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THE ARAB BOYCOTT and AMERICAN EXPORT LAW

A Brief Guide for Companies Active in the Middle East

THE AMERICAN JEWISH COMMITTEE
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A Brief Guide for Companies Active in the Middle East hen President Carter, in June 1977, signed the legislation which today keeps Americans and American businesses from getting involved in boycotts imposed by a foreign country against a country friendly to the United States, he voiced the hope that it would put an end to the divisive effect of the Arab boycott within our nation. If, he said, we allowed foreign governments to take actions that discriminate against a particular group of Americans (in this case American Jews), we would open the door to discrimination against every other ethnic, racial or religious group in the country.

In the period since the enactment of these anti-boycott provisions, what has happened to the Arab boycott? Has the intent of the law, to bar most forms of American compliance with the boycott, been fulfilled? And what are the new responsibilities of American companies doing business in the Middle East?

The Boycott Still Stands, But...

When the 1977 legislation was passed, Mohammed Ahmed Mahgoub, then Commissioner General of the Arab League's Central Boycott Office, declared: "The Boycott Office will take a decisive stand to convince those concerned that the Arab boycott of Israel will not be deterred by such laws. The office will be quite strict in implementing decisions which will be taken in this connection."

A year and a half later, the Arab states still maintain their boycott of Israel, and still try to make American businesses support it through secondary and tertiary boycotts, and the boycott still poses a threat to the integrity of American business. But since the anti-boycott legislation was adopted it has been possible for American companies to tell their Arab customers: "We want to do business with you, but we cannot cooperate with requests prohibited by American law."

The Problem

The Arab boycott has gone far beyond the internationally recognized right of sovereign nations to boycott other sovereign nations directly ("primary boycott"). Over and above refusing to deal with Israeli nationals or firms. Arab countries have tried to force others, such as American companies, to refrain from dealing with Israel ("secondary boycott"), or even from dealing in the U.S. with other American companies that deal with Israel ("tertiary boycott"). Moreover, though the sponsors of the boycott insist that they are only against Israel and Zionism, not against Jews as Jews, certain Arab countries have tried to discriminate among U.S. citizens on the basis of religion—for example, by refusing admission to American Jews who arrived as members of work teams.

American companies wanting to do business with Arab governments or firms have been required to submit information about any dealings they may have with Israel or with companies blacklisted for dealing with Israel—as well as to supply "negative certificates of origin" documenting that no part of the goods being sold comes from such sources.

The costs to the United States of these secondary and tertiary boycott practices have been substantial. As the American Bar Association has pointed out, such boycotts

Report on Foreign Boycotts of the American Bar Association Section of International Law. April 27, 1978

have had at least the following adverse effects on United States interests:

- —"such boycotts expand conflict to third parties and create pressures in such nations to abandon traditional ties of friendship and commerce and in this respect they have a substantially greater impact than primary boycotts alone;
- "such boycotts substantially compound the restraints on trade and economic distortions accompanying primary boycotts; and
- —"such boycotts may create subtle pressures on human rights and freedom of expression within affected third nations, including discrimination in employment or business dealings."

The Response

As these effects became evident, growing numbers of Americans concluded that such interference in U.S. business dealings could not be tolerated. Even before Congress acted for the nation as a whole, a number of individual states adopted legislation aimed at stemming the discriminatory effects of the Arab boycott. In 1976, the Congress proposed similar safeguards as amendments to the Export Administration Act; but although both Houses passed anti-boycott bills, they could not be reconciled in a conference committee before Congress adjourned.

When the new Congress took up the legislation again during the winter of 1976-77. some corporations—particularly banks and petroleum companies, and others with close connections in the Arab world—sought to prevent passage. But a number of other corporations, notably members of the Business Roundtable, recognizing that Congressional sentiment favored measures which would prohibit American firms from collaborating in discriminatory efforts by foreign nations, undertook to work for a law that would be fair to both the business

community eager to do business in the Middle East and to those who were threatened by the Arab boycott.

Over a period of many weeks, leaders of the Business Roundtable conferred with representatives of three leading Jewish organizations—the Anti-Defamation League of B'nai B'rith, the American Jewish Committee and the American Jewish Congress—to seek agreement on how this goal could be achieved. The compromise they arrived at became the basis of the present law.

The Export Administration Act, as amended in 1977, prohibits American firms and individuals from complying with boycotts imposed by a foreign country against a country friendly to the United States. Though couched in terms applicable to any such boycott, the provisions were aimed first and foremost at the Arab boycott of Israel, which has had a particularly odious impact on certain United States citizens and businesses.

Prohibited Actions

To protect American citizens and companies from foreign attempts to impose discrimination and foreign interference in their affairs, Federal law provides:

- (1) U.S. persons or companies may not refuse, or require anyone else to refuse, dealings with a boycotted country or with any other person, pursuant to an agreement with, a requirement of, or a request by a boycotting country.
- (2) No one may discriminate against U.S. persons or companies on account of the race, religion, sex or national origin of that person or any of the company's owners, directors, or employees.
- (3) Letter of credit containing conditions contrary to the law's provisions may not be implemented.
- (4) Certain information designed to further

the boycott may not be supplied. This includes data:

- about the race, religion, sex or national origin of any U.S. citizen;
- about the business relationships of a U.S. company with boycotted nations or blacklisted companies;
- about anyone's contributions to, or other connections with, charitable or fraternal organizations supporting the boycotted country.

Exceptions to Prohibitions

The law makes several exceptions to these prohibitions, to avoid interfering with the sovereign rights and laws of boycotting nations and to facilitate normal trade relations. Thus, as regards the Arab boycott of Israel, these exceptions mean that:

- (1) Boycotting countries, their nationals or residents may continue to select specific suppliers. American businesses may comply with terms specifying particular carriers, or providers of services to be performed wholly or in significant part in the boycotting country, or specifying goods that are identifiable by source in the normal course of business. However, such compliance is allowed only if the selections are made unilaterally by the boycotting customer.
- (3) Persons and companies resident in a boycotting country may comply with local laws governing activities exclusively within that country, including laws governing the import of trademarked or similarly specifically identified products purchased for their own use in that country.
- (4) American businesses may continue to process legitimate import and shipping document requirements, as well as legitimate immigration and passport requirements. Certificates of origin and

other certificates identifying suppliers of services may be provided, as long as they state where goods and services originate, not where they do *not* originate.

These exceptions may not, of course, be used to evade the intent of the law. As Stanley J. Marcuss, who heads the Commerce Department office responsible for administering the anti-boycott regulations, explains:

"The basic philosophy is that no American company should be forced to implement or help enforce someone else's boycott. The U.S. has the right and, indeed, the responsibility, to protect its own citizens against discrimination by other citizens of this country who are complying with the dictates or the foreign policy of a foreign government. But the law also recognizes the right of one country to conduct a boycott against another. Where it does draw the line is at the point where the foreign country attempts to enlist American citizens in the implementation and enforcement of that boycott."²

Reporting Requirements

Since August 1, 1978, a person or company who receives a request to take any action that will further or support a restrictive trade practice or boycott must report it to the U.S. Department of Commerce—even if the action requested comes under one of the exceptions listed above. This requirement applies not only to U.S. companies, but also to foreign subsidiaries, affiliates or branch offices under control of such companies, with respect to their activities in the interstate or foreign commerce of the United States.

 [&]quot;Boycott: The New American Response." by Stanley
J. Marcuss. Senior Deputy Assistant Secretary for
Industry and Trade. <u>Commerce America</u>. February
27, 1978.

The Commerce Department has emphasized that the term "request" is to be construed broadly:

"It includes a situation where an exporter is negotiating a transaction with a boycotting country, knows that he will be asked to supply certain reportable boycott information at the conclusion of the negotiations, and, in an effort to forestall receipt of the request and thereby avoid having to file a report, supplies the information in advance. The term "request" also includes a solicitation, directive, legend, or instruction that asks for information or that asks that a United States person take or refrain from taking action. Requests which are reportable may be either oral or written or may take many forms."

Until June 30, 1979, companies located in the U.S. must report any boycott request by the end of the month following the month in which it was received. After that date, requests are to be reported by the end of the calendar quarter in which received.

The reports will be available for public inspection. However, there are safeguards for keeping confidential all information whose disclosure the Secretary of Commerce deems likely to place the reporting company at a competitive disadvantage, or to be contrary to the national interest.

Some practices normally used for non-boycotting purposes are specifically exempted from the reporting requirements. For example, there is no need to report requests to refrain from shipping goods on a carrier which flies the flag of a particular country; to ship via a prescribed route or avoid a specified route; to supply a positive certificate of origin. Also exempt are requests to individuals to supply information about themselves, or members of their families for immigration, passport, visa or employment purposes.

Reports must be sent to the Bureau of

Trade Regulation, Room 1617-M, U.S. Department of Commerce, Washington, D.C. 20230. Reporting forms are available from that office

A Look Ahead

How will anti-boycott legislation affect U.S. Mideast trade? The answer depends largely on two factors: the willingness of the Arabs to abandon the boycott mechanism, and the commitment of American companies to negotiate changes in Arab boycott practices in individual transactions.

The new law appears to have weakened the boycott, although it still receives avid lipservice throughout the Arab world. According to the Commerce Department, several Arab countries have eased boycott requirements in individual transactions when American companies have made an effort to get them removed or relaxed, and some countries have reduced their requirements across the board.

Thus, most Arab countries now accept positive certificates of origin instead of insisting on negative ones. Saudi Arabia, America's largest Arab trading partner, no longer requires certification that vessels and insurance carriers are not blacklisted, and no longer demands that powers of attorney used in registering patents and trademarks contain boycott provisions. Clauses calling specifically for compliance with Kuwait's boycott laws are reportedly being deleted from Kuwaiti government contracts and being replaced by a less offensive requirement calling for general compliance with the country's laws. The Commerce Department also reports that boycott conditions are disappearing from letters of credit relating to Middle East transactions.

As for the effect of anti-boycott legislation on the flow of trade, according to the

Commerce Department:3

"Last year's gloomy predictions that passage of the foreign boycott provisions of the Export Administration Amendments would cost thousands of U.S. jobs and severely damage U.S.-Arab trade have not materialized. On the contrary, since the passage of the law, there has been a significant increase in U.S. exports to the 14 Near East/North African boycotting countries. For the first six months of 1978, U.S. sales to those countries totalled just under \$4 billion, an increase of 10 percent over the same period last year."

This analysis has been echoed even by some Arab business leaders. The Secretary General of the General Union of Arab Chambers of Commerce. Industry and Agriculture. Burhan Dajani, who led a delegation of over 100 Arab businessmen on a tour of the U.S. early in 1978, said: "I believe business on both sides has been able to live with these laws. It has been possible to continue the flow of trade."

And the Arab Press Service, in its October 16, 1978 International Edition, reports that "The Arabs" economic weapon against Israel is crumbling. Once Egypt has broken the boycott then, within a year, more than half the population of the Arab world will join in."

Given these trends, the American business community has good reason to expect increased dealings throughout the Middle East, not only in the Arab world, but in Israel as well. There are growing signs that some boycotting countries are prepared to do business with U.S. companies whether or not these companies also trade with Israel. But a crucial factor in the easing of boycott restrictions on U.S. companies will be how committed American business is to freedom of trade, and how willing to press for abatement of boycott practices in their individual

^{3.} Stanley J. Marcuss. Address to International Trade Club. Chicago. September 14, 1978

transactions.

During 1978, the Ford Motor Company and the Coca Cola Corporation, though blacklisted by the Arabs for doing business in Israel, announced plans to expand their operations in Egypt while continuing their Israeli activities. Ford and Coca Cola will thus join IBM and TWA, Hertz and Avis, the Hilton and Sheraton Hotels, American Express, General Electric, General Telephone and hundreds of others who have defied the boycott and maintained business in both Israel and the Arab world.

These companies, and others that follow their lead, will serve not only their own commercial interests, but also the interests of peace. For over and above putting unfair pressures on Americans, the boycott has been an obstacle to peaceful settlement of the Arab-Israel conflict. Conversely, expansion of free trade can give added impetus to the search for peace and understanding in that region. By complying with the spirit as well as the letter of the anti-boycott law, American business can make its contribution toward that end.

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