

Comparison of Commerce and Treasury
Antiboycott Laws & Regulations/Guidelines

(Note: This table is an illustrative summary and is not a substitute for statutory and regulatory provisions. Specific questions should be referred to the experts at the Departments of Commerce and Treasury.)

<u>1. Authorities</u>	<u>Commerce</u>	<u>Treasury</u>
Statutory provisions	Section 8 of the Export Administration Act of 1979, as amended, 50 U.S.C. app. §§ 2401 – 2420 (2000), International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707 (2000)	“Ribicoff Amendment” to the Tax Reform Act of 1976, adding § 999 to the Internal Revenue Code.
Regulatory provisions	Part 760 “Restrictive Trade Practices and Boycotts” of the Export Administration Regulations (15 C.F.R. Part 760) (2008)	Treasury Guidelines (TG)

<u>2. Principal Features</u>		
To whom applicable?	U.S. persons, including individuals who are U.S. residents and nationals, businesses, and “controlled in fact” foreign subsidiaries, with respect to activities in the interstate or foreign commerce of the U.S.	Any U.S. taxpayer or member of a controlled group which includes such taxpayer. Also includes U.S. shareholders of foreign companies. Not limited to activities in U.S. commerce.

Intent required?	Yes, for prohibitions. ("intent to comply with, further or support an unsanctioned foreign boycott")	No.
Form of implementation?	The Export Administration Regulations contain prohibitions, with certain limited exceptions.	Denial of certain tax benefits for boycott agreements.
Sanctions?	Criminal and civil penalties and/or denial of export privileges.	Denial of tax benefits such as foreign tax credit and foreign subsidiary deferral benefits. If the U.S. taxpayer has no such tax benefits, there is no sanction – but still has to report.
Reporting requests?	Required to report receipt of boycott-related requests on a <u>quarterly</u> basis on BIS Form 621-P.	On IRS Form 5713, required to report <u>annually</u> operations in, with, or related to boycotting countries and any boycott-related requests and agreements. Plus operations and requests of entire controlled group in, with, or related to boycotting countries.

Reporting of requests on multiple transaction basis permitted on BIS Form 6051-P.

Reporting of operations required on a country-by-country basis. Boycott requests and agreements must also be reported.

Reports publicly available.

Reports kept confidential as part of tax return.

Failure to report can lead to imposition of sanctions (even if there is no violation of law's prohibitions).

Failure to report can subject taxpayer to fines and criminal proceedings.

3. Principal Differences in Treatment of Conduct

a. "Vessel Eligibility" Certificates

Permitted if furnished by owner, master or charterer of the vessel; exporter may request and pass on such a certificate. No restrictions on such certificates for shipments to Saudi Arabia since the Saudi Government does not consider the requirement to be boycott-related under its laws. Not reportable.

Can constitute boycott agreement which results in denial of certain tax benefits unless certificate is requested by Saudi Arabia, which has explained that it applies only to maritime matters such as the condition and safety standards of the vessel.

b. Local Law Clauses in Contractual Documents:

- Agreement to comply generally with laws and regulations of a boycotting country –

Permitted

Penalized

- Agreement that laws of a boycotting country shall apply – Permitted Not penalized
- Agreement to comply with boycott laws of a boycotting country – Prohibited Penalized
- Agreement that boycott laws of a boycotting country shall apply – Prohibited Not penalized

c. Furnishing Information

Furnishing and/or agreeing to furnish certain boycott-related information prohibited.

Not penalized, as §999 penalizes agreements to refrain from doing business, not furnishing information. However, an agreement to furnish boycott-related information at a later date will be penalized.