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SOUTH AFRICA

Enhancing Enforcement of the Comprehensive Anti- Apartheid Act



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**National Security and
International Affairs Division**

B-226687

July 12, 1989

The Honorable Edward M. Kennedy
United States Senate

Dear Senator Kennedy:

On November 23, 1988, you requested that we review South Africa's role in the world gold and diamond markets. As agreed with your office, we are providing an interim report on the existing U.S. ban on imports from South African state-owned or controlled entities (parastatals) and problems with its enforcement, a matter which came to our attention during our work to date.

Results in Brief

The Comprehensive Anti-Apartheid Act of 1986 banned imports of products produced, marketed, or exported by South African parastatals, but the U.S. government does not have adequate tools to effectively enforce the provision. The State Department issued a list of South African government agencies and state-owned corporations that it designated as parastatals but did not identify the products produced, marketed, or exported by them. Therefore, Customs does not know which South African products could have come from parastatals (that is, come from industries where parastatals are active) and so cannot devote special enforcement attention to them.

Background

In October 1986, in response to racial discrimination in South Africa, the U.S. Congress passed the Comprehensive Anti-Apartheid Act, which imposed economic sanctions against that country, including selective import and export bans, a prohibition on new lending and investment, and a ban on air transportation to and from South Africa. The Act bans U.S. imports of South African coal, textiles, uranium, agricultural products, iron and steel, gold coins, and products from parastatals.

The Act specifically bans imports of any goods grown, produced, manufactured, marketed, or otherwise exported by South African parastatals except minerals certified by the U.S. President as strategic. Gold has not been certified as a strategic mineral. To implement this ban, the State Department issued a list of 106 South African parastatals in March 1987, but did not identify the products associated with them.

Lack of List of Products Associated With Parastatals Hinders Enforcement

Customs requires importers to certify that all goods imported into the United States from South Africa are not produced, marketed, or exported by a parastatal. This certification is made in a statement on the import documentation. However, Customs does not know which products are associated with parastatals and so cannot give special enforcement attention to imports produced by industries in which parastatals are active. Consequently, its enforcement primarily consists of ensuring that documentation on all imports from South Africa contain the required certification.

The analyses of trade data to identify imports of banned products and audits of selected imports are important techniques in enforcing trade sanctions. Because products associated with parastatals have not been identified, Customs cannot use trade data, which is kept on a product-by-product basis, to obtain leads on illegal imports from parastatals. Customs also cannot target any audits of certificates to those of products in industries where known parastatal activity exists. Audits trace a product's history through the shipping documentation to identify which companies exported, marketed, and produced it.

The lack of a list of products of South African parastatals also hinders detection of parastatal products that enter the United States after being shipped through third countries. If parastatal products are merely transshipped, as opposed to being substantially transformed into a new product, they remain subject to the parastatal provision. By relying only on a certification on direct imports from South Africa to enforce the parastatal provision, Customs cannot detect products being transshipped through third countries. Data on trade flows can provide insight into such transshipment by identifying products exported by countries with little or no indigenous production.

One senior Customs official who investigates fraudulent imports stated that much confusion exists about what products are associated with parastatals and that identifying them would aid enforcement of the Act. A Customs import specialist agreed that identifying such products would enhance enforcement, especially if specific products were identified.

Identifying products associated with parastatals might result in better importer compliance with the ban as well, according to the senior Customs fraud investigator. By examining the invoice accompanying any import from South Africa, the U.S. importer can determine the exporter of the product but may not know who produced the item. The product

could have been produced by a parastatal but exported by a private company in South Africa. According to a State Department official, the South African government could set up such arrangements to attempt to circumvent the ban. The senior Customs investigator stated that South Africa would have an incentive to deceive the U.S. importer. If products associated with the parastatals on State's list were identified, importers would have more information to use when certifying that an import from South Africa was not from a parastatal. Importers, checking the list of products associated with parastatals and discovering the incoming products are from industries where parastatals are active, might be more likely, before signing the certificate, to reaffirm with the exporter that no parastatal produced the item.

Customs Was Generally Unaware That the Parastatal Provision Covered Gold Imports

While officials of the State and Treasury Departments told us they were aware of and agree that imports of South African gold bullion are prohibited because it is covered under the parastatal provision, this was not widely known in Customs or the world gold industry because gold bullion is not under an explicit product ban identifying gold by name. It is covered under the parastatal provision because South African gold mining companies sell their gold to the Reserve Bank of South Africa for marketing internationally. Customs and industry officials were unaware that gold was banned because the State Department parastatal list did not identify products produced, marketed, or exported by the parastatals. The Reserve Bank of South Africa is included in the State Department's parastatal list, but without knowing how the South African gold industry operates, it is not readily apparent that gold is subject to the Act.

Although U.S. gold bullion imports from South Africa, which totaled \$79 million in 1986, ceased in 1987 and 1988, possibly due to the sanction, some of the gold bullion entering the United States from third countries, particularly Switzerland and the United Kingdom, may be of South African origin. Between January 1987 and March 1989, Switzerland and the United Kingdom exported \$164 million and \$175 million, respectively, in gold bullion to the United States. Both countries, however, produce little or no gold but each has a major gold trade; South Africa is the world's largest gold producer and exporter and is believed to market much of its gold through these two countries. This South African gold would likely remain subject to U.S. sanction if it were reexported to the United States as gold bullion. Because it was not widely known in Customs that gold was under the parastatal sanction, it could not use data on trade flows

to obtain leads on illegal trade and could not identify possible transshipment of South African gold to the United States through third countries. Although trade data can be used to develop such leads, only a full Customs investigation can determine whether illegal imports are actually occurring. As a result of our work, Customs is investigating whether some of the gold coming from Switzerland and the United Kingdom is of South African origin and is entering the United States illegally.

Conclusion

Customs has inadequate tools to enforce the ban on imports from South African parastatals. Amending State's list of parastatal entities to include the products associated with each parastatal would enhance Customs ability to enforce the ban and improve the information available to importers when certifying that imports do not come from a parastatal.

Recommendation

We recommend that the Secretary of State direct the Assistant Secretary for African Affairs to publish a list of the products grown, produced, manufactured, marketed, or exported by each South African parastatal identified in the Department's list of parastatals.

Objectives, Scope, and Methodology

In developing the implications of the lack of a product list associated with parastatals, we interviewed and obtained documentation on the parastatal provision and its enforcement from officials of (1) State's Office of Southern African Affairs, (2) Treasury's Office of Foreign Assets Control, and (3) Customs' Offices of Commercial Fraud Enforcement, Trade Operations, Regulations and Rulings, and its National Import Specialist Division. During the interviews, we concentrated on how the U.S. government was enforcing the ban against imports of gold from South Africa.

To obtain general information about the international gold market, we interviewed and obtained documentation from knowledgeable private sector representatives. None of them apparently knew that a U.S. ban existed on imports of gold from South Africa. We talked with gold mining analysts in major brokerage houses in London; officials from the London and New York gold markets; representatives from trade associations representing gold mining, refining, and trading interests; academics and private researchers knowledgeable about world gold markets; and two anti-apartheid groups that advocate a U.S. sanction on South African gold. To measure gold imports into the United States from South

Africa and potentially from third countries through transshipment, we used the Department of Commerce's data base on U.S. trade flows. We conducted our work in accordance with generally accepted government auditing standards.

As agreed, we did not obtain agency comments on this report. However, we discussed the results of our work with State and Treasury officials, including the U.S. Customs Service, and included their comments in the report as appropriate.

Unless you announce its contents earlier, we plan no further distribution of the report until 30 days after its issue date. At that time, we will send copies to the Secretaries of State and Treasury, Commissioner of Customs, Director of the Office of Management and Budget, congressional committees responsible for overseeing implementation of the Act, and to other interested parties upon request.

This report was prepared under the direction of Allan I. Mendelowitz, Director, Trade, Energy, and Finance Issues. Other GAO staff members who made major contributions to this report were Steven Sternlieb, Project Director, and Ivan Eland, Project Manager.

Sincerely yours,



Frank C. Conahan
Assistant Comptroller General

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