

A Practical Understanding of U.S. Anti-Boycott Compliance

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United States anti-boycott laws are an often overlooked part of export compliance. Our practice has seen the frequency of suspicious requests rise. In response, we wanted to take the time to remind our readers of the basics for U.S. anti-boycott compliance and its practical application in day-to-day operations. These rules are significant for all U.S. interests, whether manufacturers, distributors, freight forwarders, or even the foreign subsidiaries of domestic interests.

What are Anti-Boycott Regulations?

The United States has implemented anti-boycott regulations to address how companies can and should respond when receiving requests from foreign parties to effectively boycott certain countries or businesses from those countries that are friendly to the United States (e.g., Israel). The anti-boycott rules are found at 15 CFR Part 760 and at 26 USC § 999. Typical boycott requests that can trigger these provisions include requirements to refuse business to another country, or a company domiciled in that country, and agreement to otherwise discriminate against businesses or persons based on their race, sex, national origin, or nationality. The Dept. of the Treasury publishes a list on a periodic basis identifying frequent boycotting countries, but boycott-related requests are actionable regardless of whether the issuing country or entity is on such a list. In general, boycott requests must be reported to the federal government regardless of whether or not they are acted upon.

Who Must Report Boycott Requests?

United States persons must report boycott requests received in connection with transactions or activities in the interstate or foreign commerce of the United States. [15 CFR § 760.1] The term “United States person” refers to any person who is a United States resident or national, including individuals, domestic concerns, and “controlled in fact” foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns. This includes any foreign concern’s subsidiary, partnership, affiliate, branch, office, or establishments in the U.S. as well as any domestic concern’s foreign subsidiary, partnership, affiliate, branch office, or establishments controlled in fact by such domestic concern. [15 CFR § 760.1(b)(1)] Also, foreign “controlled groups” that hold a parent-subsidiary relationship in which a parent holds a majority interest in one or more chains of corporations are included in the category of companies subject to these provisions. [IRC § 999] A request received by a U.S. person located outside the United States (that is, a foreign subsidiary, partnership, affiliate, branch, office, or other permanent foreign establishment that is controlled in fact by any domestic concern, as determined under § 760.1(c)), is reportable if it is received in

connection with a transaction or activity in the interstate or foreign commerce of the United States. [15 CFR § 760.5]

What Are the Reporting Requirements?

The *mere receipt* of a boycott request triggers compliance obligations. Any United States person that receives a boycott request is required to report that receipt to the Department of Commerce. [15 CFR § 760.5] Importantly, boycott-related requests are generally reportable regardless of whether the recipient complies with the request or not. If the request was received in the United States, the report must be filed with the Department of Commerce within one month following the end of the quarter during which the request was received. If received outside the United States, the United States person receiving the request has one additional month to report. Form BIS 621-P is available for use on single requests, and form BIS 6051-P may be used for multiple requests. Additional reporting requirements exist under the Internal Revenue Code, which requires taxpayers to report whether it or any member of its controlled group has participated in or cooperated with a boycott at any time during the taxable year. [26 USC § 999(a)(2)] Reports to the Internal Revenue Service pursuant to § 999 must be filed annually with a U.S. taxpayer's tax return using IRS form 5713.

What Are the Consequences of Failing to Report?

Violations of the reporting requirements can result in civil and criminal penalties, including fines, imprisonment, and denial of export privileges. Civil penalties include fines of up to \$11,000 per violation and applicable restrictions. Criminal penalties imposed for each "knowing" violation can be a fine of up to \$50,000 or five times the value of the exports involved, whichever is greater, and imprisonment of up to five years. Under certain circumstances, the criminal penalties for each "willful" violation can be a fine of up to \$50,000 and imprisonment for up to 10 years. Fortunately, voluntary self-disclosure procedures are available and may serve as mitigating factors during enforcement. [15 CFR § 764.8]

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