

## 8. Office of Antiboycott Compliance

The Office of Antiboycott Compliance (OAC) is responsible for implementing the antiboycott provisions of the Export Administration Act (EAA) and EAR. The Office performs three main functions: enforcing the antiboycott provisions, assisting the public in complying with the antiboycott regulations, and compiling and analyzing information regarding international boycotts. Compliance officers in the Enforcement Division enforce the antiboycott regulations by means of investigations and audits. The Compliance Policy Division provides advice and guidance to the public concerning application of the antiboycott provisions and analyzes information about boycotts.

### Enforcement Division

The investigative teams of the Enforcement Division implement the investigative and enforcement functions of the Office, including: conducting compliance reviews, investigating potential violations, issuing pre-charging letters for alleged violations, negotiating settlements where violations are alleged, preparing settlement documents or drafting charging letters initiating administrative proceedings, preparing cases for referral to the Office of the Chief Counsel for Export Administration for litigation, assisting the Office of the Chief Counsel for Export Administration in litigation of charges brought under the antiboycott provisions, and preparing cases for referral to the Department of Justice for criminal prosecution.

### Compliance Policy Division

The Compliance Policy Division is responsible for developing and coordinating policies and initiatives to promote compliance with the antiboycott policies and requirements of the Act. This includes preparing amendments, interpretations, and clarifications of the Regulations; reviewing international boycott activity through communication with diplomatic posts; analysis of reports received by OAC and review of information from other sources; preparing reports on boycott activity for use by U.S. embassies and others in efforts to bring an end to the Arab boycott of Israel; developing public education programs to assist U.S. companies to comply with the antiboycott regulations; processing all boycott reports filed with the Department; and supervising the informal telephone advice provided by OAC professionals to members of the public.

### Policy Implementation

During Fiscal Year 1998, 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) continuing to provide information concerning the boycott to the State Department, (3) continuing the active educational and

counseling program of the full time telephone advice line, which handled 1,235 calls during Fiscal Year 1998, and (4) continuing the outreach program to increase public awareness and understanding of the antiboycott regulations. During Fiscal Year 1998, OAC officials spoke at 10 events sponsored by BXA's Office of Export Enforcement, banking groups, trade associations and local bar associations. Presentations included updates on OAC enforcement efforts and detailed reviews of the regulatory program. OAC also issued a new edition of its guide to boycott requests commonly appearing in letters of credit.

### **Summary of Boycott Reports**

The antiboycott provisions of the Act require U.S. persons to report to the Department of Commerce requests they receive to take actions which have the effect of furthering or supporting unsanctioned foreign boycotts. The report filed by U.S. persons contains information concerning both the request and the transaction(s) to which the request relates. These "transactions" are specific business activities generally involving documents such as invitations to bid, contracts, export shipping documents, and letters of credit. U.S. persons are required to report if they receive 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, discriminating against U.S. persons on the basis of religion or national origin, or refusing to do business with a blacklisted firm or boycotted country.

In interpreting the data presented in the Tables 7-1 through 7-6, it is important to keep two factors in mind. First, 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. Second, the number of both transactions and requests (as well as the value of the transactions) may be somewhat inflated because each party to the transaction is required to file a boycott report.

During Fiscal Year 1998, 461 persons reported receipt of 1,609 boycott requests in 1,609 transactions. The corresponding figures for Fiscal Year 1997 were 507 persons, 1,868 boycott requests, and 1,867 transactions. As is generally the case, exporters were the principal category of reporters, constituting approximately 70 percent of the reporting entities in Fiscal Year 1998.

Prohibited boycott requests totaled 442 of the 1,609 boycott requests reported to OAC in Fiscal Year 1998. A prohibited request is a request to take action that is prohibited by the Regulations (e.g. a request to not to use suppliers blacklisted by a boycotting country).

The United Arab Emirates was the leading country from which boycott requests originated, with a total of 478 requests. The next four countries from which the highest number of boycott requests originated were Saudi Arabia (154), Qatar (152), Kuwait (135), and Syria (122).

## **Enforcement Activities**

During the fiscal year, OAC continued to pursue violations of the antiboycott provisions, such as discrimination based on religion, refusals to do business with other companies for boycott reasons, and furnishing prohibited information. Most of the settlements reached in Fiscal Year 1998 involved alleged violations of the prohibition against furnishing information about business relationships with or in Israel or with companies on boycotting countries' blacklists. Several involved refusals to do business, or agreements to refuse to do business, for boycott purposes. Others involved failure to report, as the regulations require, receipt of requests to engage in restrictive trade practices or boycotts. The large majority of the settlements involved alleged violations of two or more sections of the antiboycott provisions.

### *Cases Completed*

A total of 15 enforcement actions were completed in Fiscal Year 1998. Of that total, 10 were settlement agreements. OAC issued one charging letter and closed four cases with warning letters for violations of the reporting requirements. Additionally, 18 investigative cases were closed because violations were not found. Therefore, the total number of investigations closed in Fiscal Year 1998 was 33.

### *Settlement Agreements and Penalties Imposed*

All of the OAC investigations which involved allegations of serious violations were resolved through settlement. This is in line with historical practice; an overwhelming majority of cases brought by the OAC have been settled. Settlement agreements may provide for payment of civil penalties, denial of export privileges and, occasionally, the establishment of compliance programs.

Civil penalties imposed in the 10 settlement agreements totaled \$380,000 in Fiscal Year 1998.

#### ***Major cases included:***

##### *Grove Europe, Limited*

The Department of Commerce imposed a \$298,000 civil penalty on Grove Europe, Limited, of Sunderland, England to settle 120 alleged violations of the Regulations. The Department alleged that Grove Europe, while engaging in transactions with Libya, Saudi Arabia and the United Arab Emirates, on 15 occasions in 1989 agreed to refuse to do business with Israel or with companies or individuals known or believed to be blacklisted by countries that boycott Israel. The Department also alleged that Grove Europe furnished 105 separate items of information about its and other companies' business relationships with or in Israel and with companies known or believed to be blacklisted.

##### *Coleman Deutschland GmbH*

The Department of Commerce imposed a \$20,000 civil penalty on Coleman Deutschland GmbH for 10 alleged violations of the antiboycott provisions. The Department alleged that, on 10 occasions in 1993, in transactions involving sales to Kuwait, Qatar, Bahrain and the United Arab Emirates, the German subsidiary of The Coleman Company of Wichita, Kansas, furnished information about its business relationships with Israel.

*Phoenix International Freight Services International*

The Department of Commerce imposed a \$12,000 civil penalty on Phoenix International Freight Services of Wood Dale, Illinois, for alleged violations of the antiboycott provisions. The Department alleged that, on one occasion in connection with a 1993 export to Kuwait, Phoenix International furnished one item of information about the blacklist status of a shipping vessel and, in 1984, in connection with a transaction with Dubai, United Arab Emirates, Phoenix International furnished one item of information about another company's business relationships with Israel. The Department further alleged that Phoenix International failed to report its receipt of boycott requests in one letter of credit related to the 1993 export to Kuwait.

*FMC Corporation*

The Department of Commerce imposed a \$13,000 civil penalty to settle allegations that FMC Corporation, located in Chicago, Illinois, violated the antiboycott provisions. The Department alleged that FMC, in a 1994 transaction with Kuwait, furnished information about other persons' business relationships with or in Israel and about the ownership and blacklist status of a shipping vessel. The Department also alleged that, in seven instances, FMC failed to report its receipt of requests to engage in restrictive trade practices or boycotts.

*Charging Letters:*

Once allegations of violations are made to a respondent, OAC 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 \$10,000 per violation or a period of 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. The OAC issued one charging letter in Fiscal Year 1998.

*Alexandria International (U.S.A.)*

On May 12, 1998, OAC issued a charging letter to Alexandria International (U.S.A.). OAC charged that the Rome, Georgia carpet manufacturer and exporter violated the antiboycott provisions in an October 1995 transaction with the United Arab Emirates when it furnished

information about its business relationships with Israel. However, before the case was litigated, Alexandria International (U.S.A.) agreed to settle the case by paying a \$7,000 civil penalty. The Department withdrew the case from the administrative law judge.

*Previously Issued Charging Letters:*

*Serfilco, Ltd.*

On August 25, 1994, OAC issued a charging letter to Serfilco, Ltd., a Northbrook, Illinois manufacturer of commercial filtration and pumping equipment. The Department charged that Serfilco furnished prohibited business information to a distributor in Iraq. The Department also alleged that Serfilco failed to report its receipts of seven boycott requests. A hearing was conducted on August 23, 1995. In his decision, the ALJ found that Serfilco had violated the antiboycott provisions and imposed a \$118,000 civil penalty on the company. Also, the ALJ denied for one year Serfilco's export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates and the Republic of Yemen. Serfilco appealed the ALJ's decision to the Department's Under Secretary for Export Administration.

*Jack H. Berg*

On August 25, 1994, OAC issued a charging letter to Mr. Jack H. Berg, president of Serfilco. The Department charged that Mr. Berg furnished prohibited business information to a distributor in Iraq. A hearing was conducted on August 23, 1995. In his decision, the ALJ found that Berg had violated the antiboycott provisions and imposed a civil penalty of \$90,000 on Berg. Mr. Berg appealed the ALJ's decision to the Under Secretary for Export Administration.

In his June 10, 1996 "Final Decision and Order," the Under Secretary upheld the ALJ's decision to deny for one year to Berg's and Serfilco's export privileges to export to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen. However, the Under Secretary reduced the \$118,000 penalty imposed on Serfilco to \$38,000 and reduced the penalty imposed on Berg to \$80,000. Berg and Serfilco have refused to pay the civil penalties. At the request of the Commerce Department, the U.S. Department of Justice has filed a law suit in Federal court against Berg and Serfilco to collect the civil penalties.

All of the final orders issued during Fiscal Year 1998 imposing administrative sanctions, including civil penalties, resulting from OAC investigations are summarized in the following table.

**Table 7-1: Summary of Settlements & Charging Letters in Fiscal Year 1998**

<b>Company Name &amp; Location</b>	<b>Date Order Signed</b>	<b>Alleged Violations</b>	<b>Penalty Amount</b>
Haliburton Energy Services, Inc. Houston, TX	10/16/97	15 violations of 769.6 Failed to report.	\$15,000
Global Transport Services, Inc. Houston, TX	11/06/97	4 violations alleged: 1-769.2(d) Furnished prohibited business information. 3-769.6 Failed to report.	\$10,000
Phoenix International Freight Services Wood Dale, IL	12/10/97	3 violations alleged : 2-769.2(d) Furnished prohibited business information. 1-769.6 Failed to report.	\$12,000
Grove Europe Limited Crownworks, Sunderland England	12/22/97	120 violations alleged: 15-769.2(a) Agreed to refuse to do business. 105-769.2(d) Furnished prohibited information.	\$298,000
International Paper Co. Memphis, TN	1/23/98	2 violations alleged: 1-769.2(a) Agreed to refuse to do business. 1-769.2(d) Furnished prohibited information.	\$5,000
Weco Agencies (Louisiana) Inc. New Orleans, LA	2/3/98	3 violations alleged: 1-769.2(a) Agreed to refuse to do business. 1-769.2(d) Furnished prohibited information. 1-769.6 Failed to report.	\$12,000
H.A. Gogarty, Inc. Metairie, LA	3/16/98	2 violations alleged: 1-769.2(a) Required another person to refuse to do business. 1-769.2(d) Furnished prohibited information.	\$5,000

Dell Computer, GmbH Langen, Germany	5/28/98	1 violation of 769.2(d) Furnished prohibited business information.	\$3,000
Alexandria International (U.S.A.) Rome, GA.	7/24/98	1 violation of 769.2(d) Furnished prohibited business information.	\$7,000
FMC Corporation Chicago, IL	9/18/98	10 violations alleged: 3-769.2(d) Furnished prohibited business information. 7-769.6 Failed to report.	\$13,000

CHARGING LETTERS ISSUED IN Fiscal Year 1998			
COMPANY NAME & LOCATION	DATE LETTER ISSUED	VIOLATIONS CHARGED	PENALTY AMOUNT
Alexandria International (U.S.A.) Rome, GA.	5/12/98	1 violation of 769.2(d) Furnished prohibited business information	[Case filed with Administrative Law Judge]