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Cover of State
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or send State, Treasury, OMB, Justice

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- - count 1641 (b)
- - report 1703 (b)

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223 et seq.

10203

~~22 USC 2751~~
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- 2751

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- EO. in hand
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Options for the Executive Order

The draft executive order contains provisions comparable to most of those contained in H.R. 1460, although their scope and terms differ in important respects. The only subject in the E.O. not addressed in the bill is the ban on certain defense imports. All of the provisions are listed below in summary fashion for the President's approval or disapproval. With the exception of the modified Krugerrand ban, State believes that the elements below should be in the E.O. in order for it to have a chance of being persuasive.

- Scholarships and Human Rights Fund. The E.O. directs the Secretary of State to take the steps necessary to increase the amounts provided for scholarships and human rights projects. The E.O. eliminates the racially discriminatory terms used in the bill. The figures are comparable to those in the bill, and will require reprogramming notices to the Congress.

Approve _____ Disapprove _____

Bank Loans. Unlike the bill, the E.O. applies only to U.S. financial institutions and not their foreign subsidiaries, thus reducing anticipated extraterritorial problems and difficulties for our Allies. It contains a blanket exception for certain housing, educational, and health loans, and the Secretary of the Treasury would be authorized to license other transactions which will improve the welfare of all South Africans.

Approve _____ Diapprove _____

- Nuclear Exports. The executive order contains the prohibitions of the Conference bill. However, exceptions are authorized for IAEA exports and exports which are necessary for health and safety.

Approve _____ Disapprove _____

- Computer Ban. The Administration has been implementing a regulatory prohibition on certain computer exports to apartheid enforcing agencies for several years. The Conference bill adds more specificity to these measures and codifies them in a statute which cannot be altered without an act of Congress. The changes in the executive order deal primarily with the definition of the agencies covered. The computer industry is pleased with the terms of the ban, and is taking credit for their limited scope.

Approve _____ Disapprove _____

- Fair Labor Standards. The Conference bill requires U.S. firms to implement the Sullivan related principles, prescribes a penalty for failing to do so, and requires detailed reporting and State regulation of the labor practices of U.S. firms. The executive order requires U.S. firms only to adhere to the principles (e.g., by subscribing to the Sullivan code and its voluntary monitoring mechanism)). The penalty for failure to adhere would be the same as that in the bill--i.e., no U.S.G. intercession with foreign governments in their marketing activities. More importantly, it would eliminate the need to establish a new bureaucratic regime to monitor labor practices overseas. The U.S. Embassy would be authorized to implement the principles.

Approve _____ Disapprove _____

- Krugerrand imports. The most difficult issue to deal with in the executive order is the Krugerrand ban. The deal struck in the Conference Committee was that the House would drop its ban on new investments in exchange for the Senate's agreement to accept the ban on Krugerrand imports. We have attempted to deal with this issue by stating a policy to impose a ban (a) if the requirements of the GATT agreement can be met and (2) if progress is not made in South Africa. A related measure in the bill is the requirement that Treasury mint a gold coin, so that the American people will have an U.S. alternative to the Krugerrand. The E.O. would direct the Secretary of the Treasury to seek legislation for this purpose.

Krugerrand provision:

Approve _____ Disapprove _____

U.S. Gold Coin

Approve _____ Disapprove _____

- Advisory Committee. The Conference bill requires the establishment of an advisory committee to make various recommendations regarding implementation of the fair labor standards and related matters. The implementation provisions of the bill have been deleted in the executive order, and consequently the jurisdiction of the committee would be different. The executive order provides that it shall make recommendations regarding measures to encourage peaceful change. We would control the agenda of the committee.

Approve _____ Disapprove _____

-Weapons Imports. In order to further implement the mandatory arms embargo against South Africa, the U.S. last December voted in favor of a Security Council prohibition on the import of certain defense articles produced in South Africa. The decision to do so was concurred in by all affected agencies, including Defense, Treasury, and Commerce. State and Treasury are currently in the process of finalizing federal regulations to implement the ban, and including it in an executive order would be well received in the U.N. and the Congress.

APPROVE _____

DISAPPROVE _____

EXECUTIVE ORDER

PROHIBITING TRADE AND CERTAIN OTHER
TRANSACTIONS INVOLVING SOUTH AFRICA

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergency^{ies} Act (50 U.S.C. 1601 et seq.), the U.N. Participation Act (22 U.S.C. 287), the Arms Export Control Act (22 U.S.C. 2778), the Foreign Service Act (22 U.S. 3901, et seq.), the Federal Advisory Committee Act (5 U.S.C. App. I), Section 301 of Title 3 of the United States Code, and considering the measures which the Security Council has decided on or recommended in Security Council Resolutions No. 418 of November 4, 1977, No. 558 of December 14, 1984, and No. 569 of July 26, 1985.

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

Section 1. The following transactions are prohibited immediately:

(a) The making of any loans by U.S. financial institutions to the Government of South Africa or to entities owned or controlled by that Government. This prohibition shall not apply to (i) any loan or extension of credit for any educational, housing, or health facility which is available to all persons on a nondiscriminatory basis and which is located in a geographic area accessible to all population groups without any legal or administrative restriction; or (ii) any loan or extension of credit for which an agreement is entered into before the date of the enactment of this Order.

The Secretary of the Treasury shall promulgate regulations for this purpose. The Secretary of the Treasury may, with the concurrence of the Secretary of State, permit exceptions to this prohibition only if the Secretary of the Treasury determines that the loan or extension of credit will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system, provided that no exception may be made for any apartheid enforcing entity.

(b) All exports of computers, computer software, or goods or technology intended to service computers to or for use by any of the following entities of the Government of South Africa:

- (1) The military
- (2) The police
- (3) The prison system
- (4) The national security agencies
- (5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research
- (6) The administering authorities for the black passbook and similar controls
- (7) Any apartheid enforcing agency
- (8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

The Secretary of Commerce shall implement a system of end use verification to ensure that any computers exported to South Africa will not be used by any entity set forth in this subsection.

(c) (1) Any export to South Africa of goods or technology which are to be used in a nuclear production or utilization facility, or which, in the judgment of the Secretary of State, are likely to be diverted for use in such a facility. No authorization to engage, directly or indirectly, in the

production of any special nuclear material in South Africa may be given and no license may be issued for the export to South Africa of component parts or other items or substances especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. No retransfer to South Africa of any goods, technology, special nuclear material, components, items or substances described in this section may be approved.

(2) Nothing in this section shall preclude assistance for International Atomic Energy Agency safeguards or programs generally available to its member states, or for technical programs for the purpose of reducing proliferation risks, such as for reducing the use of highly enriched uranium and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or for exports which the Secretary of State determines are necessary for reasons of health and safety.

(d) The import into the U.S. of any arms, ammunition, and military vehicles produced in South Africa or of any manufacturing data for such articles.

Sec. 2 (a) No department or agency of the United States may intercede after December 31, 1985, with any foreign government regarding the export marketing activity in any country of any national of the United States who employs more than 25 persons in South Africa who does not adhere to the principles stated in subsection, ~~(b) prior to December 31, 1985.~~ The Secretary of State shall

promulgate procedures to ensure that such nationals may register that they have adhered to the principles.

(b) The principles referred to in subsection (a) are as follows:

- (1) Desegregating the races in each employment facility;
- (2) Providing equal employment for all employees without regard to race or ethnic origin;
- (3) Assuring that the pay system is ^{equitably} applied to all employees without regard to race or ethnic origin;
- (4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;
- (5) Increasing by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;
- (6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;
- (7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(c) U.S. nationals referred to in subsection (a) are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace, by measures such as supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas, by influencing other companies in South Africa to follow the standards specified in subsection (b) and by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and by making provision for adequate housing for families of employees within the proximity of the employee's place of work.

Sec. 3. The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall promptly take the necessary steps to ensure that the labor practices described in section (2)(b) are applied to their South African employees.

Sec. 4. The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by persons in South Africa disadvantaged by the apartheid system.

*minority
out-voice ?*

Sec. 5. The Secretary of State is directed to take any measures necessary pursuant to the General Agreement on Tariffs and Trade to authorize the United States to prohibit the import of Krugerrands. The Secretary of the Treasury shall prohibit the import of such Krugerrands when such measures have been taken unless the Secretary of State informs the Secretary of the Treasury that the Government of South Africa has taken reasonable and concrete measures toward ending the policy of apartheid and the state of emergency promulgated in July 1985.

Sec. 6. The Secretary of the Treasury is directed to seek legislative authority to mint and issue gold coins.

Sec. 7. In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury and the Secretary of Commerce shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons. Each such Secretary shall issue such regulations, licenses, or other authorizations, and is authorized to enter into such contracts, as the Secretary considers necessary to carry out the purposes of this Order.

Sec. 8. The Secretary of State shall establish, under his chairmanship and pursuant to appropriate legal authority, an

Advisory Commission on South Africa to provide recommendations on measures to encourage peaceful change in South Africa. The Advisory Commission shall provide its initial report no later than January 1, 1987.

Sec. 9. The Secretary of State is directed to take the steps necessary pursuant to the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.), and related legislation to (a) increase the amount of scholarships provided to South Africans to \$8 million in Fiscal Year 1986 and (b) increase the amount allocated for South Africa in the Human Rights Fund to \$1.5 million in FY 1986. At least one third of the latter amount shall be used for legal assistance for South Africans.

This order shall be effective immediately and shall be transmitted to the Congress and published in the Federal Register.

The White House

September __, 1985

Options for the Executive Order

The draft executive order contains provisions comparable to most of those contained in H.R. 1460, although their scope and terms differ in important respects. The only subject in the E.O. not addressed in the bill is the ban on certain defense imports. All of the provisions are listed below in summary fashion for the President's approval or disapproval. With the exception of the modified Krugerrand ban, State believes that the elements below should be in the E.O. in order for it to have a chance of being persuasive.

- Scholarships and Human Rights Fund. The E.O. directs the Secretary of State to take the steps necessary to increase the amounts provided for scholarships (up to \$1.5 million in FY 86) and human rights projects (up to \$1.5 million in FY 86) to benefit blacks and others disadvantaged by the apartheid system. The figures are comparable to those in the bill, and will require reprogramming notices to the Congress.

Approve _____ Disapprove _____

- Bank Loans. Unlike the bill, the E.O. applies only to U.S. financial institutions and not their foreign subsidiaries, thus reducing anticipated extraterritorial problems and difficulties for our Allies. It contains a blanket exception for certain housing, educational, and health loans. The Secretary of the Treasury would be authorized to license other transactions which will improve the welfare of all South Africans.

Approve _____ Disapprove _____

- Nuclear Exports. The E.O. contains the prohibitions of the Conference bill. However, exceptions are authorized for IAEA exports and exports which are necessary for health and safety.

Approve _____ Disapprove _____

- Computer Ban. The Administration has been implementing a regulatory prohibition on certain computer exports to apartheid enforcing agencies for several years. The Conference bill adds more specificity to these measures and codifies them in a statute which cannot be altered without an act of Congress. The changes in the E.O. deal primarily with the definition of the agencies and computers covered. The computer industry is pleased with the terms of the ban, and is taking credit for their limited scope.

Approve _____ Disapprove _____

- Fair Labor Standards. The Conference bill requires certain U.S. firms to implement the Sullivan-related principles, prescribes a penalty for failing to do so, and requires detailed reporting and State regulation of the labor practices of U.S. firms. The E.O. applauds the efforts of the great majority of U.S. firms in South Africa that subscribe to the Sullivan principles. It requires U.S. firms employing 25 or more persons to adhere to these principles (e.g., by subscribing to the Sullivan code and its voluntary monitoring mechanism). The penalty for failure to adhere would be the same as that in the bill, i.e., no U.S.G. intercession with foreign governments in their marketing activities. More importantly, it would eliminate the need to establish a new bureaucratic regime to monitor labor practices overseas. The U.S. Embassy would be authorized to implement the principles and the U.S. Ambassador to South Africa would be required to encourage all U.S. firms to adhere to the principles.

Approve _____

Disapprove _____

- Krugerrand imports. The most difficult issue to deal with in the E.O. is the Krugerrand ban. The deal struck in the Conference Committee was that the House would drop its ban on new investments in exchange for the Senate's agreement to accept the ban on Krugerrand imports. The E.O. would direct State and USTR to consult with other GATT participants to consider a ban on Krugerrand imports. A related measure in the bill is the requirement that Treasury report to the President within 60 days on the feasibility of minting U.S. gold coins.

Krugerrand provision:

Approve _____

Disapprove _____

U.S. Gold Coin

Approve _____

Disapprove _____

- Advisory Committee. The Conference bill requires the establishment of an advisory committee to make various recommendations regarding implementation of the fair labor standards and related matters. The implementation provisions of the bill have been deleted in the E.O., and consequently the jurisdiction of the committee would be different. The E.O. provides that it shall make recommendations regarding measures to encourage peaceful change. We would control the agenda of the committee.

Approve _____

Disapprove _____

- Weapons Imports. In order to further implement the mandatory arms embargo against South Africa, the U.S. last December voted in favor of a Security Council prohibition on the import of certain defense articles produced in South Africa. The decision to do so was concurred in by all affected agencies, including Defense, Treasury, and Commerce. State and Treasury are currently in the process of finalizing federal regulations to implement the ban, and including it in an E.O. would be well received in the U.N. and the Congress.

Approve _____

Disapprove _____

Wang: 0026A

EXECUTIVE ORDER

PROHIBITING TRADE AND CERTAIN OTHER
TRANSACTIONS INVOLVING SOUTH AFRICA

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergency Act (50 U.S.C. 1601 et seq.), the U.N. Participation Act (22 U.S.C. 287), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act (50 U.S.C. App. 2401 et seq.), the Atomic Energy Act (42 U.S.C. 2011 et seq.), the Foreign Service Act (22 U.S. 3901, et seq.), the Federal Advisory Committee Act (5 U.S.C. App. 1), Section 301 of Title 3 of the United States Code, and considering the measures which the Security Council has decided on or recommended in Security Council Resolutions No. 418 of November 4, 1977, No. 558 of December 14, 1984, and No. 569 of July 26, 1985.

I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

Section 1. The following transactions are prohibited effective October 11, 1985:

(a) The making of any loans by persons in the United States or U.S. nationals abroad to the Government of South Africa or to entities owned or controlled by that Government. This prohibition shall not apply to (i) any loan or extension of credit for any educational, housing, or health facility which is available to all persons on a nondiscriminatory basis and which is located in a geographic area accessible to all population groups without any legal or administrative restriction; or (ii) any loan or extension of credit for which an agreement is entered into before the date of the enactment of this Order.

The Secretary of the Treasury shall promulgate regulations for this purpose. The Secretary of the Treasury may, with the concurrence of the Secretary of State, permit exceptions to this prohibition only if the Secretary of the Treasury determines that the loan or extension of credit will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system, provided that no exception may be made for any apartheid enforcing entity.

(b) All exports of computers, computer software, or goods or technology intended to service computers to or for use by any of the following entities of the Government of South Africa:

- (1) The military
- (2) The police
- (3) The prison system
- (4) The national security agencies
- (5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research
- (6) The administering authorities for the black passbook and similar controls
- (7) Any apartheid enforcing agency
- (8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

The Secretary of Commerce shall implement a system of end use verification to ensure that any computers exported to South Africa will not be used by any entity set forth in this subsection.

(c)(1) Granting any license for the export to South Africa of goods or technology which are to be used in a nuclear production or utilization facility, or which, in the judgment of the Secretary of State, are likely to be diverted for use in such a facility; any authorization to engage, directly or indirectly, in the production of any special nuclear material in South Africa; any license for the export to South Africa of component parts or other items or substances especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes; and any approval of retransfers to South Africa of any goods, technology, special nuclear material, components, items or substances described in this section. The Secretaries of State, Energy, and Commerce shall take action under appropriate legal authority to carry out these prohibitions.

(2) Nothing in this section shall preclude assistance for International Atomic Energy Agency safeguards or IAEA programs generally available to its member states, or for technical programs for the purpose of reducing proliferation risks, such as for reducing the use of highly enriched uranium and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or for exports which the Secretary of State determines are necessary for humanitarian reasons to protect the public health and safety.

(d) The import into the U.S. of any arms, ammunition, and military vehicles produced in South Arica or of any manufacturing data for such articles. The Secretaries of State, Treasury, and Defense shall take any measures necessary for this purpose.

Sec. 2 (a) The great majority of U.S. firms in South Africa have voluntarily adhered to fair labor standards which have benefitted those in South Africa who have been disadvantaged by the apartheid system. It is the policy of the U.S. to strongly encourage all U.S. firms in South Africa to follow this commendable example.

(b) Accordingly, no department or agency of the United States may intercede after December 31, 1985, with any foreign government regarding the export marketing activity in any country of any national of the United States who employes more than 25 persons in South Africa who does not adhere to the principles stated in subsection (c). The Secretary of State shall promulgate procedures to ensure that such nationals may register that they have adhered to the principles.

(c) The principles referred to in subsection (b) are as follows:

(1) Desegregating the races in each employment facility;

(2) Providing equal employment opportunity for all

(3) Assuring that the pay system is equitably applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(d) U.S. nationals referred to in subsection (b) are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace, by measures such as supporting the right of all businesses, regardless of the racial character of their owners or

employees, to locate in urban areas, by influencing other companies in South Africa to follow the standards specified in subsection (c) and by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and by making provision for adequate housing for families of employees within the proximity of the employee's place of work.

Sec. 3. The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall promptly take the necessary steps to ensure that the labor practices described in section (2)(c) are applied to their South African employees.

Sec. 4. The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by persons in South Africa disadvantaged by the apartheid system.

Sec. 5. The Secretary of State and the U.S. Trade Representative are directed to consult with other parties to the General Agreement on Tariffs and Trade to consider a prohibition on the import of Krugerrands.

Sec. 6. The Secretary of the Treasury is directed to conduct a study to be completed within sixty days regarding the feasibility of minting and issuing gold coins.

Sec. 7. In carrying out their respective functions and responsibilities under this Order, the Secretary of the Treasury and the Secretary of Commerce shall consult with the Secretary of State. Each such Secretary shall consult, as appropriate, with other government agencies and private persons. Each such Secretary shall issue such regulations, licenses, or other authorizations, and is authorized to enter into such contracts, as the Secretary considers necessary to carry out the purposes of this Order.

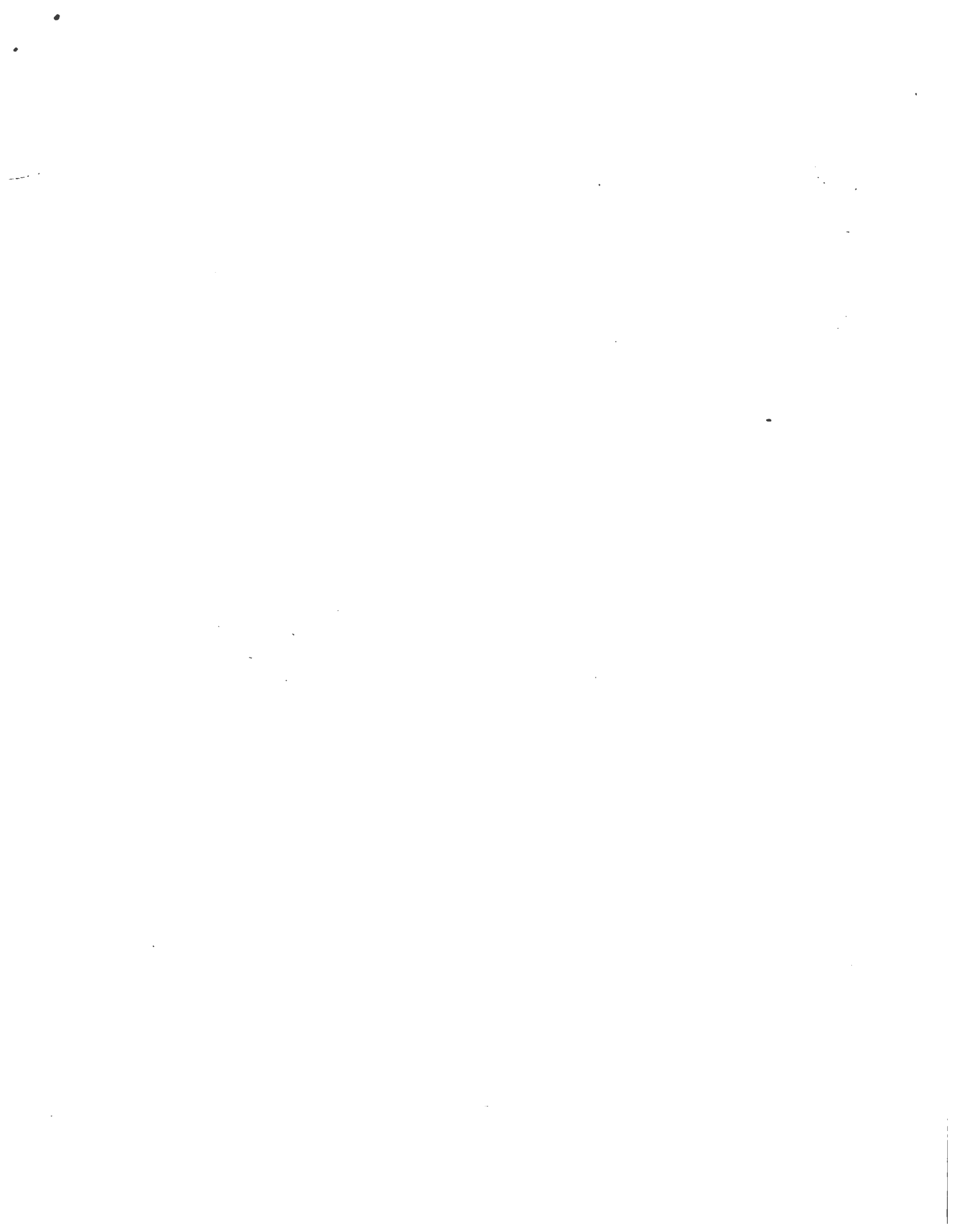
Sec. 8. The Secretary of State shall establish, under his chairmanship and pursuant to appropriate legal authority, an Advisory Commission on South Africa to provide recommendations on measures to encourage peaceful change in South Africa. The Advisory Commission shall provide its initial report no later than January 1, 1987.

Sec. 9. The Secretary of State is directed to take the steps necessary pursuant to the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.), and related legislation to (a) increase the amount of scholarships provided to South Africans disadvantaged by the apartheid system up to \$8 million in Fiscal Year 1986 and (b) increase the amount allocated for South Africa in the Human Rights Fund to \$1.5 million in FY 1986. Appropriate increases will be considered in future fiscal years. At least one third of the latter amount shall be used for legal assistance for South Africans.

This order shall be effective immediately and shall be transmitted to the Congress and published in the Federal Register.

The White House

September __, 1985



Following is a brief summary of the provisions of HR 1460 (The Anti-Apartheid Act of 1985):

The bill would impose the following immediate sanctions:

- Ban of U.S. computers and software to SAG apartheid administering agencies;

- Ban on sale of nuclear power equipment and technology (rescinded if the SAG signs the NPT);

- Ban on new loans to the SAG (except where loans support SAG facilities freely open to persons of all races);

- Ban on importation of Krugerrands (President could waive the ban for one year if he determines SAG had made at least one of eight specific reforms, including: good faith negotiations with black leaders, ending forced removals and influx control, releasing political prisoners, accepting Namibia settlement, lifting restrictions that dictate where South Africans must live).

The bill would impose a second class of sanctions, within 12 months, and from which the President would have to choose, depending on the degree to which the above reforms have been implemented. Similar Presidential assessments would be made after each 12-month period. This choice of sanctions includes:

- Ban on new commercial investment in South Africa;

- Denial of MFN trading status;

- Ban importation of coal and uranium;

- Any other economic or political sanctions

Other provisions of the bill include:

- Requiring all U.S. firms employing more than 25 persons to adhere to Sullivan principles or face penalties;

- Authorizes \$1.5 million annually for human rights and legal assistance; earmarks \$8, \$11, and \$15 million annually for FY's 86, 87, and 88, respectively, for black scholarships in South Africa;

- Directs EX-IM Bank to assist U.S. exporters to non-white South Africans;

- Provides for ending all sanctions if apartheid is eliminated;

- Establishment of an "Advisory Committee" of distinguished Americans;

- Authorizes minting of new U.S. gold coins.

Calendar No. 206

99TH CONGRESS
1ST SESSION**H. R. 1460**

IN THE SENATE OF THE UNITED STATES

JUNE 10 (legislative day, JUNE 3), 1985

Received, and read the first time

JUNE 26, 1985

Read the second time and placed on the calendar

AN ACT

To express the opposition of the United States to the system of apartheid in 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. SHORT TITLE.**

4 This Act may be cited as the "Anti-Apartheid Act of
5 1985".

6 **SEC. 2. POLICY DECLARATIONS.**

7 The Congress makes the following declarations:

8 (1) It is the policy of the United States to encour-
9 age all nations to adopt political, economic, and social

1 policies which guarantee broad human rights, civil lib-
2 erties, and individual economic opportunities.

3 (2) It is the policy of the United States to con-
4 demn and seek the eradication of the policy of apart-
5 heid in South Africa, a doctrine of racial separation
6 under which rights and obligations of individuals are
7 defined according to their racial or ethnic origin.

8 **SEC. 3. PROHIBITION ON LOANS TO THE SOUTH AFRICAN**
9 **GOVERNMENT.**

10 (a) **IN GENERAL.**—No United States person may make
11 any loan or other extension of credit, directly or through a
12 foreign affiliate of that United States person, to the Govern-
13 ment of South Africa or to any corporation, partnership, or
14 other organization which is owned or controlled by the Gov-
15 ernment of South Africa, as determined under regulations
16 which the President shall issue.

17 (b) **EXCEPTION FOR NONDISCRIMINATORY FACILI-**
18 **TIES.**—The prohibition contained in subsection (a) shall not
19 apply to a loan or extension of credit for any educational,
20 housing, or health facility which—

21 (1) is available to all persons on a totally nondis-
22 criminatory basis, and

23 (2) is located in a geographic area accessible to all
24 population groups without any legal or administrative
25 restriction.

26 (c) **EXCEPTION FOR PRIOR AGREEMENTS.**—The prohi-

1 bition contained in subsection (a) shall not apply to any loan
2 or extension of credit for which an agreement is entered into
3 before the date of the enactment of this Act.

4 (d) ISSUANCE OF REGULATIONS.—The President shall
5 issue the regulations referred to in subsection (a) not later
6 than 90 days after the date of the enactment of this Act.

7 SEC. 4. RESTRICTIONS ON NEW INVESTMENTS (INCLUDING
8 BANK LOANS).

9 (a) PRESIDENT TO ISSUE REGULATIONS.—The Presi-
10 dent shall, not later than 90 days after the date of the enact-
11 ment of this Act, issue regulations prohibiting any United
12 States person from making, directly or through a foreign affil-
13 iate of that United States person, any investment (including
14 bank loans) in South Africa.

15 (b) EXCEPTIONS FROM PROHIBITION.—The prohibition
16 contained in subsection (a) shall not apply to—

17 (1) a loan or extension of credit permitted under
18 section 3;

19 (2) an investment which consists of earnings de-
20 rived from a business enterprise in South Africa estab-
21 lished before the date of the enactment of this Act and
22 which is made in that business enterprise; or

23 (3) the purchase, on a securities exchange regis-
24 tered as a national securities exchange under section 6
25 of the Securities Exchange Act of 1934, of securities
26 in a business enterprise described in paragraph (2).

1 SEC. 5. GOLD COINS.

2 (a) PROHIBITION.—No person; including a bank, may
3 import into the United States any South African krugerrand
4 or any other gold coin minted in South Africa or offered for
5 sale by the Government of South Africa.

6 (b) UNITED STATES DEFINED.—For purposes of this
7 section, the term “United States” includes the States of the
8 United States, the District of Columbia, the Commonwealth
9 of Puerto Rico, and any territory or possession of the United
10 States.

11 SEC. 6. WAIVERS.

12 (a) AUTHORITY OF THE PRESIDENT.—

13 (1) INITIAL WAIVER.—The President may waive
14 the prohibitions contained in sections 4 and 5 for a
15 period of not more than 12 months if—

16 (A) the President determines that one or
17 more of the conditions set forth in subsection (b)
18 are met,

19 (B) the President submits that determination
20 to the Congress, and

21 (C) a joint resolution is enacted approving
22 the President’s determination.

23 (2) ADDITIONAL WAIVERS.—The President may
24 waive the prohibitions contained in sections 4 and 5 for
25 additional 6-month periods if, before each such
26 waiver—

1 (A) the President determines that an addi-
2 tional condition set forth in subsection (b) has
3 been met since the preceding waiver under this
4 subsection became effective,

5 (B) the President submits that determination
6 to the Congress, and

7 (C) a joint resolution is enacted approving
8 the President's determination.

9 (b) STATEMENT OF CONDITIONS.—The conditions re-
10 ferred to in subsection (a) are the following:

11 (1) FAMILY HOUSING NEAR PLACE OF EMPLOY-
12 MENT.—The Government of South Africa has elimi-
13 nated the system which makes it impossible for black
14 employees and their families to be housed in family ac-
15 commodations near the place of employment.

16 (2) RIGHT TO SEEK EMPLOYMENT.—The Gov-
17 ernment of South Africa has eliminated all policies that
18 restrict the rights of black people to seek employment
19 in South Africa and to live wherever they find employ-
20 ment in South Africa.

21 (3) ELIMINATING DENATIONALIZATION.—The
22 Government of South Africa has eliminated all policies
23 that make distinctions between the South African na-
24 tionality of blacks and whites.

1 (4) ELIMINATING REMOVALS.—The Government
2 of South Africa has eliminated removals of black popu-
3 lations from certain geographic areas on account of
4 race or ethnic origin.

5 (5) ELIMINATING RESIDENCE RESTRICTIONS.—
6 The Government of South Africa has eliminated all
7 residence restrictions based on race or ethnic origin.

8 (6) NEGOTIATIONS FOR NEW POLITICAL
9 SYSTEM.—The Government of South Africa has en-
10 tered into meaningful negotiations with truly represent-
11 ative leaders of the black population for a new political
12 system providing for the full national participation of
13 all the people of South Africa in the social, political,
14 and economic life in that country and an end to dis-
15 crimination based on race or ethnic origin.

16 (7) SETTLEMENT ON NAMIBIA.—An internation-
17 ally recognized settlement for Namibia has been
18 achieved.

19 (8) FREEING POLITICAL PRISONERS.—The
20 Government of South Africa has freed all political
21 prisoners.

22 (c) PROCEDURES FOR CONSIDERATION OF JOINT RES-
23 OLUTIONS.—

24 (1) REFERRAL OF JOINT RESOLUTIONS.—All
25 joint resolutions introduced in the House of Represent-

1 atives and the Senate shall be referred immediately to
2 the appropriate committees.

3 (2) COMMITTEE DISCHARGE.—If the committee
4 of either House to which a joint resolution has been
5 referred has not reported it at the end of 30 days after
6 its introduction, the committee shall be discharged from
7 further consideration of the joint resolution or of any
8 other joint resolution introduced with respect to the
9 same matter.

10 (3) CONSIDERATION OF RESOLUTIONS.—A joint
11 resolution under this subsection shall be considered in
12 the Senate in accordance with the provisions of section
13 601(b)(4) of the International Security Assistance and
14 Arms Export Control Act of 1976. For the purpose of
15 expediting the consideration and passage of joint reso-
16 lutions reported or discharged pursuant to the provi-
17 sions of this subsection, it shall be in order for the
18 Committee on Rules of the House of Representatives
19 to present for consideration a resolution of the House
20 of Representatives providing procedures for the imme-
21 diate consideration of a joint resolution under this sub-
22 section which may be similar, if applicable, to the pro-
23 cedures set forth in section 601(b)(4) of the Interna-
24 tional Security Assistance and Arms Export Control
25 Act of 1976.

1 (4) RECEIPT OF RESOLUTIONS FROM THE OTHER
2 HOUSE.—If before the passage by one House of a joint
3 resolution of that House, that House receives a joint
4 resolution with respect to the same matter from the
5 other House, then—

6 (A) the procedure in that House shall be the
7 same as if no joint resolution had been received
8 from the other House; but

9 (B) the vote on final passage shall be on the
10 joint resolution of the other House.

11 (5) COMPUTATION OF LEGISLATIVE DAYS.—In
12 the computation of the period of 30 days referred to in
13 paragraph (2) of this subsection, there shall be ex-
14 cluded the days on which either House of Congress is
15 not in session because of an adjournment of more than
16 3 days to a day certain or because of an adjournment
17 of the Congress sine die.

18 (6) JOINT RESOLUTION DEFINED.—For purposes
19 of this subsection, the term “joint resolution” means a
20 joint resolution the matter after the resolving clause of
21 which is as follows: “That the Congress, having re-
22 ceived on a determination of the Presi-
23 dent under section 6(a) of the Anti-Apartheid Act of
24 1985, approves the President’s determination.”, with

1 the date of the receipt of the determination inserted in
2 the blank.

3 **SEC. 7. EXPORTS TO SOUTH AFRICAN GOVERNMENT.**

4 Section 6 of the Export Administration Act of 1979 (50
5 U.S.C. App. 2405) is amended by adding at the end the
6 following:

7 “(1) EXPORTS TO SOUTH AFRICA.—(1) No computers,
8 computer software, or goods or technology intended to serv-
9 ice computers may be exported, directly or indirectly, to or
10 for use by the Government of South Africa or any corpora-
11 tion, partnership, or other organization which is owned or
12 controlled by the Government of South Africa.

13 “(2) For purposes of paragraph (1), the term ‘computer’
14 includes any computer that is the direct product of tech-
15 nology of United States origin.

16 “(3) The prohibition contained in paragraph (1) shall not
17 apply to donations of computers to primary and secondary
18 schools.

19 “(4) Notwithstanding any other provision of this or any
20 other Act, the prohibition contained in paragraph (1) shall
21 apply to any contract or agreement entered into before the
22 date of the enactment of this subsection, and to any license or
23 other authorization in effect which is issued under this Act
24 before such date of enactment.

1 “(5) The termination provisions contained in section 20
2 of this Act shall not apply to this subsection, or to sections 11
3 and 12 of this Act to the extent such sections apply to viola-
4 tions of, and the enforcement of, this subsection.”.

5 **SEC. 8. NUCLEAR EXPORTS.**

6 (a) **COOPERATION.**—Cooperation of any kind provided
7 for in the Atomic Energy Act of 1954 is hereby prohibited
8 with respect to the Republic of South Africa.

9 (b) **NUCLEAR REGULATORY COMMISSION AUTHORIZA-**
10 **TIONS.**—The Nuclear Regulatory Commission may not issue
11 any license or other authorization under the Atomic Energy
12 Act of 1954 for the export to the Republic of South Africa of
13 any source or special nuclear material, any production or uti-
14 lization facility, any sensitive nuclear technology, any compo-
15 nent, item, or substance determined to have significance for
16 nuclear explosive purposes pursuant to section 109 b. of the
17 Atomic Energy Act of 1954, or any other material or tech-
18 nology requiring such a license or authorization.

19 (c) **DISTRIBUTION OF NUCLEAR MATERIAL.**—The au-
20 thority of the Atomic Energy Act of 1954 may not be used to
21 distribute any special nuclear material, source material, or
22 byproduct material to the Republic of South Africa.

23 (d) **SUBSEQUENT ARRANGEMENTS.**—No department,
24 agency, or official of the United States Government may
25 enter into any subsequent arrangement under the Atomic

1 Energy Act of 1954 which would permit the transfer to or
2 use by the Republic of South Africa of any nuclear materials
3 and equipment or any nuclear technology.

4 (e) AUTHORIZATIONS OF SECRETARY OF ENERGY.—
5 The Secretary of Energy may not provide any authorization
6 (either in the form of a specific or a general authorization)
7 under section 57 b. (2) of the Atomic Energy Act of 1954 for
8 any activity which would constitute directly or indirectly en-
9 gaging in the Republic of South Africa in activities which
10 require an authorization under that section.

11 (f) EXPORT LICENSES.—

12 (1) NUCLEAR RELATED USES.—The Secretary of
13 Commerce may not issue any license under the Export
14 Administration Act of 1979 or other provision of law
15 for the export directly or indirectly to the Republic of
16 South Africa of any goods or technology—

17 (A) which are intended for a nuclear related
18 end use or end user;

19 (B) which have been identified pursuant to
20 section 309(c) of the Nuclear Non-Proliferation
21 Act of 1978 as items which could, if used for pur-
22 poses other than those for which the export is in-
23 tended, be of significance for nuclear explosive
24 purposes; or

1 (C) which are otherwise subject to the proce-
2 dures established pursuant to section 309(c) of the
3 Nuclear Non-Proliferation Act of 1978.

4 (2) PROHIBITION ON ADDITIONAL EXPORTS.—In
5 addition, the Secretary of Commerce shall use the au-
6 thorities set forth in the Export Administration Act of
7 1979 (notwithstanding section 20 of that Act) to pro-
8 hibit any export directly or indirectly to the Republic
9 of South Africa of any goods and technology contained
10 on any of the lists prepared pursuant to paragraph (3)
11 of this subsection. Export controls shall be imposed
12 pursuant to this paragraph without regard to the re-
13 quirements otherwise applicable to the imposition of
14 export controls under the Export Administration Act of
15 1979.

16 (3) LIST OF PROHIBITED GOODS AND TECHNOLO-
17 GY.—Not later than 6 months after the date of the en-
18 actment of this Act, the Nuclear Regulatory Commis-
19 sion, the Secretary of Commerce, the Secretary of
20 Energy, and the Secretary of State shall each prepare
21 a list of all goods or technology, whose transfer to the
22 Republic of South Africa is not otherwise prohibited by
23 this Act, which in their judgment could, if made avail-
24 able to the Republic of South Africa, increase the abili-
25 ty of that country to design, develop, fabricate, test,

1 operate, or maintain nuclear materials, nuclear facili-
2 ties, or nuclear explosive devices. Such lists shall in-
3 clude goods or technology which, although not
4 intended for any of the specified nuclear related end
5 uses, could be diverted to such a use.

6 (g) INFORMATION.—No officer or employee in any de-
7 partment or agency of the executive branch (including the
8 Nuclear Regulatory Commission) may make available to the
9 Republic of South Africa, directly or indirectly, any tech-
10 nology or other information which could increase the ability
11 of that country to design, develop, fabricate, test, operate, or
12 maintain nuclear materials, nuclear facilities, or nuclear ex-
13 plosive devices. This subsection does not require that an offi-
14 cer or employee withhold information in published form
15 which is available to the public from such officer or
16 employee.

17 (h) PRIOR LICENSES AND AUTHORIZATIONS.—Any li-
18 cense or authorization described in this section which was
19 issued before the enactment of this Act is hereby terminated.

20 **SEC. 9. REGULATORY AUTHORITY.**

21 The President shall issue such regulations, licenses, and
22 orders as are necessary to carry out this Act.

23 **SEC. 10. ENFORCEMENT AND PENALTIES.**

24 (a) AUTHORITY OF THE PRESIDENT.—The President
25 shall take the necessary steps to ensure compliance with the

1 provisions of this Act and any regulations, licenses, and
2 orders issued to carry out this Act, including establishing
3 mechanisms to monitor compliance with this Act and such
4 regulations, licenses, and orders. In ensuring such compli-
5 ance, the President may conduct investigations, hold hear-
6 ings, administer oaths, examine witnesses, receive evidence,
7 take depositions, and require by subpoena the attendance and
8 testimony of witnesses and the production of all books,
9 papers, and documents relating to any matter under investi-
10 gation.

11 (b) PENALTIES.—

12 (1) FOR PERSONS OTHER THAN INDIVIDUALS.—

13 Any person, other than an individual, that violates the
14 provisions of this Act or any regulation, license, or
15 order issued to carry out this Act shall be fined not
16 more than \$1,000,000.

17 (2) FOR INDIVIDUALS.—

18 (A) IN GENERAL.—Any individual who vio-
19 lates the provisions of this Act or any regulation,
20 license, or order issued to carry out this Act shall
21 be fined not more than \$50,000, or imprisoned
22 not more than 5 years, or both.

23 (B) PENALTY FOR SECTION 5.—Any individ-
24 ual who violates section 5 of this Act or any reg-
25 ulation issued to carry out that section shall, in

1 lieu of the penalty set forth in subparagraph (A),
2 be fined not more than 5 times the value of the
3 krugerrands or gold coins involved.

4 (c) ADDITIONAL PENALTIES FOR CERTAIN INDIVID-
5 UALS.—

6 (1) IN GENERAL.—Whenever a person commits a
7 violation under subsection (b)—

8 (A) any officer, director, or employee of such
9 person, or any natural person in control of such
10 person who knowingly and willfully ordered, au-
11 thorized, acquiesced in, or carried out the act or
12 practice constituting the violation, and

13 (B) any agent of such person who knowingly
14 and willfully carried out such act or practice,
15 shall be fined not more than \$10,000, or imprisoned
16 not more than 5 years, or both.

17 (2) EXCEPTION FOR CERTAIN VIOLATIONS.—
18 Paragraph (1) shall not apply in the case of a violation
19 by an individual of section 5 of this Act or of any regu-
20 lation issued to carry out that section.

21 (3) RESTRICTION ON PAYMENT OF FINES.—A
22 fine imposed under paragraph (1) on an individual for
23 an act or practice constituting a violation may not be
24 paid, directly or indirectly, by the person committing
25 the violation itself.

1 **SEC. 11. NEGOTIATIONS.**

2 (a) **IN GENERAL.**—The President shall, by means of
3 both bilateral and multilateral negotiations, including through
4 the United Nations, attempt to persuade the governments of
5 other countries to adopt restrictions on new investment (in-
6 cluding bank loans) in South Africa, on bank loans and com-
7 puter sales to the South African Government, and on the
8 importation of krugerrands, and other restrictions in effect
9 under United States law with respect to South Africa. The
10 President shall submit annual reports to the Congress on the
11 status of negotiations under this section.

12 (b) **FUTURE ANTI-APARTHEID MEASURES.**—The Con-
13 gress urges the President to consult with other countries,
14 particularly the major allies of the United States, with re-
15 spect to the implementation in the future of any anti-apart-
16 heid measures being considered by the United States or any
17 such country, in order to encourage multilateral, rather than
18 unilateral, implementation of such measures.

19 **SEC. 12. REPORT ON STATUS OF APARTHEID AND HUMAN**
20 **RIGHTS IN SOUTH AFRICA.**

21 (a) **MONITORING AND REPORT.**—The President shall
22 monitor the status of apartheid and human rights in South
23 Africa and shall report annually to the Congress on the
24 progress or lack of progress of the Government of South
25 Africa in eliminating apartheid and promoting human rights
26 in that country.

1 (b) ADDITIONAL ANTI-APARTHEID MEASURES.—It is
2 the sense of the Congress that the United States should take
3 measures in addition to the sanctions imposed by this Act
4 unless the Government of South Africa makes substantial
5 progress toward the goals set forth in subsection (a).

6 SEC. 13. TERMINATION OF PROVISIONS OF ACT.

7 (a) DETERMINATION OF ABOLITION OF APART-
8 HEID.—If the President determines that the system of apart-
9 heid in South Africa has been abolished, the President may
10 submit that determination, and the basis for the determina-
11 tion, to the Congress.

12 (b) JOINT RESOLUTION APPROVING DETERMINA-
13 TION.—Upon the enactment of a joint resolution approving a
14 determination of the President submitted to the Congress
15 under subsection (a), the provisions of this Act, and all regu-
16 lations, licenses, and orders issued to carry out this Act, shall
17 terminate.

18 (c) DEFINITION.—For purposes of subsection (a), the
19 “abolition of apartheid” shall include—

20 (1) the repeal of all laws and regulations that dis-
21 criminate on the basis of race; and

22 (2) the establishment of a body of laws that as-
23 sures the full national participation of all the people of
24 South Africa in the social, political, and economic life
25 in that country.

1 SEC. 14. DEFINITIONS.

2 For purposes of this Act—

3 (1) INVESTMENT IN SOUTH AFRICA.—The term
4 “investment in South Africa” means establishing, or
5 otherwise investing funds or other assets in, a business
6 enterprise in South Africa, including making a loan or
7 other extension of credit to such a business enterprise.

8 (2) UNITED STATES PERSON.—The term “United
9 States person” means any United States resident or
10 national and any domestic concern (including any per-
11 manent domestic establishment of any foreign concern),
12 and such term includes a bank organized under the
13 laws of the United States;

14 (3) SOUTH AFRICA.—The term “South Africa”
15 includes—

16 (A) the Republic of South Africa,

17 (B) any territory under the administration,
18 legal or illegal, of South Africa, and

19 (C) the “bantustans” or “homelands”, to
20 which South African blacks are assigned on the
21 basis of ethnic origin, including the Transkei, Bo-
22 phuthatswana, Ciskei, and Venda.

23 (4) FOREIGN AFFILIATE.—A “foreign affiliate” of
24 a United States person is a business enterprise located
25 in a foreign country, including a branch, which is con-
26 trolled by that United States person.

1 (5) CONTROL.—A United States person shall be
2 presumed to control a business enterprise if—

3 (A) the United States person beneficially
4 owns or controls (whether directly or indirectly)
5 more than 50 percent of the outstanding voting
6 securities of the business enterprise;

7 (B) the United States person beneficially
8 owns or controls (whether directly or indirectly)
9 25 percent or more of the voting securities of the
10 business enterprise, if no other person owns or
11 controls (whether directly or indirectly) an equal
12 or larger percentage;

13 (C) the business enterprise is operated by the
14 United States person pursuant to the provisions of
15 an exclusive management contract;

16 (D) a majority of the members of the board
17 of directors of the business enterprise are also
18 members of the comparable governing body of the
19 United States person;

20 (E) the United States person has authority to
21 appoint a majority of the members of the board of
22 directors of the business enterprise; or

23 (F) the United States person has authority to
24 appoint the chief operating officer of the business
25 enterprise.

1 (6) **LOAN.**—The term “loan” includes an exten-
2 sion of credit as defined in section 201(h) of the Credit
3 Control Act (12 U.S.C. 1901(h)).

4 (7) **BANK.**—The term “bank” means—

5 (A) any depository institution as defined in
6 section 19(b)(1)(A) of the Federal Reserve Act (12
7 U.S.C. 461(b)(1)(A)),

8 (B) any corporation organized under section
9 25(a) of the Federal Reserve Act (12 U.S.C. 611
10 et seq.),

11 (C) any corporation having an agreement or
12 undertaking with the Federal Reserve Board
13 under section 25 of the Federal Reserve Act (12
14 U.S.C. 601 et seq.), and

15 (D) any bank holding company as defined in
16 section 2(a) of the Bank Holding Company Act of
17 1956 (12 U.S.C. 1843(a)).

18 (8) **BUSINESS ENTERPRISE.**—The term “business
19 enterprise” means any organization, association,
20 branch, or venture which exists for profitmaking pur-
21 poses or to otherwise secure economic advantage.

22 (9) **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 (10) POLITICAL PRISONER.—The term “political
2 prisoner” means any person in South Africa who is in-
3 carcerated or persecuted on account of race, religion,
4 nationality, membership in a particular social group, or
5 political opinion, but the term “political prisoner” does
6 not include any person who ordered, incited, assisted,
7 or otherwise participated in the persecution of any
8 person on account of race, religion, nationality, mem-
9 bership in a particular social group, or political opinion.

10 **SEC. 15. APPLICABILITY TO EVASIONS OF ACT.**

11 This Act and the regulations issued to carry out this Act
12 shall apply to any person who undertakes or causes to be
13 undertaken any transaction or activity with the intent to
14 evade this Act or such regulations.

15 **SEC. 16. CONSTRUCTION OF ACT.**

16 Nothing in this Act shall be construed as constituting
17 any recognition by the United States of the homelands re-
18 ferred to in section 14(3)(C) of this Act.

Passed the House of Representatives June 5, 1985.

Attest:

BENJAMIN J. GUTHRIE,

Clerk.

Calendar No. 206

99TH CONGRESS
1ST SESSION

H. R. 1460

AN ACT

To express the opposition of the United States to the system of apartheid in South Africa, and for other purposes.

JUNE 26, 1985

Read the second time and placed on the calendar