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# Anti-Boycott Restrictions Remain Relevant Today

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**Anti-boycott rules are one of the lesser raised issues across clients involved in international trade or in servicing those movements, but the issue does arise. The rules originated in the Export Administration Act of 1979 (the Act) as a means to protect U.S. business practices and foreign policy but the U.S. Department of Commerce (Commerce) enhanced the act as recently as 2022. Four new "enhancements" to the rules reprioritize categories of violations with enhanced penalties, revise the settlement process, and renew focus on foreign subsidiaries of U.S. companies. Here is a quick summary.**

**Recategorization of Violations.** Commerce through its Bureau of Industry and Security (BIS) now categorizes violations based on perceived harm. Category A violations are only the most serious offenses and now include furnishing information about association with charitable organizations that support a boycotted country [87 FR 60890]. Category A penalties are unchanged and reflect maximum penalties available under the Anti-Boycott Act of 2018. These penalties include imprisonment for twenty (20) years and a fine of $1 million USD [50 USC 4843; 87 FR 60890]. BIS additionally revised Category B violations to include those that most commonly arise in commercial transactions, including some violations that were removed from Category A such as refusal to do business, violations involving letters of credit, and furnishing information about business relationships with boycotted countries or blacklisted persons [87 FR 60809]. BIS also enhanced penalties for the same. [87 FR 60890] Category C violations have not been revised.

**Settlement Process.** BIS also implemented changes to its settlement procedures to ensure harmony in its practice and promote visibility about compliant practices. In the past, BIS resolved violations by permitting companies to pay a reduced penalty without admitting misconduct through "no admit/no deny" settlements. BIS noted that these settlements lacked public statement of facts, which made compliance practices unclear for companies reviewing precedent. The lack of public fact statements was misaligned with BIS practices, such as the requirement that administrative export cases under its jurisdiction require a public admittance of conduct in order to obtain resolution. Now, BIS requires admittance to a statement of facts outlining violative conduct in the settlement agreement in order to obtain a reduced penalty in settlement.

**New Focus on Subsidiaries.** Finally, BIS stated that its past enforcement efforts have largely targeted U.S. parties that complied with, or failed to report receipt of, boycott requests rather than the parties making the requests. BIS stated that its future efforts will be more aggressive and include methods to deter foreign parties from issuing or making such boycott requests. BIS stated that it will have a particular focus on controlled foreign subsidiaries of U.S. parent companies.

The subject of anti-boycott rules has long been the practice of certain states or organizations seeking to boycott Israel. In the last ten (10) years over fifty (50) enforcement actions have been brought against U.S. companies, banks, and other entities for furthering illegal boycotts of Israel. While Israel is the "principal" unsanctioned foreign boycott with which U.S. persons should be concerned, BIS intends that the new enhancement will apply to all unsanctioned foreign boycotts.

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