

Testimony of Acting A/S Elizabeth Dibble, Bureau of Economic, Energy
and Business Affairs

Senate Committee on Banking, Housing and Urban Affairs

October 3, 2007

“Combating Genocide in Darfur: The Role of Divestment and Other Policy
Tools”

Chairman Dodd, Ranking member Shelby, and members of the committee, thank you for the opportunity to appear before you today to discuss some aspects of possible sanctions measures concerning Sudan. Sanctions seek to change behavior. To be effective, they must be carefully calibrated and coordinated. Naturally, timing and messaging are essential components of this process. The Administration and Congress need to maintain a unified message on Sudan policy to maximize U.S. influence on the peace process. This is particularly true since the Administration and Congress fully share the same objectives in Sudan, in particular our common desire to end the violence in Darfur.

In recent years, the Administration, with the support of the Congress, has imposed extensive sanctions against Sudan. There can be no doubt regarding the determination of the United States to see effective change in Sudan.

But sanctions are only one part of the approach, which also has to rely upon multilateral diplomacy and, eventually, changed behavior by the Khartoum regime itself. We have to ensure that our desire to send a strong message via sanctions does not counteract or even overwhelm progress on those political fronts. As Assistant Secretary Frazer indicated, we have serious concerns about attempts to apply new sanctions on the Government of Sudan (GOS) at this moment. It would send the wrong message to the regime at a time when it is actually being helpful with peace talks and with the AU/UN peace keeping force. It would also send the wrong message to rebel movements, one of which just attacked an African Union peacekeeping base and killed 11 Nigerian peace-keepers. The rebels need to join the peace process rather than targeting international forces.

Legislative proposals can serve as a useful reminder of what might occur if progress does not continue, but we are concerned about the negative impact of an actual new law at this delicate juncture.

Our most recent action on Sudan sanctions, announced by President Bush on May 29, was carefully targeted and came at a time when the GOS was resisting deployment of UN peace-keepers, undermining the political process, and continuing to carry out a bombing campaign in Darfur. The USG designated 30 companies owned or controlled by the Government of Sudan under Executive Orders 13067 and 13412. These included five petrochemical companies and Sudan's national telecommunications company. These designations got the attention of GOS officials without undermining our multinational coalition on Sudan, and as Assistant Secretary Frazer has stated, it was this increased pressure that helped bring us to where we are today.

In addition to the problem of timing, certain aspects of pending Sudan bills raise broader concerns about unintended consequences. We need to take into account the potential impacts on Southern Sudan as well as reactions by key international partners. A/S Frazer has noted the millions of dollars of taxpayer money that we have invested in trying to help develop Southern Sudan; our sanctions regime already is so broad that it inevitably has negative consequences for the South as well as for its intended target in the North. The Government of Southern Sudan recently sent a high-level delegation to DC to explore ways to mitigate the unintended harm our current sanctions appear to have had in the South. New measures may well compound the South's difficulties in attracting U.S. and foreign investors or even interfere with development assistance projects, if they are not carefully calibrated.

Required divestment will be seen by our allies as a U.S. government action targeting their companies and could affect our ability to obtain cooperation on mutual action with respect to Sudan. Some of these key allies will be providing troops and equipment for the AU/UN Hybrid peacekeeping force.

In a broader spillover effect, such Sudan measures could also jeopardize the cooperation of these key partners on other countries of concern such as Iran, North Korea, and Burma. We need to look carefully at each of the Sudan bills and consider all aspects of their likely impacts, including on Southern Sudan and our multinational coalitions. We need a multilateral coalition that includes the Chinese, the Arab world, the Europeans, and the African Union to build peace in Sudan.

We recognize that individuals and particular funds may want to divest certain holdings for a variety of reasons. In fact, we do not take a position on private independent action by individual investors based on private-sector research and analysis. The message sent by millions of individuals voting with their dollars can be powerful; especially if it is not influenced by U.S. government action. However, the Administration is opposed to affirmative federal legislation that explicitly authorizes divestment campaigns at the state and local level. Sanctions policy needs to respond quickly to rapidly evolving events. Having one unified foreign policy gives us the flexibility to do this. State and local divestment efforts risk creating the appearance of a multiplicity of foreign policies, undercutting our policy flexibility and the clarity of the messages we send foreign governments. They also undermine the President's Constitutional responsibilities to conduct foreign affairs for the Nation. Moreover, such provisions could serve as an undesirable model for other countries to adopt their own legislation, encouraging divestment from companies (including American ones) doing business in other particular countries.

The Department knows that this is not the intent of the concerned citizens, groups, and representatives who back Sudan divestment initiatives, but it is a real concern. We share their desire to stop the violence in Darfur and applaud the way so many have come together to keep the focus on change in Sudan.

Other general concerns about divestment include the prospect that encouraging divestment could be challenged by foreign governments as a secondary boycott. It could also invite such secondary boycotts or other similar action against U.S. firms, or against companies engaged in activities, or doing business in countries, that we strongly support. Politicizing our capital markets also carries longer-term risks to our economy, if it deters foreign investors from using our markets. The Administration has consistently opposed, as a matter of policy, legislative provisions that politicize capital markets.

Other provisions of concern which are in some bills remove essential legal protections for workers' retirement security. The Employee Retirement Income Security Act of 1974 (ERISA) requires fiduciaries of private-sector employee benefit plans to act prudently and solely in the interest of the plan's participants and beneficiaries. Bills with "safe harbor" provisions, including for private investment companies, could exempt fiduciaries from

their duties of prudence and loyalty and from prohibitions on self-dealing when divesting the plan from investments or avoiding investing plan assets in blacklisted companies. By removing these essential protections, such a measure could harm workers, retirees and their families, allowing them no recourse for their losses.

The Sudan bills currently under consideration all seek ways to use U.S. economic leverage to have an indirect impact on Sudan's leaders by pressuring foreign companies that do business in Sudan. The primary approach in certain bills would have the USG create a "blacklist." This is the most troubling approach. Another concept in play is a new SEC disclosure process. A third concept is an as yet unarticulated U.S. government contracting certification procedure and a procurement ban on prospective contractors who cannot certify that they either have no specified business activities in Sudan or, if they do, that they meet certain humanitarian criteria. These latter two proposals also pose concerns but we remain open to exploring them further as alternatives.

The Administration has consistently opposed all requirements that the President or Treasury or any other U.S. government entity affirmatively prepare a "blacklist" periodically of companies doing business in Sudan -- such a list would target our allies, impairing multilateral efforts to aid the peace process. The high evidentiary standard that the U.S. government compiler of such a list would need to apply also means that the list would be narrower than ones already developed by NGO's and the private sector.

In summary, sanctions are an important policy tool, but need to be managed with maximum flexibility. Timing is everything, and we believe it imperative to preserve the President's flexibility to decide when and how to calibrate the application of sanctions, so they can work to the maximum advantage. We look forward to our continued dialogue with the Congress to ensure that sanctions are applied at the appropriate time and in ways that do not undermine the multilateral efforts which are essential to achieve our policy objectives for Sudan, including ending the violence in Darfur.