

rules require that a boycott related "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" be reported. Questions have frequently arisen about how particular requirements in the form of directive or instructions are viewed under the antiboycott regulations, and we believe that it will add clarity to the regulations to provide a written interpretation of how three of these terms are treated under the law. The terms in question appear frequently in letters of credit, but may also be found on purchase orders or other shipping or sale documents. They have been brought to the attention of the Department by numerous persons. The terms are, or are similar to, the following: (1) Goods of boycotted country origin are prohibited; (2) No six-pointed stars may be used on the goods, packing or cases; (3) Neither goods nor packing shall bear any symbols prohibited in the boycotting country.

(a) *Goods of boycotted country origin prohibited.* This term is very common in letters of credit from Kuwait and may also appear from time-to-time in invitations to bid, contracts, or other trade documents. It imposes a condition or requirement compliance with which is prohibited, but permitted by an exception under the Regulations (see § 760.2(a) and § 760.3(a)). It is reportable by those parties to the letter of credit or other transaction that are required to take or refrain from taking some boycott related action by the request. Thus the bank must report the request because it is a term or condition of the letter of credit that it is handling, and the exporter-beneficiary must report the request because the exporter determines the origin of the goods. The freight forwarder does not have to report this request because the forwarder has no role or obligation in selecting the goods. However, the freight forwarder would have to report a request to furnish a certificate that the goods do not originate in or contain components from a boycotted country. See § 760.5, examples (xii)-(xvii).

(b) *No six-pointed stars may be used on the goods, packing or cases.* This term appears from time-to-time on documents from a variety of countries. The Department has taken the position that the six-pointed star is a religious symbol. See § 760.2(b), example (viii) of this part. Agreeing to this term is prohibited by the Regulations and not excepted because it constitutes an agreement to furnish information about the religion of a U.S. person. See § 760.2(c) of this part. If a person proceeds with a transaction in which this is a condition at any stage of the transaction, that person has agreed to the condition in violation of the Regulations. It is not enough to ignore the condition. Exception must affirmatively be taken to this term or it must

be stricken from the documents of the transaction. It is reportable by all parties to the transaction that are restricted by it. For example, unlike the situation described in (a) above, the freight forwarder would have to report this request because his role in the transaction would involve preparation of the packing and cases. The bank and exporter would both have to report, of course, if it were a term in a letter of credit. Each party would be obligated affirmatively to seek an amendment or deletion of the term.

(c) *Neither goods nor packaging shall bear any symbols prohibited in the boycotting country.* This term appears from time-to-time in letters of credit and shipping documents from Saudi Arabia. In our view, it is neither prohibited, nor reportable because it is not boycott-related. There is a wide range of symbols that are prohibited in Saudi Arabia for a variety of reasons, many having to do with that nation's cultural and religious beliefs. On this basis, we do not interpret the term to be boycott related. See § 760.2(a)(5) and § 760.5(a)(5)(v) of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 7 TO PART 760—
INTERPRETATION

Prohibited Refusal To Do Business

When a boycotting country rejects for boycott-related reasons a shipment of goods sold by a United States person, the United States person selling the goods may return them to its inventory or may re-ship them to other markets (the United States person may not return them to the original supplier and demand restitution). The U.S. person may then make a non-boycott based selection of another supplier and provide the goods necessary to meet its obligations to the boycotting customer in that particular transaction without violating § 760.2(a) of this part. If the United States person receives another order from the same boycotting country for similar goods, the Department has determined that a boycott-based refusal by a United States person to ship goods from the supplier whose goods were previously rejected would constitute a prohibited refusal to do business under § 760.2(a) of this part. The Department will presume that filling such an order with alternative goods is evidence of the person's refusal to deal with the original supplier.

The Department recognizes the limitations this places on future transactions with a boycotting country once a shipment of goods has been rejected. Because of this, the Department wishes to point out that, when faced with a boycotting country's refusal to permit entry of the particular goods, a United States person may state its obligation to abide by the requirements of United

States law and indicate its readiness to comply with the unilateral and specific selection of goods by the boycotting country in accordance with §760.3(d). That section provides, in pertinent part, as follows:

“A United States person may comply or agree to comply in the normal course of business with the unilateral and specific selection by a boycotting country * * * of * * * specific goods, * * * provided that * * * with respect to goods, the items, in the normal course of business, are identifiable as to their source or origin at the time of their entry into the boycotting country by (a) uniqueness of design or appearance or (b) trademark, trade name, or other identification normally on the items themselves, including their packaging.”

The Department wishes to emphasize that the unilateral selection exception in §760.3(d) of this part will be construed narrowly, and that all its requirements and conditions must be met, including the following:

- Discretion for the selection must be exercised by a boycotting country; or by a national or resident of a boycotting country;
- The selection must be stated in the affirmative specifying a particular supplier of goods;
- While a permissible selection may be boycott based, if the United States person knows or has reason to know that the purpose of the selection is to effect discrimination against any United States person on the basis of race, religion, sex, or national origin, the person may not comply under any circumstances.

The Department cautions United States persons confronted with the problem or concern over the boycott-based rejection of goods shipped to a boycotting country that the adoption of devices such as “risk of loss” clauses, or conditions that make the supplier financially liable if his or her goods are rejected by the boycotting country for boycott reasons are presumed by the Department to be evasion of the statute and regulations, and as such are prohibited by §760.4 of this part, unless adopted prior to January 18, 1978. See §760.4(d) of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 8 TO PART 760— INTERPRETATION

Definition of Interstate or Foreign Commerce of the United States

When United States persons (as defined by the antiboycott regulations) located within the United States purchase or sell goods or services located outside the United States, they have engaged in an activity within the foreign commerce of the United States. Although the goods or services may never

physically come within the geographic boundaries of the several states or territories of the United States, legal ownership or title is transferred from a foreign nation to the United States person who is located in the United States. In the case of a purchase, subsequent resale would also be within United States commerce.

It is the Department’s view that the terms “sale” and “purchase” as used in the regulations are not limited to those circumstances where the goods or services are physically transferred to the person who acquires title. The EAR define the activities that serve as the transactional basis for U.S. commerce as those involving the “sale, purchase, or transfer” of goods or services. In the Department’s view, as used in the antiboycott regulations, “transfer” contemplates physical movement of the goods or services between the several states or territories and a foreign country, while “sale” and “purchase” relate to the movement of ownership or title.

This interpretation applies only to those circumstances in which the person located within the United States buys or sells goods or services for its own account. Where the United States person is engaged in the brokerage of foreign goods, i.e., bringing foreign buyers and sellers together and assisting in the transfer of the goods, the sale or purchase itself would not ordinarily be considered to be within U.S. commerce. The brokerage service, however, would be a service provided from the United States to the parties and thus an activity within U.S. commerce and subject to the antiboycott laws. See §760.1(d)(3).

The Department cautions that United States persons who alter their normal pattern of dealing to eliminate the passage of ownership of the goods or services to or from the several states or territories of the United States in order to avoid the application of the antiboycott regulations would be in violation of §760.4 of this part.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34950, June 1, 2000]

SUPPLEMENT NO. 9 TO PART 760— INTERPRETATION

Activities Exclusively Within a Boycotting Country—Furnishing Information

§760.3(h) of this part provides that a United States person who is a bona fide resident of a boycotting country may comply with the laws of that country with respect to his or her activities exclusively within the boycotting country. Among the types of conduct permitted by this exception is “furnishing information within the host country.” §760.3(h)(1)(v) of this part. For purposes of the discussion which follows, the Department is assuming that the person in question is a bona fide resident of the boycotting