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## McDOUGALL ANNOUNCES ECONOMIC SANCTIONS LEGISLATION

The Secretary of State for External Affairs, the Honourable Barbara McDougall, announced the tabling of a Bill that would permit the Government to impose a broad range of economic sanctions in response to a serious threat to international peace or security.

"The Act is necessary to improve the Government's ability to contribute quickly and effectively to peaceful solutions to international crises," stated Mrs. McDougall.

The Act will permit the Government to prohibit or restrict the import and export of goods and services, financial and commercial transactions and the operation of air and sea links. It will also permit the freezing of foreign-held assets in Canada. Although powers do exist for some measures, for instance to control trade in goods under the Import and Export Permits Act, the new Act will fill gaps in the Government's current legislative authority and simplify the process of imposing sanctions.

Sanctions could be applied under the Act where a "grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis" or to implement "a decision, resolution or recommendation of an international organization or association of states of which Canada is a member, calling for the application of sanctions."

The legislation provides for mandatory parliamentary review of any order or regulation passed under the Act.

"This legislation will be a valuable contribution to Canada's traditional policy of working multilaterally to promote international peace and stability," said Mrs. McDougall.

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## ECONOMIC SANCTIONS LEGISLATION

### Recent experience

The sanctions against Iraq focused attention on certain limitations in the Government's legal authority available to respond quickly and decisively to international crises. When Iraq invaded Kuwait, on August 2, 1990, the United States and the United Kingdom immediately applied far-reaching economic measures to rebuke Iraq and to preserve the assets of the legitimate government of Kuwait.

However, it proved difficult for the Government of Canada to impose similar comprehensive measures. The Government has only limited authority to restrict imports, financial transactions and trade in services; to freeze assets in Canada held by another state; or to interrupt air and sea links between Canada and other states.

On August 6, 1990, the United Nations Security Council adopted resolution 661, requiring the Members of the United Nations to impose economic sanctions against Iraq and to preserve the assets of the legitimate Government of Kuwait. This resolution was adopted pursuant to Article 41 of the Charter of the United Nations and, as such, is binding in international law. It provided the legal basis for the Government of Canada to invoke the United Nations Act to apply comprehensive measures without delay.

Similarly, when the Ad Hoc Meeting of Ministers of Foreign Affairs of the Organization of American States (OAS) urged OAS Member States to freeze Haitian state assets, the Government of Canada had only limited authority to prohibit financial transactions or freeze assets of the Government of Haiti.

These are only two examples of the difficulties the Government of Canada has encountered in trying to impose effective economic sanctions under existing legislation.

Authority exists that permits the Government to take certain measures, even in the absence of a binding Security Council resolution. However, this limited authority is spread over various statutes and is cumbersome to apply.

Part III of the Emergencies Act, dealing with an international emergency, would allow the application of a broad range of sanctions. However, this Act can be invoked only in the narrowly defined circumstances of a "national emergency." In circumstances where Canada would want to impose economic sanctions, a national emergency would probably not exist. Trade in merchandise is a good example of current problems. While exports can be readily controlled under the Export and Import Permits Act, the control of certain imports requires an "arrangement or commitment" with another country. This is not always feasible.

There is no statutory power that would permit the Government to prohibit Canadian enterprises from making financial, engineering or other services available to another country.

With regard to transportation, there is only very limited authority for the Government to selectively ban traffic at air or sea ports for political reasons or to order ships or aircrafts registered in Canada not to call at certain destinations.

Another good example of the difficulty of applying current legislation is the Trading with the Enemy (Transitional Powers) Act of 1947. This Act might appear to be available to apply certain economic sanctions, such as freezing and sequestering state assets; however, the Act is not clear on the circumstances in which it may be applied. Moreover, some provisions of the Act might not meet the test of the Canadian Charter of Rights and Freedoms.

As for reliance on the Security Council, it is important to keep in mind that it has been rare for the UN to agree on the imposition of sanctions. Prior to the occupation of Kuwait by Iraq, the only instances were the prohibition of arms sales to South Africa and the trade embargo against former Rhodesia. Crises relating to Afghanistan, the Falkland Islands, Iran and Poland, in which the Security Council was unable to take binding measures, have demonstrated the difficulties that may arise. In those cases, the Government found that existing statutory authority restricted the range of options available to respond to the crises.

Past experience has shown that the enactment of special legislation to deal with a crisis takes time. The opportunity to influence a favourable resolution of the crisis may pass, or the assets of a legitimate government be dissipated by the time the special legislation is adopted. This kind of process also presents particular problems for crisis management if Parliament is not sitting.

#### The proposed Legislation

The Act to Provide for the Imposition of Special Economic Measures will enable the Government to apply a broad range of economic sanctions in situations where the UN Security Council does not take binding measures, where existing legislation is inappropriate or where there is currently no legal authority.

The Bill provides two alternative thresholds for the application of sanctions. Sanctions may be applied:

- following a determination that, in the opinion of the Government, a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis; or

- in implementation of a *decision, resolution or recommendation of an international organization or association of States* of which Canada is a member, calling for the application of sanctions.

The Bill stipulates that the Government of Canada will be able to "seize, freeze or sequester any property situated in Canada that is held by or on behalf of a foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada."

The Bill gives authority to the Government to adopt orders and regulations to restrict or prohibit activities such as the export or import of any goods to or from that foreign state; the transfer, provision or communication of any technical data; the provision or acquisition of financial services or any other services to, from or for the benefit of that foreign state; and the operation of air and sea links between Canada and the foreign state to which the sanctions apply. The Bill allows exclusions from sanctions that could be used for humanitarian purposes such as authorizing trade in food and medicine.

The Bill would authorize the imposition of restrictions on some activities of Canadians outside Canada. Were it ever necessary to use this power, measures applied to Canadians outside Canada would have to be consistent with the principles of international law and the comity of nations that Canada expects other countries to respect.

The Bill stipulates that "every person who wilfully contravenes or fails to comply with the provisions of the Act is liable, on summary conviction, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year, or to both; or is liable, on being found guilty of an indictable offence, to imprisonment for a term not exceeding five years."

Regulations and orders made under the new legislation must be laid before both Houses of Parliament within five sitting days of their making. If 50 Members of Parliament or 20 Senators support a motion to that effect, Parliament would be required to consider a motion that the order or regulation be revoked.

The Secretary of State for External Affairs is responsible for the administration and enforcement of the Act, but the Government may designate one or more Ministers to ensure the administration or enforcement of any of the provisions of the Act or any order or regulations made under the Act. The Government may also designate a Minister to report to it with respect to claims for compensation.