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LETTER DATED 13 OCTOBER 1978 FROM THE PERMANENT REPRESENTATIVE
OF INDIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF
THE SECURITY COUNCIL

I have the honour to forward to you for the information of the Security Council a copy of a letter dated 19 September 1978 from the Permanent Representative of the United Kingdom, enclosing a copy of the report by Messrs. T. H. Bingham and S. M. Gray on the supply of petroleum and petroleum products to Rhodesia (the Bingham Report). I should like to add that this report is available for consultation by members of the Council in the secretariat of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia. However, I am enclosing herewith chapter XIV of the Bingham Report, containing the conclusions and observations of that report.

At its 317th meeting, on 12 October 1978, the Committee discussed the Bingham Report in general terms, and the proceedings of its meeting will be available in summary record form (S/AC.15/SR.317).

The Committee decided that it should be left to the Security Council to consider this matter at an appropriate time.

I would be grateful if this letter could be circulated as a document of the Security Council.

(Signed) Rikhi JAIPAL
Permanent Representative of India
to the United Nations
Chairman of the Committee

Enclosure

Letter dated 19 September 1978 from the Permanent Representative of the United Kingdom to the United Nations addressed to the Chairman of the Security Council Committee established in pursuance of resolution 253 (1968) concerning the question of Southern Rhodesia

I should like to inform you of the results of an enquiry by Mr. Bingham, QC, and Mr. Gray into the supply of petroleum and petroleum products to Rhodesia. I enclose a copy of the Report and, in view of its bulk, I leave it to you to decide whether to make individual copies available to members of the Committee or whether the enclosed copy should be available in the Secretary's office for those who wish to study it.

The enquiry was commissioned in April 1977 by my Secretary of State for Foreign and Commonwealth Relations. Mr. Bingham's investigation has been completed with the utmost speed consistent with a thorough investigation of the volume and complexity of the evidence submitted to him. The British Government and the oil companies under United Kingdom jurisdiction gave Mr. Bingham their full co-operation, and written and oral evidence was received from other organisations and individuals.

Upon receipt of the Report, my Government decided that it should be published in full, once the consent of those giving relevant evidence to the enquiry had been obtained. My Government also concluded that, in the light of material contained in the Report, it should be referred to the Director of Public Prosecution to consider whether further enquiries should be undertaken with a view to possible criminal proceedings for breaches of United Kingdom sanctions legislation. The Report has accordingly been referred to the Director of Public Prosecutions. I will keep you informed of any action he decides to take.

(Signed) Ivor RICHARD

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Annex

Excerpt from
Report on the Supply of Petroleum and Petroleum Products to Rhodesia
by T. H. Bingham, Q.C. and S. M. Gray, F.C.A.

CONCLUSIONS

CHAPTER XIV

14.1 In this Chapter we summarise our main factual conclusions, we summarise and review the major arguments advanced on behalf of the Shell and BP Groups and we make certain concluding observations.

14.2 We refrain from expressing any opinion as to whether any company or any individual has or may have at any time committed any criminal offence under the Sanctions Orders. Our Terms of Reference do not in our opinion permit, still less require, us to do so. We have, however, in Annex III, gathered together information and references which may be of relevance in considering whether criminal offences have been committed: the information and references there given relate to the more important companies which feature either in the organisation charts referred to in Chapter I, paragraph 1.45 or in the chain of supply to Southern Africa described in Chapter I, Section C.

A. FACTUAL CONCLUSIONS

14.3 It is convenient that we should summarise our main conclusions. In making this summary we would emphasise

- (a) that a proper understanding and fair appreciation of the facts summarised require reference to the indicated passages in the full text.
- (b) that the summary is of facts now known: many of the facts now summarised were not contemporaneously known to one or other or both of the Groups in London; some were not known until the relevant documents were assembled from many sources for presentation to us; some came to light in the course of the Investigation. It would be wrong to assume that all the events now summarised were known to the Groups in London at the time the events were taking place.

14.4 Our main conclusions are these:

(i) Shell notified the Rhodesian Government before UDI that the Shell and BP Groups would continue to perform their contractual obligations unless or until force majeure prevented them doing so. There may have been informal expressions of opinion to the effect that sanctions were unlikely to be imposed and, if imposed, were unlikely to be effective. The Groups did not deliberately encourage the Rhodesian Government to make its illegal declaration of independence and did not assure that Government that it would maintain supplies if sanctions were imposed. (Chapter IV, paragraphs 4.3 - 4.16).

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(ii) It seems very likely that in the weeks preceding promulgation of the 1965 Sanctions Order stocks in Rhodesia rose above the normal level. We do not think that any major concerted effort to that end was made, and limitations on storage capacity precluded substantial stockpiling. We doubt if the margin by which stocks were increased significantly affected the subsequent course of events. (Chapter IV, paragraphs 4.17 - 4.23).

(iii) It appears that stocks of refined products in Zambia immediately prior to the 1965 Sanctions Order were at a very low level. It may be that there was some interception in Rhodesia of supplies intended for Zambia, or a deliberate failure to consign to Zambia supplies which would otherwise have been consigned, but the evidence available to us does not show that this was so. (Chapter IV, paragraphs 4.24 - 4.28).

(iv) We are satisfied that Shell did not, in the weeks immediately preceding the 1965 Sanctions Order, negotiate with the Portuguese to vary the form of documentation for imports in transit through Mozambique with a view to concealing the destination of products consigned to Rhodesia in the event of an embargo. (Chapter IV, paragraphs 4.29 - 4.38).

(v) Upon the making of the 1965 Sanctions Order Shell on behalf of Consolidated and the Shell and BP Groups acted promptly to notify the Consolidated companies in South Africa, Mozambique and Rhodesia of the terms of the Order and to seek the compliance of those companies with its terms. A cargo of oil on the high seas en route for Rhodesia was diverted. Further supplies of crude were stopped. Orders suspected of being for Rhodesia were rejected. (Chapter V, paragraphs 5.2 - 5.5 and 5.43).

(vi) Pumping of oil to CAPREF ceased on the 31st December 1965 and the Refinery closed down on the 15th January 1966. No crude oil has reached the Refinery since that date and it remains closed down. (Chapter IV, paragraph 4.22 and Chapter V, paragraphs 5.49 and 5.74).

(vii) The Consolidated management immediately stopped the despatch of products from the Durban Refinery and the Luboil Blending Plant and (after a pause to assess the legal position) acted to prevent the supply from South Africa to Rhodesia of products which had traditionally been supplied from the Consolidated companies in South Africa to their affiliates in Rhodesia. (Chapter V, paragraphs 5.3, 5.8, 5.23 and 5.25).

(viii) Oil products began to reach Rhodesia by the road route over Beit Bridge at a rate rising from about 35,000 gallons per day in February up to about 100,000 gallons per day in May 1966. Subsequently the quantities entering Rhodesia by this route declined. Supplies were sent partly by South African supporters of the Rhodesian regime and partly by South African and Rhodesian contractors, and were increasingly obtained by GENTA (the Rhodesian oil procurement agency). Transport belonging to the South African Consolidated marketing companies was not involved. Some transport belonging or leased to Rhodesian contractors but painted (or previously painted) with the colours of the Rhodesian Consolidated companies was used to obtain supplies; some of these

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companies' own transport may also have been used. It is certainly possible, though not proved, that the Rhodesian Consolidated companies actively participated in the procurement of supplies by road from the Transvaal. Another Rhodesian marketing company did so. The source of the products carried to Rhodesia by road cannot be clearly ascertained, but it is likely that they derived from all the South African marketing companies. (Chapter V, Section C).

(ix) The local management of the Consolidated companies in South Africa was impeded in its initial efforts to restrict the flow of oil to Rhodesia by the insistence of the South African Government that there should be no embargo within South Africa on supplies to Rhodesia and by the strong pro-Rhodesian sympathy of virtually all white South Africans employed by the companies. Despite these impediments the local management of Consolidated tried during about the first six months or so after the 1965 Sanctions Order to prevent or reduce the flow of oil to Rhodesia. (Chapter V, Section D).

(x) In February 1966 oil products began to be carried by rail from South Africa via Mozambique to Rhodesia. This traffic reached a peak in May 1966 and thereafter declined, ceasing altogether in March 1967. The quantity of all products carried by this route during 1966 amounted to some 87,000 tons. It seems highly probable that industrial customers of all the South African marketing companies bought rail tank cars of product surplus to their requirements and re-consigned them to Rhodesia. It seems clear that Parry Leon and Hayhoe Limited bought rail tank cars of product and re-consigned them to Rhodesia. The figures suggest that a substantial proportion of this traffic consisted of purchases by Parry Leon and Hayhoe from the Consolidated marketers in South Africa, and that some members of the South African management must have known of the destination of these products. (Chapter VII, paragraphs 7.2 - 7.5 and 7.60 - 7.62).

(xi) In December 1966 Shell Mocambique delivered about 3,000 tons of oil products free on rail at Lourenco Marques to Parry Leon and Hayhoe pursuant to contracts made between Shell South Africa and Parry Leon and Hayhoe in Johannesburg. During 1967 about 150,000 tons were so delivered. Shell South Africa was under strong pressure from the South African Government, if not under legal obligation, to make sales to South African buyers able to pay the price, which is what Parry Leon and Hayhoe were. While the product probably passed technically through the ownership of Shell Mocambique, it was supplied by the Consolidated marketing companies in South Africa and was in the main transported to Mozambique from South Africa. Parry Leon and Hayhoe sold these products to GENTA and consigned them to Rhodesia. Additional quantities may well have been similarly delivered to Parry Leon and Hayhoe for carriage to the Transvaal. (Chapter I, paragraph 1.71, Chapter III, paragraphs 3.3 - 3.5, Chapter V, paragraphs 5.28 and 5.81 and Chapter VII, paragraphs 7.18, 7.37(ii) and (iv), 7.39, 7.58 and 7.59(ii)).

(xii) When Mr. Vasconcellos in Mozambique appreciated that goods delivered to Parry Leon and Hayhoe, or some of them, were being carried to Rhodesia he raised the matter with the top management in South Africa. He was told (in effect) to continue making such deliveries. The management in South Africa was

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however concerned to avoid the affixing of rail tank car labels showing a Rhodesian destination within the Shell Mocambique installation and was insistent that no consignments were to be made direct to Rhodesian destinations. (Chapter VII, paragraphs 7.29, 7.30, 7.33 and 7.36).

(xiii) Mr. Walker's personal position as a South African citizen and General Manager in South Africa with overall local responsibility for Mozambique was a difficult one because he could not faithfully comply at the same time both with the policy of the 1965 Sanctions Order that supplies should be denied to Rhodesia and with the policy of the South African Government that South African traders should be free to trade with Rhodesia. He believed it was arguable that since neither he nor Shell Mocambique knew for sure that any particular consignment was destined for Rhodesia there was no contravention of the 1965 Sanctions Order. (Chapter VII, paragraphs 7.25 and 7.37(v)).

(xiv) Mr. Walker informed the British Embassy in South Africa of his view that oil for Rhodesia was going through various intermediaries from all the companies supplying South Africa, probably in about the same proportion as their share of the South African market, and that he believed the other companies would make good any shortfall in supplies made by the Consolidated marketing companies. (Chapter VII, paragraph 7.38(iii)).

(xv) Until January 1968 the Shell and BP Groups in London believed that no sales were made by the Consolidated marketing companies in South Africa and Mozambique to customers who were known or thought to be selling the products on to Rhodesia. That belief was based on information and assurances given by the General Manager in South Africa, Mr. Walker. These assurances were passed on to HMG which, until towards the close of 1967, fully accepted them. (Chapter VI, paragraphs 6.31 - 6.33, 6.35 and 6.39).

(xvi) From about May 1966, when the scale of the supply to Rhodesia became known, HMG was very much concerned to stop that supply. During 1967 a number of schemes were explored and diplomatic moves made to that end. HMG came to believe that without the co-operation of South Africa and Portugal, and in the absence of a restricted crude supply by the CFP Group to the SONAREP Refinery, the supply to Rhodesia could not (without an embargo on supplies to South Africa and Mozambique) be stopped altogether. The attention of HMG was then concentrated on achieving a position in which it could truly be said that British companies were not engaged in supplying Rhodesia and that no British oil was reaching Rhodesia. Towards the end of 1967 HMG began to suspect that customers to whom goods were delivered free on rail at Lourenco Marques by Shell Mocambique were consigning them to Rhodesia. (Chapter VI, paragraphs 6.7 - 6.10, 6.15 - 6.30, 6.39 and 6.72).

(xvii) Information given to Shell in London in January 1968 led the Groups to believe that Parry Leon and Hayhoe, to whom goods were delivered free on rail at Lourenco Marques, might be consigning them to Rhodesia. A visit paid to South Africa and Mozambique by representatives of Shell in London confirmed that belief. (Chapter VI, paragraphs 6.42 - 6.52 and 6.55).

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(xviii) In about February 1968 Shell South Africa made an arrangement with Total South Africa that orders for products to be delivered free on rail at Lourenco Marques, placed on Shell South Africa by customers suspected of selling on to Rhodesia, should be fulfilled with product supplied by Total South Africa from its Matola installation in exchange for an equivalent quantity of product supplied to it by the Consolidated companies in South Africa at a convenient point or points in that country. (Chapter VI, paragraph 6.59 and Chapter VIII, paragraphs 8.2, 8.6 and 8.7).

(xix) On the 21st February 1968 representatives of the Groups disclosed to the Commonwealth Secretary that deliveries had in the past been made free on rail at Lourenco Marques to customers who had re-sold to Rhodesia and that arrangements had been made for orders placed by suspicious customers henceforward to be met from non-British sources at Lourenco Marques. It may have been indicated that the CFP Group was the most likely non-British source and that a product exchange was involved. The details of the Total exchange arrangement were communicated to HMG in the course of the following year if not on that occasion. HMG considered that this was the best arrangement which could be made in the circumstances but realised that it would not of itself prevent or reduce the quantity of oil reaching Rhodesia. (Chapter VI, paragraphs 6.75, 6.76, 6.80 and 6.83).

(xx) The Total exchange arrangement was implemented and operated for a period, during which orders placed on Shell South Africa by Parry Leon and Hayhoe and (after 1969) Freight Services were physically met with product supplied and handled by Total South Africa at Lourenco Marques against an equivalent supply elsewhere. This arrangement was superseded by an arrangement under which products supplied by the Consolidated South African marketing companies were handled through the Total installation at Lourenco Marques for a fee and then delivered by Total to Freight Services. This arrangement with Total ended at about the end of 1971. (Chapter VIII, paragraphs 8.3 - 8.12).

(xxi) After the ending of the arrangements with Total orders placed by Freight Services on Shell South Africa were met from products supplied by the Consolidated South African marketing companies and delivered by Shell Mocambique at Lourenco Marques. Most if not all of these products were consigned by Freight Services to Rhodesia. (Chapter VII, paragraph 7.37(ii) and Chapter VIII, paragraphs 8.16 and 8.23 - 8.25).

(xxii) It was known to the top management of the Consolidated companies in South Africa and (after the event) Mozambique that the arrangements with Total South Africa had come to an end. It was known to the top management in both countries that deliveries to Freight Services at Lourenco Marques were handled by Shell Mocambique. (Chapter VIII, paragraphs 8.12, 8.13 and 8.29).

(xxiii) During visits to South Africa in early 1974 it came to the attention of Mr. Francis (Shell) and Mr. Sandford (BP) that the Total exchange arrangement had ended and that Shell Mocambique was handling deliveries to Freight Services. Mr. Francis told the local management of SERVICO or Shell

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South Africa that steps should be taken at once to remove Shell Mocambique from the chain of supply to Freight Services. This was not done before the closure of the Mozambique/Rhodesia border in March 1976, although the quantities delivered by Shell Mocambique to Freight Services diminished following the opening of a direct rail link between South Africa and Rhodesia in September 1974. Mr. Francis discussed the matter with his immediate superior Mr. de Liefde and thought that he had effectively communicated an understanding of the problem. Such was not the case: Mr. de Liefde did not appreciate that Shell Mocambique might be in jeopardy nor that there was any departure from arrangements notified to HMG. Mr. Francis did not make any report on this matter to any other member of the Shell management nor ascertain whether his instructions to SERVICO or Shell South Africa had been carried out, although he was led to believe for a time that Freight Services traffic to Rhodesia had switched from Lourenco Marques to the new rail link. Early in 1975 he learned that some Freight Services supplies to Rhodesia were still being handled by Shell Mocambique in Lourenco Marques but thought that these were minor residual deliveries which gradually petered out. Mr. Sandford informed his immediate superior Mr. Robertson what he had learned in South Africa and of the concern that he felt about it, but Mr. Robertson knew very little of the events in 1968 and misconceived the status of Freight Services and did not communicate any sense of urgency or alarm to the most senior levels of BP management or to Shell. Mr. Sandford pursued the matter with Mr. Francis but in October 1974 concluded (wrongly) that the new rail link had attracted the Lourenco Marques oil traffic and thus solved the problem. Thereafter he did nothing before his retirement in September 1975. (Chapter VIII, paragraphs 8.38, 8.42 - 8.44, 8.55, 8.60, 8.69, 8.70 and 8.72 - 8.74).

(xxiv) The quantities of product delivered to Parry Leon and Hayhoe and Freight Services free on rail in Lourenco Marques, either by Total South Africa (during the exchange/throughput period) or after that period by Shell Mocambique, pursuant to orders placed on Shell South Africa (or BP Southern Africa), and thereafter sold to GENTA and consigned to Rhodesia, were during the calendar years 1968-1975 inclusive probably not less than the following:

1968	165,000 tons
1969	180,000 tons
1970	190,000 tons
1971	220,000 tons
1972	275,000 tons
1973	300,000 tons
1974	300,000 tons
1975	250,000 tons

(Chapter VIII, Section C).

(xxv) When the business formerly conducted under the Consolidated Agreements in South Africa came to be split between the Shell and BP Groups, BP insisted on obtaining and obtained half of the business with Freight Services. Its chief local representative in South Africa knew what that business consisted of. So, with varying degrees of comprehension, did a small number of officers in London. (Chapter VIII, paragraphs 8.33, 8.39 and 8.60 - 8.63).

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(xxvi) From March 1966 until the independence of Mozambique in June 1975 ships entering Beira with cargoes of oil or oil products were subject to scrutiny by patrolling vessels of the Royal Navy. The volume of refined products reaching Rhodesia through Beira between the 1965 Sanctions Order and the closure of the Mozambique/Rhodesian border in March 1976 was inconsiderable. No crude oil reached Rhodesia by this route. (Chapter IX).

(xxvii) Throughout the period since the 1965 Sanctions Order some minor products have reached Rhodesia from South Africa by means of the railway line through Botswana. No attempt was made to intercept these supplies within that country either before or after the independence of Botswana because it was believed that Botswana was economically dependent on the railway line and vulnerable to economic retaliation by Rhodesia, and also because of South African insistence that the line be kept open. The South African Government and the Consolidated marketing companies in South Africa were made aware of HMG's wish that supplies to Rhodesia by this route should be kept to a minimum. We are satisfied that the volumes of oil products carried by this route were modest, never reaching 10,000 tons in any year for which figures are available (1966-1969). There is no evidence that volumes increased thereafter. (Chapter X).

(xxviii) Throughout the period from the 1965 Sanctions Order until the present, minor products such as lubricants, base oils, greases, SBPs and bitumen have in the main reached Rhodesia direct from South Africa. GENTA were probably not involved in the procurement of lubricants and base oils, but Freight Services and at least one other intermediary (DL Petroleum) were involved in these sales. The procurement of minor products other than lubricants and base oils may have been handled by GENTA but we think it more likely that GENTA procured bitumen only. Freight Services acted as intermediary in sales of all these products also. (Chapter XI).

(xxix) During 1975 an increasing share of supplies to Freight Services was made by SASOL or SASRAF direct from the Republic of South Africa by the new rail link. The supplies came from NATREF. At about the time of the Mozambique/Rhodesia border closure in March 1976 SASOL or SASRAF took over all responsibility for the supply to Freight Services of those main products (in particular motor gasoline and gasoil) which NATREF produced. The South African marketing companies who had previously done business with Freight Services were, as to 85% of the business so lost, compensated by increased access to the NATREF area of the Transvaal. So far as we have been able to ascertain, this situation has continued up to the present. It seems probable that neither the Shell nor the BP marketing companies in South Africa are now selling to Freight Services or to any intermediary who is known to be selling on to Rhodesia. (Chapter XIII, Sections A and D).

(xxx) After a lapse of some years contact between HMG and the Shell and BP Groups concerning the enforcement of sanctions was renewed in the summer of 1976. In a letter to HMG dated the 30th June 1976, following publication of The Oil Conspiracy in the United States by the Center for Social Action of the United Church of Christ, disclosure was not made of the deliveries by Shell

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Mocambique to Freight Services between 1972 and March 1976 and the impression was given that the situation had remained substantially unchanged since February 1968. It was known to Mr. Francis (who drafted the letter) that such deliveries had been made, although he thought that they had begun later and stopped earlier. It was not appreciated by Mr. Francis' superiors in Shell that such deliveries had been made at all: Mr. Francis had discussed the matter with Mr. de Liefde but the latter had not grasped the situation. It is not entirely clear whether the contents of this letter were disclosed to BP before the letter was sent but BP received a copy of the letter subsequently and approved of it. The responsible senior management of BP at this time (June 1976) had not been involved in the discussions with HMG in 1968-1969 and did not appreciate the changes which had occurred in the arrangements then notified to HMG nor the possible implications of such changes. (Chapter XIII, paragraphs 13.18 - 13.23).

(xxxix) Since a date very shortly after the 1965 Sanctions Order the Consolidated marketing companies in Rhodesia have been subject to direction by the illegal Rhodesian Government on pain of criminal penalty for non-compliance. It has never been suggested to the Shell and BP Groups by HMG that they should liquidate those companies or suspend their operations; had either of these courses been attempted the Rhodesian Government would have appointed a Custodian of the companies. The Groups have received information concerning these companies sporadically, but not concerning procurement of supplies. Directors of the companies resident in England have played no part in their management. Shell (as the channel of communication under the Consolidated Agreements) have remained in contact with the companies and have been able to influence some policy decisions, but neither the Groups nor Consolidated have enjoyed any effective power of control. (Chapter III, paragraphs 3.11 and 3.14, Chapter V, paragraph 5.4 and Chapter XII, paragraphs 12.4 - 12.11 and 12.24 - 12.29).

(xxxix) The primary role in procuring main products for consumption on the Rhodesian market was played (at least so far as the Consolidated companies were concerned) by GENTA, which appears to have allocated the available supplies to the existing Rhodesian marketers roughly in proportion to their market shares. So far as we know, Caltex Oil Rhodesia played no part in procuring supplies save in the early months of 1966. There is some evidence that the Consolidated companies in Rhodesia did, probably to a minor extent, participate with GENTA in procuring supplies. We have had no direct evidence concerning Mobil and Total. (Chapter I, paragraphs 1.74, 1.75 and 1.77, Chapter V, paragraph 5.81, Chapter VII, paragraph 7.57, Chapter VIII, paragraphs 8.39 and 8.66(ii) and (vi) and Chapter XII, paragraphs 12.15 - 12.19).

(xxxix) At the time of UDI, total consumption of all petroleum products in Rhodesia was running at an annual rate of about 410,000 tons. The total fell after UDI but was restored to the old level by about 1969 and thereafter increased until it now stands at about 800,000 tons. (Chapter XII, paragraph 12.12).

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B. SUBMISSIONS

(1) SHELL

14.5 At the outset of our Investigation Mr. C. C. Pocock, Chairman of The "Shell" Transport and Trading Company Limited, stressed to us that the principle of delegating managerial authority to local Shell companies was one in which the Royal Dutch/Shell Group really believes and which it fully practises. Apart from certain business principles which must always be observed, and matters such as financial policy and management appointments which are of direct concern to the shareholder, the business of management is entrusted to the local management. As a letter circulated to Shell companies in November 1976 put it, "Fullest practicable managerial autonomy resides with each Shell company". We are satisfied that in practice very considerable managerial autonomy was granted to Group companies in Southern Africa during the period under consideration, although their performance was carefully monitored in London and non-routine decisions were the subject of consideration there.

14.6 It was stressed, secondly, that chief executives and local staffs within the Group are expected to obey the laws of countries where they live and work. This formed part of a Statement of General Business Principles drawn up by the Group and circulated to companies in 1976:

"Companies should endeavour always to act commercially, operating within existing national laws in a socially responsible manner, and avoid involvement in politics".

This recommendation reflected OECD guidelines accepted by HMG in 1976 (see International Investment. Guidelines for International Enterprises, Cmnd. 6525, 1976). Sir Frank McFadzean, himself a former Chairman of "Shell" Transport and Trading, laid particular emphasis on the importance, in his view, of local companies so far as possible avoiding involvement in national politics. We think that both elements of this principle, compliance with local law and avoidance of corporate political commitments, formed part of the Group's philosophy and practice in Southern Africa throughout the period.

14.7 At the conclusion of our Investigation SIPC made to us a detailed written submission drawing attention to a number of factors which, it was said, must have affected the minds and conduct of those in Shell who were concerned with handling the many and difficult problems caused by sanctions. In summary, Shell contended

- (i) that its belief from the outset was that sanctions could not prevent supplies of oil reaching Rhodesia because ample supplies would be forthcoming from South Africa: the withholding of supplies to South Africa by Shell would have caused grave damage to British commercial interests there (including the sequestration by the South African Government of Shell's own assets) but it would not have stopped the flow of oil products to Rhodesia.

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- (ii) that Shell was the subject not only of a conflict between the policies of the British and South African Governments but also of an irreconcilable conflict between the policy of the Sanctions Orders (which Shell thought could only be safely complied with by cutting of supplies to South Africa) and the policy of HMG that there should be no economic confrontation with South Africa: given the duty to comply with the local law this gave rise to the most acute practical problems.
- (iii) that acceptance of the Total exchange by HMG was inevitable if confrontation with South Africa was to be avoided, but it was felt by Shell to be a fairly transparent device since it involved continued contractual relations by Shell South Africa with (and facilitation of supplies to) Parry Leon and Hayhoe, who were known to be supplying Rhodesia; the only change was that the product supplied to Parry Leon and Hayhoe now belonged to Total South Africa who in exchange received products (supplied by English-incorporated Shell and BP trading companies) elsewhere in South Africa.
- (iv) that those concerned naturally and foreseeably interpreted HMG's concern as being to have a technical defence to the accusation that British oil was reaching Rhodesia, that defence being based on a narrow construction of the Sanctions Order.
- (v) that between 1966 and 1972 talk of a Rhodesian settlement was frequently in the air: since South African help was sought in persuading Mr. Smith to compromise there was an added reason for avoiding confrontation.
- (vi) that those who knew of the Total exchange must have appreciated that closure of the Mozambique border would necessarily have ended the Total exchange as arranged in 1968.

14.8 This submission raises certain questions involving the evaluation of government policy upon which we do not feel entitled under our Terms of Reference to comment. But it also raises factual issues upon which the evidence given to us does enable us to make observations:

- (a) Shell did from the outset consider that sanctions against Rhodesia could not be effective unless South Africa also were blockaded. Within HMG also there was appreciation of difficulties which the sanctions policy faced. (Chapter V, paragraph 5.3).
- (b) Sir Frank McFadzean told us that it was his view and that of Mr. Berkin at the time of the 1965 Sanctions Order that if Shell had refused to supply South Africa the South Africans would have sequestered Shell's assets; they also thought that the South Africans had enough engineers and that there was enough crude oil available to enable the South Africans to run SAPREF without Shell's co-operation. We have not investigated this matter, but have no reason to doubt Sir Frank and Mr. Berkin's contemporary judgment.

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- (c) in a practical (as opposed to a legal) sense there was an obvious conflict between the policy of HMG that oil trade to Rhodesia should be reduced as much as possible and the South African Government's policy that South African buyers should be free to buy oil within South Africa irrespective of the use or destination to which they intended to use or send it. (Chapter III, paragraphs 3.3 - 3.5 and Chapter V, paragraphs 5.6 - 5.33). For British citizens subject to the laws of both countries there was a conflict of jurisdictions in a legal sense. (Chapter II and Chapter III, paragraphs 3.3 - 3.5).
- (d) shortly after the 1965 Sanctions Order Shell expressed the view that the only sure way of avoiding a breach of the Order was to cease supplying the South African registered companies. (Chapter V, paragraph 5.17).
- (e) it was the policy of HMG in the years 1965-1969 at all costs to avoid economic confrontation with South Africa (Chapter V, paragraph 5.21 and Chapter VI, paragraphs 6.16, 6.20, 6.26, 6.27, 6.36, 6.72 and 6.85). We have received no evidence as to policy in later years. It was recognised on all sides that the cutting off of supplies to South Africa by Shell and BP Groups was likely to provoke such confrontation. At his meeting with company representatives on the 21st February 1968 the Commonwealth Secretary said that there were no doctrinaire or ideological objections to trade with South Africa, save in the arms field, and other similar statements were made on other occasions. (Chapter VI, paragraph 6.75).
- (f) the Consolidated marketing companies in South Africa and their employees faced very severe problems in seeking to give effect to the policy of the Sanctions Orders (Chapter III, paragraphs 3.3 - 3.5, Chapter V, paragraphs 5.89 - 5.93 and Chapter VII, paragraphs 7.25 - 7.27).
- (g) the effect of the Total exchange was as summarised in Chapter VIII, paragraph 8.7.
- (h) the companies were initially doubtful as to the legality of the Total exchange but did not disclose those doubts to HMG (Chapter VI, paragraphs 6.65 - 6.68 and 6.75(iv)). On the 6th February 1969 Sir Frank McFadzean expressed the view that the exchange seemed "pretty thin" to him but "legally sound". (Chapter VI, paragraph 6.83(iii)). HMG was of opinion that "the legal position was sound and could be defended", and was never prepared to countenance what it regarded as breaches of the Orders by British companies. It was appreciated within the companies (as was the case) that HMG regarded it as important to be able to assert that British oil was not reaching Rhodesia. (Chapter VI, paragraph 6.83(iii) and 6.86).
- (i) there were two or three occasions over the years 1966-72 when it was widely believed that a political settlement with Rhodesia might be

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imminent: for example, at the time of the talks on HMS TIGER and HMS FEARLESS, and at the time of the Douglas-Home proposals in 1971.

- (j) since the Total exchange (as arranged in 1968) involved delivery of refined products free on rail in Lourenco Marques before onward carriage of some or all of them to Rhodesia, the arrangement could not survive closure of the Mozambique-Rhodesian border. (Chapter VIII, paragraphs 8.3 and 8.7).

We have endeavoured to take full account of this submission by S.I.P.C. both in reaching and formulating our factual conclusions and in making the Observations which we do in Section C of this Chapter.

(2) B.P.

14.9 The position of BP was in some respects the same as that of Shell and in some different. The main difference was that during those periods when and in those areas where the Consolidated Agreements were in force BP were, even as compared with Shell in London, one step further removed from direct involvement in the business operations of the local companies (except, in the case of Mozambique, from 1st September 1975 onwards). We have treated this subject at greater length in Chapter I, Section B. The role of BP was necessarily subsidiary. Another difference, which would seem to have influenced BP's conduct on occasion (for example, in favouring immediate disclosure to HMG in February 1968), was the large Government shareholding in BP.

BP were, however, at one with Shell in their approach to the principle of managerial autonomy. The point was put by BP in this way:

"The South African subsidiary companies were not created or used as a sham to enable English companies to evade the requirements of English law. Their creation occurred many years ago. The autonomy which they enjoyed was conferred on them bona fide, and was a response to a problem which confronts every major business operating in many countries, namely, that the host governments insist that enterprises operating in their country be to that extent identified with the national interest of that country, and in particular that commercial policy be not dictated by the political policy of the group's home government. These are the conditions in which the BP Group trades in South Africa."

14.10 BP would endorse the principle that local companies should comply with local laws and, as the foregoing quotation makes clear, base their decisions on commercial rather than political grounds.

14.11 BP's overriding submission was that the Group management in London consistently co-operated in the enforcement of sanctions whenever its assistance was requested by HMG, and that where on occasion it was not able to assist its position was very fully explained to HMG. This is in our opinion true of the early years; but for various reasons summarised above there was not a full (or

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indeed any) explanation to HMG of the situation found to exist in early 1974, and when the South African business was split BP showed no reluctance to undertake half the Freight Services trade.

C. OBSERVATIONS

14.12 In offering observations upon certain of the facts recounted and summarised above, we wish to reiterate that we are excluding from our consideration questions as to whether any criminal offence has been committed by any company or any individual.

14.13 We think it unfortunate that Mr. Walker should, as General Manager in South Africa with responsibility for Mozambique, have failed between about the end of 1966 and February 1968 to lay the facts known to and suspected by him before his superiors in London and that he should have given categorical assurances which those facts did not warrant. The Shell and BP Groups in London and HMG were as a result led to misunderstand the means by which Rhodesia obtained its oil supplies. Because of this misunderstanding both the Groups and HMG unwittingly adopted false positions at that time.

14.14 The easiest course for Mr. Walker personally would have been to disclose his knowledge and suspicions to Shell Centre and let others bear the burden of deciding what to do. It has not become clear to us why he did not do so. He may have wished to avoid embarrassing the Shell management in London. He may also have wished to safeguard the business he was running in South Africa. Awareness of the very stringent South African official secrets legislation may have played a part. We do not think these considerations justify his conduct even if they explain it.

14.15 In making this criticism we bear in mind the submission made to us against attributing blame to relatively junior individuals. We are also acutely aware of the difficulty of Mr. Walker's position as a South African living in a society very unsympathetic to the policy of the Sanctions Orders. But as General Manager of the Consolidated operation in South Africa Mr. Walker was not in a junior position, and it must in our view follow that if fullest practicable managerial autonomy is to reside in each local company then the management of that company must be regarded as responsible for the decisions which it makes.

14.16 Given the prevailing management philosophy, the information received from local sources and the knowledge that existed in the Groups of local political attitudes in South Africa and Mozambique, we do not think the Groups are to be criticised for failing during 1966 and 1967 to send a team from London to investigate methods of Rhodesian supply directly. When, in January 1968, suspicion deepened, such a team was sent. We are surprised that the report made by that team did not cause some dissatisfaction with the information previously supplied from South Africa, but we have not heard that it did. The reason is, we think, that the facts were not, even in February 1968, known to the Groups nearly as fully as they are now.

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14.17 It was in our view a proper course for the Groups, once apprised of the facts, to disclose them and the proposed solution to HMG and seek HMG's acceptance of that solution. We are unsure whether the proposed solution was fully communicated in February 1968 but during the year following HMG was given sufficient information to enable a fair judgment to be made. The contrary has not been suggested to us. The proposed solution was accepted. It was thereafter reasonable for the Groups to proceed upon that basis.

14.18 The Total exchange arrangement plainly did not have the effect of denying supplies of oil products to Rhodesia. That an arrangement having this deficiency was accepted by HMG had, we think, an important consequence. It induced among some of those most directly concerned (notably Mr. Francis and Mr. Walker) a belief that compliance with the Sanctions Orders was to be regarded as a matter of form rather than of substance, that it was the letter which mattered, not the spirit. The failure to communicate to or within Shell Centre certain matters which, as we think, should have been communicated may be traceable to this belief.

14.19 We think it possible also that, because of their differing viewpoints and backgrounds, HMG and the Groups may have seen the Total exchange rather differently. To HMG the arrangement was acceptable because it took British oil companies out of the line of supply to Rhodesia and enabled it to be said that British oil was not reaching Rhodesia. In the light of Britain's primary international responsibility for Rhodesia, that seemed an object worth achieving even though the arrangement would not deny oil to the illegal régime. To company representatives, familiar with product exchanges as an everyday fact of the international oil business, the exchange might, like other exchanges, have appeared to be merely an alternative means of making a supply. This approach may, we think, have coloured the thinking of some oil company employees.

14.20 When, following the Total exchange, official pressure on the Groups eased, there was a marked reduction in the prominence given to the whole question of Rhodesian sanctions among those within the Groups who were concerned with the affairs of Southern Africa. This had a consequence of its own in the inadequate briefing on this subject of some key executives who came fresh to the Southern African scene after 1968: on the Shell side, for example, neither Mr. de Liefde on appointment as Regional Co-ordinator nor Mr. McCutcheon on appointment as Managing Director of SERVICO was instructed as to the past history or the Group policy on this subject; the same was in varying degrees true on the BP side of Mr. Laidlaw when he became Regional Managing Director, Mr. Robertson when he became Regional Director of BP Trading, Mr. Savage when he became Regional Co-ordinator, Mr. Milne when he became the BP representative in South Africa and Mr. Trechman, either when he went to Mozambique as Senior Assistant in 1973, or when he became the local General Manager in September 1975. Bearing in mind the information given to HMG in February 1968 and HMG's request recorded in Sir Frank McFadzean's note of that meeting that it should be informed of any change in the situation, we think it clear that the Groups should not have allowed this subject to slip so far into the background. Those responsible for keeping HMG informed of any change in the situation could not do so without a reasonable working knowledge of what the situation was.

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14.21 It was plainly the duty of Mr. Walker as General Manager in South Africa, knowing as he did the outline of what transpired between HMG and the Groups in early 1968, to inform Shell Centre of the ending of the Total exchange and the procedures adopted thereafter. Again we are unclear why he did not do so. Again we think the considerations listed in paragraph 14.14 above played a part. We think also (despite his denial) that he was probably influenced by the lack of official and company concern currently apparent in relation to questions of sanctions enforcement.

14.22 When Mr. Francis and Mr. Sandford (both of whom had detailed knowledge of what transpired between HMG and the Groups in 1968-1969) learned in early 1974 of the ending of the Total exchange and of the arrangements which had followed it, their duty was in our opinion to make sure that the change in the arrangements notified to HMG was fully appreciated by the responsible members of the senior management of their respective Groups. While it was for the senior managements to decide whether a further approach to HMG was indicated and whether any (and if so what) action should be taken to stop supplies, those managements should have been put in a position to make the decision. Both Mr. Francis and Mr. Sandford raised the matter with their superiors, but neither effectively communicated the important fact that a system of supply was in force which significantly departed, in the renewed involvement of Shell Mocambique, from the arrangements notified to HMG in 1968-1969. This was unfortunate.

14.23 It was further, we think, the duty of Messrs. Francis and Sandford, after learning the true facts in early 1974, to take steps to satisfy themselves, directly or indirectly, that Shell Mocambique had been removed from the chain of supply to Freight Services (or, if it had not, to seek some alternative expedient). While the detailed steps to be taken could reasonably be seen as a matter for the local management, achievement of the result was clearly a matter of direct concern to the Groups themselves in view of their relations with HMG and the obligations of some companies and individuals under the Sanctions Order. Although for a time Mr. Francis believed that supplies had switched to the new rail link, he learned in early 1975 that some (as he thought, residual) deliveries were continuing to be made by Shell Mocambique to Freight Services. He was never positively told that these deliveries had ceased and should not, we think, have let the matter rest. We do not doubt the genuineness of Mr. Sandford's belief formed as a result of his visit to Matola in October 1974 that the Freight Services traffic had switched from Lourenco Marques to the direct route from South Africa, and we bear in mind the action which Mr. Sandford had already taken (see Chapter VIII, paragraph 8.38) and the fact that BP were at this time still two steps removed from formal responsibility for management of marketing in South Africa; even so, we think Sandford was easily satisfied.

14.24 Had the Groups in London appreciated that a change of obvious significance had occurred in the arrangements notified to HMG in 1968-1969, we think it clear that HMG should have been told and consideration given to what (if any) action should be taken to ensure that the Sanctions Orders were complied with. Their failure to tell HMG can be excused only on the basis (which we accept) of their ignorance or inadequate appreciation of the change which had occurred.

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14.25 Once it was appreciated by the Groups in January 1968 that a situation had arisen in Mozambique of which the Groups had not previously been fully informed and which was not regarded as acceptable, it should in our view have been seen as unsatisfactory (a) for the British-registered company in Mozambique to be managed locally by Portuguese citizens not subject to the 1965 Sanctions Order and (b) for that company to report through and to be operationally subordinate to a management in South Africa which was inhibited in giving full effect to the policy of that Order. BP did at this time ask that the General Manager in South Africa should be relieved of responsibility for Mozambique. Shell had reasons for resisting the proposal and it was not pursued. It seems to us that this was a precaution which could and should have been taken and that the introduction of the Total exchange should not have been regarded as obviating the need for it. When, in 1975, BP appointed an expatriate General Manager in Mozambique, immediately answerable to BP in London, the appointment was unfortunately made without consideration of Rhodesian supplies: deliveries to Freight Services accordingly continued to be made until the Mozambique/Rhodesian border was closed, the General Manager having no instructions to the contrary.

14.26 The letter written by Shell to HMG following publication of the UCC Report in June 1976 was in our view bound to convey the impression, as it did, that the arrangements disclosed in 1968-1969 had remained continuously in force until closure of the Mozambique/Rhodesia border in March 1976. Since Sir Frank McFadzean as signatory of the letter had not been informed to the contrary and believed this to be the case, he cannot be blamed. But we think that Mr. Francis, as author of the letter, who knew that it was not the case, should not have allowed this impression to be given. Although we fully accept that he had no thought or intention of misleading either his superiors or HMG, we think that even (or perhaps particularly) at this late stage the need for full disclosure should have been apparent.

14.27 The criticisms which we have made have related in the main to failures to disclose, either within the Groups or by the Groups to HMG. We do not regard these failures as in any way unimportant. The Groups should have been able to base their actions and determine their conduct vis-a-vis HMG on the basis of such full and accurate information as was available. In the context of the relations prevailing between it and the Groups, HMG should have been able to base its policy towards the Groups and to determine its conduct internationally on a clear understanding of the salient facts so far as these were known to the Groups. In the event both HMG and the top management of the Groups, save for limited periods (the early months of 1966, the period of 2-3 years after February 1968 and perhaps the period after March 1976), were ignorant of facts which should have been the subject certainly of consideration and possibly of action. This ignorance led HMG and the top management of the Groups unwittingly to make statements and give assurances which they would not have done with full knowledge of the facts.
