

Locke Lord QuickStudy: Key Takeaways for Antiboycott Compliance Programs Following BIS Penalizing Company for Antiboycott Violations

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On September 30, 2024, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") imposed a civil penalty of \$151,875 against a U.S.-based technology company to resolve 45 alleged violations of the antiboycott provisions of the Export Administration Regulations ("EAR"). These violations occurred between July 2018 and December 2019 and involved requests from a distributor located in the United Arab Emirates ("UAE") to refrain from importing Israeli-origin goods.

The company voluntarily self-disclosed the violations, cooperated with BIS's Office of Antiboycott Compliance, and implemented remedial measures, all of which resulted in a reduced penalty. This enforcement action underscores the importance of ensuring robust compliance programs that address antiboycott provisions, especially for companies with foreign subsidiaries, distributor agreements, or operations in jurisdictions prone to making boycott-related requests.

Background of the Case

The company admitted to the conduct outlined in BIS's Proposed Charging Letter, which detailed 45 violations of Section 760.5 of the EAR. This section of the regulations requires U.S. persons to report requests to engage in restrictive trade practices or foreign boycotts against U.S.-friendly countries. The company failed to report 45 such requests from its UAE customer, which had asked it to refrain from importing Israeli goods in fulfillment of purchase orders.

Understanding the Antiboycott Regulations

The antiboycott provisions of the EAR, implemented under the Anti-Boycott Act of 2018, are designed to discourage U.S. persons from supporting unsanctioned foreign boycotts, such as the Arab League boycott of Israel. The regulations prohibit certain actions and require U.S. persons to report boycott-related requests to BIS, even if they do not intend to comply.

The regulations apply to a wide range of transactions, including contracts, letters of credit, and requests from foreign customers or distributors. Failure to report these requests can result in significant penalties, as demonstrated in this case. Companies should be aware that boycott-related requests may appear in documents

such as purchase orders, contracts, and correspondence, especially in dealings with customers or vendors in regions known for maintaining unsanctioned boycotts.

Compliance and Reporting Obligations

U.S. persons are required to report boycott-related requests within specific timeframes. Reports must be filed electronically or by mail using forms BIS-621P for single transactions or BIS-6051P for multiple transactions received within a calendar quarter. Companies located in the U.S. must submit these reports by the end of the month following the calendar quarter in which the request was received. For companies outside the U.S., the deadline is the last day of the second month following the relevant calendar quarter.

BIS also maintains a boycott “Requester List,” which identifies entities that have been reported to make boycott-related requests. While inclusion on this list does not restrict U.S. persons from conducting business with listed parties, it serves as a warning that additional scrutiny may be required in dealings with these entities.

Enhancing Compliance Programs

Given BIS’s focus on antiboycott enforcement and the increased penalties for violations, U.S. companies should take proactive steps to strengthen their compliance programs. This includes ensuring that compliance training and policies are disseminated to all relevant employees, especially those involved in foreign transactions or who interact with international customers and vendors.

Key compliance strategies include:

- Thoroughly reviewing contracts, purchase orders, and correspondence for any language that could be construed as a boycott-related request.
- Companies should vet vendors and customers for compliance risks, ensuring that they are aware of U.S. antiboycott regulations.
- Training employees on how to identify and report potential antiboycott requests.
- Companies dealing with customers or vendors in regions known for maintaining unsanctioned boycotts should be especially cautious.
- Implementing internal reporting mechanisms to ensure that any requests are promptly flagged and reported to BIS in compliance with the EAR. In the event that a boycott-related request is received, companies should ensure that it is reported to the appropriate authorities in a timely manner, even if they do not plan to comply with the request.
- Monitoring foreign subsidiaries and partners to ensure they are aware of and comply with U.S. antiboycott laws, as foreign parties are increasingly scrutinized for their role in making boycott requests.

BIS’s ongoing efforts to increase penalties and focus on foreign subsidiaries reinforce the importance of robust compliance programs. Companies must remain diligent in their efforts to prevent inadvertent participation in or support for unsanctioned foreign boycotts and to comply with U.S. reporting requirements.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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