U.S. Anti-boycott Regulations

**Overview:**

These regulations were designed to prohibit U.S. companies from complying with aspects of foreign countries’ boycotts that are not supported by the United States. More specifically, these laws were created in response to the Arab League boycott of Israel. Currently the U.S. government has listed several countries as supporting the boycott of Israel one of which is Qatar.1

***\*NOTE: If you receive a request or have any questions regarding the information in this document immediately contact VCU’s Export Compliance Program at***[***exportctrl@vcu.edu***](mailto:exportctrl@vcu.edu)***or call 847-636-1991.***

**Six Key Prohibitions:**

* **Refuse** (or agree to refuse) to do business with another country or entity.
  + Example:
    - refuse to do business with someone on “Arab League Blacklist”
    - Refuse to business with Israel
    - Refuse to do business with a company even if is not on the Blacklist
  + Exceptions:
    - Can comply with import and export requirements of boycotting country
    - Can agree not to ship Israel products directly to Arab League Country (Arab League countries can control what comes into their boarders)
    - May agree to not route shipments via boycotted country
    - May agree not to use boycotted country carriers when dealing with boycotting country
    - Resident of a boycotting country may place a “positive” order for specific goods but may not exclude items (so if they order only china origin goods its ok as long as they do not tell you they do not want any Israeli origin goods).
* **Furnish** (or agree to furnish) information about your business relationship with a boycotted country or blacklisted persons.
* **Discriminate** against a US person on the basis of race, religion, sex or national origin.
* **Furnish** information about race, religion, sex or national origin of a US person.
* **Furnish** information concerning association with fraternal and charitable organizations.
* **Implement** letter of credit containing prohibited condition.

**Jurisdiction:**

***Export Administration Regulations: 15 C.F.R. § 760***

* Who is covered under EAR: applies to the activities of U.S. persons in the interstate or foreign commerce of the United States or controlled in fact affiliates of domestic concerns
  + U.S. Person – includes individuals, corporations, and unincorporated associations resident in the United States, including the permanent domestic affiliates of foreign concerns
  + Controlled in Fact Affiliates – test for “controlled in fact” is the ability to establish the general policies or to control the day to day operations of the foreign affiliate
* What actions are covered under EAR: prohibits U.S. persons from taking, or agreeing to take, actions taken with the intent to comply with, further, or support an unsanctioned foreign boycott
  + Requires U.S. persons to report certain requests that they have received to take certain actions to comply with, further, or support an unsanctioned foreign boycott.

***Internal Revenue Code: 15 C.F.R. § 760: 26 U.S. Code § 999***

* Agreeing to participate/cooperate in a boycott is not prohibited and therefore do not carry civil or criminal penalties but can result in adverse U.S. tax consequences for the taxpayer
* The IRC reaches the conduct of non-U.S. affiliates who are members of a U.S. taxpayer’s controlled group under the IRC – even if the conduct is not associated with an activity in U.S. commerce.

**Scope of Reporting Requirements:**

* Department of Commerce: EAR 15 C.F.R. § 760.5
  + A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce.
    - Such a request may be either written or oral and may include a request to furnish information or enter into or implement an agreement.
    - It may also include a solicitation, directive, legend or instruction that asks for information or that asks that a United States person take or refrain from taking a particular action.
    - Such a request shall be reported regardless of whether the action requested is prohibited or permissible under this part, except as otherwise provided by this section.
  + A request received by a United States person is reportable if he knows or has reason to know that the purpose of the request is to enforce, implement, or otherwise further, support, or secure compliance with an unsanctioned foreign boycott or restrictive trade practice.

**Record Keeping Requirements:**

* Mandatory EAR record keeping requirements EAR 762.1(a)(1)
  + Must keep records related to anti-boycott matters for 5 years
    - Memoranda, notes, correspondence, contracts
    - Invitations to bid, books of account, financial records
    - Other restrictive trade practice or boycott documents and reports

**Penalties for Non-compliance:**

* EAR
  + A civil penalty of $250,000
  + Criminal penalty, upon conviction, be fined not more than $1,000,000, or if a natural person, may be imprisoned for not more than 20 years, or both.
* Department of Treasury (for failing to follow reporting requirements)
  + Civil penalty Adverse tax consequences
  + Criminal penalty, fined not more than $25,000, imprisoned for not more than one year, or both.

**Compliance Areas of Concern:**

* Written Communications
  + Emails
  + Contracts and Purchase Orders
  + Letters of Credit
  + Import Documents
  + Invoices
  + Shipping Terms
* Problem Language
  + Reference to Israel when transaction does not involve Israel
  + Certifying goods are not of a certain origin
  + General requests to comply with laws/regulations of a boycotting country