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**UNICE Position on
Economic sanctions/embargoes**

Executive Summary

UNICE is fully committed to the rule of international law which may cover economic sanctions/embargoes.

However, UNICE is strongly opposed to the use of extraterritorial legislation, sub-federal sanctions and ineffective sanctions that harm industry instead of the target countries.

Sanctions/embargoes can only be acceptable in very specific situations and if very precise conditions are met. These conditions are:

- 1) sanctions/embargoes should never be just a political signal: they should aim to be effective with regard to the goals in view;
- 2) sanctions/embargoes should only be used as a last resort: they should only be pursued after alternative prior political measures have failed or have been judged inadequate;
- 3) sanctions/embargoes should never be extraterritorial or, even worse, secondary boycotts;
- 4) sanctions/embargoes should never be sub-federal: foreign policy is a prerogative of the national government;
- 5) sanctions/embargoes should aim to be effective. However, often they are not. Only multilateral sanctions focusing on controllable (not mass-market) products and on clear targets (no vague destinations) can be considered effective.

Lastly, UNICE would like to stress that, to be able to comply, companies need full transparency with regard to the entry into force of the measures and their precise scope.

GENERAL REMARKS

UNICE is fully committed to the rule of international law which may cover economic sanctions/embargoes. However, UNICE is opposed to extraterritorial legislation, sub-federal sanctions and ineffective sanctions.

UNICE's views :

1. **Definition**

Economic embargoes and sanctions are used as a tool of foreign and/or security policy. Embargoes/sanctions aim at:

- preventing/controlling all commodities or specific goods being shipped to certain destinations and thus disabling/controlling all or certain activities in the embargoed country.

However, UNICE believes these embargoes/sanctions should never be just a political signal.

The embargoed destination can be described as "*an island in an ocean of non-embargoed destinations*". Apart from pure political signals, the effects of an embargo depend on the bridges or on controls of the bridges between the embargoed island and the rest of the world.

2. **Key points of reference for economic embargoes**

The business community and most governments agree on the following points of reference with regard to economic embargoes:

- Economic embargoes and sanctions are a last resort and should be effective with regard to the goals in view.
- Secondary boycotts (targeting companies of third countries doing business in the embargoed country), but also extra-territorial reach of national laws on economic embargoes, are not acceptable because they infringe on the national sovereignty of other countries.
- Sub-federal economic embargoes (e.g. by US federal states, such as the "Massachusetts Selective Purchasing Law") are not acceptable because foreign and/or security policy is the prerogative of national governments.
- Multilateral embargoes in fact are the only way. By preference these should be United Nations embargoes, but if this is not possible, at least embargoes/sanctions agreed upon and harmonised by the main trading countries of controllable products that may contribute to an unwanted end-use.
- Sanctions/embargoes should not be used for products that are essential for the survival of the inhabitants of the target country.

- The products subject to economic embargoes/sanctions have to be controllable. In the case of full United Nations embargoes, all products can be considered controllable:

“All bridges between the embargoed destination and the rest of the world are burnt.”

In the case of national embargoes, even if these embargoes are harmonised between the main trading countries, mass-market products, freely available on the world market, cannot be considered controllable.

The only products that can be subject to these embargoes and sanctions are specific products that materially contribute to the unwanted end-use and that are evidently controllable because they are, for instance, installation- or service-sensitive:

“The bridges between the embargoed destination and the rest of the world are not burnt, but are controlled as far as possible.”

- The end-use subject to economic embargoes/sanctions has to be clear. Where the embargoed destination is a country, this condition is met. Where the embargoed destination is a customer or a group of customers, the situation is much more complex: (e.g. “government-related entities” as embargoed end-use).

In these customer-oriented embargoes, specific government information has to be available:

“The bridges between the embargoed destination and the rest of the world can only be burnt or controlled if the embargoed destination is known.”

3. US and EU economic sanctions and embargoes

- The US imposes full national sanctions/embargoes and operates partial sanctions. The US also has a tendency to claim extraterritorial jurisdiction.

These US sanctions/embargoes are also fairly ineffective, because most trading and other economic relations between the embargoed destination and the rest of the world remain in operation.

This is the main reason why the US has turned to the more far-reaching policy of “secondary boycotts”.

- EU member states only operate partial economic sanctions/embargoes and/or tight controls.

These measures apply to specific products that are evidently controllable because they are installation- or service- sensitive.

Unless these sanctions are harmonised between the main suppliers on the world market, these measures appear to have only a political meaning and hardly any effectiveness because of outside suppliers. However, at least shipments from the country exercising the controls to the embargoed destination are controllable.

4. **Comparison between existing embargoes/sanctions and key elements**

A comparison between existing embargoes/sanctions and the key elements mentioned shows the following picture:

- Full United Nations embargoes/sanctions meet all key elements.
- Partial United Nations embargoes/sanctions meet all key elements, except the end-use criteria: government related entities are used as an embargoed destination as in the recent case of financial sanctions against Libya.
- Full national or sub-national embargoes/sanctions do not meet the key elements. These embargoes only are controllable and can only have some effectiveness if accompanied by unacceptable extra-territoriality or secondary boycotts.
- Partial national or sub-national embargoes/sanctions or restrictions which de facto have similar effect could meet the key elements if they are agreed upon and harmonised by the main trading countries of controllable products subject to these embargoes. Since this is not the case, these embargoes can only have some effectiveness if accompanied by unacceptable extra-territoriality or secondary boycotts.

5. **Embargoes and sanctions as a political signal to which UNICE is opposed**

Governments may claim that some embargoes/sanctions are not controllable and/or effective, such as:

- full national embargoes,
- partial national embargoes,

but that these embargoes are meant primarily to be political signals. UNICE, as stated, opposes this approach.

Increasingly, however, these political signals are recognized as being counterproductive and a very expensive and ineffective way of conducting foreign policy. An example of this recognition can be found in the US *Hamilton-Crane-Lugar* sanctions reform bill of October 1997 which sought to restrict US application of unilateral sanctions but failed in the last US Congress although superseded by and reintroduced as a different bill and proposal in 1999.

6. **Effects of economic sanctions and embargoes on European companies**

Apart from the effects of differences between economic sanction/embargo policies on international political and economic co-operation, there are many effects of these different sanctions/embargoes on companies.

- US sanctions and embargoes

US secondary boycotts present European companies with a dilemma, because of conflicting legislation. Generally, US extra-territorial legislation can cause problems where re-exports of "US products" are involved.

US extra-territoriality also causes problems where “US components or modules” are incorporated in a “European product”. Although a US-controlled content over 10% does not occur frequently, EU companies have to know the products that are US controlled and check that content. This places a heavy burden on European companies’ worldwide operations.

When US extra-territoriality causes problems, double licensing is often needed. This leads to problems raised by conflicting decisions.

If a US supplier beforehand knows that an EU company will ship its product to a US embargoed destination, even if the *de minimis-rule* is applicable, the operation will probably be stopped. This creates confusing relations between EU and US companies.

- EU sanctions and embargoes

The non-harmonised sanctions policies within the EU cause problems for business because of the growing importance of co-operation between companies and increasing trans-European logistics.

In the single European market there should be free movement of people, goods and capital. Practical problems are created for a company, not only of public image, but for example, by a commodity manufactured in one EU member state and exported from another EU member state to a destination embargoed by the original country of origin. This shows the urgent need for a fully harmonised EU sanctions policy as well as the need for general worldwide recognition of the EU “certificate of origin”.

UNICE accepts that economic sanctions/embargoes and strict controls have to be available as an instrument of last resort for foreign and security policy objectives. However, the present differences between economic sanctions policies of the US and EU member states are not acceptable. Also, the inherent ineffectiveness of these sanctions is not acceptable. Realism and harmonisation seem to be key to finding solutions. Extra-territorial legislation and secondary boycotts can also be abolished via this route.

7. EU-US understanding of 18 May 1998: a solution to part of the problem?

UNICE regrets any international political and economic tensions caused by imposing secondary boycotts. UNICE is strongly opposed to this most visible infringement on national sovereignty.

UNICE therefore cautiously welcomes the understanding reached at the EU-US Summit of 18 May 1998 as a basis for resolving differences over secondary boycotts. The understanding opens up real prospects for a solution with important commitments by the US government and the EU. It would clearly have been preferable if US primary legislation imposing secondary boycotts and extending US jurisdictional reach in an extraterritorial manner could have been repealed.

UNICE notes that the agreements of 18 May 1998 offer progress on secondary boycotts and require the US Congress to grant waivers to relevant pieces of legislation and for those waivers to be implemented.

UNICE welcomes the new 'Declaration on the Transatlantic Partnership on Political Co-operation', as adopted on the EU-US Summit on 18 May 1998, to ensure better EU-US co-operation notably on economic sanctions.

This must mean not only that no action will be taken against European businesses under the laws of the US, but also that the US government will oppose and resist the imposition of any future measures of this sort.

8. Structural solution: multilateral approach

- European sanctions/embargoes/tight controls

Most sanctions of EU member states in principle could be effective because they focus on products and/or services that materially contribute to an unwanted end-use and are evidently controllable. The lack of harmonisation, however, reduces the effectiveness and at the same time creates an unacceptable burden for business.

- US sanctions and embargoes

US sanctions cannot be effective because they do not focus on products that materially contribute to an unwanted end-use and are evidently controllable. This lack of effectiveness is hardly compensated for by extra-territorial application of legislation. In addition, extra-territoriality causes international tensions and is detrimental to companies.

- Multilateral solution

A solution could be found in harmonisation of sanctions between the main suppliers on world markets. The best solution, though often difficult to reach, would be United Nations measures on sanctions and embargoes.

General consensus on a limited number of target countries must be possible. Apart from harmonisation, realism also seems to be key. This realism would mean that sanctions are limited to well defined products and/or services that materially contribute to an unwanted end-use. This realism also would mean that sanctions are focused on products that can be controlled effectively because they are not mass-market products.

If the governments involved could accept this solution, sanctions might become more effective, the inclination towards US extra-territorial legislation would disappear and the negative effects on industry would cease to exist.

9. Internet site on sanctions

European companies are often taken by surprise by the imposition of economic sanctions. Companies are keen to operate in full conformity with the requirement to avoid exposure to penalties and/or negative publicity.

To be able to comply with economic sanctions, they therefore need full transparency as regards the entry into force of measures and their precise scope. The scope is especially important, as frequently lists are published without clear definitions, leaving both national authorities and companies uncertain as to what is covered. This in turn leads to different interpretations and distortion of competition. Lists of products covered and the scope of measures therefore need to be defined very precisely and to be unequivocally clear.

UNICE recommends that the European Commission sets up an Internet site providing information on all sanctions in force at European and international level together with the name of a contact person from whom further details can be obtained.

CONCLUSION

UNICE is strongly opposed to the use of extra-territorial legislation, unilateral embargoes and economic sanctions and ineffective sanctions that harm industry and not the target countries.

Economic sanctions involving restrictions on companies should be considered only as multilateral measures of last resort against countries whose actions threaten world interests. They should only be pursued after alternative prior measures have failed or have been judged inadequate or inappropriate by all involved parties.

Differences within the European Union and/or between the main trading partners are not acceptable.

UNICE believes a solution must be found under WTO and UN rules, and offer secure and lasting guarantees to companies. This must mean that any government concerned will oppose and resist the imposition of any future unilateral embargoes and/or sanctions.

UNICE reaffirms its commitment to pursuing all ways and means to strengthen the rule of international law. To that end, it is ready to contribute actively to consultations at European and national level and to develop recommendations to enhance interaction between the European Commission, EU Member States' governments, European companies and other parties involved.

Attachment

Economic sanctions/embargoes

UNICE position paper

Overview of embargoes/sanctions

Apart from arms embargoes and US sub-federal sanctions, 23 economic embargoes/ sanctions/tight controls are operated by the US and by EU Member Countries.

The embargoes can be divided into 4 categories:

1. Full United Nations embargoes
 - Iraq
2. Partial United Nations embargoes
 - Angola, Sierra Leone, Sudan

Prohibited products/end-uses include: aircraft products, specific oil-industry products, nuclear goods, other controlled goods, government end-users, government-related end-users

3. Full national embargoes
 - US embargoes on
 - Cuba
 - Iran
 - Iraq
 - Libya
 - North Korea
 - Sudan
4. Partial national embargoes/sanctions, licence restrictions which de facto have similar effect
 - France against Angola
 - Germany against Iran, Libya, North Korea, Pakistan, Syria
 - UK against Angola, Iran, Libya
 - US against India, Pakistan, Yugoslavia/Kosovo
 - EU against Yugoslavia