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100TH CONGRESS
2D SESSION

H. R. 1580

To prohibit investments in, and certain other activities with respect to, South Africa, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 1987

Mr. DELLUMS (for himself, Mr. ACKERMAN, Mr. ATKINS, Mr. BATES, Mr. BONIOR of Michigan, Mr. BROWN of California, Mr. BEEMAN, Mr. CLAY, Mrs. COLLINS, Mr. CONTE, Mr. CONYERS, Mr. CROCKETT, Mr. DE LUGO, Mr. DOWNEY of New York, Mr. DYMALLY, Mr. DYSON, Mr. EDWARDS of California, Mr. EVANS, Mr. ESPY, Mr. FAUNTROY, Mr. FLAKE, Mr. FOGLETTA, Mr. FORD of Tennessee, Mr. FRANK, Mr. GARCIA, Mr. GRAY of Illinois, Mr. GRAY of Pennsylvania, Mr. HOYER, Mr. HAWKINS, Mr. HAYES of Illinois, Mr. JACOBS, Mr. KASTENMEIER, Mr. KOSTMAYER, Mr. LELAND, Mr. LOWRY of Washington, Mr. LEVIN of Michigan, Mr. LEWIS of Georgia, Mr. THOMAS A. LUKEN, Mr. MARTINEZ, Mr. MARKEY, Mr. MFUME, Mr. MORRISON of Connecticut, Mr. OBERSTAR, Mr. OWENS of New York, Mr. RANGEL, Mr. RAHALL, Mr. RODINO, Mr. SAVAGE, Mr. STARK, Mr. STOKES, Mr. STUDDS, Mr. UDALL, Mr. WEISS, and Mr. WHEAT) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Ways and Means, Armed Services, Banking, Finance and Urban Affairs, Public Works and Transportation, and the Permanent Select Committee on Intelligence

MARCH 30, 1988

Additional sponsors: Mr. TRAXLER, Mr. MILLER of California, Mr. LEVINE of California, Mr. DIXON, Mr. COELHO, Mr. GEJDENSON, Mr. MINETA, Mr. TOWNS, Mr. SIKORSKI, Mr. KENNEDY, Ms. PELOSI, Mr. OWENS of Utah, Mr. SOLARZ, Mr. MAVBOULES, Mr. CAMPBELL, Mr. BRENNAN, Mr. WISE, Mr. BUSTAMANTE, Mr. KILDEE, Mr. MATSUI, Mrs. SCHROEDER, Mr. FAZIO, Mr. FEIGHAN, Ms. OAKAR, Mr. WAXMAN, Mr. LANTOS, Mr. DONNELLY, Mr. DEFazio, Mr. TORRES, Mr. ST GERMAIN, Mrs. BOXER, Mr. CARDIN, Mr. BOBSKI, Mr. SABO, Mr. LEHMAN of Florida, Mr. PANETTA, Mr. BRUCE, Mr. SCHEUER, Mr. AKAKA, Mr. MOAKLEY, Mrs. BOGGS, Mr. SHAYS, and Mr. YATES

A BILL

To prohibit investments in, and certain other activities with respect to, South Africa, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROHIBITION ON INVESTMENTS IN SOUTH**
4 **AFRICA.**

5 A United States person may not, directly or through a
6 foreign affiliate of that United States person, make or hold
7 any investment in South Africa.

8 **SEC. 2. PROHIBITION ON IMPORTS AND EXPORTS FROM**
9 **SOUTH AFRICA.**

10 (a) **IMPORTS.**—Notwithstanding any other provision of
11 law, no article which is the growth, produce, or manufacture
12 of South Africa may be imported into the United States,
13 except for any strategic mineral with respect to which the
14 President certifies to the Congress that the quantities of such
15 mineral which are essential for military uses exceed reason-
16 ably secure domestic supplies and that substitutes for such
17 mineral are not available.

18 (b) **EXPORTS.**—

19 (1) **GENERAL RULE.**—No goods, technology, or
20 other information subject to the jurisdiction of the
21 United States may be exported to South Africa, and no
22 goods, technology, or other information may be export-

1 ed to South Africa by any person subject to the juris-
2 diction of the United States. The prohibition contained
3 in this paragraph shall apply to goods, technology, or
4 other information of any kind, which is subject to con-
5 trols under the Export Administration Act of 1979, the
6 Arms Export Control Act, the Atomic Energy Act of
7 1954, or any other provision of law.

8 (2) EXCEPTION.—The prohibition contained in
9 paragraph (1) shall not apply to exports described in
10 section 6(g) of the Export Administration Act of 1979.

11 **SEC. 3. PROHIBITION ON LANDING RIGHTS OF SOUTH AFRI-**
12 **CAN AIRCRAFT.**

13 (a) PROHIBITION.—The Secretary of Transportation
14 shall prohibit the takeoff and landing of any aircraft by a
15 foreign air carrier owned, directly or indirectly, by the Gov-
16 ernment of South Africa or by South African nationals.

17 (b) EXCEPTIONS FOR EMERGENCIES.—The Secretary
18 of Transportation may provide for such exceptions from the
19 prohibition set forth in subsection (a) as the Secretary consid-
20 ers necessary to provide for emergencies in which the safety
21 of an aircraft or its crew or passengers is threatened.

22 (c) DEFINITIONS.—For purposes of this section, the
23 terms "aircraft" and "foreign air carrier" have the meanings
24 given those terms in section 101 of the Federal Aviation Act
25 of 1958.

1 SEC. 4. PROHIBITION ON IMPORTATION OF KRUGERRANDS.

2 No person may import into the United States any South
3 African krugerrand or any other gold coin minted in South
4 Africa or offered for sale by the Government of South Africa.

5 SEC. 5. GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS.

6 No United States depository institution may accept, re-
7 ceive, or hold a deposit account from the Government of
8 South Africa or from any agency or entity owned or con-
9 trolled by the Government of South Africa except for such
10 accounts which may be authorized by the President for diplo-
11 matic or consular purposes. For purposes of the preceding
12 sentence, the term "depository institution" has the same
13 meaning as in section 19(b)(1) of the Federal Reserve Act.

14 SEC. 6. PROHIBITION ON UNITED STATES MILITARY OR IN-
15 TELLIGENCE COOPERATION WITH GOVERN-
16 MENT OF SOUTH AFRICA.

17 (a) MILITARY COOPERATION.—No agency or entity of
18 the United States may engage in any form of cooperation,
19 direct or indirect, with the armed forces of the Government
20 of South Africa.

21 (b) INTELLIGENCE COOPERATION.—No agency or
22 entity of the United States involved in intelligence activities
23 may engage in any form of cooperation, direct or indirect,
24 with the Government of South Africa.

1 **SEC. 7. LIMITATION ON IMPORTS FROM OTHER COUNTRIES.**

2 The President is authorized to limit the importation into
3 the United States of any product or service of a foreign coun-
4 try to the extent to which such foreign country benefits from,
5 or otherwise takes commercial advantage of, any prohibition
6 imposed by or under this Act.

7 **SEC. 8. ENFORCEMENT; PENALTIES.**

8 **(a) AUTHORITIES OF THE PRESIDENT.**—The President
9 shall take the necessary steps to ensure compliance with the
10 provisions of this Act and any regulations, licenses, and
11 orders issued to carry out this Act, including establishing
12 mechanisms to monitor compliance with such provisions, reg-
13 ulations, licenses, and orders. In ensuring such compliance,
14 the President may conduct investigations, hold hearings, ad-
15 minister oaths, examine witnesses, receive evidence, take
16 depositions, and require by subpoena the attendance and tes-
17 timony of witnesses and production of all books, papers, and
18 documents relating to any matter under investigation.

19 **(b) VIOLATIONS.**—Any person that knowingly violates
20 the provisions of this Act or any regulation, license, or order
21 issued to carry out this Act shall—

22 (1) if other than an individual, be fined not more
23 than \$500,000; and

24 (2) if an individual, be fined not more than
25 \$250,000, or imprisoned not more than 5 years, or
26 both.

1 **(c) ADDITIONAL PENALTIES FOR CERTAIN INDIVID-**
2 **UALS.—**

3 **(1) IN GENERAL.—**Whenever a person commits a
4 violation under subsection (b)—

5 **(A)** any officer, director, or employee of such
6 person, or any natural person in control of such
7 person who willfully ordered, authorized, acqui-
8 esced in, or carried out the act or practice consti-
9 tuting the violation, and

10 **(B)** any agent of such person who willfully
11 carried out such act or practice,
12 shall, upon conviction, be fined not more than
13 \$250,000, or imprisoned not more than 5 years, or
14 both.

15 **(2) RESTRICTION OF PAYMENT OF FINES.—**A
16 fine imposed under paragraph (1) on an individual for
17 an act or practice constituting a violation may not be
18 paid, directly or indirectly, by the person committing
19 the violation itself.

20 **(d) SEIZURE AND FORFEITURE OF AIRCRAFT.—**Any
21 aircraft used in connection with a violation of section 3 or
22 any regulation, license, or order issued to carry out that sec-
23 tion shall be subject to seizure by and forfeiture to the United
24 States. All provisions of law relating to the seizure, forfeit-
25 ure, and condemnation of articles for violations of the cus-

1 toms laws, the disposition of such articles or the proceeds
2 from the sale thereof, and the remission or mitigation of such
3 forfeitures shall apply to the seizures and forfeitures incurred,
4 or alleged to have been incurred, under the provisions of this
5 subsection, insofar as such provisions of law are applicable
6 and not inconsistent with the provisions of this Act; except
7 that all powers, rights, and duties conferred or imposed by
8 the customs laws upon any officer or employee of the Depart-
9 ment of the Treasury shall, for purposes of this subsection, be
10 exercised or performed by the Secretary of Transportation or
11 by such persons as the Secretary may designate.

12 **SEC. 9. REGULATORY AUTHORITY.**

13 The President may issue such regulations, licenses, and
14 orders as are necessary to carry out this Act.

15 **SEC. 10. DEFINITIONS.**

16 For purposes of this Act—

17 (1) **UNITED STATES.**—The term “United States”
18 includes the States of the United States, the District of
19 Columbia, the Commonwealth of Puerto Rico, and any
20 territory or possession of the United States.

21 (2) **UNITED STATES PERSON.**—The term “United
22 States person” means—

23 (A) any United States resident or national;

24 and

1 **(B) any partnership, corporation, or other**
2 **entity organized under the laws of the United**
3 **States or of any of the several States, of the Dis-**
4 **trict of Columbia, or of any commonwealth, terri-**
5 **tory, or possession of the United States.**

6 **(3) INVESTMENT IN SOUTH AFRICA.—The term**
7 **“investment in South Africa” means—**

8 **(A) a commitment of funds or other assets (in**
9 **order to earn a financial return) to the Govern-**
10 **ment of South Africa or to a business enterprise**
11 **located in South Africa or owned or controlled by**
12 **South African nationals, including—**

13 **(i) a loan or other extension of credit**
14 **made to the Government of South Africa or**
15 **to such a business enterprise, or security**
16 **given for the debts of the Government of**
17 **South Africa or such a business enterprise;**

18 **(ii) the beneficial ownership or control**
19 **of a share or interest in such a business en-**
20 **terprise, or of a bond or other debt instru-**
21 **ment issued by the Government of South**
22 **Africa or such a business enterprise; or**

23 **(iii) capital contributions in money or**
24 **other assets to such a business enterprise; or**

1 **(B) the control of a business enterprise locat-**
2 **ed in South Africa or owned or controlled by**
3 **South African nationals, in cases in which sub-**
4 **paragraph (A) does not apply.**

5 **(4) SOUTH AFRICA.—The term “South Africa”**
6 **includes—**

7 **(A) the Republic of South Africa;**

8 **(B) Namibia and any other territory under**
9 **the administration, legal or illegal, of South**
10 **Africa; and**

11 **(C) the “bantustans” or “homelands”, to**
12 **which South African blacks are assigned on the**
13 **basis of ethnic origin, including the Transkei, Bo-**
14 **phuthatswana, Ciskei, and Venda.**

15 **(5) BUSINESS ENTERPRISE.—The term “business**
16 **enterprise” means any organization, association,**
17 **branch, or venture which exists for profitmaking pur-**
18 **poses or to otherwise secure economic advantage, and**
19 **any corporation, partnership, or other organization**
20 **which is owned or controlled by the Government of**
21 **South Africa.**

22 **(6) BRANCH.—The term “branch” means the op-**
23 **erations or activities conducted by a person in a differ-**
24 **ent location in its own name rather than through a**
25 **separate incorporated entity.**

1 **(7) FOREIGN AFFILIATE.**—A “foreign affiliate” of
2 a United States person is a business enterprise located
3 in a foreign country, including a branch, which is con-
4 trolled by that United States person.

5 **(8) SOUTH AFRICAN NATIONAL.**—The term
6 “South African national” means—

7 **(A)** a citizen of South Africa; and

8 **(B)** any partnership, corporation, or other
9 entity organized under the laws of South Africa.

10 **(9) CONTROL BY SOUTH AFRICAN NATIONALS.**—

11 For purposes of paragraphs (3) and (7), a business en-
12 terprise shall be presumed to be controlled by a United
13 States person or by South African nationals (as the
14 case may be) if—

15 **(A)** the United States person or South Afri-
16 can nationals beneficially own or control (whether
17 directly or indirectly) more than 50 percent of the
18 outstanding voting securities of the business
19 enterprise;

20 **(B)** the United States person or South Afri-
21 can nationals beneficially own or control (whether
22 directly or indirectly) 25 percent or more of the
23 voting securities of the business enterprise, if no
24 other person owns or controls (whether directly or
25 indirectly) an equal or larger percentage;

1 (C) the business enterprise is operated by the
2 United States person or South African nationals
3 pursuant to the provisions of an exclusive man-
4 agement contract;

5 (D) a majority of the members of the board
6 of directors of the business enterprise are also
7 members of the comparable governing body of the
8 United States person or a South African national;

9 (E) the United States person or South Afri-
10 can nationals have the authority to appoint a ma-
11 jority of the members of the board of directors of
12 the business enterprise; or

13 (F) the United States person or South Afri-
14 can nationals have the authority to appoint the
15 chief operating officer of the business enterprise.

16 **SEC. 11. APPLICABILITY TO EVASIONS OF ACT.**

17 This Act shall apply to any person who undertakes or
18 causes to be undertaken any transaction or activity with the
19 intent to evade the provisions of this Act or any regulation,
20 license, or order issued to carry out this Act.

21 **SEC. 12. REPEAL OF COMPREHENSIVE ANTI-APARTHEID ACT**
22 **OF 1986.**

23 (a) **REPEAL OF ACT.**—The Comprehensive Anti-Apart-
24 heid Act of 1986 (Public Law 99-440), and all regulations,

1 licenses, and orders issued to carry out that Act, are hereby
2 repealed.

3 (b) REPEAL OF AMENDMENTS MADE BY THAT ACT.—

4 (1) Section 105(b) of the Foreign Assistance Act
5 of 1961 is amended—

6 (A) by striking out “(1)” after “(b)”; and

7 (B) by striking out paragraph (2).

8 (2) Chapter 1 of part I of the Foreign Assistance
9 Act of 1961 is amended—

10 (A) in section 116—

11 (i) in subsection (e)(2)(A) by striking out
12 “1984,” and inserting in lieu thereof “1984
13 and”;

14 (ii) in subsection (e)(2)(A) by striking out
15 “, and \$1,500,000 for the fiscal year 1986
16 and for each fiscal year thereafter”; and

17 (iii) by striking out subsection (f); and

18 (B) by striking out section 117.

19 (3) Chapter 4 of part II of the Foreign Assistance
20 Act of 1961 is amended by striking out section 535.

21 (4) Section 2(b)(9) of the Export-Import Bank Act
22 of 1945 is amended—

23 (A) by striking out “(9)(A) Except as provid-
24 ed in subparagraph (B), in” and inserting in lieu
25 thereof “(9) In”; and

1 **(B) by striking out subparagraph (B).**

2 **(c) TRANSITION PROVISION.—**The repeal contained in
3 subsection (a) shall not affect any proceeding to impose a
4 penalty under section 603 of the Comprehensive Anti-Apart-
5 heid Act of 1986 for violations of that Act (or any regulation,
6 license or order issued to carry out that Act) occurring before
7 the date on which this Act takes effect.

8 **SEC. 13. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act take
10 effect 180 days after the date of the enactment of this Act.

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COMMITTEE PRINT

4/21/88

SHOWING H.R. 1580, AS AMENDED BY THE SUBCOMMITTEE ON AFRICA
AND THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND
TRADE ON APRIL 20, 1988

Strike all after the enacting clause and insert in lieu thereof the following:

1 SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.--This Act may be cited as the ``Anti-
3 Apartheid Act Amendments of 1988``.

4 (b) REFERENCE.--References in this Act to ``the Act`` are
5 to the Comprehensive Anti-Apartheid Act of 1986.

6 (c) TABLE OF CONTENTS.--

- Sec. 1. Short title; reference; table of contents.
- Sec. 2. Prohibitions on investment and trade.
- Sec. 3. Prohibition regarding involvement in the South African energy sector.
- Sec. 4. Prohibition on nuclear assistance to South Africa.
- Sec. 5. Prohibition on United States intelligence and military cooperation with South Africa.
- Sec. 6. Multilateral measures to undermine apartheid.
- Sec. 7. South Africa sanctions office; inter-agency coordinating committee on South Africa.
- Sec. 8. Independence of Namibia.
- Sec. 9. Report on program to reduce dependence upon importation of strategic minerals from South Africa.
- Sec. 10. Assistance for disadvantaged South Africans.
- Sec. 11. Sense of congress regarding antitrust investigation of South African diamond cartel and study of diamond origins.
- Sec. 12. Study of measures to reduce South Africa's foreign exchange earnings from gold.
- Sec. 13. Sense of congress regarding South African consulates and approval of visas.

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Sec. 14. Penalties.

Sec. 15. Technical and conforming amendments.

Sec. 16. Effective date.

1 SEC. 2. PROHIBITIONS ON INVESTMENT AND TRADE.

2 (a) PROHIBITIONS ON INVESTMENT AND TRADE.--

3 (1) AMENDMENT.--Sections 301, 302, and 303 of the
4 Comprehensive Anti-Apartheid Act of 1986 (hereafter in
5 this Act referred to as "the Act") are amended to read
6 as follows:

7 " PROHIBITION ON INVESTMENT IN SOUTH AFRICA

8 " SEC. 301. A United States person may not, directly or
9 through another person, purchase, acquire, own, or hold any
10 investment in South Africa.

11 " PROHIBITION ON IMPORTS INTO THE UNITED STATES FROM SOUTH
12 AFRICA

13 " SEC. 302. (a) No article which is grown, produced,
14 extracted, or manufactured in South Africa may be imported
15 into the United States.

16 " (b) The prohibition of subsection (a) shall not apply
17 to the import of--

18 " (1) any strategic mineral (including any ferroalloy
19 thereof) with respect to which the President certifies to
20 the Congress that the quantities of such mineral which
21 are essential for the economy or defense of the United
22 States are not available from alternative reliable
23 suppliers and that such needs cannot be met in a timely

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1 manner by improved manufacturing processes, conservation,
2 recycling, and economical substitution; and

3 `` (2) publications.

4 `` (c) The prohibition under subsection (a) includes--

5 `` (1) uranium hexafluoride that has been manufactured
6 from South African uranium or uranium oxide; and

7 `` (2) fish or seafood--

8 `` (A) purchased from a ship owned by a South
9 African or of South African registry;

10 `` (B) purchased from a South African;

11 `` (C) processed in whole or part by a South
12 African ship or person; or

13 `` (D) stored in or shipped from South Africa.

14 `` PROHIBITION OF EXPORTS TO SOUTH AFRICA FROM THE UNITED
15 STATES

16 `` SEC. 303. (a) No goods or technology subject to the
17 jurisdiction of the United States may be exported, or re-
18 exported, to South Africa. No goods or technology may be
19 exported, or re-exported, to South Africa by any person
20 subject to the jurisdiction of the United States.

21 `` (b) The prohibitions under subsection (a) shall not
22 apply to--

23 `` (1) publications; and

24 `` (2) donations of articles intended to relieve human
25 suffering, such as food, clothing, and medicine and

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1 medical supplies intended strictly for medical purposes.

2 “(c) The prohibitions under subsection (a) shall not
3 apply to any goods that are the direct product of
4 technology of United States origin under a written
5 agreement entered into on or before April 20, 1988, and
6 that are exported prior to the date which is one year
7 after the date of the enactment of the Anti-Apartheid Act
8 Amendments of 1988.

9 “(d) The prohibitions under subsection (a) shall not
10 apply to--

11 “(1) economic assistance or human rights programs
12 for disadvantaged South Africans, South African blacks or
13 other nonwhite South Africans, or victims of apartheid in
14 South Africa pursuant to the Foreign Assistance Act of
15 1961, the Export-Import Bank Act of 1945, or any other
16 provision of law authorizing economic or human rights
17 assistance programs; and

18 “(2) contributions to charitable organizations
19 engaged in social welfare, public health, religious,
20 educational, and emergency relief activities in South
21 Africa.”.

22 (2) EFFECTIVE DATE.--

23 (A) The amendments made by paragraph (1) shall
24 take effect 180 days after the date of the enactment
25 of this Act.

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1 (B) A person affected by the prohibition under
2 section 301 of the Comprehensive Anti-Apartheid Act
3 of 1986 (as amended by this section) may apply to the
4 President for a one-time waiver of the prohibition.
5 With respect to any applicant, the President may
6 waive the application of section 301 for not more
7 than 180 days after such section takes effect. Such
8 waiver may be granted only for good cause. During any
9 period of waiver under this subparagraph, the
10 provisions of the Comprehensive Anti-Apartheid Act of
11 1986 as in effect before the date of the enactment of
12 the Anti-Apartheid Act Amendments of 1988 shall apply
13 and the President may not waive any such provision.

14 (b) REPEAL OF CERTAIN PROVISIONS OF THE ACT.--Effective
15 180 days after the date of the enactment of this Act, the
16 Comprehensive Anti-Apartheid Act of 1986 is amended by
17 striking sections 212, 304, 309, 310, 317, 318, 319, 320,
18 321, and 323.

19 (c) DEFINITIONS.--

20 (1) Paragraphs (3) and (4) of section 3 of the Act
21 are amended to read as follows:

22 `` (3) the term ``loan''--

23 `` (A) means any transfer or extension of funds or
24 credit on the basis of an obligation to repay, or any
25 assumption or guarantee of the obligation of another

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1 to repay an extension of funds or credit, including--

2 (i) overdrafts;

3 (ii) currency swaps;

4 (iii) the purchase of debt or equity

5 securities issued by the Government of South

6 Africa or a South African entity on or after the

7 date of enactment of this Act;

8 (iv) the purchase of a loan made by another

9 person;

10 (v) the sale of financial assets subject to

11 an agreement to repurchase;

12 (vi) a renewal or refinancing whereby funds

13 or credits are transferred or extended to the

14 Government of South Africa or a South African

15 entity;

16 (vii) short-term trade financing, as by

17 letters of credit or similar trade credits;

18 (viii) sales on open account in cases where

19 such sales are normal business practice; and

20 (ix) rescheduling of existing loans; and

21 (B) does not include, a loan for which an

22 agreement was entered into before April 20, 1988, so

23 long as such a loan is maintained under the terms in

24 effect on such date.

25 (4) the term 'investment in South Africa' means--

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1 “(A) a commitment of funds or other assets (in
2 order to earn a financial return) to a South African
3 entity, including--

4 “(i) a loan or other extension of credit
5 made to a South African entity, or security given
6 for the debts of an entity;

7 “(ii) the beneficial ownership or control of
8 a share or interest in a South African entity, or
9 of a bond or other debt instrument issued by such
10 an entity; or

11 “(iii) capital contributions in money or
12 other assets to a South African entity; or

13 “(B) the control of a South African entity in
14 cases in which subparagraph (A) does not apply.”.

15 (2) Section 3 of the Act is further amended by--

16 (A) striking “and” after the semicolon in
17 paragraph (8)(B);

18 (B) striking the period at the end of paragraph
19 (9) and inserting a semicolon; and

20 (C) adding at the end of such section the
21 following:

22 “(10) the term ‘person subject to the jurisdiction
23 of the United States’ includes--

24 “(A) any person, wherever located, who is a
25 citizen or resident of the United States;

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1 `` (B) any person actually within the United
2 States;

3 `` (C) any corporation organized under the laws of
4 the United States or of any State, territory,
5 possession, or district of the United States; and

6 `` (D) any partnership, association, corporation,
7 or other organization, wherever organized or doing
8 business, that is owned or controlled by persons
9 specified in subparagraphs (A), (B), or (C) of this
10 paragraph;

11 `` (11) the terms 'goods' and 'technology' have the
12 meanings given such terms by section 16 of the Export
13 Administration Act of 1979; and

14 `` (12) the term 'goods subject to the jurisdiction of
15 the United States' includes goods that are the direct
16 product of technology of United States origin.'`.

17 (d) NEGOTIATIONS WITH EMPLOYEE ORGANIZATIONS REGARDING
18 TERMINATION OF INVESTMENT.--A controlled South African
19 entity, subject to the investment prohibition under section
20 301 of the Comprehensive Anti-Apartheid Act of 1986 (as
21 amended by subsection (a)), that employs more than 24 South
22 Africans--

23 (1) shall notify all South African employees and
24 their employee organizations of such termination of
25 investment not less than 90 days prior to such

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1 termination; and

2 (2) shall enter into good faith negotiations with
3 representative trade unions (or, if there are no such
4 unions, with other representative worker organizations)
5 regarding the terms of a termination.

6 Negotiations shall include discussions and agreements
7 concerning pension benefits; relocation of employees;
8 continuation of existing union recognition agreements;
9 severance pay; and acquisition of the terminated business or
10 the business assets by representative trade unions, union-
11 sponsored workers' trusts, other representative worker
12 organizations, or employees.

13 **SEC. 3. PROHIBITION REGARDING INVOLVEMENT IN THE SOUTH**
14 **AFRICAN ENERGY SECTOR.**

15 The Act is amended by adding after section 303 (as
16 amended by section 2 of this Act) the following new section
17 304:

18 **RESTRICTIONS REGARDING INVOLVEMENT IN THE SOUTH AFRICAN**
19 **ENERGY SECTOR**

20 **SEC. 304. (a)** A United States person may not, directly
21 or through an affiliate, provide transport to South Africa of
22 a commercial quantity of crude oil or refined petroleum
23 products. The prohibition under this subsection includes
24 transport on a vessel of United States registry and transport
25 on a vessel owned, directly or indirectly, by a United States

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1 person.

2 `` (b)(1) The Secretary of the Interior may not issue any
3 lease or permit pursuant to the Mineral Leasing Act of 1920,
4 the Mineral Leasing Act for Acquired Lands, the Outer
5 Continental Shelf Lands Act, or the Geothermal Steam Act of
6 1970 to any national of the United States which is controlled
7 by, or under common control with, any foreign person who--

8 `` (A) purchases, acquires, owns, or holds any
9 investment in South Africa; or

10 `` (B) exports to South Africa, directly or
11 indirectly, any crude oil or refined petroleum products.

12 `` (2) Prior to issuing any lease or permit referred to in
13 paragraph (1), the Secretary of the Interior shall require an
14 applicant for such a lease or permit to certify that the
15 applicant is not subject to the provisions of paragraph
16 (1).''.

17 **SEC. 4. PROHIBITION ON NUCLEAR ASSISTANCE TO SOUTH AFRICA.**

18 Section 307 of the Act is amended to read as follows:

19 `` **PROHIBITION ON NUCLEAR ASSISTANCE TO SOUTH AFRICA**

20 `` **SEC. 307.** Notwithstanding any other provision of law,
21 the Secretary of Energy shall not, under section 57b.(2) of
22 the Atomic Energy Act, authorize any person to engage,
23 directly or indirectly, in the production of special nuclear
24 material in South Africa.''.
25

25 **SEC. 5. PROHIBITION ON UNITED STATES INTELLIGENCE AND**

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11

1 **MILITARY COOPERATION WITH SOUTH AFRICA.**

2 The Act is amended by striking section 322 and adding
3 after section 308 the following new section:

4 **PROHIBITION ON UNITED STATES INTELLIGENCE AND MILITARY**
5 **COOPERATION WITH SOUTH AFRICA**

6 **SEC. 309. (a)(1)** No agency or entity of the United
7 States involved in intelligence activities may engage in any
8 form of cooperation, direct or indirect, with the Government
9 of South Africa (specifically including the authorities
10 administering Namibia so long as Namibia is illegally
11 occupied). The cooperation prohibited by this subsection
12 specifically includes any activity relating to the collection
13 of intelligence, including the exchange of intelligence
14 either directly or through a third country.

15 **(b)** No agency or entity of the United States may engage
16 in any form of cooperation, direct or indirect, with the
17 armed forces of the Government of South Africa.

18 **(c)** Funds authorized to be appropriated or otherwise
19 made available by the Congress (including funds specified in
20 a classified schedule of authorizations or appropriations)
21 may not be obligated or expended by any agency or entity of
22 the United States for any expenses related to any cooperation
23 prohibited by this section.

24 **(d)** Consistent with the objectives of this section, the
25 President should not--

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12

1 “(1) assign or detail any member of the United
2 States Armed Forces to serve as, or otherwise perform the
3 functions of, a defense (or military) attache in South
4 Africa; or

5 “(2) accredit any individual to serve as, or
6 otherwise perform the functions of, a defense (or
7 military) attache at a South African diplomatic mission
8 in the United States.”.

9 **SEC. 6. MULTILATERAL MEASURES TO UNDERMINE APARTHEID.**

10 (a) **NEGOTIATING AUTHORITY.--**

11 (1) Section 401(b)(1) of the Act is amended to read
12 as follows:

13 “(b)(1) The President, or at his direction, the
14 Secretary of State, shall, consistent with the policy under
15 subsection (a), confer with the other industrialized
16 democracies in order to reach cooperative agreements to
17 impose sanctions against South Africa to bring about the
18 complete dismantling of apartheid.

19 (2) Section 401(b)(2) of the Act is amended by
20 striking “this Act,” and inserting “the Anti-Apartheid
21 Act Amendments of 1988,”.

22 (b) **UNITED NATIONS SANCTIONS.--**Section 401(e) of the Act
23 is amended by striking “It is the sense of the Congress that
24 the President should” and inserting “The President shall”.

25 (c) **LIMITATION ON IMPORTS FROM AND CONTRACTING WITH**

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13

1 CERTAIN FOREIGN PERSONS.--Section 402 of the Act is amended
2 to read as follows:

3 ``LIMITATION ON IMPORTS FROM AND CONTRACTING WITH CERTAIN
4 FOREIGN PERSONS

5 ``SEC. 402. (a) To the extent that a foreign person takes
6 significant commercial advantage of--

7 `` (1) any sanction or prohibition imposed by or under
8 this Act, or

9 `` (2) any sanction or prohibition of another
10 industrialized democracy which is comparable to, and
11 increases the efficacy of, United States sanctions and
12 prohibitions under this Act,
13 the President shall impose not less than one of the penalties
14 under subsection (b).

15 `` (b) The penalties which the President may impose under
16 subsection (a) are:

17 `` (1) Limit the importation into the United States of
18 any product or service of the foreign person.

19 `` (2) Restrict the foreign person from contracting
20 with departments, agencies, and instrumentalities of the
21 United States Government.

22

23 [AN AMENDMENT STRIKING THE FOLLOWING SECTION WAS DEFEATED
24 BY THE SUBCOMMITTEE ON AFRICA AND AGREED TO BY THE
25 SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE]

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14

1 SEC. 7. OFFICE OF SOUTH AFRICA SANCTIONS; INTER-AGENCY
2 COORDINATING COMMITTEE ON SOUTH AFRICA.

3 The Act is amended by adding after section 606 the
4 following new sections:

5 ``OFFICE OF SOUTH AFRICA SANCTIONS.

6 ``SEC. 607.(a) There is established within the Department
7 of State an Office of South Africa Sanctions which shall be
8 responsible to the Secretary of State for matters pertaining
9 to the implementation of sanctions against South Africa, in
10 accordance with the provisions of this subsection.

11 `` (b) The Secretary of State, through the Office of South
12 Africa Sanctions, shall--

13 `` (1) lead and coordinate all executive agency
14 activities concerning monitoring of compliance with, and
15 enforcement of, this Act;

16 `` (2) lead and coordinate monitoring by appropriate
17 executive agencies of other countries' trade and
18 financial flows with South Africa (including economic
19 relations which may undermine the effects of United
20 States sanctions);

21 `` (3) assist the Department of Commerce, the
22 Department of the Treasury, and appropriate intelligence
23 and other agencies in carrying out the functions of such
24 agencies under paragraphs (1) and (2); and

25 `` (4) annually prepare and submit, on February 1 of

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15

1 each year after 1989, a comprehensive report to the
2 Congress which--

3 (A) describes specific actions taken during the
4 preceding year by each affected executive agency to
5 monitor compliance with, and enforce, the provisions
6 of this Act;

7 (B) describes the trade and financial flows (by
8 commodity, activity, total volume, and value) during
9 the preceding year between South Africa and each of
10 its trading and financial partners, including
11 economic relations which may violate section 402 of
12 this Act;

13 (C) describes the resources utilized by the
14 office, the Department of State, and other executive
15 agencies in carrying out their functions under this
16 Act in the preceding year, including an evaluation of
17 whether such resources were adequate; and

18 (E) provides any recommendations of the
19 Secretary of State for improving the effectiveness of
20 the office.

21 (c) In carrying out the functions under subsection (b),
22 the office shall place particular emphasis on activities
23 related to strategically important trade in oil, coal,
24 computers, specialized machinery and arms, and to financial
25 credits.

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16

1 “(d) AUTHORIZATION OF APPROPRIATIONS.--There are
2 authorized to be appropriated to carry out the provisions of
3 this section \$500,000 for fiscal year 1989 and each
4 subsequent fiscal year.

5 “INTER-AGENCY COORDINATING COMMITTEE ON SOUTH AFRICA

6 “SEC. 608. (a) There is established an Inter-Agency
7 Coordinating Committee on South Africa. The Committee shall
8 coordinate and monitor implementation of this Act.

9 “(b) The committee shall be composed of--

10 “(1) the Secretary of State,

11 “(2) the Secretary of the Treasury,

12 “(3) the Secretary of Defense,

13 “(4) the Secretary of Commerce,

14 “(5) the Secretary of Agriculture,

15 “(6) the Attorney General,

16 “(7) the United States Trade Representative, and

17 “(8) such other heads of executive agencies with

18 functions under this Act as the President considers

19 appropriate.

20 The Secretary of State shall be the chairperson of the
21 committee.”.

22

23 **SEC. 8. INDEPENDENCE OF NAMIBIA.**

24 (a) ADDITIONAL MEASURE FOR TERMINATION OF CERTAIN

25 PROVISIONS OF THE ACT.--Section 311 of the Act is amended--

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17

1 (1) in subsection (a)--

2 (A) in paragraph (4) by striking ``and`` after
3 the semicolon;

4 (B) in paragraph (5) by striking the period and
5 inserting ``; and``;

6 (C) by adding after paragraph (5) the following
7 new paragraph:

8 `` (6) ends the illegal occupation of Namibia and
9 implements United Nations Resolution 435 which calls for
10 the independence of Namibia.``; and

11 (2) in subsection (b) by amending paragraph (2) to
12 read as follows:

13 `` (2) taken four of the five actions listed in
14 paragraphs (2) through (6) of subsection (a), and``.

15 (b) POLICY TOWARD THE GOVERNMENT OF SOUTH
16 AFRICA.--Section 101 is amended--

17 (1) in paragraph (5) by striking ``and`` after the
18 semicolon;

19 (2) by striking the period at the end of paragraph
20 (6) and inserting ``; and``; and

21 (3) by adding after paragraph (6) the following new
22 paragraph (7):

23 `` (7) end South Africa's illegal occupation of
24 Namibia and implement United Nations Resolution 435 which
25 calls for the establishment of an independent Namibia.``

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18

1 **SEC. 9. REPORT ON PROGRAM TO REDUCE DEPENDENCE UPON**
2 **IMPORTATION OF STRATEGIC MINERALS FROM SOUTH**
3 **AFRICA.**

4 Section 504(b) of the Act is amended by adding at the end
5 ``Not later than April 1, 1989, the President shall submit to
6 the Congress a report describing the program developed under
7 this subsection.'`.

8 **SEC. 10. ASSISTANCE FOR DISADVANTAGED SOUTH AFRICANS.**

9 Section 535(a) of the Foreign Assistance Act of 1961 is
10 amended--

11 (1) by amending paragraph (1) to read as follows:

12 ``SEC. 535. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH
13 AFRICANS.--(a)(1) Up to \$40,000,000 of the funds authorized
14 to be appropriated to carry out this chapter and any other
15 economic development assistance activities under the Foreign
16 Assistance Act of 1961, for the fiscal year 1989 and each
17 fiscal year thereafter, shall be available for assistance for
18 disadvantaged South Africans. Assistance under this section
19 shall be provided for activities that are consistent with the
20 objective of a majority of South Africans for an end to the
21 apartheid system and the establishment of a society based on
22 nonracial principles. Such activities may include
23 scholarships, assistance to promote the participation of
24 disadvantaged South Africans in trade unions and private
25 enterprise, alternative education and community development

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19

1 programs, and training and other assistance (including legal
2 aid in challenging government media restrictions) for South
3 African journalists.".

4 (2) in paragraph (2) by striking "programs for South
5 Africa's trade unionists." and inserting "and other
6 support programs (including legal assistance) for trade
7 unions in South Africa and Namibia, including COSATU
8 (Congress of South African Trade Unions), NACTU (National
9 Council of Trade Unions), and NUNW (National Union of
10 Namibian Workers), their affiliates, and other viable
11 unions in order to develop a balanced assistance program
12 which is representative of the trade union movement.
13 Assistance under this paragraph may be provided through
14 United States trade unions or other appropriate
15 intermediary organizations."; and

16 (3) by adding after paragraph (2) the following new
17 paragraph:

18 "(3) Not less than \$4,000,000 of the amounts
19 provided for each fiscal year pursuant to this subsection
20 shall be available for programs of refugee education and
21 assistance for South Africans and Namibians.".

22 **SEC. 11. SENSE OF CONGRESS REGARDING ANTITRUST INVESTIGATION**
23 **OF SOUTH AFRICAN DIAMOND CARTEL.**

24 It is the sense of the Congress that--

25 (1) the President should direct the Attorney General

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20

1 of the United States to conduct an investigation of the
2 South African-controlled international diamond cartel in
3 order to ascertain if any enforcement action is
4 appropriate under the antitrust laws of the United
5 States; and

6 (2) the President should direct the Secretary of
7 Commerce and the Commissioner of Customs to conduct a
8 study to determine the feasibility of identifying at port
9 of entry, without harm to producers and processors of
10 diamonds outside of South Africa, the national origin of
11 diamonds entering the United States.

12 **SEC. 12. STUDY OF MEASURES TO REDUCE SOUTH AFRICA'S FOREIGN**
13 **EXCHANGE EARNINGS FROM GOLD.**

14 (a) **STUDY.**--In consultation with other industrialized
15 nations and international financial institutions, the
16 President shall conduct a study of possible actions by the
17 United States to reduce the foreign exchange earnings of
18 South Africa which accrue through sales of gold. The
19 President shall consider possible international and domestic
20 consequences of any course of action and shall evaluate
21 mechanisms to avoid or minimize any adverse effects on the
22 United States gold mining industry.

23 (b) **REPORT.**--Not later than 180 days after the date of
24 the enactment of this Act, the President shall submit to the
25 Congress a report of the findings of such study.

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1 **SEC. 13. SENSE OF CONGRESS REGARDING SOUTH AFRICAN CONSULATES**
2 **AND APPROVAL OF VISAS.**

3 It is the sense of the Congress that--

4 (1) South Africa has effectively banned 19 major anti-
5 apartheid organizations, forbade the major trade union
6 federation, COSATU, from engaging in political
7 activities, and denied permission for travel to the
8 United States to numerous South Africans;

9 (2) the repression by South Africa of domestic and
10 foreign media has prevented the free flow of information
11 essential to the advance of any national dialogue between
12 the government and the nonwhite majority which actively
13 opposes apartheid, and has restricted the ability of the
14 foreign press to report developments in South Africa;

15 (3) the President should immediately close two of
16 South Africa's consulates general, eliminate all honorary
17 consuls which South Africa has in the United States, and
18 forbid South Africa to expand the staffing of its embassy
19 beyond the level of January 1, 1988; and

20 (4) approval of temporary United States visas,
21 especially to South African government personnel, should
22 be granted on a case-by-case basis only after close
23 scrutiny of the South African Government's record of
24 allowing South African citizens, particularly those who
25 are members of anti-apartheid organizations, to travel to

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22

1 the United States.

2 **SEC. 14. PENALTIES.**

3 Section 603(b) of the Act is amended--

4 (1) in paragraph (2)--

5 (A) by inserting `` (A) `` after `` (2) ``; and

6 (B) by adding at the end the following new
7 subparagraph:

8 `` (B) any person, other than an individual that
9 knowingly violates the provisions of this Act, or any
10 regulation, license, or order issued to carry out this
11 Act shall be fined not more than \$500,000; ``; and

12 (2) in paragraph (3)--

13 (A) by inserting `` (A) `` after `` (3) ``; and

14 (B) by adding at the end the following new
15 subparagraph:

16 `` (B) any individual who knowingly violates the
17 provisions of this Act, or any regulation, license, or
18 order issued to carry out this Act shall be fined not
19 more than \$250,000, or imprisoned not more than 5 years,
20 or both; and ``.

21 **SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.**

22 (a) **AMENDMENTS TO THE TABLE OF CONTENTS.--**

23 (1) The table of contents in section 2 of the Act is
24 amended by amending the items relating to title III to
25 read as follows:

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23

TITLE III-MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

- Sec. 301. Prohibition on investment and trade.
- Sec. 302. Prohibition on imports into the United States from South Africa.
- Sec. 303. Prohibition of exports to South Africa from the United States.
- Sec. 304. Restrictions regarding involvement in the South African energy sector.
- Sec. 305. Prohibitions on loans to the Government of South Africa.
- Sec. 306. Prohibition on air transportation with South Africa.
- Sec. 307. Prohibition on nuclear trade with South Africa.
- Sec. 308. Government of South Africa bank accounts.
- Sec. 309. Prohibition on United States intelligence and military cooperation with South Africa.
- Sec. 311. Termination of certain provisions.
- Sec. 312. Policy toward violence or terrorism.
- Sec. 313. Termination of tax treaty and protocol.
- Sec. 314. Prohibition of United States Government procurement from South Africa.
- Sec. 315. Prohibition on the promotion of United States tourism in South Africa.
- Sec. 316. Prohibition on United States Government assistance to, involvement in, or subsidy for trade with, South Africa.

1 (2) The table of contents in section 2 of the Act is
2 further amended--

3 (A) by striking the item relating to section 212;

4 (B) by amending the items relating to sections

5 402 and 502, respectively, to read as follows:

- Sec. 402. Limitation on imports from and contracting with certain foreign persons.
- Sec. 502. Reports on United States imports from member states of the Council for Mutual Economic Assistance. ; and
(C) by adding after the items relating to section 606 the following items:
- Sec. 607. Office of South Africa sanctions.
- Sec. 608. Inter-agency coordinating committee on South Africa.

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24

1 (b) CONFORMING AMENDMENTS TO THE ACT.

2 (1) Section 602(a)(3) and 602(b)(1) of the Act are
3 amended by striking ``318(b),``.

4 (2) Section 602(c) is amended by striking paragraph
5 (2) and redesignating paragraphs ``(3)`` and ``(4)`` as
6 paragraphs ``(2)`` and ``(3)`` , respectively.

7 (3) Section 603(b) of the Act is amended--

8 (A) by striking paragraph (4);

9 (B) by striking the semicolon in paragraph (2)
10 and inserting ``; and`` ; and

11 (C) by striking ``; and`` in paragraph (3) and
12 inserting a period.

13 (4) Section 603(c) of the Act is amended by striking
14 paragraph (2) and by redesignating paragraph ``(3)`` as
15 paragraph ``(2)`` .

16 (5) Section 501(c) of the Act is amended--

17 (A) by inserting ``or other measures`` after
18 ``additional measures`` ; and

19 (B) by striking paragraph (2) and redesignating
20 paragraphs (3) and (4) as paragraphs ``(2)`` and
21 ``(3)`` , respectively.

22 (6) Section 502 of the Act is amended to read as
23 follows:

24 ``Reports on United States Imports from Member States of the
25 Council for Mutual Economic Assistance

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25

1 "SEC. 502. Beginning 30 days after the date of the
2 enactment of this Act, and every 30 days thereafter, the
3 President, through the Secretary of Commerce, shall prepare
4 and transmit to the Congress a report setting forth the
5 average amounts of imports of coal or any strategic and
6 critical material entering the United States from each member
7 country and observer country of the Council for Mutual
8 Economic Assistance (C.M.E.A.)."

9 **SEC. 16. EFFECTIVE DATE.**

10 (a) **GENERAL RULE.**--Except as otherwise provided, this Act
11 and the amendments made by this Act shall take effect on the
12 date of enactment.

13 (b) **EXCEPTIONS.**--

14 (1) Sections 2(b), 2(c), 14, and 15 shall take effect
15 180 days after the date of the enactment of this Act.

16 (2) Section 10 shall take effect October 1, 1988.

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24

1 (b) CONFORMING AMENDMENTS TO THE ACT.

2 (1) Section 602(a)(3) and 602(b)(1) of the Act are
3 amended by striking ``318(b),``.

4 (2) Section 602(c) is amended by striking paragraph
5 (2) and redesignating paragraphs ``(3)`` and ``(4)`` as
6 paragraphs ``(2)`` and ``(3)`` , respectively.

7 (3) Section 603(b) of the Act is amended--

8 (A) by striking paragraph (4);

9 (B) by striking the semicolon in paragraph (2)
10 and inserting ``; and`` ; and

11 (C) by striking ``; and`` in paragraph (3) and
12 inserting a period.

13 (4) Section 603(c) of the Act is amended by striking
14 paragraph (2) and by redesignating paragraph ``(3)`` as
15 paragraph ``(2)`` .

16 (5) Section 501(c) of the Act is amended--

17 (A) by inserting ``or other measures`` after
18 ``additional measures`` ; and

19 (B) by striking paragraph (2) and redesignating
20 paragraphs (3) and (4) as paragraphs ``(2)`` and
21 ``(3)`` , respectively.

22 (6) Section 502 of the Act is amended to read as
23 follows:

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25 Council for Mutual Economic Assistance

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25

1 "SEC. 502. Beginning 30 days after the date of the
2 enactment of this Act, and every 30 days thereafter, the
3 President, through the Secretary of Commerce, shall prepare
4 and transmit to the Congress a report setting forth the
5 average amounts of imports of coal or any strategic and
6 critical material entering the United States from each member
7 country and observer country of the Council for Mutual
8 Economic Assistance (C.M.E.A.)."

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15 180 days after the date of the enactment of this Act.

16 (2) Section 10 shall take effect October 1, 1988.

100TH CONGRESS
1ST SESSION

H. R. 2443

To prohibit United States intelligence and military cooperation with South Africa.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1987

Mr. GRAY of Pennsylvania (for himself, Mr. CONTE, Mr. DYMALLY, and Mr. WOLPE) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Armed Services, and Permanent Select Committee on Intelligence

A BILL

To prohibit United States intelligence and military cooperation with South Africa.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PROHIBITION ON UNITED STATES MILITARY AND**
4 **INTELLIGENCE COOPERATION WITH SOUTH**
5 **AFRICA.**

6 (a) **PROHIBITION.**—Section 322 of the Comprehensive
7 Anti-Apartheid Act of 1986 (22 U.S.C. 5072) is amended to
8 read as follows:

1 “PROHIBITION ON UNITED STATES MILITARY AND
2 INTELLIGENCE COOPERATION WITH SOUTH AFRICA

3 “SEC. 322. (a) No agency or entity of the United States
4 may engage in any form of cooperation, direct or indirect,
5 with the armed forces of the Government of South Africa.
6 The cooperation prohibited by this subsection specifically
7 includes—

8 “(1) assigning or detailing any member of the
9 United States Armed Forces to serve as, or otherwise
10 perform the functions of, a defense (or military) attache
11 in South Africa; and

12 “(2) cooperating in any way with an individual
13 serving as, or otherwise performing the functions of, a
14 defense (or military) attache at a South African diplo-
15 matic mission in the United States.

16 Consistent with the objectives of this subsection, the Presi-
17 dent should not accredit any individual to serve as, or other-
18 wise perform the functions of, a defense (or military) attache
19 at a South African diplomatic mission in the United States.

20 “(b) No agency or entity of the United States involved
21 in intelligence activities may engage in any form of coopera-
22 tion, direct or indirect, with the Government of South Africa
23 (specifically including the authorities administering Namibia
24 so long as Namibia is illegally occupied). The cooperation
25 prohibited by this subsection specifically includes any activity

1 relating to the collection of intelligence, including the
2 exchange of intelligence either directly or through a third
3 country.”.

4 (b) CONFORMING AMENDMENTS.—

5 (1) TABLE OF CONTENTS.—The table of contents
6 contained in section 2 of that Act is amended by
7 amending the item relating to section 322 to read as
8 follows:

“Sec. 322. Prohibition on United States military and intelligence cooperation with
South Africa.”.

9 (2) INTELLIGENCE AUTHORIZATION ACT.—Sec-
10 tion 107 of the Intelligence Authorization Act for
11 Fiscal Year 1987 (Public Law 99-569), relating to re-
12 strictions on intelligence agency cooperation with
13 South Africa, is repealed.

○

Page Denied

§ 5072a. Restriction on intelligence agency cooperation with South Africa

No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of section 413 of Title 50.

(Pub.L. 99-569, Title I, § 107, Oct. 27, 1986; 100 Stat. 3191.)

Codification. Section was not enacted as part of the Comprehensive Anti-Apartheid Act of 1986 which comprises this chapter but as part of the Intelligence Authorization Act for Fiscal Year 1987.

Legislative History. For legislative history and purpose of Pub.L. 99-569, see 1986 U.S. Code Cong. and Adm. News, p. 5327.

Library References

United States: § 41

C.J.S. United States: § 41

FY 1987 Intelligence Authorization Act, section 107, codified at 22 U.S.C. 5072a

THE CHAIRMAN. Will the gentleman from Ohio?

There was no objection.

(Mr. STOKES asked and was given permission to revise and extend his remarks.)

Mr. STOKES. Mr. Chairman, recently, the New York Times published an article by Seymour Hersh which alleged a significant intelligence exchange between the United States and the Government of South Africa. In particular, Mr. Hersh charged that the United States provides information concerning the African National Congress and other South African opposition groups to the Government of South Africa.

Given the position of the United States Government concerning South Africa and the strong feeling in this body about the immoral and unsupportable nature of apartheid, I joined other members of the committee in carefully reviewing this article and in fully investigating all of its charges. We spoke with intelligence officials. We demanded and received written responses to our questions about this alleged relationship.

That process led us, I believe, to a reasonably good understanding of the nature of U.S. intelligence activities in question. It also led me to the conviction that it would be important, both because of the allegations in Mr. Hersh's article and because of the deep concern in this House about the United States relationship to South Africa, to offer an amendment which would make clear the acceptable limits of any potential intelligence relationship with South Africa.

The amendment which I offer prohibits intelligence cooperation with the Government of South Africa except for intelligence collection. It also states that it is the policy of the United States not to provide any intelligence information to the Government of South Africa concerning any opposition group or individual. Further, in the event that an exception is promulgated to this policy, or any intelligence information is ever passed, the Director of Central Intelligence must inform the House and Senate Intelligence Committees of this prior to such an event.

Mr. Chairman, this provision is essentially a modification of the Kennedy amendment to the South African sanctions bill passed by the Senate. My understanding is that it was worked out in connection with the Central Intelligence Agency and that, although this administration opposes all legislation on South African sanctions, my modification of the Kennedy amendment is not viewed as prohibiting activities which the United States contemplates entering into.

Mr. Chairman, my amendment, and I believe that of the intelligence community is that these amendments would not result in any intelligence necessary

intelligence, nor would it prevent the United States from acting to forestall the loss of innocent life, which is the only circumstance under which intelligence likely would be provided. What it does do is state clearly for all the world to know that the United States will not side with white South Africa against black South Africa.

It is unfortunate that such a message needs to be sent, but it is clearly one that must be sent, and sent again until it is finally understood in the councils of white South Africans that apartheid and the system which it supports cannot stand against the inalienable rights of black South Africans to determine their own destiny and to acquire the rights of representation, free passage, and human dignity that are daily denied them in the ghettos of South Africa.

Mr. Chairman, I urge the support of this amendment.

Mr. STUMP. Mr. Chairman, will the gentleman yield?

Mr. STOKES. I yield to my distinguished minority member of the subcommittee, the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, while there is some reluctance to this amendment, we have examined it on this side and are willing to accept it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. STOKES].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. STOKES

Mr. STOKES. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STOKES: On page 5, after line 22, insert the following new section:

"RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA

"Sec. 103. No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of Section 501 of the National Security Act of 1947."

Mr. STOKES (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-952

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

OCTOBER 1, 1986—Ordered to be printed

Mr. HAMILTON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 4759]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, having agreed to so recommend, do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1987".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

- (1) The Central Intelligence Agency.*
- (2) The Department of Defense.*
- (3) The Defense Intelligence Agency.*
- (4) The National Security Agency.*

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SECTION 107

Section 107 of the conference report provides that no agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. In addition, Section 107 establishes as the policy of the United States that no U.S. intelligence agency or entity may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Finally, Section 107 provides that any change in that policy, or the provision of intelligence information contrary to that policy, shall be considered a significant anticipated intelligence activity for purposes of Section 501 of the National Security Act of 1947. The conferees expect that intelligence information will be provided contrary to that policy only when such information credibly indicates the imminent likelihood of violent action calculated to threaten human life and provision of such information could be expected to contribute to avoidance of that violent action.

Section 107 of the conference report is identical to Section 107 of the House bill. The Senate amendment contained no corresponding provision.