

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

I. Purpose

To ensure that SI's international dealings do not involve restrictive trade practices or unsanctioned boycotts. U.S. persons engaging in U.S. commerce may not agree to secondary or tertiary boycotts. These most commonly involve the boycott of Israel by the Arab League nations.

II. Policy

SI's directive No. XXX sets out the policy that no unit or division shall engage in an unsanctioned boycott by providing information, agreeing to terms, obtaining information about employees, or refusing to do business with a boycotted entity at the direction of a potential sponsor.

III. Background and Reference

Regulations:

[Part 760 of the Export Administration Regulations](#)

[Office of Antiboycott Compliance](#)

[26 U.S.C. Section 999 of Internal Revenue Service code](#)

[Ribicoff Amendment to the 1976 to the Tax Reform Act \(TRA\)](#)

Abbreviations:

EAA – Export Administration Act

EAR – Export Administration Regulations

OAC – Office of Antiboycott Compliance

TRA – Tax Reform Act

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

Boycotting countries enumerated in the TRA are:

- Bahrain
- Iraq
- Kuwait
- Lebanon
- Libya
- Oman
- Qatar
- Saudi Arabia
- Syria
- United Arab Emirates
- Yemen, Republic of

Background of the Antiboycott Laws:

During the mid-1970's the United States adopted two laws that seek to counteract the participation of U.S. citizens in other nation's economic boycotts or embargoes. These "antiboycott" laws are the 1977 amendments to the Export Administration Act (EAA) and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA). While these laws share a common purpose, there are distinctions in their administration.

The antiboycott laws were adopted to encourage, and in specified cases, require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. They have the effect of preventing U.S. firms from being used to implement foreign policies of other nations which run counter to U.S. policy.

Primary Impact:

The Arab League boycott of Israel is the principal foreign economic boycott that U.S. companies must be concerned with today. The antiboycott laws, however, apply to all boycotts imposed by foreign countries that are unsanctioned by the United States.

SI's activities with participating countries must avoid any actions that could be determined to demonstrate "intent" [per section 760.1 \(e\) of the EAR](#).

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

(1) This part prohibits a United States person from taking or knowingly agreeing to take certain specified actions with intent to comply with, further, or support an unsanctioned foreign boycott.

(2) A United States person has the intent to comply with, further, or support an unsanctioned foreign boycott when such a boycott is at least one of the reasons for that person's decision whether to take a particular prohibited action.

- **What do the Laws Prohibit? (Refer to [Section 760.2 of the EAR](#))**

Conduct that may be prohibited under Part 760 of the EAR includes:

- Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin or nationality of another person.
- Implementing letters of credit containing prohibited boycott terms or conditions.

Excerpt: § [760.3 of EAR](#) - Exceptions to the Prohibitions

(a) Import requirements of a boycotting country:

(1) A United States person, in supplying goods or services to a boycotting country, or to a national or resident of a boycotting country, may comply or agree to comply with requirements of such boycotting country which prohibit the import of:

- (i) Goods or services from the boycotted country;
- (ii) Goods produced or services provided by any business concern organized under the laws of the boycotted country; or
- (iii) Goods produced or services provided by nationals or residents of the boycotted country.

(2) A United States person may comply or agree to comply with such import requirements

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

whether or not he has received a specific request to comply. By its terms, this exception applies only to transactions involving imports into a boycotting country. A United States person may not, under this exception, refuse on an across-the-board basis to do business with a boycotted country or a national or resident of a boycotted country.

(3) In taking action within the scope of this exception, a United States person is limited in the types of boycott-related information he/she can supply. (See §760.2(d) of this part on "Furnishing Information About Business Relationships with Boycotted Countries or Blacklisted Persons" and paragraph (c) of this section on "Import and Shipping Document Requirements.")

Penalties:

The Export Administration Act (EAA) specifies penalties for violations of the Antiboycott Regulations as well as export control violations. These can include:

Criminal:

The 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. During periods when the EAR are continued in effect by an Executive Order issued pursuant to the International Emergency Economic Powers Act, the criminal penalties for each "willful" violation can be a fine of up to \$50,000 and imprisonment for up to ten years.

Administrative:

For each violation of the EAR, any or all of the following may be imposed:

- General denial of export privileges;
- The imposition of fines of up to \$11,000 per violation; and/or
- Exclusion from practice.

Boycott agreements under the TRA involve the denial of all or part of the foreign tax benefits discussed above. When the EAA is in lapse, penalties for violation of the Antiboycott Regulations are governed by the International Emergency Economic Powers Act (IEEPA). The IEEPA Enhancement Act provides for penalties of up to the greater of \$250,000 per violation or twice the value of the transaction for administrative violations of Antiboycott Regulations, and up to \$1 million and 20 years imprisonment per violation for criminal antiboycott violations.

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

IV. Definitions

Activities in United States Commerce – for purposes of this part 760 of the EAR, the export of goods or services from the United States and the import of goods or services into the United States are activities in United States commerce.

Bureau of Industry and Security (BIS) – agency in the Department of Commerce that processes dual use and commercial license applications for export. The office is the Office of Antiboycott Compliance.

Export Administration Regulations (EAR) – regulations set forth in 15 CFR Parts 730 – 774 over the export of commercial, dual-use, strategic and other items subject to foreign policy controls.

United States Person - 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. Any partnership, corporation, company, association, or other entity organized under the laws of paragraph (b)(1)(i) or (ii) of this section 760 of the EAR.

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

V. Responsibilities

These positions may assist in resolving questions or may encounter boycott language as part of SI-related agreements, shipments or activities:

Office of Contracting and Personal Property Management (OCon & PPM)

Office of General Counsel (OGC)

Office of International Relations (OIR)

Office of Sponsored Programs (OSP)

Export Compliance Officer (ECO)

Principal Investigators (PI)

Program Managers (PM)

Registrars

Shipping Specialists

VI. Procedure

1. The **ECO** is responsible for training personnel involved in procurement, contracting and shipping about the antiboycott laws when engaging in international projects, particularly those in countries that pursue the boycott of Israel.

2. The **ECO** ensures that outreach organizations who deal internationally include checkpoints in their review and approval procedures related to hiring, contracting, travel, financial, and property management for compliance with the antiboycott language restrictions. All parties, such as **Director of OIR**, **Director of OSP** and **OGC** are required to update the ECO about SI activities with boycotting countries that they are aware of. Any language accepting the laws of the countries listed above in an award or contract should be reviewed by OCG or the ECO.

3. In cases where an SI employee questions restrictive language on a contract, RFQ or shipping terms from a foreign party because it might represent prohibited language, the employee can refer to guidance on the antiboycott website referenced above and

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

section 760 of the EAR. To determine if language is prohibited and/or reportable, contact the **ECO**, (nfinnerty@cfa.harvard.edu) or, if unavailable, **OGC**.

4. The **ECO** reviews the document and submits it to the Office for Antiboycott Compliance (OAC). According to the prohibitions enumerated in 760.2 of the EAR and exceptions to the prohibitions listed in 760.3, the OAC makes a determination if the incident needs to be reported. If so, the **ECO** ensures that reports are filed on a quarterly basis on BIS Form 621P for a single violation, or on form BIS 6051P for multiple transactions received in the same calendar quarter.
5. The [forms are available on-line](#) in a fillable pdf format.

VII. RECORDS

The following are considered export compliance records to maintain for five years:

- Copy of prohibited language
- Records of referral to Office of Antiboycott Compliance
- Copies of form BIS-6051 and 621P

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

Examples of Boycott Requests

Following are examples of boycott requests that have been reported to the Office of Antiboycott Compliance. These examples are illustrative and not exhaustive.

BAHRAIN

Prohibited Boycott Condition in a Purchase Order:

"In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League."

Reportable boycott condition in an importer's purchase order:

"Goods of Israeli origin not acceptable."

Reportable boycott condition in a letter of credit:

"A signed statement from the shipping company, or its agent, stating the name, flag and nationality of the carrying vessel and confirming ... that it is permitted to enter Arab ports."

Prohibited Boycott Condition in a Contract

"Israeli Clause:

The Seller shall not supply goods or materials which have been manufactured or processed in Israel nor shall the services of any Israeli organization be used in handling or transporting the goods or materials."

Prohibited Condition in a Contract

"The Contractor shall comply in all respects with the requirements of the laws of the State of Bahrain relating to the boycott of Israel. Goods manufactured by companies blacklisted by the Arab Boycott of Israel Office may not be imported into the State of Bahrain and must not be supplied against this Contract. For information concerning the Boycott List, the Contractor can approach the nearest Arab Consulate."

Prohibited Condition in a Letter of Credit

"Buyer shall in no way contravene the regulations issued by Bahrain Government and or Israel Boycott Office. Buyer shall not nominate a vessel blacklisted by the said office."

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

BANGLADESH

Prohibited Boycott Condition in instructions to bidders on a contract

"No produced commodity shall be eligible for ... financing if such commodity contains any component or components which were imported into the producing country from Israel and countries not eligible to trade with ... the People's Republic of Bangladesh. The equipment and materials must not be of Israeli origin. The supplier/bidder who are not black listed by Arab boycott of Israel will be allowed to participate in this bid."

IRAQ

Prohibited Boycott Condition in a Questionnaire

"1. Do you have or ever have had a branch or main company, factory or assembly plant in Israel or have sold to an Israeli?"

"2. Do you have or ever have had general agencies or offices in Israel for your Middle Eastern or international operations?"

"3. Have you ever granted the right of using your name, trademarks royalty, patent, copyright or that of any of your subsidiaries to Israeli persons or firms?"

"4. Do you participate or ever participated or owned shares in an Israeli firm or business?"

"5. Do you render now or ever have rendered any consultative service or technical assistance to any Israeli firm or business?"

"6. Do you represent now or ever have represented any Israeli firm or business or abroad?"

"7. What companies in whose capital are your shareholders?" Please state the name and nationality of each company and the percentage of share of their total capital."

"8. What companies or shareholders in your capital? Please state the name and nationality of each company and the percentage of share of their total capital."

"N.B. The above questions should be answered on behalf of the company itself and all of its branch companies, if any."

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

The following two pages is an example of a questionnaire from a boycotting country that has been reported to the Office of Antiboycott Compliance. These examples are illustrative and not exhaustive. If you receive any similar material, report it; do not respond to it.

[Exhibit 4.61.6-1 \(05-01-2006\) from IRS document:](#)

Part 4. Examining Process

Chapter 61. LMSB International Program Audit Guidelines

Sample Letter from Boycotting Country with Standard Questionnaire

Dear Sirs:

SUBJECT: *ISRAEL BOYCOTT RULES & REGULATIONS*

You are kindly requested to complete the enclosed questionnaire in duplicate and have both copies legalized by the chamber or union of commerce or industry or similar organization or concerned boards or Arab/foreign chamber of commerce and duly attested by the Iraqi commercial attache or his representative in the Iraqi diplomatic service or consular or commercial representative, and return to us as soon as possible.

This arrangement shall facilitate for you the immediate presentation of your shipping documents (consisting of the invoices and bills of lading only) to the bank at your end for collection of amounts due to you without having to await the legalization formalities of the documents in conformity with the Israel boycott rules and regulations.

We appreciate early responses.

With kind regards,

Yours faithfully

Head of Materials and Purchasing
NORTHERN PETROLEUM ORGANIZATION

5. EXPORT LICENSE PROCEDURES FOR DEALING WITH COUNTRIES PURSUING UNSANCTIONED BOYCOTTS (RESTRICTIVE TRADE PRACTICES)

Standard Boycott Questionnaire:

1. Do you have now or ever have had a branch or main company, factory or assembly plant in Israel or have you sold one to Israel?
2. Do you have now or ever have had general agencies or offices in Israel for your Middle Eastern international operations?
3. Have you ever rented the right of using your name trademarks, royalty, patent, copyright or that of any of your subsidiaries to Israeli persons or firms?
4. Do you participate in or own or have you ever participated in or owned shares in an Israeli firm or business?
5. Do you render now or have you ever rendered any services or technical assistance to any Israeli firm or business for consideration?
6. Do you represent now or have you ever represented any Israeli firm or business in Israel or abroad?
7. What companies in whose capital are you shareholders? Please state the name and nationality of each company and the percentage of share to their total capital.
8. What companies are shareholders in your capital? Please state the name and nationality of each company and the percentage of share to your total capital.
9. The above questions should be answered on behalf of the company itself, and of all the branch companies, if any.