned friend Advocate Vos's difficulty that a witness has referred to a document that she wants to have sight of. As regards to the contracts themselves Mr Chairman with submission and respect my view is the same as the Chair has indicated, there doesn't seem to be any dispute as to the actual contractual terms, why I had wished to call a witness to prove the contracts was simply for the sake of completion that they would be in front of the Commission so that the Commission could have regard to them if necessary, but I certainly, I concede that no one has given evidence saying we dispute that that is what the credit methodology is in terms of the contract or we dispute that there

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is a provision in the contract which says the following, that has not been the evidence that has been led up until now, but on those two aspects I abide the decision of the Commission.

CHAIRPERSON: Advocate De Vos, let's assume we do  
5 accede to your request for an adjournment for you to consider your position, what sort of adjournment are you looking at?

ADV DE VOS: Well Mr Chair, obviously I believe a few hours to prepare the cross-examination, I would ask for an adjournment until tomorrow morning and I would also ask for  
10 the opportunity to see if we can't get hold of the, or come to some kind of arrangement of whoever is in charge of the declassification of the report and then perhaps if the terms of the agreement are not in dispute someone who is in charge of those agreements can give us those terms so that I can use  
15 them in cross-examination because I don't know what those terms are that is not in dispute.

CHAIRPERSON: Advocate De Vos, I think we'll adjourn until tomorrow morning in order to give you an opportunity to prepare your cross-examination but I'm concerned about the  
20 fact that your clients are in possession of documents which have not been declassified (indistinct). Two; I would suggest that you discuss this issue with the other counsellors, particularly the evidence leader and counsel representing Mr Erwin to try and see if you can come to some type of  
25 arrangements because if I can I want to deal with Mr Erwin

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tomorrow morning and we finish the cross-examination and release him because I don't like the question of releasing witnesses and saying to him that he will have to be recalled unless if at all there is a good explanation for that. Wherever  
5 it's possible the witness must be represented, be cross-examined so that the witness can be excused. (Indistinct), we can deal with the question of one affordability report which (indistinct) his possession which has not been declassified and then (indistinct) contracts.

10 ADV DE VOS: I will endeavour to do so, thank you Mr Chair.

CHAIRPERSON: Advocate Skinner, will that be okay?

ADV SKINNER: Indeed Mr Chairman.

CHAIRPERSON: Advocate Moerane?

15 ADV MOERANE: Chair, the Chair has already made a ruling, we would have preferred to proceed this afternoon but the Chair has made a ruling.

CHAIRPERSON: I understand it's what I would have preferred but then the difficulty is that the statements were  
20 (indistinct), at least (indistinct) on Saturday evening (indistinct) this morning, if at all the statements were posted on the website prior to today probably then (indistinct) would have preferred that we (indistinct) today.

ADV MOERANE: I abide by the Commission's decision.

25 CHAIRPERSON: Thank you. So, we are going to adjourn

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until tomorrow morning and we'll being at 10h00. Thank you.  
We'll adjourn until tomorrow.

**(COMMISSION ADJOURNS)**