

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.

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 “Stop Very Unscrupu-
5 lous Loan Transfers from Underprivileged countries to
6 Rich, Exploitive Funds Act” or the “Stop VULTURE
7 Funds Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Many poor countries have been struggling
4 under the burden of international debts for many
5 years.

6 (2) In 1996, the international community cre-
7 ated the Heavily Indebted Poor Countries Initiative
8 (the HIPC Initiative) to reduce the debt burden that
9 curtailed spending on economic development and
10 poverty-reducing programs in many impoverished
11 countries.

12 (3) Since adoption of the original HIPC Initia-
13 tive in 1996 and the Enhanced HIPC Initiative in
14 1999, donor countries have committed more than
15 \$50,000,000,000 in bilateral and multilateral debt
16 cancellation to eligible countries.

17 (4) Congress has demonstrated its support for
18 bilateral and multilateral debt relief through the en-
19 actment of comprehensive debt relief initiatives for
20 heavily indebted poor countries in—

21 (A) title V of H.R. 3425 of the 106th Con-
22 gress, as enacted into law by section 1000(a)(5)
23 of the Act, entitled “An Act making consoli-
24 dated appropriations for the fiscal year ending
25 September 30, 2000, and for other purposes.”,
26 approved November 29, 1999 (Public Law 106–

1 113; 113 Stat. 1501–311) and the amendments
2 made by such title;

3 (B) title II of H.R. 5526 of the 106th
4 Congress, as enacted into law by section 101(a)
5 of the Act, entitled “An Act making appropria-
6 tions for foreign operations, export financing,
7 and related programs for the fiscal year ending
8 September 30, 2001, and for other purposes.”,
9 approved November 6, 2000 (Public Law 106–
10 429; 114 Stat. 1900A–5); and

11 (C) title V of the United States Leadership
12 Against HIV/AIDS, Tuberculosis, and Malaria
13 Act of 2003 (Public Law 108–25; 117 Stat.
14 747) and the amendment made by such title.

15 (5) A number of countries, including the United
16 States, have canceled 100 percent of the bilateral
17 loans made by such countries to countries that are
18 eligible for debt relief under the Enhanced HIPC
19 Initiative, and other major donor nations have can-
20 celed a large percentage of such loans. However, a
21 number of countries eligible for such debt relief will
22 continue to owe substantial debts to international fi-
23 nancial institutions such as the International Mone-
24 tary Fund, the International Development Associa-
25 tion, and the African Development Fund.

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

9 (7) So-called “vulture” creditors acquire, either
10 by purchase, assignment, or some other form of
11 transaction, the defaulted obligations of, and some-
12 times actual court judgments against, impoverished
13 nations. Vulture creditors usually acquire the debt
14 for the payment of a sum far less than the face
15 value of the defaulted obligation. They do so for the
16 sole purpose of collecting through litigation, seizure
17 of assets, political pressure, or other means, pref-
18 erential payment of the defaulted debt on terms and
19 in amounts far in excess of the amount paid by the
20 vulture creditor to acquire the debt. The vulture
21 creditors seek payments far in excess of the rates of
22 payment made to other similarly situated creditors,
23 including multilateral creditors (such as the Inter-
24 national Monetary Fund, the International Develop-
25 ment Association, and the African Development

1 Fund), bilateral official creditors such as those
2 working through the Paris Club of Official Creditors
3 or direct negotiations, or commercial creditors work-
4 ing through the London Club mechanism of sov-
5 ereign debt restructuring.

6 (8) Profiteering in defaulted sovereign debt is
7 made possible by the absence of the same type of
8 bankruptcy protections for sovereign debtors that
9 are available to private debtors. Bankruptcy or other
10 insolvency laws protect private debtors through,
11 among other things, stays of execution pending reor-
12 ganization or restructuring of debt, suspension of
13 the accrual of interest, “cram-down” powers which
14 allow the majority of creditors to force so-called
15 “hold-out” creditors to accept a debt restructuring
16 that will optimize the recovery of all creditors and
17 avoid preferential payments to a minority of credi-
18 tors, and the ability to discharge debts and obliga-
19 tions as part of a debt restructuring process.

20 (9) Preferential payments to vulture creditor
21 holders of the defaulted sovereign debt of poor coun-
22 tries serve to transfer the benefits of international
23 debt relief efforts from their intended beneficiaries,
24 the citizens of the poor nations of the world, to the
25 speculators in sovereign debt who can experience ex-

1 orbitant and usurious rates of return on their specu-
2 lation.

3 (10) In pursuit of their collection activities, vul-
4 ture creditors have engaged in litigation in the
5 courts of the United States, which has, and con-
6 tinues to have, a negative effect on the foreign rela-
7 tions of the United States, and hinders trade be-
8 tween the United States and the poor countries
9 whose defaulted debts have been acquired by vulture
10 creditors. Such disruptive activities have included,
11 among other actions, attempting to levy against the
12 embassies of foreign states, seeking to have foreign
13 states held in contempt of court, issuing subpoenas
14 to visiting foreign dignitaries, and accusing foreign
15 governments of violating the Racketeer Influenced
16 and Corrupt Organizations Act.

17 (11) Many vulture creditor holders of defaulted
18 sovereign debt act through “offshore” entities, incor-
19 porated in foreign states, despite being substantially
20 owned and operated by United States citizens or
21 conducting substantial business in the United
22 States, with the purpose of avoiding regulation and
23 taxation of their activities in the United States.

24 (12) The direct or indirect speculation and
25 profiteering in defaulted sovereign debt by United

1 States citizens, and the use of the courts in the
2 United States to advance such profiteering, is con-
3 trary to the foreign relations interests of the United
4 States and negatively affects the interstate com-
5 merce of the United States.

6 (13) In order to successfully prevent the specu-
7 lation and profiteering in the defaulted sovereign
8 debt of poor countries in a uniform fashion, and pre-
9 vent the use of the courts of the United States to
10 assist in such profiteering, national legislation is re-
11 quired to regulate the practices and procedures used
12 in litigation against foreign sovereigns.

13 (14) To be effective and properly regulate the
14 use of judicial forums in an area affecting the for-
15 eign relations of the United States, national legisla-
16 tion is required that will mandate the public disclo-
17 sure of relevant information concerning the acquisi-
18 tion, ownership, and consideration provided by credi-
19 tors in obtaining their property interests in the de-
20 faulted sovereign debt of poor countries.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **VULTURE CREDITOR.**—The term “vulture
24 creditor” means any person who directly or indi-
25 rectly acquires defaulted sovereign debt at a dis-

1 count to the face value of the obligation so acquired,
2 except that the term does not include the Govern-
3 ment of the United States or any agency of the Gov-
4 ernment of the United States, any foreign state, or
5 any international financial institution (as defined in
6 section 1701(c)(2) of the International Financial In-
7 stitutions Act).

8 (2) SOVEREIGN DEBT.—The term “sovereign
9 debt” means a commercial obligation of a foreign
10 state, whether evidenced by a claim, contract, note,
11 negotiable instrument, award, or judgment.

12 (3) DEFAULTED SOVEREIGN DEBT.—The term
13 “defaulted sovereign debt” means any sovereign debt
14 for which payment has been refused by a foreign
15 state, which is subject to an announced moratorium,
16 upon which an award or judgement has been en-
17 tered, or upon which a payment of interest or prin-
18 cipal has not been paid according to the terms of the
19 debt obligation.

20 (4) SOVEREIGN DEBT PROFITEERING.—The
21 term “sovereign debt profiteering” means any act by
22 a vulture creditor seeking, directly or indirectly, the
23 payment of part or all of defaulted sovereign debt of
24 a qualified poor country, in an amount that exceeds
25 the total amount paid by the vulture creditor to ac-

1 quire the interest of the vulture creditor in the de-
2 faulted sovereign debt (excluding any amount paid
3 for attorneys' fees or other fees and costs associated
4 with collection), plus 6 percent simple interest per
5 year on the total amount, calculated from the date
6 the defaulted sovereign debt was so acquired, but
7 the term does not include the purchase or sale of
8 such a debt, or the acceptance of a payment in satis-
9 faction of the debt obligation, without threat of, or
10 recourse to, litigation.

11 (5) UNITED STATES PERSON.—The term
12 “United States person” means—

13 (A) a national of the United States (as de-
14 fined in section 101(a)(22) of the Immigration
15 and Nationality Act); and

16 (B) a corporation, partnership, association,
17 joint stock company, business trust, unincor-
18 porated organization, or sole proprietorship that
19 is—

20 (i) organized under the laws of the
21 United States or of any political subdivi-
22 sion thereof; or

23 (ii) owned or controlled by a citizen or
24 resident of the United States.

1 (6) FOREIGN STATE.—The term “foreign state”
2 includes a political subdivision of a foreign state, or
3 an agency or instrumentality of a foreign state (as
4 defined in paragraph (7)).

5 (7) AGENCY OR INSTRUMENTALITY OF A FOR-
6 EIGN STATE.—The term “agency or instrumentality
7 of a foreign state” means an entity—

8 (A) which is a separate legal person, cor-
9 porate or otherwise;

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

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

19 (8) UNITED STATES.—The term “United
20 States” includes all territory and waters, continental
21 or insular, subject to the jurisdiction of the United
22 States.

23 (9) QUALIFIED POOR COUNTRY.—The term
24 “qualified poor country” means a foreign state iden-

1 tified on the list maintained by the Secretary of the
2 Treasury under section 6(a)(2).

3 **SEC. 4. PROHIBITIONS ON SOVEREIGN DEBT PROFIT-**
4 **EERING; PENALTIES.**

5 (a) PROHIBITIONS.—It shall be unlawful for any
6 United States person, directly or indirectly, to engage in
7 sovereign debt profiteering, or for any person, directly or
8 indirectly, to engage in sovereign debt profiteering in the
9 United States.

10 (b) PENALTIES.—Whoever willfully violates sub-
11 section (a) shall be fined an amount equal to the total
12 amount sought by the person through the sovereign debt
13 profiteering.

14 (c) EFFECTIVE DATE.—This section shall take effect
15 90 days after the date of the enactment of this Act.

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

19 (a) IN GENERAL.—A court in or of the United States
20 may not issue a summons, subpoena, writ, judgment, at-
21 tachment, or execution, in aid of a claim under any theory
22 of law or equity a purpose of which would be furthering
23 sovereign debt profiteering.

24 (b) DISCLOSURES REQUIRED IN ACTIONS INVOLVING
25 COLLECTION OF SOVEREIGN DEBT.—A court in or of the

1 United States may not issue a summons, subpoena, writ,
2 judgment, attachment, or execution against a foreign state
3 or any debtor or creditor of a foreign state, with respect
4 to collection of sovereign debt of the foreign state, unless
5 the court has required each party seeking the summons,
6 subpoena, writ, judgment, attachment, or execution to file
7 with the court, and the court has received, affidavits,
8 under oath, setting forth—

9 (1) a statement that written notice of the claim
10 against the foreign state has been provided to the
11 Department of the Treasury;

12 (2) a copy of the list of qualified poor countries
13 maintained under section 6(a)(2), which is current
14 as of the date of the affidavit; and

15 (3) if the foreign state is identified on the list—

16 (A) a statement of the names and address-
17 es of all persons who, directly or indirectly hold
18 any interest in the claim against the foreign
19 state;

20 (B) a statement of the total amount paid
21 by all persons, directly or indirectly holding an
22 interest in the claim against the foreign state,
23 to acquire the interest, including the date the
24 interest was acquired and the identity of any
25 person from whom the interest was acquired;

1 (C) a statement containing a calculation of
2 6 percent simple interest per year on the total
3 amount so paid, for the period beginning with
4 the date the interest was acquired, as of the
5 date of each action sought from the court;

6 (D) a statement that the claim against the
7 foreign state has not been further assigned or
8 encumbered by the party;

9 (E) a statement that neither the holder of
10 the debt, nor any owner, employee, or agent of
11 the holder has given anything of value to a for-
12 eign state, or any officer or agent of a foreign
13 state, in exchange for any action in connection
14 with the acquisition or collection of the debt, or
15 any information concerning the acquisition or
16 collection of the debt;

17 (F) a statement that each person against
18 whom any legal process is sought in the case
19 has been served with a copy of this Act, a copy
20 of the complaint or initial process in which the
21 claim is stated, and copies of the affidavits re-
22 quired by this subsection; and

23 (G) a statement that copies of the affida-
24 vits required by this paragraph have been pro-
25 vided to the Department of the Treasury.

1 (c) JUDICIAL PROCESS ISSUED IN VIOLATION OF
2 THIS SECTION IS VOID.—A summons, subpoena, writ,
3 judgment, attachment, or execution issued in violation of
4 any provision of this section shall be void.

5 (d) DISMISSAL OF ACTIONS BROUGHT OR MAIN-
6 TAINED IN VIOLATION OF THIS SECTION.—If it appears
7 to a court in or of the United States that an action
8 brought in the court constitutes, or is in furtherance of,
9 sovereign debt profiteering, the court shall, on its own ini-
10 tiative or at the request of any interested party, promptly
11 dismiss the action.

12 (e) ENTITLEMENT TO DISCOVERY.—A party against
13 whom a summons, subpoena, writ, judgment, attachment,
14 or execution is sought in an action brought with respect
15 to collection of sovereign debt of a foreign state, and the
16 foreign state, shall be entitled to discovery to determine
17 the veracity of the matters attested to in any affidavit re-
18 quired by subsection (b).

19 (f) REQUIREMENT TO SERVE AFFIDAVITS ON ALL
20 PERSONS AGAINST WHOM ANY LEGAL PROCESS IS
21 SOUGHT.—Each party seeking a summons, subpoena,
22 writ, judgment, attachment, or execution pursuant to sub-
23 section (b) shall serve on each person against whom any
24 legal process is sought a copy of this Act, a copy of the

1 complaint or initial process in which the claim is stated,
2 and copies of the affidavits required by subsection (b).

3 (g) INFORMATION REQUIRED TO BE PROVIDED TO
4 THE TREASURY DEPARTMENT.—Each party seeking a
5 summons, subpoena, writ, judgment, attachment, or exe-
6 cution pursuant to subsection (b) shall present to the Sec-
7 retary of the Treasury—

8 (1) written notice of the claim involved; and

9 (2) copies of the affidavits required by sub-
10 section (b)(3).

11 (h) EFFECTIVE DATE.—This section shall apply to
12 actions brought or pending on or after the date of the en-
13 actment of this Act.

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

15 (a) MAINTENANCE OF LISTS.—The Secretary of the
16 Treasury shall compile and maintain, and make available
17 to the public—

18 (1) an up-to-date list of the foreign states that
19 are eligible for financing from the International De-
20 velopment Association but not from the Inter-
21 national Bank for Reconstruction and Development;
22 and

23 (2) an up-to-date list of the foreign states listed
24 under paragraph (1) with respect to which the Sec-

1 retary of the Treasury, in consultation with the Sec-
2 retary of State, has not determined that—

3 (A) the government of the state (including
4 its military or other security forces) engages in
5 a pattern of gross violations of internationally
6 recognized human rights (as defined in section
7 116 of the Foreign Assistance Act of 1961
8 (Public Law 87–195));

9 (B) the government of the state has an ex-
10 cessive level of military expenditures;

11 (C) the government of the state has pro-
12 vided support for acts of international ter-
13 rorism, as determined by the Secretary of State
14 under section 6(j)(1) of the Export Administra-
15 tion Act of 1979 (50 U.S.C. App. 2405(j)(1)),
16 or section 620A(a) of the Foreign Assistance
17 Act of 1961 (22 U.S.C. 2371(a)); or

18 (D) the government of the state is failing
19 to cooperate with the United States on inter-
20 national narcotics control matters.

21 (b) MAINTENANCE OF AFFIDAVITS AS PUBLIC
22 RECORDS.—On presentation of an affidavit pursuant to
23 section 5(g), the Secretary of the Treasury shall accept
24 the affidavit and maintain the affidavit as a public record.

1 (c) NOTIFICATION OF POOR COUNTRIES OF THE
2 PROVISIONS OF THIS ACT.—Within 90 days after the date
3 of the enactment of this Act, the Secretary of the Treasury
4 shall provide written notice to each foreign state referred
5 to in subsection (a)(1) of the provisions of this Act.

6 (d) ANNUAL REPORTS.—Within 1 year after the date
7 of the enactment of this Act, and annually on the anniver-
8 sary of the date the first report is submitted under this
9 subsection, the Secretary of the Treasury shall submit to
10 the Committees on Financial Services and on the Judici-
11 ary of the House of Representatives and the Committees
12 on Foreign Relations and on the Judiciary of the Senate,
13 and make available to the public, a report that—

14 (1) explains how the Secretary determined
15 which countries would be included in the list of for-
16 eign states maintained under subsection (a)(2);

17 (2) summarizes the affidavits presented to the
18 Secretary pursuant to subsection (b) during the pe-
19 riod covered by the report; and

20 (3) discusses how this Act has advanced the
21 policies of the United States with respect to poor
22 countries and supported the goals and purposes of
23 the Enhanced HIPC Initiative (as defined in section
24 1625(e)(3) of the International Financial Institu-
25 tions Act), the Multilateral Debt Relief Initiative,

1 and other international efforts to provide debt relief
2 to poor countries.

3 **SEC. 7. RELATIONSHIP TO STATE LAW.**

4 In the event of a conflict between this Act and a pro-
5 vision of State law, this Act shall control.

6 **SEC. 8. SEVERABILITY.**

7 If any provision of this Act or the application thereof
8 to any person or circumstance is held invalid, the inva-
9 lidity does not affect other provisions or applications of
10 this Act which can be given effect without the invalid pro-
11 vision or application, and to this end, the provisions of
12 this Act are severable.

○