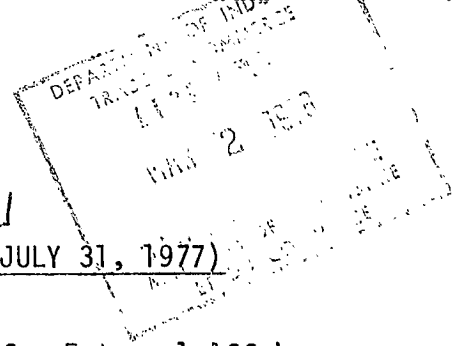


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International economic boycotts. 1976/77

Press Release
Feb 9/78



INTERNATIONAL ECONOMIC BOYCOTTS
FIRST SEMI-ANNUAL REPORT (OCTOBER 21, 1976 TO JULY 31, 1977)

On October 21, 1976, the Secretary of State for External Affairs enunciated Canadian Government policy on international economic boycotts. The policy statement outlined the Government's opposition to discrimination and boycotts based on race, national or ethnic origin or religion. It further outlined the Government's commitment to adopt measures denying its support or facilities for various kinds of trade transactions in order to combat any discriminatory effects which such boycotts may have on Canadian firms and individuals.

The types of transactions against which the Government was directed to take action are those which would, in connection with the provisions of any boycott, require a Canadian firm to: engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual; refuse to purchase from or sell to any other Canadian firm; refuse to sell Canadian goods to any country; or refrain from purchases from any country. These measures, of course, do not apply to any boycotts accepted by Canada, the only example of which is Rhodesia.

IMPLEMENTATION OF CANADIAN POLICY

1. Department of Industry, Trade and Commerce

In the context of this policy and in relation to transactions in countries which are known to have in their laws and regulations such economic boycotts, officials of the Department of Industry, Trade and Commerce, including Trade Commissioners posted abroad, are under standing instructions (see departmental directive dated January 21, 1977 - Appendix I) to determine before responding to requests for assistance whether Canadian trade transactions involve unacceptable boycott undertakings. In those instances where a firm is known to have agreed to an unacceptable boycott provision for a specific transaction, departmental services are withheld or withdrawn from the firm with respect to that particular transaction.

It is necessary to make a clear distinction between boycotts themselves and related undertakings which may, but do not necessarily, contravene Canadian policy. The Canadian Government policy is not directed against a boycott *per se*, but only against certain kinds of undertakings or agreements that may be related to an economic boycott.

The Department continues to bring trade opportunities in the countries in question to the attention of the Canadian business community. However, in doing so, officials also bring to their attention Canadian Government policy on international economic boycotts.

Because business transactions can be of many different types and because there is considerable variety in the kinds of boycott provisions encountered, the boycott policy is administered on a case-by-case basis. Boycott clauses are encountered at various stages of business undertaking. Most often they are contained in tender documents qualifying firms to do business, in import documents, in contracts and in letters of credit.

In determining whether boycott-related requests contravene the Canadian Government's policy, the following guidelines are applied:

Primary boycott undertakings: These generally relate to the refusal of a boycotting country to accept any goods or components of a boycotted country, either directly or through third parties. This, at times, involves a negative certificate of origin, i.e. certification that the goods in question are neither made in a boycotted country nor contain components from a boycotted country. Several boycotting countries now require positive certificates only, i.e. certification that the goods are of Canadian origin and in instances where foreign components are involved, the foreign source and the percentage share are identified. Since there is no discrimination against Canadian citizens or between Canadian companies, certificates of origin, whether negative or positive, are deemed not to contravene the Canadian Government policy.

Secondary boycott undertakings: Secondary boycott clauses in general terms may require a Canadian company, as a pre-condition for doing business in boycotting countries, to limit its commercial activities with respect to another country. Since this could involve a relationship separate and distinct from the transaction in question, and would require the Canadian company to restrict its commercial freedom, such undertakings are deemed to be at variance with the Canadian Government policy.

Tertiary boycott undertakings: These clauses in general terms may require an exporter to certify that goods or services are not procured in whole or in part from companies with which a boycotting country refuses to do business. Because Canadian firms could in this way be limited in their ability to do business with other Canadian companies, tertiary boycott undertakings are deemed to be at variance with the Canadian Government policy.

Questionnaires: Clauses requiring a person or firm to furnish information about another person's race, religion, sex or national origin where such information is sought for boycott enforcement purposes are also deemed to be at variance with the Canadian Government policy.

Umbrella boycott undertakings and fact vs intent clauses:

(a) Some general boycott clauses require Canadian firms to either abide by the laws and regulations of the country in which they are doing business, or to abide by the general rules of the boycott; since there is reasonable doubt as to the intent of these clauses, Canadian firms entering into such

undertakings are required, in order to receive continued support from the Canadian Government, to include in the contract or supporting documentation an addendum provision along the following lines: "... that in meeting the terms of this contract, the sellers are not required to discriminate against any person on the basis of race, religion or national or ethnic origin, and are not required to refuse to purchase from or sell goods and/or services to any other Canadian company, agency or individual, sell Canadian goods and/or services to any country or purchase goods and/or services from any country, except that it would be the right of the purchaser to refuse to accept goods, components and/or services of specified non-Canadian origin that would be prohibited entry if imported directly ..."

(b) In clauses which are statements of fact, e.g. certification that the company does not have a branch office or plant in a boycotted country, but which could be interpreted as having the effect of limiting a firm's future actions (i.e. establishing a branch office or plant in the boycotted country) and thereby bring about those results which the policy was designed to prevent, the Canadian firm is asked to make a unilateral declaration to the Canadian Government along the lines of the addendum in item (a).

The "unilateral declaration" is also requested whenever Canadian firms encounter boycott clauses generally referred to as shipping clauses. These clauses generally requiring certification that "... the carrying steamer is not included in country X blacklist" are a standard feature of letter of credit and import documentation of several boycotting countries. While theoretically such undertakings might be viewed as having tertiary boycott connotations, the realities of Canadian shipping, whereby it has been determined that there are no Canadian registered bottoms engaged in trade in areas where economic boycotts are implemented, makes it impossible for a Canadian firm to engage in discriminatory actions against other Canadians in its choice of carrying vessel. Therefore, since these clauses neither limit the freedom of a Canadian firm to do business with other Canadian persons or firms nor limit the freedom of Canadian firms to do business in a third country, it has been ruled that "shipping clauses" do not violate the Government's policy. Nevertheless, to provide assurances on these points, Canadian firms encountering the shipping clause will be required as a condition for receiving Government services, to provide the "unilateral declaration".

The processing of letters of credit, shipping or other documents by Canadian companies (including banks, Chambers of Commerce, Boards of Trade, etc.) does not contravene the policy. It has been determined that in carrying out their functions, these institutions do not themselves partake in discriminatory practices nor do their actions limit the freedom of a Canadian company to deal with another Canadian company or with another country. However, in instances where a Canadian bank or agency is directly involved in a transaction (such as financing a project or underwriting a loan), such activity if accompanied by an unacceptable boycott undertaking would be deemed to be in contravention of Government policy.

2. Department of External Affairs

The Department of External Affairs follows a policy of denying all but essential consular services (e.g. assistance to travellers in difficulty) for a transaction when an unacceptable boycott clause comes to the attention of its officials. Certificates of religious affiliation requested to comply with regulations that discriminate against Canadians of certain faiths are not provided.

ADMINISTRATION OF CANADIAN POLICY

1. Department of Industry, Trade and Commerce

Approximately 5000 requests were made for departmental support or services concerning commercial activity in boycotting countries in the period October 21 to July 31. Most of these requests for assistance were associated with preliminary stages of endeavour (providing marketing information, names of potentially interested importers, invitations to bid, etc.). Approximately 500 related to particular business possibilities but only in an early stage of development where, for example, specific contracts, etc. were not in place. The number of identifiable and specific transactions approximated 80. Of these, 24 involved boycott-related undertakings.

In one case departmental support was denied for a contract for which financial support had been requested. An informal opinion of the boycott clause submitted revealed it to be at variance with Government policy. In this instance, the firm in question rather than be faced with the withdrawal of government support chose to have the \$10 million contract fulfilled by an offshore subsidiary. While legal implications preclude the public release of the name of the contravening firm since the undertaking was not in Canadian commerce, measures have nevertheless been taken to effectively deny further government support to the Canadian parent for the transaction in question. In a second case, departmental support and services were withdrawn from a Canadian company which had made an unacceptable boycott-related undertaking in a letter of credit containing a shipping clause. However, as the Government chose later to amend its interpretation of the "shipping clause" for the reasons outlined in the preceding section, government support and services were subsequently reinstated to the firm.

The remaining 22 possible transactions were examined by the Department at the exporter's request to determine whether a requested boycott undertaking would be in contravention of Canadian Government policy. The companies concerned were advised to amend or remove the offending section or, where there was doubt, qualifying undertakings were required as described above. In all cases, so far we are aware, Canadian companies have succeeded in amending the offending clause or have refused the business.

In general terms the most common offending clause brought to the Department's attention referred to provisions prohibiting use of certain vessels and/or to requests for information on a company's relationship with a boycotted country. Less common have been requests for undertakings concerning dealings with other companies with whom a boycotting country refuses to do business. There were no instances where Canadian companies were asked about the race, religion or ethnic or national origin of their directors, owners, managers or employees.

Except for the cases referred to above, all statistics are approximations. While the Canadian Government policy on international economic boycotts came into effect on October 21, 1976, statistical procedures were not established until January 1977. Additionally, there is considerable multiple-counting with requests for assistance relating to the same transaction being serviced by several parts of the Department.

A decision has been taken to remove Algeria, Morocco, Tunisia and Sudan from the list of countries requiring cooperation with an international economic boycott. It has been determined that these countries only enforce the primary boycott of Israel and in this light do not require boycott undertakings by foreign suppliers as part of their commercial process.

2. Department of External Affairs

In no instance was it found necessary for the Department of External Affairs to deny services or support. There were no requests for certificates of religious affiliation.

SECOND SEMI-ANNUAL REPORT

The next semi-annual report on the Canadian Government policy on international economic boycotts will cover the period of August 1, 1977 to January 31, 1978 and will be tabled in the House of Commons in early March.

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Date January 21, 1977

From Deputy Minister

Subject International Economic Boycotts

Date le 21 janvier 1977

De Sous-ministre

Sujet Boycottages Economiques Internationaux

1) On October 21, 1976 the Honourable Don Jamieson in the House of Commons enunciated Canada's policy on international economic boycotts. This policy provides that Governmental support and services will be denied or withdrawn from any company, agency or individual with respect to any transaction which would, in connection with the provisions of any boycott, require Canadian companies, agencies or individuals to engage in discrimination based on race, religion or national or ethnic origin, to refuse to purchase from or sell to any other Canadian company, agency or individual, to refuse to sell Canadian goods to any country or to refuse to purchase goods from any country.

2) In the context of this policy and in relation to transactions with respect to countries which are known to have in their laws and regulations such economic boycotts, all officials of the Department of Industry, Trade and Commerce in Ottawa, in regional offices in Canada, and in foreign posts are instructed to withhold all Departmental support and services in connection with a specific transaction wherever it is found that, in connection with that transaction, a Canadian company, agency or individual has made undertakings that are in contravention of this policy. In each case of a request for normal Departmental support, officials shall ascertain from the company, agency or individual concerned, whether any boycott requests have been agreed to and if in an examination it is determined that the boycott provision contravenes the above policy on international economic boycotts assistance should be withheld or withdrawn and in all such

1) Le 21 octobre 1976, l'honorable Don Jamieson a exposé à la Chambre des communes la politique du Canada en ce qui concerne les boycottages économiques internationaux. Selon cette politique, le Gouvernement refusera son appui et ses services à toute société, tout organisme et toute personne qui entreprennent une transaction qui, relativement aux dispositions d'un boycottage, obligerait des entreprises canadiennes, des organismes ou des personnes à poser des actes discriminatoires fondés sur la race, la religion, la nationalité ou l'origine ethnique, à refuser d'acheter ou de vendre à une autre entreprise ou personne canadienne ou un autre organisme canadien, à refuser de vendre des produits canadiens à un autre pays ou à refuser d'acheter des produits à un autre pays.

2) Dans le contexte de cette politique et lorsqu'il s'agit de transactions avec des pays dont il est connu que leurs lois et réglementations contiennent de tels boycottages économiques, tous les fonctionnaires du ministère de l'Industrie et du Commerce à Ottawa, dans les bureaux régionaux au Canada et dans les postes à l'étranger doivent refuser tout appui et service ministériel relativement à une transaction particulière si l'on juge que, relativement à cette transaction, une entreprise canadienne, un organisme ou une personne ont conclu des affaires qui vont à l'encontre de cette politique. Si une société, un organisme ou une personne demande l'appui normal du Ministère, les fonctionnaires doivent vérifier si le demandeur a acquiescé à une ou plusieurs demandes de boycottage et si par la suite une évaluation conduit à la conclusion qu'une telle acceptation va à l'encontre de la

instances the firm and country involved, shall be reported to the appropriate geographic bureau, Department of Industry, Trade and Commerce, Ottawa. A public report will be made semi-annually.

3) Support and services referred to above shall include fairs and missions programs, the Programs for Export Market Development, the General Adjustment Assistance Program and the direct services normally rendered in Ottawa, in regional offices in Canada and in foreign posts. The withholding of this assistance shall relate only to the particular transaction in question.

4) In extending usual support and services to companies, agencies or individuals entering into transactions in countries where economic boycotts are in effect, officials will first obtain from the company, agency or individual assurances that the transaction concerned does not contravene Canadian Government policy.

5) Countries where such economic boycotts exist include: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen Arab Republic, People's Democratic Republic of Yemen, Algeria, Morocco, Sudan, Tunisia and Mauritania. Countries may be added or removed from this list from time to time.

6) A separate directive regarding consular matters will be issued by the SSEA for the guidance of those Industry, Trade and Commerce officers abroad who have consular responsibilities.

7) The above instructions in no way affect the operation of the U.N. Rhodesia regulations.

8) Enquiries relating to the above, including questions as to whether particular undertakings would be in contravention of Canadian policy, should be addressed to the Pacific, Asia and Africa Bureau, Department of Industry, Trade and Commerce, Ottawa K1A 0H5.

politique ci-haut mentionnée sur les boycottages économiques internationaux, toute assistance devrait être retenue ou cessée et en de telles circonstances tous les cas doivent être signalés au bureau international concerné du ministère de l'Industrie et du Commerce à Ottawa, avec le nom de la société et du pays en cause. Un rapport en sera publié deux fois par année.

3) L'aide et les services susmentionnées comprennent les programmes des foires et missions, de développement des marchés d'exportation, d'aide générale de transition et les services directs rendus ordinairement à Ottawa et aux bureaux régionaux au Canada ainsi que dans les postes à l'étranger. L'aide sera refusée seulement pour la transaction en question.

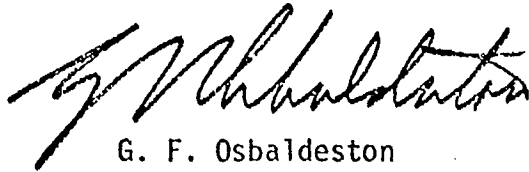
4) En accordant l'aide et les services ordinaires aux sociétés, aux organismes et aux personnes qui font des affaires dans les pays où les boycottages économiques sont en vigueur, les fonctionnaires doivent recevoir l'assurance de la société, de l'organisme ou de la personne en question que la transaction faite ne va pas à l'encontre de la politique du gouvernement canadien.

5) Les pays où un boycottage économique existe inclut: Bahrain, Egypte, Irak, Jordanie, Kuwait, Liban, Libye, Oman, Qatar, Arabie Saoudite, Syrie, Emirats Arabes Unis, République Arabe du Yémen, République Populaire Démocratique du Yémen, Algérie, Maroc, Sudan, Tunisie. Des pays peuvent être ajoutés à cette liste ou en être retirés de temps à autre.

6) Une directive concernant les questions consulaires sera émise par le Secrétaire d'Etat aux Affaires extérieures à l'attention des agents du ministère de l'Industrie et du Commerce à l'étranger qui ont des responsabilités consulaires.

7) Les instructions ci-haut mentionnée n'affectent d'aucune façon la mise en vigueur des règlements de l'O.N.U. vis-à-vis la Rhodésie.

8) Les demandes de renseignements sur la directive précédente y compris des questions pour savoir si une transaction particulière va à l'encontre de la politique du Canada, doivent être envoyées au Bureau du Pacifique, de l'Asie et de l'Afrique, ministère de l'Industrie et du Commerce, Ottawa K1A 0H5.



G. F. Osbaldeston

*Tabled in the
HofC Feb 9/78
by dw Horner*

Export Development Corporation
International Economic Boycotts
First Semi-Annual Report
for the period October 21, 1976 to July 31, 1977

1. Purpose:

The purpose of this report is to inform the Minister of Industry, Trade and Commerce of the policies and practices of Export Development Corporation in the matter of international economic boycotts.

2. Background:

In response to the Government's statement of October 21, 1976, enunciating its position on international boycotts, Export Development Corporation has reviewed its programmes and has made several policy decisions to ensure that the Corporation complies with Government policy in that its support does not extend to commercial contracts containing discriminatory boycott clauses.

In this connection, EDC's Executive Committee drafted a policy on international boycotts on October 29, 1976. Subsequent to this the President of EDC and the Minister of Industry, Trade and Commerce met on November 15, 1976, to adapt the Government's statement of October 21, 1976 to the specifics of EDC's business activities. As a result of this meeting refinements were made to the draft policy and Export Development Corporation's Board of Directors approved the Corporation's policy at the November 24, 1976 Board of Directors' meeting.

3. EDC Policy

At the November 24, 1976, Board meeting EDC's Board of Directors approved the following policy to be applied to all its facilities:

- I In assessing exporter's sales contracts for export credits insurance claims purposes, for loans and for foreign investment guarantees, EDC will not assist in transactions where a Canadian firm would:
- i) engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual;
 - ii) refuse to purchase from or sell to any other Canadian firm;
 - iii) refuse to sell Canadian goods to any country; and
 - iv) refrain from purchases from any country.

With regard to (iii) and (iv) the following applies:

- a) A boycott is the classic boycott, i.e. where in a sale or other contract a Canadian firm has agreed that it will not sell any goods or services to, or buy any goods or services from a certain country;
- b) EDC would not treat as a boycott a clause in a sale or other contract in which a Canadian firm agrees that for that contract it will not buy goods or services from a certain country, since a buyer has the right to specify what he will purchase;
- c) A statement of fact by a Canadian firm that it does not sell to or buy from a certain country is not in itself a classic boycott clause; and
- d) The assessment of whether a classic boycott results from a clause in a sale contract stating that the laws of the buyer's country apply to the contract is beyond EDC's capacity in administrative terms, the more so because of the difficulty of determining the validity of a legal opinion thereon, if obtainable.

II With respect to export credits insurance policies in particular:

- i) The effect must be that no claim whatever can be paid in respect of a sale subject to a boycott clause. The earlier practice had been to confine exclusions to claims arising from a boycott clause.
- ii) Accordingly, EDC's Insurance Policies must henceforth require that the exporter has not accepted a boycott condition. Furthermore, the exporter must understand that failure to disclose renders the Insurance Policy void.
- iii) EDC's boycott exclusion cannot be retroactive since EDC cannot unilaterally alter an existing Insurance Policy; thus, Insurance Policies in force prior to this policy decision will not be affected.
- iv) If the contract of sale is silent about the laws of the buyer's country, EDC will not search out those laws.

4. Statement of Current Practice

The Export Development Corporation has never provided financing or investment insurance for projects containing undertakings which contravene the Government policy. In the case of export credits insurance, endorsements have, since October 29, 1976, been attached to export credits insurance policies involving Arab countries, to the effect that no claims shall be paid in the case of a contract containing an unacceptable clause (a copy of the standard

endorsement is attached to this report as Appendix I). Such an endorsement is necessary as under such policies, the Corporation only sees the documentation if a claim is received from the exporter. A similar practice is not followed in the case of investment insurance or financing. In both these facilities the Corporation sees all the documentation relating to a particular transaction prior to the Corporation's entering into an investment insurance contract, or loan agreement. Thus in both these facilities the Corporation is able to screen out all transactions which would contravene the Government policy. From time to time, however, the Corporation may not see all the documentation relating to a financing or investment insurance transaction and these are dealt with on a case-by-case basis in a similar manner to that for export credits insurance.

In instances where firms have encountered boycott clauses referred to as shipping clauses, the Corporation's actions have been consistent with Government policy. As there are no Canadian registered bottoms operating in areas where economic boycotts are in effect, it is recognized that there is no possibility of a Canadian firm engaging in discriminatory action against other Canadians in its choice of carrying vessel, even if the Canadian firm is prevented from shipping on blacklisted carriers. Further assurance of this is provided by the Corporation's requirement that firms taking out export credits insurance accept the Corporation's standard endorsement relating to boycotts.

The Export Development Corporation's relationship with the Canadian business community is strictly contractual. In this sense no support for a particular export or investment transaction is forthcoming from the Corporation until a loan agreement, investment insurance contract or export credits insurance policy is in force. In the case of financing and investment insurance, prior to entering into a contractual relationship the Corporation is made privy to the particulars of the transaction. If, during the course of the assessment of a transaction, an unacceptable boycott provision is found, EDC would not support the transaction and no contractual relationship would exist between EDC and the exporter or investor for that transaction. In the case of export credits insurance, because EDC does not have any prior knowledge of individual transactions, an endorsement is attached to the insurance policy which precludes from cover any transaction containing an unacceptable boycott clause. Thus EDC has not supported transactions where Canadian firms have had to abide by an unacceptable boycott clause. Therefore, if EDC were to divulge the details of a transaction it had not supported it would be providing commercially confidential information on a transaction in which it has no contractual interest. As well as not appearing to be the role of EDC, such an act would seriously undermine the confidence and trust placed in EDC by the Canadian business community. This would impair the function of EDC as a commercial enterprise which would be to the extreme detriment of Canada's trade and investment activity.

The following is a statistical summary of the Corporation's activity from October 21, 1976 to July 31, 1977, in countries enforcing unacceptable economic boycotts. In that period two loans totalling \$124.2 million were signed under Section 29 of the Act. Two contracts of insurance totalling \$7.5 million were issued by the Foreign Investment Guarantees Division under Section 34. Export credits insurance was issued under both specific contract and whole turnover policies. Twenty-four specific contract policies were issued under Sections 24 and 27 with a total insured volume of \$149.5 million. Whole turnover policies (Section 24) were activated by 34 companies to cover a declared volume of shipped goods totalling \$67.3 million. Neither the transactions financed by EDC nor the investments insured by the Corporation contained boycott clauses and the standard boycott endorsement was attached to all the whole turnover and specific contract policies issued for export credit insurance.

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APPENDIX ICONFIDENTIAL

ENDORSEMENT attached to and forming part of Export Development Corporation Specific Government Contract Policy No. _____ dated _____ in the name of _____.

WHEREAS the Government of Canada has affirmed its opposition to discrimination and boycotts based on race, national or ethnic origin or religion; and has further advised that measures would be taken to deny its support or facilities for various kinds of trade transactions in order to combat any discriminatory effects which any such discrimination and boycotts may have on Canadian firms or individuals, and

WHEREAS in keeping with the above the Board of Directors of Export Development Corporation has decided that it will not provide insurance cover for the risks in any contract or transaction that is subject to clauses or provisions which so discriminate:

THEREFORE this Policy shall not cover any contract or transaction that would require the Exporter to

- (a) engage in discrimination based on the race, national or ethnic origin or religion of any person;
- (b) refuse to purchase from or sell to any other Canadian firm or individual; or
- (c) refuse to sell any goods and services to, or buy any goods or services from any country, except that a buyer may define the country of origin of the goods and services for his own purchase, or refuse to accept goods, components, and/or services of specified non-Canadian origin that would be prohibited entry if imported directly.

EXPORT DEVELOPMENT CORPORATION

(NAME OF EXPORTER)

