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Chapter 6. Antiboycott Compliance

The Office of Antiboycott Compliance (OAC) implements the antiboycott provisions of the Export Administration Act (EAA) and the Export Administration Regulations (EAR). OAC performs three main functions: enforcing the EAR, assisting the public in complying with antiboycott provisions, and compiling and analyzing information regarding international boycotts. Compliance officers in the Enforcement Division enforce the EAR through investigations and audits. The Compliance Policy Division provides advice and guidance to the public on the antiboycott provisions of the EAR and analyzes information about boycotts.

Enforcement Division

Enforcement Division compliance officers perform the investigative and enforcement functions of OAC, which include conducting compliance reviews, investigating potential violations, issuing pre-charging letters for alleged violations, and negotiating settlements when violations have been alleged. The Enforcement Division also prepares settlement documents or charging letters to initiate administrative proceedings and prepares cases for civil litigation through the Office of the Chief Counsel for Export Administration or for criminal prosecution through the Department of Justice.

Compliance Policy Division

The Compliance Policy Division develops and coordinates policies and initiatives to promote compliance with the antiboycott requirements of the EAA and EAR. This includes: preparing amendments, interpretations, and clarifications of the EAR; reviewing international boycott activity through communication with diplomatic posts; analyzing reports received by OAC and review of information from other sources; preparing reports on boycott activity for use by the U.S. Government in its effort to bring an end to the boycott; developing public education programs to assist U.S. companies in complying with the EAR; counseling the public on requirements of the law and how to comply with it; reviewing enforcement actions to ensure consistency with policy guidelines; processing all boycott reports filed with the Department of Commerce; and supervising the informal telephone advice provided to the public by OAC.

Policy Implementation

During FY 2001, the U.S. Government continued to press for complete dismantlement of the Arab

League's boycott of Israel. OAC continued to focus its efforts in four major areas: (1) enforcing the law against antiboycott violators; (2) providing information concerning the boycott to the State Department; (3) educating and counseling the public through the OAC telephone advice line, which handled 1,058 calls during FY 2001; and (4) increasing public awareness and understanding of the EAR. During FY 2001, OAC officials spoke at 16 events sponsored by BXA, Export Enforcement, banking groups, trade associations, and local bar associations. Presentations included updates on OAC enforcement efforts and detailed reviews of the regulatory program.

Summary of Boycott Reports

The antiboycott provisions of the EAA and EAR require U.S. persons to report to the Department requests they receive to take actions that further or support unsanctioned foreign boycotts. The reports filed by U.S. persons contain information concerning both the request and the transaction(s) to which the request relates. The transactions referred to in this context are specific business activities generally involving documents, such as invitations to bid, contracts, export documents, and letters of credit. In connection with these transactions, the reporting person would have received one or more requests to take specific boycott-based action, such as responding to a boycott questionnaire, furnishing information about business relationships with a boycotted country, religious discrimination against U.S. persons, or refusing to do business with a blacklisted firm or boycotted country.

During FY 2001, 319 persons reported receipt of 1,270 documents containing 1,482 boycott requests. Boycott requests can exceed the number of documents containing boycott requests because some documents contain more than one boycott request. The corresponding figures for FY 2000 were 350 persons, and 1,177 documents containing 1,425 boycott requests. As is generally the case, exporters were the principal category of reporters, constituting approximately 64 percent of the reporting entities in FY 2001.

Prohibited boycott requests totaled 355 of the 1,482 boycott requests reported to OAC in FY 2001. A prohibited request is a request to take action prohibited by the EAR (e.g., a request to not use suppliers blacklisted by a boycotting country).

The United Arab Emirates was the leading country from which prohibited boycott requests originated with a total of 110 requests. The next three countries originating prohibited boycott requests were Syria (59), Saudi Arabia (52), and Bahrain (38).

More detailed information on antiboycott activity can be found in the data presented in Tables 6-1 through 6-6. (See Appendix B). In interpreting the data, it should be noted that: (1) the number of reported transactions may be fewer than the number of reported requests because a single transaction may involve more than one boycott request, and (2) the numbers of both transactions and requests (as

well as the value of the transactions) may be somewhat inflated because boycott reports involving the same reportable transaction are required to be filed by each party to the transaction.

Enforcement Activities

During FY 2001, OAC continued to pursue more serious violations of the EAR, such as discrimination based on religion, refusals to do business with other companies for boycott reasons, and furnishing prohibited information. The settlements reached in FY 2001 involved alleged violations of the prohibition against furnishing information about business relationships with companies known or believed to be restricted from having any business with a boycotting country, failures to report receipt of requests to engage in restrictive trade practices or boycotts, and failures to maintain records of boycott-related transactions, as required by the EAR.

Cases Completed

OAC completed five enforcement actions in FY 2001 with two settlement agreements and three companies receiving warning letters. In addition, four investigative cases were closed because violations were not found. Nine investigations were closed in FY 2001 in total.

Settlement Agreements and Penalties Imposed

All of the OAC investigations involving allegations of serious violations were resolved through settlement. Historically, an overwhelming majority of cases brought by OAC have been settled. Settlement agreements may provide for payment of civil penalties, denial of export privileges, and for the establishment of compliance programs. Civil penalties imposed in the settlement agreements totaled \$117,250 in FY 2001.

Cases

G.M. Marketing Company

The Department of Commerce imposed a \$111,250 civil penalty on G.M. Marketing Company, a Dallas, Texas, furniture exporter, to settle allegations that the company committed 41 violations of the antiboycott provisions of the EAR. The Department alleged that, in ten transactions, G.M. Marketing Company furnished information about its business relationships with other persons who are known or believed to be restricted from having any business relationship with or in a boycotting country. The Department also alleged that G.M. Marketing failed to report its receipt of 20 boycott requests as required by the EAR and, in 11 transactions, failed to maintain records containing information relating to

reportable boycott requests. The transactions involved the sale of goods to Kuwait, Saudi Arabia, Dubai, and Qatar.

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Perry Equipment Corporation

The Department of Commerce imposed a \$6,000 civil penalty on Perry Equipment Corporation of Mineral Wells, Texas, a drilling equipment manufacturer, for 12 alleged violations of the antiboycott provisions of the EAR when Percy Equipment allegedly failed to report its receipt of 12 boycott requests as required by the EAR. Eleven of the requests were from Pakistan; one request was from the United Arab Emirates.

Charging Letters

Once allegations of violations are made to a respondent, OAC usually offers the respondent the opportunity to discuss the alleged violations. If the company and OAC cannot reach a mutually satisfactory resolution of the matter, a charging letter is issued. The case is then referred to an administrative law judge (ALJ) for formal adjudication. The Office of the Chief Counsel for Export Administration represents OAC before the ALJ, who decides the case and may impose a civil penalty of not more than \$12,000 per violation, a period of a denial of export privileges, or both. Either party may appeal the decision of the ALJ to the Under Secretary for Export Administration. If neither party appeals, the decision of the ALJ becomes the final agency decision. OAC did not issue any charging letters in FY 2001. All previously issued charging letters have been resolved by settlement agreements.