

~~LC 14.2: 87-200 F~~
LC 14.2: 87-200 F

Report No. 87-200 F

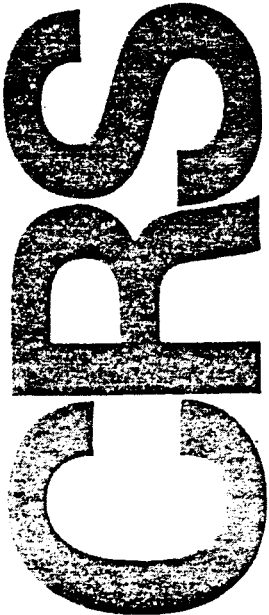
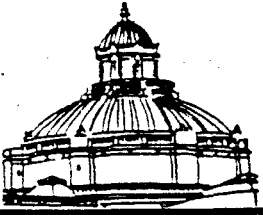
SANCTIONS AGAINST SOUTH AFRICA:
ACTIVITIES OF THE 99th CONGRESS

THE UNIVERSITY
OF TEXAS

MAY 11 1988

GENERAL LIBRARIES
DEPOSITORY

Brenda M. Branaman
Analyst in African Affairs
Foreign Affairs and National Defense Division



February 13, 1987

JX 4491

CONGRESSIONAL
RESEARCH
SERVICE
THE LIBRARY
OF CONGRESS

The Congressional Research Service works exclusively for the Congress, conducting research, analyzing legislation, and providing information at the request of committees, Members, and their staffs.

The Service makes such research available, without partisan bias, in many forms including studies, reports, compilations, digests, and background briefings. Upon request, CRS assists committees in analyzing legislative proposals and issues, and in assessing the possible effects of these proposals and their alternatives. The Service's senior specialists and subject analysts are also available for personal consultations in their respective fields of expertise.

ABSTRACT

This paper discusses legislation proposed in the 99th Congress which imposed sanctions against South Africa and provided assistance to the victims of apartheid. In addition the paper gives background on sanctions, especially the issue of disinvestment for American companies in South Africa, and on the Sullivan Principles, a set of fair employment practices.

CONTENTS

SUMMARY.....	1
BACKGROUND.....	1
THE ISSUE OF ECONOMIC SANCTIONS.....	2
1985 LEGISLATION.....	7
House Action.....	7
Senate Action.....	8
Senate-House Conference.....	10
EXECUTIVE ACTION.....	12
1986 LEGISLATION.....	13
Sanctions.....	14
Future Sanctions.....	16
Provision for Termination of Sanctions.....	17
Reports to Congress.....	17
Multilateral Negotiations.....	18
U.S. Policy on Apartheid.....	18
Assistance to Black South Africans.....	19
State and Local Anti-Apartheid Laws.....	20

SANCTIONS AGAINST SOUTH AFRICA:
ACTIVITIES OF THE 99th CONGRESS 1/

SUMMARY

Increasing turmoil in South Africa led to legislation in 1986 (P.L. 99-440) that imposed sanctions against that country. President Reagan disapproved of many of the sanctions in the bill and attempted to prevent its passage by renewing his Executive orders of 1985, then promising a new Executive order that would impose limited sanctions, and appointing a black ambassador to South Africa. Despite these actions, both Houses of Congress overrode his veto and the bill became law on October 2, 1986.

BACKGROUND

The catalyst for heightened congressional interest was a series of South African developments in 1984-86. The unrest in South Africa since September 1984 began as a reaction by South African blacks to the establishment of a new Parliament where Indian and mixed race citizens in South Africa -- but not blacks -- would share power with whites on a national level. The South African government responded to violence in the black townships by declaring a state of emergency in specific areas in July 1985. The South African government, although showing restraint in some cases, reacted strongly, arresting large numbers of blacks conducting peaceful protests as well as those involved in

1/ This report was originally prepared as Issue Brief 85188, now archived.

violent clashes with police. Labor union leaders were harassed, deaths in detention have occurred, and massive searches of private homes in the townships were conducted. The government also continued its forced relocation policy, although that policy had been reviewed and modified.

Although the state of emergency was lifted in early 1986, a new nationwide emergency was declared in June of that year. Under the new emergency, severe press restrictions were issued and hundreds of anti-apartheid activists were detained. Later the number of detentions rose to several thousand. Blacks in the townships responded with rent and school boycotts, and bombing incidents increased.

THE ISSUE OF ECONOMIC SANCTIONS 2/

U.S. direct investment in South Africa totalled \$1.3 billion at the end of 1985, a substantial drop from \$2.6 billion at its peak in 1981. Outstanding bank loans at the end of 1985 were \$3.2 billion. This investment was about 1 percent of all American foreign investment, but it was valuable to South Africa because it involves critical technology-intensive sectors of the South African economy such as transportation, communications, electronic equipment, computers, nuclear technology, and oil refining and distribution.

In 1985, U.S. exports to South Africa, mainly capital goods such as machinery, were valued at \$1.2 billion, and imports from South Africa, valued at \$2.1 billion, were primarily gold coins (Krugerrands), diamonds, ferrochrome, and platinum group metals.

^{2/} For a detailed discussion of various economic sanctions, their effectiveness, and how they might affect the United States, see IB85117, South African-U.S. Economic Ties: Emerging Issues, by William H. Cooper. See also IB85078, South Africa and the U.S. Banking Community, by Walter Eubanks.

Many observers argue that American financial activities in South Africa have the effect of supporting apartheid, and that U.S. corporations should therefore withdraw all investment in that country. They reason that such a total disinvestment of U.S. holdings there would damage the South African economy and would distance the United States from the South African government. This would force the white minority government to move toward majority rule, eliminate discrimination against blacks and other nonwhites, and eventually redistribute economic power, according to those who take this view. The same argument is made by advocates for broad economic sanctions against South Africa. It is further argued that unless sanctions are used to nonviolently persuade South Africa to change its apartheid policies, revolution and race conflict will be inevitable in South Africa. The conflict would, it is argued, spread to all of southern Africa; it would be internationalized and could well become a threat to world peace.

Many critics of the disinvestment proposals or of economic sanctions argue that such actions would hurt blacks more severely than whites because they would cause a decline in job opportunities for blacks and would increase the white South African government's conservatism and repression of blacks. Such international measures and negative internal consequences would, it is argued, further polarize and inflame the situation, and could well stimulate a very bloody revolution damaging to all parties. Supporters of sanctions answer with the claim that any adverse effects on blacks would be short-term and would be outweighed by the long-term gains.

U.S. corporations arguing against withdrawal say that their continued presence in South Africa can be a force for change. They point to the various codes of conduct developed by international corporations, including the U.S. code known as the Sullivan Principles.

There are other arguments against withdrawal of investment and trade embargoes.

-- With respect to wholly owned direct investment, U.S. businesses in South Africa cannot physically remove their facilities from the country, but would have to sell them to other investors, either Western or South African, or they would be taken over by the South African government. With regard to investment such as partial equity ownerships or debt securities, a buyer would also have to be found. With respect to either form of investment, if international buyers were found, the effect on South African political decisions would not appear to be great. If buyers were not found, disinvestment would imply large losses to U.S. firms. Immediate disinvestment would be possible only with regard to draft accounts in South African banks.

-- There is a lack of support for sanctions from American allies. Imposing sanctions would pose serious economic problems for Britain, and there is not great enthusiasm for withdrawal in France, West Germany, and Japan.

-- Sanctions that produced an economic decline in South Africa would also have an adverse effect on South Africa's economically dependent neighbors. These countries include Botswana, Lesotho, Swaziland, Namibia, Mozambique, and Zimbabwe.

-- Economic sanctions in the past have been ineffective, in part because of difficulties of enforcement. Advocates of this argument note the ineffectiveness of the U.N. sanctions against Rhodesia and the absence of reform of apartheid in the wake of the international arms embargo and U.S. restrictions on bank loans to South Africa.

Despite the complexities involved in a general Western withdrawal of investment or trade embargo, calls for economic sanctions continue within the United Nations, chiefly by Third World countries. Specific sanctions advocated

by international anti-apartheid forces have included an oil embargo, a sports boycott, a cultural boycott involving entertainers, and a ban on air travel to South Africa.

In South Africa, black political activists and some white liberals advocate disinvestment of foreign corporation holdings. Black labor leaders and merchants in the urban areas are ambivalent. Some favor disinvestment, but are more concerned that such action would result in a loss of jobs and business. A prominent exception is Chief Gatsha Buthelezi, the leader of the KwaZulu homeland and prominent black activist. Buthelezi has opposed Western disinvestment on two grounds: (1) it would slow the economic advancement of South African blacks, and (2) it would not be effectively enforced.

The South African government in recent years has actively attempted to upgrade its international image to counteract international pressure for sanctions. South African business, represented by SACCOLA (South African Consultative Committee on Labor) and the Urban Foundation, developed in 1977 a code of employment practice similar to the codes of conduct developed by other countries with businesses in South Africa. But the South African government has also attempted to prepare for any eventual boycott by preparing internal contingency plans, among other measures. It has also made advocacy of disinvestment a crime.

Anti-apartheid groups within the United States have campaigned for disinvestment of American companies and "divestment" of shareholder stocks for several years, and the movement appears to have grown in the late 1970s. Students at American universities have launched campus protest activities to press for divestment or withdrawal of university holdings in corporations doing business with South Africa. Similarly, stockholder actions have attempted to force individual corporations to reduce or terminate their

activities in South Africa. Many anti-apartheid groups have supported legislation proposed in Congress to distance the United States from the appearance of supporting South Africa's apartheid system. Other groups have opposed congressional sanctions proposals.

The Reagan Administration has continued a longstanding U.S. policy of neither encouraging nor discouraging American investment in South Africa. The Administration, however, does support the Sullivan Principles, which were adopted in 1977 on a voluntary basis by a number of U.S. corporations conducting business in South Africa. As of October 1985, 178 of approximately 284 U.S. corporations (plus one European corporation) had signed the code which calls for:

- Nonsegregated work facilities;
- Equal and fair employment practices;
- Equal pay for equal work;
- Increased number of blacks, coloureds, and Asians in management and supervisory positions; and
- Improved quality of employees' lives outside the work environment.

A rating system consisting of nine standards measures the relative progress of each signatory. According to the "Ninth Report on the Signatory Companies to the Sullivan Principles," (Arthur D. Little, Inc., October 25, 1985), 36 companies were making good progress, 89 companies were making progress, and 21 needed to be more active.

There has been some controversy about the Sullivan Principles and the role they play in helping to justify the continued presence of American corporations in South Africa. Some critics point to the fact that all the U.S. firms together employ fewer workers than many South African companies. Other critics feel the code is inadequate because it fails to address the need for

political change. Defenders of the Sullivan Principles are hopeful that they are a positive means toward peaceful change.

1985 LEGISLATION

House Action

The Anti-Apartheid Act of 1985 (H.R. 1460) expressed the opposition of the United States to the system of apartheid in South Africa and calls for certain steps against Pretoria. Specifically, banned bank loans to and new investment in South Africa, banned the sale of South African Krugerrands in the United States, and banned export sales to South Africa of computers, software, and goods or technology intended to service computers. Restrictions on bank loans and computer sales would take effect upon enactment and remain in force until the complete elimination of apartheid. New investment and Krugerrand sales could be waived by the President if one of eight specified conditions were met by the South African government. The waiver would be for one year but could be extended for 6-month periods thereafter each time the South African government meets an additional condition. Waivers would require approval of both Houses of Congress.

On the floor two amendments were agreed to: H. Amdt. No. 63, introduced by Representative Zschau, encouraged the President to consult with other countries on the implementation of future anti-apartheid measures and requires annual reports from the President to Congress on the status of apartheid and human rights in South Africa. H. Amdt. No. 66, introduced by Representative Conyers, would prohibit all nuclear assistance to South Africa, including equipment, material, and technology. Several other amendments were introduced on the floor but were rejected. These included mandatory Sullivan principles,

in violation of that section. Several amendments were introduced on the floor but were rejected. These included (1) imposition of sanctions on signatories of the 1975 Helsinki accords, such as the Soviet Union, if they did not comply with Helsinki's human rights standards, (2) prohibition against economic sanctions if they would result in unemployment for South African blacks, (3) extension of sanctions to the Soviet Union, other countries with serious human rights violations, and countries encouraging terrorist attacks on Americans, and (4) declaration that the African National Congress (ANC) is a terrorist organization and imposition of restrictions on its members.

S. 995 was introduced on April 24, 1985; it was referred to the Committee on Foreign Relations. The Committee reported the bill with an amendment, on June 28, 1985 (S. Rept. 99-99). On July 11, 1985, Senate passed H.R. 1460 in lieu of this measure, but substituted the language of S. 995 for the House language.

Senate-House Conference

In the Senate-House conference on H.R. 1460, three categories of sanctions were accepted. The first was immediate sanctions which included: (1) a ban on the export of computers and software to the South African police or other agencies that administer apartheid; (2) a ban on the sale of nuclear equipment and technology until South Africa signs the Nuclear Non-Proliferation Treaty; and (3) a ban on most new loans to the South African government, except loans for educational, housing, or health facilities available to all races would be allowed.

The second category of sanctions was an immediate ban on sale of Krugerrands which the President could waive if he determined that South Africa had made one of eight specified reforms. The waiver could only be applied if

Congress approved it with a joint resolution. Every 6 months additional waivers could be made with congressional approval if more of the eight reforms were implemented by South Africa.

The third category of sanctions would be imposed 12 months after enactment of the bill if the President determined that South Africa had not made significant progress toward eliminating apartheid. At that time the President could choose from (1) a ban on new investment; (2) denial of most-favored-nation trading status; (3) prohibition against importing South African coal or uranium into the United States; and (4) any other economic or political sanctions. Any additional sanctions would have to be approved by a congressional joint resolution. The President was also required to negotiate with other countries on joint sanctions against South Africa. Other provisions of the conference version of the bill:

- Authorized the minting of new U.S. gold coins;
- Required that all U.S. companies doing business in South Africa implement the Sullivan Principles of fair labor practices;
- Set penalties for violations of sanctions;
- Authorized \$1.5 million annually for human rights organizations in South Africa, \$350,000 of the funds to be used for legal assistance for political prisoners;
- Earmarked funds for scholarships for South African blacks in South Africa (\$8 million in FY86, \$11 million in FY87, \$15 million each year thereafter);
- Directed the U.S. Export-Import Bank to encourage the use of its facilities by South African black-owned businesses;
- Directed the Secretary of State to report to Congress on the health conditions in South Africa's homelands; and
- Directed the Secretary of State to apply the Sullivan Principles of fair employment to the U.S. Embassy in South Africa and to contracts for employment services of South Africans.

The conference version of the bill was cited as the Anti-Apartheid Action Act of 1985. However, to head off the passage of the legislation, President Reagan signed an Executive order, with more limited sanctions.

EXECUTIVE ACTION 3/

On September 9, 1985, President Reagan signed Executive Order No. 12532 imposing limited sanctions against South Africa. The Executive order has the following provisions:

-- It bans new loans except those for education, housing, or health facilities open to all races;

-- It bans the export of computers, computer software, and computer technology to apartheid implementing offices of the South African government;

-- It bans nuclear-related exports defined as goods and technology that would be used in nuclear production or utilization facilities. Export of such goods would be allowed if they are needed for health and safety or international safeguard programs;

-- It implements U.N. Security Council Resolution 558 banning the import of arms, ammunition, or military vehicles produced in South Africa;

-- It orders an end to trade assistance to U.S. companies doing business in South Africa if they do not apply the Sullivan Principles;

-- It directs all U.S. agencies with activities in South Africa to assist black-owned businesses;

3/ For an analysis of how U.S. policy and practices have been affected by President Reagan's sanctions, see CRS Report No. 85-955 E, The Reagan Administration Sanctions Against South Africa: Their Potential Economic Impact, by William H. Cooper.

-- It orders U.S. officials to consult with other parties to the General Agreement on Tariffs and Trade (GATT) on a U.S. prohibition of Krugerrand sales;

-- It orders a study of the feasibility of minting U.S. gold coins;

-- It establishes an "advisory committee" to recommend ways to encourage peaceful change in South Africa;

-- It provides for increased funds for scholarships to black South Africans and for grants to human rights organizations in South Africa, including legal assistance for political prisoners.

On October 1, 1985, the President signed a second Executive order on South Africa (Executive Order No. 12535) that prohibits the import of Krugerrands into the United States. President Reagan extended both Executive orders of 1985 on September 4, 1986.

Feeling that the sanctions imposed by the President's Executive orders were not sufficiently stringent, Congress responded to recent events in South Africa with legislation (P.L. 99-440) that imposed stronger sanctions.

1986 LEGISLATION

The Comprehensive Anti-Apartheid Act of 1986 (P.L. 99-440, H.R. 4868) 4/ was vetoed by the President on September 26, 1986. The House overrode his veto

4/ H.R. 4868 was introduced May 21, 1986; it was referred to the Committees on Banking, Finance and Urban Affairs, on Foreign Affairs, on Public Works and Transportation, and on Ways and Means. The House passed the Dellums Amendment on June 18, 1986, as a substitute for the language of H.R. 4868, as originally introduced. The Dellums amendment would have prohibited all investment in South Africa and cut off most trade with that country, except for import of strategic minerals unavailable from other sources and export to South Africa of medicines, medical supplies, and food. Two other sections of the amendment banning Krugerrand imports and air travel were incorporated into the final Act. (Text of the Dellums amendment is in Congressional Record, June 18, 1986, p. H3908.) On July 30, 1986, the Senate introduced its version
(continued)

on September 29 by a vote of 313 to 83; the Senate overrode the veto on October 2, 1986, by a vote of 78 to 21; the bill became a law on the same day. The Act has three major provisions. It imposed sanctions against South Africa, it put into law U.S. policy on apartheid, and it provided assistance to black South Africans. Following is a summary of the final provisions of the bill.

Sanctions

Title III contains immediate sanctions against South Africa. Five of these codify the provisions of the President's Executive orders of September 9 and October 1, 1985. There are 14 other sanctions in addition to these.

Section 301 bans the importation of Krugerrands other South African gold coins into the United States. The importation of Soviet gold coins into the United States is banned by title V, section 510.

Section 302 bans the import into the United States of arms, ammunition, military vehicles, and the manufacturing data for these weapons.

Section 303 bans the import into the United States of products of South African parastatals except for agricultural products for 12 months after enactment and except for strategic materials for which there are no reliable suppliers.

Section 304 bans the export of computers, computer software, and goods and technology to the South African military, police, and other apartheid enforcing

(continued) of the Comprehensive Anti-Apartheid Act (S. 2701); it was referred to the Committee on Foreign Relations. The Senate bill was reported to the Senate (S. Rept. 99-370) on August 6, 1986. The text of S. 2701 was inserted in H.R. 4868 as it passed the Senate on August 15, 1986. The August 15 version of S. 2701/H.R. 4868 contained a number of additional sanctions that were not in S. 2701 as it was introduced.

agencies. Computers may be exported only if there is an end use verification that they will not be diverted to prohibited agencies.

Section 305 bans loans to the South African government or government-owned entities unless the loans are for educational, housing, and humanitarian purposes. Loans to the private sector are banned under section 310, which prohibits new investments in South Africa.

Section 306 bans air transportation between the United States and South Africa via U.S. and South African aircraft 10 days after enactment and terminates a 1947 air travel agreement between the two countries. Emergency landings are allowed.

Section 307 bans the export to South Africa of nuclear material, component parts, items, substances, or technical data. The exception is health and safety-related items such as pacemakers which contain small amounts of plutonium. This section provides for the ban to be lifted if South Africa becomes a party to the Non-Proliferation Treaty or maintains International Atomic Energy Agency safeguards on all nuclear activities.

Section 308 prohibits U.S. banks from holding deposits of the South African government or parastatals except for diplomatic or consular purposes. This provision is effective 45 days after enactment.

Section 309 bans the import of South African uranium ore, uranium oxide, coal, and textiles, effective 90 days after enactment.

Section 310 prohibits new investment in South Africa, effective 45 days after enactment, but this does not apply to firms owned by black South Africans.

Section 313 terminates the 1946 U.S.-South African treaty that prevents businesses from paying taxes on the same income to both countries.

Section 314 prohibits U.S. Government agencies from contracting with South African parastatals for goods or services except for diplomatic and consular purposes.

Sections 315 and 316 ban the use of U.S. Government funds to promote tourism in or to subsidize trade with South Africa.

Sections 317 and 318 ban the export to South Africa of items on the U.S. munitions list except for items the President determines are being exported only for commercial purposes and will not be used by the South African military and police. The President is required to notify Congress of any sales allowed and Congress has 30 days to disapprove by joint resolution.

Section 319 bans the importation into the United States of South African agricultural products, but title II, section 212 allows the export of U.S. agricultural goods to South Africa.

Section 320 bans the importation of South African iron and steel into the United States.

Section 321 bans the export of oil and petroleum products to South Africa.

Section 322 prohibits U.S. agencies from cooperating, directly or indirectly, with the South Africa armed forces except activities for the purpose of collecting intelligence are allowed.

Section 323 bans the importation of South African sugar and sugar-related products and transfers South Africa's part of the U.S. sugar import quota to the Philippines.

Future Sanctions

Title V provides for possible future sanctions. Title V, section 501 requires that the President report to Congress one year after enactment and

every year thereafter on the progress of the South African government in ending apartheid and establishing a nonracial democracy. If significant progress has not been made, he may recommend one or more of the following sanctions: a ban on the importation of diamonds from South Africa; a ban on the importation of strategic minerals; and a prohibition on U.S. military assistance to countries violating the international arms embargo against South Africa.

Provision for Termination of Sanctions

Section 311 provides for the termination of the immediate sanctions (under title III) or future sanctions (under title V) if:

- (1) Nelson Mandela and other political prisoners are released,
- (2) the state of emergency is lifted and all detainees under the emergency are released,
- (3) democratic political parties are unbanned,
- (4) the Group Areas and Population Registration Acts are repealed, and
- (5) the South African government publicly commits itself to good faith negotiations with truly representative members of the black majority without preconditions.

The President may suspend or modify any of the sanctions if Nelson Mandela and other political prisoners are released and any three of the four remaining conditions are met. Congress may disapprove of any Presidential modification by joint resolution.

Reports To Congress

Title V, sections 502-509 requires the following reports to Congress on:

- Health conditions in the "homelands" of South Africa,
- Strategic minerals imported from South Africa,

- U.S. assistance in southern Africa and what steps can be taken to expand the trade, private investment and transport network of landlocked countries in that area, other industrialized democracies,
- Deposit accounts in U.S. banks held by South African nationals,
- Violations of the international arms embargo on South Africa imposed by U.N. Security Council Resolution 418,
- Communist activities in South Africa, and
- U.S. investigation of allegations that the ANC or other African opposition groups may have violated the Foreign Agents Registration Act.

Multilateral Negotiations

Title IV, section 401 gives the President authority to negotiate international agreements imposing sanctions on South Africa with other countries, and he is required to report to Congress on the on the negotiations. The President is also given the power to modify U.S. sanctions to conform with such international agreements. Section 402 provides the President with the power to retaliate against foreign governments if their policies allow their firms to take commercial advantage of prohibitions against U.S. firms selling their products in South Africa. Section 403 provides that any foreign company taking advantage of U.S. sanctions to supplant U.S. businesses in South Africa would be liable for damages in U.S. courts.

U.S. Policy on Apartheid

Title I sets forth U.S. policy on apartheid. Title III, section 312 explains U.S. policy toward violence or terrorism, including congressional views of the practice of "necklacing," a method by which some township blacks execute

blacks alleged to have cooperated with South African authorities. The victim's hands and feet are bound; then a gasoline-filled tire is placed around his neck and set afire.

Assistance to Black South Africans

Title II provides for assistance to victims of apartheid.

Section 201 earmarks \$4 million annually for FY87, FY88, and FY89 for scholarships for black South Africans.

Section 202 provides \$1.5 million of the Human Rights Fund in FY86 and each year thereafter for nongovernmental organizations in South Africa promoting an end to apartheid. Of that amount \$500,000 is to be used for direct legal assistance and other activities which help political detainees, political prisoners and their families.

Section 203 provides that U.S. Government agencies assist black-owned businesses in South Africa.

Section 204 requires the Export-Import Bank to encourage the use of its facilities by black South African businesses.

Section 205 requires U.S. Government agencies employing South Africans to follow the Sullivan Principles.

Section 206 provides that the U.S. Government lease or buy housing for its black South African employees and provides \$10 million for FY87 for the program.

Section 207 requires all U.S. companies with 25 or more employees in South Africa to implement the Sullivan Principles and provides that no U.S. assistance in export marketing be given to companies who do not implement the principles. Section 208 lists the seven Sullivan Principles which U.S. companies

and the U.S. Government must follow and provides that the President may contract with private groups to assist him in monitoring the compliance with the principles.

Section prohibits assistance to groups which have members who have violated human rights.

Section 210 authorizes the use of the African Emergency Reserve to meet food shortages in southern Africa.

Title V, section 511 earmarks \$40 million for FY87 and each fiscal year thereafter for economic aid to disadvantaged South Africans. Of that amount \$3 million each year would be used for training of trade unionists. These funds cannot be used by organizations financed or controlled by the South African government.

State and Local Anti-Apartheid Laws

Title VI, section 606 gives state and local governments 90 days to bring their anti-apartheid laws into conformity with whatever the Federal Government does, or face the possible loss of Federal funds.