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TEXT

TESTIMONY BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEES
ON AFRICAN AFFAIRS AND INTERNATIONAL ECONOMIC POLICY AND TRADE

BY

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APRIL 17, 1985

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CROCKER: U.S. SEEKS TO HASTEN DEMISE OF APARTHEID

Text: Crocker House testimony on S. African sanctions)

Following is the text of Crocker's prepared testimony:

(BEGIN TEXT)

Let me begin, Mr. Chairman, by stating what should be obvious to all of us at this time of heightened American interest in events in South Africa. There is no support for apartheid in our country. No respectable voice is being raised in defense of that odious system or in defense of the status quo. No one is suggesting that our policy should be a cozy partnership -- business as usual -- with a government that denies elementary political and other rights to a majority of the people on the basis of race. While there is much debate in our country concerning South Africa, that debate is not about apartheid. Rather, it concerns what we can do to support change toward a just society whose system is based on the consent of the governed.

This leads to my second point. At this time of protests and other expressions of moral indignation -- about apartheid and the killings of blacks in South Africa -- we should be able to agree on two things. We are fully justified in expressing our moral indignation. At the same time, moral indignation by itself is not foreign policy. If we are to play a positive, constructive role, it will not do to proclaim simply that we must "do something" about apartheid and then select among proposals according to how good they make us feel. Of course, there is a role for protest politics in any free society and we respect it. But I do not believe the American people vote for their elected leaders in Congress and the Executive Branch to shape our foreign policies without regard to the practical results of those policies. Hence, the onus is on all of us to consider carefully the consequences of current and alternative policies. We cannot throw our hands in the air and say, in effect, "We are not interested in the results in South Africa."

We have heard, Mr. Chairman, arguments to the effect that, if nothing else, punitive sanctions would send a moral signal of our concern, a signal to black South Africans that we hear their voices -- and a signal to South Africa's white leaders that the time for basic change is now. In our view, there are better ways of sending signals than those proposed by the critics of president Reagan's

policy. What signal is sent by adjusting U.S. export licensing procedures so that South Africa's electric utility corporation imports German or Japanese computers instead of American ones? What signal is sent when we tell black South Africans that we are going to support their cause by stopping new or existing U.S. investment so that their chances of employment with the world's most enlightened and advanced corporations will be diminished? We submit that there are far more effective ways of sending signals, many of which are part and parcel of our current policy toward South Africa.

This brings me to an observation and an appeal. If our current discussions about South Africa and U.S. policy are to serve any useful purpose, they must be based on facts and on a reasonable understanding of the issues and our policies. As we exchange views with concerned Americans, we frequently face a litany of warped statistics, misrepresentations or outright falsifications of the facts with the clear purpose of discrediting U.S. policy toward that country and creating a false contrast between current policies and those of previous administrations going back to the early 1960s. The record needs to be set straight.

First of all, it should be clear to any objective observer that our relationship with South Africa is far from a "normal" one. The significant embargoes and restrictions already in place on our trade and cooperation in the military and nuclear areas, as well as in our commercial relationships, demonstrate in a tangible way that we find apartheid repugnant and are dissociating ourselves from it. Many of these policies and practices have existed for years. We have maintained them. U.S. arms sales to South Africa have been embargoed since 1963, and in 1977 the United States joined the United Nations in imposing a further mandatory arms embargo on South Africa. Our regulations are in fact more severe than the U.N. embargo and restrict U.S. exports to the South African military and police of items not covered in the U.N. embargo. In December of last year, the United States joined with other U.N. Security Council members in voting for an embargo on imports of arms and ammunition produced in South Africa. In the commercial area, Eximbank (the U.S. Export Import Bank) is essentially prohibited from financing U.S. sales to South Africa except under very restrictive circumstances. OPIC (the U.S. Overseas Private Investment Corporation) does not provide guarantees for South Africa. Our representative at the IMF (International Monetary Fund) must "actively oppose any facility involving use of fund credit by any country which practices apartheid" unless the Secretary of Treasury makes certain certifications to Congress. U.S. trade fairs do not travel to South Africa. We carefully review license applications for the export of, among other things, U.S. crime control equipment to prevent the use of such items in the enforcement of apartheid.

This information, vital to an understanding of current American policy, is too often ignored or misrepresented in our discussions. We hear claims that the U.S. supports the enforcement of apartheid by permitting the South African authorities to import main frame computers to implement the pass laws which control the lives of approximately 22 million non-voting South Africans. This, too, is

absolutely false; it has no basis in fact. Administration policy is to prohibit the sale of computers to the South African military, police or entities enforcing apartheid. We conduct regular pre-license checks on the end use of these computers to such agencies as the Post Office, the Reserve Bank or the Electricity Supply Commission and have insisted on our right to do post-license checks as well. To my knowledge, there have been no violations to date. As far as we are concerned, this is a realistic approach, balancing our moral and political responsibilities with the realities of free trade.

We hear claims from critics that since this administration took office, the United States has sold 100 million dollars worth of munitions to South Africa, including such items as shock batons. These allegations are a complete distortion of the facts. The Department of State has simply not licensed any export to South Africa of any item that is subject to the U.N. embargo. It is important to understand that our export controls go beyond the requirements of the U.N. embargo. There are items on the U.S. Munitions List which are not subject to the U.N. embargo. For example, "encryption" devices, such as those used in bank teller machines, are on the Munitions List. We will authorize their export to South Africa only for use by private entities like banks, financial institutions and U.S. corporate subsidiaries after careful checks on the recipients and their intended uses. These items comprise 90 percent of the value of licenses given for Munitions List export to South Africa. The remaining items, while on the Munitions List, had similarly valid end use by other entities, such as image-intensifier tubes for an astronomical observatory. There are no items approved for export for military purposes.

Yes, the system of controls is not perfect. A license was mistakenly authorized by the Department of Commerce some time ago for a shipment of shock batons to South Africa. This item was not controlled by the Munitions List. It was not the critics who first brought this to our attention, but the Department of Commerce, which discovered the error and brought it to light. Such an export would not have been approved if it had been handled in the normal manner. It is blatantly untrue to accuse the administration of approving or increasing arms sales to South Africa.

Our critics accuse us of supporting South Africa's acquisition of sensitive nuclear technology, claiming that South Africa could not have developed its nuclear potential without active assistance from the United States. It must be pointed out that South Africa has pursued an independent nuclear program for three decades. It stretches the imagination to envision how any U.S. Government could have prevented a technologically advanced nation like South Africa from developing an indigenous nuclear program. U.S. law and policy bar all significant nuclear transfers to countries, like South Africa, that have not accepted full-scope safeguards, and we have strict controls over transfers of nuclear technology. All applications for exports of nuclear-related equipment or assistance are thoroughly and carefully reviewed so that only limited, nonsensitive transactions are permitted. The U.S. has approved for

export to South Africa only unclassified, nonsensitive items for use in fully safeguarded civil nuclear facilities. No U.S. help was given to weapons-related research. On the other hand, by our efforts, the South Africans have agreed to follow the London Nuclear Supplier Group's Guidelines on nuclear exports and are negotiating with the IAEA (International Atomic Energy Agency) for the application of safeguards at South Africa's semi-commercial enrichment plant. We strenuously reject implications that we have an irresponsible attitude towards proliferation of nuclear technology in South Africa.

Mr. Chairman, I could cite many more illustrations of the climate of spurious allegation and distorted analysis in which our current discussions are taking place. The point, however, is clear. The helicopters flying South African soldiers and police are not American. The nuclear power plants outside Cape Town are not American. Computers used by security forces and apartheid-enforcing agencies are not American. We have in place strong and effective policies that distance our country from such fields, sending both a tangible and symbolic signal that is clearly understood in South Africa. Our policies in this regard are the most rigorous of any of its major industrial trading partners.

The fact that we are one of South Africa's largest trading partners should surprise no one, given the vast size and strength of our economy. But it makes no sense to argue that overall U.S.-South African economic relations "support apartheid" -- unless one is also prepared to argue that our policy should aim at the weakening and ultimate destruction of that country's economy as a device to end apartheid. Let me be very clear on that point: we have no intention of waging economic warfare on South Africa and its people. On the contrary, we firmly believe that economic growth has been -- and will continue to be -- a principal engine of constructive change in all fields in that country.

I stated a moment ago that debate in this country today is not about apartheid but about the appropriate policies to hasten its demise. Allow me to qualify that judgment in one important respect. There is a debate about the basic trend of events in South Africa, whether constructive change is occurring there or not. We believe the record, though no source of complacency or satisfaction on our part, is clear: South Africa is changing, for the better. It also has a long way to go and many basic issues have not yet been adequately addressed.

This is not the place for a comprehensive statement of the case. But allow me to make two brief observations about change. First, we must recognize that the essential precondition for progress is change in the hearts and minds of white South Africans and in the white political alignments they give rise to. Winnie Mandela, the banned wife of the imprisoned ANC (African National Congress) leader, said it best when she told ABC's (U.S. television network) Ted Koppel that the government of South Africa holds in 'its hands the key to the question of whether it is too late to avoid a catastrophe, too late for constructive change. In our judgment, she

is correct. Despite the obvious limitations of change seen so far, we have witnessed over the past three years the crossing of a historical watershed by the National Party government, which has seen major defections in its own ranks as it undertakes reforms. We cannot afford in this country to underestimate the significance of this realignment in white politics, a process which is producing an electorate and a leadership committed to reform. Many factors have played a role in that process -- including our policies -- but the principal pressures for change are, and will remain, internal.

Second, it should surprise no one that wildly conflicting claims are made about what is really going on in that country. We are dealing with a highly politicized and polarized situation. It does not serve the political interest of white leaders to speak openly about the implications of specific reform steps or to define clearly in advance their current vision of their bottom lines in the bargaining that surely lies ahead. Similarly, it does not serve the political interest of black leaders to give credibility to a reform process from which they have been largely excluded so far or to speak positively about reform measures and models that do not yet offer them access to the corridors of political power. We are witnessing, in short, an effort by leaders of all races in South Africa to keep the faith with their own audiences and to hang onto their constituencies. Surely, that point will be understood in this House.

We in this country have a different role and responsibility. We are only indirectly participants in a vital political process taking place 8,000 miles away. It is unseemly for us to add to the polarization and distortions that occur there. It is also unseemly for us to dismiss as trivial changes -- such as the repeal of laws on marriage and sex between races -- that were made in this country less than 20 years ago.

In conclusion, Mr. Chairman, we believe our policies are responsible and effective. Our position on proposed economic sanctions against South Africa is but one small part of a broader policy framework to which this administration remains committed. We also remain open to constructive ideas on how we can do better. The case against such sanctions -- which have been opposed by every administration for the past 20 years -- is stronger than ever precisely because of what is taking place in South Africa.

(END TEXT)

99TH CONGRESS
1ST SESSION

S. 635

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

IN THE SENATE OF THE UNITED STATES

MARCH 7 (legislative day, FEBRUARY 18), 1985

Mr. KENNEDY (for himself, Mr. WEICKER, Mr. PROXMIRE, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. MOYNIHAN, Mr. HART, and Mr. RIEGLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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.

1 (c) EXCEPTION FOR PRIOR AGREEMENTS.—The prohi-
2 bition contained in subsection (a) shall not apply to any loan
3 or extension of credit for which an agreement is entered into
4 before the date of the enactment of this Act.

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

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

10 (a) PRESIDENT TO ISSUE REGULATIONS.—The Presi-
11 dent shall, not later than ninety days after the date of the
12 enactment of this Act, issue regulations prohibiting any
13 United States person from making, directly or through a for-
14 eign affiliate of that United States person, any investment
15 (including bank loans) in South Africa.

16 (b) EXCEPTIONS FROM PROHIBITION.—The prohibi-
17 tion contained in subsection (a) shall not apply to—

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

22 (2) the purchase, on a securities exchange regis-
23 tered as a national securities exchange under section 6
24 of the Securities Exchange Act of 1934, of securities
25 in a business enterprise described in paragraph (1).

1 **SEC. 5. GOLD COINS.**

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

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

12 **SEC. 6. WAIVERS.**

13 (a) **AUTHORITY OF THE PRESIDENT.**—

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

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

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

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

24 (2) **ADDITIONAL WAIVERS.**—The President may
25 waive the prohibitions contained in sections 4 and 5 for

1 additional six-month periods if, before each such
2 waiver—

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

7 (B) the President submits that determination
8 to the Congress, and

9 (C) a joint resolution is enacted approving
10 the President's determination.

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

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

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

23 (3) ELIMINATING DENATIONALIZATION.—The
24 Government of South Africa has eliminated all policies

1 that make distinctions between the South African na-
2 tionality of blacks and whites.

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

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

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

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

21 (8) FREEING POLITICAL PRISONERS.—The Gov-
22 ernment of South Africa has freed all political prison-
23 ers.

24 (c) PROCEDURES FOR CONSIDERATION OF JOINT RES-
25 OLUTIONS.—

1 (1) REFERRAL OF JOINT RESOLUTIONS.—All
2 joint resolutions introduced in the House of Represent-
3 atives and the Senate shall be referred immediately to
4 the appropriate committees.

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

12 (3) CONSIDERATION OF RESOLUTIONS.—A joint
13 resolution under this subsection shall be considered in
14 the Senate in accordance with the provisions of section
15 601(b)(4) of the International Security Assistance and
16 Arms Export Control Act of 1976. For the purpose of
17 expediting the consideration and passage of joint reso-
18 lutions under this subsection, it shall be in order for the
19 Committee on Rules of the House of Representatives
20 (notwithstanding the provisions of clause 4(b) of rule
21 XI of the Rules of the House of Representatives) to
22 present for immediate consideration, on the day report-
23 ed, a resolution of the House of Representatives pro-
24 viding procedures for the consideration of a joint reso-
25 lution under this subsection similar to the procedures

1 set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

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

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

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

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

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

1 approves the President's determination.", with the date
2 of the receipt of the determination inserted in the
3 blank.

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

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

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

14 "(2) For purposes of paragraph (1), the term 'computer'
15 includes any computer that is the direct product of technolo-
16 gy of United States origin.

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

20 "(4) The termination provisions contained in section 20
21 of this Act shall not apply to this section, or to sections 11
22 and 12 of this Act to the extent such sections apply to viola-
23 tions of, and the enforcement of, this subsection."

1 **SEC. 8. REGULATORY AUTHORITY.**

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

4 **SEC. 9. ENFORCEMENT AND PENALTIES.**

5 (a) **AUTHORITY OF THE PRESIDENT.**—The President
6 shall take the necessary steps to ensure compliance with the
7 provisions of this Act and any regulations, licenses, and
8 orders issued to carry out this Act, including establishing
9 mechanisms to monitor compliance with this Act and such
10 regulations, licenses, and orders. In ensuring such compli-
11 ance, the President may conduct investigations, hold hear-
12 ings, administer oaths, examine witnesses, receive evidence,
13 take depositions, and require by subpoena the attendance and
14 testimony of witnesses and the production of all books,
15 papers, and documents relating to any matter under investi-
16 gation.

17 (b) **PENALTIES.**—

18 (1) **FOR PERSONS OTHER THAN INDIVIDUALS.**—

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

23 (2) **FOR INDIVIDUALS.**—

24 (A) **IN GENERAL.**—Any individual who vio-
25 lates the provisions of this Act or any regulation,
26 license, or order issued to carry out this Act shall

1 be fined not more than \$50,000, or imprisoned
2 not more than five years, or both.

3 (B) PENALTY FOR SECTION 5.—Any individ-
4 ual who violates section 5 of this Act or any reg-
5 ulation issued to carry out that section shall, in
6 lieu of the penalty set forth in subparagraph (A),
7 be fined not more than five times the value of the
8 krugerrands or gold coins involved.

9 (c) ADDITIONAL PENALTIES FOR CERTAIN INDIVID-
10 UALS.—

11 (1) IN GENERAL.—Whenever a person commits a
12 violation under subsection (b)—

13 (A) any officer, director, or employee of such
14 person, or any natural person in control of such
15 person who knowingly and willfully ordered, au-
16 thorized, acquiesced in, or carried out the act or
17 practice constituting the violation, and

18 (B) any agent of such person who knowingly
19 and willfully carried out such act or practice, shall
20 be fined not more than \$10,000, or imprisoned
21 not more than five years, or both

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

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

6 **SEC. 10. NEGOTIATIONS.**

7 The President shall, by means of both bilateral and mul-
8 tilateral negotiations, including through the United Nations,
9 attempt to persuade the governments of other countries to
10 adopt restrictions on new investment (including bank loans)
11 in South Africa, on bank loans and computer sales to the
12 South African Government, and on the importation of kru-
13 gerrands. The President shall submit annual reports to the
14 Congress on the status of negotiations under this section.

15 **SEC. 11. TERMINATION OF PROVISIONS OF ACT.**

16 (a) DETERMINATION OF ABOLITION OF APART-
17 HEID.—If the President determines that the system of apart-
18 heid in South Africa has been abolished, the President may
19 submit that determination, and the basis for the determina-
20 tion, to the Congress.

21 (b) JOINT RESOLUTION APPROVING DETERMINA-
22 TION.—Upon the enactment of a joint resolution approving a
23 determination of the President submitted to the Congress
24 under subsection (a), the provisions of this Act, and all regu-

1 lations, licenses, and orders issued to carry out this Act, shall
2 terminate.

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

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

7 (2) the establishment of a body of laws that as-
8 sures the full national participation of all the people of
9 South Africa in the social, political, and economic life
10 in that country.

11 **SEC. 12. DEFINITIONS.**

12 For purposes of this Act—

13 (1) INVESTMENT IN SOUTH AFRICA.—The term
14 “investment in South Africa” means establishing, or
15 otherwise investing funds or other assets in, a busi-
16 ness enterprise in South Africa, including making a
17 loan or other extension of credit to such a business
18 enterprise.

19 (2) UNITED STATES PERSON.—The term “United
20 States person” means any United States resident or
21 national and any domestic concern (including any per-
22 manent domestic establishment of any foreign concern),
23 and such term includes a bank organized under the
24 laws of the United States:

1 (3) SOUTH AFRICA.—The term “South Africa”
2 includes—

3 (A) the Republic of South Africa,

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

6 (C) the “bantustans” or “homelands”, to
7 which South African blacks are assigned on the
8 basis of ethnic origin, including the Transkei, Bo-
9 phuthatswana, Ciskei, and Venda.

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

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

16 (A) the United States person beneficially
17 owns or controls (whether directly or indirectly)
18 more than 50 per centum of the outstanding
19 voting securities of the business enterprise;

20 (B) the United States person beneficially
21 owns or controls (whether directly or indirectly)
22 25 per centum or more of the voting securities of
23 the business enterprise, if no other person owns or
24 controls (whether directly or indirectly) an equal
25 or larger percentage;

1 (C) the business enterprise is operated by the
2 United States person pursuant to the provisions of
3 an exclusive management contract;

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

8 (E) the United States person has authority to
9 appoint a majority of the members of the board of
10 directors of the business enterprise; or

11 (F) the United States person has authority to
12 appoint the chief operating officer of the business
13 enterprise.

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

17 (7) BANK.—The term “bank” means—

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

21 (B) any corporation organized under section
22 25(a) of the Federal Reserve Act (12 U.S.C. 611
23 et seq.),

24 (C) any corporation having an agreement or
25 undertaking with the Federal Reserve Board

1 under section 25 of the Federal Reserve Act (12
2 U.S.C. 601 et seq.), and

3 (D) any bank holding company as defined in
4 section 2(a) of the Bank Holding Company Act of
5 1956 (12 U.S.C. 1843(a)).

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

10 (9) BRANCH.—The term “branch” means the op-
11 erations or activities conducted by a person in a differ-
12 ent location in its own name rather than through an
13 incorporated entity.

14 (10) POLITICAL PRISONER.—The term “political
15 prisoner” means any person in South Africa who is in-
16 carcerated or persecuted on account of race, religion,
17 nationality, membership in a particular social group, or
18 political opinion, but the term “political prisoner” does
19 not include any person who ordered, incited, assisted,
20 or otherwise participated in the persecution of any
21 person on account of race, religion, nationality, mem-
22 bership in a particular social group, or political opinion.

23 **SEC. 13. APPLICABILITY TO EVASIONS OF ACT.**

24 This Act and the regulations issued to carry out this Act
25 shall apply to any person who undertakes or causes to be

1 undertaken any transactions or activity with the intent to
2 evade this Act or such regulations.

3 **SEC. 14. CONSTRUCTION OF ACT.**

4 Nothing in this Act shall be construed as constituting
5 any recognition by the United States of the homelands re-
6 ferred to in section 12(3)(C) of this Act.

○

VIZ: At the appropriate place in the bill, add the following new section:

A. POLICY DECLARATIONS.

The Congress makes the following declarations:

(1) It is the policy of the United States to encourage all nations to adopt political, economic, and social policies which guarantee broad human rights, civil liberties, and individual economic opportunities.

(2) It is the policy of the United States to condemn and seek the eradication of the policy of apartheid in South Africa, a doctrine of racial separation under which rights and obligations of individuals are defined according to their racial or ethnic origin.

B. PROHIBITION ON LOANS TO THE SOUTH AFRICAN GOVERNMENT.

(1) IN GENERAL. -- No United States person may make any loan or other extension of credit, directly or through a foreign affiliate of that United States person, to the Government of South Africa or to any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa, as determined under regulations which the President shall issue.

(2) EXCEPTION FOR NONDISCRIMINATORY FACILITIES. -- The prohibition contained in subsection (1) shall not apply to a loan or extension of credit for any educational, housing, or health facility which --

(a) is available to all persons on a totally non-discriminatory basis, and

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

(3) EXCEPTION FOR PRIOR AGREEMENTS. -- The prohibition contained in subsection (1) shall not apply to any loan or extension of credit for which an agreement is entered into before the date of the enactment of this Section.

(4) ISSUANCE OF REGULATIONS. -- The President shall issue the regulations referred to in subsection (1) not later than ninety days after the date of the enactment of this Section.

C. REGULATORY AUTHORITY.

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

D. ENFORCEMENT AND PENALTIES.

(1) AUTHORITY OF THE PRESIDENT. -- The President shall take the necessary steps to ensure compliance with the provisions of this Section and any regulations, licenses, and orders issued to carry out this Section, including establishing mechanisms to monitor compliance with this Section and such regulations, licenses, and orders. In ensuring such compliance, the President may conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(2) PENALTIES. --

(a) FOR PERSONS OTHER THAN INDIVIDUALS. -- Any person, other than an individual, that violates the provisions of this Section or any regulation, license, or order issued to carry out this Section shall be fined not more than \$1,000,000.

(b) FOR INDIVIDUALS. --

(1) IN GENERAL. -- Any individual who violates the provisions of this Section or any regulation, license, or order issued to carry out this Section shall be fined not more than \$50,000 or imprisoned not more than five years, or both.

(3) ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS. --

(a) IN GENERAL. -- Whenever a person commits a violation under subsection (2) --

(1) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(2) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than \$10,000, or imprisoned not more than five years, or both.

(b) RESTRICTION ON PAYMENT OF FINES. -- A fine imposed under paragraph (a) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.