

ELEMENT 7: ANTI BOYCOTT COMPLIANCE SCREEN

A system for assessing proposed transactions against an anti-boycott profile that takes into account the following factors to include conduct prohibited under the Export Administration Act (EAA):

- ◆ Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
- ◆ Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- ◆ Furnishing information about business relationships with Israel or with blacklisted companies.
- ◆ Furnishing information about the race, religion, sex, or national origin of another person.
- ◆ Paying, or otherwise implementing letters of credit that include requirements to take boycott related actions prohibited by the antiboycott regulations.

When any of the above factors have been identified and follow-up inquiries have not been satisfactorily resolved, the firm may not proceed with the export in question before contacting the Office of Antiboycott Compliance of the Bureau of Export Administration.

OBJECTIVE: To encourage or require U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction. The Antiboycott Regulations prevent U.S. firms from being used to implement foreign policies of other nations which run counter to U.S. policy.

PROCEDURE: The EMS Administrator may wish to determine who is responsible for performing and documenting the antiboycott profile check. Ideally, the profile should be considered at all phases of the order processing system. However, it is most beneficial that the screen be performed immediately upon receipt of an order. It is also advantageous that it be performed any time the customer requests a change to an existing order or when new information about an order is available.

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 (unsanctioned by the United States).

Screening Procedures

It is recommended that the profile check be performed on a transaction basis. The screen should be performed using the profile checklist and any relevant information contained in the firm's customer file. It is important that all employees involved in international sales and order processing activities be trained to recognize indicators of antiboycott concern.

A well-documented customer file noting each customer's usual activities and orders would be helpful in screening new orders. Such a file would be updated whenever new information on a customer became available. Any information indicating a risk of non-compliance and all correspondence with the Bureau of Export Administration would be noted in the customer file. New customers would be screened, and a file created, before placing the new customer on the firm's approved customer list.

New information on a customer may come from many sources, including government, industry, media or from the customer itself, as when the customer changes activities, indicates a new end-use or end-user, requests a change in an existing order or furnishes replies to the firm's inquiries. The antiboycott Regulations require companies to report receipt of certain boycott related requests.

Documentation of Screen

The profile screen should be documented. Documentation consists of noting the presence or absence of indicators, the name or initials of the person performing the screen, and the date. The profile check may be documented on each order or in the firm's customer file whenever new information of the customer becomes available.

Comments: See Part 760 of the EAR for additional guidance and various examples of the following:

- ◆ Refusals and Agreements To Refuse To Do Business.
- ◆ Discriminatory Actions
- ◆ Prohibitions Against Furnishing Discriminatory Information.
- ◆ Prohibition Concerning Furnishing of Information
- ◆ Prohibition Against Furnishing Information About Associations With Charitable or Fraternal Organizations
- ◆ Reporting Requirements

Generally, it is adequate for the firm to create a standard document that includes the name and address of the firm being checked, the name or initials of the person performing the check and the date the check is performed.

Documentation will be dependent upon the extent of the relationship between the firm and the customer and the sensitivity of the item(s) ordered. For example, a new customer should conceivably be examined with greater scrutiny than an existing well-know customer .

Violations of the Commerce rules under the EAA can result in civil penalties and denial or suspension of export privileges. Criminal penalties consist of up to \$50,000 and/or five years in jail. Violations of the The Reform Act (TRA) involve the denial of all or part of the foreign tax benefits discussed above. Willful violations of the reporting requirements can result in criminal penalties of up to \$25,000 and/or one year in jail. For more information contact The U.S. Department of Commerce BXA/Office of Antiboycott Compliance, HCHB 6098, Washington, D.C. 20230, Phone: 202-482-2381, or Department of Treasury, Office of the General Counsel, Room 2004, 15th & Pennsylvania Ave., NW, Washington, D.C. 20220, Phone: 202-622-1945.