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Report to Congressional Requesters

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SOUTH AFRICA

Status Report on Implementation of the Comprehensive Anti-Apartheid Act

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United States
General Accounting Office
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National Security and
International Affairs Division

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October 21, 1987

The Honorable Edward M. Kennedy
The Honorable Lowell P. Weicker, Jr.
United States Senate

This report responds to your letter of July 31, 1987, which requested us to review the status of the administration's implementation of the Comprehensive Anti-Apartheid Act of 1986, as amended (Public Law 99-440, 22 U.S.C. 5001 et seq.). You asked that we examine the administration's compliance with the deadlines and policy objectives of the act, its enforcement of the act, the operation of assistance programs designed to help the victims of apartheid, and administration efforts to obtain multilateral cooperation for sanctions against South Africa. We are also providing information on two additional topics: the treatment of uranium hexafluoride in relation to the ban on imports of South African uranium ore and its processed derivative, uranium oxide, and efforts to lessen U.S. dependence on South African strategic minerals. As agreed with your offices, this is an interim report summarizing our work to date and as such is preliminary. We plan to provide a more in-depth report at a later date.

The act (1) provides guidelines for U.S. policy in southern Africa and economic sanctions against South Africa; (2) provides impetus for the President to obtain foreign cooperation for the sanctions; (3) authorizes measures to assist the victims of apartheid; and (4) calls for reporting requirements by the administration on certain political, economic, social, and legal issues concerning South Africa. Appendix I lists the act's sanctions. The act was preceded by Executive Orders 12532 and 12535, which imposed more limited sanctions against South Africa. Executive Order 12571, dated October 27, 1986, designates the agencies responsible for administering its provisions.

The results of our work are summarized in this letter and discussed in more detail in the appendixes.

Administration Compliance With the Act

The act required the administration to submit a total of 12 reports to the Congress on various dates within a year after enactment. For example, the act required reports on U.S.dependence on South African strategic minerals, the feasibility of prohibiting South African deposits in U.S. banks, and economic relations between other industrialized nations and

South Africa. Every year, on the anniversary of the act (starting October 2, 1987), the President is required to report the progress of South Africa in ending apartheid, moving toward a nonracial democracy, and negotiating a settlement of the armed conflict in South Africa.

Most of the 12 reports were completed close to their deadlines. Four reports were submitted on time or within 1 week of their deadline, including the President's annual report, which was on time. Three other reports were 2 to 3 weeks late, four were 5 to 6 weeks late, and the Justice Department's report on actual and alleged violations of the Foreign Agents Registration Act by government and opposition groups in Subsaharan Africa was over 5 months late. The Justice official responsible for the report attributed the delay to other priority projects and the desire to wait until Justice had some investigations on which to report.

The act also specifies policy objectives, which include bringing about reforms leading to a nonracial democracy, moderating the behavior of opposition groups, helping victims of apartheid, and promoting negotiations between the South African government and its opposition. The act states that the United States should use political, economic, and diplomatic means to achieve these objectives. State has implemented the policy objectives of the act mainly through diplomatic initiatives. For example, the administration has used speeches by senior policymakers, United Nations resolutions, and diplomatic protests as a means to encourage the South African government to end apartheid and institute reforms. The administration has also maintained contacts with opposition groups in South Africa and has conducted assistance programs for victims of apartheid.

Appendix II contains additional detail on compliance with these and other provisions of the act.

Administration Enforcement of the Act

Two principal agencies are involved in enforcement of the act:

- Treasury's U.S. Customs Service has jurisdiction over merchandise entering and exiting U.S. borders and investigates violations of U.S. law.
- Commerce's Office of Export Enforcement (OEE) enforces, with Customs, the export prohibitions in the act (for example, the exportation of computers to apartheid-enforcing agencies is prohibited). OEE also investigates violations of the act.

While Customs has initiated a number of investigations, Customs officials said the agency has not received additional resources for the act's enforcement, and it has competing higher priority enforcement activities.

Customs has conducted 17 investigations of import fraud related to the act and 14 cases of illegal exports. Of the 17 import cases, Customs terminated 4 after it determined that no violation existed or that the allegations were unfounded. The other 13 cases remain open. Of the 14 export cases, 2 have been closed without indictment, 7 are still active, 1 has been passed to the State Department's Office of Munitions Control for further review, 3 are pending U.S. attorneys' decisions to prosecute, and 1 has been prosecuted and a conviction obtained. This involved the attempt to export technical manuals for the C-130 aircraft to South Africa through Argentina.

Commerce's OEE uses post-shipment checks as an enforcement tool. One use of post-shipment checks in South Africa is to ensure that U.S.-made computers have not been physically diverted and to ensure that they are not used by apartheid-enforcing agencies. During a post-shipment check, a Foreign Commercial Service Officer associated with the U.S. embassy in South Africa is responsible for verifying that a U.S.-made computer is on-site at the South African government agency or private business and determining what it is used for. OEE has devoted significant resources to post-shipment checks in South Africa. In fiscal year 1987, 27 percent of OEE's worldwide post-shipment checks were conducted in South Africa.

Post-shipment checks appear, however, to be more effective in assessing whether physical diversions have taken place than whether a South African apartheid-enforcing agency, such as the military or police, is using a computer. OEE officials said that it is possible for the military or police to use a U.S.-made computer remotely by modem or off-site terminal without detection by a post-shipment check.

Appendix III contains additional detail on enforcement.

Operation of the Assistance Programs to Help the Victims of Apartheid

The act authorizes the appropriation of funds for U.S. foreign assistance programs to help South African victims of apartheid. The Agency for International Development (AID) implements the programs, which fall into three categories:

- scholarships for victims of apartheid, provided by section 201 of the act;

- the human rights fund for individuals and organizations peacefully opposing apartheid, provided by section 202 of the act; and
- economic support programs for disadvantaged South Africans, provided by section 511 of the act.

Through June 30, 1987, AID has obligated about $47 million for these programs since their inception, which sometimes predated the act, but spent only about $25 million. Expenditures have significantly trailed obligations in some of the scholarship and economic support programs. A principal reason given by AID officials for this is that some of these programs involve multiyear commitments, such as those for college scholarships, where expenditures are made over a period of years.

Appendix IV contains a description of program objectives and efforts to implement them, along with an obligation and expenditure profile.

U.S. Efforts to Win Multilateral Cooperation for Sanctions

For sanctions to have the best possibility for success, multilateral cooperation is essential. Currently, the United States has the strongest sanctions in the world against South Africa.

To secure international cooperation, the act stated the "sense of the Congress" that the United States should propose that the United Nations Security Council impose measures against South Africa similar to those in the act. The administration voted against additional mandatory sanctions against South Africa in the Security Council, citing two reasons:

- If circumstances changed in South Africa, any of the permanent members of the Council—including the Soviet Union—could veto the lifting of multilateral sanctions.
- Imposing sanctions is the sovereign responsibility of each nation.

The act also states "it is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid." The act further states that negotiations to reach such agreements on sanctions with other industrialized democracies and South Africa's other trading partners, including the convening of an international conference by the Secretary of State with other industrialized democracies, should begin promptly and should be concluded no later than 180 days after the act's enactment (March 31, 1987). However, because the State Department

does not regard the provision as mandatory, no effort was made to convene the international conference. Instead, the State Department emphasizes its continuing diplomatic discussions with other nations on possible multilateral steps to bring about an end to apartheid.

Although no international conference to negotiate sanctions was held, other nations, including the European Community and some British Commonwealth nations, have initiated sanctions against South Africa. However, some nations' sanctions have less effect than they seem because they end commercial relationships that are not important, cover narrowly defined products, and are voluntary. Additional detail, including information on the sanctions of selected nations, is contained in appendix V.

Uranium Hexafluoride

Section 309 of the act banned imports into the United States of uranium ore and its processed derivative, uranium oxide, that are produced or manufactured in South Africa. But because an even more highly processed compound—uranium hexafluoride—is not listed in section 309, the prohibition may have a limited impact.

Processing nuclear fuel requires the following steps:

(1) Uranium ore is mined and made into uranium oxide, a solid commonly called "yellow cake."

(2) Uranium oxide is converted to uranium hexafluoride gas.

(3) Uranium hexafluoride gas is enriched so that it has a higher uranium content for use in nuclear reactors.

(4) The enriched uranium hexafluoride gas is converted into a form suitable for use as nuclear reactor fuel.

Because South African uranium ore and oxide cannot be imported directly into the United States, foreign utilities (most commonly Taiwanese, Japanese, Spanish, and West German) buy these compounds from South Africa and ship them to Europe, where they are converted to uranium hexafluoride gas. The uranium hexafluoride is then shipped to the United States, where it is enriched, fabricated into fuel rods, and shipped to the foreign utility. One Department of Energy official estimates that during 1987, uranium hexafluoride of South African or

Namibian origin will account for about 28 percent of the uranium enriched in the United States for foreign utilities.

According to an Energy Department official, the banning of uranium ore and oxide, without explicitly banning uranium hexafluoride, hurt the U.S. uranium conversion industry without reducing the amount of South African uranium entering the United States.

The question of whether uranium hexafluoride falls within this prohibition is currently being litigated in the case of Dellums and others vs. Nuclear Regulatory Commission (NRC) and the United States (D.C. Cir. 87 - 1531). The action challenges two orders of the Nuclear Regulatory Commission that allow certain licensees to import uranium hexafluoride derived from South African origin uranium ore and uranium oxide. The complainants contend that the orders violate section 309. In issuing the orders, the NRC had determined that the import of uranium hexafluoride does not fall within section 309's prohibition.

Strategic Materials

Three provisions of the act—sections 303(a)(2), 504(a), and 504(b)—concern the U.S. dependence on strategic materials from South Africa and place specific requirements on the administration.

Section 303(a)(2) requires the President to certify to the Congress those strategic minerals essential for the economy or defense of the United States that are unavailable from reliable and secure suppliers. These minerals are to be exempted from the prohibition on imports from parastatal organizations (corporations or partnerships owned, controlled, or subsidized by the South African government). On February 11, 1987, State certified 10 strategic minerals published in a list in the Federal Register.

Section 504(a) requires that the President submit to Congress a report on the extent to which the United States is dependent on the importation of strategic materials from South Africa. On February 6, 1987, State transmitted its report to the Congress. In this report, the definition of dependence is based on the percentage of U.S. consumption of a given commodity supplied by South Africa. The report affirmed a significant reliance on South Africa, with imports from South Africa accounting, for example, for 56 percent of U.S. chromite consumption, 26 percent of manganese consumption, 41 percent of all platinum group metals consumption, and 52 percent of cobalt consumption (when including cobalt transshipped through South Africa). Section 504(b) requires that the

President develop a program to reduce any U.S. dependence on South African materials that were identified in the 504(a) report. The law contains no deadline for the development of this program.

State chairs an interagency coordinating group set up to decide on the direction of the program to reduce dependence on South Africa and to review the policy options. The interagency group is composed of representatives from the Departments of State and Commerce, the Office of Management and Budget, and the Bureau of Mines and National Critical Materials Council (both are part of the Department of the Interior).

The President delegated the authority for implementing section 504 of the act to State in Executive Order 12571. State plans to satisfy its responsibilities by preparing an options paper by the end of 1987. According to a State official, this options paper will likely be provided to the National Security Council (NSC), which will make the final decision on the program.

A preliminary working document has detailed the guidelines and principles for the 504(b) options paper. It was circulated for comment among 15 agencies, including the Departments of Commerce, Defense, and Interior, the Office of Management and Budget, the Federal Emergency Management Agency (FEMA), and the Environmental Protection Agency. The preliminary report identified nine general principles for developing material-specific options. These include focusing the analysis on normal peacetime conditions, i.e., not considering the national defense stockpiles; and closely examining the economic consequences of stockpiling, including U.S. competitiveness and the effects on the federal budget.

According to State's working document, the final options paper will provide a case-by-case examination of 11 minerals, including an analysis of the available options to reduce the U.S. peacetime dependence on South Africa. These options include substitution, conservation, alternate suppliers, and economic stockpiles/private inventories.

State Would Exclude the National Defense Stockpile From the Program to Reduce Dependence

State representatives emphasize that no program developed to reduce U.S. dependence on South Africa will involve the national defense stockpile, which is viewed as a different issue.[1] Most agency officials we spoke to agreed with this position and found it to be consistent with the objectives of the Strategic and Critical Materials Stock Piling Act, as amended (Public Law 96-41, 50 U.S.C. 98 et seq.), which ensures that materials are stockpiled to minimize dependence on foreign sources of supply in times of national emergency.

State's preliminary guidelines clarify that the defense stockpile is designed to alleviate the national defense impact of any supply disruption and that the present stockpile is adequate. A FEMA official explained that material can be released from the stockpile during peacetime if that material is required to maintain defense production—but not for any other use. He added that the 504(b) program is to reduce peacetime dependence; therefore, drawdowns of the defense stockpile should not be considered in the plans.

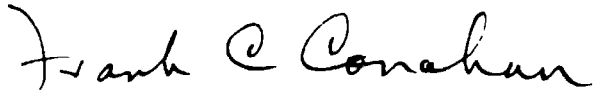
One official at the National Critical Materials Council dissented from this view in that he felt the defense stockpile should be considered an option for any program to reduce dependence. It was his opinion that while the defense stockpile is restricted for use in times of national emergency, it is up to the President to determine what constitutes a national emergency. He stated that one cannot really separate defense and nondefense uses of the stockpile.

We discussed a draft of this report with officials from the Departments of Commerce, Defense, Justice, State, and Treasury and from the office of the U.S. Trade Representative. Their comments were considered in preparing the final report. As requested, we did not obtain official agency comments.

[1]The issue of national defense stockpile goals appears to be deadlocked. The administration's position continues to be based upon a 1985 NSC stockpile study calling for major reductions in stockpile goals. The study recommendations included the elimination of the stockpiles for most of the 10 minerals identified in the section 303(a)(2) listing of strategic materials imported from South Africa.

We evaluated the methodology and assumptions used in the NSC study (National Defense Stockpile: National Security Council Study Inadequate to Set Stockpile Goals (GAO/NSIAD-87-146, May 1987) and concluded that the NSC study should not be used as a basis for setting stockpile goals. We further suggested that Congress consider continuing its restrictions on changes in the stockpile. Congressional actions to date have largely served to maintain previous stockpile goals.

Unless you announce its contents earlier, we plan no further distribution of the report until 2 days after its issue date. At that time, we will send copies to the Secretaries of Commerce, Defense, Justice, State, and Treasury; the Administrator, Agency for International Development; the U.S. Trade Representative; the Director, Office of Management and Budget; and to other interested parties upon request.



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Abbreviations

AID	Agency for International Development
ANC	African National Congress
DOD	Department of Defense
FCS	Foreign Commercial Service
FEMA	Federal Emergency Management Agency
NSC	National Security Council
OEE	Office of Export Enforcement
USTR	U.S. Trade Representative

Sanctions Against South Africa Contained in the Comprehensive Anti-Apartheid Act of 1986

The sanctions prohibit the following interactions between the United States and South Africa:

U.S. Imports From South Africa

1. Gold coins (South African Krugerrands).

2. Uranium.

3. Iron and Steel.

4. Coal.

5. Agricultural products (including sugar).

6. Textiles.

7. Military articles.

8. Products, including U.S. government procurement of goods from parastatals, except strategic minerals certified by the President.

U.S. Exports to South Africa

1. Oil.

2. Many items on the U.S. Munitions List (except items used for commercial purposes).

3. Nuclear materials and technology.

4. Computers to apartheid-enforcing agencies (for example, the police and the military).

Financial Transactions

1. New U.S. loans to South Africa (to both government and private entities in South Africa).

2. New U.S. investment in South Africa (except in firms owned by black South Africans).

3. South African government and parastatal deposits in U.S. banks.

Other Prohibitions

1. Air transportation to and from South Africa.

2. Treaty between the United States and South Africa preventing double taxation.

3. U.S. government promotion of tourism in South Africa.

4. The use of U.S. government funds to subsidize trade or investment in South Africa.

5. U.S. military cooperation with South Africa (except intelligence gathering).

Compliance With the Act

Sections 401 and 501 through 512 of the act required the administration to submit a total of 12 reports to the Congress on various dates within a year after enactment. Of the 12 reports, most were completed close to their statutory deadlines. Four reports were submitted on time or within 1 week of their deadlines, three were 2 to 3 weeks late, four others were 5 to 6 weeks late, and the Justice Department's report on actual and alleged violations of the Foreign Agents Registration Act by government and opposition groups in Subsaharan Africa was over 5 months late. The Justice Department official responsible for the report stated that other projects took priority and that the Justice Department wanted to wait until it had some investigations to report on. (See table II.1.)

Table II.1: Reports Due Under the Act and Their Timeliness

Title	Days late
Economy of southern Africa and the role of U.S. economic assistance (AID)	Early by 11 days
Progress made by the South African government in ending apartheid and any recommendations by the President on the need for future sanctions (State)	0
Compliance with the U.N. arms embargo (State)	3
Activities of the Communist Party in South Africa (State)	8
Feasibility of prohibiting accounts of South Africans in U.S banks (Treasury)	9
U.S. efforts to negotiate multilateral sanctions against South Africa (State)	2
U S. strategy to assist disadvantaged South Africans (AID)	10 to 20[a]
U.S. dependence on South African minerals (State)	37
U.S. dependence on strategic materials from Council of Mutual Economic Assistance (CMEA) member countries (Commerce)	38
Health conditions in the homelands (AID)	38
Industrialized democracies' relations with and sanctions against South Africa (State)	42
Possible violations of the Foreign Agents Registration Act by governments and opposition groups in southern Africa (Justice)	163

[a]The report was due on December 31, 1986, and was submitted by AID in mid-January 1987 AID could not provide the exact issue date for the report.

Efforts to Implement the Policy Objectives of the Act

Section 101 of the act states that the United States should use political, economic, and diplomatic means to bring about reforms in the South African government that would lead to a nonracial democracy. According to a document prepared for us by State, the United States has encouraged the South African government to end apartheid through the following:

- The President, Secretary of State, and Assistant Secretary of State for African Affairs gave speeches reiterating U.S. entreaties to end apartheid.
- In February 1987, the United States introduced a resolution in the United Nations condemning apartheid and calling for the release of political prisoners and issued a report on human rights practices worldwide that denounced South Africa for human rights abuses.
- U.S. embassy personnel participated in protests and activities designed to oppose apartheid.
- The United States protested South Africa's military strikes into neighboring countries by expelling South Africa's defense attache from the United States and withdrawing the U.S. defense attache in South Africa.

Section 102 states that U.S. policy toward opposition groups, including the African National Congress (ANC), should be designed to end violence, leading to negotiations designed to bring about a nonracial democracy. According to State, U.S. officials at all levels maintain communication with the ANC. Specifically cited was Secretary of State Shultz's meeting with Oliver Tambo, the head of ANC, in Washington, D.C., in January 1987.

Section 103 states that U.S. policy of aiding victims of apartheid should work toward removing apartheid, helping victims in overcoming handicaps imposed on them by the system, and preparing them for full participation in a post-apartheid society. The administration, through the Agency for International Development (AID), provides aid to private organizations to carry out projects in the fields of education, community affairs, human rights, and small business and trade union development. Other U.S. agencies, such as the U.S. Information Agency, the National Endowment for Democracy, the Commerce Department, and the State Department's Bureau for Refugee Programs are also engaged in efforts designed to help the victims of apartheid.

Section 104 states that U.S. policy toward other countries in southern Africa shall be designed to encourage democratic forms of government, full respect for human rights, an end to cross-border terrorism, political independence, and economic development. According to the previously mentioned State Department document, the United States continues to pursue negotiations to achieve independence for Namibia through linking it with Cuban troop withdrawal from Angola. Also, the administration has increased economic and humanitarian assistance to southern Africa.

Section 105 gives the sense of Congress that the President should discuss with governments of the African states bordering South Africa the effects that disruptions in transportation or other economic links through South Africa would have on them and the means of reducing those effects. According to State, in 1986, the Under Secretary for Political Affairs visited several key southern African states to reiterate American support for the security and development of these frontline states. President Reagan has also met with selected frontline state presidents.

Section 106 states that the United States, in concert with its allies and other interested parties, should seek to bring the South African government and its opposition into negotiations to achieve a transition to a post-apartheid democracy. The section also contained the sense of Congress that the President, the Secretary of State, or other high-level U.S. officials should meet with opposition leaders in South Africa. According to State, the Secretary of State and the U.S. Ambassador to South Africa have met with a variety of representatives of the oppostion in South Africa.

Section 107 urges the President to seek cooperation among individuals, groups, and nations to end apartheid and suspend terrorism in South Africa. The Department issued a report to Congress containing a description of continuing U.S. efforts—both bilaterally and multilaterally—to help create a political framework in which negotiations can begin in South Africa.

Section 108 states the sense of Congress that the ANC should condemn and take action to prevent execution by fire—called necklacing. According to State, the administration shares the sense of Congress in condemning necklacing by the ANC and others in South Africa.

Section 109 states the sense of the Senate that the U.S. Ambassador should formally request permission of the South African government to meet with opposition leader Nelson Mandela. According to State, the U.S. Ambassador has, on numerous occasions, requested the meeting, but the request has not yet been granted. The Ambassador continues to seek a meeting.

Section 110, among other things, states the sense of Congress that U.S. employers in South Africa are obliged to actively oppose apartheid and recruit and train victims of apartheid for management responsibilities. In September 1987, State reported to Congress on the adherence of U.S.

businesses to a set of fair labor principles designed to counter apartheid. The principles are designed to encourage nondiscrimination in the workplace and to promote assistance to victims of apartheid. State noted that the administration has taken steps to ensure that firms identified as failing in the report will be denied export assistance for 1 year.

Department of Defense Implementation of Its Responsibilities

The executive order requires the Department Of Defense (DOD) to implement the act's provision (section 322) prohibiting any U.S. agency or entity from cooperating with the armed forces of South Africa, except for activities which are reasonably designed to facilitate the collection of necessary intelligence. According to one DOD official, a distinction exists between military "cooperation," which benefits both the United States and South Africa, and military "activities," which benefit only the United States. The official indicated that DOD does not consider certain military activites as falling within section 322's prohibition.

The official stated that DOD does not cooperate with South Africa's military forces. As evidence of this, the official said that the United States does not train or exercise with South Africans, and that DOD neither provides nor sells U.S. military hardware, technology, or items having potential military end use, to South Africa's military.

As to what DOD considers permissible military activities, the official said that DOD engages in some activities such as the use of military attaches, who collect and report on politico-military intelligence, and the Marine guards attached to the United States embassy to provide security.

Since 1978, the Duncan Memorandum has governed the conduct of U.S. military personnel in relationships with South Africans. The memorandum states that "it is essential that no actions or statements by officials or elements of the Department of Defense present even the appearance of a new or higher level of cooperation between the United States and South Africa." The memorandum also gives examples of prohibited conduct. DOD does not monitor other agencies' relationships with South Africa. DOD states that the administration did not intend for DOD to have any government-wide overall responsibility over other departments and agencies for ensuring compliance with section 322. One DOD official cited section 1 of the executive order requiring all affected agencies to "take all steps necessary, consistent with the Constitution, to implement the requirements of the Act." DOD said that the Department of State and the National Security Council have reaffirmed this view.

DOD officials said that other U.S. agencies, because of the nature of their work, might have the need to interact with the South African armed forces. We are developing further information on this matter for our final report.

The U.S. Trade Representative Has Limited Staff for Enforcement

The executive order requires the U.S. Trade Representative (USTR) to implement the provision in the act authorizing the President to limit imports from any foreign country which benefits from or otherwise takes commercial advantage of U.S. sanctions. However, the order provides that USTR is not responsible for actually imposing import restrictions. In practice, USTR officials have interpreted their role as monitoring other nations to detect benefits from U.S. sanctions and, if needed, advising the President on possible retaliatory actions.

USTR does not have the people to adequately monitor other nations' possible commercial advantage from U.S. sanctions. Because only one person monitors all trade developments in Africa, possible foreign commercial advantages derived from the U.S. embargo are monitored only on a part-time basis. In addition, because USTR's resources are limited, it gets much of its information on possible foreign commercial advantage from an interagency committee.

USTR is dependent on intelligence from the Central Intelligence Agency and information from the U.S. embassy in South Africa to identify changes in trading patterns that might suggest that other nations are taking commercial advantage of the sanctions. In the future, Commerce will also provide data. In the 1987 Annual Foreign Policy Report to the Congress (January 21, 1987 through January 20, 1988), Commerce reported that because of U.S. export controls, South African customers have sought other suppliers, causing U.S. firms to lose sales to international competitors. USTR, however, was unaware of Commerce's assertions that the U.S. market share in the rapidly expanding South African computer market has declined.

Enforcement of the Act

Two principal agencies are involved in enforcing the act:

- Treasury's U.S. Customs Service has jurisdiction over merchandise entering and exiting U.S. borders and investigates violations of U.S. law.
- Commerce's Office of Export Enforcement (OEE) is responsible, with Customs, for enforcing the act's prohibition on exports, for example computers to apartheid-enforcing agencies and oil. OEE also investigates violations of the act.

Customs Enforces Export and Import Prohibitions

Customs investigates both import and export violations of the act. For imports, Customs initiated 17 investigations of fraud, most of which involved the falsification of documents listing the country where the product originated, false country of origin markings on the product, transhipment through a third country to mask South African origin, or a combination of these activities. Customs ended 4 of the 17 investigations after it determined that no violation existed or that the allegations were unfounded. The other 13 cases remain open with no specific criminal violations of the act discovered to date; one case was referred for prosecution for an alleged criminal violation prior to the enactment of the act, but prosecution was declined and the case remains open. In 3 of the 13 open cases (including the prior violation), 2 of which have civil penalty action pending, Customs seized the merchandise.

One Justice official involved in prosecuting violations said that the primary effect of the act has been to change the mismarking of merchandise from a misdemeanor, which is the case regardless of country of origin, to a felony if the mismarking is of merchandise from South Africa, with a maximum sentence of 10 years in prison.

Both Customs and Justice officials said that the act has had little effect on the enforcement of illegal exports. Customs said that the act adds another criminal charge that can be filed against people who export arms to South Africa in violation of the Arms Export Control Act and another charge against people who export computers to South African police, military, and other apartheid-enforcing agencies in violation of the Export Administration Act. According to Customs, of the 14 investigations related to the act to date, 13 have also involved potential violations of the Arms Export Control Act or the Export Administration Act and would have been investigated even without the passage of the Anti-Apartheid Act. Customs said that the only significant new export prohibition in the Comprehensive Anti-Apartheid Act bans the exports of oil

and petroleum products from the United States to South Africa. Customs has one investigation pending that involves petroleum products.

Of the 14 investigations into potentially illegal exports, 2 have been closed without indictment, 7 are still active, 1 has been passed to the State Department's Office of Munitions Control for further review, 3 are pending U.S. attorneys' decisions to prosecute, and 1 has been prosecuted and a conviction obtained.

The case that ended in prosecution, and the first and only conviction to date under the act, was an attempt to illegally export technical manuals for the C-130 military aircraft to South Africa through Argentina.

In one of the three cases where the decision to prosecute is pending, the U.S. Attorney has tentatively accepted prosecution.

While Customs has initiated a number of investigations, Customs officials said the agency has not received additional resources for enforcement. Customs highest priorities are narcotics, fraud, controls on high technology exports to the Soviet bloc, financial incidents, and pornography. Consequently, Customs has not independently sought information on violations of the act by developing informant networks, but instead follows up on tips from existing informants, such as those that usually provide information on narcotics.

Commerce Is Also Involved in Export Enforcement

Commerce's OEE uses post-shipment checks to help enforce the export provisions of the act in South Africa. Post-shipment checks in South Africa can help ensure that controlled products have not been diverted from South Africa to the Soviet bloc, are not being used for South Africa's nuclear program, and are not being used by South African apartheid-enforcing agencies in violation of the act. During a post-shipment check, a Foreign Commercial Service (FCS) officer associated with the U.S. embassy in South Africa, with help from OEE headquarters staff in certain cases, is responsible for verifing that controlled products, usually U.S.-made computers, are on-site at the South African government agency or private business. To determine what the computers are used for, the FCS officer might examine logs of computer use and talk to workers at the computer site.

OEE has devoted significant resources to post-shipment checks in South Africa. In fiscal year 1986, 21 percent of OEE's worldwide post-shipment checks were conducted in South Africa, rising to 27 percent in fiscal

year 1987. According to a Commerce official, OEE conducts more post-shipment checks in South Africa than in any other country.

Post-shipment checks appear, however, to be more effective in assessing whether physical diversions have taken place than whether a South African apartheid-enforcing agency, such as the military or police, is using the computer. OEE officials said that it is possible for the military or police to use a U.S.-made computer remotely by modem or off-site terminal without detection by a post-shipment check.

OEE also does pre-license checks on some applications for exports to South Africa before they are granted. Pre-license checks are also done by FCS officers at the U.S. embassy in South Africa. The FCS officer checks whether the listed recipient of the product covered by the application exists, has ordered the product, and is suitable to receive it. Pre-license checks in South Africa made up 3 percent of such checks worldwide in fiscal year 1986 and increased to 4 percent in fiscal year 1987 after the act was passed. Of the 45 pre-license checks done in South Africa in fiscal year 1987, 34 indicated no potential problems in granting the license, 7 recommended the license application be returned to the exporter without action until more information was provided, 2 recommended rejection of the license application, and 2 were cancelled.

Operation of Foreign Assistance Programs to AID Victims of Apartheid

The act authorizes the appropriation of funds for U.S. foreign assistance programs to help South African victims of apartheid. AID implements the programs, which fall into three categories:

- scholarships for victims of apartheid, provided by section 201 of the act;
- the human rights fund, provided by section 202 of the act; and
- economic support programs for disadvantaged South Africans, provided by section 511 of the act.

AID's South African assistance program is unique because the aid is not provided to or through the South African government but instead goes to private groups.

Table IV.1 contains a comparison of obligations and expenditures for AID programs in South Africa from date of initiation to June 30, 1987. The programs are described on pages 23 through 29.

Table IV.1: Obligations and Expenditures for AID Programs in South Africa From Date of Initiation Through June 30, 1987

Program	Obligations	Expenditures
Bursaries Project	$9,360,000	$201,000
Scholarships for Secondary Schools	0	0
Human Rights Fund	3,538,000	2,187,000
Training for Disadvantaged South Africans	22,881,000	17,200,000
Alternative Education	550,000	9,000
Community Development	2,260,000	565,000
Trade Union Training	3,393,000	1,892,000
Entrepreneurial Training for Disadvantaged South Africans	3,000,000	1,801,000
Africa Private Enterprise Fund	104,000	0
Black Private Enterprise Development	0	0
Special Self-Help Fund	1,315,000	938,000
Building Democratic Institutions Project	212,000	0
Funding for the International Committee of the Red Cross	500,000	0
Total	**$47,113,000**	**$24,793,000**

According to one AID official, there are four principal reasons for the large difference between obligations and expenditures for selected programs (for example, the Bursaries and alternative education programs):

- Many scholarship programs, including the Bursaries project, and scholarship components of other assistance programs are forward funded—that is, a commitment is made to finance a student's entire education

program. For example, AID, when committing to finance 400 years of college education, funds 100 students for four years rather than 400 students for 1 year. This guards against terminating a student's education if problems occur with program funding. However, forward funding also leads to balances accumulating without being spent.

- The expenditures in the table are measured in AID's accounting system by disbursements rather than accruals. If AID's accounting system measured accruals rather than disbursements, expenditures would be higher.
- All disbursements are not reflected in AID's accounting system. After a voucher is received and money paid to a grant recipient, the posting of expenditures is slow. The slow posting occurs because South Africa has no program controller. AID has a regional controller for several countries in Swaziland.
- In fiscal year 1986, most of the obligations for programs, except the self help and human rights funds, were made in the final quarter of the fiscal year. As a result, expenditures were delayed.

Scholarships for the Victims of Apartheid

The following educational programs, administered by AID, fall under section 201 of the act:

South Africa Bursaries Project

The act provides that not less than $4 million of the amounts authorized to be appropriated in each of fiscal years 1987, 1988, and 1989, shall be spent on education, training, and scholarships for students attending college in South Africa.

Under the South African Bursaries Project, which existed before the act was passed, AID obligated about $7.4 million on the program from fiscal year 1985, when the project was first authorized, through fiscal year 1986. AID obligated $4 million in fiscal year 1987 and plans to obligate $4 million in each of fiscal years 1988 and 1989. From fiscal year 1985 through June 30, 1987, about $200,000 had been spent on the project.

The project financed 76 students in 1986 and 260 more in 1987. By 1988, AID expects to have funded a total of 600 scholarships.

The program is administered by two South African nongovernmental organizations. AID submits all applications for scholarships from these organizations to the Policy Advisory Board, composed of South African

educators and community leaders who have a role in formulating policy and priorities for the project and provide guidance in managing it.

Scholarships for Secondary Schools

The act provides that up to $1 million of the amounts authorized to be appropriated for each of fiscal years 1987, 1988, and 1989, may be used to finance scholarships for secondary school students in South Africa. The act states that a panel or panels appointed by the U.S. Chief of Mission to South Africa should select scholarship recipients. The program is still in the planning stage, with no obligations to date.

According to AID, implementing the program has proved slow and difficult. Both secondary education and the scholarships themselves are volatile issues in South Africa. A scholarship program for private schools may be seen by disadvantaged South Africans as fostering elitism. However, a scholarship program to meet the few expenses for public schools does not deal with the more fundamental problems in secondary education—a shortage of schools and the poor quality of school facilities and teachers—and might seem to support the apartheid-based school system. According to one AID official, another problem with the program is that black South Africans are reluctant to be on a panel associated with the U.S. Ambassador.

In-Service Training for Teachers

The act provided that up to $500,000 in fiscal year 1987 and up to $1 million in fiscal year 1988 of the amounts authorized to be appropriated may be used for in-service teacher training through South African nongovernmental organizations, such as teachers' unions.

The in-service training program existed before the act was passed. AID funds the program under the alternative education programs, which are discussed on page 26.

AID is implementing the program through the African Teachers Association of South Africa, the largest teachers union in South Africa, and the American Black Colleges Consortium.

The Human Rights Fund

Section 202 of the act provides that $1.5 million of amounts made available in fiscal year 1986 and each year thereafter shall be used for grants to nongovernmental organizations for human rights activities in South Africa.

The human rights fund existed before the act was passed. From fiscal year 1979, when the program was first authorized, through fiscal year 1986, about $3.1 million was obligated for human rights. In fiscal year 1987, AID obligated $1.5 million. In each of fiscal years 1988 and 1989, AID plans to obligate $1.5 million. From fiscal year 1979 through June 30, 1987, expenditures on human rights totaled about $2.2 million.

The human rights program in South Africa is administered jointly by the U.S. embassy, consulates, and the AID mission. The highest priorities for assistance under this program are given to activities sponsored by pressure and service groups involving civil and political rights.

The act further states that of the $1.5 million in funds made available to carry out the human rights program each fiscal year, the following amounts shall be used for assistance to certain individuals and groups:

- Not less than $500,000 each fiscal year for legal and other assistance to political prisoners and their families and support for black-led community organizations peacefully resisting apartheid. Individual grants are not to exceed $100,000 and the average grant should not exceed $70,000. In fiscal year 1987, 11 grants totaling about $720,000 (average: about $65,000) were made to people providing legal assistance to detainees and to people facing prosecution under apartheid laws or challenging the implementation of those laws. For example, one grant went to a national organization in South Africa providing paralegal assistance, undertaking pressure group activities, and acting as a human rights service organization. Another grant went to provide legal services in rural areas.
- $175,000 each fiscal year to assist families of victims of violence. AID gave a grant of $175,000 in fiscal year 1987 to the South African Red Cross.
- $175,000 to black groups in South Africa that are working peacefully toward a multiracial solution to sharing political power. An AID document prepared for us cited difficulties in identifying specific AID activities that fall under this provision of the act because it regards the provision as broad enough to encompass most of AID's program in South Africa. According to the agency, the majority of AID's South African grantees are peaceful, black, and working toward a multiracial solution to South Africa's political and social problems.

Economic Support for Disadvantaged South Africans

Section 511 of the act provides that up to $40 million of the funds authorized to be appropriated for fiscal year 1987 and every year thereafter shall be available to assist disadvantaged South Africans. The act states that such assistance may include scholarships, alternative education programs, community development programs, and programs to promote participation of disadvantaged South Africans in trade unions and private enterprise.

According to the AID document prepared for us, section 511 is so broad that it encompasses most of AID's programs in South Africa. AID has programs covering the areas specifically mentioned in section 511 and has other programs that it regards as being consistent with the mandate of the section.

Training for Disadvantaged South Africans

Section 511 provides scholarships for disadvantaged South Africans in addition to those provided in section 201 of the act.

A scholarship program existed before the passage of the act. From fiscal year 1982, when a scholarship program was first authorized, through fiscal year 1986, AID had obligated about $23 million. In fiscal year 1987, AID obligated $5.5 million. AID plans to obligate $4 million in each of fiscal years 1988 and 1989. From fiscal year 1982 through June 30, 1987, AID expended $17.2 million for the program.

The AID project is associated with the South African Education Program, an initiative by U.S. universities, corporations, and foundations, and brings disadvantaged South African students to the United States for undergraduate and graduate education. AID's contribution to the program will fund about 400 students over the next 5 years.

Alternative Education Programs

The Educational Support and Training Project has short-term and long-term goals. The short-term goals are to help blacks cope with the apartheid-based educational system in South Africa and influence the debate on education and to help communities become involved in defining their educational priorities. The long-term goal is to help lay the foundation for a nonracial educational system in post-apartheid society. The programs funded under this project include community-based schools as an alternative to apartheid-system schools, schools attended by all races as models for nonracial education in post-apartheid South Africa, adult education and literacy programs, and educational material development.

In fiscal year 1986, the year the program was first authorized, AID obligated $550,000 for the program; in fiscal year 1987, $1.9 million. For each of fiscal years 1988 and 1989, about $4.6 million is planned for obligation. From fiscal year 1986 through June 30, 1987, AID had expended $9,000.

Community Development Program

The Community Outreach and Leadership Development Program is designed to develop community leadership and representative institutions to allow disadvantaged communities to pursue their own priorities for social and political change. The program funds nongovernmental community organizations and civic associations designed to provide services and leadership to the community, advice and mediation groups trying to secure basic rights and promote collective action for peaceful change, and youth and women's development programs.

In fiscal year 1986, the year the program was first authorized, AID obligated about $2.3 million; in fiscal year 1987, about $3.3 million. For each of fiscal years 1988 and 1989, $3.5 million is planned for obligation. From fiscal year 1986 through June 30, 1987, $565,000 had been spent on the program.

Trade Union Training Project

The act provides that up to $3 million of the about $40 million provided each fiscal year under the economic support program shall be available for trade union training programs.

The project existed before the passage of the act. From fiscal year 1983, the year the project was first authorized, through fiscal year 1986, AID obligated about $3.4 million; in fiscal year 1987, $800,000. AID plans to obligate $1.5 million in each of fiscal years 1988 and 1989. From fiscal year 1983 through June 30, 1987, AID had actually spent about $1.9 million.

The program is implemented through the AFL-CIO's African-American Labor Center. Training for South African unionists is conducted by the center itself, AFL-CIO affiliated unions, and the international trade union secretariats.

Programs to Promote Participation of Disadvantaged South Africans in Private Enterprise

Three programs promote participation of disadvantaged South Africans in private enterprise:

- Entrepreneurial Training for Disadvantaged South Africans is a program providing management training and business counseling to disadvantaged South Africans through a black chamber of commerce representing about 40 percent of black businesses in South Africa. The program existed before passage of the act. From fiscal year 1983, when the program was first authorized, through fiscal year 1986, AID obligated $3 million. No obligations were planned for fiscal years 1987 through 1989. From fiscal year 1983 through June 30, 1987, about $1.8 million had been spent on the program.
- The Africa Private Enterprise Fund helped the International Executive Service Corps establish a South African organization. The Corps usually provides the services of retired U.S. executives to private companies in developing countries to help them with business practices in certain fields, such as management and marketing. The South African Corps, using white South African businessmen for expertise rather than American businessmen, is now independent of the international organization. The project helped 35 black businesses in its first 6 months of operation. In fiscal year 1986, when the program was first authorized, AID obligated $104,000. No obligations were planned during fiscal years 1987 through 1989. From fiscal year 1986 through June 30, 1987, AID's accounting system showed that no funds had been spent on the program. The system, however, understates AID's expenditures on assistance programs.
- The Black Private Enterprise Development Project is designed to help black business and professional groups become effective advocates for black business in South Africa and to expand black hiring and promotion in the white economy. The project will also provide technical assistance to small-scale black entrepreneurs and those blacks trying to acquire major businesses. In fiscal year 1987, the year the project was first authorized, AID obligated $1.9 million. For each of fiscal years 1988 and 1989, AID plans to obligate $4.7 million. Through June 30, 1987, no money had been spent on the program.

Other Projects

AID has programs providing economic support to disadvantaged South Africans that do not fall into the areas mentioned specifically in the act but that are consistent with its mandate:

- The Special Self-Help Fund provides small grants to local community groups to establish services in health or education or to promote income

generation and employment. From fiscal year 1980, the year the program was first authorized, through fiscal year 1986, AID obligated about $1.2 million for the program. In fiscal year 1987, AID obligated $350,000. For each of fiscal years 1988 and 1989, $350,000 was planned for obligation. From fiscal year 1980 through June 30, 1987, AID had spent $938,000 on the program.

- The Building Democratic Institutions Project provides funding to the National Endowment for Democracy for its programs in South Africa. The Endowment supports U.S. and South African nongovernmental organizations offering leadership training and promoting dialogue for peaceful change. In fiscal year 1986, the first year the program was authorized, about $200,000 was obligated; for fiscal year 1987, about $600,000. For each of fiscal years 1988 and 1989, planned obligations for the program are $150,000. From fiscal year 1986 through June 30, 1987, no funds had been spent on the program.
- Funding is provided for the International Committee of the Red Cross program to train 60 community organizers who will teach first aid and health care classes and organize relief efforts and groups to respond to medical emergencies. In fiscal year 1986, the first year the program was authorized, $500,000 was obligated. For fiscal years 1987, 1988, and 1989, no obligations were planned. From fiscal year 1986 through June 30, 1987, no money had been spent on the program.

Administration Efforts to Obtain International Cooperation for Sanctions

For sanctions to have the best possibility for success, multilateral cooperation is essential. Section 401 of the act states that "it is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid." The act further states that negotiations to reach such agreements on sanctions with other industrialized democracies and South Africa's other trading partners, including the convening of an international conference by the Secretary of State with other industrialized democracies, should begin promptly and should be completed not later than 180 days after the act's enactment (March 31, 1987).

The State Department's report to the Congress entitled U.S. Efforts to Negotiate Multilateral Measures to Dismantle Apartheid states that the legislative history of section 401 indicates that the provision is not mandatory. One State Department official said that during congressional action on the act, the Congress changed the wording to make it nonmandatory, thus eliminating the potential constitutional problem of interfering with the President's prerogative to conduct foreign affairs. As a result of State's interpretation, it never convened the international conference.

Instead, State's report emphasizes its continuing diplomatic discussions—both bilateral and multilateral—with other nations on possible multilateral steps to end apartheid. According to the report, State's diplomatic exchanges with other nations have dealt with how to persuade South Africa to resume its reforms, openings for negotiation between the South African government and the opposition, and sanctions.

The act also stated the "sense of the Congress" that the United States should propose that the United Nations Security Council impose measures against South Africa similar to those in the act. The administration voted against additional mandatory sanctions against South Africa in the Security Council, citing two reasons:

- If circumstances changed in South Africa, any of the permanent members of the Council—including the Soviet Union--could veto the lifting of multilateral sanctions.
- Imposing sanctions is the sovereign responsibility of each nation.

Sanctions Imposed by Other Nations

Although no international conference to negotiate sanctions was held, other nations, including the European Community and the Commonwealth nations, have initiated sanctions against South Africa. However,

the United States has the strongest sanctions against South Africa in the world. (See tables V.1 and V.2.)

Table V.1: Export and Financial Sanctions of Selected Nations

	Sanctions						
Country	Ban on investment	Ban on new bank loans	Ending of export credits	Ban on nuclear trade	Ban on arms	Ban on oil	Ban on computers
United States	Yes	Yes	Yes	Yes	Yes	Yes	Partial
United Kingdom	Voluntary	No	No	Partial	Yes	Yes	Partial
France	Yes	No	No	Partial	No	No	Partial
West Germany	Yes	No	No	Partial	Yes	No	No
Italy	Yes	No	Partial	No	No	No	No
Japan	Yes	Yes	No	Yes	No	No	Yes
Taiwan	No	No	No	No	No	No	No
Hong Kong	Voluntary	Voluntary	No	No	Yes	No	No
South Korea	Yes	Yes	No	No	No	No	No
Singapore	No	No	No	No	No	No	No

Table V.2: Import Sanctions of Selected Nations

	Sanctions						
Country	Ban on agricultural products	Ban on uranium	Ban on krugerrands	Ban on iron & steel	Ban on coal	Ban on products of parastatals	Ban on air links
United States	Yes	Partial	Yes	Yes	Yes	Yes	Yes
United Kingdom	No	No	Yes	Yes	No	No	No
France	No	No	Yes	Yes	Partial	No	No
West Germany	No	No	Yes	Yes	No	No	No
Italy	No	No	Yes	Yes	No	No	No
Japan	No	No	Yes	No	No	No	Yes
Taiwan	No	No	No	No	No	No	No
Hong Kong	No	No	Voluntary	Voluntary	No	No	No
South Korea	No	No	No	No	No	No	No
Singapore	Yes	Yes	Yes	Yes	Yes	Yes	No

Of the six countries which had the highest volume of trade with South Africa—the United States, Japan, West Germany, Italy, the United Kingdom, and France—the United States has the most comprehensive sanctions.

Worldwide, the most commonly imposed sanctions against South Africa are bans on South African Krugerrand gold coins, new investments in South Africa, imports of South African iron and steel, and arms exports to South Africa.

According to Commerce Department officials, however, some nations' sanctions have less effect than they seem because they end commercial relationships that were not important, narrowly define products covered, and adopt sanctions in which participation by business is voluntary. Some examples follow:

- Although two Scandanavian countries have comprehensive trade bans against South Africa and a third Scandanavian country is considering imposing one, these countries' volume of trade with South Africa is low.
- Although the Japanese banned new investment in South Africa, investment is a less important commercial relationship for them in South Africa than are exports of products.
- The European Economic Community has narrowly defined iron and steel for its boycott against these South African products.
- The Canadian government has suggested that there be no imports of South African Krugerrand gold coins, new bank loans to the South African government, and the export of oil, but has not specifically banned them.
- The Hong Kong government has suggested that there be no new investment and bank loans in South Africa and imports of South African gold coins and iron and steel, but has not specifically banned them.
- The Australian government has suggested that there be no South African government investment in Australia and Australian bank loans to the South African government, but has not specifically banned them.

Objectives, Scope, and Methodology

We reviewed the status of administration implementation of the Comprehensive Anti-Apartheid Act of 1986, focusing on

- compliance with the act,
- enforcement of the act,
- efforts to gain multilateral cooperation for sanctions against South Africa, and
- operation of programs to assist the victims of apartheid.

We also reviewed two additional matters which came to our attention during our work. Those are (1) the treatment of uranium hexafluoride in relation to the ban on imports of South African uranium ore and oxide and (2) efforts to lessen U.S. dependence on South African strategic minerals.

To describe administration actions to comply with the act, we compared the statutory dates for administration reporting on political, economic, social, and legal issues with the dates the reports were actually submitted to the Congress. We held discussions with State Department officials concerning State efforts to implement the act's policy objectives and reviewed material describing its activities. We also spoke with and obtained information from DOD and USTR on their implementation of selected provisions in the act.

To describe administration actions to enforce the act, we spoke to and obtained information from officials in Commerce's Office of Export Enforcement, Treasury's U.S. Customs Service, and the Justice Department on steps they have taken to enforce the act. This included data on the number of investigations, alleged violations, and case status.

To describe the operation of the foreign assistance programs to aid victims of apartheid, we reviewed AID documents detailing the various programs. These documents included data on obligations and expenditures. We also held discussions with AID officials to determine why expenditures were substantially below obligations.

To develop information on U.S. efforts to obtain multilateral cooperations for sanctions, we reviewed the act and obtained information from State Department officials on their interpretation of its provisions and the actions taken to implement those provisions. To describe which sanctions other nations had imposed, we compiled matrices using State Department data contained in its report Industrial Democracies' Relations with and Measures Against South Africa.

Information about U.S. imports of South African uranium was obtained from Treasury's Office of Foreign Assets Control, an Energy Department official, and U.S. uranium industry representatives. We obtained information on strategic minerals from the Departments of State and Interior.

Our review was performed in accordance with generally accepted government auditing standards. We conducted our work between August and October 1987.

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