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CHAIRPERSON: Good morning. Advocate Sibeko.

ADV SIBEKO: Good morning Chair and Commissioner Musi. In the past weeks the Commission has heard evidence from officials from the DTI regarding matters of, or the aspect
5 of the National Industrial Participation Programmes that related to the acquisition of the SDPP. This morning we're going to start with the officials, the evidence of the officials from ARMSCOR who will give evidence relating to what we refer to as the sister programme to the NIPS, in this instance the
10 Defence Industrial Packages. These, the evidence will be started with that of Mr Johannes Bernhardus De Beer who is a programmes manager of ARMSCOR in that department.

His evidence would deal by enlarge with the policies that are applicable with regard to these packages but his
15 evidence will start as to just set the scene, I will deal with the background and the history of the development of countertrades right up to its evolution or the process of its evolution up to the time where it culminated to what we now refer to as the DIPS, that is the Defence Industrial Packages.

20 During the course of his evidence he will in passing refer to some issues relating to the NIPS, however, he will not be testifying on the NIPS but will deal with some of the aspects of the NIPS to the extent that it would be necessary for his testimony but largely his evidence deals with the DIPS from a
25 historical perspective, the general principles and policies that

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were applicable before, during and after the SDPP and later on evidence will be presented to the Commission of the actual programmes of the DIPS that have been administered by ARMSCOR as was contemplated in the NIPS and DIPS policies.

5 With that short opening I guess I would now beg leave for Mr De Beer to be sworn in.

CHAIRPERSON: Can you ask the witness to take the oath?

(Witness is sworn in.)

CHAIRPERSON: Thank you.

10 ADV SIBEKO: Chair and Commissioner Musi, just for purposes of housekeeping you should have before you three files marked files 1, 2 and 3. The first file, file number 1, is the file that contains the statement of Mr De Beer, files 2 and 3 contain the documents to which he will make reference to
15 during the course of his evidence. I would just wish to make sure if you have both, all three files placed in front of you. Thank you Chair.

**WITNESS (ARMSCOR) : MR JOHANNES BERNHARDUS DE
20 BEER (Hereinafter referred to as "MR DE BEER"), GIVES
EVIDENCE UNDER OATH**

EXAMINATION IN CHIEF:

ADV SIBEKO: Mr De Beer, for purposes of the recordal of the evidence I would request of you to switch or to turn on the
25 switch so that your evidence could be recorded firstly but

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secondly your evidence need to carry to the room so that other persons inside here may be able to follow your evidence, do you understand that?

MR DE BEER: I do.

5 ADV SIBEKO: Thank you Mr De Beer. It is correct that you are employed at ARMSCOR, or Armaments Corporation of South Africa Ltd.?

MR DE BEER: That is correct.

10 ADV SIBEKO: How long have you been employed at ARMSCOR?

MR DE BEER: Approximately 33 years Commissioner.

ADV SIBEKO: Now in what capacity are you presently employed?

15 MR DE BEER: Commissioner, I'm presently employed as programme manager in the Command and Control Division for normal technical procurement type programmes.

ADV SIBEKO: Contained in file 1, there are three files in front of you, one of those files contains your statement, is that correct?

20 MR DE BEER: That is correct, file 1.

ADV SIBEKO: May I ask you to turn to page, the last page of your statement Mr De Beer, I think it is page 48. You found it?

MR DE BEER: Yes.

25 ADV SIBEKO: There is a signature at the bottom right

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hand of that document, is that your signature?

MR DE BEER: That is correct, it is my signature
Commissioner.

ADV SIBEKO: Now during or about the period 1997 to
5 1999 in what capacity were you employed at ARMSCOR?

MR DE BEER: Commissioner, I was employed as a
manager in the DIP Division of ARMSCOR, it started off at that
stage being the Countertrade Division.

ADV SIBEKO: Now what are the functions of a DIP
10 manager?

MR DE BEER: Commissioner, a DIP manager is
responsible for compiling documentation for the purposes of
the request for information, issue those requests for
information to potential foreign bidders and collating the
15 information, compiling reports and reporting accordingly.
Secondly a DIP manager is also responsible for compiling
documentation pertaining to the request for offer and that
specifically is the request for offer documentation for DIP, for
Industrial Participation, the guidelines, the evaluation
20 methodology *et cetera*. After receiving the offers the DIP
manager will also be responsible to participate in evaluation,
report accordingly to the divisional head and after successful
negotiations with a preferred bidder that would be appointed by
the ARMSCOR board of directors he would then continue to
25 execute the management of such DIP agreements or DIP terms

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as it was called in the SDPP.

ADV SIBEKO: Now you state in paragraph 1.2 of your statement, which is at page 1, that you have been with ARMSCOR before, during and after the Strategic Defence Procurement Packages acquisition. Were you involved in any of the packages that were acquired at the relevant time? Which packages form the subject matter of these proceedings?

MR DE BEER: Commissioner, I was involved with the packages or the SDPP from 1998, early 1998, that was after the completion of the RFI phase, the Request for Information phase which I was not, I still not a DIP manager at that stage. Now I participated from the compilation of the request for offer onwards until final contracting.

ADV SIBEKO: And just to digress a bit you end that paragraph with reference to an Annexure "BDB1" which is your *Curriculum Vitae*, is that correct?

MR DE BEER: That is correct Commissioner.

ADV SIBEKO: That document is found in file number 2, item 1 as on from page 49. Can I ask you to go to that? Is that your CV?

MR DE BEER: That is correct Commissioner.

ADV SIBEKO: Now in the middle of page 49 you deal briefly with your work experience. Now you refer in the second last paragraph of that document as having commenced training as countertrade offset manager in the Defence Industrial

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Participation Division 1998 to 2003. Now is that the period that relates to the management of the DIP programmes as they apply to the SDPP?

MR DE BEER: That is correct Commissioner, although
5 that is also the period where we did the RFO evaluations, reported accordingly, supporting negotiating phase, successful contracting and implementing of the DIP agreements or the DIP terms for the SDPP's.

ADV SIBEKO: And before then you were a programme
10 manager for the production or upgrade of the Rooikat Armoured Combat vehicle within the Armoured System Division in ARMSCOR, is that correct?

MR DE BEER: That is correct Commissioner.

ADV SIBEKO: Just briefly what did that responsibility
15 entail?

MR DE BEER: At the point I was appointed in the Armoured Division of ARMSCOR the Rooikat vehicle was already developed, it was successfully contracted to a local supplier and the vehicles were in production. The first
20 production vehicles were already at the user and being utilised, however, they required some upgrades, so I was appointed as a programme manager specifically for production of the remaining armoured vehicles, the Rooikat and then also in conjunction to that upgrading the first lot of Rooikat armoured vehicles to the
25 same configuration status as the very last ones, and that was

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completed in 1998, 1997/1998.

ADV SIBEKO: So, when you participated in the DIP RFO process and the evaluation of the offers you had some experience within the DIP Division of ARMSCOR, is it correct?

5 MR DE BEER: I did not have experience during my time at the Armoured Division, I applied for the position in the DIP Division, it was quite new in the sense of it's a changed policy, so henceforth my CV states that I was actually also trained. The other reason was that the-then very experienced DIP
10 manager at this stage was close to retirement at the end of 1998 and I was then the successful candidate to replace him after his retirement, so I was actually trained in the year 1998 by the previous DIP manager.

ADV SIBEKO: And who was the previous DIP manager?

15 MR DE BEER: That was Mr Deon Gladhaar.

ADV SIBEKO: There was also a Mr Van Dyk within the department, is that correct?

MR DE BEER: That is correct, Mr Van Dyk was the head of the division.

20 ADV SIBEKO: Now for purposes of preparing your statement is it correct that you prepared the statement relying on facts that are within your personal knowledge and some of the facts that you obtain from perusing documents that are under your control?

25 MR DE BEER: That is correct Commissioner.

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ADV SIBEKO: And in fact the documents also that were not necessarily under your control but those that you've had access to for purposes of giving a full account of the issues you want to testify about?

5 MR DE BEER: That is correct Commissioner.

ADV SIBEKO: Now you set out in your statement as from page 2 the issues you will be giving evidence about, most of which are recorded in your statement, correct?

MR DE BEER: That is correct Commissioner.

10 ADV SIBEKO: And without belabouring what, or the issues listed in page 2 we will turn to page 3 of your statement where you deal with the "Origin of the Concept of Offset, Countertrade and Industrial Participation". Now we will in the fullness of time or in due course perhaps hear evidence from
15 some people who talk about the countertrades being a matter that is to some extent regulated by the World Trade Organisation. Are you aware of that?

MR DE BEER: I am aware of that Commissioner.

ADV SIBEKO: Perhaps to be precise you are aware of the
20 existence of the World Trade Organisation Agreement that seeks to regulate these countertrades?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now as you deal with this matter under the heading that is numbered 2, "Origin of the Concept of Offset,
25 Countertrade and the Industrial Participation", is it your view

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that these, the offsets, countertrades and Industrial Participation refer to separate concepts individually or is it just one concept that has evolved over a period of time?

MR DE BEER: From my knowledge it is a concept that evolved over time, specifically in South Africa and specifically at ARMSCOR from the early days of offsets, turning into countertrade meaning a more focused, more organised and managed process and then eventually ending up to be Industrial Participation which is quite a sophisticated mechanism of management.

ADV SIBEKO: Now you say in the first line of your paragraph number 2 that:

“The concept of offset and countertrade is a worldwide phenomenon ...”.

What is the basis of your assertion regarding this matter?

MR DE BEER: Commissioners, we were aware that there were several countries worldwide that were actively implementing offsets and countertrades for many years, a desktop study was also conducted to confirm this view, a number of countries are listed here for the benefit but there are more countries that only those listed here that until today still actively participate in Industrial Participation or even offsets and countertrade in its various forms.

ADV SIBEKO: Now the ..., you have set out these countries. Can I ask you to turn your attention to Annexure

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“BDB2” which you will find in file number 2 Commissioners, and this you will find at page 51, is that the desk... Do you confirm that is the desktop or a result of the desktop research that you conducted?

5 MR DE BEER: Yes, I do Commissioner.

ADV SIBEKO: Now there are two columns to that page 51, the one column refers to the actual country and the other relates to the penalty and guarantee required. Could you just explain this for the benefit of the commissioners what story is told by that document? Thank you, you may proceed.

MR DE BEER: Thank you Commissioners. On this desktop study the results are summarised with the column “Country”, under the column “Country”, and a number of countries are listed that actively applies offsets or countertrade or Industrial Participation. The first country is Brazil for example, in Brazil they apply a 100% obligation on government procurement. The percentages ...

15
20 ADV SIBEKO: I beg your pardon. When you say in Brazil they apply a 100% of obligation, what does that mean specifically?

MR DE BEER: Commissioners, it means a 100% of the contract value from foreign suppliers to Brazil will be subject to offsets or countertrade or Industrial Participation, so it’s a one-to-one basis, they apply 100% of the contract value, will be an obligation to perform offset business in Brazil.

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ADV SIBEKO: So does that mean that a contract is awarded of a US\$100 million the obligation would be offsets of a US\$100 million, do I understand you to mean that?

MR DE BEER: That is correct Commissioners.

5 ADV SIBEKO: Now you can proceed with your explanation of the table.

MR DE BEER: Commissioners, if we go to the next column, the column with the heading "Penalty and Guarantee Required" it differs from country to country. If we once again
10 specifically look at Brazil they apply a 5% penalty which is supposed to be covered by a bank guarantee, the 5% penalty is for non-performance. Now that penalty is as far as I could determine based on 5% of the obligation which in this specific case is a 100% of the contract value as well, so if we use the
15 example as already mentioned, a US\$100 million contract would have a US\$100 million obligation and 5% of that for non-fulfilment would be US\$5 million.

With regards to the increase of obligation, that is another method that is also applied by Brazil, they can either
20 apply a penalty for non-performance or they can increase the obligation value subject to agreement by the offset authority, meaning the offset authority of the Brazilian Government in this specific example.

ADV SIBEKO: So, would I be correct to suggest that if
25 one looks at the list of countries set out in pages 51 and 52 the

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practice of offsets is a matter that is not only limited to developing countries but is a matter that also applies to first world countries?

MR DE BEER: That is correct Commissioners.

5 ADV SIBEKO: Thank you. Now in paragraph 2.2 of your statement you refer to the “Perspective from the World Trade Organisation”. Earlier on I referred you to the agreement that appears to prohibit to some extent countertrade in respect of acquisitions from foreign suppliers, you said you are aware of
10 that agreement?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now before I take you to that agreement you refer to a perspective from the World Trade Organisation. Will you explain to the commissioners what you mean thereby?

15 MR DE BEER: The perspective from the World Trade Organisation is generally not in favour of countertrade, except for exclusions as contained in the agreement that we are referring to, it’s Appendix “i”. That appendix has got Annexures “i” to Annexure “v” where countertrade offsets or
20 Industrial Participation are permitted within the limitations as contained in the agreement, the annexure to the agreement. Relevant thresholds are determined for different countries. Such an annexure may have been filed at the time of the country’s government ratifying the agreement, that is the World
25 Trade Organisation’s agreement and/or may be filed as part of

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an agreement with the WTO to be concluded in the future. In conclusion to Mr Van Dyk's debate on the World Trade organisation's stance on offsets he quotes Mr S K Treahan and states that:

5 *"The WTO agreement permits countertrade when*
taking into account the development, the financial
and the trade needs of developing countries, in
particular least-developed countries in safeguarding
their 'balance of payments', to 'promote the
10 *establishment or development of domestic*
industries' and to encourage 'economic development
through regional [and /] global arrangements among
developing countries'".

These arrangements that we are referring to are typical your
15 offset or countertrade or Industrial Participation-type
arrangements.

ADV SIBEKO: Now during the course of the consultation
you had occasion to have a look at the World Trade
Organisation that he is talking about, is that correct?

20 MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Can I ask you to turn to page 746 which
you will find in file number 3. Page 746. Thank you
Commissioner, Chair. Just for the record I wish to point out
that the document was printed from the website of the World
25 Trade Organisation and it regulates government procurement.

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Mr De Beer you will see that at the, just about the bolded print which states “**Parties and Observers to the GPA**”, this document relates to “Government Procurement. The Plurilateral Agreement on Government Procurement”, do you
5 see that?

MR DE BEER: Yes, I do Commissioners.

ADV SIBEKO: Now you see also that just below that there are parties to the agreement?

MR DE BEER: That is correct Commissioners.

10 ADV SIBEKO: May I ask you just for the record to read into the record the countries that appear to be parties to the agreement and when they became parties to this plurilateral agreement?

MR DE BEER: I will do Commissioners, starting from
15 Armenia 15 September 2011, Canada 1st of January 1996, European Union with regard to its 28 member states, all of them on 1st January 1996. I will read the names, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, The Netherlands, Portugal, Spain, Sweden
20 and the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia, Bulgaria and Romania, Croatia, the latter part being the 1st of January 2007 and also Croatia in 1st of July 2013.

Then we continue with the list, Hong Kong, China
25 19 June 1997, Iceland 28 April 2001, Israel 1st January 1996,

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Japan 1st of January 1996, Korea 1st January 1997,
Lichtenstein 18 September 1997, The Netherlands with respect
to Aruba 25 October 1996, Norway 1st January 1996, Singapore
20 October 1997, Switzerland 1st January 1996, Chinese,
5 Taipei 15 July 2009, United States 1st of January 1996.

ADV SIBEKO: Now you will see that just before the list of
the parties to this agreement there is a note made just below
that heading that:

10 *“Most parties have been bound by the agreement
since its entry into force on 1 January 1996. For
some it entered into force at a later stage, some
parties have joined the agreement by way of
accession”.*

Do you see that?

15 MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Are you aware if South Africa as a country
is a party to this agreement?

MR DE BEER: To the best of my knowledge I am not
aware that South Africa is a party to this agreement.

20 ADV SIBEKO: Now below the list of countries which are
parties to this agreement there is a list of observers that is the
WTO observer members. I will not ask you to read the list of
all the countries listed there but just from inspection as you
would have earlier on, does South Africa appear as an observer
25 member to this plurilateral agreement?

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MR DE BEER: Commissioners in, upon inspection of the list Commissioners it is found that South Africa is not an observer to the WTO agreement.

ADV SIBEKO: Now having gone through this exercise
5 would you agree with me that purely on the basis of what we have looked at, despite the existence of this agreement South Africa is not bound by it?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Chair and Commissioner Musi we have
10 included the rest of the agreement in the bundle as from page 748 of the file. We do not intend to deal with any of the provisions of the agreement as we understand the agreement is not binding on South Africa. Now having accepted that South Africa is one of many countries that applies countertrade
15 agreements through its government procurement system, especially from the ARMSCOR perspective we now need to start dealing with the aims and rationale of this concepts and this you will find as you turn the page as from paragraph 3. Could you just briefly inform the commissioners to the extent that at
20 least they have had some of the evidence from the officials from the Department of Trade and Industry, how this affected ARMSCOR's procurement from the time when the DIP policy did not apply?

MR DE BEER: Commissioners, as we can see in
25 paragraph 3.1 of the statement:

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5 *“The aim of offset or countertrade, Industrial Participation is primarily derived from the economic considerations which seeks to partially offset the negative outflow of currency as a result of government acquisitions and procurement from foreign-based companies when the required product system and specific services are not locally available. This is of particular importance to the Department of Defence (DoD) as many of the requirements from the South African National Defence Force (SANDF) can only be satisfied through foreign procurement of products and services by ARMSCOR. As a result of foreign procurement the South African Defence Industry may seem to be disadvantaged in spite of the fact that the product systems and specialised services cannot be supplied locally”.*

10

15

From this we can see it is important that ARMSCOR had to look at offsetting the negative outflow of foreign currency in satisfying the specific requirements of the National Defence Force.

20

ADV SIBEKO: Now you conclude that paragraph by referring to the “South African Defence Industry seemingly being disadvantaged by foreign procurement by ARMSCOR”.

25 Could you just explain what you mean by that?

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MR DE BEER: Commissioners, the needs and requirements of the South African Defence Force, specifically also in the Strategic Defence Packages was of such a nature that it is on a very high level and it comprises of a total system. If we use for example the light fighter aircraft, the Gripen, it's a complete system that needs to be procured and supplied to the National Defence Force for its needs which that type of system cannot be procured from within the borders of South Africa as our defence related industry are in most cases not developed to the extent that they can provide full product systems and the training and the logistic support of the nature of for instance a Gripen aircraft. The same example can apply also for the Corvette's, the submarines, the light utility helicopter as well as the light, the trainer aircraft that was procured. So the aim is, or the emphasis is on the fact that system-level procurement is more often than other not possible from the South African industry.

ADV SIBEKO: So, as I understand your evidence now the issue of a disadvantage to the industry does not arise because the local industry does not have the capability to produce these armaments?

MR DE BEER: That is correct Commissioner, although we should add and state that there are very good advantages and capabilities in our local defence industry, the fact of the matter is that they are not developed up to system level, the

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capabilities doesn't exist up to system level, it is very expensive and require huge investments by government mainly to be able to put your own industry in the position to supply a product system of the nature of those in the SDPP's.

5 ADV SIBEKO: So, would it be correct to state or assume that the capability of our local defence industry relates only to, perhaps at the highest level to subsystems?

MR DE BEER: That is correct Commissioner.

10 ADV SIBEKO: And just for the edification of the commissioners or perhaps to remind them could you just explain what a subsystem is as opposed to a system as you have explained it?

15 MR DE BEER: Commissioners, a subsystem would be typically your engines of an aircraft or the helicopter or in the case of the Navy the ship's engines, its gearboxes, the avionics of aircraft *et cetera* would be subsystems that many of which there are capability and capacity in local industry.

20 ADV SIBEKO: Now having referred to this perceived disadvantage in the local industry, can you now then deal with the rationale and mechanisms that are used in relation to the offsets just briefly?

25 MR DE BEER: Commissioners, in this case where ARMSCOR need to procure from foreign-based countries and the suppliers ARMSCOR endeavours to allow for the participation of the local industry in that system-level

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procurement by requiring from the foreign suppliers to involve the local industry by means of reciprocal trade. There may be subsystems and even lower level components, spare parts *et cetera* that may be acquired from local industry, in so doing allowing them to participate in the programme, henceforth the name of Industrial Participation, it is to allow one's own industry to participate in a very expensive system-level procurement process.

5
10 ADV SIBEKO: Now in paragraph 3.2 of your statement you refer to a mechanism such as reciprocal trade. What do you mean by that?

MR DE BEER: Reciprocal trade is actually the heart of offsets and countertrade but the mechanism is when a government agency, for instance in the case of ARMSCOR procure from a foreign supplier we obliges [sic] the foreign suppliers to procure in a reciprocal manner from local industry, local from the South African point of view, so we procure from the foreign supplier and they should procure up to a predetermined and agreed-to percentage from local suppliers also products and services that may be applicable in that system that is procured, or it could be also participating in other programmes of such a foreign supplier in other countries where they now allow the South African industry with their specific products and services to participate in.

25 ADV SIBEKO: You also referred to a concept

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“international market access and network”, could you explain what that entails?

MR DE BEER: In most of the cases of foreign suppliers who can supply on system level such suppliers have got a very strong international marketing division which reach all over the world and ARMSCOR obliges the foreign supplier through Industrial Participation to allow its own marketing division to access services and products from South African companies, which means the South African company which are normally of a much smaller base and capacity, to allow the South African company to make use of their foreign sellers marketing division and also market their services and products worldwide. The best solution in this case would be when the foreign suppliers in its own system level products marketed anywhere in the world make use of some subsystems or even components, spares and services of South African companies as part of proposals to other foreign governments.

ADV SIBEKO: There is also the issue of transfer of skills as part of the mechanisms that are applied in the DIP context, could you explain what that entails?

MR DE BEER: It is also true that because of the location and the capacity of South African industry we may not always be, we may not always have access to the latest technology and skills that are in foreign suppliers of system-level. Through these obligations when ARMSCOR contract foreign

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supplier we also allow for the transfer of technology and skills to local industry and to local employees of such industry. There is a specific subcategory for technology transfer although limited but it is allowed, and it must be technology
5 that is new and unique and not similar technology that already exists in countries specifically inside the defence-related industry.

ADV SIBEKO: Now how are these objectives achieved in the application of the principles of countertrade offset *et cetera*, Industrial Participation?
10

MR DE BEER: These objectives are met by means of firm contracting where the rules of such a contract, the terms and conditions is included and it also allows for Industrial Participation in two main subcategories or two main categories
15 being direct defence Industrial Participation and also indirect defence Industrial Participation which we will define later. Now in such firm contracts the foreign supplier is obliged to commit to these activities to perform direct defence industrial participating as well as indirect defence Industrial Participation
20 until the full obligation has been met successfully.

ADV SIBEKO: in the concluding paragraph of that page you refer to issues of work share that is described in a main agreement which is defined, and other supply contracts. Could you expand on that?

25 MR DE BEER: What we also must note Commissioners is

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that there cannot be a defence Industrial Participation agreement with a foreign supplier if there is not a main agreement or a main contract for the supply of the main equipment, that is the most important and that comes first.

5 Now based on such a main agreement an obligation is attracted through the arrangements through defence Industrial Participation, that is then a separate agreement, so the main agreement would be the Supply Terms as referred to in the SDPP's and the DIP agreement is associated with such a main
10 agreement with an obligation. In the case of defence Industrial Participation as supplied by ARMSCOR and as allowed by the policy from the DTI the obligation percentage is 50% of the main agreement's value.

ADV SIBEKO: We will deal in detail with the origin of the
15 obligations to, for the DIP requirements but let us turn the page to what you deal with in the next page that relates to the history and origin of the concept of DIP within ARMSCOR. Could you just set out what, without necessarily reading the document, how this concept arose and evolved to what we are
20 now dealing with?

MR DE BEER: The concept of offset and countertrade was
implemented by ARMSCOR already since the middle 1980's and
that is to offset the flow, the outflow of foreign, of currency
from the country, that was the main purpose in the first place
25 to offset the outflow of currency. It then developed into also

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forcing the foreign suppliers to allow local industry to participate in such programmes, so it started in the middle 1980's, some examples are mentioned and I think a very famous example, we will mention examples a little bit later, so

5 ARMSCOR applied countertrade from the middle 1980's mainly to prevent or to partly offset the outflow of currency.

ADV SIBEKO: But just briefly what example are you able to refer to at this point that would demonstrate the application of this concept even as far back as the 1980's?

10 MR DE BEER: Some examples include the procurement of the air defence, 35mm air defence guns for South Africa, that actually happened in the 1960's but participation by local industry was enforced through support contracts on the foreign supplier to start to utilise local companies like as mentioned

15 here the company in the technique to be the local support services supplier for that specific system being the 35mm air defence guns. Other examples also include the trainer of the South African Air Force from Pilatus Switzerland where a local company was also allowed to participate and to form the

20 support basis in country for such a system.

ADV SIBEKO: So, within the ARMSCOR environment the issue or the practice of countertrades goes back as far as one can remember, as you pointed out in the 1960's there already was an obligation on the foreign supplier to include

25 participation of a local industry player?

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MR DE BEER: That is correct Commissioner. The example of the 35mm air defence guns does not include from the middle 1960's, the obligations for countertrade. An example of that nature is actually further on in the statement, the South African Air Force Light Fighter and Trainer that was procured from Italy in the middle 1960's, the Impala, the Mk1 and the Mk2 enforced [sic] the Italian supplier to set up a local industry which today is known by the name of Denel Aviation, it was set up in the middle 1960's to produce these aircraft and it's a successful aircraft support services supplier until today.

ADV SIBEKO: So within the ARMSCOR environment countertrades are not a novel idea that only came about during the acquisition of the programmes that form the subject matter of the SDP's?

MR DE BEER: That is correct Commissioners, it found its roots already many years ago where ARMSCOR contemplated that, however, it needs to be noted that it was applied since the middle 1980's in a more formal process.

ADV SIBEKO: Now in paragraph 4.3 of your statement you deal with the issues of the DIPS and the NIPS and the obligations arising formally as from 1988 within the ARMSCOR environment. Could You expand on that please?

MR DE BEER: Commissioners, those countertrade agreements in the period 1988 until the year 2000 encouraged the foreign suppliers to engage in business with the local

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defence industry. In the countertrade agreements of, before the SDPP's which is basically 1998 onwards we allowed for three categories of business for the purposes of claiming credits which would then offset the obligation. Those three
5 categories were allowed, namely the project related business which is the predecessor name for Direct Dip as well as defence related business, that is a wider term with the whole defence related industry, and that's the predecessor of, or equivalent to what is known today as Indirect DIP, but we also
10 allowed for commercial business, similar to what is now known as the National Industrial Participation Programme.

ADV SIBEKO: Can I ask you to just stop there and let's break this down into bits and pieces. Let's deal with the Direct DIP. Now in the Defence Industry what would be seen as
15 activity relating to Direct DIP?

MR DE BEER: Commissioners, such activity is an activity that directly relates to the main agreement, the subject of the procurement. If we use for example the Gripen aircraft, if industry, local industry that is, is allowed to participate in
20 supplying some products or components for the Gripen aircraft that would be direct DIP, it means directly related to the procurement of a system.

ADV SIBEKO: Now the use with regard to the frigates, the procurement of the combat suite, is that a matter that
25 would be related to Direct DIP?

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MR DE BEER: That is correct Commissioners, the combat suite, there was a local capability also for a combat suite and that would relate to Direct DIP.

5 ADV SIBEKO: What then will be Indirect DIP as opposed to Direct DIP, and if you can use an example thereof please feel free to do so.

MR DE BEER: Indirect DIP would be activities proposed by foreign suppliers towards local suppliers in products and services that are not directly related to the system of the main agreement, the objective of the main agreement. If we use the 10 example of the Gripen aircraft it would be products and services that the foreign supplier needs for other programmes that they may be involved in, in other countries and they can find these products, components, spare parts or services from 15 South African industry in which case they would then market that and also successfully implement those in other programmes not related to the programme with South Africa, the object of the main agreement or the Supply Terms, that would be in a nutshell Indirect DIP, but still defence related.

20 ADV SIBEKO: Is there any example that you can think of perhaps in relation to the programmes that form the subject matter of this inquiry?

MR DE BEER: A first example could be the procurement from Denel Aviation of tail booms for the Hawk-type aircraft. 25 These tail booms were also required by BAE Systems for the

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production of the 24 Hawk aircraft that South Africa procured, although Denel Aviation was not only involved in producing the first 24 for South African Hawk but also the same tail boom for other programmes that BAE Systems were busy with in a
5 foreign country, so that would be also access to the market *et cetera*, those tail booms would then by definition actually be Indirect DIP.

ADV SIBEKO: Thank you. Now you also refer to something that is similar to what is known as the NIP that is
10 the commercial business, can you just expand on that a little?

MR DE BEER: In the middle of the 1980's up until just before 1996 Commissioners the South African Government had no policy on National Industrial Participation but ARMSCOR applied such a programme as you are now aware of and this
15 programme included the third category of commercial business. In those days ARMSCOR regarded the risk of contracting for full Direct Industrial Participation or even inclusive of indirect Industrial Participation as too high due to capacity and also capability problems from the local industry.

20 We had to allow foreign suppliers to also utilise the mechanism of commercial trade for the purposes of offsetting the value of the obligation. The obligation value in those days was also principally 50%, so this third category of commercial business was allowed for the purposes of claiming credits as
25 we will define a bit later.

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ADV SIBEKO: Is there any example that you can think of in relation to what you refer to as commercial business?

MR DE BEER: Commissioners, there are examples. There are an example that was earlier mentioned that involves the export of coal. That example in this specific case pertains to the export of coal to markets that were not the standard markets of South Africa, coalmines at the time, so coal were also exported to countries like Israel who were not the normal procurer of South African coal and in which case that was also allowed for the purposes of credit, that pertains to the definition and the notion of additionality which we will also define later. That was allowed. There are other examples as well which I will not endeavour now.

ADV SIBEKO: Now the second last sentence of the concluding paragraph on that page refers to "Investments, technology transfer, export sales, local sales were allowed in terms of the countertrade agreements". Could you just expand on that a little?

MR DE BEER: ARMSCOR developed Commissioners, ARMSCOR developed the Countertrade Portfolio and refined it to include other activities as well, for instance investments where foreign suppliers who are committed and/or obliged to do Industrial Participation were also encouraged to do investments into local South African defence related industry and even the commercial industry as well. Technology transfers was

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developed to be able to transfer new skills, new technologies to South African industry for the purposes of offsetting the obligation and also then for the purposes of claiming credits. Export sales, the foreign supplier supporting local suppliers to
5 access international markets, that resulted in export sales. Local sales, that now more relates to commercial business, was also allowed for the purposes of credits where local sales would have been caused by the foreign supplier in the local market. That were, all of those subcategories were developed
10 in the countertrade division which were later on successfully employed in the Defence Industrial Participation Programme of ARMSCOR.

ADV SIBEKO: You also make reference in that paragraph to multipliers not being allowed in countertrade agreements
15 within the ARMSCOR environment, could you expand on that a little?

MR DE BEER: Since the implementation Commissioners of countertrade within ARMSCOR in the middle 1980's a principle decision was taken that multipliers would not be
20 allowed in the transfer of technology and other investments.

ADV SIBEKO: Just for my edification what do multipliers entail in the context of countertrades?

MR DE BEER: Commissioners, multipliers would be in the case of a technology transfer by example if the value of such
25 technology transfer is determined to be X, then a foreign

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supplier would normally require from the authority to allow him to obtain and claim for credits for X times 2 or X times any number that could be agreed upon. That number would be called a multiplier. For the reason that the foreign supplier
5 invested maybe lots of funds into developing that technology for its own benefit and in transferring such a technology to another supplier in a foreign country they would require at least to recover some of their investment and in such a process they would require multipliers. ARMSCOR, however, decided
10 not to allow for multipliers.

ADV SIBEKO: In the context of a countertrade agreement and where multipliers are allowed, what effect do these multipliers have on the discharge of the obligation imposed by the agreement?

15 MR DE BEER: Commissioners, the discharge of the obligation is effected by the use of multipliers in the sense that a foreign supplier would be able to discharge his obligation at a different rate. If the multiplier for instance is a 2 the rate of discharging the obligation would be 2 as well, twice the normal
20 time it would take to discharge if you view it from a time perspective so his obligation, the goal of the obligation would be reached much sooner.

ADV SIBEKO: Thank you Mr De Beer. Can I ask you to turn to page 6 of your statement where you deal with the
25 National Industrial Participation Policy that was introduced in

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1996 and perhaps how it affected the practice of ARMSCOR before the introduction of this policy.

MR DE BEER: As stated Commissioners on 1st of September 1996 the Cabinet of The Republic of South Africa
5 approved and adopted the utilisation of the instrument of government procurement to leverage economic and industrial benefits and support for further development of the industry at large in South Africa through DTI's NIP Programme. Now at that stage Commissioners you are aware now that ARMSCOR
10 already employed the mechanism of countertrade, ARMSCOR had to adapt its own countertrade system to fall in line with the national government's NIP policy and programme. The, what is important to note that the commercial category immediately fell away and ARMSCOR continued to concentrate only on defence
15 related business and by agreement with the DTI and also in line with the national programme.

ADV SIBEKO: Now the applicability of the policy with regard to the threshold of acquisition *et cetera*, could you expand on that as you have in your statement?

20 MR DE BEER: Commissioners, the NIP Programme allows for a threshold of US\$10 million or equivalent value for any government department or parastatal to apply the mechanism of Industrial Participation, so the threshold is US\$10 million or more for any government or parastatal. In the case of
25 ARMSCOR and by agreement, and as allowed by the policy

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ARMSCOR applies Defence Industrial Participation for foreign procurement done by ARMSCOR on behalf of the Department of Defence which is obviously also a government department falling under the National Industrial Participation Programme.

5 ARMSCOR's threshold is US\$2 million, so any foreign procurement by ARMSCOR for the Department of Defence with a threshold of, exceeding the threshold of US\$2 million is immediately subject to Defence Industrial Participation up to the point where such threshold may exceed US\$10 million then,
10 and in addition to the Defence Industrial Participation threshold or value then NIP, National Industrial Participation also becomes applicable. Now the threshold, the threshold we have discussed but the percentage of the obligation in the case of the National Industrial Participation is 30% of the contract value. In the case of Defence Industrial Participation it is 50%
15 of the contract value.

In the example that I mentioned when foreign procurement of a defence nature by ARMSCOR exceeds US\$10 million the total obligation would be 50% as applied by
20 ARMSCOR and in addition to that another 30%, so the total obligation on the foreign supplier would be 80%. In the case of the SDPP Commissioners that percentage was increased to be 50% for NIP in addition to the 50% for DIP, so the total obligation was 100%.

25 ADV SIBEKO: And who is responsible for the

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administration of these respective obligations, the NIP and the DIP?

MR DE BEER: Commissioners, ARMSCOR is responsible for the execution and management of the DIP agreements or
5 DIP Terms with the foreign suppliers for 50% of the contract value or whatever percentage was agreed to with the foreign suppliers whereas the additional 50% in terms of the National Programme is administered and managed by the Department of Trade and Industry.

10 ADV SIBEKO: Now in relation to the threshold of the obligations that arise you then offer some examples of how the reciprocal obligations arose and were dealt with. These you will find at paragraph 4.8 of your statement, could you just deal with those?

15 MR DE BEER: Commissioners, some examples also from early offsets our countertrade or Industrial Participation by ARMSCOR, it was already mentioned earlier in my statement, once again we can just refer to the establishment of ATLAS Aircraft Corporation later became known as Denel Aviation and
20 that was mainly due to the production of the Impala aircraft from the Italian supplier in South Africa since the middle 1960's. That is, those aircraft were disposed of by the South African Air Force only in the year 2005 which shows us that it is about 39 years of service and successful service of those
25 aircraft to the South African Air Force but what is also more

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important from a Defence Industrial Participation perspective is that Denel Aviation through all these years did not only produce these aircraft but they could also support these aircraft until the year 2005. It is also a fact that some of these aircraft are still surviving and flying in the ... Private collectors bought out some of these aircraft and are still flying around, I am not sure whether Denel Aviation is supporting such aircraft.

ADV SIBEKO: Now in paragraph 4.10 you refer to certain values relating to the countertrade agreements that were concluded earlier. Could you just give an account of what you say there?

MR DE BEER: By February of 2000 countertrade agreements outside those of the SDPP's amounted to R4.7bn of value and credits were passed successfully to that same amount to the local defence industry. All those agreements have since been completed successfully without the need of any punitive measures, so we regard those countertrade agreements as being successful and very supportive of local defence related industry.

ADV SIBEKO: Now the punitive measures that you refer to there, what are these and what do they entail?

MR DE BEER: Commissioners, punitive measures would be the application of a penalty where an obligation has not been met. ARMSCOR with its foreign suppliers always manage

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to find a way so that there is a successful rate in discharging those obligations. It entailed obviously the amendment of agreements from time to time which we will also deal with a little bit later, but the punitive measures is basically the application of a penalty, it was never necessary.

ADV SIBEKO: Now at the end of that page you deal with the aim and rationale of DIP. Could you just explain how that is different from what you have been testifying about earlier on as being the aim and rationale of the offset, countertrade and Industrial Participation that you find in paragraph 3 of your statement?

MR DE BEER: Commissioners, the aim of DIP is a more formalised process whereby the foreign suppliers is directed into the two sub, the two categories of Defence Industrial Participation meaning Direct Defence Industrial Participation which is a formal agreement which should be a pre-agreed to percentage of the total value of the contract. It could vary between 20% up to 30% of the contract value to be performed as Direct DIP participating in the main programme, that is a very formalised way of doing countertrade. Well, we talk about Industrial Participation now. The Indirect DIP will normally form the balance of the obligation, where Direct DIP is between 20 and 30 then Indirect will make up, the balance up to 50% of the main agreement's value.

So it's quite formalised. Now within Direct and

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Indirect DIP there are subcategories, for instance production from local industry, technology transfer into local industry, investments, exports, marketing access *et cetera*. Those subcategories are formalised, described, it's defined and agreed to in the form of Defence Industrial Participation agreements by ARMSCOR with the foreign suppliers, so it's a formalised process.

ADV SIBEKO: Now this formalised process and its aim and rationale you say in your statement one finds in the policy that is "A-POL-6100" that was approved on 28 July 1997, is that correct?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now that document you will find in file number 2 as from page 53. Can I ask you to turn to that page please? File number 2 page 53 Commissioner. Page 53. May I ask you for purposes of identification read into the record the title of that document.

MR DE BEER: Commissioners, the title of this document is "POLICY IN RESPECT OF DEFENCE INDUSTRIAL PARTICIPATION (DIP)".

ADV SIBEKO: Could you also read into the record the objects of that document as you will find in the Summary?

MR DE BEER: Commissioners:

"THIS DOCUMENT OUTLINES THE POLICY IN RESPECT OF DEFENCE INDUSTRIAL

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*PARTICIPATION APPLICABLE TO DEFENCE
PURCHASES ABROAD VALUING USD 2 MILLION
AND MORE”.*

ADV SIBEKO: Would it then be correct to say that after
5 this policy was promulgated the Industrial Participation within
the defence sector was regulated by this policy and what you
referred to earlier in your evidence as formalised?

MR DE BEER: That is correct Commissioners.

CHAIRPERSON: I'm sorry Advocate Sibeko, before we pass
10 this document if you look at, if you look on page 53 you will
see that the implementation date is the 1st of April 1997 and if
you go to the next page date of approval seems to be
28 July 1997. Can you just explain that to me because I don't
quite understand how can it be implemented before it's
15 approved, I thought it will be the other way around.

ADV SIBEKO: Yes. Mr De Beer, you've heard the
concern raised by the Chair. Firstly 1 April 1997, was this a
joke or something that had to be taken seriously?

MR DE BEER: Commissioners, I believe that is a mistake
20 although I believe that the aim was to have it implemented from
the 1st of April 1997, however, the division only succeeded in
having this policy approved by ARMSCOR's board by the dates
as you can see on the approval page. In so doing the division
unfortunately did not update the front page with the correct
25 date.

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ADV SIBEKO: You are certain this was no April Fool's joke?

MR DE BEER: Commissioners, I am certain it was no April Fool's joke.

5 ADV SIBEKO: In the next page you set out the policies and procedures as contained in this document. Could you just briefly summarise or refer to those specific paragraphs that you would like to deal with further later on in your evidence?

MR DE BEER: Commissioners, the most important point
10 from the policy is the implementation of Defence Industrial Participation but specifically the threshold, that is dealt with in the policy and that is as already stated US\$2 million for foreign procurement. Then as we go along as per paragraph 6.2 Defence ..

15 ADV SIBEKO: Perhaps before you go to paragraph 6.2 could I ask you to turn to page 57 of file number 2 and perhaps that would to some extent deal with the question raised by the chairperson earlier on if I ask you to read into the record what is contained in paragraph 1.1.1.

20 MR DE BEER: Commissioners, paragraph 1.1.1 of A-POL-6100 reads as follows:

*"This policy on Defence Industrial Participation is issued and described in accordance with those policy statements contained in the Department of
25 Trade and Industry's National Policy on Industrial*

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5 *Participation (hereinafter referred to as ‘NIP’) and
that of the Department of Defence (DoD) on Defence
Industrial Participation (hereinafter referred to as
‘DIP’). As accepted by the Management Board on
28 February 1997 and the Board of Directors on
2 April 1997 respectively”.*

ADV SIBEKO: Now if I may ask you to then turn to page
54, this would be the signature or approval page, if you
compare the contents of paragraph 1.1.1 and what appears in
10 the approval page are you able to explain what would ..., the
difference there?

MR DE BEER: Commissioners in this case I’m
unfortunately not able to explain this difference in dates.

ADV SIBEKO: But according to this document it was
15 approved by ARMSCOR Management Board or accepted by
ARMSCOR Management Board on 28 February 1997, is that
correct?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Alright. Now can I ask you to look at
20 paragraph 1.1.2 and read that into the record?

MR DE BEER: Commissioners, paragraph 1.1.2 of A-POL-
6100:

25 *“NIP became mandatory on the 1st of
September 1996 upon approval by the Cabinet of
the Government of South Africa, to utilise the*

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instrument of government procurement to leverage, through the NIP programme, economic and industrial benefits and support for the further development of South Africa”.

5 ADV SIBEKO: You testified earlier in your evidence that the DIP Policy was an adaptation of the NIP Policy as accepted by Cabinet, or approved by Cabinet, is that correct?

MR DE BEER: That is correct Commissioner.

10 ADV SIBEKO: What you have just read into the record at 1.1.2 would be a confirmation of that, is that so?

MR DE BEER: Commissioners, as I understand it although Industrial Participation was applied by ARMSCOR before this policy. After the implementation of the NIP Policy ARMSCOR directed its DIP Policy to be in line and in support of the NIP Programme.

15 ADV SIBEKO: Can I ask you to turn the page, or before you turn the page you mentioned earlier the percentages of obligations as they applied to NIP and DIP. Would you have regard to paragraph 1.1.5 of that document and read that also into the record.

20 MR DE BEER: Commissioners, paragraph 1.1.5 of A-POL-6100:

25 *“The NIP Policy also makes provision for the purchaser (in this case ARMSCOR) to require a reciprocal obligation on purchases below USD 10*

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million and to increase such obligation to above the DTI prescribed percentage obligation for purchases of USD 10 million or more as mandated by Cabinet. In this respect it is the policy of the DoD, fully
5 underwritten by ARMSCOR, that all defence purchases abroad with a contract value of USD 10 million or more will be subject to an 80% obligation which is to be split proportionally between national (30%) and defence (50%) industrial participation
10 programmes. Furthermore all defence contracts placed abroad valued at USD 2 million and more are subject to a DIP obligation of up to 50%”.

ADV SIBEKO: Thank you Mr De Beer. Now the provisions you have just read into the record, these are the formalised
15 processes as they were promulgated in terms of the DIP Policy that applied subsequently at ARMSCOR?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: If I ask you to look at paragraph 1.1.9 of that same page and ask you to read that into the record?

20 MR DE BEER: Commissioners, paragraph 1.1.9 of A-POL-6100 reads:

“This policy regarding the application of NIP and DIP will be applicable to all acquisition/procurement projects (with a value of USD 10 million and more)
25 deemed necessary for satisfying the collective

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security needs of South Africa. On defence contracts with a value between USD 2 million and USD 10 million, only the DIP portion will be applicable”.

5 ADV SIBEKO: And as you testified earlier this has always been the practice within the ARMSCOR environment relating to procurement?

MR DE BEER: That is correct Commissioners, but that is after the application or the implementation of the NIP
10 Programme.

ADV SIBEKO: No, my question is directed at the historical evolution of the practice of countertrades within the ARMSCOR environment as it was then subsequently formalised by this policy.

15 MR DE BEER: That is correct Commissioners, to the best of my knowledge from a threshold of US\$2 million it was implemented by ARMSCOR up to any value of the purchase contract which could have exceeded already US\$10 million but it was still only subject to ARMSCOR’s countertrade
20 agreements.

ADV SIBEKO: Now earlier on you testified or gave evidence about the aim and rationale of DIP as we now understand it. Can I ask you to turn to page 59 of that same policy, ...

25 CHAIRPERSON: I’m sorry, ...

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COMMISSIONER MUSI: Sorry, sorry to interrupt you. Can I get clarity before you proceed on that 1.1.9 where it says on defence contract the value of between US\$2 million and US\$10 million only the DIP portion would be applicable. What does it mean? Does it mean that for your ordinary NIP the obligation, the NIP obligation would be on the value of US\$10 million and above but that if it is a defence procurement then the obligation would be limited to only US\$2 million, or what does it mean?

5
10 CHAIRPERSON: Just hold on, before you answer that question, just before you answer that question, look also on page 8, 6.3 of your statement where you are quoting paragraph 1.1.5 of A-POL-6100 where it says that:

15 *"It is the policy of the DoD, fully underwritten by ARMSCOR, that all defence purchases abroad with a contract value of US\$10 million or more will be subject to an 80% obligation, which is to be split (indistinct) 80%, ... Furthermore all defence contracts placed abroad, valued US\$2 million and*
20 *more are subject to a NIP obligation of up to 50%".*

Now before that in the previous paragraph of 6.2 you say that:

25 *"It is important to note, however, the that only the DIP portion will be applicable to defence contracts with a value of between USD 2 million and USD 10 million".*

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And there is a paragraph where you are talking about the DIP Policy applying, DIP and NIP Policy applying in instances where the goods or products to be secured are US\$10 million. Now my question is combined to what Judge Musi has said, is it
5 a question of DIP and NIP applying where it is US\$10 million or is it a question of DIP and NIP applying where it is US\$10 million plus?

MR DE BEER: Commissioners, DIP and NIP is applicable from the value of foreign procurement of US\$10 million and
10 more, then DIP and NIP is applicable. ARMSCOR procurement from a threshold value of US\$2 million and more up to just below US\$10 million are then only subject to Defence Industrial Participation of 50%. So, it's only in the case of ARMSCOR at this stage, and to the best of my knowledge that it is allowed
15 that the threshold is at the value, starts at the value of US\$2 million, so then only DIP will be applicable, between US\$2 million up to US\$10 million.

COMMISSIONER MUSI: Then it's 50%?

MR DE BEER: That is correct Commissioner, at 50%.

20 ADV SIBEKO: So just for purposes of clarity DIP applies only when a procurement is for goods or services that are US\$2 million up to just below US\$10 million, only DIP applies in terms of A-POL-6100, is that correct?

MR DE BEER: That is correct Commissioners.

25 ADV SIBEKO: Now as soon as you reach, and perhaps

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just to take a step back, the obligation for the supplier would be at 50% of the value between US\$2 and just below US\$10, is that correct?

MR DE BEER: That is correct Commissioners, it's US\$2 million and up to US\$10 million.

ADV SIBEKO: Yes. Now once you get to the threshold of US\$10 million for a particular acquisition of procurement, so it is US\$10 million plus 1, would that be correct?

MR DE BEER: It would include the value of US\$10 million Commissioners, then DIP and NIP will be applicable.

ADV SIBEKO: I don't quite understand that though because if, the application of DIP exclusively must have a threshold that does not include US\$10 million, would I be correct?

MR DE BEER: That will be correct Commissioners, it will be US\$1 short of reaching US\$10 million.

ADV SIBEKO: So the obligation or the threshold for the application of both NIP and DIP would start as from US\$10 million and that would result in obligations 50% for DIP and 30% for NIP, is that correct?

MR DE BEER: That is correct Commissioners.

CHAIRPERSON: Advocate Sibeko, I think you end up confusing me more. If at all it's US\$10 million, it's say US\$10 million, is it only DIP or it's DIP plus NIP?

MR DE BEER: Commissioner, it will be DIP plus NIP.

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CHAIRPERSON: US\$10 million?

MR DE BEER: US\$10 million.

COMMISSIONER MUSI: And if I understand you correctly once
it's US\$10 million and above both NIP and DIP apply but it will
5 be 30% NIP and 50% dip amounting to 80% actually, is that
correct?

MR DE BEER: That is correct Commissioners.

CHAIRPERSON: Let me put it the other way around for my
own understanding. For NIP and DIP to apply it must be US\$10
10 million plus 1, will that be correct? And even up to US\$10
million then it's only DIP but then if it's US\$10 million plus 1
then it's NIP and DIP?

MR DE BEER: We can apply it in that way Commissioner.

CHAIRPERSON: Okay, I think maybe let's take a break for
15 five minutes, I'm still confused up to now. We'll adjourn for 15
minutes.

(Commission adjourns.)

(Commission reopens.)

CHAIRPERSON: Thank you. Can the witness confirm that
20 he is still under oath?

MR DE BEER: I do.

CHAIRPERSON: Thank you.

ADV SIBEKO: Thank you Chair. Perhaps to try and
clarify the apparent confusion on the applicability of DIP
25 exclusively and NIP over and above DIP in the acquisition

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process we'll try and take a step, a step back. Now you've testified that in terms of the policy applicable, and let's deal specifically now with A-POL-6100 there are instances in terms of that policy where only DIP will be applicable or DIP obligations will be applicable during an acquisition process, is that correct?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now in terms of the policy at what stage does the reciprocal obligation on a supplier begin to arise in this process?

MR DE BEER: This obligation Commissioners arises at procurement of US\$2 million in the case of Defence Industrial Participation.

ADV SIBEKO: Now at US\$2 million that would be the value of the goods or service that are procured, is that correct?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now what is the threshold of the obligation that arises with the acquisition of the US\$2 million procurement?

MR DE BEER: Commissioners, that is 50% of the contract value.

ADV SIBEKO: Now up to a point you have the exclusive application of DIP obligations, is that correct?

MR DE BEER: That is correct Commissioners.

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ADV SIBEKO: Now in terms of the policy now both NIP and DIP Policies, it's the one applied by DTI, one applied by ARMSCOR, at what point do both NIP and DIP begin to apply/

MR DE BEER: US\$10 million.

5 ADV SIBEKO: Now it is at that point that the NIP obligations come in, that is US\$10 million, is that right?

MR DE BEER: That is correct Commissioners.

CHAIRPERSON: Advocate Sibeko maybe let me come in, even then that doesn't seem to tell you that with the policy
10 document. I've looked at it again, it says that when it exceeds US\$10 million, it says when it exceeds. If you look at 6.2 of his statement "with a value of US\$2 million or more whereas NIP becomes applicable in addition to DIP when the contract value exceeds US\$10 million". As I understand this policy
15 between US\$2 million and US\$10 million it will be DIP only, when it exceeds US\$10 million then it's NIP and DIP.

ADV SIBEKO: Chair, the confusion might be attributed to the inelegance in the drafting because from our understanding of the, even the NIP Policy it makes provision for the
20 application of, or the obligations in respect of NIP becoming or arising as from US\$10 million, so once it hits US\$10 million there would be an obligation on ARMSCOR to notify DTI of that acquisition because the threshold kicks in at US\$10 million, so it, the confusion appears to be a function largely of inelegant
25 drafting. In practice, and this has been confirmed, perhaps the

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witness will confirm that once it hits US\$10 million DTI must be informed because the NIP obligations which is 30% of the contract value come into being. I have during the course of the break taken the liberty of confirming with the DTI representatives and they also seem to understand the policy applies in that way. Perhaps if I may address your attention to what appears on page 58 Chair and Commissioner Musi, this is what the witness also read to, into the record as from paragraph 1.1.5. Now it says in paragraph 1.1.5:

10 *“The NIP Policy also makes provision for the purchaser (in this case ARMSCOR) to require a reciprocal obligation on purchases below US\$10 million and to increase such obligation to above the DTI prescribed percentage obligation for purchases*
15 *of US\$10 million or more as mandated by Cabinet”.*

Now it continues to say:

20 *“In this respect it is the policy of the DoD, fully underwritten by ARMSCOR, that all defence purchases abroad with a contract value of US\$10 million or more will be subject to an 80% obligation which is to be split proportionally between national (30%) and defence (50%) industrial participation programmes”.*

Now the inconsistency seems to arise from the drafting as you fell [sic], but it is understood that as from US\$10 million or

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more this obligation kicks in. I think what also is the source of the confusion is what appears in paragraph 6.2 of the witness's statement where he refers to the contract value exceeding US\$10 million. I think it is the paraphrasing that is not
5 correct. Now the policy is very clear in paragraph 1.1.5 as to the thresholds in terms of which a contract value state or becomes the determinant factor of which of the two programmes would apply, if it is exclusively DIP it would be US\$10 million, up to just below US\$10 million and as from US\$10 million and
10 above on a proper reading of paragraph 1.1.5 of the policy it is very clear that at that point the NIP obligations arise with the obligations on the 80/50/30 split.

COMMISSIONER MUSI: Yes, I think I've always understood it that way and I thought when you led the witness I think you
15 were a bit careful to say between US\$2 million and under just below US\$10 million. The problem comes when you include US\$10 million in that equation.

ADV SIBEKO: Yes, I perhaps may have been inelegant in the way that I was posing the question to the witness, I sought
20 to indicate that NIP applies or DIP applies to a point and at US\$10 million NIP and DIP then apply, that is what we sought to illustrate.

CHAIRPERSON: Okay thank you, maybe let's get to the next point.

25 ADV SIBEKO: Mr De Beer, at the point of the confusion

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arising we were just about to deal with the aim and rationale of
DIP as contained in the policy, you recall that?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: And at that point I was just about to refer
5 you to page 59 of the policies which makes provision for the
objectives of DIP as at paragraph 1.2.2, do you see that? At
1.2.2 page 59.

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: May I just ask you to quickly read that into
10 the record please?

MR DE BEER: Commissioners, paragraph 1.2.2 of A-POL-
6100, "Objectives of DIP":

*"1.2.2.1 DIP shall be applied in such a manner that
it contributes to independence as far as it is
15 practically possible as regards the maintenance and
advancement of South Africa's defence industrial
capabilities. The objective is furthermore to
manage such programmes proactively to ensure that
sellers meet their contractual obligations
20 timeously".*

The next paragraph:

*"1.2.2.2 The main objectives of all the programme
are thus, and in addition to the NIP objectives, also
addressing specific defence industry objectives
25 such as the:*

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- 5 a) *Retention, and where possible creation of jobs, abilities and capabilities;*
- b) *Establishment of a sustainable defence industrial and economic basis, with strategic logistic support capabilities;*
- 10 c) *Promotion of defence exports or value added goods;*
- d) *Promotion of like-for-like technology transfer and joint ventures.*
- e) *Maintenance of skilled indigenous manufacturing capabilities; and*
- f) *Provision for a sustainable local defence industry capacity”.*

ADV SIBEKO: Now at paragraph 1.2.2.1 that reference is made to the application of DIP in a manner that contributes to the independence of the South African Defence Industrial Capabilities. What does that mean precisely?

MR DE BEER: Commissioners, in the example that we used earlier about the ATLAS Aircraft Corporation manufacturing the Impala Aircraft, that was done in such a way that ATLAS Aircraft Corporation, today known as Denel Aviation became independent eventually, they could manage, support and even amend that system through development changes on their own without the support of the main foreign supplier, so that would pertain to independence of the defence industry.

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ADV SIBEKO: Paragraph 3 of the policy, can you refer to that at page 60 of the policy? It seems to set out the principles of how DIP's are applied. Could you just briefly elaborate on that?

5 MR DE BEER: Chair, it starts off with the responsibility for countertrade DIP and NIP functions where NIP as we discussed already is the responsibility of the Department of Trade and Industry as contemplated in paragraph 3.1.2 of the policy. Then in 3.1 ... See the numbering problem there?

10 The first number should be 3.1.2, the one with the heading "Department of Trade and Industry" should actually be 3.1.1. The next paragraph should be 3.1.2, the one with the heading "ARMSCOR's Countertrade Division". The ARMSCOR's Countertrade Division would be responsible for Defence

15 Industrial Participation from the threshold of US\$2 million as already contemplated up to the total value of that contract, Defence Industrial Participation is applicable even if it's exceeding the NIP threshold of US\$10 million. It continues on page 61 with the responsibilities of ARMSCOR's countertrade

20 manager today known as a DIP manager, these managers are responsible for compilation of RFI's, RFO's, evaluation, reporting as such, the participation in negotiations, contracting and then management of such DIP agreements when it came into being, become effective. In 3.1.4 ARMSCOR's programme

25 manager is described whereas the ARMSCOR programme

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manager is involved in the main agreement as defined, that is the subject of the procurement that is taking place, so the programme manager is managing the acquisition or procurement of main equipment whereas the DIP manager is responsible for management of DIP agreements to manage the countertrade and Industrial Participation agreements with foreign suppliers. The DIP manager or countertrade manager is not involved in managing the contracts that are the result of the foreign contractor in contracting local defence industry, it is important to note that the DIP manager is not involved in those contracts. He is only managing the agreement between ARMSCOR and the foreign supplier.

ADV SIBEKO: Now that agreement between ARMSCOR and the foreign supplier, what is it referred to as or how is it described? How is it described?

MR DE BEER: The DIP agreement is, contains the obligation of 50% and if NIP is also applicable it will contain both of those obligations although the NIP obligation will be managed in a separate agreement, so we will concentrate on the DIP agreement, so it contains the obligation, the monetary value of that obligation, the differentiation between direct DIP and Indirect DIP in terms of percentages and then a business plan supporting the agreement stating all the activities relating to and falling in the category of Direct DIP.

And then also for Indirect DIP it will contain in the

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same business plan those activities offered to and to be contracted with local industry for Indirect DIP, so that would be the main points of such an agreement, it will also contain performance, milestones, also the regular meetings for management between ARMSCOR and such foreign supplier, typically on a six monthly basis, because it is a foreign supplier it cannot take place every month, it will entail high cost of travel, and then it will also contain the end date of that contract with the final milestone and then also the completion of the obligation with regards to the guarantee and the guarantee for the penalty, when that will be reduced to zero, it will contain all those terms and conditions.

ADV SIBEKO: There are further functionalities that are referred to later in this paragraph like your DIP Committee *et cetera*, what is the role of the DIP Committee in the administration and management of a DIP agreement?

MR DE BEER: Commissioners, the DIP Committee forms the Management Committee for all DIP managers and the head of the division whereby the DIP Committee will assess DIP proposals. It is the role of the DIP manager to submit DIP proposals to the DIP Committee for assessment and for approval or rejection or correction. After contracting the DIP Committee will also up to a point in time, which were recently changed in the policy but in terms of this current policy in front of us the DIP Committee would then also approve claims for

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credits which are submitted by foreign suppliers to the DIP manager, turning it into a submission to the DIP Committee by the DIP manager and then recommending it for approval as a credit, so that is also the role of the DIP Committee. The DIP
5 Committee would also approve or reject proposed amendments to DIP agreements and also the closure of a DIP agreement when the obligation is fully discharged.

ADV SIBEKO: Later on in paragraph 6.5 you deal with certain DIP principles as are contained in the policy, but
10 perhaps before we deal with these principles Chair, would this be a convenient time to take the lunch adjournment and we'll deal with the rest of these principles, it will take quite a bit.

CHAIRPERSON: We'll take the lunch adjournment until 14h00. Thank you.

15 **(Commission adjourns.)**

(Commission reopens.)

CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

MR DE BEER: I do.

20 CHAIRPERSON: Thank you.

ADV SIBEKO: Thank you Chair. Mr De Beer, we are still busy with the principles that apply in the DIP environment as prescribed in the A-POL-6100. You recall that?

MR DE BEER: That is correct Commissioner.

25 ADV SIBEKO: Now I'd like for us to deal with the

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principles that you would find at page 62 of Volume 2 of file number 2 and you would find that these correspond in some way with what you set out in your statement at page 9 paragraph 6.5, is that correct?

5 MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now the first principle that appears at 6.5.1 of your statement, and if you look across the document at page 62 is the "Price", paragraph 3.2.1. Several issues arise in relation to the price within the DIP space. Could you just
10 briefly elaborate to the Commissioners what the importance of, or what is the significance of the price in respect of a project in the DIP space?

MR DE BEER: Commissioners, the price of the main supply agreement or the main contract determines not only the
15 acquisition of the equipment but also determines the value of the DIP obligation. That must be seen in relation to the thresholds that we've discussed before the lunch break, the threshold of US\$2 million and then also the threshold of US\$10 million where NIP also applies. So, the price is extremely
20 important to be determined unambiguously so that the value of the DIP obligation which will be 50% of that price is determined and where NIP is applicable the additional 30% of the NIP obligation is determined via the price, so that is extremely
important.

25 ADV SIBEKO: Now in terms of that principle it is

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provided that the DIP obligation must not result in an increase in the price of the purchase. What does that mean just literally?

MR DE BEER: Commissioners, the price of the equipment
5 must not be additionally loaded if I may use this term, with the fact that an obligation in the form of DIP and where NIP is applicable in addition, that the price will be increased. That is the aim and idea of this objective or this principle. It is true, however, that any foreign supplier have to deal with contract
10 management in its entirety and that includes the management of obligations in the form of DIP or NIP's and therefore in the overhead structure of the company one can imagine that the cost for management of DIP obligations and/or NIP obligations is included in some way, however, the specific increase of a
15 price because of these obligations is not permitted.

ADV SIBEKO: So, an official either at ARMSCOR or DTI making a valuation of a response to an RFO is not able to determine separately if the price offered includes or does not include the DIP obligations?

MR DE BEER: Commissioners, it will be very difficult for
20 a DIP manager or a NIP manager to determine that just based on the face value of offers received, unless he or she has got an intimate knowledge of the products and services, as well as that specific foreign supplier, I think the only way that one
25 really can determine whether this foreign supplier really

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increase specifically the price because of DIP and/or NIP would be via an audit and more so a forensic audit.

ADV SIBEKO: So, in the evaluation of these tenders that were submitted the price that was quoted as being the value
5 that was being committed was taken at face value as not including the DIP obligations, would that be correct?

MR DE BEER: Commissioners, if we read it, the question in terms of the principle as we discussed here the price value as stated in the offers was taken on face value.

10 ADV SIBEKO: Right. The next principle in the next paragraph refers to "Mutual Benefit Situation". Could you expand on that?

MR DE BEER: Commissioners, it is also the aim of ARMSCOR's Industrial Participation Division to allow that DIP
15 activities should be mutually beneficial, in that way the foreign obligor also derives some benefit out of this. I can explain that in another way by using price structures or components, services or other products that foreign suppliers may find within the South African industry, specifically the defence
20 related industry. It is so that foreign suppliers are then exposed to the South African industry and become aware of products that may be on the local market available that such foreign supplier may not have or may not have sub-suppliers from foreign origin to him. In that way they may find that
25 South African prices are favourable and also due to rate of

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exchange benefits that they may rather procure from local business meaning South African business some products or services which they then can market further overseas with a normal profit attached to that, so that's the mutual benefit situation. The DIP division would not specifically prevent that from happening.

ADV SIBEKO: And as you pointed out there is the possibility of discovering certain systems or subsystems from the local defence industry that the foreign supplier would not have been aware of, is that correct, do I understand your evidence correctly?

MR DE BEER: That is correct Commissioners. I may name an example. The local industry in the time before the SDPP's and during that time developed a system which is used on aircraft which is called, in those days it was called a health usage and monitoring system which was quite unique and has got new functionalities that foreign suppliers were not exactly aware of and did not have also from their own sub-supplier base, so that component was to a great extent also utilised by foreign suppliers and further marketed.

ADV SIBEKO: What was that component used for, if you can just elaborate on this example you're citing?

MR DE BEER: Commissioners, the health and usage monitoring system actually monitors the condition of an aircraft whilst flying and its major subsystems for instance the engines

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and the general condition of the aircraft. That information is captured on memory and then specifically used once the aircraft landed by the ground support personnel, downloaded from this system and they can then monitor the whole flight of that aircraft until landing to monitor the condition of for instance the engine to see whether the engine performed to its normal functionalities as it is supposed to be, and that helps in support activities.

ADV SIBEKO: That would also assist in the maintenance functions that would be required from the ground crew when they inspect an aircraft, is that correct?

MR DE BEER: That is correct.

ADV SIBEKO: Yes. Now you deal further with additionality as a concept in the DIP space, what does that mean?

MR DE BEER: Commissioner, the principle of additionality is that all DIP activities offered should be additional business and not the normal standard business and specifically in the exports, it should be new business incremental to existing business and that would only be considered for credits, so it's important if we also use the example of coal exports, although no longer part of the DIP environment, that such business should have been additional, it is not the standard exports that a foreign supplier can now come and claim for credits but it must be new business and

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also caused by this foreign supplier which is the principle that we will still discuss.

ADV SIBEKO: The example of the aircraft component that you testified to just a short while back would also fall into that category not so?

MR DE BEER: That is correct Commissioners, although one must take into account if that component was recently discovered by foreign suppliers and already been exported then they would not be in a position to claim those exports as credits before a DIP agreement come into being.

ADV SIBEKO: The next concept is that of sustainability, how does this work?

MR DE BEER: It is a principle as stated, sustainability Commissioners. It is difficult to apply, however, what we would like to prevent if possible is once-off type business which lasts only for a year or two years or up to three years. One would endeavour to allow for activities from foreign suppliers to local business which is sustainable and can at least be for a period of five years if not longer.

ADV SIBEKO: Talk to us about causality.

MR DE BEER: Commissioners, the causality principle is the fact that the foreign supplier who are obliged through or via a DIP agreement will cause these activities to be contracted to local industry. Now that does not necessarily mean that the foreign supplier's own company must contract in total for all

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the activities proposed but such foreign supplier can also utilise other industries of his own country or even from other countries to place contracts on his behalf in the defence related industry in South Africa as long as the foreign supplier
5 can prove to ARMSCOR that he caused that activity to happen. So causality is very important that it is to be in all cases from the foreign supplier.

ADV SIBEKO: And the principle of responsibility in the DIP programme?

10 MR DE BEER: Commissioners, the responsibility for fulfilment of the DIP obligation is solely with the seller, the responsibility for the management of that DIP agreement and to make sure that it is timeously completed will be that of the countertrade division and also the DIP managers.

15 ADV SIBEKO: Now if you turn to page 67 of the file, and perhaps before you go there, there is something on page 66 referred to as the "DIP Credit", could you explain what a DIP credit is?

MR DE BEER: Commissioners, the DIP Credit is also
20 explained in the statement a little bit later further on, I cannot get to the page in time now but from memory the DIP credit is a value that reflects a DIP contract which excludes all foreign content which is the value of a DIP contract placed by foreign seller on a local company. That value is then claimed from
25 ARMSCOR in offsetting the DIP obligation, so that would be the

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DIP credit. Once approved and also before approval it must be supported by the relevant documentation and once the DIP manager is in support of that claim it will be submitted to the DIP Committee for approval.

5 ADV SIBEKO: I know you will talk in some detail about the actual explanation of the DIP credit, but when you say that DIP credit will be awarded with the support of relevant documentation would you for example state what these documents are likely to be in any claim for DIP credits that has
10 to be considered?

MR DE BEER: A DIP claim is submitted by the foreign seller based on a format that is supplied by ARMSCOR within the DIP agreements. So, first and foremost a DIP credit must be claimed utilising the correct form and format and it must be
15 duly signed. Secondly that DIP claim would refer to the activity number, it will refer to the description, the company, the local company that the contract was placed on and very important it will also reflect the value of such DIP contract. The DIP contract itself will form part of the relevant
20 documentation so that ARMSCOR can verify that a contract indeed came into being between the foreign supplier and also the local company, so that would most importantly, be the most important documentation to support the claim.

In addition to support of the claim the ARMSCOR
25 DIP Division will separately verify with the local company

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based on a fixed format that they are aware of this contract and that they indeed accepted this contract and also executed the contract. There will also be questions with regards to the value of the contract and if there are any imported content or royalties or any other cost that the foreign contractor may subtract, whether that is included, because the DIP credit will be a value removed from all foreign content, royalties, statutory costs *et cetera*, so that would be the main components of documentation supporting a claim.

5
10 ADV SIBEKO: Perhaps as you deal with foreign content it might be appropriate to have regard to what is set out in page 67 regarding "Imported Content". Could you explain what is imported content as opposed to foreign, I guess local content.

MR DE BEER: Local content.

15 ADV SIBEKO: Yes.

MR DE BEER: Commissioners, when one read the definition of "Imported Content", we are inside South Africa and must be viewed from the point of a local contractor. If in performing of a DIP contract placed upon a local contractor by the foreign seller, if inside that contract are any imported content, that value must be identified and that would not be accounted for DIP credits, so we would only count value for money across the border, not money that goes the opposite direction as well, so that will be subtracted, imported content from the local contractor's point of view.

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ADV SIBEKO: Are you able to think of any example that would have, in the execution of the DIP obligation something that is akin to imported content during the evaluation of a DIP claim?

5 MR DE BEER: Commissioners, examples could be in the case of a subsystem or a component that is locally developed but it makes use of for instance software that must be bought out from overseas or other components of maybe materials that are not locally to be found. Those materials or software must
10 then be imported and obviously as I stated before the value of such must be identified and will be subtracted, but there are many instances where local companies have to import materials to be able to produce a component or even a subsystem for supply to the foreign seller.

15 ADV SIBEKO: Thank you. And how do joint ventures operate within the environment of the DIP Programmes?

MR DE BEER: Commissioners, I must admit that in my period there was no joint ventures formed, so I'll have to rely on what is stated in the policy.

20 *“Joint ventures shall refer to an agreement between the seller or industries in the seller’s country and ARMSCOR or defence related industries in South Africa in terms whereof each party contributes for the purpose of achieving a common and mainly
25 Defence Industrial interest. For the purposes of the*

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5 *aforementioned the Countertrade Division in
collaboration with the DIP Committee may consider
credits for investments, technology transfers,
marketing assistance and the net gain for
ARMSCOR or defence related industries in South
Africa”.*

10 What we can deduct from that is when joint ventures come into
being foreign sellers may claim credits but only for the
purposes or based on investments made by the third party
seller, the third party to the seller who make a joint venture
with the local company, such investments would be considered
for DIP credit claims and also in the case of technology
transfers into the joint venture, but the direction of flow of
technology transfer as well as investments must be from
15 outside the borders to inside the borders of South Africa. The
applicability of additionality and sustainability *et cetera* also
applies in considering such.

ADV SIBEKO: Now in paragraph 3.3.13 “Cancellation” is
referred to there. How is that dealt with in the programmes?

20 MR DE BEER: DIP agreements will typically also allow for
cancellation of DIP contracts in whole or in part due to the sole
fault of the local supplier. Now the emphasis on “sole fault of
the local supplier”. This is a potentially dangerous situation in
that foreign sellers may endeavour to cause local companies to
25 fail in the execution of their DIP contracts in which case they

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might claim the full value of that contract although it did not materialise. That is why I'm stating that the emphasis is on the "sole fault of the local supplier". If it can be proven that it is only the local supplier who defaulted in execution of that contract in such case ARMSCOR DIP Division will consider the approval of a claim in such regard.

ADV SIBEKO: What happens in instances where the foreign supplier is also at fault?

MR DE BEER: In such case the credit claim will not be approved and the foreign supplier will still be obliged to either perform that specific activity with that specific company or it is allowable to amend DIP agreements whereby the activity could be amended or the local supplier could be amended or both to be amended but to a value of at least equal if not more of the original activity.

ADV SIBEKO: Now in instances where DIP obligations are to be performed, is ARMSCOR responsible in any way in nominating or electing the local company that will benefit from a DIP obligation?

MR DE BEER: Commissioners, ARMSCOR is not, is ... In no way ARMSCOR can appoint local suppliers on behalf of the foreign supplier, ARMSCOR can also not appoint local suppliers towards the foreign supplier and be instrumental in setting up those agreements.

ADV SIBEKO: How does a foreign supplier then become

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aware of which entity it would need to enter into contracts with for purposes of discharging the DIP obligations?

MR DE BEER: Commissioners, this is also, because it's specifically defence related it may not be common knowledge to
5 foreign suppliers which companies to approach. For that reason ARMSCOR in cooperation with local defence industry in the 1990's, even in the 1980's compiled registries of local suppliers which via ARMSCOR was also supplied to foreign suppliers to make them aware of local companies' contact
10 details and types of products. That is a facilitation that ARMSCOR also performed.

In the time of the SDPP's that was quite an important instrument to make foreign suppliers aware of local defence related industry. ARMSCOR also implemented or
15 conducted a conference whereby all local defence industry that ARMSCOR was aware of at that time were invited to a conference and all the foreign potential suppliers were invited to the same conference where they could meet and also enjoy exhibits from local companies. Through that establishment of
20 relationships started to flourish and local, the local industries had an opportunity to market their products and services to foreign suppliers.

ADV SIBEKO: Thank you. Now going back to the policy on page 67 there is something mentioned, mention is made
25 there of "Proactive DIP Agreements". What are those?

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MR DE BEER: Commissioners, proactive DIP agreements are agreements that come into being before a supply contract or a main contract is entered into by ARMSCOR for the supply of a specific system. This is in cases where foreign suppliers
5 anticipates that ARMSCOR may enter into procurement of systems in the future. In doing so ARMSCOR Countertrade Division was responsible to engage local industry already in business with foreign suppliers in anticipation of such but it must be noted that in no way that would guarantee the
10 contracting of such foreign supplier by ARMSCOR for the main equipment, that risk is made very clear to foreign suppliers or potential foreign suppliers that they do it on their own risk.

Whilst performing such proactive DIP agreements they will accumulate credits which are and were banked by
15 ARMSCOR for future use. In the late 1980's and the early 1990's such credits were banked and they had no expiry date. Lately those proactive agreements contains a clause where such credits lapse after a number of years, I am not too sure how many years, Mr Pieter Burger may help us on that, the
20 expiry of such bank credits.

ADV SIBEKO: Now in the execution of the obligations and administration of these matters the DIP Division you said administers the DIP Programmes and where there is a NIP obligation the DTI administers its programmes. Is there any
25 relationship or liaison that takes place in instances where the

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NIP obligations are also involved in acquisition?

MR DE BEER: Commissioners, there are liaison and these liaisons are important to note. First and foremost the DTI must know the price in the first place from which is derived the NIP obligation and then from the DTI there are also milestones that they reach from time to time in the discharge of the obligation but what is quite important if there is a change in the main Supply Terms, for instance ARMSCOR are forced to cancel some of the main supply, then the obligations are affected or in the opposite direction where ARMSCOR acquires more of the same equipment and the price therefore increase or the value of the contract increase the NIP and DIP obligations increase automatically in the same way.

Now liaison is important from ARMSCOR towards the DTI to keep them informed on the progress on the main supply as well as the, any amendments to the main supply that may potentially affect the NIP obligation and the discharge of such obligation.

ADV SIBEKO: Now if you turn the page to page 68 of the policy there you will find mention being made of deviations. Could you talk to us about "Deviations".

MR DE BEER: Deviations can occur with regards to, from the RFI stage through to the RFO stage that there may be deviations with regards to the standard DIP Guidelines. If we stand still for a moment at the RFO and by example inside the

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RFO towards the suppliers of the SDPP's all the potential suppliers, there was a standard set of DIP guidelines, there was, however, requirement for a deviation to that standard set because of the Corvette Programme and the division in the Corvette Programme between the platform as well as the combat suite, so that is an example of a deviation that we had to implement in the standard RFO documentation. Now that can be managed and can be approved by the head of the Countertrade Division in consultation with ARMSCOR's Legal Department and/or the DIP Committee if necessary, that is with regard to deviation to RFO documentation.

ADV SIBEKO: Would the deviation contemplated in that paragraph also include some deviation from the manner in which the bidders submit their responses, especially with regard to DIP obligations?

MR DE BEER: Commissioner, deviations from that point of view must be managed and it can occur and it did occur, however, it must be managed within the policy guidelines, the ARMSCOR DIP Policy Guidelines.

ADV SIBEKO: I'm not sure if I understand your response. My question really is you've explained how deviations are applied in the acquisition process and especially with regard to DIP insofar as it relates to what is set out in the DIP Guidelines which forms part of the RFO to suppliers. Now the question I was asking is in the same way as the principle of

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deviations appears to be contemplated in instances where the RFO document is formulated, would deviations or would this principle also apply in instances where the bidders as in the foreign suppliers complete these forms or these responses and submits them to, say ARMSCOR for evaluation only in respect of the DIP obligations?

MR DE BEER: Commissioner, to the best of my knowledge that would not be approved or acceptable that the foreign suppliers would deviate from the principles as contained in the DIP Guidelines in RFO's.

ADV SIBEKO: Thank you. Now there is a further, I think it's the last concept there relating to evaluations. I recall that there is a detailed explanation of evaluations later in your statement. Could you just briefly explain what this entails?

MR DE BEER: Commissioners, in the compilation of RFO documentation, specifically the DIP Guidelines the ARMSCOR DIP Division should also devise an evaluation methodology which is contained in the value system, such to be applied to evaluate offers to be received. The principles of such value system is also conveyed to the foreign suppliers so that they know what they will be evaluated upon, what would not be supplied to the foreign suppliers is the scoring as well as the weighting of the scoring.

ADV SIBEKO: Thank you. And perhaps to pause on this policy that bring, that comes, that brings an end to this policy,

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is that correct?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Now if you turn to page 10 of your statement as from paragraph 6 you deal with further policies
5 that were applicable in the Defence Industrial Participation environment at the time, that is the procedures, the practices and so forth. Could you just give a general description of what these are and what they regulated?

MR DE BEER: Commissioners, ARMSCOR endeavoured to
10 be certified in terms of ISO-9000 Worldwide International Standard. In that process it is expected of a company or an institution like ARMSCOR to conform to the requirements of such standards. Now the requirements of those standards *inter alia* requires from an institution to have a policy and in support
15 of the policy's procedures and in support of the execution of the procedures, also practices. So, we're talking now about policies, procedures and practices. That happened in the middle 1990's that ARMSCOR endeavoured to be certified. In the process the Countertrade Division then had to develop, the
20 policy was already in existence but they had to develop a procedure, the procedure we're referring to is initially A-PROC-008, Defence Industrial Participation Procedures and then also in support of that procedure, and that is on page 11 practice was developed with a number A-PROC-6030, Defence Industrial
25 Participation Practice. So, in short ARMSCOR until today and

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to the best of my knowledge we have a policy on Defence Industrial Participation and then we have a procedure and in support of the procedure and the policy we have a practice.

ADV SIBEKO: Now let's start with the procedure that is referred to in paragraph 6.6 and 6.7 and while you have your finger on that can I ask you to go to file 2 and go to page 69. Thank you Chair and Commissioner Musi. May I Mr De Beer ask you to identify the document for the record please?

MR DE BEER: Commissioners, this document, the title of this document is "Defence Industrial Participation Procedures", the document number is A-PROC-008, the summary of this document outlines the procedures and requirements in respect of DIP agreements applicable to defence purchases abroad, valuing US\$2 million and more.

ADV SIBEKO: Now you will see on the date page or the implementation date of that policy or procedure it is 1 April 1997 and if you turn the page the approval page is signed on a different date, do you see that?

MR DE BEER: Yes Commissioners.

ADV SIBEKO: You were asked earlier by the commissioners if you could explain the mal-alignment of the dates there. Is that, that's the same problem as previously?

MR DE BEER: Commissioners yes, that is correct. These documents were compiled and submitted for approval with the idea to have it approved on the date. It did not take place

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most probably for practical reasons, so it contained the same problems as the policy.

ADV SIBEKO: Now while you have that document open can I ask you to go to page 87 of that document. Right, again
5 this is a matter we will deal with later in your evidence but there is a question of evaluation that is provided for there. That is more or less the same with what you have testified to just a short while back, is that ...

MR DE BEER: That is correct Commissioners.

10 ADV SIBEKO: However, what is provided for there is an evaluation model which is prescribed. You will see in the last sentence of that paragraph, could you explain the model to the commissioners as it will become relevant later in your testimony?

15 MR DE BEER: Commissioners, I'm not exactly sure what the question entails. The reference to Figure 2 is not necessarily a model but rather a process to be followed, if I can just understand the question?

20 ADV SIBEKO: The process that is followed during an evaluation, it is referred to in that paragraph as an evaluation model, we call it process, the procedure as prescribed refers to it as a model but do you understand if you have regard to Figure 2 that's contained in page 88, does that deal with the process as you describe it?

25 MR DE BEER: Commissioners my apologies, that is the

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model. The evaluation would focus on the defence strategic areas, that is quite important for us as can be seen in this figure depicted on page 88. The product strategic would refer to the main system, that is the subject of the main agreement and then how it relates to the DIP imperatives, then we would focus on the industry strategic which is important for industry, for industry obviously what is of importance is business and the growth of business, the acceptance of new skills, the acceptance of DIP contracts *et cetera* and those are also depicted in the model, and then this is divided into the Direct and the Indirect DIP as already explained earlier today, which must still be more precisely defined.

Then obviously NIP when it becomes applicable the imperatives of NIP will also be taken into account, however, not by the Countertrade Division but by liaison with the DTI and the NIP imperatives will also look at economic benefit factors and provide for a ranking, so from the NIP side it will be mostly focused on economic benefit factors for industry at large whereas for the ARMSCOR evaluation it will be specifically those industry strategic factors for the defence related industry that will be evaluated. I trust this will become a bit more clear when we do the specific value system that was applied for the SDPP's.

ADV SIBEKO: Thank you. And you say in paragraph 6.7 of your statement that this "BDB4" was applicable during the

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RFI and the RFO phase and contracting of the SDPP, is that correct?

MR DE BEER: That is correct Commissioners.

5 CHAIRPERSON: Advocate Sibeko, you are referring to paragraph 6.7?

ADV SIBEKO: Yes, it is 6.7 of the statement.

CHAIRPERSON: On page?

ADV SIBEKO: On page 10 of the statement in file 1.

10 CHAIRPERSON: Just hold on. Yes, we seem to be ... I do have that page, but unfortunately Judge Musi still has got the old page, it hasn't been changed but then it doesn't matter, that can be done later on.

ADV SIBEKO: We will endeavour to do that Chair, I was assured this morning that all the pages, the replacement pages
15 had been copied and furnished to the Commission staff, however, the old paragraph 6.1 corresponds with 6.6 of the new page 10 and the old 6.2 is currently 6.7. The content is largely the same but during the adjournment we will endeavour to attend to the replacement of the pages of Commissioner Musi's
20 bundle. Thank you Chair. You have confirmed Mr De Beer that this A-PROC-008 document was applicable during the RFI and RFO phase of the procurement.

MR DE BEER: That is correct Mr Commissioners.

ADV SIBEKO: Now you then refer to A-POL-6000 Policy
25 in respect of Defence Industrial Participation as approved on

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11 February 2002. Could you just briefly describe what this policy is and what its object was?

MR DE BEER: Commissioners, A-POL-6000 actually superseded A-POL-6100, it corrected some of the old terminology that was still included in A-POL-6100, specifically those referring to countertrade is replaced by Defence Industrial Participation, the division's name was corrected accordingly. The applicable literature heading in the old policy was replaced with the correct heading namely "Applicable Documents" and then A-PROC-008 was already then also replaced by A-PROC-6031 which fulfilled the same procedure as was contemplated in A-PROC-008, so those were corrections and updated to the old policy and it superseded the old policy.

ADV SIBEKO: Can I ask you to turn to file 2 of the bundle next to you and ask you to turn to page 93. Will you please identify that document for the record?

MR DE BEER: Commissioners, the title of this document is "Policy in respect of Defence Industrial Participation (DIP)", the document number is A-POL-6000 and the summary of this document:

"THIS DOCUMENT OUTLINES THE POLICY IN RESPECT OF DEFENCE INDUSTRIAL PARTICIPATION APPLICABLE TO DEFENCE PURCHASES ABROAD VALUING USD 2 MILLION AND MORE".

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ADV SIBEKO: Now the implementation date of that document also is 1 April 1997, do you confirm that?

MR DE BEER: Commissioners, that was unfortunately an omission, the implementation date should have been in February 2002, so that was not updated accordingly.

ADV SIBEKO: Can I ask you to turn to page 94, the approval page. There are signatures that appear there, the one by the compiler and the other by the approver, what is the date there?

10 MR DE BEER: Commissioners the date is 11 February 2002.

ADV SIBEKO: So that was dated, is that correct?

MR DE BEER: That is correct.

15 ADV SIBEKO: And you say this policy superseded the earlier on A-POL-6100?

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Right. Now can I then ask you to turn to page 110 of file 2 and once again will you please identify that document for the record?

20 MR DE BEER: Commissioners, this document is "Defence Industrial Participation (DIP) Procedures". The summary of this document is:

25 *"THIS DOCUMENT OUTLINES THE PROCEDURES AND REQUIREMENTS IN RESPECT OF DIP AGREEMENTS APPLICABLE TO DEFENCE*

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*PURCHASES WITH A FOREIGN CONTENT VALUING
USD 2 MILLION AND MORE”.*

ADV SIBEKO: So, what is the effect of this document with regard to the procedure that applied previously?

5 MR DE BEER: Commissioners, this procedure superseded the old procedure A-PROC-008, this procedure was renumbered and it's got the number of A-PROC-6031.

ADV SIBEKO: And the date of approval of this document?

MR DE BEER: The date of approval of this document is
10 11 of November 2002 as indicated on the front page and in this case also on the approval page, the signatory page, page 111.

ADV SIBEKO: I realise that in respect of this document there had been enough updates made for the officials to remember to update even the dates of approval.

15 MR DE BEER: Commissioners I think it's a question of fourth time lucky, this is the fourth document that had to be updated but to summarise we are, at the end of this document we have a policy, a procedure and a practice.

ADV SIBEKO: Can I ask you to turn to page 112 of that
20 same document and if you could just read into the record what is contained in the third column just as the history of this document to complete that.

MR DE BEER: Commissioners the first amendment of document issue number 1, the first amendment is "Release
25 Supersedes A-PROC-008". And then the 2nd issue of the

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document dated 11 November 2002 is a general description, the whole document was updated in terms of a doc change proposal DCP000051.

ADV SIBEKO: Thank you. Can I then ask you to turn to page 133 of file 1 and ask you to identify that document for the record.

MR DE BEER: Commissioners, this document is "Defence Industrial Participation (DIP) Practice". The summary of this document:

10 *"THIS DOCUMENT CONTAINS GUIDELINES FOR EXECUTION OF THE DEFENCE INDUSTRIAL PARTICIPATION POLICY APPLICABLE TO DEFENCE PURCHASES WITH A FOREIGN CONTENT OF USD 2 MILLION AND MORE".*

15 ADV SIBEKO: Now you will see that that document, the page that you have in your hand has two sides to it, it has the approval page as well, is that correct? Could you just state the date when it was approved?

MR DE BEER: Commissioners, the date of approval is 20 11 November 2002.

ADV SIBEKO: And at 134 there also is the amendment history.

MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Thank you. Having dealt with that document and the amendments that have taken place over the 25

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period of time regarding the different policies, procedures and practices that apply, can I then ask you to have regard to paragraph 6.6 page 11 of your statement?

5 MR DE BEER: Commissioners, on my page 11 I have 6.10 and 6.11.

ADV SIBEKO: I beg your pardon, it must be 6.11.

MR DE BEER: Yes.

ADV SIBEKO: Now in the last, the second last sentence of that paragraph it's stated:

10 *"It should be further noted that A-PROC-6030 was not applicable during the SDPP RFI and RFO phases, evaluation phase or contracting of DIP Terms".*

Was that the case?

15 MR DE BEER: That is correct Commissioners.

ADV SIBEKO: So, this document as it stands does not have any particular relevance to the process that was undertaken during the acquisition of the SDPP's, is that right?

MR DE BEER: That is correct Commissioners.

20 ADV SIBEKO: Now the only policies and procedures we need to look at are those that you have testified to being A-PROC-6031 and A-POL-6000.

MR DE BEER: Commissioners, it is correct, however, the policy which was applicable during the SDPP's was still A-POL-25 6100 and also the procedure was A-PROC-008, those were

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superseded in 2002 by the policy and the procedure as stated just now.

ADV SIBEKO: Yes, you are correct. Now having dealt with these policies, these policies also provide for the role players and make provisions for their functions. Earlier on in your evidence when we dealt with A-POL-6000 we dealt with the various role players within the DIP and NIP administration, but just to recap there is the DTI Secretariat, could you just briefly state what their responsibilities or functions were?

5
10 MR DE BEER: Commissioners, the DTI or the IP Secretariat of the DTI are fully responsible for the non-defence related Industrial Participation or the NIP programme for projects emanating from acquisition and procurement programmes in accordance with the provisions NIP Policy.

15 *“Neither ARMSCOR nor the DoD/MOD is involved in this process”.*

ADV SIBEKO: And then in the next page you deal with the “DIP Divisions” and how does this relate or compare with the IP Secretariat of the DTI in the manner, in the way in which the IP obligations are dealt with?

20
25 MR DE BEER: The DIP division will autonomously manage DIP agreements and DIP Terms with respect to the policies within ARMSCOR which subscribes to the national programme, the NIP programme, although the DIP Division would manage that within the division in ARMSCOR itself and there are no

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interaction between the DIP division and the DTI IP Secretariat with regards to specific management of DIP agreements or the awarding of DIP credits *et cetera*. The same is true also for the DTI managing the NIP agreements that ARMSCOR is not
5 involved in that.

ADV SIBEKO: Now later we will deal with issues relating to the Industrial Participation Index which involves both the NIP and DIP's. If one has regard to the manner in which the IP Index is dealt with later in your evidence, is it your evidence
10 that in the process of the evaluations albeit in silos, the one in the NIP and the other in the DIP, there is no interaction whatsoever in the evaluation process.

MR DE BEER: That is correct Commissioners, no interaction in terms of the detailed evaluation of the proposals.

15 ADV SIBEKO: Is there any interaction that takes place at a later stage?

MR DE BEER: Commissioners that is correct, there are interactions. At the point where the DIP Division completed their evaluation and likely so the DTI IT Secretariat completed
20 their evaluations the results of those evaluations would be discussed with each other and there would be a moderation process as well as a combination into an IP Index to provide an input for a higher level authority for the awarding of tenders.

ADV SIBEKO: Thank you. Further in this paragraph you
25 deal with the other role players that you have already dealt

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with earlier in your testimony, we shall not repeat that. Now if you turn the page we then go to paragraph 8 which deals with the "STANDARD PROCESS FLOW OF DIP AND HOW IT IS INTER-RELATED TO THE ACQUISITION PROCESS". Could you
5 just talk to us about this in general terms.

MR DE BEER: Commissioners, the standard process flow of DIP within ARMSCOR and how it inter-relate to the acquisition process is that ARMSCOR acquisition will involve and inform the DIP Division of any new procurements that may
10 be of foreign nature whereby the DIP Division would be engaged in the compilation of either RFI information or if it is advanced to a stage where the ARMSCOR Acquisition Department would enter into an RFO then the DIP Division will compile the RFO Guidelines, DIP Guidelines forming part of the
15 RFO for foreign suppliers, so from that point forward the DIP Division and the Acquisition Department works closely together to provide the RFO documentation on time for submission, or not submission, distribution to all potential suppliers.

The standard process is that such tenders would be
20 submitted to ARMSCOR by any potential supplier at a certain date, at a certain time, and that would include the DIP, the tenders towards the DIP Requirements and if NIP was identified as being applicable then the NIP portions would also have formed part of the RFO and such tenders would also be
25 accepted in, at ARMSCOR tender procedures and at ARMSCOR

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secretary, Procurement Secretariat, so it will contain the responses to RFO's for both, not only for the acquisition but for both DIP and NIP tenders that would be received by ARMSCOR.

5 The DIP offers would be then distributed to specifically the DIP Division and the DIP Division will also be requested by ARMSCOR Procurement Secretariat to distribute the NIP offers to the DTI, that is basically what happens when tenders are received. Now from that point forward three
10 separate evaluation processes starts off.

ADV SIBEKO: You mentioned in your statement or in the paragraphs there about the identification of risks once the RFO's have been responded to by the various interested companies, that's the first thing. The second thing is the
15 obligation to confirm these companies' acknowledgement of the South African Industrial Participation Process. Now let's start with the confirmation of the Industrial Participation process. What is the effect of the absence of confirmation by a foreign supplier of this aspect?

20 MR DE BEER: Commissioners, within the DIP Guidelines is included a document called "Confirmation by Bidder" in terms of which when it is signed off by any bidder he acknowledges knowledge of the programme, the NIP Programme as well as the DIP requirements and then also he acknowledges to commit to
25 any obligations that may be foreseen in the case of awarding of

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a tender, so the lack of that acknowledgement in terms of a signature means that the foreign supplier did not comply, that is a mandatory requirement and when that happens from the DIP Division's perspective such a foreign supplier is a risk and most probable not to be willing to perform any NIP or DIP requirements, so that is identified from a risk point of view, but as it is also a mandatory requirement that supplier from the DIP Division's perspective is then disqualified and the DIP Division will then have to seek higher level authority to either disqualify such a supplier or to continue with evaluation for other reasons which is outside of the scope of the DIP Division and its policies.

ADV SIBEKO: Now under paragraph 8.4 of your statement there is a flowchart that seeks to explain how these matters are dealt with in respect of Defence purchases which exceed US\$10 million. Could you explain what's that diagram?

MR DE BEER: Commissioners, this diagram is an ARMSCOR diagram to show the relationship between the DIP Division representing the right hand side of that diagram, that column below the word 'Defence' and then also the relationship with the Department of Trade and Industry, specifically the IP Secretariat for the non-defence portion of such an offer. So, if we pay attention to the left hand column under "Non-Defence" ARMSCOR DIP Division will liaise and interact with the DTI to keep them informed and provide them with all the offers. The

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specified percentage of the obligation must be addressed to national priorities as would have been identified in the RFO documentation received from the DTI which ARMSCOR then will provide to foreign suppliers in the form of the RFO.

5 It goes further to the Non-Defence IP Proposals, the business plans by the contenders which will be evaluated by the DTI, then the approval by the IP Control Committee of the results of such tenders or evaluation scores of any or all the foreign suppliers. It will continue to an IP agreement
10 concluded by the IP Secretariat. It must be noted at this point in time that the DTI is responsible for concluding NIP agreements, ARMSCOR is not involved in concluding those agreements but those agreements are obviously subject to a main agreement being agreed to, a foreign supplier cannot
15 attract a NIP or a DIP obligation if there is no main agreement.

That then continues still under the DTI column to the management of the performance and the reporting by the seller towards the DTI in his discharging of his obligations, the monitoring of performance by the IP Secretariat, the credit
20 claims which are managed and approved by an IP Control Committee and then the final discharge of the non-defence IP obligation.

A similar process is in the right hand column, for convenience I would not repeat all the similar steps but there
25 are a couple of additional steps on the non, on the defence

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side. It starts off with the obligation of 50%, the Defence IP proposals are evaluated and accepted by the DIP Committee, inputs are received from the IP Secretariat at a certain point in time before contracting so that ARMSCOR Dip Division in liaison with ARMSCOR acquisition can inform timeously that from an IP perspective evaluations are concluded and results were obtained and the acquisition programme can continue with submission of the preferred tenderer and also the award of a contract, so that liaison is very important that ARMSCOR DIP Division receives that information from the DTI timeously.

It goes further with the final approval of the contender normally by the ARMSCOR Board of Directors, the tender is finally awarded, obtain of a guarantee, that specifically refers to a DIP guarantee. There is a similar guarantee in the non-defence side or on the DTI side which is not specifically indicated in this diagram, nevertheless there is also a performance guarantee that will cover the value of the penalty in both of these agreements, the NIP agreement on the one hand and the DIP agreement on the other hand.

Then it goes further to finalising of the DIP agreement, the main agreement is not finalised by the DIP Division but by ARMSCOR Acquisition Department. Once that agreement is concluded and placed with the main, with the foreign supplier performance measurement and reporting takes place by the seller towards the DIP Division, monitoring and

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performance notification of results to the IP Control Committee. There is another area of liaison where from time to time ARMSCOR would inform the DTI on performance on DIP contracts for notification purposes. Then at the end of such an agreement and the period the discharge of the defence IP obligation. So that, hopefully in short, is the diagram and the process that we intend, that we follow.

5 ADV SIBEKO: Now in the process that is followed you say in your statement that this also involves the DIP Value Systems that are contemplated in A-PROC-008, is that right?

10 MR DE BEER: That is correct Commissioner.

ADV SIBEKO: We will deal with these later in your evidence but once you say in terms of that diagram, once the DIP agreement has been approved and finalised the Supply Terms are then concluded, is that right?

15 MR DE BEER: That is correct Commissioners.

ADV SIBEKO: Does the conclusion of the DIP agreement precede the conclusion of the main agreement or what is the position?

20 MR DE BEER: Commissioners, the DIP agreement is finalised in conjunction with the main agreement and in ideal circumstances those two agreements, and if we look at the IP, the NIP agreement should be concluded on the same day. Now it is true to say that the main agreement cannot be concluded if
25 the other two agreements are also not already finalised and

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agreed upon for approval on the same day, so it is not necessarily preceding but it can be that DIP agreements and NIP agreements are finalised before the main agreement, ready for approval, but it would not be the case that those are approved and already being implemented on the foreign supplier before a main agreement comes into being, becomes effective.

ADV SIBEKO: Now can I ask you just to take a step back and have a look at paragraph 8.7 of your statement at page 15 where you refer to the approval of the preferred bidder by the ARMSCOR Board of Directors, you say:

“The DIP business plan will be finalised together with the DIP agreement”.

Is that the procedure that applied in terms of this procedure and I need you to comment on whether that procedure was applied even with the procurement of the SDPP's.

MR DE BEER: This procedure was applicable, it was not exactly followed during the SDPP's insofar that the approval of the preferred bidders was not done by the ARMSCOR Board of Directors, by exception that the preferred bidders were announced by a higher committee, obviously the Cabinet Committee, so insofar as that is concerned it wasn't followed, however, the DIP business plan would, was finalised together with the DIP agreement and the authority, the Cabinet Committee was informed accordingly as if it was the ARMSCOR

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Board of Directors.

ADV SIBEKO: Now that would bring us to the process flow of DIP and NIP and how these two processes were inter-related during the procurement of the special packages. Could
5 You just take us through that commentary as it appears from, or at least in paragraph 9.

MR DE BEER: Commissioners, without discussing the process on the previous page as depicted there a similar process was followed and it starts off with the contract value
10 which was expected to exceed US\$10 million, then automatically NIP became applicable in the SDPP's as well. Now in that case the DIP Division did liaise with the DTI and the DIP Division was also provided by the NIP requirements for the inclusion as a separate section in the RF..., initially in the
15 RFI's and also in the RFO's. The threshold of 30% at that stage was still applicable but as you can see in the statement paragraph 9.3 on page 15:

"In the case of the SDPP, the DIP and NIP thresholds were stipulated to be at least 50% ...".

20 The use of the word "threshold" is wrong, that word must be replaced by the word "obligation", so I will repeat 9.3:

"In the case of the SDPP, the DIP and NIP obligations were stipulated to be at least 50% in each case".

25 You will note that this is a deviation from the standard

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obligation of 30% normally applied by the DTI. This stipulation was in excess of the standard threshold for NIP Terms, the ARMSCOR DIP Division was informed by the-then director of Industrial Participation of the DTI Mr Vanan Pillay in a letter
5 dated coincidentally also on the 1st of April 1998. It seems this date is haunting us but this time it's not 1997, it's 1998. A copy of this letter is attached in Annexure "BDB8".

ADV SIBEKO: Can I ask you to have regard to "BDB8" in file 1 page 141. File 2, I beg your pardon Chair. File 2 page
10 141. Mr De Beer, can I ask you to identify that document for the record please?

MR DE BEER: Commissioners, this is a letter on the letterhead of the DTI to Mr Johan Van Dyk, the-then head of the division, the Countertrade Division in ARMSCOR and it was
15 with the heading "Industrial Participation" and it was written by Mr Vanan Pillay.

ADV SIBEKO: May I ask you to read that letter into the record in its entirety.

MR DE BEER: Commissioners, the letter:
20 *"It has come to our notice that there could be some confusion as to the NIP process to be followed by the bidders. In order to clear any possible misunderstanding we request that you forward the attached notice to the various bidders for
25 information purposes. It has also come to our*

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5 *attention that the recent RFI for the Lead-In Fighter
Trainer Programme indicates a 30% NIP
Requirement. As the timing of this programme
coincides with the present defence procurement we
request that you send out a notice informing the
various bidders that the NIP is for 50% of the total
contract value. This would certainly alleviate any
confusion that might occur amongst any of the
bidders at a later stage. We would appreciate it if
10 you could let us have a list of the bidders' names
that have been invited to tender for the LIFT
Programme. Best Regards".*

Signed by Mr Vanan Pillay.

ADV SIBEKO: There is something written in long hand on
15 the right hand side of that document, it says:

"Cleared with DTI 98/04/02".

Can you recognise that handwriting?

MR DE BEER: Commissioners no, I cannot recognise that
handwriting.

20 ADV SIBEKO: But as you were involved in the exercises
relating to the valuation of the NIP and to some extent the DIP
tenders and you had access to information relating to the NIP
tenders, can you confirm that the 50/50% requirement relating
to obligations was in fact implemented notwithstanding the date
25 thereof, 1 April?

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MR DE BEER: Commissioners yes, I can confirm that this requirement was complied with and the NIP obligations was communicated to be 50% of the contract value and not 30% of the contract value.

5 ADV SIBEKO: Right, can I then ask you to go to paragraph 9.4 and following of your statement dealing with the inter-relationship between the two divisions.

MR DE BEER: Commissioner:

10 *"Once the NIP offers were received by the DIP Division these offers would be distributed to the DTI for their evaluation, and by agreement on a date of completion the DIP division would in collaboration with the DTI, combine the Industrial Participation factor at equal weight for inclusion into the overall*
15 *industrial participation score ...".*

The word "score" could also be replaced by index as you are familiar with the use of index:

20 *"... for each of the offers. The Industrial Participation Index [sic] would thereafter be provided to the Acquisition Technical Team for compilation of the final index per bidder and for the purposes of determining the preferred bidder".*

In paragraph 9.5 it follows that:

25 *"The preferred bidder would be normally approved by the ARMSCOR Board of Directors".*

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That was not the case in the SDPP's as it was already testified at this Commission.

5 *“After completion of the contracting baselines for supply and the DIP agreement and NIP agreement the ARMSCOR Acquisition Technical Team would submit the Supply Terms of the ARMSCOR Board of Directors for approval. The DIP Division would be responsible for ensuring that both the DIP agreement and associated business plans are approved by the ARMSCOR Board of Directors prior to or simultaneously with the Supply Terms”.*

10

The use of the word “Supply Terms” here specifically refers to the SDPP's but in general DIP terms we normally talk about “main agreement”. In paragraph 9.6 ...

15 ADV SIBEKO: Just before you proceed you are talking about Supply Terms and main agreement. Is there a notional difference between the two?

MR DE BEER: Commissioners, there are no specific difference between the two, although I must notify that the use of Supply Terms was introduced to ARMSCOR by an external process, not that it was wrong but it was actually governed by a four ..., a diagram with four legs. There was an umbrella agreement and under the umbrella agreement there were these three sets of agreements or terms, the one being the Supply
20
25 Terms, the middle one being the DIP Terms and the third one is

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the NIP Terms, so Supply Terms is almost equal to a main agreement but differ in the sense that it lacked certain information which is normally contained in the main agreement which in the case of the SDPP's was contained in the umbrella agreement.

ADV SIBEKO: So put simply with regard to the SDP agreements you had the umbrella agreement which incorporated the Supply Terms, the DIP agreement and the NIP agreement, is that correct?

10 MR DE BEER: That is correct Commissioner.

ADV SIBEKO: So, when we later in your evidence talk about Supply Terms we must understand that to mean a component of the umbrella agreement and when you talk about the DIP Agreement we talk about another component of the umbrella agreement which specifically deals with the DIP's and when you talk about the NIP agreement that would be a third component dealing specifically with the NIP agreement.

MR DE BEER: That is correct Commissioners, however, I need to note that the DIP agreement was called DIP Terms and the NIP agreement was also called NIP Terms, so we had three sets of terms, the one being Supply, DIP and NIP.

ADV SIBEKO: Right. Now that distinction, once that agreement has been concluded in the manner that it was concluded specifically with regard to the DIP's, to the SDPP, you will know that this was preceded by the implementation of

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certain phases which are set out in paragraph 10 of your statement. Let us start with the RFI's. The ...

CHAIRPERSON: Advocate Sibeko, I realise that paragraph 10 seems to be a totally new topic.

5 ADV SIBEKO: Yes.

CHAIRPERSON: In the light of time probably this might be the right moment to adjourn and we can continue paragraph 10 tomorrow morning.

ADV SIBEKO: As it pleases the Chair.

10 CHAIRPERSON: Thank you. We will adjourn until tomorrow morning. Thank you.

(COMMISSION ADJOURNS)