

110th CONGRESS
2d Session
H. R. 6796

To prevent speculation and profiteering in the defaulted debt of certain poor countries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

August 1, 2008

Ms. WATERS (for herself, Mr. CONYERS, Mr. GUTIERREZ, Ms. MOORE of Wisconsin, Mr. PAYNE, Ms. LEE, Mr. HINCHEY, and Ms. WASSERMAN SCHULTZ) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent speculation and profiteering in the defaulted debt of certain poor countries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Stop Very Unscrupulous Loan Transfers from Underprivileged countries to Rich, Exploitive Funds Act' or the 'Stop VULTURE Funds Act'.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) Many poor countries have been struggling under the burden of international debts for many years.
- (2) In 1996, the international community created the Heavily Indebted Poor Countries Initiative (the HIPC Initiative) to reduce the debt burden that curtailed spending on economic development and poverty-reducing programs in many impoverished countries.
- (3) Since adoption of the original HIPC Initiative in 1996 and the Enhanced HIPC Initiative in 1999, donor countries have committed more than \$50,000,000,000 in bilateral and multilateral debt cancellation to eligible countries.

(4) Congress has demonstrated its support for bilateral and multilateral debt relief through the enactment of comprehensive debt relief initiatives for heavily indebted poor countries in--

- (A) title V of H.R. 3425 of the 106th Congress, as enacted into law by section 1000(a)(5) of the Act, entitled 'An Act making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.', approved November 29, 1999 (Public Law 106-113; 113 Stat. 1501-311) and the amendments made by such title;
- (B) title II of H.R. 5526 of the 106th Congress, as enacted into law by section 101(a) of the Act, entitled 'An Act making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2001, and for other purposes.', approved November 6, 2000 (Public Law 106-429; 114 Stat. 1900A-5); and
- (C) title V of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108-25; 117 Stat. 747) and the amendment made by such title.

(5) A number of countries, including the United States, have canceled 100 percent of the bilateral loans made by such countries to countries that are eligible for debt relief under the Enhanced HIPC Initiative, and other major donor nations have canceled a large percentage of such loans. However, a number of countries eligible for such debt relief will continue to owe substantial debts to international financial institutions such as the International Monetary Fund, the International Development Association, and the African Development Fund.

(6) At the same time that the international community has been extending debt relief to the poor countries of the world, a new form of business has emerged for the purpose of speculating in and profiteering from defaulted sovereign debt at the expense of both the impoverished citizens of the poor nations and the taxpayers of the world who have participated in international debt relief.

(7) So-called 'vulture' creditors acquire, either by purchase, assignment, or some other form of transaction, the defaulted obligations of, and sometimes actual court judgments against, impoverished nations. Vulture creditors usually acquire the debt for the payment of a sum far less than the face value of the defaulted obligation. They do so for the sole purpose of collecting through litigation, seizure of assets, political pressure, or other means, preferential payment of the defaulted debt on terms and in amounts far in excess of the amount paid by the vulture creditor to acquire the debt. The vulture creditors seek payments far in excess of the rates of payment made to other similarly situated creditors, including multilateral creditors (such as the International Monetary Fund, the International Development Association, and the African Development Fund), bilateral official creditors such as

those working through the Paris Club of Official Creditors or direct negotiations, or commercial creditors working through the London Club mechanism of sovereign debt restructuring.

(8) Profiteering in defaulted sovereign debt is made possible by the absence of the same type of bankruptcy protections for sovereign debtors that are available to private debtors. Bankruptcy or other insolvency laws protect private debtors through, among other things, stays of execution pending reorganization or restructuring of debt, suspension of the accrual of interest, 'cram-down' powers which allow the majority of creditors to force so-called 'hold-out' creditors to accept a debt restructuring that will optimize the recovery of all creditors and avoid preferential payments to a minority of creditors, and the ability to discharge debts and obligations as part of a debt restructuring process.

(9) Preferential payments to vulture creditor holders of the defaulted sovereign debt of poor countries serve to transfer the benefits of international debt relief efforts from their intended beneficiaries, the citizens of the poor nations of the world, to the speculators in sovereign debt who can experience exorbitant and usurious rates of return on their speculation.

(10) In pursuit of their collection activities, vulture creditors have engaged in litigation in the courts of the United States, which has, and continues to have, a negative effect on the foreign relations of the United States, and hinders trade between the United States and the poor countries whose defaulted debts have been acquired by vulture creditors. Such disruptive activities have included, among other actions, attempting to levy against the embassies of foreign states, seeking to have foreign states held in contempt of court, issuing subpoenas to visiting foreign dignitaries, and accusing foreign governments of violating the Racketeer Influenced and Corrupt Organizations Act.

(11) Many vulture creditor holders of defaulted sovereign debt act through 'offshore' entities, incorporated in foreign states, despite being substantially owned and operated by United States citizens or conducting substantial business in the United States, with the purpose of avoiding regulation and taxation of their activities in the United States.

(12) The direct or indirect speculation and profiteering in defaulted sovereign debt by United States citizens, and the use of the courts in the United States to advance such profiteering, is contrary to the foreign relations interests of the United States and negatively affects the interstate commerce of the United States.

(13) In order to successfully prevent the speculation and profiteering in the defaulted sovereign debt of poor countries in a uniform fashion, and prevent the use of the courts of the United States to assist in such profiteering, national legislation is required to regulate the practices and procedures used in litigation against foreign sovereigns.

(14) To be effective and properly regulate the use of judicial forums in an area affecting the foreign relations of the United States, national legislation is required that will mandate the public disclosure of relevant information concerning the acquisition, ownership, and consideration provided by creditors in obtaining their property interests in the defaulted sovereign debt of poor countries.

SEC. 3. DEFINITIONS.

In this Act:

(1) **VULTURE CREDITOR**- The term `vulture creditor' means any person who directly or indirectly acquires defaulted sovereign debt at a discount to the face value of the obligation so acquired, except that the term does not include the Government of the United States or any agency of the Government of the United States, any foreign state, or any international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act).

(2) **SOVEREIGN DEBT**- The term `sovereign debt' means a commercial obligation of a foreign state, whether evidenced by a claim, contract, note, negotiable instrument, award, or judgment.

(3) **DEFAULTED SOVEREIGN DEBT**- The term `defaulted sovereign debt' means any sovereign debt for which payment has been refused by a foreign state, which is subject to an announced moratorium, upon which an award or judgement has been entered, or upon which a payment of interest or principal has not been paid according to the terms of the debt obligation.

(4) **SOVEREIGN DEBT PROFITEERING**- The term `sovereign debt profiteering' means any act by a vulture creditor seeking, directly or indirectly, the payment of part or all of defaulted sovereign debt of a qualified poor country, in an amount that exceeds the total amount paid by the vulture creditor to acquire the interest of the vulture creditor in the defaulted sovereign debt (excluding any amount paid for attorneys' fees or other fees and costs associated with collection), plus 6 percent simple interest per year on the total amount, calculated from the date the defaulted sovereign debt was so acquired, but the term does not include the purchase or sale of such a debt, or the acceptance of a payment in satisfaction of the debt obligation, without threat of, or recourse to, litigation.

(5) **UNITED STATES PERSON**- The term `United States person' means--

- (A) a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act); and
- (B) a corporation, partnership, association, joint stock company, business trust, unincorporated organization, or sole proprietorship that is--

- (i) organized under the laws of the United States or of any political subdivision thereof; or
- (ii) owned or controlled by a citizen or resident of the United States.

(6) FOREIGN STATE- The term `foreign state' includes a political subdivision of a foreign state, or an agency or instrumentality of a foreign state (as defined in paragraph (7)).

(7) AGENCY OR INSTRUMENTALITY OF A FOREIGN STATE- The term `agency or instrumentality of a foreign state' means an entity-

(A) which is a separate legal person, corporate or otherwise;

(B) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof; and

(C) which is neither a citizen of a State of the United States (as defined in section 1332(c) and (e) of title 28, United States Code), nor created under the laws of any third country.

(8) UNITED STATES- The term `United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(9) QUALIFIED POOR COUNTRY- The term `qualified poor country' means a foreign state identified on the list maintained by the Secretary of the Treasury under section 6(a)(2).

SEC. 4. PROHIBITIONS ON SOVEREIGN DEBT PROFITEERING; PENALTIES.

(a) Prohibitions- It shall be unlawful for any United States person, directly or indirectly, to engage in sovereign debt profiteering, or for any person, directly or indirectly, to engage in sovereign debt profiteering in the United States.

(b) Penalties- Whoever willfully violates subsection (a) shall be fined an amount equal to the total amount sought by the person through the sovereign debt profiteering.

(c) Effective Date- This section shall take effect 90 days after the date of the enactment of this Act.

SEC. 5. PROHIBITION ON USE OF COURTS OF THE UNITED STATES TO FURTHER SOVEREIGN DEBT PROFITEERING.

(a) In General- A court in or of the United States may not issue a summons, subpoena, writ, judgment, attachment, or execution, in aid of a claim under any theory of law or equity a purpose of which would be furthering sovereign debt profiteering.

(b) Disclosures Required in Actions Involving Collection of Sovereign Debt- A court in or of the United States may not issue a summons, subpoena, writ, judgment, attachment, or execution against a foreign state

or any debtor or creditor of a foreign state, with respect to collection of sovereign debt of the foreign state, unless the court has required each party seeking the summons, subpoena, writ, judgment, attachment, or execution to file with the court, and the court has received, affidavits, under oath, setting forth--

- (1) a statement that written notice of the claim against the foreign state has been provided to the Department of the Treasury;
- (2) a copy of the list of qualified poor countries maintained under section 6(a)(2), which is current as of the date of the affidavit; and
- (3) if the foreign state is identified on the list--

- (A) a statement of the names and addresses of all persons who, directly or indirectly hold any interest in the claim against the foreign state;
- (B) a statement of the total amount paid by all persons, directly or indirectly holding an interest in the claim against the foreign state, to acquire the interest, including the date the interest was acquired and the identity of any person from whom the interest was acquired;
- (C) a statement containing a calculation of 6 percent simple interest per year on the total amount so paid, for the period beginning with the date the interest was acquired, as of the date of each action sought from the court;
- (D) a statement that the claim against the foreign state has not been further assigned or encumbered by the party;
- (E) a statement that neither the holder of the debt, nor any owner, employee, or agent of the holder has given anything of value to a foreign state, or any officer or agent of a foreign state, in exchange for any action in connection with the acquisition or collection of the debt, or any information concerning the acquisition or collection of the debt;
- (F) a statement that each person against whom any legal process is sought in the case has been served with a copy of this Act, a copy of the complaint or initial process in which the claim is stated, and copies of the affidavits required by this subsection; and
- (G) a statement that copies of the affidavits required by this paragraph have been provided to the Department of the Treasury.

(c) Judicial Process Issued in Violation of This Section Is Void- A summons, subpoena, writ, judgment, attachment, or execution issued in violation of any provision of this section shall be void.

(d) Dismissal of Actions Brought or Maintained in Violation of This Section- If it appears to a court in or of the United States that an action brought in the court constitutes, or is in furtherance of, sovereign debt profiteering, the court shall, on its own initiative or at the request of any interested party, promptly dismiss the action.

(e) Entitlement to Discovery- A party against whom a summons, subpoena, writ, judgment, attachment, or execution is sought in an action brought with respect to collection of sovereign debt of a foreign state, and

the foreign state, shall be entitled to discovery to determine the veracity of the matters attested to in any affidavit required by subsection (b).

(f) Requirement To Serve Affidavits on All Persons Against Whom Any Legal Process Is Sought- Each party seeking a summons, subpoena, writ, judgment, attachment, or execution pursuant to subsection (b) shall serve on each person against whom any legal process is sought a copy of this Act, a copy of the complaint or initial process in which the claim is stated, and copies of the affidavits required by subsection (b).

(g) Information Required To Be Provided to the Treasury Department- Each party seeking a summons, subpoena, writ, judgment, attachment, or execution pursuant to subsection (b) shall present to the Secretary of the Treasury--

(1) written notice of the claim involved; and

(2) copies of the affidavits required by subsection (b)(3).

(h) Effective Date- This section shall apply to actions brought or pending on or after the date of the enactment of this Act.

SEC. 6. DUTIES OF THE DEPARTMENT OF THE TREASURY.

(a) Maintenance of Lists- The Secretary of the Treasury shall compile and maintain, and make available to the public--

(1) an up-to-date list of the foreign states that are eligible for financing from the International Development Association but not from the International Bank for Reconstruction and Development; and

(2) an up-to-date list of the foreign states listed under paragraph (1) with respect to which the Secretary of the Treasury, in consultation with the Secretary of State, has not determined that--

(A) the government of the state (including its military or other security forces) engages in a pattern of gross violations of internationally recognized human rights (as defined in section 116 of the Foreign Assistance Act of 1961 (Public Law 87-195));

(B) the government of the state has an excessive level of military expenditures;

(C) the government of the state has provided support for acts of international terrorism, as determined by the Secretary of State under section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)); or

(D) the government of the state is failing to cooperate with the United States on international narcotics control matters.

(b) Maintenance of Affidavits as Public Records- On presentation of an affidavit pursuant to section 5(g), the Secretary of the Treasury shall accept the affidavit and maintain the affidavit as a public record.

(c) Notification of Poor Countries of the Provisions of This Act- Within 90 days after the date of the enactment of this Act, the Secretary of the

Treasury shall provide written notice to each foreign state referred to in subsection (a)(1) of the provisions of this Act.

(d) Annual Reports- Within 1 year after the date of the enactment of this Act, and annually on the anniversary of the date the first report is submitted under this subsection, the Secretary of the Treasury shall submit to the Committees on Financial Services and on the Judiciary of the House of Representatives and the Committees on Foreign Relations and on the Judiciary of the Senate, and make available to the public, a report that--

(1) explains how the Secretary determined which countries would be included in the list of foreign states maintained under subsection (a)(2);

(2) summarizes the affidavits presented to the Secretary pursuant to subsection (b) during the period covered by the report; and

(3) discusses how this Act has advanced the policies of the United States with respect to poor countries and supported the goals and purposes of the Enhanced HIPC Initiative (as defined in section 1625(e)(3) of the International Financial Institutions Act), the Multilateral Debt Relief Initiative, and other international efforts to provide debt relief to poor countries.

SEC. 7. RELATIONSHIP TO STATE LAW.

In the event of a conflict between this Act and a provision of State law, this Act shall control.

SEC. 8. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

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