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INTERNATIONAL ECONOMIC BOYCOTTS  
THIRD SEMI-ANNUAL REPORT (FEBRUARY 1, 1978 TO JULY 31, 1978)

Mr. Speaker, I hereby table the third semi-annual report of my Department and the Export Development Corporation outlining the administration of the Government's policy on international economic boycotts during the period February 1, 1978 to July 31, 1978.

Government services and assistance are denied to companies accepting boycott provisions contrary to Canadian Government policy. On August 21, 1978 the Government announced its intention to introduce legislation in the current session of parliament to require all Canadian companies or individuals, whether or not they ask for or receive government support, to report requests made in connection with a business transaction for information or for undertakings related to a foreign economic boycott.

The Government has also decided that negative certificates of origin, those which certify that goods, services or components do not originate in a specified country, are unacceptable. Certification of origin must be positive in nature, i.e. stating the countries from which goods, services or components do originate. This has been in effect since October 1, 1978, except in the case of contracts that have been concluded prior to that date.

Statements of fact on commercial dealings, past or present, with any country are permitted, but statements of intention not to engage in such dealings in the future continue to be unacceptable. To make this policy more effective, the Government has decided that "statements of fact" on past or present commercial dealings which ensue from a boycott request must be accompanied by a clause establishing clearly that such "statements of fact" are not an indication of intent restricting the company's future actions.

Earlier this year particular attention was focussed on the immigration, passport, visa and employment requirements of certain boycotting countries. Guidelines have been drawn up by my Department to provide direction to Canadian businessmen. These are outlined on page 5 of the report.

ADMINISTRATION OF CANADIAN GOVERNMENT POLICY

1. Department of Industry, Trade and Commerce

Approximately 1,750 requests were made for departmental support or assistance concerning commercial activity in boycotting countries in the period February 1 to July 31. Most of these requests for assistance were associated with preliminary stages of endeavour such as for example, the provision of information relating to a country's business conditions, names of potential importers or agents, sources of financing, etc. Approximately 680 related to particular business possibilities at an early stage

of development where, for example, specific contracts, etc. were not in place.<sup>1</sup> The number of identifiable business transactions was 92. Of these, 38 contained one or more boycott-related undertakings of a type that contravened the Canadian Government's policy on international economic boycotts.

In no instance was it necessary during this period to deny government support and assistance to any firm. Three firms, for various boycott-related reasons, declined to pursue opportunities; the remaining 35 firms removed offending boycott clauses or were able to provide qualifying undertakings as required by the Canadian Government policy.

The offending clause brought to the Department's attention most frequently referred to requests for information on a company's relationship with a boycotted country. Less frequent requests have been those requiring a firm's general compliance with the rules and regulations of international economic boycotts. Other clauses encountered referred to provisions prohibiting the use of other companies with which a boycotting country refuses to do business. One transaction included a request that the "... supplying firm not display "the Star of David or Hexagonal star in the Packaging"". Since such a request is deemed to discriminate against Canadian citizens or firms on the basis of religion, the firm in question was requested to delete the clause from the commercial documentation. The company succeeded in having such a clause removed. The Department is not aware of any instances where Canadian companies were asked about the race, religion or ethnic or national origin of their directors, owners, managers or employees.

In August 1978, the Government of Kuwait eliminated several boycott-related procedures which had caused difficulty for Canadian companies doing business in Kuwait. The new regulations provide for positive certification in letters of credit, customs documentation and shipping documents. The standard requirements in Government contracts whereby a company had to sign a clause agreeing to abide by the boycott of Israel have also been dropped.

## 2. Department of External Affairs

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

## GUIDELINES FOR IMPLEMENTATION OF CANADIAN GOVERNMENT POLICY

### 1. Department of Industry, Trade and Commerce

In relation to transactions with countries which are known to have in their laws and regulations economic boycotts contrary to Canadian

<sup>1</sup> There is some multiple counting inherent in this statistic, since requests for assistance relating to the same transaction are being serviced by several parts of the Department, its regional offices in Canada and trade posts abroad.

Government policy, 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 1) 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.

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 undertakings. Most often they are contained in tender documents qualifying firms to do business, in import documents, in contracts and letters of credit.

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

#### Primary boycott undertakings

The Canadian Government recognizes the right of nations to impose boycotts on other nations and to refuse to accept goods or components from a boycotted country either directly or through third parties. Furthermore, a Canadian exporter, in shipping goods to a boycotting country may comply with the shipping document requirements of that country with respect to: (i) country of origin of the goods; (ii) the name of the carrier; (iii) the route of the shipment.

After October 1, 1978 information concerning the country of origin of the goods must be stated in positive, non-exclusionary terms. "Negative" certificates of origin, i.e. those that indicate that the goods and services do not originate in a specific country, are unacceptable after this date. The information with respect to the names of carriers or routes of shipment may continue to be negatively stated.

#### 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. Such undertakings are unacceptable as they could involve a relationship separate and distinct from the transaction in question, and would require the Canadian company to restrict its commercial freedom.

### 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. Tertiary boycott undertakings are deemed unacceptable because Canadian firms could in this way be limited in their ability to do business with other Canadian companies.

### Questionnaires

Clauses requiring a person or firm to furnish information about the race, religion, sex or national origin of their personnel or of any other person, are also unacceptable unless justified for reasons unrelated to the boycott.

### Umbrella boycott undertakings, fact vs intent clauses, and shipping clauses

(a) Some general boycott clauses require Canadian firms to either abide by the laws and regulations of the boycotting country with explicit reference to that country's boycott laws, or to abide by the general rules of the boycott. As there is reasonable doubt as to the intent of these clauses, Canadian firms entering into such undertakings are required 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, 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, restrict commercial investment or any other economic activity in 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) Clauses which are statements of fact, for example, 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. by prohibiting the establishment of a branch office or plant in the boycotted country) and thereby bringing about those results which the policy was designed to prevent, must be accompanied by a clause establishing clearly that such statements of fact are not an indication of intent.

(c) Shipping clauses generally requiring certification that "... the carrying steamer is not included in country X blacklist", are a standard feature of the letters 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, make it impossible for a Canadian firm to engage in a discriminatory action 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 firms nor limit the freedom of Canadian firms to do business with 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 are required in order to adhere to Canadian policy, to provide a unilateral declaration to the Canadian Government similar to the addendum cited in item (a).

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.

#### Immigration, Passport, Visa and Employment Requirements

Any Canadian may comply with the immigration, passport, visa or employment requirements of a boycotting country, and with requests for information from a boycotting country made to ascertain whether such individual meets requirements for employment within the boycotting country provided that the information furnished relates solely to the applicant or a member of his family, and not about any other Canadian person, including one's employees, employers or co-workers. Canadian companies recruiting personnel for assignments in boycotting countries are advised not to provide information about one's employees or executives, but instead to allow any potential applicant to respond on his own to any request for information.

#### 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.

Export Development Corporation  
International Economic Boycotts  
Third Semi-Annual Report  
for the period  
February 1, 1978 to July 31, 1978

Throughout the period under review the Export Development Corporation continued to operate within the boycott guidelines set in place by its Board of Directors. EDC's boycott policy was originally adopted in response to the Secretary of State for External Affairs' statement in the House on October 21, 1976 in which it was made clear that neither the Government nor its institutions are to offer support for transactions in which Canadian firms are required to abide by unacceptable boycott undertakings. EDC's Board is satisfied that during the third reporting period, February 1, 1978 through July 31, 1978, the Corporation has not provided its services for any transaction in which unacceptable boycott clauses were found.

Corporate Policy and Practice

EDC's Board of Directors has agreed that the Corporation will not provide any of the Corporation's services in transactions where a Canadian firm would be required to

- (a) engage in discrimination based on the race, national or ethnic origin or religion of any Canadian or other individual;
- (b) refuse to purchase from or sell to any other Canadian firm;
- (c) refuse to sell Canadian goods to any country;
- (d) refrain from purchases from any country; or,
- (e) restrict commercial investment or other economic activity in any country.

It was further agreed that EDC must continue to recognize both a buyer's right to specify what he will purchase and a sovereign state's right to exclude the products or services of another country. These latter are primary boycott considerations recognized and accepted by the Corporation and the Canadian Government.

In line with this broad statement of policy EDC has adopted guidelines and procedures to ensure that the Corporation's administration of policy remains consistent with the objectives of the Board and the Canadian Government.

With respect to the EDC's loans and investment guarantees programmes, corporate staff are generally able to review all the documentation relating to a particular transaction prior to the Corporation's entering into an investment insurance contract or financing agreement. This enables EDC to screen out all transactions that include boycott clauses in contravention of Government and Corporate policy. Where unacceptable clauses are discovered, the firm is informed that EDC's services cannot be provided unless and until such clauses are amended or deleted. From time to time, however, the Corporation may not see all the documentation relating to a financing or an investment insurance transaction, and therefore may not be absolutely certain that unacceptable boycott clauses are not present. In these cases the Corporation's standard boycott endorsement is attached to the contract. The endorsement (attached as Appendix 1) states that the Corporation's services will not be provided in any contract or transaction that requires the Canadian firm to agree to unacceptable boycott clauses. During the third boycott reporting period the Board is satisfied that EDC has not provided loans or investment insurance for transactions with boycott clauses in contravention of policy.

The procedure adopted for export credits insurance has been to attach the Corporation's boycott endorsement to all contracts covering shipments to boycotting countries. This is necessary because export credits insurance contracts are signed in advance of arrangements to ship, making it impossible for the Corporation to review either the exporter's commercial contract with the buyer or the shipping documents for boycott clauses unless and until a claim is made by the exporter. The endorsement makes it clear, however, that no claim will be honoured by EDC if an unacceptable clause is discovered in shipping or other documents subsequent to the signing of EDC's insurance contract. This effectively denies the Corporation's export credits insurance to any client who agrees to an unacceptable clause. The Board is satisfied that this procedure is being followed and that during the third reporting period export credits insurance claims have not been paid in any case where unacceptable boycott clauses were discovered.



Since the Corporation's boycott policy was formulated, EDC has introduced a fourth package of services for Canadian exporters. It includes performance guarantees, cross consortium liability insurance and surety bond insurance. As is the case with export credits insurance, the standard boycott endorsement is attached to all such policies which involve boycotting countries. Once again, the Corporation's Board of Directors is satisfied that this procedure is effectively denying EDC's services for any transactions involving unacceptable undertakings.

EDC's Board, in line with Government policy through the period February 1, 1978 to July 31, 1978, determined that statements of fact regarding past or present relations with a given country could be distinguished from statements of intent to discriminate. The former, if taken at face value, are acceptable as they impose no obligation on the Canadian firm to alter its future pattern of business dealings. The latter are clearly unacceptable inasmuch as they would limit a firm's freedom to do business in, or with, a given country in transactions unrelated to the deal in question. The Corporation recognized, however, that boycotting nations may pressure Canadian firms to limit their future dealings with a given country once a statement of fact has been made. As an additional assurance that Canadian firms making such statements had no intent to agree to unacceptable boycott provisions, the Corporation, during the third reporting period, required them to sign the Government's unilateral declaration. The declaration (attached as Appendix 2) provided EDC with a written commitment that the firms in question will not allow such statements to limit their future activities.

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. Since these clauses neither limit the freedom of Canadian firms 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. 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.

During the third reporting period February 1, 1978 through July 31, 1978 the Corporation continued to accept either positive or negative certificates of origin. This was in line with both Government policy at that time, and the Board's recognition of the buyer's right to specify what kind of goods will or will not be accepted.

EDC's services are provided to the Canadian business community on a contractual basis. The policy and practices outlined above ensure that the Corporation does not enter into contracts for transactions in which unacceptable boycott clauses are found. In the case of export credits insurance, where EDC has no prior knowledge of individual transactions, and in cases where problem clauses raise any doubt about a firm's intent, appropriate measures are taken to ensure that EDC's contractual support will be withheld if companies are found in contravention of boycott policy.

Prior to EDC's decision to sign a contract the Corporation becomes privy to a great deal of information, the confidentiality of which may be crucial to the Canadian firm. Even the fact that a given firm is competing for a project may be a matter of secrecy in the business community. If EDC were to provide any of the details of its preliminary discussions with these firms, it would be violating a fundamental business principle: that of commercial confidentiality. It would also be providing information about transactions in which it has no contractual interest. EDC could not continue to function effectively if it were required to reveal this information. The Board has thus agreed that provision of such information does not appear to be the Corporation's role. If it were, the confidence and trust placed in EDC by the Canadian business community would be seriously undermined. This would impair the function of EDC as a commercial enterprise, to the extreme detriment of Canada's export trade and investment activity.

EDC's policy and procedures ensure that the Corporation does not support transactions where Canadian firms are required to abide by unacceptable boycott clauses. The Corporation does, however, offer its support to firms which have won contracts without such clauses. The following is a statistical summary of the Corporation's support for business transactions which took place in boycotting countries in the period February 1, 1978 - July 31, 1978 and which were free from unacceptable boycott provisions. In that period no loans were

signed under either Section 29 or Section 31 of the Export Development Act. Under the Foreign Investment Guarantees Programme (Section 34 of the Act) four contracts of insurance were issued with a total maximum coverage of \$19.8 million. Export credits insurance and surety cover were issued on both specific contract and whole turn-over policies under Section 24 and 27 of the Act. Six specific contract policies were issued with a total insured volume of \$872 million and eight surety policies were issued with a total insured value of \$267 million. Whole-turnover policies were activated by 33 Canadian companies to cover a declared volume of shipped goods valued at \$28.3 million.

The Board of Directors of the Export Development Corporation has indicated its commitment to fully comply with the Government's policy on international boycotts. Any changes to Government policy subsequent to the third reporting period (February 1, 1978 - July 31, 1978) will be reflected in EDC's policy and will be detailed in subsequent reports.

**Export Development Corporation**

**Société pour l'expansion des exportations**



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APPENDIX I

CONFIDENTIAL

Specific contract policy,  
whole turnover policy, et al.

~~ENDORSEMENT~~ attached to and forming part of Export Development Corporation  
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)

\_\_\_\_\_  
\_\_\_\_\_

APPENDIX 2

Industry Trade and Commerce's Unilateral Declaration

(used during the third reporting period

February 1, 1978 - July 31, 1978)

" We can assure you that in meeting the terms of this contract, the seller, (name of Canadian firm) is not required to discriminate against any person on the basis of race, religion or national or ethnic origin, and is 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."

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