UNITED STATES DEPARTMENT OF COMMERCE
Assistant Secretary for Export Enforcement
Washington, D.C. 20230

October 6, 2022

MEMORANDUM FOR ALL EXPORT ENFORCEMENT EMPLOYEES

FROM: MATTHEW S. AXELROD, ASSISTANT SECRETARY FOR EXPORT ENFORCEMENT

SUBJECT: ENHANCED ENFORCEMENT OF THE ANTIBOYCOTT RULES

More than four decades ago, the United States formally recognized long-held foreign policy and non-discrimination principles when Congress passed antiboycott legislation as part of the Export Administration Act of 1979. Designed to address the Arab League's boycott of Israel, this legislation, which was reauthorized under the Anti-Boycott Act of 2018, more broadly prohibited U.S. persons from participating in any unsanctioned boycott imposed by a foreign government against a country friendly to the United States. Crucially, these antiboycott laws preserved U.S. foreign policy interests by preventing U.S. industry from implementing the foreign policy prerogatives of other nations.

These antiboycott laws, implemented under the Export Administration Regulations (EAR), were also enacted to address another vital concern: unlawful discrimination. A bedrock principle of our democracy, federal civil rights laws strictly prohibit discrimination in business and in employment. Our nation's antiboycott regulations reflect this foundational principle by unequivocally forbidding U.S. companies from participating in unsanctioned foreign boycotts that would require them to implement discriminatory business or employment practices.

Against this backdrop, the antiboycott rules carry strong symbolic importance to the United States and to our allies. They reflect an acknowledgment of both the insidiousness of illegal discrimination and the harm inflicted on U.S. foreign policy interests when U.S. firms participate in unsanctioned foreign boycotts.

The serious nature of the conduct prohibited by antiboycott rules demands strong enforcement and accountability measures. For more than forty years, the Office of Antiboycott Compliance (OAC) has been stalwart in its implementation of the antiboycott rules. Their work has had significant impact. OAC has worked hard to educate companies about their responsibilities under the law, to encourage companies to institute and implement rigorous Compliance Programs to deter violations, and to impose penalties when violations have occurred.

Today, I am taking the following steps to further strengthen OAC's antiboycott enforcement program. These changes are designed to enhance compliance, increase transparency, incentivize deterrence, and compel accountability for those who violate our nation's antiboycott rules.

Enhanced Penalties. As outlined above, violations of our antiboycott rules cause real harm to the United States, both to our core principle of non-discrimination and to our foreign policy interests. Going forward, we will impose penalty amounts that reflect our assessment of the seriousness of the violation and that are commensurate with the harm caused. Because not all antiboycott violations are equivalent in seriousness, we will continue to seek different levels of penalties depending on the different nature of the antiboycott violation. For the most serious violations – those in Category A under our regulations – BIS will begin its penalty calculus with the maximum penalty under the Anti-Boycott Act. Our regulations have long provided for imposition of the maximum penalty for Category A violations. But our past practice was to impose the maximum penalty for only a small subset. Now, all Category A violations will be subject to the maximum penalty as the starting point in our penalty calculus. For violations of Category B, penalties will be enhanced as well. Penalties must be high enough to both punish those who violate the antiboycott rules and deter those who would violate them. This means that penalties for Category C violations will also be increased.

Reprioritized Violation Categories. Consistent with the above penalty enhancements, we are updating our regulatory categories to better align those categories with our view of the violations' relative seriousness. As OAC has evaluated cases over time, they have determined that the current categories of violations do not always correspond to what they see as the appropriate comparative degree of seriousness. Now that we plan to consistently use the maximum penalty as the starting point for Category A violation penalties, it's important that Category A reflect what OAC views as the most significant category of offenses. For that reason, we have revised the Antiboycott Penalty Guidance to recategorize certain antiboycott violations in a manner that reflects our current view of their relative seriousness. https://www.federalregister.gov/public-inspection/2022-21713/guidance-export-administration-regulations-penalty-determinations-in-the-settlement-of

Admissions of Misconduct. In the past, when we have resolved matters involving violations of the antiboycott rules, we have allowed companies to pay a reduced penalty without admitting misconduct. These "no admit/no deny" settlements had the advantage of making it easier to reach resolution, but also had two serious disadvantages. First, because there was no admission in such cases, there was no admitted statement of facts, i.e., no factual recitation making clear what got the company into trouble. Without such an admitted statement of facts, it is more difficult for other companies to learn from their peers' mistakes and adjust their behavior accordingly. Second, companies get a significant reduction in penalty when they resolve matters short of trial. We want companies to resolve matters and want to incentivize them to do so. But in other enforcement contexts, including in our administrative export enforcement cases, companies must admit their conduct in order to obtain a resolution. The same will now be true in administrative antiboycott enforcement cases as well. Under the new policy, OAC will require those who enter into settlement agreements for antiboycott violations to admit to a statement of facts outlining their conduct as part of the settlement agreement.

Renewed Focus on Foreign Subsidiaries of U.S. Companies. Violations of our antiboycott rules have traditionally resulted in consequences being imposed on the U.S. parties receiving the boycott-related requests (for complying with or failing to report receipt of such requests) and not on the parties making them. The penalties we impose on U.S. recipients help to deter them from complying with boycott-related requests by attaching significant costs on the

back end. But this is only one side of the equation. We also want to dissuade foreign parties from making those requests in the first place. Going forward, we will be more aggressive in exploring ways to deter foreign parties from issuing or making boycott requests of U.S. persons. In particular, we will bring a renewed focus to our enforcement efforts against controlled foreign subsidiaries of U.S. parent companies when they act in violation of our antiboycott regulations.

Thank you to the Office of Antiboycott Compliance for their continued steadfast work protecting our foreign policy interests and defending core American principles of equality and non-discrimination. With these policy changes, OAC now has enhanced tools to help them carry out their important mission.