

APPENDIX II

COMPENSATION: A THORNY ISSUE

Unfortunately, there are no standard practices or clear guidelines on the question of compensation.

The knotty question of who should assume the cost of sanctions when they are applied arises. The question of constitutional property rights remains to be settled, but the Canadian Charter of Rights and Freedoms does not appear to safeguard property rights. The government is entitled to pass enabling legislation for economic sanctions, based on its legislative authority with respect to international trade, banking, navigation, air transport, and peace, order and good government. On the other hand, the Canadian Bill of Rights recognizes an individual's right to the enjoyment of property, and the right not to be deprived of it except by due process of law. Will the courts recognize a right to compensation by virtue of the Bill of Rights? The question will have to be dealt with sooner or later.

Acquired rights may be affected by the application of economic sanctions. It is sometimes possible to protect oneself against political risks through export insurance, which can be obtained at a reasonable cost. The Emergency Measures Act provides for compulsory compensation for persons who suffer injury from regulations adopted pursuant to this Act. Neither the Export and Import Permits Act, nor the Iranian Economic Sanctions Act, nor the United Nations Act contains a clause allowing for compensation. The Special Economic Measures Act does not make compensation mandatory. In the case of the sanctions adopted over the past 25 years, only those against Rhodesia (1968) provided for the possibility of compensation, and we have found no evidence of claims for compensation having been submitted to the government following the imposition of sanctions. In 1980, Canada undertook not to replace US wheat exports to the USSR and to abstain from making grain sales to the USSR above "normal and traditional levels." The government undertook to compensate Canadian grain producers for any lost income which could legitimately be attributed to measures taken by the Canadian government or to the impact of the US measures on third parties. \$81 million was reportedly paid out at that time to grain and oilseed producers under various assistance programs to compensate for lost earnings due to lower prices resulting from the fact that US grain which would normally have been sold to the USSR was diverted onto the world market.