

Issue date:
June 2017

Antiboycott Compliance

This paper summarizes both the federal rules that prohibit U.S. persons from agreeing to participate in unauthorized foreign boycotts (“antiboycott” laws), and the related reporting obligations.

A. Statutory background

Current antiboycott requirements are founded in two statutes enacted in the 1970s: a 1977 amendment to the Export Administration Act (EAA), and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA). While the initial impetus for these laws was the Arab League boycott of Israel, the requirements are written generally, and apply to any boycott the U.S. government does not endorse.

The EAA’s antiboycott requirements are implemented in Part 760 of the Export Administration Regulations (EAR). (The EAA is formally in lapse, but the International Emergency Economic Powers Act (IEEPA) provides authority to sustain the antiboycott and other provisions of the EAR.) The TRA’s antiboycott language is found in section 999 of the Internal Revenue Code.¹

Given the arcane nature of the requirements under both Part 760 of the EAR and section 999, it is advisable to consult both when making any antiboycott determinations or evaluating compliance. Each encompasses largely overlapping but not identical activities, and each imposes unique reporting requirements and deadlines.

B. Part 760 of the EAR

Briefly stated, U.S. persons must (a) not agree to participate in an unsanctioned boycott, and (b) report any requests or agreements to participate in an unsanctioned boycott to the Office of Antiboycott Compliance (OAC), part of the Bureau of Industry and Security (BIS).

Part 760 of the EAR applies to all U.S. persons, meaning U.S. citizens, permanent residents, and people with certain protected immigration statuses, as well as U.S. entities involved in interstate or foreign commerce, including universities and their overseas campuses. Foreign subsidiaries of U.S. organizations are included.

Prohibitions

Broadly speaking, Part 760 prohibits the following:

- Agreements to refuse or actual refusal to do business with or in Israel (or other embargoed country) or with blacklisted companies.²
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.³

¹ 26 U.S.C. § 999.

² 15 C.F.R. § 760.2(a) (2017).

³ 15 C.F.R. § 760.2(b) (2017).

- Agreements to furnish or actual furnishing of information about business relationships with or in Israel (or other embargoed country) or with blacklisted companies.⁴
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.⁵

Exceptions to the Prohibitions

Some exceptions to these prohibitions are:

- Agreement to comply with all laws of a specific country.⁶
- Agreement to comply with export requirements of a country related to shipments or transshipments of exports to a boycotted country, a company in a boycotted country, or a national or resident of a boycotted country.⁷
- Complying or agreeing to comply with import and shipping document requirements regarding country of origin, name of the supplier/provider, name of the carrier, and route of shipment. (None of this information may be stated in negative terms. For example, stating “Goods are of U.S. origin” would be acceptable, but “Goods are not of Israeli origin” would be prohibited.)⁸
- A person providing information related to their or a family member’s race, religion, sex, national origin, or nationality to comply with immigration, passport, visa, or employment requirements.⁹
- “Vessel eligibility” certificates may be furnished by the owner, master, or charterer of a vessel and passed on by the exporter.¹⁰ (The exception does not extend to certificates furnished by any *other* party, such as a freight forwarder.)

Examples

In practice, boycott requests can take many forms. One example is a request for a certification that goods are not coming from a specific country, such as, “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.”¹¹ Additionally, a request for information about a business relationship with a specific country or about a person’s race, religion, or national origin can also constitute a boycott request.

Reporting

Under Part 760 of the EAR, U.S. persons must report to OAC any requests to participate in an unauthorized boycott. Required information includes not only the circumstances and content of the request, but also what action the U.S. reporting entity took. A report must be submitted no more than one month after the end of the quarter in which a request is received in the United States, or within two months of the end of the quarter for

⁴ 15 C.F.R. § 760.2(d) (2017).

⁵ 15 C.F.R. § 760.2(c) (2017).

⁶ 15 C.F.R. § 760.3(g) (2017).

⁷ 15 C.F.R. § 760.3(e) (2017).

⁸ 15 C.F.R. § 760.3(c) (2017).

⁹ 15 C.F.R. § 760.3(f) (2017).

¹⁰ 15 C.F.R. Part 760, Supp. No. 1 (2017).

¹¹ BIS, Examples of Boycott Requests, at <https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examples-of-boycott-requests>.

requests encountered outside the United States. Reports are filed using either Form BIS-621P (single transactions) or Form BIS-6051P (multiple transactions). Submissions may be sent via mail or online.¹²

C. Section 999 (the Ribicoff Amendment)

Section 999 of the Internal Revenue Code operates a bit differently. It requires U.S. persons or any member of a U.S.-controlled group to report annually any operations in or related to a boycotting country or where “participation in or co-operation with an international boycott is required as a condition of doing business within such country or with such government, company, or national.”¹³

For reporting under section 999, the U.S. person or company operating in boycotting countries must submit IRS Form 5713 annually, typically as part of its federal tax filing. Information requested on this form is related to “operations in or related to a boycotting country” and “requests for and acts of participation in or cooperation with an international boycott.”¹⁴ Operations in or related to boycotting countries are broken down into countries identified as carrying out a boycott of Israel by the Secretary of the Treasury, non-listed countries carrying out a boycott of Israel, and boycotts other than the one related to Israel. If the U.S. person or company agreed to the received boycott request, then information related to that agreement must be included.

Exceptions

Similar to Part 760 of the EAR, the Ribicoff Amendment has exceptions for complying with local laws. Section 999 states it does not apply to compliance with requirements related to an international boycott if the United States has sanctioned the boycott,¹⁵ to a prohibition of importing goods from a country subject to an international boycott,¹⁶ or to the prohibition of exporting goods to a country subject to an international boycott.¹⁷

Example

An example of a boycott request that would need to be reported on Form 5713 is if a U.S. university’s overseas campus receives a questionnaire asking about collaboration with Israeli companies or any business conducted in Israel, or if the overseas campus were asked to not select specific people to their governing board or faculty based on those individuals’ nationality, race, or religion.

D. Penalties for Violations

Since IEEPA is currently being used to enforce the antiboycott provisions of the EAA, the IEEPA Enhancement Act puts the potential adjusted penalties as high as the greater of \$284,582 per violation or twice the value of the transaction for civil violations, and up to \$1 million in fines and 20 years imprisonment per violation for deliberate, criminal acts. Other possible penalties include loss of export privileges and federal debarment.

¹² BIS, Boycott Request Reporting Forms, at <https://www.bis.doc.gov/index.php/enforcement/oac?id=300>.

¹³ 26 U.S.C. § 999(a)(1)(B) (2017).

¹⁴ IRS, Form 5713, at <https://www.irs.gov/pub/irs-pdf/f5713.pdf>.

¹⁵ 26 U.S.C. § 999(b)(4)(A) (2017).

¹⁶ 26 U.S.C. § 999(b)(4)(B) (2017).

¹⁷ 26 U.S.C. § 999(b)(4)(C) (2017).

Penalties under the IRS rules include potential denial of several specified tax benefits to the U.S. person or entity.¹⁸ Additionally, a U.S. person or company willfully failing to report a boycott request, activity, or operations in a boycotting country may be subject to a fine of up to \$25,000 (and up to one year in prison for individuals).¹⁹

Recent Enforcement Action

2016 saw four enforcement cases of alleged antiboycott violations under the EAR. The alleged violations generally involved providing information concerning business relationships with boycotted countries or with blacklisted persons (15 C.F.R. § 760.2(d)) and failing to report boycott requests (15 C.F.R. § 760.5).²⁰ Fines ranged from \$9,000 to \$238,000. This last fine was so high because the company allegedly engaged in 70 violations between 2009 and 2013 in transactions involving Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Pakistan, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen.

According to the most recent IRS data for E-filed Forms 5713, in 2014, 130 U.S. persons received 2,750 boycott requests in 404 agreements.²¹

Guidance paper author:
Nancy Draper

¹⁸ IRS, Form 5713, at <https://www.irs.gov/pub/irs-pdf/i5713.pdf>.

¹⁹ 26 U.S.C. § 999(c)(1)(F) (2017).

²⁰ BIS, Alleged Antiboycott Violations, at <https://efoia.bis.doc.gov/index.php/electronic-foia/index-of-documents/7-electronic-foia/226-alleged-antiboycott-violations>.

²¹ Source: IRS, Statistics of Income Division, International Boycott Reports, August 2016.