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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

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ACTION

September 3, 1986

MEMORANDUM FOR JOHN M. POINDEXTER

FROM: CLARK MURDOCK *CM*

SUBJECT: South Africa - Discussion With Senator Lugar

Our strategy in consultations with the Senate Republican leadership is to seek support for and negotiate a new Executive Order, to be announced when the President vetos the sanctions bill, or failing that, a new bill we can accept, with appropriate additions from the Senate bill and measures to be adopted by our EC allies September 14-16. The Senate bill includes all of the measures being considered by the EC (namely a ban on new investments and the import of coal, iron, steel and gold coins) and almost all of the Commonwealth measures (including termination of landing rights and a ban on imports produced by parastatals and of agricultural products and uranium). Your discussion is complicated by the EC timetable: the EC measures are likely to become the "floor" of any follow-on Senate bill, but any prior leak that we might accept them would undercut British and German efforts to weaken them.

At Tab I is our initial analysis of the Senate bill, including acceptable and objectionable provisions, that was included in the strategy paper. Measures listed in Section I are all consistent with the existing Executive Order, and, of course, are acceptable. We also judge that the measures listed in Section II would be acceptable as well but these are largely confined to policy matters (e.g., establishing a framework for US relations with South Africa, endorsing talks between the US Ambassador and Mandela, promoting negotiations and preparing reports on the impact of sanctions, the role of the CPSA, etc.) and some positive programs (including more scholarships for blacks, expanding opportunities for black firms, and the federal preemption of state and local legislation against US firms doing business in South Africa). The economic measures included in Section II are pretty minor -- no USG funds for promotion of tourism in South Africa and no USG procurement from parastatals (except for diplomatic purposes)-- and are unlikely to satisfy the Senate. The provisions listed in Section III and IV are all objectionable, but those in Section III include the least severe measures agreed to by the Commonwealth (ban on oil exports to South Africa and no SAG and parastatal bank accounts in US, except for diplomatic purposes) and the measures being considered by the EC. Although we strongly oppose the bans on imports of coal (with its adverse effects on black unemployment), iron and steel (which apparently will greatly reduce production of vanadium as a

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BY *CM*

NLRR #00-056 #3464 (DUP) 1982

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by-product), we will likely be bound by EC decisions on them. Section IV provisions are especially objectionable to us and many of our European allies, especially the ban on agricultural imports, uranium (State just informed me that DOE would lose \$500 million per year in fees for processing uranium from Namibia), and imports from parastatals (which would affect about half of South Africa's exports).

At Tab II I have attached State's annex to its strategy paper on negotiating guidelines. Their approach is largely consistent with ours but focuses on ranking the changes by importance, with the EC bans on coal, iron and steel included among the imperative changes we should seek.

Senators Lugar and Dole are likely to resist our suggestion of an expanded executive order in conjunction with a veto of the Senate bill, assuming House endorsement of the Senate version. Senator Lugar's cooperation in last year's EO was fairly controversial and was sustained by only two votes, even though the EO was crafted to appear as similar as possible to the existing Senate bill. The Senate leadership also might delay serious bargaining until the EC has acted, which then could be viewed as base to which the Senate would add further measures in an effort to get the US out in front on the South African issue. We, of course, would argue that the EC actions are as far as the President can go and stay in line with our Allies. In any event, there is a narrow window for Congressional action. Any bill would have to be passed and sent to the President by September 15 to avoid a pocket veto (under current Congressional schedule).

CA For
Ron Sable concurs.

RECOMMENDATION:

That you use the talking points at Tab III in your discussion with Senator Lugar. Based on the Lugar meeting results, we may suggest further discussions to include Senators Dole and Kassebaum.

APPROVE _____

DISAPPROVE _____

FYI - State has been informed of the Lugar meeting and understands this is a temperature-taking event, rather than an agreement-producing one.

Attachments:

Tab I Initial analysis of Senate bill
Tab II State's annex to strategy paper
Tab III Talking points for discussion w/Senator Lugar

cc: Peter Rodman

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NLRR FOR ASL #36997 (DATE 19021)

BY Cal NARA DATE 3/25/08

I. Support these provisions as consistent with Executive Order

II. Additional provisions which are acceptable

- Sec. 307 Prohibits most nuclear exports/trade involving South Africa (with narrow exceptions for IAEA and for humanitarian/health purposes).
- Sec. 304 Prohibits the export of computers and related goods and services to the police, military, and apartheid-enforcing entities.
- Sec. 305 Prohibits all loans to the South African Government including parastatals, with an exception for certain loans for educational, housing or humanitarian purposes.
- Sec. 301 Prohibits the import of Kruggerands and other gold coins minted in South Africa.
- Sec. 201 Earmarks specified amounts of assistance for specified purposes (\$4,000,000 for education and training of victims of apartheid, \$500,000 per fiscal year for legal assistance to political prisoners and detainees, and \$175,000 for families of the victims of those "necklaced").
- Sec. 207 Requires U.S. nationals employing at least 25 individuals in South Africa to apply certain fair labor standards based on the Sullivan principles. The penalty for failure to implement the principles is a loss of U.S.G. export marketing support.
- Sec. 205 The U.S. Embassy and Consulates in South Africa are also required to implement the principles, except that the bill makes it clear that the applicable provision does not confer a right to engage in strikes against the U.S.G.
- Sec. 317 Prohibits the export of any item on the U.S. Munitions List (part of the International Traffic in Arms Regulations (ITAR) of the Department of State) to South Africa. An exception is provided for items not covered by the mandatory U.N. arms embargo if the items are to be used strictly for commercial purposes and are not destined for the military, police, or security forces or military uses.
- Sec. 302 Prohibits the import of defense articles and data produced in South Africa.
- Sec. 212 Permits South Africa to participate in Department of Agriculture export credit and promotion programs.
- Sec. 315 Prohibits the use of U.S.G. funds for the promotion of tourism in South Africa.
- Sec. 314 Prohibits U.S.G. procurement from parastatals except for items necessary for diplomatic or consular purposes.
- Sec. 204 Requires Eximbank to take active steps to encourage the use of its facilities to assist black South Africa business enterprises and relaxes certain current statutory restrictions on Eximbank activities in South Africa.
- Sec. 206 Authorizes \$10 million for the purchase of housing for black South Africa nationals employed by the U.S. Government in South Africa. The housing is to be located in areas open to all population groups.
- Sec. 511 Increases the amount of foreign assistance funds available for scholarships to the victims of apartheid and for assistance generally to South Africa (i.e., up to \$40,000,000 in economic support funds in FY 1987 and each year thereafter).
- Sec. 502 The bill provides that the President may lift any prohibition in the bill, after six months, if it would "increase U.S. dependence upon any member country or observer country of the Council for Mutual Economic Assistance" (i.e., the economic entity related to the Warsaw Pact) for the import of (1) coal, (2) any strategic material, or (3) any critical material. Criteria is established for this purpose.
- Sec. 606 Provides that the bill establish a comprehensive and complete U.S. framework for dealing with South Africa. The legislative history makes it clear that state and local legislative sanctions against South Africa (e.g., procurement bans against U.S. firms doing business in South Africa) are pre-empted by the bill for purposes of U.S. law. The bill contains a transitional amendment which provides in effect that states will not be punished for acts taken as a result of such laws currently in force for a period of 90 days.

- Sec. 203 Provides that the U.S. Embassy and Consulates in South Africa shall make affirmative efforts to purchase goods and services from the victims of apartheid notwithstanding normal competition in contracting laws.
- Sec. 603 Provides authority to impose strict enforcement and penalties.
- Sec. 402 The bill authorizes the President to limit the import into the U.S. of any products of any foreign country to the extent that the country concerned benefits from or otherwise takes commercial advantage of the sanctions contained in the bill.
- Sec. 210 The President is authorized to use the Emergency Reserve for African Famine Relief established as part of the P.L. 480 program notwithstanding certain existing legal requirements. Reserve to be used for humanitarian food aid in Southern Africa.
- Sec. 501 Requires the President to make a report to Congress 12 months after enactment on progress in South Africa. If he determines that the conditions specified have not been met, the bill requires that the President must recommend which additional measures should be adopted (from a list of potential sanctions). The sanctions are not automatic, and a law would have to be enacted to promulgate any sanctions recommended by the President pursuant to this procedure. The future measures could include prohibiting military assistance to countries violating the U.N. arms embargo; the import of diamonds and strategic minerals; and any U.S. bank accounts for South Africa nationals.
- Sec. 102 The bill contains a provision which would establish U.S. policy toward the African National Congress (ANC) to suspend terrorist activities so that negotiations can begin. It also provides that U.S. policy towards South Africa will be adjusted based on certain actions of both the SAG and the ANC. It provides that it shall be the policy of the U.S. to support negotiations without the ANC if (1) the SAG agrees to enter into negotiations without conditions, abandons "unprovoked violence", commits itself to a free and democratic post-apartheid South Africa, and if the ANC refuses to participate in negotiations; and (2) if the ANC refuses to abandon unprovoked violence during such negotiations and refuses to commit itself to a free and democratic post-apartheid South Africa.
- Sec. 316 Prohibits U.S. Government assistance for investment for trade in South Africa, including subeildes and funding for any trade missions/trade fairs.
- Sec. 322 The bill prohibits any agency or entity of the U.S.G. from engaging in any form of cooperation with the armed forces of South Africa, except activities reasonably designed to facilitate the collection of necessary intelligence.
- Sec. 603 Severe criminal and civil penalties are provided for violations of the bill and broad regulatory powers are conferred on the President.
- Sec. 510 Prohibits imports of Soviet gold coins.
- Sec. 211 Prohibits U.S.G. assistance to anyone or group supporting execution by fire, "necklacing."
- Sec. 109 The bill expresses the sense of Congress that the U.S. Ambassador to South Africa should meet with Nelson Mandela.
- Sec. 209 Prohibits U.S.G. assistance to any individual or group grossly violating human rights, as defined in F.A.A. Sec. 502(b).
- Sec. 101 Outlines U.S.G. policy toward the Government of South Africa.
- Sec. 103 States U.S.G. policy to assist the victims of apartheid.
- Sec. 104 Outlines U.S.G. policy towards other countries in Southern Africa.
- Sec. 105 Sense of Congress that the U.S. should discuss situation with "Frontline" states.
- Sec. 106 States U.S. policy to promote a negotiated settlement.
- Sec. 107 Urges President to seek international cooperation on anti-apartheid efforts.
- Sec. 108 Sense of Congress that the U.S. should condemn and work against execution by fire, "necklacing".
- Sec. 110 Sense of Congress that U.S. employers in South Africa should oppose apartheid and support black and colored employment in their firms.

III. Provisions to Oppose (but not severe and could live with).

- Sec. 401 The bill expresses the sense of Congress that the President should seek mandatory Chapter VII Security Council sanctions against South Africa of the kind contained in the bill.
- Sec. 312 States U.S. policy against violence in South Africa and to promote negotiations to end apartheid.
- Sec. 311 Provides that sanctions will terminate if the South African Government releases Nelson Mandela, repeals the state of emergency, urban democratic political parties; repeals certain apartheid laws and makes a public commitment to good faith negotiations with representatives of the black majority. Congress can pass a joint resolution disapproving a Presidential determination of these conditions.
- Sec 401 The bill requires negotiations with other countries within 180 days on international arrangements to end apartheid. It provides that the Secretary of State "should convene" an international conference to reach agreements and impose multilateral sanctions (as well as certain reporting requirements). Presidential modifications of the bill as a result of such agreements will require Congressional approval by joint resolution.
- Reports
- Sec. 509 Role/activities of the Communist Party in South Africa.
- Sec. 508 Countries violating the Mandatory Arms Embargo.
- Sec. 503 Health conditions in the homelands.
- Sec. 505 Effect of sanctions on Front Line States.
- Sec. 507 Bank deposits of South Africans in the U.S.
- Sec. 504 South African Imports/Strategic Minerals.
- Sec. 512 Report on the African National Congress.
- Sec. 506 Relationships between South African government and industrialized countries.
- Sec. 321 Prohibits exports of crude oil and petroleum products to South Africa (with an exception for existing contracts).
- Sec. 308 Prohibits the SAG and its parastatals from having bank accounts in the U.S., with the exception of those authorized by the U.S. Government for diplomatic and consular purposes.
- Sec. 310 Prohibits new investment by any U.S. person in South Africa, except for black-owned firms. (Prohibition does not include trade financing, reinvestment of profits earned in South African enterprises, reschedulings, or investments to meet Sullivan labor standards.)
- Sec. 403 Provides that it shall be an unfair method of competition for any person to benefit from or take commercial advantage of any sanctions measures and confers a private cause of action in U.S. on individuals affected.
- Sec. 320 Prohibits imports of iron, and steel from South Africa to take effect 90 days after enactment.
- Sec. 309 Prohibits import of coal.

IV. Provisions to strongly oppose

Sec 319, 323 Prohibits the import of agricultural commodities and their derivatives and any product available suitable for human consumption. Sec. 323 prohibits the import of sugar, syrups, and molasses and increases the Philippines' sugar quota by an amount corresponding to the South African reduction.

Sec. 309 Prohibits the import into the U.S. of South African (1) uranium ore; (2) uranium oxide; and (3) textiles. These import prohibitions enter into effect 90 days after enactment.

Sec. 306 Prohibits the landing or takeoff of any South African aircraft (with an exception for emergencies).

Sec. 313 Requires the termination of the bilateral tax treaties in force with South Africa.

Sec. 303 Prohibits the import of any item produced, grown, manufactured, marketed, or exported by SAG parastatals (i.e., organizations owned, controlled or subsidized by the SAG). An exception is provided for imports of articles pursuant to contracts signed before August 15, 1986, provided that no shipment of such articles may be received after April 1, 1987.

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Negotiating Guidelines on
the South Africa Bill

General.

The Comprehensive Anti-Apartheid Act passed by the Senate on August 15 is a complex and lengthy 70-page bill consisting of 70 separate provisions. Title III of the bill contains 23 separate provisions, sanctions, or measures, including five measures currently in the President's South Africa Executive Orders. Two provisions in the bill contain far-reaching import bans that were not in the original Lugar bill.

The bill contains numerous policy statements consistent with Administration policy. This includes praise for U.S. firms that have implemented the Sullivan principles; the need for international cooperation on South Africa; the need to have all foreign military forces removed from the region; and the need for a suspension of violence in order for negotiations to begin on the future of South Africa. It also contains several positive provisions on scholarships; expanding economic opportunities for black firms; and federal preemption of state and local legislation against U.S. firms doing business in South Africa, a provision that has strong support from corporate leaders.

The only chance to limit the otherwise inevitable damage that would be caused to the President and U.S. foreign policy by the first veto override in the field of foreign affairs since the War Powers Resolution of 1973 would be to strike a deal with Senators Lugar and Dole. It would mean that the Senate would (1) sustain the veto; and (2) immediately modify the bill to take into account the President's objections.

It will not be possible to convince Lugar and Dole and 18 other Senators to join the 14 opponents of the Senate-passed bill in sustaining a veto unless they can be assured that a modified but tough bill would be signed by the President and that it would not be pocket vetoed. They would undoubtedly insist on retaining some measures which we oppose, on the basis that deleting them would create the impression that the bill is being gutted. However, they may be able to drop provisions which were added on the Senate floor by relatively narrow margins.

The following guidelines list the measures which the Administration should seek to have changed or deleted. It should be emphasized, however, that it is unlikely that they would agree at this late stage to meet all of our objections.

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NLRR FD-156 #36465 (DUP 12/77)

BY CW NARA DATE 3/23/05

Even if we are successful in reducing the damage, the bill would still contain many objectionable elements.

I. Imperative Changes

- Coal. The South African economy is heavily dependent on the production and export of coal. The coal import ban was added to the Lugar bill by the SFRC. The deletion of this provision is extremely important on the merits. However, we could not argue persuasively in favor of deleting the ban if the EC agrees to impose such a ban in September, which is likely. We should take the view that the coal prohibition must be deleted if the EC and Japan do not agree to such a ban. This should be known by the time a bill is presented to the President.
- Agricultural Products. The total ban on agricultural imports (including the separate sugar provision) will have the kind of economic impact on black workers that we are most opposed to, and our highest priority should be to delete this prohibition. It was part of a key Kennedy amendment that was adopted by a vote of only 55 to 44.
- Aviation Agreement. The Lugar bill required the termination of our landing rights agreement with South Africa in accordance with its terms, which meant that South African Airlines could fly in the U.S. for up to 12 months. A Sarbanes-Kassebaum amendment requires an immediate termination of landing rights, which places us in violation of our international legal obligations. Lugar fought for the Administration on this issue, but the amendment was adopted by a vote of 56 to 42.
- Uranium. The uranium ban was in the SFRC bill. A motion to strike the ban on the Senate floor was defeated by a vote of 56 to 40. It would be highly desirable to delete this provision, in part because of DOE contracts involving such products.
- Iron and Steel. A Kennedy amendment to ban imports of iron and steel passed by 55-44 votes. Previously, the bill had covered only iron and steel produced by parastatals. We should seek deletion of the broad import ban in favor of the original Lugar language on parastatal products. Our argument for this is strengthened by the belated discovery that an unintended consequence of a ban on iron and steel would be to get production of vanadium, a key strategic metal extracted as a by-product of South African steel production.

- Parastatals. The original Lugar provision was limited to products of parastatals (especially iron and steel). It was later made applicable to products marketed, exported, or subsidized by parastatals. Approximately half of South Africa's exports could be covered as a result of the amendment. This includes most agricultural products and gold. The ban on products marketed by parastatals must be deleted.

II. Important Changes

- New Investments. The original Lugar prohibition on new investments contained an exception for Sullivan companies. It was deleted in the SFRC, largely as a result of Senator Kassebaum. However, Lugar was able to add five very important exceptions in the bill which in practical terms should ease considerably the pressure on U.S. companies. Nonetheless, an express exception for such companies would be highly desirable as a matter of policy.
- Textiles. The Cranston textile ban was adopted in the full Senate by a vote of 67 to 29, which was largely influenced by protectionist sentiments and the ill-timed announcement of the recent textile agreement. The ban hurts black workers and the economy and its deletion should be a top priority.
- Presidential Flexibility. The bill contains several provisions regarding Presidential waivers or modification of the bill. The sanctions in the bill terminate automatically if 5 conditions are met (i.e., freeing all political prisoners and detainees; repealing the state of emergency two key apartheid laws; unbanning political parties; and agreeing to enter into genuine negotiations). However, the bill does not confer sufficient flexibility to suspend or modify the sanctions based on progress in South Africa. An agreement should be reached in principle to confer greater authority on the President in this regard. There are several ways for this to be accomplished which could be addressed at the staff level (e.g., changing a key "and" in the bill to "or", or making various sanctions in the bill contingent on the Allies agreeing to the same).

III. Highly Desirable

- SAG Bank Accounts. The bill prohibits SAG bank accounts in the U.S., except for diplomatic/consular purposes. This irritant would make it extremely difficult for parastatals to operate in the U.S., and it would be highly desirable to delete or modify this ban if the parastatal import ban is modified.

- Private Cause of Action. The provision conferring the right to sue foreigners in U.S. courts who take advantage of U.S. sanctions has been significantly tightened in the final bill. However, it could result in unnecessary and troubling litigation. It would be highly desirable to modify or delete this provision.

- Other Provisions. The bill contains numerous objectionable and impracticable calls on the President to go to the UNSC, negotiate binding agreements with Allies, etc., and we should seek to strip such assertions from the final bill. Likewise, the tax treaty provision constitutes an unwelcome precedent in terms of international tax policy (although its practical effects should not be significant) and it would be desirable to have the provision deleted.

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TALKING POINTS

-- I wanted to take advantage of the Congressional recess to discuss the South African problems with you. September promises to be an exceptionally hectic month for us, and I thought it would be useful to talk before Congress resumes deliberation on your proposed legislation and before the EC Heads of State meeting on 14-17 September.

-- As you know, we have been in very close contact with our European allies on this issue and we believe that it is very important that we act in concert with them. Assistant Secretary Crocker returned from London on September 3 where he consulted with his British and Japanese counterparts. British Foreign Minister Howe will visit Washington on September 9-10 for further discussions in both the EC and Commonwealth contexts. We are concerned about the potential impact that passage of your bill would have upon what we feel is an especially good example of allied cooperation and consultation on a sensitive political issue.

-- We are also concerned about the potential impact of a successful override of a Presidential veto -- which would be the first in the foreign affairs field since the early 1970s -- on the President's flexibility and authority in setting US foreign policy. Consequently, I thought this might be a useful opportunity to explore ways in which we might prevent this from occurring before these various legislative and Allied schedules converge later this month.

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NLRR EUO-056 #3646b (DUG 15023)

BY CW NARA DATE 3/25/08

September 12, 1986

The Honorable Robert H. Michel
U.S House of Representatives
Washington, D.C. 20515

Dear Bob:

I understand the House of Representatives will begin debate shortly on the Senate legislation on South Africa. The bill is an important step in the evolution of U.S. policy towards South Africa and its neighbors. It enjoyed broad, bipartisan support in the Senate, as reflected in the 84-14 vote on final passage. I believe that it merits your support.

The bill sets forth a comprehensive policy toward South Africa including limited economic sanctions. The purpose of these measures is to put pressure on the South Africa government to end apartheid and move toward a multiracial democracy. To the greatest extent possible, the economic measures are aimed at the government of South Africa and those who support it.

The legislation also gives the President the power to suspend or modify these measures if any of the following occurs:

- (1) he negotiates international agreements with the other industrialized democracies which impose multilateral measures on South Africa;
- (2) the government of South Africa frees Nelson Mandela and takes other specified steps on the road to a color blind, democratic form of government; or
- (3) U.S. dependence on communist nations for imports of strategic and critical materials and coal increases.

Congress must enact new legislation to overturn a Presidential modification based on either of the latter two conditions. The President, is, of course, the chief architect of U.S. foreign policy. The bill fully reflects this.

The measures imposed by the bill limit investments U.S. firms may make in South Africa. They do not, however, require U.S. firms to divest themselves of presently held assets. Ongoing operations will be permitted to continue. Profits earned in South Africa may be reinvested, and new investment will be permitted where necessary to

keep those operations functioning. New investment in black-owned enterprises will also be allowed.

The bill contains numerous provisions to assist black South Africans. Monies are provided for scholarships, teacher training and defense of human rights. Democratic trade union activity will also be aided. The thrust of these provisions is to help black South Africans overcome the hardships imposed on them by the system of apartheid and assist them in assuming their role as citizens in a post-apartheid South Africa.

The bill recognizes that the problems in South Africa cannot be solved by the government alone. The African National Congress, the Pan African Congress and their affiliates are urged to suspend terrorist activities, make known their commitment to democracy, agree to negotiate a peaceful solution to the problems of South Africa and to re-examine their ties to the South African Communist party. In line with the President's recent address, the bill acknowledges that the government of South Africa has no responsibility to negotiate with those who refuse to abandon violence during negotiations or who would substitute one form of tyranny for another.

The bill also addresses U.S. policy toward the southern African region. It commits the United States to assist the other states in becoming economically self-sufficient. It also makes it clear that the U.S. will insist upon respect for human rights throughout the region. The front-line states are called upon to take action to end cross-border terrorism. Finally, the bill puts Congress on record in support of the Administration's policy of requiring the removal of all foreign military forces from Angola and the other countries in southern Africa.

The bill is not so much a radical break with the President's policy as it is a further step in the evolution of U.S. policy toward South Africa. Foreign policy cannot be cast in concrete. As events change, so must a nation's policies. The President recognized this last September when he issued his Executive Order. The developments in South Africa since require further modification in our policy. I believe the bill before you is a sound and appropriate response to these developments.

All of us are committed to the end of apartheid. That is not the issue. The question is how we in the United States can help speed its end. In my judgment the bill before you is the best means of achieving this shared goal. I believe it is one the President can, and should, sign into law. I urge you to support it.

Sincerely,

Richard G. Lugar
Chairman

RGL: rnk