SOUTH AFRICA: United States Economic Sanctions and the Impact on Apartheid

In October 1986, the United States Senate voted to override the Presidential veto of the Comprehensive Anti-Apartheid Act of 1986 ("Act"), sharply rejecting the Reagan Administration's approach of "constructive engagement" in South Africa. Responding to popular pressure from civil rights, church, student and labor groups, Congress refused to follow the direction of the executive branch and took the initiative in setting United States foreign policy. Nor did the disagreement between the executive and legislative branches over the purposes and effects of sanctions end after the bill became law. The history of the first twelve months of the Act, and in particular each side's recently published assessments of its effects, reflect the continued tension between supporters and opponents of sanctions. Nevertheless, the Act retains a symbolic significance which cannot and ought not be easily dismissed.

The Act consists of an import ban on some South African products, an export prohibition on certain United States goods, a series of limits on United States financial activity, assistance for the victims of apartheid and criteria for measuring efforts at political reform. First, the Act bans the importation of South African coal, uranium, textiles, steel, iron and agricultural products. The Act also prohibits the importation of arms, ammunition and military vehicles, as well as any gold coin minted in South Africa, including the gold krugerrand, which had been a popular investment vehicle. With respect to exports, the Act focuses on sales of United States technical goods and energy-producing resources to South Africa. Computer exports are banned to all entities in the South African government unless a monitoring system is established to determine how and by whom the technology will be used. In addition, the Act bars export of all

4. Id.
5. Id.
6. Id. § 320.
7 Id.
8 Id. § 319
9 Id. § 302.
10 Id. § 301.
11 Id. § 304(b)(1). Specifically, the Act bars the use of this technology by the South African military, police, prison system, national security agencies and any agency that has a role in enforcing apartheid Id § 304(a). However, it is still possible for the military or police to use
United States energy-producing products,\(^1\) and prohibits the United States Nuclear Regulatory Commission from licensing the export of nuclear materials to prevent production of nuclear weapons in South Africa.\(^2\)

The Act attempts to curtail financial activity by United States citizens doing business in or with South Africa. Thus the Act limits the extension or approval of credit to the South African government\(^3\) to loans made for education, housing or other humanitarian benefit available to all South Africans on a nondiscriminatory basis.\(^4\) It also restricts new United States investment in South Africa\(^5\) to firms owned by black South Africans.\(^6\) Moreover, the Act forbids any United States depository institution from accepting or holding any deposits under South African government control.\(^7\)

In addition to providing for economic sanctions, the Act provides affirmative relief to the victims of apartheid. Most importantly, the Act provides that not less than $500,000 per year in Foreign Assistance Act funds will be used for direct legal and other assistance to political detainees and their families, and for supporting actions by black-led community groups against forced removals, pass laws and denationalization of blacks.\(^8\) The Act also mandates a “Code of Conduct” analogous to the Sullivan Principles\(^9\) for all United States companies doing business in South Africa that employ more than twenty-five persons.\(^10\)

\(^2\) Comprehensive Anti-Apartheid Act of 1986, supra note 1, § 321(a).
\(^3\) Id. § 307(a)(1).
\(^4\) Id. § 305(a). This ban does not apply to loans or other credit agreements made prior to the enactment of the law. Id. § 305(b)(2).
\(^5\) Id. § 305(b)(1). In addition, the Act instructs the Export-Import Bank of the United States both to encourage South African blacks to use its resources and to insure credit to enterprises that are majority-owned by nonwhite South Africans. Id. § 308(a).
\(^6\) Id. § 310(a).
\(^7\) Id. § 310(c).
\(^8\) Id. § 308(a). Note that this prohibition excludes such deposits in such accounts that are authorized by the President for diplomatic or consular purposes. Id.
\(^9\) Id. § 202(b). The Act also provides funds to support black South African students by establishing a scholarship fund for black South Africans attending universities, colleges and secondary schools in South Africa. Id. § 201(a)(2).
\(^10\) The Sullivan Principles, named after their sponsor, the Reverend Leon Sullivan, originated in July 1978 and are a fair employment code designed for United States companies operating in South Africa. The code calls for desegregation of the workplace, fair employment practices, equal pay for equal work, job training and advancement and improvement in the quality of workers’ lives. See generally E. Schmidt, One Step in the Wrong Direction: An Analysis of the Sullivan Principles as a Strategy for Opposing Apartheid (1985).
\(^11\) Comprehensive Anti-Apartheid Act of 1986, supra note 1, § 207
The Act also provides for a number of standards to monitor the progress of the South African government toward the establishment of a nonracial democracy in South Africa.\textsuperscript{22} The Act lists numerous objectives to serve as evidence of this progress, including: repeal of the state of emergency, release of all political prisoners (including Nelson Mandela), granting permission to all South Africans to form political parties, establishment of a timetable for the elimination of apartheid and establishment of a policy to end military and paramilitary activities aimed at neighboring states.\textsuperscript{23} Depending on these indicators, the President may adjust United States policy toward South Africa.\textsuperscript{24} The Act contains further sanctions that were to go into effect if the situation in South Africa had not made "substantial progress" within twelve months.\textsuperscript{25} In addition, the Act calls on the President to initiate promptly negotiations aimed at concluding a comprehensive anti-apartheid agreement among industrialized democracies.\textsuperscript{26} In this way, Congress attempted to continue to exercise control over United States foreign and human rights policy toward South Africa.

The push for sanctions first gained momentum in late 1984.\textsuperscript{27} Facing sanctions measures sure to pass Congress, the Reagan Administration, in September 1985, modified its policy of quiet diplomacy, known as "constructive engagement," with an executive order imposing limited sanctions on South Africa.\textsuperscript{28} The imposition of sanctions by executive action, rather than by congressional vote, allowed President Reagan to regain the offensive, and the issue lay dormant in Congress for months. South Africa, however, remained a national concern, with Congress especially sensitive to the mounting public pressure because 1986 was an important election year.\textsuperscript{29}

\textsuperscript{22} Id. \S 4.
\textsuperscript{23} Id. \S 101.
\textsuperscript{24} Id.
\textsuperscript{25} Id. \S 501(a). However, the President effectively ignored this provision when he assessed the effects of sanctions in late 1987. See infra note 69 and accompanying text.
\textsuperscript{26} Id. \S 401.
\textsuperscript{27} In November 1984 civil rights groups, religious organizations, labor unions and student groups initiated the national Free South Africa Movement in the United States. The Free South Africa Movement, led by Randall Robinson of TransAfrica, called for sanctions against South Africa in opposition to Reagan Administration policies. See Metz, The Anti-Apartheid Movement and the Populist Instinct in American Politics, 101 POL. SCI. Q. 379, 390.
\textsuperscript{28} N.Y. Times, Sept. 10, 1985, \S 1, at 1, col. 6; Exec. Order No. 12,532, 50 Fed. Reg. 36, 861 (1985). The sanctions enacted were largely drawn from the legislation before Congress. Of the nine provisions contained in the executive order, two could be viewed as specifically oriented towards human rights: the ban on export of computers to "any apartheid enforcing entity" of the South African government, and the prohibition of United States export marketing support to United States firms employing over 25 persons in South Africa which "do not adhere to certain fair labor standards." Economic Sanctions Against South Africa, 22 WEEKLY COMP. PRES. DOC. 379 (Mar. 24, 1986).
\textsuperscript{29} Continued student protests nationwide against college and university investments in companies doing business in South Africa kept media and political attention on the issue.
New sanctions legislation was introduced in Congress on May 24, 1986, immediately following stepped-up attacks by the South African government on the opposition African National Congress ("ANC"). On an expedited schedule, the House Foreign Affairs Committee on June 10 approved a strong sanctions measure, sending it to the House floor for debate. The bill that was passed by the House a week later was the strongest sanctions legislation yet, calling for a comprehensive trade embargo on South Africa which would require all United States companies to pull out of the country within 180 days.

The Administration, meanwhile, sent conflicting signals to Congress and South Africa through denunciations of apartheid mixed with expressions of sympathy for Pretoria. On July 22, President Reagan delivered his first speech devoted exclusively to South Africa. Echoing Pretoria, he argued that "the primary victims of an economic boycott of South Africa would be the very people we seek to help. . . . Most of the workers who would lose jobs because of sanctions would be black workers." The President made it clear that he was prepared to defy Congress rather than put more pressure on South Africa.


30. See N.Y. Times, May 25, 1986, § 1, at 1, col. 3.
32. See N.Y. Times, June 11, 1986, § 1, at 6, col. 1.
35. See Texts of Reagan, Democrats on South Africa, 44 CONG. Q. WEEKLY REP. 1698 (July 26, 1986).
36. Id. Note that this is essentially what South African Foreign Minister Roelof "Pik" Botha had threatened, saying that the South African government would take countermeasures, such as sending migrant workers home, against frontline states in response to Commonwealth sanctions. N.Y. Times, Aug. 6, 1986, § 1, at 1, col. 1.
37. See N.Y. Times, July 23, 1986, at A1, col. 6; A12, col. 1; A14, col. 1. Some observers felt that, ironically, the President had advanced the drive for sanctions by defending his policy of quiet diplomacy so vehemently. See generally Felton, Pressure Builds for New South Africa Sanctions, 44 CONG. Q. WEEKLY REP 1671 (July 26, 1986). The Reagan Administration reiterated its stance against sanctions throughout the summer and into the fall, arguing that sanctions would "erode our capacity to promote negotiations in South Africa." Felton, Administration's Role, supra note 34, at 1384 See generally N Y Times, July 20, 1986, § 4, at 1, col.
On August 15, however, the Senate approved broad sanctions, 84-14.38 The Senate bill39 was not as strong as the House bill in that it did not require all United States companies to pull out of South Africa within 180 days. The House accepted the Senate's version of the sanctions bill, 308-77, on September 12. True to his word, on September 26, President Reagan vetoed it.40 Three days later, the House overrode President Reagan's veto, and sent the legislation back to the Republican-controlled Senate,41 where, on October 2, the Senate voted 78-21 to override President Reagan's veto.42

Initial responses to the vote on sanctions were varied. Most black leaders in South Africa welcomed the apparent turn-around in United States policy.43 At home, several United States corporations announced plans to disinvest from South Africa. Citing deteriorating economic and political conditions, IBM44 and General Motors45 announced the sale of their South African subsidiaries to local groups of investors. The Reverend Leon H. Sullivan applauded their decisions and reiterated his 1985 call for all United States firms abiding by the Sullivan principles to withdraw from South Africa if apartheid were not ended by May 31, 1987.46

38. N.Y. Times, Aug. 16, 1986, § 1, at 1, col. 5. See also Felton, Senate Votes on a Bill to Impose New Sanctions on South Africa 44 CONG. Q. WEEKLY REP. 1860 (Aug. 16, 1986) [hereinafter Felton, Senate Votes]. The vote was also meant to send a signal to the White House that the Reagan Administration's policy was out of step with the United States public; for example, the bill banned textile imports in direct response to—and as a disapproval of—President Reagan's July 29 announcement of a new textile trade pact with South Africa. Felton, Senate Votes, supra, at 1862.

43. Wash. Post, Oct. 16, 1987, at A23, col. 3. Zwalake Sisulu, a South African journalist, described the impact of the announcement of sanctions: "We really felt heartened when the veto of sanctions was defeated. The voting was telecast live here, and people were sticking to their TV sets watching. For years the face of the American government was only the President of the United States. So we felt relieved." Praise for the vote came also from leaders of neighboring states. Robert Mugabe, the prime minister of Zimbabwe, often a harsh critic of the United States, called a special press conference in New York after the vote to thank the American people. Id.


45. N.Y. Times, Oct. 21, 1986, at A1, col. 3. General Motors Chairman Roger B. Smith announced that "this slowness of progress in ending apartheid has contributed importantly to the imposition of sanctions and other actions by governments at all levels in the United States." Two days later, Honeywell and Warner Communications also announced their plans to leave South Africa See N Y Times, Oct 23 1986, at D2, col 5

United States firms improved their public image at home by announcing plans to divest in the weeks following the enactment of the bill, yet critics pointed out that United States business withdrawal from South Africa would not cripple the South African economy, at least not in the short run. As companies began to pull out, South African investors were able to buy up United States subsidiaries at bargain prices. In addition to transferring foreign capital to South African hands, sanctions encouraged domestic production to replace imported products in certain markets. The history of South Africa's oil and weapon industries demonstrates the country's ability to move toward economic self-sufficiency when external circumstances so require. However, not all sectors are able to recover efficiently from the loss of overseas markets.

During the months following the passage of the Act, South African State President P.W. Botha took minimal retaliatory action against the United States. In December 1986, a group of twenty members of Congress and their aides were denied visas to visit South Africa. Pretoria also declared it would no longer permit United States military aircraft to resupply a small civilian satellite-tracking station operated by the United States National Aeronautics and Space Administration unless Washington agreed to allow South African military aircraft to fly to the United States despite the ban under sanctions. However, a spokesperson for the Pentagon stated that, as of February 1988, its operations at the station had not been interrupted.

47. United States executives have become concerned that investment in South Africa exposes them to greater risk of hostile takeovers at home. When institutional shareholders divest from corporations doing business in South Africa, a large number of shares come up for sale. Buyers then have an opportunity to acquire a sizable interest in a company targeted for takeover. Thus, pulling out of South Africa becomes a means for companies to reduce their vulnerability in a hostile market. See Investment Responsibility Resource Center, Report-Back on IRRC's 1986 Visit to South Africa: An Edited Transcript 16 (Sept. 1986).


49. See Brimelow, Why South Africa Shrugs at Sanctions, FORBES, Mar. 9, 1987, at 101. In the case of General Motors, United States managers decided to join in as buyers. South Africans could often improve profit margins after buying a United States-owned firm by eliminating "costly social-responsibility programs implemented to conform with the Sullivan principles." Id. at 101-02.

50. See Brimelow, supra note 48, at 102. In response to the oil embargo of the 1960s and 1970s, South Africa built Sasol, an oil-from-coal plant, which now supplies 70 percent of the country's liquid fuel needs. Id.

51. N.Y. Times, Oct. 6, 1986, at D5, col. 1. This is illustrated by the high-tech industry, in which either South Africa lacks the expertise to manufacture necessary parts or the parts cannot be produced in sufficient volume to be cost-effective. Id.


53. Id. at 8, col. 4; Comprehensive Anti-Apartheid Act of 1986, supra note 1, § 306(a)(1). In addition, President Botha hinted this would be the first of many reprisals which would include cutting off United States grants to black community activists and scholarships to black university students. L.A. Times, Dec. 24, 1986, § 1, at 1, col. 4

The first official assessment of the effects of sanctions came in January 1987, when the Secretary of State's Advisory Committee on South Africa issued its report to Secretary of State George P. Shultz. The Committee's recommendations elaborated the underlying policies embodied in the Act. The Report recommends that the United States adopt a foreign policy which would promote negotiations between the South African government and black majority leaders. To set the climate for successful dialogue, the Committee listed several measures Pretoria should implement. These included the release of Nelson Mandela, Walter Sisulu, Govan Mbeki and all other political prisoners, removal of the ban on the ANC, termination of the state of emergency and release of all detainees held under the emergency provisions.

The Committee emphasized that United States policy should endorse reforms which seek to redress the fundamental inequities of the apartheid system. In addition, the Committee suggested that the United States develop open lines of communication with a variety of South Africa's opposition groups including the ANC, the Pan-African Congress, the United Democratic Front, the Azanian People's Organization, Inkatha and trade unions.

In a move which goes beyond the specific requirements of the Act, the State Department Advisory Committee's report also called on the President to expand the sanctions movement to include United States allies. The report advised President Reagan to collaborate with Britain, Canada, West Germany, France, Japan and Israel to implement a multilateral sanctions program modeled after the October legisla-

---

56. Id. at 9.
57. Id. On November 5, 1987, the South African government freed Govan Mbeki after twenty-three years in prison. The South African government gave no indication that the ANC member's release was in response to pressure from the United States. N.Y. Times, Nov. 6, 1987, at A1, col. 2. Initially, Mbeki's release was seen by anti-apartheid groups as signaling a softening in Pretoria's policy toward the ANC. However, shortly after his release, the police rescinded their decision to allow Mbeki to address a rally. This vacillation suggests disagreement within the government over its strategy with respect to the outlawed organization. N.Y. Times, Nov. 28, 1987, at A6, col. 5.
58. ADVISORY COMMITTEE REPORT, supra note 55, at 9.
59. Id.
60. Id. at 10. Specifically, the committee advocated the restoration of national citizenship to those born or naturalized within the internationally recognized borders of South Africa; repeal of the Group Areas Act, the Native Lands Act and the Population Registration Act; creation of a legal system that will give persons charged with political crimes the protections of due process, the right to a speedy trial and prohibition of detention without cause; the reincorporation of the "independent" homelands into the Republic of South Africa. Id.
61. Id. at 11
62. Id. at 13
These sanctions would go into effect unless Pretoria met certain conditions. In particular, the Committee urged the President to adopt measures to prevent arms and defense materials from reaching South Africa through third party intermediaries like Israel. In the event Pretoria refused to respond to such measures, the report advised the President to mobilize the international community to implement additional measures, such as a multilateral trade embargo and sanctions against newly-mined South African gold.

In accordance with the requirements of the Act, President Reagan issued to Congress in October 1987 his own report discussing the progress made during the year toward ending apartheid. The Act requires that, should the President determine significant progress has not been made toward ending apartheid, he shall recommend additional measures be imposed. The President's report concludes that while sanctions succeeded in registering the United States public's condemnation of Pretoria's racial policies, they did not successfully pressure the government to dismantle apartheid. The President rejected imposing more stringent sanctions, stating that additional measures would be counter-productive and the United States should instead pursue a policy of "creative diplomacy" in concert with our principal Organization of Economic Cooperation and Development partners, Britain, West Germany and Japan.

The President's report relates the imposition of sanctions to the deterioration of the political climate in South Africa. In his report, President Reagan notes that President Botha's campaign platform stressing opposition to United States sanctions and resistance to foreign interference paid off at the polls in May parliamentary elections. The ruling party and conservative opposition gained seats at the expense of liberals. The defection of English speaking voters from the left-of-center Progressive Federal Party to support the ruling party was

63. Id.
64. Id. These conditions included the release of political prisoners, lifting the ban on the ANC and the abolition of the State of Emergency. Id.
65. Id.
66. Id.
68. Communication from the President of the United States, Progress Toward Ending the System of Apartheid, H.R. Doc. No. 100-109, 100th Cong., 1st Sess. (1987) [hereinafter President's Report]. The President's report made no mention of the recommendations of the Secretary of State's Advisory Committee. Id.
69. See Comprehensive Anti-Apartheid Act of 1986, § 501(c); see also supra note 25 and accompanying text.
70. President's Report, supra note 68, at 11
71. Id. at 13.
72. Id. at 6.
73. Id. at 6-7
74. N.Y Times, May 8, 1987. at A3, col. 1
viewed as particularly surprising.\textsuperscript{75} For the first time in forty years Pretoria faces an official opposition party on the right instead of the left.\textsuperscript{76}

According to the Administration and some press reports, sanctions have not significantly hurt the South African economy. The majority of South Africa's export earnings come from gold bullion and strategic metals, which were not covered by the ban.\textsuperscript{77} Pretoria succeeded in finding other export markets for goods previously sold to the United States.\textsuperscript{78} State Department figures indicate the South African economy would have grown just one percent faster in the absence of United States sanctions.\textsuperscript{79} Initially, trade restrictions have made it difficult for Pretoria to reach the five to six percent annual growth rate it needs to keep pace with the annual increase in population and cut unemployment.\textsuperscript{80} But while it is still early to evaluate fully the economic impact of sanctions on South Africa, economists predict that the 1987 setback will be compensated for in the next few years as South African industries increase production to make up for the lack of imports.\textsuperscript{81}

A report issued by the General Accounting Office ("GAO") in October 1987\textsuperscript{82} suggests that the Reagan Administration was less than fully committed to enforcement of the Act's provisions. Although the State Department pursued the Act's stated policy objectives through diplomatic channels,\textsuperscript{83} it interpreted the Act as simply suggesting, but not requiring the United States to convene an international conference to seek multilateral agreements designed to hasten an end to apartheid.\textsuperscript{84} Thus, the Administration voted against additional mandatory sanctions against South Africa in the United Nations Security Council.\textsuperscript{85} The Administration cited two reasons for its vote: 1) the

\begin{footnotesize}
\textsuperscript{76} Id. at A23, col. 1.
\textsuperscript{77} Wall Street J., Sept. 21, 1987, at 24, col. 1.
\textsuperscript{78} President's Report, supra note 68, at 9.
\textsuperscript{79} Wall Street J., Sept. 21, 1987, at 24, col. 1.
\textsuperscript{80} President's Report, supra note 68, at 9.
\textsuperscript{81} N.Y. Times, Oct. 4, 1986, at A1, col. 5.
\textsuperscript{82} GAO REPORT, supra note 11. The GAO conducted and published this review of the Administration's compliance with the Act at the request of Senators Edward Kennedy (D-Mass.) and Lowell Weicker (R-Conn.). Id.
\textsuperscript{83} Id. at 15. Secretary of State Shultz' meeting with ANC President Oliver Tambo in January 1987 was cited as evidence of the Administration's commitment to fostering bonds with black opposition groups. Id.
\textsuperscript{84} Id. at 30. But see Comprehensive Anti-Apartheid Act of 1986, supra note 1, § 401(b). The State Department maintained that § 401 of the Act, in which the international conference is discussed, was not a mandatory provision. This interpretation holds that Congress could not have intended to require the President to convene such a conference, since to do so would create a potential constitutional problem: an infringement upon the executive right to formulate and implement foreign policy programs. GAO REPORT, supra note 11, at 30.
\textsuperscript{85} GAO REPORT, supra note 11, at 30. In February 1987 the United States and Britain vetoed a United Nations Security Council Resolution which would have imposed multilateral
\end{footnotesize}
possibility that any permanent member, including the Soviet Union, could veto lifting the sanctions in the event that the South African government improved its racial policies and 2) a multilateral agreement would impinge on each nation's sovereign power to impose sanctions.86

According to the GAO report, enforcement of the Act was also hampered by loopholes in the legislation and by lack of funds. South African exports of certain strategic materials, for example, slipped through one such loophole and reached the United States via Japanese, Spanish, West German and Taiwanese traders.87 With respect to funding, responsibility for monitoring compliance with the bill was delegated to two agencies, but they did not receive any additional financial support.88 The Act provides that the President may limit imports from any foreign country which benefits from United States sanctions; due to budget constraints, however, little research has been conducted to determine which, if any, nations qualified for punitive measures.89

Congress and the Executive each revealed their respective assumptions about the purpose of the Act when they assessed the impact of twelve months of sanctions. The Administration maintains that sanctions have had a "minimal" impact on the economy of South Africa

sanctions similar to those already adopted by the United States. The resolution was endorsed by the Secretary of State's Advisory Committee. West Germany, a nonpermanent member of the Security Council, joined in the veto and Japan abstained. The resolution would have banned the import of gold coins, military equipment, some mineral and food items, suspended landing rights for South African aircraft, barred investment by companies and banks in South Africa, banned the sale of computers and nuclear technology to Pretoria and called for termination of tax treaties. N.Y. Times, Feb. 21, 1987, § 1 at 3, col. 1. Prior to the vote, ANC president Oliver Tambo urged Security Council members to adopt the UN resolution as a necessary measure to increase pressure on Pretoria. Wash. Post, Jan. 9, 1987, at A28, col. 1.

86. GAO REPORT, supra note 11, at 30.
87. Id. at 5. The 1986 Act banned import of uranium ore and its processed derivative, uranium oxide, but it failed to mention a further derivative gas, uranium hexafluoride. See Comprehensive Anti-Apartheid Act of 1986, supra note 1, § 309. Thus uranium ore and oxide were shipped to Europe where they were converted into uranium hexafluoride and then imported to the United States. Upon arrival in the United States, the gas is processed into fuel rods for use in nuclear reactors both at home and abroad. The issue of whether uranium hexafluoride is covered by sanctions is currently being litigated in the case of Dellums v. Nuclear Regulatory Commission (D.C. Cir. 87-1531). See GAO REPORT, supra note 11, at 5-6.
88. GAO REPORT, supra note 11, at 3. The Treasury Department's United States Customs Service and the Commerce Department's Office of Export Enforcement enforce export prohibitions. Of the 17 investigations of import fraud which the Customs Service has conducted, 13 remain open. Out of 14 export cases, seven are still active, three await decisions whether or not to prosecute and one conviction has been obtained for an attempt to export technical manuals for the C-130 aircraft to South Africa through Argentina. Id.
89. Id. at 18. The United States Trade Representative, which has been charged with monitoring other nations' commercial gains from the bill, has just one person covering trade developments in all of Africa. This means that South Africa is only reviewed on a part-time basis. Id.
and have failed to lead Pretoria to institute reforms to dismantle racial segregation.\textsuperscript{90} The President points in particular to the chilling effect trade restrictions have had on relations between Washington and Pretoria as evidence that sanctions have stifled the Executive's ability to conclude effective negotiations with the South African government.\textsuperscript{91}

However, as the GAO report suggests, the potential for trade restrictions to strike a severe blow to the South African economy was diluted both by the scope of the ban and by its lack of enforcement. The Administration criticizes the Act as ineffective, yet its potential economic impact was severely curtailed by the limited scope of the goods banned under the bill.\textsuperscript{92} The Act did not cover some of the most important sources of wealth to South Africa, such as diamonds and newly-mined gold. While opponents of sanctions find vindication for their position in the failure of sanctions significantly to impair the health of the economy, it is important to keep in mind that the measures which would have exerted a far greater impact were never employed.\textsuperscript{93}

Despite the legislation, and particularly the Act's push for coordinated anti-apartheid efforts between the United States and its allies,\textsuperscript{94} United States policy continues to rely on persuasion rather than confrontation to bring Pretoria into negotiations with black opposition groups.\textsuperscript{95}

The Administration's record of compliance with the Act illustrates the difficulties Congress faces when it tries to legislate a foreign policy which runs counter to the expressed intentions of the Executive.\textsuperscript{96}

\textsuperscript{90} President's Report, supra note 68, at 1. Secretary of State Shultz and Assistant Secretary of State Crocker, both in charge of executing United States policy toward South Africa, were vocal opponents of sanctions. Wash. Post, Oct. 5, 1986, at A22, col. 1.

\textsuperscript{91} See President's Report, supra note 68, at 4. State Department officials report that the South African whites' angry reaction to sanctions has made it difficult them to communicate with their South African counterparts. United States protests of detentions and inquiries into human rights abuses which once prompted quick response are now delayed or remain unanswered. Wall Street J., Sept. 21, 1987, at 24, col. 1.

\textsuperscript{92} See supra note 26 and accompanying text. The State Department Advisory Committee's endorsement of this approach further underscores the Administration's isolation in its decision not to pursue multilateral sanctions. See Advisory Committee Report, supra note 55, at 13.

\textsuperscript{93} On September 29, 1987 Secretary of State Shultz delivered a speech in which he reiterated the Administration's conciliatory policy of constructive engagement toward the South African government. See Wash. Post, Sept. 30, 1987, at A21.

\textsuperscript{94} The effectiveness of sanctions as an implement of foreign policy also depends on the context. While sanctions provide a useful vehicle for expressing United States disapproval of apartheid, in the South African context they appear to be an awkward implement to achieve United States policy goals. Sanctions proved particularly useful to pressure Iran into releasing the American hostages, but in that instance the goal was clear and compliance relatively easy. In the present case, the guidelines for lifting the trade restrictions are tied more to general social
While the utility of a trade embargo against South Africa is questionable in terms of bringing about a rapid end to apartheid, supporters of the bill note that their goal was far broader. The Act signaled congressional desire to end to the United States policy of "constructive engagement," improved the image of the United States in the eyes of the rest of Africa, and called on the international community to work in concert to increase pressure on President Botha. The message conveyed by the adoption of the sanctions bill serves to distance the United States from the apartheid regime in the eyes of both South Africans and the international community as a whole. That the United States has gone on the record and adopted comprehensive sanctions is significant. The Act gives new credibility to the opponents of apartheid. The potential of the movement to capitalize politically on this legislation should not be undervalued.

Laurel Fletcher
Luke Cole
Alison McMorran

reform than to specific policy aims, thereby reducing the strategic effectiveness of sanctions. See generally B. COHEN, IN WHOSE INTEREST? INTERNATIONAL BANKING AND AMERICAN FOREIGN POLICY 200-01 (1986).


98. In addition, Congress continues to use its legislative power to assume a stronger sanctions position than the Executive is willing to adopt. In an eleventh hour session in December 1987, Congress passed as part of the deficit-reduction bill a provision which denies tax credits to American companies doing business in South Africa. Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, § 10231, 101 Stat. 1330, 1418. Under the new law, taxes paid in South Africa by subsidiaries of United States companies cannot be credited on a dollar for dollar basis against the companies' tax bills in the United States. The American Chamber of Commerce in Johannesburg estimates the effect of the bill will be to increase taxes paid on profits earned in South Africa from 57.5 percent to 72 percent. N.Y. Times, Dec. 25, 1987, at D1, col. 2.