

EUROPEAN PARLIAMENT

Working Documents

1982-1983

8 April 1982

DOCUMENT 1-83/82

R E P O R T

drawn up on behalf of the Committee on External
Economic Relations

on the ~~the~~ significance of economic sanctions, partic-
ularly trade embargoes and boycotts, and their
consequences for the EEC's relations with third
countries

Rapporteur: Mr H.J. SEELER

By letter of 29 June 1981 the Committee on External Economic Relations requested authorization to draw up a report on the significance of economic sanctions, particularly trade embargoes and boycotts, and their consequences for the EEC's external relations.

By letter of 28 September 1981 the President of the European Parliament authorized the committee to draw up a report on this subject. The Committee on Economic and Monetary Affairs was asked, on 28 September 1981, to deliver an opinion.

On 20 October 1981 the Committee on External Economic Relations appointed Mr Seeler rapporteur.

The Committee considered the draft report at its meetings of 27 October 1981, 23 February 1982 and 31 March 1982 and adopted the motion for a resolution and explanatory statement at the latter meeting by 14 votes to 1 with 2 abstentions.

The following took part in the vote:

Sir Fred Catherwood, chairman; Mr van Aerssen and Mr Seal, vice-chairmen, Mr Seeler, rapporteur; Mr Alavanos, Mrs Baduel Glorioso, Mr Bonaccini (deputizing for Mrs Poirier), Lord Harmar-Nicholls (deputizing for Sir Fred Warner), Mr Mommersteeg, Mrs L. Moreau, Lord O'Hagan, Mrs Phlix (deputizing for Mr Jonker), Mrs Pruvot, Mr Rieger, Mr Rogers (deputizing for Mr Radoux), Mr Stella and Mr Welsh.

The opinion of the Committee on Economic and Monetary Affairs is to be published separately.

C O N T E N T S

	<u>Page</u>
A. Motion for a resolution	5
B. Explanatory statement	9
I. Definition of terms	9
(a) Embargo	9
(b) Boycott	10
(c) Blockade	11
II. The legal status of sanctions	11
III. Sanctions imposed by, or affecting, the European Community	15
(a) The 'pipe embargo'	15
(b) The Arab boycott of Israel	16
(c) The embargo imposed on Rhodesia	17
(d) The trade embargo imposed on Iran	21
(e) The grain embargo imposed by the US on the USSR after the invasion of Afghanistan	24
(f) The COCOM lists	26
(g) Sanctions imposed on South Africa	28
(h) Sanctions imposed on Poland and the USSR ..	31
—	
IV. Economic sanctions over the last few decades: the lessons to be drawn	32
(1) Reasons for the failure of sanctions which have their origins in the target country	35
(2) Economic and political repercussions of sanctions	36
(3) Remaining potential applications of economic sanctions	38

The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the significance of economic sanctions, particularly trade embargoes and boycotts, and their consequences for the EEC's relations with third countries.

The European Parliament,

has, in formulating the measures contained in paragraphs 1-8 below, been guided by the following considerations:

- (a) trade embargoes and boycotts are sanctions recognized in international law,
- (b) economic sanctions have a history of failure,
- (c) economic sanctions have proved to be thoroughly unsatisfactory as a means of achieving foreign policy objectives,
- (d) hardly any state can be induced by economic pressure to make radical changes in its policies. Such pressure is much more likely to result in the hardening of political attitudes while the national economies of the state imposing sanctions and of third countries not directly involved are very often as seriously affected and badly damaged as the national economy of the state on which sanctions have been imposed,
- (e) there are many ways of circumventing and undermining economic sanctions. However stringently they are policed, it is impossible to guarantee that they are implemented absolutely consistently and without exception, at least in peace-time,
- (f) for sanctions to be effective, the state on which they are imposed must be dependent on the import and export of the boycotted goods and services, and must be unable-or at least fail-to reduce its need for such goods and services or to find substitutes for them,

- (g) the effects of sanctions - the disruption of trade, the loss of markets, the threat to the economic survival of firms and undertakings, and hence to jobs - often inflict financial losses and irreparable economic damage on a scale out of all proportion to the desired or possible economic objectives,
- (h) economic sanctions often have the effect of rallying the people of the state subjected to them around their country and their government, creating a surge of solidarity which would not otherwise have been possible and enabling the state to greatly reduce its dependence on international trade by such means as increased industrialization or more intensive farming. Thus sanctions can often eventually strengthen, rather than weaken, the position of the state on which they are imposed,
- (i) economic sanctions can have a powerful emotional impact, helping to create a mood of national emergency. This may in turn very often lead to public support for preventive measures being taken within certain limits by the government against its political opponents,

The European Parliament

Having regard to these findings and considerations, and to the report of the Committee on External Economic Relations and the opinion of the Committee on Economic and Monetary Affairs (Doc. 1-83/82), decides as follows:

- 1. The Commission and the Council are urged not to impose or associate themselves with any general and hence, in practice, unenforceable economic sanctions;
- 2. If the imposition of economic sanctions becomes necessary on political grounds, such sanctions should focus on specific selective measures and careful consideration should be given to the prospects of their being successfully enforced and to their possible consequences;
- 3. Such sanctions directed at specific areas of the economy should, however, be used very sparingly; if such sanctions are decided upon by the institutions of the European Community, however, the following principles should be observed:

- the sanctions should be concentrated on precisely defined areas of the economy and products in which the EC and its allies have a strong market position (e.g. markets for gold or diamonds, 'hard' currency loans and highly specialized technology),
 - financial measures, particularly with regard to 'hard' currency loans, must be organized in conjunction with financial and monetary centres outside the Community,
 - the necessary measures must be introduced and implemented both swiftly and vigorously,
 - exemptions must be almost completely ruled out,
 - the unconditional support and full cooperation of all the EEC Member States and other countries involved in the imposition of sanctions must be established before any such measures are taken, and ensured for as long as sanctions are in force by the prompt and detailed exchange of information,
 - efforts must be made to ensure that the economic losses and damage incurred as a result of the imposition of sanctions are borne in equal measure by all the states and national economies involved,
4. All sanctions motivated by the race or religion of natural or legal persons are to be condemned on principle and all national and economic institutions are urged to refrain from doing anything which could encourage or facilitate the imposition of such sanctions;
 5. The Council and the Commission must press for the inclusion of a non-discrimination clause analogous to that included in the Community's cooperation agreements with the Maghreb and Mashreq states in any negotiations on trade and cooperation agreements or financial protocols with third countries;
 6. The Council and the Commission should, when pursuing such political objectives as the elimination of racial discrimination throughout the world, exert stronger pressure on European firms working and investing in other countries, for example South

Africa, to observe the EC Code of Conduct and

- abolish any internal racial or religious discrimination,
- refrain from any pay differentials based on race or sex,
- make strenuous efforts to improve the rights of those workers who are subject to racial discrimination,

7. The Commission is urged to draw up guidelines for commercial policy towards states whose political actions are unacceptable to the EC, and which therefore ought to be induced to change their policies;
8. Its President is instructed to forward this resolution and the report of the committee to the Council and the Commission, the parliaments of the Member States and the Foreign Ministers of the Member States meeting in political cooperation.

EXPLANATORY STATEMENTI. Definition of terms

1. The terms sanction, embargo and boycott are often confused and used interchangeably. It should be noted that 'trade sanctions' is a general term covering embargoes, boycotts and blockades. All are measures intended to achieve political and economic objectives by forcing other states or their governments to take, or refrain from, certain actions. History provides countless examples of sanctions of this kind: the 'Continental System' or blockade of the UK by France under Napoleon, the sea blockade against the Central Powers by the Allies in the First World War, the League of Nations sanctions against Italy during the Abyssinian war, and the UN embargo imposed on the People's Republic of China and North Korea during the Korean war.

a) Embargo

2. An embargo can be defined as a foreign trade restriction ordered by one or more states, generally in the form of a ban on trade with one or more states or with persons or firms operating on the economic territory of this or these states. The purpose of an embargo is to induce the 'target' state or states to take or refrain from a specific political course. The embargo is therefore an instrument of foreign policy, as the result of an initiative at national level. Economic relations with one or more states are thereby broken off for political reasons.

Any embargo is an aggressive variant of international economic policy, intended to introduce deliberate discrimination into economic transactions. Its purpose is to damage the economy of another state in order to pressure it into changing its political behaviour. It implies that the imposing state is prepared to suffer damage to its own economy in consequence.¹

¹ Detlev Christian Dicke: Die Intervention mit wirtschaftlichen Mitteln im Völkerrecht (Intervention by economic means in international law), Baden-Baden 1971, and Rolf Hesse: Theorie und Politik des Embargos (The embargo, theory and policy), Cologne 1973.

3. Embargoes fall into four categories: export embargoes, import embargoes, capital transaction and financial embargoes, and embargoes on transport services. These can be subdivided further into partial embargoes, which affect only one or two sectors of the economy, and total embargoes. Partial embargoes can be broken down, in turn, into quota embargoes-which impose specific quantitative limits on trade-and selective embargoes, which only affect specific items. Total embargoes can be broken down into total trade embargoes, in which imports and exports are suspended, and total embargoes proper, in which all trade is broken off.

b) Boycott

4. A boycott is not to be confused with a trade embargo. A boycott can be applied to any aspect of social, cultural and economic life at national or international level, and is therefore much broader in scope than an embargo. The boycott and the embargo have certain features in common: their aim is economic discrimination against, and damage to, a specific third party to force that party to take or refrain from certain actions. The crucial difference between an embargo and a trade boycott is the fact that the former is imposed by the state. An embargo is a matter of national policy, a measure taken by the state, whereas a boycott can be conducted by private individuals, firms, unions etc., acting on their own initiative in the exercise of their rights of free association and the freedom to enter into contracts.

Nevertheless it is common usage, in the context of international relations, to refer to the economic sanctions imposed on one state by another as a boycott. The terminological distinction between the two concepts is not always very precise.

5. There are three kinds of boycott: the primary boycott aims to prevent the citizens of a country from engaging in business with the citizens of another country, whether directly or indirectly. A secondary boycott, on the other hand, means the extension of trade restrictions to third countries or persons not directly involved in the dispute. One such example is the trade boycott imposed by Arab states on firms and businessmen in third states who engage in business with Israeli citizens.

A tertiary boycott is directed against natural or legal persons that do business with firms which are the targets of a secondary boycott, e.g. are on the Arab League's 'black list' because they, in turn, do business with Israeli firms.

c) Blockade

6. A blockade is not to be confused with an embargo or a boycott. The legal concept of the blockade derives from an act of sea warfare which entails cutting off access to the enemy's coasts by means of warships: this permits the blockading state to control the shipment of goods outside its own territorial waters. In time of war, the imposition of a blockade can bring an enemy's foreign trade to a complete standstill.

II. The legal status of sanctions

7. The embargo, the boycott and the blockade are sanctions recognized in international law. The Charter of the League of Nations provided (Articles 16 and 17) that all member states of the League should immediately break off all state and private economic and financial relations with any state, or nationals of a state, which had infringed the charter of the League by going to war, regardless of whether the state was a member. Since mandatory provisions of this kind proved to be unworkable in practice, and the sanctions imposed by the League seldom achieved the desired results, the Charter of the United Nations preferred a more cautious formula. Under Article 41 of the UN Charter, where a breach of the Charter has led to war or the threat of war the Security Council can oblige all members of the UN to impose mandatory economic sanctions against the offending state.

In practice, however, this rule has never been applied up to now. The embargo imposed on Albania and Bulgaria in 1949 was recommended by the General Assembly, not the Security Council. The same applies to the recommendation that an embargo should be imposed on the People's Republic of China and North Korea, during the Korean war.

8. Economic sanctions are instruments of foreign policy and economic policy. As an institution acknowledged in international law, sanctions are to be interpreted either as an act of reprisal or a gesture of solidarity with international organizations or alliances. Economic sanctions work - or are intended to work - by the withdrawal of goods and services, which has the effect of forcing the target country to seek alternative supplies, provoking structural change, and exacerbating unemployment and inflation. They are also intended to affect production by producing a shortage of raw materials and spare parts, and causing important machines and plant to be idle as a result.

9. One of the main justifications for the admissibility of the embargo and the boycott in international law is the principle of the freedom to enter into contracts. It follows from the concept of state sovereignty that a state has the right to enter or refrain from entering into trade or supply contracts. The same right is available to every citizen and every legal person. But it also follows from this right that embargoes and boycotts imposed in peace-time should not affect existing contractual commitments. So, for example, the US went ahead with its previously agreed grain deliveries to the USSR in spite of the grain embargo it had imposed on that country after its invasion of Afghanistan.

10. Secondary and tertiary boycotts directed against natural or legal persons not directly involved in disputes which have religious, racial or other origins are of particular interest. A few states have introduced laws expressly prohibiting boycotts of this kind. For example, the US Export Administration Amendments of 1977, which became law on 22 June 1977, tightened up the anti-boycott provisions of the Export Administration Act of 1969. This prohibits practically all acts and practices which could serve to implement or support the Arab States' secondary and tertiary boycott. France passed a law against economic boycotts in 1977. This law prohibits any discrimination on grounds of race, religion or nationality which leads to the disruption of economic activities. The law has little or no practical effect, however, because of another provision that such action is not punishable if it is the result of government instructions. The British attempt to bring in legislation on the subject foundered when the Foreign Boycotts Bill 1978 failed to get through all its parliamentary stages.

11. The European Community's response to secondary and tertiary boycotts has been threefold:

- (a) The cooperation agreements with the Maghreb and Mashreq countries includes a non-discrimination clause which, if strictly applied, prohibits both sides from conducting secondary or tertiary boycotts. However the Maghreb States, in an exchange of letters, weakened this clause by claiming that laws which had entered into force before the agreement was signed, and matters considered vital to the security interests of the states involved, were not affected by it. A similar fate befell the equivalent provisions of the cooperation agreements with the Mashreq countries. It should be noted, however, that the obligation placed on both sides by the non-discrimination clause cannot be waived by unilateral statements by either party. The derogation in favour of protecting national security interests echoes Article 21 of the GATT agreement. But, apart from this proviso, the Arab signatories to these agreements cannot, in effect, conduct secondary boycotts against any persons or firms in the EC states. The financial protocols concluded with the Mahgreb and Mashreq countries also expressly state that participation as regards projects and measures financed by the Community 'shall be open on equal terms to all natural and legal persons' of the states party to the agreements.
- (b) Also, the EC has invoked the competition rules of the EEC Treaty against such cases of boycott. The Commission has always taken the view that the rules contained in Articles 85 and 86 of the Treaty prohibit the imposition of any kind of boycott or other discrimination by third countries on European firms or citizens on grounds of race, religion or nationality.

(c) The Commission is also endeavouring to counter boycotts of this kind by the application of the Treaty rules regarding the harmonization of legislation. The Commission is anxious to afford European citizens and firms greater protection against such boycotts by introducing EC directives to bring the great variety of national provisions into alignment. One of its principal concerns is to prevent third countries from singling out for boycotts the Member State or States whose legislation is least restrictive in this area.

12. Neutral states are in a special position in so far as the legal status of sanctions is concerned. Their neutral status in international law requires them to refrain from taking sides in international conflicts. Their commercial policy towards other states must be based on the principle of 'business as usual'. Their neutral status does not oblige them, on the other hand, to step up their trade with a nation which is subject to an embargo or other sanctions in order to counteract the effects of such sanctions. But in fact neutral states often become the focus of 'sanction-busting' operations, since trading companies in these states are subject to no geographical restrictions and little or no control. Nowadays as in the past, sanctions present neutral states with a great temptation to draw benefit for themselves and their economies from other countries' mutual disagreements. Many examples could be quoted of neutral states profiting considerably from situations of this kind.

To sum up, embargoes and boycotts are legitimate sanctions in international law, subject to the reservations mentioned above. But before drawing any conclusions for the commercial policy of the European Community, we should first consider eight important cases of sanctions which the EC was directly or indirectly involved in imposing, or by which it has been affected.

III. Sanctions imposed by, or affecting, the European Community

a) The 'pipe embargo'

13. In 1963 the NATO Council unanimously decided that it would henceforth cease to supply steel pipes to the USSR because such pipes served strategic as well as economic purposes, since they could be used, among other things, to improve the supply of fuel to the troops. The Council decision touched, therefore, on an area already covered by the embargo on strategically important products supervised by the Coordinating Committee for East-West Trade Policy (COCOM).

As a result of the pipe embargo, the export of pipes, chiefly from the Federal Republic of Germany, dropped from 255,400 tonnes in 1962 to 8,300 tonnes in 1964, and to nil by the end of 1966. But the embargo was undermined, principally by Sweden and Japan. Sweden's exports of pipes to the USSR were:

1962	7,000 tonnes
1963	60,000 tonnes
1965	48,300 tonnes,

while Japan's were:

1962	14,300 tonnes
1965	142,000 tonnes.

The UK also ignored the pipe embargo, despite the unanimous decision by the NATO Council. The UK did not pick up any extra orders, however.

14. The USSR reacted to this embargo by converting the pipelines it was constructing to larger-gauge pipes, which it began to produce itself in greater quantities. Stepping up the production of pipes imposed a strain on the supply of raw materials and led to increasing shortages in other sectors of industry such as mechanical engineering. It also noticeably slowed down the rate of pipeline construction thus delaying the development of the oil and gas industry and the construction of irrigation works. There

was no significant reaction from the USSR, however. The exercise demonstrated that a specific embargo of this kind is pointless, particularly if the states imposing it show a lack of solidarity. The brunt of the NATO decision was borne by the Federal Republic of Germany and some of those who spoke of the need to protect the strategic interests of the Alliance were much more concerned with protecting themselves against competition from that country and, to an even greater extent, from the USSR, an increasingly significant exporter of energy. The pipe embargo was therefore lifted at the end of 1966. The export of pipes to the USSR was resumed in the course of the following year.

b) The Arab boycott of Israel

15. As early as 1946 the Council of the Arab League launched a permanent boycott of 'Zionist' goods and products. In 1951 the boycott was extended to third states in an effort to prevent them from supporting Israel. The anti-Israel boycott central office in Damascus sought to give impetus to the boycott by compiling so-called 'black lists' of Western firms whose trade with Israel was helping to develop the economic and military potential of that country. This secondary boycott was accompanied, in some cases, by a tertiary boycott intended to restrain firms from doing business with other firms which were on the black list.

After the Arab-Israeli war of 1973 the Arab states stepped up the boycott once again. The number of American firms black-listed by the Damascus boycott office rose from 785 in 1974 to 25,000 in 1976.

16. The EC has taken no firm measures to put an end to this boycott, apart from inserting the above-mentioned 'non-discrimination' clauses in the cooperation agreements with the Mahgreb and Mashreq countries, and continuing to insist on the binding nature of the competition rules contained in Articles 85 and 86 of the Treaty of Rome. Former Commissioner Cheysson, addressing the European Parliament on behalf of the Commission on 15 May 1975, declared that the boycott ran counter to the spirit

and principles of the cooperation which the Community was endeavouring to establish with the Arab states. The Commission also announced that it would take firm action on every case of discrimination reported to it by the Member States or their firms, undertakings or private citizens. The Commission has not so far received any complaints about the effects of the boycott.

17. In fact the Arab boycott against Israel has been weakened to a considerable extent. This is due to the fact that the Arab League had drawn up only an outline agreement on how the boycott was to be operated; each member state was left to pass a law of its own containing more detailed provisions. Self-interest and pragmatism tended to prevail over anti-Zionist ideology since Arab businessmen were often reluctant to stop doing business with firms which were also doing business with Israel. Coca-Cola, Xerox, Ford and various big hotel chains and airlines fell into this category.

In 1978, Kuwait was the first Arab League state to remove some of the restrictions on trade with the USA. Kuwait decided that in future it would no longer require proof that a firm had no business relations with Israel, not least because no such proof could be forthcoming without the active cooperation of the public authorities in the other state. Experience shows that the Arab boycott of Israel can only be implemented if the industrialized countries' public authorities or chambers of commerce actively cooperate in it. But if, for example, chambers of commerce are reticent about so-called 'Israel clauses' and refuse to accept discriminatory clauses in business documents, it is almost impossible for an Arab state to find out which firms do business with Israel or might be liable to a secondary or tertiary boycott for other reasons.

c) The embargo imposed on Rhodesia

18. In 1953 Great Britain, acting against the wishes of the black population, formed a federation from the three protectorates of Northern Rhodesia, Southern Rhodesia and Nyasaland. It was only in Southern Rhodesia that the White minority succeeded in holding on to power. Nyasaland became independent on 6 July 1964, and Northern Rhodesia on 24 October 1964; Southern Rhodesia refused to comply