

[4830-01]

Office of the Secretary

ISSUANCE OF NEW BOYCOTT GUIDELINES

JANUARY 20, 1978.

The Treasury Department today issued new guidelines, consisting of questions and answers, relating to the provisions of the Tax Reform Act of 1976 which deny certain tax benefits for participation in or cooperation with international boycotts.

The new guidelines supersede earlier sets of guidelines issued November 4, 1976 (Treasury news release WS-1156), December 30, 1976 (WS-1239), and August 12, 1977 (B-390), and published in the FEDERAL REGISTER on November 11, 1976, January 5, 1977, and August 17, 1977, respectively. The guidelines issued today generally are effective for operations occurring after, requests received after, and agreements made after November 3, 1976. As qualified by the following exceptions, this effective date affords a retroactive benefit to taxpayers who can claim the advantage of any rule in today's guidelines which is more favorable than previous guidelines. There are five exceptions to this general effective date:

First: Until February 13, 1978, affected persons will be entitled to the benefits of any previously published Treasury guidelines with respect to any specific issue covered in parts H through M of the guidelines.

Second: In the case of binding contracts entered into before October 25, 1977, operations that do not constitute participation in or cooperation with an international boycott, under any previously published Treasury guideline will not constitute participation in or cooperation with an international boycott until July 1, 1978.

Third: In the case of binding contracts entered into before February 13, 1978, but after October 24, 1977, operations that do not constitute participation in or cooperation with an international boycott under the August 12, 1977, guidelines will not constitute participation in or cooperation with an international boycott until January 1, 1979.

Fourth: In the case of binding contracts entered into before February 13, 1978, guidelines H-1B, H-8, H-29A, H-29B, I-8, J-11, and K-5 of today's guidelines will not be effective until July 1, 1978.

Fifth: If a particular guideline in parts A through G or N through O of today's guidelines results in an increase in the reporting burden or tax liability of a person, that answer will be effective for taxable years ending after January 20, 1978.

Although the guidelines issued today differ in many respects from earlier guidelines, substantial revisions are reflected in guidelines A-3, A-10B,

A-14A, A-14B, A-23, D-3, D-4, D-5, F-2, H-1B, H-2B, H-29A, H-29B, H-32, H-33, H-34, I-8, J-2A, J-2B, J-5, J-11, K-5, M-5, N-1A, N-1B, and N-2.

The principal authors of these guidelines were John C. Holberton, Russell L. Munk, and Leonard E. Santos of the Office of the Secretary of the Treasury.

Contact: Robert E. Nipp, 202-566-5328.

DEPARTMENT OF THE TREASURY GUIDELINES

BOYCOTT PROVISIONS (SECTION 999) OF THE
INTERNAL REVENUE CODE

Table of Contents

- A. Boycott reports.
- B. Definition of "operations."
- C. Definition of "reason to know" of official requirement of boycott participation.
- D. Definition of "clearly separate and identifiable operations."
- E. Effective date provisions.
- F. International boycott factor and specifically attributable taxes and income.
- G. Determinations.
- H. Definition of an agreement to participate in or cooperate with a boycott (section 999(b)(3)).
- I. Refraining from doing business with or in a boycotted country (section 999(b)(3)(A)(i)).
- J. Refraining from doing business with any U.S. person engaged in trade in a boycotted country (section 999(b)(3)(A)(ii)).
- K. Refraining from doing business with any company whose ownership or management in made up, in whole or in part, of individuals of a particular nationality, race, or religion (section 999(b)(3)(A)(iii)).
- L. Refraining from employing individuals of a particular nationality, race, or religion (section 999(b)(3)(A)(iv)).
- M. As a condition of the sale of a product, refraining from shipping or insuring that product on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott (section 999(b)(3)(B)).
- N. Reduction of foreign tax credit.
- O. Subpart F income.
- In the questions and answers:
 - (a) Company A and company B are companies organized under the laws of one of the States of the United States;
 - (b) Company C, company D, and company E (and bank C and bank D), unless otherwise stated in the question, are companies organized under the laws of any country, including the United States;
 - (c) Country X is a boycotting country, which, inter alia, boycotts country Y;
 - (d) Country Y is a country boycotted by country X;
 - (e) Country Z is any country and may be the United States; a boycotting country, or a boycotted country;
 - (f) All references to "sections" are to sections of the Internal Revenue Code of 1954, as amended;
 - (g) In parts H-M in instances where the action described in the question by itself does not, according to the answer, provide sufficient evidence to support an inference that an agreement under section 999(b)(3) exists, an overall course of conduct which includes such action in addition to other factors could support such an inference; whether an agreement can be inferred from

a given course of conduct is an evidentiary question which turns on the probative value of particular facts and circumstances; the examples offered in parts H-M are illustrative, not comprehensive; and

(h) In many questions in part H-M, a person deals with either country X or the government, a company or a national of country X. The result reached in the answer to each of those questions would be the same irrespective of whether the person is an individual, a company or any other type of person, and whether the person dealt with is country X or the government, a company or a national of country X.

BOYCOTT REPORTS

A-1. Q. Who must report as required by section 999(a)?

A. Generally, a U.S. person (within the meaning of section 7701(a)(30)) is required to report under section 999(a) if it—

1. Has operations; or
2. Is a member of a controlled group (within the meaning of section 993(a)(3)), a member of which has operations; or
3. Is a U.S. shareholder (within the meaning of section 951(b)) of a foreign corporation that has operations, but only if the U.S. shareholder owns (within the meaning of section 958(a)) stock of that foreign corporation; or
4. Is a partner in a partnership that has operations (see, however, answer A-17); or
5. Is treated under section 671 as the owner of a trust that has operations.

in or related to a boycotting country (or with the government, a company, or a national of a boycotting country). A person (within the meaning of section 7701(a)(1)) that is not a U.S. person is required to report under section 999(a) if it satisfies any one of the five conditions specified above and it either claims the benefit of the foreign tax credit under section 901 or owns stock of a DISC. For purposes of section 999(a), a foreign corporation engaged in a trade or business in the United States is not a U.S. person.

If a person controls a corporation within the meaning of section 304(c) and that person is required to report under section 999(a), then under section 999(e) that person must report whether the corporation participated in or cooperated with the boycott. If the corporation is required to report under section 999(a), then under section 999(e) the corporation must report whether the person participated in or cooperated with the boycott.

A boycotting country is—

(i) Any country that is on the list maintained by the Secretary under section 999(a)(3), or

(ii) Any country not on the list maintained by the Secretary under section 999(a)(3), in which the person required to file the report (or a member of the controlled group that includes that person) has operations, and which that person knows or has reason to know requires any person to participate in or cooperate with an international boycott that is not excepted by section 999(b)(4) (A), (B), or (C). Thus, even if the boycott participation required of the person reporting the operation is excepted by section 999(b)(4) (A) (B), or (C), if that person knows or has reason to know that boycott participation not excepted by section 999(b)(4) (A), (B), or (C) is required of any other person, the country is a boycotting country.

If the person required to file the report (or a member of the controlled group that includes that person) has operations related to a country, but not operations in that country, that country is not a boycotting country with respect to that person unless it is on the list maintained by the Secretary under section 999(a)(3). (For the definition of operations in or related to a country, see the questions and answers under part B.)

A-2. Q. Do the reporting requirements of section 999(a) that refer to "U.S. shareholders" of foreign corporations require U.S. minority shareholders to report the operations of such foreign corporations?

A. Yes. Under section 951(b) the term "U.S. shareholder" includes any U.S. person who owns (within the meaning of section 958(a)), or is considered as owning (by the application of the rules of ownership of section 958(b)), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation. The reporting requirement applies even if the U.S. shareholder is a minority shareholder and even if the foreign corporation is not a controlled foreign corporation within the meaning of section 957(a). However, as stated in answer A-1, the reporting requirement applies only to minority shareholders that actually own some stock within the meaning of section 958(a).

A-3. Q. If one member of a controlled group of corporations (within the meaning of section 993(a)(3)) files a report under section 999(a) with respect to the reportable operations of all members of that group, is this sufficient to discharge the reporting obligation of all members of the group?

A. Generally, every member of a controlled group of corporations (within the meaning of section 993(a)(3)) is required to report under section 999(a) if any member of the controlled group has operations in or related to a boycotting country. There are, however, two exceptions to this rule. First: A common parent (as defined in the regulations under section 1504) may file the report under section 999(a) on behalf of all the members of a controlled group that join with the common parent in the filing of a consolidated income tax return, and thereby discharge the obligation of each such member to file the report. Second: The requirement that each member of the controlled group file a report under section 999(a) is waived for each such member who, for its own taxable year:

1. Had no operations (other than those that meet the requirements of Answer A-20) in or related to a boycotting country (or with the government, a company, or a national of a boycotting country) and owned no stock, directly or indirectly, of any corporation having such operations; and

2. Received no request to participate in or cooperate with an international boycott and owned no stock, directly or indirectly, of any corporation receiving such a request; and

3. Is not entitled to (or forfeits) any benefits of deferral, DISC, or the foreign tax credit; and

4. Attaches to its income tax return a certificate signed by a person authorized to sign the tax return of the common parent certifying that the common parent filed a form 5713 on behalf of such member.

A-4. Q. If one U.S. shareholder of a foreign corporation files a report under section 999(a) in respect of the reportable operations of the foreign corporation, is this sufficient to discharge the reporting obligation

of all U.S. shareholders of the foreign corporation in respect of that corporation's operations?

A. No. Each U.S. shareholder of a foreign corporation must file the section 999(a) report in respect of the activities of that corporation. However, if two or more U.S. shareholders of a foreign corporation are included in the same consolidated return, only one report need be filed with respect to all U.S. shareholders included in the return.

A-5. Q. How will the reporting requirements under section 999(a) be satisfied?

A. A taxpayer required to file an international boycott report under section 999(a) will fulfill this requirement by filing IRS Form 5713, "International Boycott Report," and all applicable supporting schedules and forms contained in the taxpayer's income tax returns that indicate the amounts and computations of benefits denied under sections 908(a), 952(a)(3), and 995(b)(1)(F) of the Internal Revenue Code.

A-6. Q. What degree of confidentiality will the international boycott reports submitted by taxpayers receive?

A. The reports by taxpayers will be submitted as part of the income tax return and, therefore, will be accorded the same degree of confidential treatment under section 6103 as any other information contained in an income tax return.

A-7. Q. Where and how should the Form 5713 be filed?

A. The Form 5713 should be filed in duplicate by all reporting taxpayers. One copy of Form 5713 should be sent to the Internal Revenue Service, 11601 Roosevelt Blvd., Philadelphia, Pa. 19155, and the other copy of Form 5713 should be attached to the taxpayer's income tax return that is filed with the taxpayer's customary Internal Revenue Service Center.

A-8. Q. Do individuals as well as corporations use Form 5713?

A. Yes. All taxpayers required to file a report under section 999(a) use IRS Form 5713. However, some parts of the form apply to corporations only; individual taxpayers can ignore these parts and complete only the parts relevant to individuals.

A-9. Q. Section 999(b)(4) permits a person to agree to comply with certain laws without being treated as having agreed to participate in or cooperate with an international boycott. In the course of its operations in or related to a boycotting country, a person agrees to comply with a prohibition on importation and exportation that is described in section 999(b)(4)(B) and section 999(b)(4)(C). Is that person required to report the operations on Form 5713?

A. Yes, although agreements described in section 999(b)(4)(B) and (C) do not constitute participation in or cooperation with an international boycott, the operations in or related to a boycotting country must be reported on Form 5713.

A-10A. Q. Section 999(b)(4)(A) permits a person to meet requirements imposed by a foreign country with respect to an international boycott if U.S. law or regulations, or an Executive order, sanctions participation in or cooperation with that international boycott. If a person's operations fall within this exception, is the person required to report such operations?

A. No. The reporting requirements with respect to operations under such international boycotts are waived.

A-10B. Q. Certain types of conduct that would otherwise be covered under section 999 of the Internal Revenue Code are not

covered by, or are excepted from the penalties of, the Export Administration Amendments of 1977. Are those types of conduct permitted under section 999(b)(4)(A) of the Internal Revenue Code and thereby exempt from the coverage of section 999?

A. No. Both the reporting requirements of section 999 and the sanctions of sections 908(a), 952(a)(3), and 995(b)(1)(F) apply to those types of conduct. The exception of section 999(b)(4)(A) applies to an international boycott such as the embargo against Rhodesia in which the United States participates or with which the United States cooperates pursuant to U.S. law or regulations or to an Executive order.

A-11. Q. Company C sells goods or services outside a boycotting country to a person that is not a boycotting country, or the government, a company, or a national of a boycotting country. Company C knows or has reason to know that person in turn will either use the goods or services in a boycotting country, or will sell the goods or services for use in a boycotting country. Is company C required to report its sale of goods or services to that person?

A. Although the sale of the goods or services by company C constitutes an operation of company C related to a boycotting country (see answer B-1), the requirement that company C report the sale is waived, provided that in connection with the operation company C does not receive a request to participate in or cooperate with an international boycott (within the meaning of section 999(b)(3)), company C does not participate in or cooperate with an international boycott, and facilitation of participation in or cooperation with an international boycott was not one of the principal purposes for company C's entering into either the relationship or the transaction between company C and the other person. If facilitation of boycott participation or cooperation is a principal purpose of the relationship or the transaction, then company C's failure to report the sale of the goods or services to the other person is a willful failure to report within the meaning of section 999(f). The result in this answer would be the same were company C an individual or any other type of person, or if company C did other business with the other person outside a boycotting country.

A-12. Q. Company A is a U.S. shareholder (within the meaning of section 951(b)) of company C, a foreign corporation that is not a member of a controlled group that includes company A. Company A has a taxable year ending January 31, and company C has a taxable year ending June 30. Both companies have operations in country X, which is on the list maintained pursuant to section 999(a)(3). Who should file Form 5713 and for what period?

A. As indicated in answer A-1, company C need not file Form 5713 unless it claims the benefit of the foreign tax credit under section 901 or owns stock of a DISC. Company A must file Form 5713 for its taxable year ending January 31, and must report operations of company C during company C's taxable year ending within the period covered by company A's report.

A-13. Q. In the case of a Form 5713 filed by a member of a controlled group, what period of time should be reflected in the report, and when should the report be filed?

A. Each person described in Answer A-1 ("reporting person") is required to report all reportable operations, requests and participation or cooperation of each member of

the controlled group for each member's taxable year that ends with or within the common taxable year of the controlled group that ends with or within the taxable year of the reporting person.

In addition, each reporting person is required to report all reportable operations, requests and participation or cooperation of each foreign corporation having a United States shareholder that is a member of the controlled group. Such operations, requests and participation or cooperation of a foreign corporation are reported for the foreign corporation's taxable year that ends with or within the taxable year of the United States shareholder that ends with or within the common taxable year of the controlled group that ends with or within the taxable year of the reporting person.

In general, the common taxable year of the controlled group is the taxable year of the common parent of the controlled group. However, the members of the controlled group may elect the taxable year of one of the members of the controlled group to serve as the common taxable year of the controlled group. In the event that no common parent exists and that no common taxable year election has been made, the common taxable year of the controlled group will be the taxable year of the member of the controlled group whose taxable year ends latest in the calendar year.

In general, if a common taxable year election is made, it must be consented to in writing by each member of the controlled group. A common parent may, however, consent to the common taxable year election on behalf of all members of the controlled group that join with the common parent in the filing of a consolidated income tax return. In addition, foreign corporations that are members of the controlled group need not sign the consent if they are not required to report under Answer A-1. (However, if a foreign corporation is required to report in a year subsequent to the year in which a common taxable year election is made by the domestic members of the controlled group, it will be bound by the common taxable year election previously made by the group.) The consents must be attached to each member's Form 5713 filed during the first taxable year of such member to which the common taxable year election applies. The common taxable year election is a binding election and is made only once. Approval of the Secretary of the Treasury or his delegate is required for any changes in the common taxable year.

Each reporting person will use its normal taxable year for making adjustments required under sections 908(a), 952(a)(3) and 995(b)(1)(F), and for all purposes other than reporting and computing the international boycott factor. For example, if the reporting person uses the international boycott factor, the international boycott factor will be applied to the reporting person's normal taxable year for determining the reporting person's adjustments under sections 908(a), 952(a)(3) and 995(b)(1)(F).

More details concerning the time period covered in the international boycott report are contained in the instructions to Form 5713. Details concerning the time period covered in the international boycott factor are contained in the instructions to Form 5713 and in Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1.

As stated in Answer A-7, the reporting person's Form 5713 is filed at the time the reporting person files its income tax return.

A-14A. Q. Company A is a U.S. corporation and is required to report under section 999(a). Company A is also a subsidiary or a sister of a foreign corporation that is not required to report under section 999(a). Is Company A required to report the operations, requests and participation or cooperation of the foreign parent or sister corporation?

A. Generally, under section 999(a) and Answer A-1, a person required to report must report the operations, requests and participation or cooperation of all members of the controlled group of which it is a member. However, if the foreign parent or sister corporation is not otherwise required to report, the requirement that Company A report the operations, requests and participation or cooperation of the foreign parent or sister corporation will be waived if Company A—

1. Is not entitled to any benefits of deferral, DISC, or the foreign tax credit, or

2. Applies the international boycott factor, and forfeits all the benefits of deferral, DISC and the foreign tax credit to which it is entitled (i.e., applies an international boycott factor of one under sections 908(a), 952(a)(3), and 995(b)(1)(F)), or

3. Identifies specifically attributable taxes and income, and forfeits all the benefits of deferral, DISC, and the foreign tax credit attributable to: (a) operations related to boycotting countries in connection with which there was participation in or cooperation with an international boycott; or (b) operations in boycotting countries which have not been clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott.

Although the requirement that Company A report operations, requests and the participation or cooperation of its foreign parent or sister corporations may be waived, Company A must report all operations, requests and participation or cooperation—

(i) Of itself, and

(ii) Of all United States members of each controlled group of which Company A is a member, and

(iii) Of all foreign corporations of which Company A is a United States shareholder within the meaning of section 951(b), but only if Company A owns (within the meaning of section 958(a)) stock of the foreign corporation.

If Company A is required to report on behalf of a foreign corporation under (iii) above, it must report all operations, requests and participation or cooperation of the foreign corporation, even if conducted or received by the foreign corporation in connection with operations that are not effectively connected with a United States trade or business.

A-14B. Q. Company C, a foreign corporation engaged in operations in the United States through U.S. Branch A, is required to report under section 999(a). Company C may also have a parent, subsidiaries or sister corporations that are not United States persons. Is Company C required to report either the operations, requests and participation or cooperation of its non-U.S. parent, subsidiaries or sister corporations or its own operations, requests and participation or cooperation that do not relate to Branch A?

A. Generally, under section 999(a) and Answer A-1, a person required to report must report the operations, requests and

participation or cooperation of all members of the controlled group of which it is a member. However, the requirement that Company C report the operations, requests and participation or cooperation of its non-U.S. parent, subsidiaries or sister corporations and its own operations, requests and participation or cooperation that do not relate to Branch A will be waived if Company C—

1. Is not entitled to any benefits of deferral, DISC, or the foreign tax credit, or

2. Applies the international boycott factor, and forfeits all the benefits of deferral, DISC and the foreign tax credit to which it is entitled (i.e., applies an international boycott factor of one under sections 908(a), 952(a)(3), and 995(b)(1)(F)), or

3. Identifies specifically attributable taxes and income, and forfeits all the benefits of deferral, DISC, and the foreign tax credit attributable to: (a) operations related to boycotting countries in connection with which there was participation in or cooperation with an international boycott; or (b) operations in boycotting countries which have not been clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott.

Although there may be a waiver of the requirement that Company C report the operations, requests and participation or cooperation of its non-U.S. parent, subsidiaries, or sister corporations and of itself to the extent that the operations, requests and participation or cooperation do not relate to Branch A, Company C must report all operations, requests and participation or cooperation—

(i) Of Branch A, and

(ii) Of all United States members of each controlled group of which Company C is a member.

Company C is, moreover, required to report all the operations, requests and participation or cooperation of Branch A, even if conducted or received by Branch A in connection with operations that are not effectively connected with a United States trade or business. In addition, if Company C or any member of a controlled group of corporations that includes Company C engages in operations in the United States directly (i.e., not through Branch A), and those operations are also operations in or related to a boycotting country, then those operations, as well as all requests and participation or cooperation relating to those operations, must be reported by Company C.

A-15. Q. Company C receives an unsolicited invitation to tender for a contract for the construction of an industrial plant in Country X. The tender documents contain a provision stating that the person inviting the tender will not enter into the contract unless the successful tenderer makes an agreement described in section 999(b)(3). Company C does not respond to the unsolicited invitation. Is Company C required to report the invitation under section 999(a)(2) as a request to participate in or cooperate with an international boycott?

A. No. The section 999(a)(2) reporting requirement will be waived provided that Company C neither solicited the invitation to tender nor responded to the invitation. This answer would be the same were Company C an individual or any other type of person.

A-16. Q. Before May 13, 1977, Company C received requests to comply with interna-

tional boycotts. Company C preserved the requests that were evidenced in writing and preserved the notations it made concerning the details of oral requests. When Form 5713 was issued on May 13, 1977, it required more details concerning the requests made of Company C than were preserved, and many of those details can no longer be ascertained. Will Company C's report under section 999(a)(2) be deemed deficient?

A. On October 4, 1976, Company C was put on notice that it would be required to document boycott requests received after November 3, 1976. Form 5713 does not require any details that would not have been preserved by a prudent person having such notice. In addition, under Answer A-15, the reporting requirements of section 999(a)(2) have been waived for certain unsolicited boycott requests. If Company C does not supply the required information with respect to the remaining requests that were either solicited or responded to, its report will be deficient. This answer would be the same were Company C an individual or any other type of person.

A-17. Q. A United States partnership consisting of 100 United States partners has operations in or related to a boycotting country, or with the government, a company, or a national of a boycotting country. Is each partner required to file Form 5713?

A. Generally, if a partnership has operations in or related to a boycotting country, or with the government, a company, or a national of a boycotting country, each partner is required to file Form 5713. However, if the partnership files Form 5713 with its information return and has no operations for the taxable year that constitute participation in or cooperation with an international boycott, then the requirement that each partner file Form 5713 will be waived for each partner that has no operations in or related to a boycotting country, or with the government, a company, or a national of a boycotting country other than operations that are reported on the Form 5713 filed by the partnership.

A-18. Q. A United States shareholder (within the meaning of section 951(a)) owns stock of Company C, a foreign corporation that has operations in Country X, but the United States shareholder does not have effective control over Company C. The United States shareholder is required to report under section 999(a). The United States shareholder requests information from Company C in order to meet its reporting obligations under section 999(a). Company C refuses to provide (or is prevented by local law, regulation, or practice from providing) that information. Will the United States shareholder be subject to the section 999(f) penalties for willful failure to report the activities of Company C?

A. The United States shareholder must report on the basis of that information that is reasonably available to it. For example, in most cases it will be aware that Company C has operations in or related to Country X, even though it is not aware of the operational details. The United States shareholder must report on Form 5713 that Company C has operations in or related to Country X. The United States shareholder should also describe in a statement attached to Form 5713 the good faith efforts that it has made to obtain all the information required under section 999(a). Although each case must be resolved on the basis of the particular facts and circumstances, the United States shareholder will not be sub-

ject to the section 999(f) penalties for willful failure to provide the information relating to Company C if it can demonstrate that it made good faith efforts to obtain the information but was denied the information by Company C.

A-19. Q. The facts are the same as in Question A-18 except that the United States shareholder owns less than 50 percent of the stock of Company C and Company C is not a controlled foreign corporation. What are the tax sanctions to which the United States shareholder will be subject?

A. Since Company C is neither a controlled foreign corporation nor a DISC, the sanctions of section 952(a)(3) and 995(b)(1)(F) are not relevant. However, the United States shareholder will be subject to the sanctions of section 908(a). Thus, if the United States shareholder applies an international boycott factor, that factor is applied to its foreign tax credits in accordance with Answers F-5, N-1A and N-2. If the United States shareholder identifies specifically attributable taxes and income under section 999(c)(2), it will lose its section 902 indirect foreign tax credit for those taxes paid by Company C that the United States shareholder cannot demonstrate are attributable to Company C's operations that are:

(a) Not in or related to a boycotting country;

(b) Related to a boycotting country and in connection with which there was no participation in or cooperation with an international boycott; or

(c) In a boycotting country and have been clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott.

(To determine whether Company A will lose its section 901 direct foreign tax credit for income tax withheld by Country X on dividends paid by Company C to Company A, see Answer N-3.)

A-20. Q. Individual G is a national of Country X, which is on the list maintained by the Secretary. G engages in an operation with Company C. For example, if Company C were a bank, the operation might involve a deposit by G, or if Company C were an automobile dealer, the operation might involve the purchase of a car, or if Company C were a stockbroker, the operation might involve the purchase or sale of a security, or if Company C were a hotel, the operation might involve the letting of a room. Irrespective of the specific nature of the operation, the agreement under which the operation is consummated is the same agreement that Company C requires of all other customers. Company C is aware of G's nationality, but participation in or cooperation with an international boycott is neither contemplated nor required as a condition of G's willingness to enter into the operation with Company C. Under section 999(a), what are the reporting obligations of Company C with respect to these operations?

A. In many business operations, there will be incidental contacts between the nationals or business enterprises of boycotting countries and persons from other countries. Company C's obligation to report these incidental contacts under section 999(a) will be waived provided that the contacts satisfy the following criteria:

1. All aspects of the operation contemplated by the parties are carried on outside a boycotting country; and

2. No request for an agreement described in section 999(b)(3) is made or received by any party to the operation; and

3. There is no such agreement in connection with the operation; and

4. a. The operation does not involve the importation of property, funds or services from or produced in a boycotting country and Company C does not know or have reason to know that the property, funds or services involved in the operation will be used, consumed or disposed of in a boycotting country, or

b. The value of the property, funds or services involved in the operation does not exceed \$5,000.

The answer to the question would be the same if Company C were an individual or any other type of person and if G were a corporation or any other type of person.

A-21. Q. Individual G, a U.S. citizen, owns 15 percent of the stock of Company A. Company A has operations in Country X. Is Individual G required to report the operations of Company A?

A. An individual generally is not required to report the operations of a domestic corporation of which the individual is a shareholder. However, if Individual G controls (within the meaning of section 304(c)) Company A and if Individual G is required to report under section 999(a), then under section 999(e) Individual G must report whether Company A participated in or cooperated with an international boycott.

A-22. Q. Companies C, D, and E are all U.S. or foreign corporations reporting on a calendar year basis. Companies C, D, and E each had operations in Country X during the calendar year and were each required to file Form 5713. From January 1 to June 1, Company C owned more than 50 percent of the stock of Company D. On June 1, Company E acquired more than 50 percent of the stock of Company D. What operations must be reflected in the Forms 5713 filed by Companies C, D, and E for the calendar year?

A. The Form 5713 filed by Company C must reflect the operations of Company C for the entire calendar year and the operations of Company D for the period January 1-May 31. The Form 5713 filed by Company E must reflect the operations of Company E for the entire calendar year and the operations of Company D for the period June 1-December 31. The Form 5713 filed by Company D must reflect the operations of Company D for the entire calendar year, the operations of Company C for the period January 1-May 31, and the operations of Company E for the period June 1-December 31. If the sale of stock had occurred during the first 30 days of the calendar year, the requirement that Company C report the operations of Company D and that Company D report the operations of Company C for the period of 30 days or less would be waived unless under Reg. § 1.1502-76(b)(5) Company D is included in the consolidated return filed by Company C for that period. The requirement that Company D report the operations of Company E, and that Company E report the operations of Company D for the period of 30 days or less would also be waived unless under Reg. § 1.1502-76(b)(5) Company D is included in the consolidated return filed by Company E for that period. Similarly, if the sale of stock had occurred during the last 30 days of the calendar year, the requirement that Company C report the operations of Company D and that Company D report the operations of Company C for the period of 30

days or less would be waived unless under Reg. § 1.1502-76(b)(5) Company D is included in the consolidated return filed by Company C for that period, and the requirement that Company D report the operations of Company E and that Company E report the operations of Company D for the period of 30 days or less would be waived unless under Reg. § 1.1502-76(b)(5) Company D is included in the consolidated return filed by Company E for that period.

A-23. Q. In 1977, Company A owns more than 10 percent and up to 50 percent of the stock of Company C, a foreign corporation that has operations in Country X that constitute participation in or cooperation with an international boycott. Company C is not a controlled foreign corporation. Company A reports on a calendar year basis and computes its loss of tax benefits using the section 999(c)(2) specific attribution of taxes and income method. Company C pays no dividend in 1977, but pays a dividend in 1978 attributable to its 1977 earnings.

In 1978 neither Company A nor Company C has operations in any boycotting country. Company A claims a foreign tax credit under section 902 in 1978 in respect of the taxes paid by Company C. For which year, 1977 or 1978, must Company A report the operations of Company C, and for which year is the sanction of section 908(a) applicable?

A. Company C's operations are reported by Company A in 1977. The sanction of section 908(a) is applicable to Company A's foreign tax credits in 1978. Accordingly, in 1978 Company A will lose that portion of the section 902 foreign tax credits specifically attributable to Company C's 1977 boycott operations. In this case, even though in 1978 Company A and Company C have no operations that are required to be reported by Company A on Form 5713, Company A must nevertheless file Form 5713 in 1978 (which will show no reportable operations) and complete Schedules B and C to Form 5713, on which Company A will show the loss of the section 902 foreign tax credits attributable to Company C's boycott operations for 1977.

Had Company C been a controlled foreign corporation, section 952(a)(3) would have been applied to require Company A to take into income in 1977 its pro rata share of Company C's income attributable to boycotting operations. In addition, under section 908(a), Company A would lose in 1977 the section 960 foreign tax credits accompanying Company C's income included in Company A's income under section 952(a)(3).

B. DEFINITION OF "OPERATIONS"

B-1. Q. Under what circumstances does a person have operations in, or related to, a boycotting country (or with the government, a company, or a national of that country)?

A. A person has operations in, or related to, a boycotting country (or with the government, a company, or a national of that country) if the operation in which it engages:

1. Is carried on in whole or part in a boycotting country ("in a boycotting country");
2. Is carried on outside a boycotting country either for or with the government, a company, or a national of a boycotting country ("with the government, a company, or a national of a boycotting country"); or
3. Is carried on outside a boycotting country for the government, a company, or a national of a non-boycotting country if the

person having the operation knows or has reason to know that the specific goods, services or funds produced by the operation are intended for use in a boycotting country, for use by or the benefit of the government, a company, or a national of a boycotting country, or use in forwarding or transporting to a boycotting country ("related to a boycotting country").

For purposes of applying the presumption of section 999(b)(1) and the sanctions of sections 908(a), 952(a)(3), and 995(b)(1)(F), and for purposes of computing the international boycott factor, operations "with the government, a company, or a national of a boycotting country" that are carried out in whole or in part in a boycotting country are deemed to be operations "in a boycotting country", and operations with such governments, companies and nationals that are not carried out in whole or in part in a boycotting country are deemed to be operations "related to a boycotting country."

The term "operation" encompasses all forms of business or commercial activities and transactions (or parts of transactions), whether or not productive of income, including, but not limited to, selling; purchasing; leasing; licensing; banking; financing and similar activities; extracting; processing; manufacturing; producing; constructing; transporting; performing activities ancillary to the foregoing (e.g., contract negotiating, advertising, site selecting, etc.); and performing services, whether or not ancillary to the foregoing.

Operations described in principles 2 and 3 above are illustrated in the following two examples:

(a) Company C engages in a joint venture manufacturing operation in a non-boycotting country with Company D, a company incorporated under the laws of Country X. Alternatively, Company C sells goods or services to Company D in a non-boycotting country. In both cases, Company C has operations "with" a company of a boycotting country.

(b) D, a national of a non-boycotting country, has a contract to construct a dam in Country X. D subcontracts to Company C for the manufacture of a generator for the dam. The contract between D and Company C and the generator specifications indicate that the generator is for use in Country X. The contract specifies delivery of the generator to D f.o.b. New York. Company C has operations "related to" a boycotting country.

B-2. Q. Individual G is a U.S. citizen living in Country X. G is retired. G receives social security payments and a pension, but has no business activities. Does G have "operations" in, or related to, Country X?

A. No. G is not engaged in any business or commercial activities.

B-3. Q. Individual H is a U.S. citizen living in Country X and working there as an employee. H earns a salary and has passive investment income, but has no business income. Does H have "operations" in or related to Country X?

A. No. The performance of personal services as an employee does not constitute an "operation."

C. DEFINITION OF "REASON TO KNOW" REQUIREMENT OF BOYCOTT PARTICIPATION

C-1. Q. Under what circumstances, in the absence of a Treasury listing of a country under section 999(a)(3), will it be deemed under section 999(a)(1)(B) that a person knows or has reason to know that participa-

tion in or cooperation with an international boycott is required as a condition of doing business within such country or with the government, a company, or a national of such country?

A. A person will be deemed to know or have reason to know that a country requires participation in or cooperation with an international boycott as a condition of doing business within a country or with the government, a company, or a national of a country, if that person receives what could be interpreted as an official request of that country to participate in or cooperate with an international boycott or if that person knows that others have received such requests. Whether a request could be interpreted as an official request of a country depends on an analysis of the facts and circumstances surrounding the request. However, the request need not be made directly by a government official or representative in order to be interpreted as an official request. For example, assume that Company C has a contract with the government of a boycotting country to build a dam in that country and is required under the contract to require its subcontractors to agree to participate in or cooperate with the boycott. Assume further that Company C requires Subcontractor D to make such an agreement as a condition of receiving the subcontract to build a generator for the dam. Subcontractor D will be deemed to have reason to know that participation in or cooperation with an international boycott is a condition of doing business within the boycotting country or with the government, a company, or a national of such country.

D. DEFINITION OF "CLEARLY SEPARATE AND IDENTIFIABLE OPERATIONS"

D-1. Q. If a person or a member of a controlled group (within the meaning of section 993(a)(3)) enters into an agreement that constitutes participation in or cooperation with an international boycott (within the meaning of section 999(b)(3)), what operations of that person or group will be considered to be operations in connection with which such participation or cooperation occurred?

A. All operations of that person or any member of that group in—

(a) The country in connection with which the agreement is made; and

(b) Any other country that requires participation in or cooperation with the boycott with respect to which the agreement is made

will be presumed to be operations in connection with which there was participation in or cooperation with an international boycott. (See, however, Answer D-4 for an exception to the presumption in the case of agreements that are unintentional and unauthorized and that relate to a minor aspect of an operation.)

This presumption may be rebutted, however, if the person (or, if applicable, the U.S. shareholder of a foreign corporation) or member of the group clearly demonstrates that a particular operation is a clearly separate and identifiable operation from the operation in connection with which the agreement was made, and that no agreement constituting participation in or cooperation with an international boycott applied to, or was made in connection with, such separate and identifiable operation.

The presumption of participation in or cooperation with the boycott will not apply

with respect to operations outside the countries described in (a) and (b) above, but such operations will be considered to be operations in connection with which there was participation in or cooperation with an international boycott if so warranted by the facts.

D-2. Q. Who has the burden of proof of clearly demonstrating that a particular operation is a "clearly separate and identifiable operation" and that there was no participation in or cooperation with an international boycott in connection with that operation?

A. If a person or a member of a controlled group has participated in or cooperated with an international boycott in connection with one or more of its operations, that person (or, if applicable, the U.S. shareholder of a foreign corporation) or that group bears the burden of proof of clearly demonstrating that any other operation is clearly separate and identifiable from the operation in connection with which such participation or cooperation occurred and that no such participation or cooperation occurred in connection with the separate and identifiable operation.

D-3. Q. How can a taxpayer determine what constitutes a "clearly separate and identifiable operation"?

A. The determination whether an operation constitutes a clearly separate and identifiable operation must be based on an examination of all the facts and circumstances. The following factors are among those that may be considered in determining whether an operation is clearly separate and identifiable from an operation in connection with which participation in or cooperation with an international boycott occurred:

1. Were the two operations conducted by different corporations, partnerships, or other business entities?

2. Were the operations, whether conducted by separate entities or not, supervised by different management personnel?

3. Did the operations involve distinctly different products or services?

4. Were the operations undertaken pursuant to separate and distinct contracts?

5. If business operations in the countries conducting the international boycott in question were not continuous over time, was each transaction separately negotiated and performed?

The factors listed above are not intended to represent all the factors that will be considered in determining whether an operation is a clearly separate and identifiable operation. Additional factors will be considered if so warranted by the facts. No relative weight is assigned to any specific factor; instead, the weight to be given to any factor will depend on the facts and circumstances of each individual case. In addition, a positive answer to all the listed factors will not necessarily result in a determination that an operation is a clearly separate and identifiable operation if a contrary conclusion is warranted by the facts.

The application of the five factors is illustrated by the following examples:

(a) Company C contracts to build several major buildings in Country X. Company C has never engaged in any business in Country X prior to such contract. Nine months later Company C enters into a second contract to build a large dock facility in Country X. Construction of the dock facility will constitute an operation separate and identifiable from construction of the buildings.

(b) Company C contracts, as general contractor, to build a pipeline in Country X. In connection with the construction of the pipeline, Company C must retain engineering consultants. Company D, a member of the same controlled group of which Company C is a member, is engaged in the business of providing engineering consulting services to both related and unrelated parties. Company C is not headquartered in the same city as Company D, and does not share any management personnel with Company D. Company C retains Company D to provide such services with respect to the pipeline construction. The engineering consulting services provided by Company D will constitute operations separate and identifiable from the construction of the pipeline by Company C.

(c) Company C markets electronic computers and medical diagnostic equipment in Country X and Country Z. The two product lines, computers and medical equipment, are handled by representatives of two separate divisions which are located in different offices. The managers of each division report to different superiors in the United States. The activities of Company C with respect to sales of computers will constitute operations separate and identifiable from Company C's activities in connection with the sales of medical equipment.

(d) Company C imports and sells motor vehicles in Country X. Company C maintains a national office and import depot at a major port in Country X and has five sales offices located in various cities in Country X. The managers of the sales offices are authorized to handle local matters relating to maintaining the offices and are subject to the close supervision and inspection of national office personnel. For internal accounting purposes, Company C treats each sales office as a profit center, charging each office for its inventory and a proportional share of corporate overhead. The marketing activities of the various sales offices do not constitute operations separate and identifiable from each other, nor do the marketing activities of Company C as a whole constitute operations separate and identifiable from the import and distribution activities of Company C.

(e) Company C markets appliances, such as refrigerators, washers and dryers, and home entertainment equipment, such as televisions and tape recorders, in Country X. The appliances are manufactured in Country X by Company D, a company wholly-owned by Company C, and the home entertainment equipment is manufactured in Country X by Company E, also wholly-owned by Company C. Company C purchases the production of Company D and Company E for resale to independent retailers who generally handle both lines of products. Company C's resales to the various independent retailers are made pursuant to separate and distinct contracts, each of which is separately negotiated. The boards of directors of Companies C, D, and E are composed of the same individuals and the same individual serves as president of each company. The products of Companies D and E are manufactured in the same plant, and the executive offices of Companies C, D, and E are all located in a building adjacent to that plant. Company C's various resale operations are not separate and identifiable from one another, and the respective operations of Companies C, D, and E do not constitute operations that are clearly separate and identifiable from each other.

(f) Bank C provides international banking and financing services throughout the world through its home office and foreign branches and subsidiaries. The services include wholesale lending, retail lending, deposit gathering and letter of credit services. The letter of credit services involve the opening, confirming and advising of letters of credit and the negotiation, payment and acceptance of drafts by beneficiaries under letters of credit. The letter of credit services are performed by specialized bank personnel that are organized into separate sections in the respective offices of Bank C and of its subsidiaries. These letter of credit services are supervised by management personnel different from the personnel responsible for the other banking and financing services provided by Bank C. The letter of credit services of Bank C, conducted through the respective offices of Bank C and of its subsidiaries, constitute operations that are separate and identifiable from the other international banking and financing services provided by Bank C and its subsidiaries.

D-4. Q. Company C has operations in or related to Country X. In connection with a minor aspect of those operations, an employee of Company C enters into an unintentional and unauthorized boycott agreement. For example, a clerk of Company C signs an invoice for office supplies. On the reverse side of the invoice, a boycott clause is printed in fine print or in a foreign language. Will that agreement give rise to the presumption that all the operations of Company C in boycotting countries are operations in connection with which there is participation in or cooperation with an international boycott? Will that agreement trigger the application of the sanctions of 908(a), 952(a)(3), or 995(b)(1)(F)?

A. An agreement to participate in or cooperate with an international boycott made in connection with a minor aspect of Company C's operations will not taint the operations of Company C in boycotting countries and will not trigger the application of the sanctions of sections 908(a), 952(a)(3), or 995(b)(1)(F) if the agreement was unintentional. Company C has not authorized the employee to agree to participate in or cooperate with the international boycott and Company C does not comply with the terms of the unauthorized boycott clause.

D-5. Q. The facts are the same as in example (c) of Answer D-3 with the following additional facts:

Company C's computer sales, each made pursuant to a separately negotiated contract, are as follows:

(a) Sales in Country X with boycott agreements	10
(b) Sales in Country X without boycott agreements	15
(c) Sales in Country Z related to Country X with boycott agreements	20
(d) Sales in Country Z related to Country X without boycott agreements	25
(e) Sales in Country Z not related to Country X	30
(f) Total sales of computers	100

Company C's medical equipment sales, each made pursuant to a separately negotiated contract, are as follows:

(g) Sales in Country X with boycott agreements	0
(h) Sales in Country X without boycott agreements	35
(i) Sales in Country Z related to Country X with boycott agreements	0

(j) Sales in Country Z related to Country X without boycott agreements.....	40
(k) Sales in Country Z not related to Country X.....	45
(l) Total sales of computers.....	120

To which sales does the section 999(b)(1) presumption apply, and to which sales do the sanctions of section 908(a), 952(a)(3), and 995(b)(1)(F) apply?

A. Since Company C has participated in an international boycott in connection with at least one sale, the presumption of section 999(b)(1) applies to Company C's 60 sales in Country X (a+b+g+h). The presumption does not apply to the 85 sales related to Country X (c+d+i+j) or to the 75 sales that are not in or related to Country X (e+k). The sanctions of 908(a), 952(a)(3) and 995(b)(1)(F) apply to Company C's 20 sales related to Country X that involve boycott participation or cooperation (c+i) and also to Company C's 25 computer sales in Country X that Company C has not clearly demonstrated are clearly separate and identifiable from sales in connection with which there was participation in or cooperation with an international boycott (a+b). Had Company C not been able to clearly demonstrate that the 35 sales of medical equipment in Country X (g+h) were clearly separate and identifiable from the tainted sales of computers in Country X (a+b), then the sanctions of 908(a), 952(a)(3), and 995(b)(1)(F) would also have applied to those 35 sales.

E. EFFECTIVE DATE PROVISIONS

E-1. Q. What are the effective dates of the reporting requirements and sanctions of the international boycott provisions?

A. Generally, the reporting requirements and the sanctions of the international boycott provisions apply to agreements to participate in or cooperate with an international boycott made after November 3, 1976, and to agreements made on or before November 3, 1976, that continue in effect thereafter. However, there are two exceptions to this general rule. First, the reporting requirements of section 999(a) apply to all operations referred to in section 999(a)(1) or (2) after November 3, 1976, whether or not there has been an agreement to participate in or cooperate with an international boycott, and whether or not the operations are carried out in accordance with the terms of a binding contract entered into before September 2, 1976. All operations on or before November 3, 1976, are reportable if there has been participation in or cooperation with the boycott during the taxable year after November 3, 1976, in connection with any operation (see Answer E-2). Second, in the case of an operation carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the sanctions of the international boycott provisions apply only to agreements to participate in or cooperate with an international boycott made on or after September 2, 1976, and to agreements made before that date that continue in effect after December 31, 1977. More details concerning reporting requirements and the application of sanctions for years affected by the effective date of the international boycott provisions are contained in the instructions to Form 5713, in Temp. Regs. § 7.999-1 and in Proposed Regs. § 1.999-1.

E-2. Q. If a person who reports tax liability on a calendar year basis makes an agreement on November 20, 1976, to participate in or cooperate with an international boy-

cott, which of that person's operations conducted during the taxable year are reportable, which operations are included in the international boycott factor calculations, and how are the sanctions applied?

A. All operations of the person during the entire 1976 taxable year (including pre-November 20, 1976, operations) in or related to a boycotting country or with the government, a company, or a national of such country must be reported under section 999(a) and will be considered in calculating the international boycott factor (or the amount of taxes or income specifically attributable to operations in which there was participation in or cooperation with an international boycott) for the taxable year. However, under section 999(c)(1), those operations that are—

(1) related to boycotting countries and in connection with which there was no boycott participation or cooperation, and

(2) in boycotting countries and that are clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation.

need not be reflected in the numerator of the international boycott factor. In addition, under section 999(c)(2) the tax benefits specifically attributable to such operations will not be denied. See also Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1.

The sanctions are applied to the year 1976 on a pro rata basis. If a person uses the international boycott factor for 1976, the factor is applied under sections 908(a), 952(a)(3), and 995(b)(1)(F) after it has been multiplied by the fraction 58/366, representing the number of days after the November 3, 1976, effective date remaining during the calendar year. If a person identifies specifically attributable taxes and income, the tax benefits denied under sections 908(a), 952(a)(3), and 995(b)(1)(F) are computed by first ascertaining the tax benefits of the foreign tax credit, deferral, and DISC, respectively, for the taxable year attributable to all operations that are—

(1) related to boycotting countries and in connection with which there was boycott participation or cooperation, and

(2) in boycotting countries and that are not clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation

and then multiplying those amounts by 58/366.

E-3. Q. If a person having a July 1-June 30 taxable year carries out an operation or operations in accordance with the terms of a binding contract entered into before September 2, 1976, and, in furtherance of that contract, makes an agreement on February 15, 1978, to participate in or cooperate with an international boycott, which of the person's operations conducted during the taxable year July 1, 1977-June 30, 1978, are reportable, which operations are included in the international boycott factor calculations, and how are the sanctions applied?

A. All operations of the person during the entire July 1, 1977-June 30, 1978, taxable year (including pre-February 15, 1978 operations) in or related to a boycotting country or with the government, a company, or a national of such country must be reported under section 999(a) and will be considered in calculating the international boycott factor (or the amount of taxes or income specifically attributable to operations in

which there was participation in or cooperation with an international boycott) for the taxable year. However, under section 999(c)(1), those operations that are—

(1) related to boycotting countries and in connection with which there was no boycott participation or cooperation, and

(2) in boycotting countries and that are clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation

need not be reflected in the numerator of the international boycott factor. In addition, under section 999(c)(2) the tax benefits specifically attributable to such operations will not be denied. See also Temp. Regs. § 7.999-1 and proposed Regs. § 1.999-1.

The sanctions are applied to the July 1, 1977-June 30, 1978, taxable year on a pro rata basis. If a person uses the international boycott factor for the taxable year, the factor is applied under sections 908(a), 952(a)(3), and 995(b)(1)(F) after it has been multiplied by the fraction $\frac{181}{366}$, representing the number of days after the December 31, 1977, effective date remaining during the taxpayer's taxable year. (See also Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1.) If a person identifies specifically attributable taxes and income, the tax benefits denied under sections 908(a), 952(a)(3), and 995(b)(1)(F) are computed by first ascertaining the tax benefits of the foreign tax credit, deferral, and DISC, respectively, for the taxable year attributable to all operations that are—

(1) related to boycotting countries and in connection with which there was boycott participation, or cooperation, and

(2) in boycotting countries and that are not clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation

and then multiplying those amounts by $\frac{181}{366}$.

E-4. Q. What is a binding contract for purposes of the binding contract rule?

A. A binding contract with respect to a person, a member of a controlled group that includes that person, or a foreign corporation of which that person is a United States shareholder is a contract that was, on September 1, 1976, and is at all times thereafter, binding on that person, foreign corporation or member, and under which all material terms are fixed or are ascertainable with reference to an objectively determinable standard.

E-5. Q. If, under a binding contract existing before September 2, 1976, a person made an agreement described in section 999(b)(3), will the operation or operations that are the subject of the contract be subject to the international boycott provisions in years after 1977?

A. Yes, unless the person establishes that, on or before December 31, 1977, the agreement to participate in or cooperate with the boycott was renounced, the renunciation was communicated to the government or person with which the agreement was made, and the agreement was not reaffirmed after 1977.

E-6. Q. If, under a contract made in 1979, a person who reports tax liability on a calendar year basis makes an agreement described in section 999(b)(3), but does not comply with the agreement after 1980, will the operation or operations that are the subject of the contract be subject to the in-

ternational boycott provisions in years after 1980?

A. Yes, unless the person establishes that, on or before December 31, 1980, the agreement to participate in or cooperate with the boycott was renounced, the renunciation was communicated to the government or person with which the agreement was made, and the agreement was not reaffirmed after 1980.

E-7. Q. If, under a contract made after January 1, 1977, a person makes an agreement described in section 999(b)(3), and later renounces the agreement and communicates such renunciation to the government or person with which the agreement was made, which operations of such person during the taxable year of the renunciation are reportable, which operations are included in the international boycott factor calculations, and how are the sanctions applied?

A. All operations of the person during the entire taxable year within which the agreement was renounced (including post-renunciation operations) in or related to a boycotting country or with the government, a company, or a national of such country must be reported under section 999(a) and will be considered in calculating the international boycott factor (or the amount of taxes or income specifically attributable to operations in which there was participation in or cooperation with an international boycott) for the taxable year. However, under section 999(c)(1), those operations that are—

(1) related to boycotting countries and in connection with which there was no boycott participation or cooperation, and

(2) in boycotting countries and that are clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation

need not be reflected in the numerator of the international boycott factor. In addition, under section 999(c)(2) the tax benefits specifically attributable to such operations will not be denied. See also Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1. There is no proration between the pre-renunciation and post-renunciation portions of the taxable year of either the boycott factor or the specifically attributable taxes and income.

E-8. Q. Before September 2, 1976, Company A entered into a binding contract that did not contain an agreement to boycott or by itself support an inference of the existence of an agreement to boycott. However, Company A's course of conduct in carrying out the operation or operations in accordance with the terms of the contract evidences that there is an implied agreement that constitutes participation in or cooperation with an international boycott. Will the sanctions of sections 908(a), 952(a)(3) and 952(b)(1)(F) be applied to such participation or cooperation that takes place prior to January 1, 1978?

A. If the course of conduct from which the existence of the implied agreement was inferred took place before September 2, 1976, then the sanctions of sections 908(a), 952(a)(3) and 952(b)(1)(F) will not be applied to such participation in or cooperation with an international boycott that takes place prior to January 1, 1978. However, if the inference of the existence of the implied agreement would depend on conduct on or after September 2, 1976, then those sanctions will be applied to participation in or cooperation with the international boycott

after November 3, 1976. See section 1066(a)(1) of the Tax Reform Act of 1976.

E-9. Q. Company C entered into a binding contract prior to September 2, 1976, to manufacture and deliver equipment to a customer located in Country X. The contract requires Company C to use no components that are manufactured by blacklisted United States companies. The contract also requires that the vessel on which the equipment is shipped not be blacklisted. On January 15, 1977, Company C is able to have the contract amended to eliminate the requirement regarding components, but is unable to secure any change regarding vessels. Will the amendment regarding components remove the binding contract protection otherwise afforded until December 31, 1977, that Company C has regarding vessels?

A. No. Since Company C could have waited to abrogate or renegotiate its contract until the end of 1977 and since it is in accord with the legislative purpose for Company C to accelerate elimination of the provision regarding components, it will remain protected until December 31, 1977, from the consequences of its continuing to refrain from shipping the goods on blacklisted vessels.

E-10. Q. If before December 31, 1977, a person carries out several different operations in boycotting countries and the only operation of that person that constitutes participation in or cooperation with an international boycott is carried out in accordance with the terms of a binding contract entered into before September 2, 1976, will the existence of that one boycotting operation trigger the section 999(b)(1) presumption that the other operations of that person in boycotting countries are also operations in connection with which boycott participation or cooperation occurred?

A. No. Operations carried out before December 31, 1977, in accordance with the terms of a binding contract entered into before September 2, 1976, will not trigger the section 999(b)(1) presumption. However, if the boycott agreements are not renounced on or before December 31, 1977, those operations will trigger the section 999(b)(1) presumption after December 31, 1977.

E-11. Q. Are operations of a person that constitute participation in or cooperation with an international boycott reflected in the numerator of a person's international boycott factor before December 31, 1977, if those operations are carried out in accordance with the terms of a binding contract entered into before September 2, 1976?

A. No. Boycotting operations carried out before December 31, 1977, in accordance with the terms of a binding contract entered into before September 2, 1976, are not reflected in the numerator of the international boycott factor. They are reflected in the denominator, however. See Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1.

E-12. Q. On June 30, 1976, Company A, a domestic corporation that reports its operations on a calendar year basis, disposed of all of its stock in Company C, a foreign corporation. Will Company A be required to report any operations, requests or participation or cooperation of Company C for calendar year 1976? Will the operations of Company C be included in Company A's international boycott factor for 1976?

A. No. Since Company A did not own any stock of Company C after the effective date of the boycott provisions, Company A is not required to report any operations, requests or participation or cooperation of Company

C in 1976 and will exclude Company C's operations from its international boycott factor computations.

E-13. Q. Are operations, requests or participation in or cooperation with an international boycott of a person for that person's taxable year that ends before November 4, 1976, required to be reported, either by that person or by any other person?

A. No. Operations, requests and participation in or cooperation with an international boycott of a person for that person's taxable year that ends before November 4, 1976, need not be reported by any person. However, as stated in Answers E-1 and E-2, operations, requests and participation in or cooperation with an international boycott before November 4, 1976, during a taxable year that ends on or after that date are reportable if there has been participation in or cooperation with an international boycott during that taxable year but on or after that date.

F. INTERNATIONAL BOYCOTT FACTOR AND SPECIFICALLY ATTRIBUTABLE TAXES AND INCOME

F-1. Q. How is the international boycott factor computed?

A. Section 999(c)(1) provides that the international boycott factor is determined under regulations prescribed by the Secretary. The international boycott factor is a fraction the numerator of which reflects boycotting operations in or related to countries associated in carrying out an international boycott and the denominator of which reflects worldwide foreign operations. Temporary and proposed regulations setting forth the method of determining the international boycott factor were issued in February, 1977. See Temp. Regs. § 7.999-1 and Proposed Regs. § 1.999-1.

F-2. Q. In the case of a controlled group (within the meaning of section 993(a)(3)), is a single international boycott factor computed for the entire group?

A. Yes. All members of a controlled group share a single, common international boycott factor. Currently, the international boycott factor regulations provide that the international boycott factor of a controlled group reflects the operations of all members of the controlled group, regardless of whether all members of the group choose to compute their loss of tax benefits using the international boycott factor. It is anticipated that those regulations will be changed to provide that the international boycott factor of a controlled group will reflect the operations of only those members of the controlled group that choose to compute their loss of tax benefits using the international boycott factor.

F-3. Q. Once an international boycott factor has been computed for a controlled group (within the meaning of section 993(a)(3)), how is the factor applied to individual members of the group?

A. The international boycott factor of a controlled group is applied separately under sections 908(a), 952(a)(3), and 952(b)(1)(F) to each individual member of the controlled group that chooses to compute its loss of tax benefits using the international boycott factor.

F-4. Q. If a person applies the international boycott factor to some operations during the taxable year, must the factor be applied to all operations of that person for the taxable year?

A. Yes. If a person applies the international boycott factor to one operation during the taxable year, the factor must be applied

to all operations during the taxable year under each of sections 908(a), 952(a)(3), and 995(b)(1)(F). If a person identifies specifically attributable taxes and income under section 999(c)(2), that method must be applied to all operations during the taxable year and must be applied under each of sections 908(a), 952(a)(3), and 995(b)(1)(F).

F-5. Q. In the case of a controlled group (within the meaning of section 993(a)(3)), may one member use the international boycott factor under section 999(c)(1) and another member identify specifically attributable taxes and income under section 999(c)(2)?

A. Yes. Each member may independently choose either to apply the international boycott factor under section 999(c)(1) or to identify specifically attributable taxes and income under section 999(c)(2). The method chosen by each member for determining the loss of tax benefits must be applied consistently to determine all loss of tax benefits of that member. For example, if one member of a controlled group, Company A, chooses to use the international boycott factor, then it must apply the international boycott factor to determine its loss of the section 902 indirect foreign tax credit in respect of a dividend paid to it by another member of the controlled group, Company C, even if Company C determines its loss of tax benefits by identifying specifically attributable taxes and income. Company A would also determine the amount deemed distributed to it under sections 995(b)(1)(F) and 952(a)(3) by applying its international boycott factor to the otherwise deferrable earnings of its DISCs or controlled foreign corporations. In addition, if an affiliated group of corporations files a consolidated return, then the affiliated group must determine its loss of tax benefits either by applying the international boycott factor to the consolidated return, or by having each member determine its loss of tax benefits by identifying specifically attributable taxes and income.

F-6. Q. If a person chooses to determine its loss of tax benefits by applying the specifically attributable taxes and income method set forth in section 999(c)(2), may it demonstrate the amount of foreign taxes paid and income earned attributable to the specific operations by applying an overall effective rate of foreign taxes and an overall profit margin to each operation?

A. No. A person must clearly demonstrate foreign taxes paid and income earned attributable to specific operations by analyzing the profit and loss data of each separate and identifiable operation. The principles of Regs. § 1.861-8 are applicable in determining income and taxes attributable to specific operations.

F-7. Q. A United States partnership has operations in a boycotting country. Is the international boycott factor computed at the partnership level?

A. No. The international boycott factor is computed separately by each partner based on information submitted by the partnership and on other activities of that partner. Of course, if the partner can meet the conditions of section 999(c)(2) of the Code, he need not use the international boycott factor.

F-8. Q. A person desires to determine its loss of tax benefits by applying the specifically attributable taxes and income method set forth in section 999(c)(2). That person is able to clearly demonstrate that some of its operations in boycotting countries consti-

tute clearly separate and identifiable operations in connection with which there was no participation in or cooperation with an international boycott. That person is also able to clearly demonstrate the taxes and income attributable to those operations. With respect to the remainder of its operations in boycotting countries, that person is either unable to clearly demonstrate that those operations are clearly separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott or is unable to identify taxes and income specifically attributable to separate and identifiable operations in connection with which there was such participation or cooperation. Under these facts, will that person be required to determine its loss of tax benefits by applying the international boycott factor?

A. No. That person may compute its loss of tax benefits by applying the specifically attributable taxes and income method if it forfeits the benefits of deferral, DISC and the foreign tax credit attributable to all its operations that are in boycotting countries and which it cannot clearly demonstrate are operations that are clearly separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott.

F-9. Q. If a person chooses to compute its loss of tax benefits in one year by applying the international boycott factor, may that person compute its loss of tax benefits in another year using the specifically attributable taxes and income method?

A. Yes. The election to use the international boycott factor or the specifically attributable taxes and income method is an annual election. The election is made by completing the appropriate Schedule A or B to Form 5713.

F-10. Q. In 1978 a person computes its loss of tax benefits using the international boycott factor. On audit, it is determined that adjustments are to be made to the international boycott factor. May that person then recompute its loss of tax benefits for 1978 using the specifically attributable taxes and income method?

A. Yes. A person may change its method of computing loss of tax benefits under the international boycott provisions at any time for any open taxable year.

G. DETERMINATIONS

G-1. Q. What degree of confidentiality will determinations, and requests for determinations, under section 999(d) receive?

A. A determination under section 999(d) will be treated as a "written determination" within the meaning of section 6110(b)(1). Therefore, the determination and any background file document related thereto will be subject to public inspection in accordance with the rules set forth in section 6110, and subject to the deletions set forth in section 6110(c).

G-2. Q. What procedures are applicable to requests for, and the issuance of, determinations under section 999(d)?

A. The procedures applicable to requests for, and the issuance of, determinations under section 999(d) are set forth in Revenue Procedure 77-9, 1977-10 IRB 12.

H. DEFINITION OF AN AGREEMENT TO PARTICIPATE IN OR COOPERATE WITH A BOYCOTT (SECTION 999(b)(3))

H-1A. Q. Company C enters into a written contract to export goods to Country X. The

contract requires Company C not to obtain any of the goods from any person blacklisted by Country X. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Generally, any express agreement (written or oral) providing that a person will refrain from doing business with a person blacklisted by Country X (or by a group of countries associated with Country X in carrying out an international boycott) constitutes participation in or cooperation with an international boycott within the meaning of section 999(b)(3). Blacklists are normally maintained to provide a convenient list of persons that engage in activities that are inconsistent with the boycott.

However, such an agreement does not constitute participation in or cooperation with an international boycott if it is established that the blacklist is maintained for reasons other than furtherance of the boycott as, for example, to exclude persons who have previously supplied defective goods.

H-1B. Q. Company C enters into a contract to export goods to Country X. The contract requires Company C to obtain goods from Company D, which is specified in the contract, and to pass on to the purchaser a certificate from Company D that Company D is not blacklisted by Country X. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Yes, if Company D is a company organized under the laws of Country Y or is a U.S. person within the meaning of section 7701(a)(30).

The result would be the same if Company C had reason to know that it would not be able to obtain the required certificate because of the nationality, race or religion of Company D's ownership, management or directors.

However, if Company D is neither a company organized under the laws of Country Y nor a U.S. person and if Company C does not have reason to know that it will not be able to obtain the certificate because of the nationality, race or religion of Company D's ownership, management or directors, Company C's action in entering into such a contract would not constitute participation in or cooperation with an international boycott under section 999(b)(3).

H-2. Q. During negotiations concerning a contract for the export of goods to Country X, Company C and Country X agree orally that Company C will not purchase any of the goods from any blacklisted company. They also agree that this agreement will not be reflected in the written contract for the export of the goods or in any other writing. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Generally, yes. See Answer H-1A.

H-3. Q. Company C signs a contract to construct an industrial plant in Country X. The contract states that the laws, regulations, requirements or administrative practices of Country X will apply to Company C's performance of the contract in Country X. The laws, regulations, requirements or administrative practices of Country X prohibit the importation into Country X of goods manufactured by any company engaged in trade in Country Y or with the government, companies or nationals of Country Y. Does Company C's action constitute an agreement under section 999(b)(3)?

A. No. An agreement under section 999(b)(3) will not be inferred solely from the inclusion in a contract of a provision stating that the laws, regulations, require-

ments or administrative practices of Country X will apply to the performance of the contract in that country. However, an overall course of conduct which includes the signing of a contract with such a provision in addition to other factors could support such an inference. Examples of other factors which could give rise to such an inference include the termination or lessening of business relationships with blacklisted firms or with Country Y (in the absence of compelling non-boycott considerations) or the refusal to enter into such business relationships where there are opportunities and compelling business reasons for doing so (apart from boycott considerations). On the other hand, repeated inclusion of such a provision in contracts does not give rise to such an inference.

H-4. Q. The facts are the same as in Question H-3, except that the contract states that Company C will comply with the laws, regulations, requirements or administrative practices of Country X in its performance of the contract in Country X. Does Company C's action constitute an agreement according to section 999(b)(3)?

A. Yes. Entering into a contract that requires compliance with the laws, regulations, requirements or administrative practices of Country X constitutes an agreement under section 999(b)(3), if some of those laws, regulations, requirements or administrative practices prohibit the importation into Country X of goods manufactured by any company engaged in trade in Country Y or with the government, companies or nationals of Country Y.

H-5. Q. Company C signs a contract to export goods to Country X. The contract contains no clause concerning a boycott. The laws, regulations, requirements or administrative practices of Country X include prohibitions on the importation into Country X of goods manufactured by persons engaged in trade in Country Y. Company C does not purchase any goods with which to fulfill its obligations under the contract from any U.S. company engaged in trade in Country Y or with the government, companies or nationals of Country Y. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Where there is no express agreement, the existence of an agreement will not be inferred solely from the fact that Company C, consistent with the laws, regulations, requirements or administrative practices of Country X, has not purchased goods with which to fulfill its obligations under the contract from any U.S. company engaged in trade in Country Y or with the government, companies or nationals of Country Y. An agreement under section 999(b)(3) will not be inferred solely from the absence of a business relationship. But an overall course of conduct which includes such an absence of business relationships in addition to other factors could support such an inference. See Answer H-3.

H-6. Q. Questions and answers H-1A, H-1B, H-2, and H-5 all involve contracts for the export of goods by company C to country X. Would the issue of whether an agreement exists under section 999(b)(3) be resolved in the same way as in each of the above answers if the contract were for (a) the supply of services to country X or (b) a construction project in country X.

A. Yes.

H-7. Q. (a) Company C incorporates a subsidiary in country X. In the documents submitted by company C relating to the incor-

poration of the subsidiary there is a general acknowledgment that the subsidiary is subject to the laws, regulations, requirements, and administrative practices of country X.

(b) Company C establishes a branch in country X. In the documents relating to the registration of the branch there is a general acknowledgment that the laws, regulations, requirements, and administrative practices of country X apply to the branch.

Included in the laws, regulations, requirements, or administrative practices of country X is a requirement that companies incorporated in country X and branches registered in country X refrain from doing business with any person engaged in trade in country Y or with the government, companies, or nationals of country Y. Does either the acknowledgment of the subsidiary or the undertaking of the branch constitute an agreement under section 999(b)(3)?

A. The mere acknowledgment of incorporation or registration documents of the general applicability of the laws, regulations, requirements, or administrative practices of a boycotting country will not give rise to the inference of the existence of an agreement under section 999(b)(3). However, such an acknowledgment in addition to other factors could support such an inference. See answer H-3. Moreover, if the incorporation or registration documents state that the subsidiary or branch will comply with the laws, regulations, requirements, or administrative practices, there is an agreement under section 999(b)(3).

H-8. Q. Company C signs a contract to export goods to country X. The contract contains no clause concerning a boycott. Payment is made by means of a letter of credit that requires, as a condition of payment, that company C provide bank D with a certificate that the goods were not manufactured by a person blacklisted by country X. Company C provides the required certificate to bank D. Does company C's action constitute an agreement under section 999(b)(3)?

A. Generally, yes. See answer H-1A. The terms of a letter of credit upon which payment is made are part of the agreement made by company C.

H-9. Q. Company C signs a contract to carry out a construction project in country X. The contract says nothing about the nationality, race, or religion of the individuals who are to be employed to carry out the contract within country X. However, company C is aware that the laws, regulations, requirements, or administrative practices of country X may prohibit the issuance of visas by country X to individuals of religion R to work on projects in that country. Company C excludes individuals of that religion from consideration for employment on the project in country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. Where there is no express agreement, the existence of an agreement under section 999(b)(3) will not be inferred solely from the fact that a person's action is apparently consistent with boycott requirements of country X, provided that there appear to be valid business reasons for such action. In the absence of valid business reasons, such an action could support the inference of an agreement under section 999(b)(3). It is highly unlikely here that there are valid business reasons for company C's action.

H-10. Q. Company C signs a contract to carry out a construction project in country X. The contract says nothing about the na-

tionality, race, or religion of the individuals who are to be employed to carry out the contract within country X. However, company C is aware that the laws, regulations, requirements, or administrative practices of country X may prohibit the issuance of visas to individuals of religion R. Company C, in hiring people for the project, informs all such people that if they cannot obtain a visa to enter country X, their employment will be terminated. Several individuals of religion R are unsuccessful in obtaining visas and their employment is subsequently terminated. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. The existence of an agreement under section 999(b)(3) will not be inferred from company C's action.

H-11. Q. The facts are the same as in question H-10, except that company C enters into employment contracts with individuals for work on the project in country X subject to the condition that such individuals obtain visas from country X that will permit them to work in country X. Few, if any, individuals of religion R are successful in obtaining visas. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. The existence of an agreement under section 999(b)(3) will not be inferred from company C's action.

H-12. Q. The facts are the same as in question H-10, except that no individuals of religion R are willing to accept employment on the terms offered by company C. Does company C's action constitute an agreement under section 999(b)(3)?

A. No.

H-13. Q. Company C signs a contract with country X to carry out a construction project in country X. The contract says nothing about who may or may not be a subcontractor to do certain work in country X other than that country X has the right of prior approval of all subcontractors. Does company C's action constitute an agreement under section 999(b)(3)?

A. The contract provision giving the project owner a right of prior approval does not itself constitute an agreement under section 999(b)(3). However, an overall course of conduct which includes the signing of a contract with such a provision in addition to other factors could give rise to such an inference. Examples of other factors which could give rise to such an inference include: Company C's supplying of boycott information relating to possible subcontractors and the compilation by company C of lists of subcontractors from which blacklisted companies are excluded for no valid business reasons. On the other hand, repeated inclusion of such a provision in contracts does not give rise to such an inference.

H-14. Q. Company C signs a contract to carry out a construction project in country X. The contract specifies a number of permissible subcontractors. All the subcontractors, in the view of company C, are capable of carrying out the work, but none of them appears on a list of companies that are blacklisted by country X. Company C has previously done business with each of the specified companies, but it has also done business with certain of the blacklisted companies with which it has had satisfactory relations. Does company C's action constitute an agreement under section 999(b)(3)?

A. A contract that on its face indicates a pattern of exclusion of certain companies, including companies with which company C has no particular reason not to do business,

gives rise to an inference that company C has agreed to refrain from doing business with the blacklisted companies, unless company C is able to show that the excluded companies were not specified as permissible subcontractors for reasons not related to the boycott. See answer H-1A.

H-15. Q. Company C signs a contract to carry out a construction project in country X. The contract provides that country X is to engage all the subcontractors that are to be engaged from outside country X but that are to perform all or part of their services in country X. Company C, however, is given the right to disapprove any company that country X proposes to engage for a subcontract. While the contract is being carried out, none of the companies that country X proposes to prequalify or invite to bid are included on a list of companies blacklisted by country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. Under the contract, company C has not agree to refrain from doing business with companies that are on the blacklist. The contract, moreover, does not give company C the right to select subcontractors other than those nominated by country X. Therefore, company C's action does not constitute an agreement under section 999(b)(3). Nevertheless, an agreement may be inferred from an overall course of conduct which includes the signing of a contract with such a provision in addition to other factors. See answer H-13 for examples of such other factors. On the other hand, the repeated signing of contracts with such provisions would not give rise to such an inference.

H-16. Q. Company C signs a contract to carry out a construction project in country X. The contract states that any disputes arising under the contract will be resolved in accordance with country X's laws. The laws of country X contain boycott provisions. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. The provision that disputes will be resolved in accordance with country X's laws does not constitute an agreement by company C to comply with country X's boycott laws with respect to the carrying out of the contract.

H-17. Q. Company C receives an inquiry from country X about certain goods that company C manufactures. The inquiry also requests company C to furnish information about the following matters: Whether it does business with country Y and whether it does business with any U.S. person engaged in trade in country Y. Company C furnishes the requested information to country X. Later company C signs a contract with country X to export goods to country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. By furnishing such information company C has not agreed to take any action, as a condition of doing business with country X, that is described in section 999(b)(3). Nevertheless, an agreement under section 999(b)(3) could be inferred from an overall course of conduct that includes the furnishing of such information in addition to other factors. An example of another factor which could give rise to such an inference is any contemporaneous termination or lessening in company C's relationships with country Y or with U.S. persons engaged in trade with country Y for no valid business reason. On the other hand, the repeated furnishing of such information would not give rise to such an inference.

H-18. Q. Company C signs a contract to export goods to country X. The contract contains a clause requiring company C not to obtain any of the goods from any company blacklisted by country X. Company C, however, purchases some of the goods from one of the blacklisted companies. Does company C's action constitute an agreement according to section 999(b)(3)?

A. Yes. An agreement to refrain from doing business with persons blacklisted by country X generally constitutes participation in or cooperation with an international boycott within the meaning of section 999(b)(3), even if company C, fully or partially, does not abide by, or intend to abide by, such agreement. See answer H-1A.

H-19. Q. Company C signs a contract with country X to export goods to country X. Included in the contract is a provision that company C will refrain from doing business with country Y. Company C has done considerable business with country Y in the past, but soon after it concludes the contract with country X its distributor in country Y, learning of the contract with country X, refuses to continue to handle company C's products and company C tries but is unable to conclude any other satisfactory distribution arrangement in country Y. Does company C's action constitute an agreement under section 999(b)(3)?

A. Yes, for the reason stated in answer H-18.

H-20. Q. Company C has been unable to do business with country X because company C has been on a blacklist of companies maintained by an organization of countries to which country X belongs. As a condition of being removed from the list, company C agrees to refrain from doing business with country Y. Does company C's action constitute an agreement under section 999(b)(3)?

A. Yes. Even though company C has not yet entered into a contract to do business with any boycotting country, it has agreed, as a condition of being in a position to do business with one or more of the countries maintaining the blacklist, to refrain from doing business with country Y. This action constitutes an agreement under section 999(b)(3).

H-21. Q. The facts are the same as in question H-20, except that company C does several different types of business with country Y. It is requested to, and agrees to, refrain from doing one of those types of business with country Y, but it continues to do the other types of business with country Y. Does company C's action constitute an agreement under section 999(b)(3)?

A. Yes. An agreement to refrain from some, but not all, business with a boycotted country constitutes an agreement under section 999(b)(3).

H-22. Q. Company C is doing business in country X. It contracts with company D, which is not related to company C, for company D to build an office building for company C's use in country X. In the course of constructing the building, company D participates in or cooperates with an international boycott imposed by country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. Unless company C directs or requires company D to take action that constitutes participation in or cooperation with the boycott by company D, or unless company C's relationship with company D is established to facilitate participation in or cooperation with the boycott, company D's action will not be attributed to company C

under section 999(b)(3), and company C will not be deemed to be participating in or cooperating with an international boycott.

H-23. Q. Company C signs a contract with country X to export goods to country X. The contract does not contain any provision as to which ships should be used for shipping the goods to country X or which insurance companies should be used. The laws, regulations, requirements or administrative practices of country X do not permit the importation of goods carried on a ship owned by companies that trade in country Y or goods insured by companies that trade in country Y. Company C is aware of these laws, regulations, requirements, or administrative practices and ships the goods on the ships of a company, and insures the goods with a company, that does not trade in country Y. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. See Answer H-5.

H-24. Q. Company C is competing for an industrial plant construction contract for which country X is inviting international tenders. The tender documents contain a provision to the effect that country X will not enter into the contract unless the successful tenderer certifies that in carrying out the contract it will refrain from doing business with companies blacklisted by country X. Company C does not win the contract, but in its tender it indicates that it would be prepared to sign a contract in the form indicated in the tender documents, and gives country X a tender bond to that effect. Does company C's action constitute an agreement under section 999(b)(3)?

A. Since its offer was not accepted, company C has not made an agreement under section 999(b)(3). Nevertheless, an agreement may be inferred, in other direct or indirect business transactions of company C in boycotting countries or with the governments, companies, or nationals of boycotting countries, from an overall course of conduct which includes company C's stated willingness to cooperate with country X's boycott in addition to other factors.

H-25. Q. Company C successfully prequalifies to tender for a contract for the construction of an industrial plant in country X. At the time it attempts to prequalify, company C is required to state that it understands that the successful tenderer for the contract will have to agree not to do business in connection with the project with any company blacklisted by country X or with the government, companies, or nationals of country Y. After it prequalifies, company C decides not to tender for the contract. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. But see answer H-24.

H-26. Q. Company C competes for an industrial plant construction contract for which country X is inviting international tenders. The tender documents contain a provision to the effect that country X will not enter into a contract unless the successful tenderer certifies that in carrying out the contract it will refrain from doing business with any company blacklisted by country X. Company C wins the tender and successfully convinces country X that the boycott clause should be deleted from the final contract. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. Company C has not made an agreement under section 999(b)(3). However, if the deletion of the boycott clause is not accomplished in good faith or is a subterfuge to mask an unstated understanding to par-

participate in or cooperate with an international boycott, there is an agreement under section 999(b)(3).

H-27. Q. Company D charters a vessel to company C to be used by company C in carrying its goods to country X. At the request of company D, company C agrees in the charter agreement not to issue any orders to, or take any action with respect to, the vessel that would result in limiting the vessel's ability to call at ports in country X or subject the vessel to arrest or confiscation in country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. Company C's agreement to take actions enumerated in section 999(b)(3) is not as a condition of doing business directly or indirectly within a boycotting country or with the government, a company, or a national of a boycotting country.

H-28. Q. Company D charters a vessel to company C to be used by company C in carrying its goods to or from specifically named ports, or a range of ports within a specified geographical area. Company D and company C agree on a charter agreement which precludes that vessel from calling at a number of countries, including country Y. Does company C's action constitute an agreement under section 999(b)(3)?

A. No.

H-29A. Q. Company A signs a contract to export goods to country X. The contract provides that payment will be made by means of a letter of credit confirmed by bank C. The letter of credit requires company A to provide to bank C a certificate that it is not blacklisted before it can be paid by bank C. Bank C confirms the letter of credit and later makes payment to company A after determining that all documents, including the boycott certificate, are in order. Does bank C's action constitute an agreement under section 999(b)(3)?

A. Yes. Bank C's action constitutes an agreement to refrain from doing business with a U.S. person and therefore constitutes an agreement under section 999(b)(3)(A)(ii). The answer would be the same under section 999(b)(3)(A)(i) if the beneficiary of the letter of credit were organized under the law of country Y and under section 999(b)(3)(A)(iii) if company C had reason to know that it will not be able to obtain the required certificate because of the nationality, race, or religion of the beneficiary's ownership, management, or directors. The answer would also be the same were bank C merely to confirm, pay, honor, negotiate, open, or otherwise implement the letter of credit. However, merely advising company A of the letter of credit does not constitute an agreement under section 999(b)(3).

Bank C's action would not constitute participation in or cooperation with an international boycott under section 999(b)(3) if the beneficiary were neither a country Y person nor a U.S. person and if bank C did not have reason to know that it would not be able to obtain the required certification because of the nationality, race, or religion of the beneficiary's ownership, management, or directors. See answer H-1B. If bank C has reason to know that a person has been inserted as the beneficiary of the letter of credit solely for the purpose of funneling payment to another person, the letter of credit will be viewed as also having that other person as a beneficiary.

H-29B. Q. The facts are the same as in H-29A, except that company A is required to provide to bank C a certificate that none of

the goods for which it is to be paid under the letter of credit is produced by a blacklisted person. Does bank C's action constitute an agreement under section 999(b)(3)?

A. Yes, for the same reasons and with the same qualifications as in Answer H-29A.

H-30. Q. Company C signs a contract to supply goods to Country X. The contract provides that Company C will not trade with Country Y, and that payment will be made by means of a letter of credit confirmed by Bank D provided that Bank D certifies to Country X that it will not confirm letters of credit relating to the export of goods to Country Y. Bank D confirms the letter of credit, after issuing the requested certificate. Does Bank D's action constitute an agreement under section 999(b)(3)?

A. Yes, regardless of Company C's nationality.

H-31. Q. Company C signs a contract to export goods to Country X. The contract, consistent with the laws, regulations, requirements or administrative practices of Country X, provides that the goods may not be produced in whole or in part in Country Y or contain any parts, raw materials or labor originating in Country Y. The contract also provides that payment will be made by means of a letter of credit confirmed by Bank D. The letter of credit requires Company C to provide to Bank D a certificate that the goods are not produced in whole or in part in Country Y and contain no parts, raw materials or labor originating in Country Y before it can be paid by Bank D. Bank D confirms the letter of credit and later makes payment to Company C after determining that all documents, including the certificate, are in order. Does Bank D's action constitute an agreement under section 999(b)(3)?

A. No. Bank D's action constitutes an agreement in furtherance of a prohibition on the importation of goods produced in whole or in part in a country that is the object of an international boycott. According to section 999(b)(4)(B), agreeing to such a prohibition does not constitute participation in or cooperation with an international boycott. (Similarly, Company C's action does not constitute participation in or cooperation with an international boycott. See Answer I-1.)

H-32. Q. Company C signs a contract to export goods to Country X. The contract contains no clause concerning a boycott. The laws, regulations, requirements or administrative practices of Country X prohibit the importation into Country X of goods manufactured by persons engaged in trade with Country Y and require import licenses. In order to obtain an import license, Company C provides a certificate indicating that the goods were not manufactured by a person engaged in trade in Country Y or with the government, companies or nationals of Country Y and that they were not shipped on a blacklisted ship. Does Company C's action constitute an agreement under section 999(b)(3)?

A. No. Merely providing at the time of import a certificate as to the content and shipper of goods, as is required to obtain an import license, does not by itself constitute an agreement under section 999(b)(3). Nor does the repetitive supplying of such certificates at the time of import by itself constitute an agreement under section 999(b)(3). However, an agreement to provide such a certificate would constitute an agreement under section 999(b)(3).

H-33. Q. Country X deposits money in a foreign branch of Bank C, a U.S. bank. As a

condition of making the deposit, Country X requires that all loans by the branch be made only to companies which can supply certificates that they are not blacklisted. The branch agrees to this condition. Does Bank C's action constitute an agreement under section 999(b)(3)?

A. Yes. Bank C's action constitutes an agreement under section 999(b)(3), which is made as a condition of doing business with Country X.

H-34. Q. Company C enters into an agreement with Country X to manufacture airplanes for Country X. The contract between Company C and Country X provides that no components in the airplane may be produced by blacklisted companies. Company C enters into an agreement with Company D pursuant to which Company D agrees to manufacture the seats and to provide Company C with a certificate that no components in the seats were produced by blacklisted companies. Company D knows or has reason to know that the seats are being incorporated in the airplanes being sold to Country X. Does Company D's action constitute an agreement under section 999(b)(3)?

A. Yes. Company D has agreed to refrain from doing business with blacklisted persons as a condition of doing business indirectly with Country X.

I. REFRAINING FROM DOING BUSINESS WITH OR IN A BOYCOTTED COUNTRY (SECTION 999(b)(3)(A)(I)).

I-1. Q. Company C signs a contract to export goods to Country X. In that contract, consistent with the laws, regulations, requirements or administrative practices of Country X, there is a provision that none of the goods to be provided shall be produced in whole or in part in Country Y or contain any parts, raw materials or labor from Country Y. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. No. Company C is complying with Country X's prohibition on the importation of goods produced in whole or in part in a country which is the object of an international boycott. Such action, according to section 999(b)(4)(B), does not constitute participation in or cooperation with an international boycott.

I-2. Q. Company C owns a number of ships. It understands that if one of its ships visits Country Y, that ship will thereafter be unable to visit Country X. Company C has some ships that visit Country Y but not Country X and other ships that visit Country X but not Country Y. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. No. Company C has not agreed to refrain from doing business with Country Y. Therefore Company C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i).

I-3. Q. Company C signs a contract licensing a company in Country X to use to certain of its patents and trademarks in Country X. The contract provides that Company C will not enter into any agreement with any national of Country Y with respect to the use in Country Y of patents and trademarks. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. Yes. Company C has agreed to refrain from doing business with nationals of Country Y and such action constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(i).

I-4. Q. The facts are the same as in Question I-3, except that Company C has a number of licensing agreements with Country Y and enters into still more such agreements after it signs the contract with Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. Yes, for the reasons stated in Answer I-3. Answer H-18 is also relevant in this context.

I-5. Q. Company C signs a contract to export products from Country X. The contract, consistent with the laws, regulations, requirements or administrative requirements of Country X, requires Company C to certify that the goods will not be sent to Country Y. Company C so certifies. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. No. Company C's compliance with Country X's prohibition on the exportation of products of Country X to Country Y does not constitute participation in or cooperation with an international boycott under section 999(b)(4)(C).

I-6. Q. Company C signs a contract to export goods to Country X. The contract provides that no capital of Country Y origin will be used in the production or manufacture of the goods. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. Yes. Company C has agreed to refrain from doing business with the government, a company or a national of Country Y.

I-7. Q. Company C enters into a contract for the manufacture and sale of goods to Country X and the provision of customer support services. The contract provides that Company C may assign its rights and obligations under the contract, but that such rights and obligations cannot be assigned to a company incorporated under the laws of Country Y without the express approval of Country X. There is no similar requirement with respect to companies incorporated under the laws of other countries. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. The contract provision requiring company C to obtain the approval of Country X prior to an assignment of the rights and obligations to a company incorporated under the laws of Country Y constitutes sufficient evidence from which to infer the existence of an agreement under section 999(b)(3)(A)(i) unless Company C can establish valid business reasons for this provision apart from the boycott.

I-8. Q. Company C, incorporated under the laws of any country other than Country Y, signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank D. The letter of credit requires Company C to provide to Bank D a certificate that it is not organized under the laws of Country Y before it can be paid by Bank D. Bank D confirms the letter of credit and later makes payment to Company C after determining that all documents, including the boycott certificate, are in order. Does Bank D's action constitute participa-

tion in or cooperation with an international boycott under section 999(b)(3)(A)(i)?

A. No. Because Company C is not a Country Y company, Bank D's action does not constitute an agreement to refrain from doing business with a person described in section 999(b)(3)(A)(i).

J. REFRAINING FROM DOING BUSINESS WITH ANY UNITED STATES PERSON ENGAGED IN TRADE IN A BOYCOTTED COUNTRY (SECTION 999(b)(3)(A)(ii)).

J-1. Q. Company C signs a contract with Country X for the turn-key construction of an industrial plant in Country X. The contract provides that Company C will not use as subcontractors a number of named U.S. firms whose past performance on contracts in Country X has been unsatisfactory, according to Country X, for reasons unrelated to the boycott. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. No. The exclusion of subcontractors based on performance is not covered by section 999(b)(3).

J-2A. Q. Company C enters into a contract to export goods to Country X. The contract provides that Company C will not use any goods manufactured by Company A in performing the contract since Company A is blacklisted by Country X even though Company A does not engage in any kind of trade in Country Y or with the government, companies, or nationals of that country. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. Yes. An agreement providing that a person will refrain from doing business with a blacklisted U.S. person constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii), even if that person is not engaged in trade with Country Y, unless Company C can establish that the blacklist is maintained for reasons other than the furtherance of the boycott. See Answer H-1A.

J-2B. Q. The facts are the same as in Question J-2A, except that the contract provides that Company C will not use any goods manufactured by Company D, a company incorporated under the laws of any country other than the United States or Country Y. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. No, because Company D is not a United States person. In addition, since Company D is not organized under the laws of Country Y, Company C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii). However, if Company C had reason to know that Company D was blacklisted because of the nationality, race or religion of Company D's ownership, management or directors, Company C's action would constitute participation in or cooperation with an international boycott under section 999(b)(3)(a)(iii). See Answer H-1B.

J-3. Q. Company C competes for an industrial plant construction contract for which Company P of Country W is inviting international tenders. The contract is to be financed by Country X, which maintains a blacklist of companies. Country X requires contracts for projects which it finances to state that the contractor is required to refrain from making any purchase for the

project from any blacklisted company. Country W does not boycott those companies. Company C wins the tender and signs the contract with Company P with the blacklist provision. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. Generally, yes. See Answer H-1A. Although the boycott is not implemented by Country W, but by Country X, and the project is being carried out in Country W, Company C has agreed not to do business with blacklisted U.S. companies as a condition of doing business indirectly with Country X.

J-4. Q. Company C signs a contract to export goods to Country X. The contract provides that Company C will not do business with any company blacklisted by Country X. Company C establishes that although a number of the blacklisted companies are foreign subsidiaries of U.S. companies, no U.S. companies are on the list. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. Yes. For purposes of this particular section, "United States person" does not include foreign subsidiaries of a United States person. However, since the blacklist may be changed to add U.S. persons between the time when Company C enters into the agreement and when it completes performance, Company C has agreed not to do business with any U.S. person that may be added to the blacklist.

J-5. Q. Bank C advises Country X on its investments in the United States. Country X instructs Bank C not to recommend for investment any shares of certain companies that are blacklisted by Country X. Bank C follows these instructions. Does Bank C's action constitute participation in or cooperation with an international boycott according to section 999(b)(3)(A)(ii)?

A. No. The recommendation of shares of certain companies by Bank C does not constitute "doing business" with those companies. Therefore Bank C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3).

J-6A. Q. Bank C manages Country X's investment portfolio in the United States. Bank C has been given certain powers to act for Country X pursuant to instructions that, among other things, require Bank C not to invest Country X's funds in stocks and bonds issued by certain blacklisted United States companies. Bank C is authorized by Country X to purchase and sell stocks and bonds only through recognized exchanges, over the counter markets, or the so-called third market. Does Bank C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. No. Purchasing stocks or bonds of any company on recognized exchanges, over the counter markets, or the so-called third market does not constitute "doing business" with that company, and an agreement to refrain from such purchases does not constitute an agreement to refrain from doing business with that company. Accordingly, Bank C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3).

J-6B. Q. The facts are the same as in Question J-6A, except that Bank C is also authorized to purchase original issues of stocks and bonds directly from the issuing company. Does Bank C's action constitute

participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. Generally, yes. An agreement not to purchase original issues of stocks or bonds directly from a U.S. company blacklisted by Country X constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii). If, however, Bank C can establish that the blacklist is maintained for reasons other than the furtherance of the boycott, Bank C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3). See Answer H-1A.

J-7. Q. Company C signs a contract to construct an industrial plant in Country X. The laws, regulations, requirements or administrative practices of Country X prohibit the importation into Country X of goods produced by blacklisted companies. The contract states that the laws, regulations, requirements or administrative practices of Country X will apply to company C's performance of the contract in Country X. In carrying out the project, Company C invites bids to furnish all goods and equipment on a delivered-in-Country X basis. No company on the blacklist maintained by Country X bids. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. No. By the terms of the agreement, Company C has not agreed to refrain from doing business with any of the blacklisted companies. The fact that blacklisted companies are unable to meet the conditions that Company C establishes is not due to any agreement by Company C with Country X, but is due to Country X's laws, regulations, requirements or administrative practices.

J-8. Q. The facts are the same as in Question J-7, except that Company C's purchase contracts require vendors to reimburse Company C for the purchase price and transportation costs, plus interest, of any goods that Company C cannot import into Country X because of Country X's import restrictions. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. No, for the reasons given in Answer J-7.

J-9. Q. Company C signs a contract to produce goods in Country X for export. The contract requires Company C to certify that, consistent with the laws, regulations, requirements or administrative practices of Country X, the goods will not be sent to Country Y and that Company C will require any purchaser of the products to certify that the goods will not be sent to Country Y if they are substantially unaltered at the time of resale by the purchaser. Company C thereafter sells these goods to Company A, requiring the certification. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(ii)?

A. No. Company C's agreement to refrain, and to require Company A to refrain, from sending Country X's unaltered products to Country Y does not constitute participation in or cooperation with an international boycott under section 999(b)(4)(C).

J-10. Q. Company C signs a contract to export goods to Country X. The contract requires that the goods be produced by Company A and that a certain component in the goods be produced by Company B. The laws, regulations, requirements or administrative practices of Country X prohibit the impor-

tation into Country X of goods manufactured by any company blacklisted by Country X. Company A and Company B are not blacklisted by Country X. Does Company C's action constitute an agreement under section 999(b)(3)(ii)?

A. No. The existence of an agreement to refrain from doing business with a person blacklisted by Country X will not be inferred solely from a provision in a contract that goods or components must be produced by a specific company that does not in fact appear on the blacklist. Accordingly, Company C's action does not constitute an agreement under section 999(b)(3).

J-11. Q. Company C, incorporated under the laws of any country other than the United States, signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank D. The letter of credit requires Company C to provide to Bank D a certificate that it is not engaged in trade with Country Y before it can be paid by Bank D. Bank D confirms the letter of credit and later makes payment to Company C after determining that all documents, including the boycott certificate, are in order. Does Bank D's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. No. Bank D's confirmation represents its agreement to refrain from doing business with a person that is not a United States person. Such an agreement does not come within the coverage of section 999(b)(3)(A)(iii).

K. REFRAINING FROM DOING BUSINESS WITH ANY COMPANY WHOSE OWNERSHIP OR MANAGEMENT IS MADE UP, IN WHOLE OR IN PART, OF INDIVIDUALS OF A PARTICULAR NATIONALITY, RACE OR RELIGION (SECTION 999(b)(3)(A)(iii))

K-1. Q. Company C signs a contract to export goods to Country X. The contract provides that the goods will not bear any mark symbolizing Country Y or religion R. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. No. Section 999(b)(3)(A)(iii) prohibits agreements to refrain from doing business on the basis of the nationality, race or religion of the owners or management of an organization and to refrain from selecting (or to remove) directors of a particular nationality, race or religion. It does not prohibit agreements not to import goods bearing certain marks into a country. No part of section 999(b)(3) concerns refusals to purchase goods bearing marks symbolizing a certain country or religion.

K-2. Q. As a condition of doing business in Country X, Company C's subsidiary in Country X agrees that the board of directors of the subsidiary must consist of a specified number of nationals of Country X. Does such action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. No.

K-3. Q. Company C is the leader of a syndicate of U.S. and foreign banks that is underwriting a public bond issue of Country X. Company D is a member of that syndicate. During the loan negotiations Country X indicates that Company E, which is not a U.S. company, should be excluded from the syndicate because of the religion of some of its directors. Company C and Company D did

not contemplate that Company E would be a member of the syndicate in any event and they agree to comply with the request of Country X. Does the action of Company C and Company D constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. Yes. The action of Company C and Company D is an agreement to refrain from doing business with a company whose management consists of individuals of a particular religion. Under section 999(b)(3)(A)(iii) this constitutes participation in or cooperation with an international boycott.

K-4. Q. The facts are the same as in Question K-3, except that Country X indicates that Company E may be included only if it removes several of its directors who are of nationality Y. Does the action of Company C and Company D in agreeing to the request of Country X constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. Yes. The action of Company C and Company D is an agreement to obtain the removal of corporate directors of a particular nationality as a condition of including Company E. This constitutes an agreement under section 999(b)(3)(A)(iii).

K-5. Q. Company C signs a contract to export goods to Country X. The contract provides that payment will be made by means of a letter of credit confirmed by Bank D. The letter of credit requires Company C to provide to Bank D a certificate that its board of directors does not contain any Country Y nationals before it can be paid by Bank D. Bank D confirms the letter of credit and later makes payment to Company C after determining that all documents, including the boycott certificate, are in order. Does Bank D's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii)?

A. Yes. Bank D's action constitutes an agreement to refrain from doing business with companies whose management includes individuals of a particular nationality. This constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(iii).

L. REFRAINING FROM EMPLOYING INDIVIDUALS OF A PARTICULAR NATIONALITY, RACE OR RELIGION (SECTION 999(b)(3)(A)(iv))

L-1. Q. Company C signs a construction contract that provides that Company C is not to employ individuals of religion R to work on the project in Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

A. Yes.

L-2. Q. Company C signs a contract for a construction project in Country X. The contract specifies that only individuals who are nationals of the United States or Country X will be allowed to work on the project. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

A. No. There is no evidence of an attempt to specifically exclude persons of a particular nationality. Persons of a number of different nationalities, including those from both friendly and unfriendly countries, have been evenhandedly excluded.

L-3. Q. As a condition of doing business in Country X, Company C agrees to employ a specified percentage of nationals of Country X or to employ increasing numbers of nationals of Country X. Does such action con-

stitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

A. No.

L-4. Q. Company C, incorporated under the laws of Country Z, signs a contract for the engineering and construction of an industrial plant in Country X. The contract excludes from working in Country X nationals of Country Z who are also nationals of Country Y. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

A. Yes. Any agreement to differentiate among citizens of Country Z on the basis of dual nationality for employment on a project constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv).

L-5. Q. Company C signs a contract for the engineering and construction of an industrial plant in Country X. The contract provides that Company C is not to employ in its home office any individuals who are nationals of Country Y to work on the design of the plant. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(iv)?

A. Yes.

M. AS A CONDITION OF THE SALE OF A PRODUCT, REFRAINING FROM SHIPPING OR INSURING THAT PRODUCT ON A CARRIER OWNED, LEASED, OR OPERATED BY A PERSON WHO DOES NOT PARTICIPATE IN OR COOPERATE WITH AN INTERNATIONAL BOYCOTT (SECTION 999(b)(3)(B))

M-1. Q. Company C enters into a c.i.f. contract to export goods to Country X. The contract states that the goods are not to be shipped on a ship blacklisted by Country X. The blacklist contains the names of vessels that have called at ports in Country Y, vessels that are owned, leased or operated by the government, a company or a national of Country Y, and vessels that are owned, leased or operated by persons who engage in activities that are inconsistent with the boycott. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)?

A. Yes. Company C has entered into an agreement described in section 999(b)(3)(B), as well as section 999(b)(3)(A). The answer would be the same if the contract stated that the goods were not to be insured by a company blacklisted by Country X.

M-2. Q. Company C enters into a f.a.s. Port of New York contract for the sale of goods to Country X. While no overseas shipping or insurance provisions are contained in the contract, Company C has reason to believe that arrangements will be made by the purchaser to see that the goods are not shipped on a carrier owned, leased or operated by a person who does not participate in or cooperate with Country X's boycott of Country Y and that the goods are not insured by a person who does not participate in or cooperate with the boycott. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. No. Company C has not agreed as a condition of sale to refrain from shipping on a carrier owned, leased or operated by a person who does not participate in or cooperate with an international boycott or to refrain from insuring the goods with a person who does not participate in or cooperate with an international boycott. It has not

agreed to any shipping or insurance arrangements. Its action thus does not constitute participation in or cooperation with an international boycott according to section 999(b)(3)(B).

M-3. Q. Company C, having its place of business in Country Z, is requested by Country X to enter into a c.i.f. contract to export goods to Country X. However, to avoid participating in or cooperating with an international boycott, Company C successfully convinces Country X that the contract should specify shipment f.a.s. port of Country Z. The remainder of the circumstances are as described in Question M-2. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. No, for the reasons given in Answer M-2.

M-4. Q. Company C, a freight forwarding company having its place of business in Country Z, has a contract with Country X to make, as an agent of Country X, shipping and insurance arrangements for goods which Country X purchases in Country Z on a f.a.s. port of Country Z basis. The contract provides that no shipments will be made on a carrier owned, leased or operated by a person who does not participate in or cooperate with Country X's boycott of Country Y and that the goods will not be insured by a person who does not participate in or cooperate with the boycott. Company C makes shipping and insurance arrangements on that basis. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. Company C's agreement is not made as a condition of the sale of a product to Country X. Therefore, Company C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3)(B). However, Company C's agreement may constitute participation in or cooperation with an international boycott under section 999(b)(3)(A).

M-5. Q. Company C enters into a contract to export goods to or from Country X. As a precaution to protect against war risk or confiscation, the contract requires Company C not to ship the goods on a Country Y flag vessel or on a vessel owned, controlled, operated or chartered by Country Y or by companies or nationals of Country Y, or on a ship which during the voyage calls at Country Y enroute to or from Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)?

A. No. The requirement in the contract is not a restrictive boycott practice. Rather, the contract provision is presumed to arise from the need to protect goods from damage or loss. However, this answer would not cover a restriction on the choice or route of a vessel when it carries no goods destined for or originating in Country X.

M-6. Q. Company C enters into a contract to export goods to Country X. The contract requires Company C to ship the goods only on a ship registered in Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. No. An agreement to ship goods only on a ship registered in Country X does not constitute an agreement to refrain from shipping or insuring those goods on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott. Therefore, Company

C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3).

M-7. Q. Company A signs a contract to export goods to Country X. The contract provides that the goods may not be shipped on a vessel that has been blacklisted by Country X because it has called at Country Y in the past. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. Yes.

M-8. Q. Company C signs a contract to export goods to Country X. The contract contains no requirement that the seller refrain from shipping the goods on a vessel that has been blacklisted by Country X. Company C does not ship the goods on a blacklisted vessel. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(B)?

A. No. See Answers H-5 and H-23.

M-9. Q. Company C signs a c.i.f. contract to export goods to Country X to be paid for by means of a letter of credit. The letter of credit for this transaction requires, as a condition of payment, that Company C certify as to the identity of the vessel and the identity of the insurer. Company C provides such a certificate to the paying bank. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)?

A. An agreement under section 999(b)(3) will not be inferred solely from Company C's certification. However, an overall course of conduct which includes the furnishing of such a certificate in addition to other factors could give rise to such an inference. Repeatedly furnishing such certificates does not constitute such a course of conduct.

N. REDUCTION OF FOREIGN TAX CREDIT

N-1A. Q. In the case of a taxpayer applying the international boycott factor under section 999(c)(1), how is the reduction of foreign tax credits for the current year computed under section 908, and how are the foreign taxes carried from the current year to other years treated?

A. 1. *Treatment of foreign tax credits available after applying the limitations of sections 904 and 907.* The international boycott factor is applied to the foreign tax credits available after the application of the limitations of sections 904 and 907 (determined without regard to section 908) in accordance with the following rules:

a. *Foreign tax credits attributable to current year sections 901, 902, and 960 taxes.* The foreign tax credits attributable to foreign taxes paid in the current year or deemed paid in the current year under sections 902 or 960 are multiplied by the taxpayer's international boycott factor for the current year. Foreign tax credits in the amount of this product are disallowed in the current year under section 908(a).

b. *Foreign tax credits attributable to section 904(c) and 907(f) taxes carried from a boycott factor year.* The foreign tax credits attributable to foreign taxes deemed paid in the current year under sections 904(c) and 907(f) that are carried from a year in which the taxpayer applied the international boycott factor are multiplied by the taxpayer's international boycott factor for the year from which the foreign taxes were carried. Foreign tax credits in the amount of this product are disallowed in the current year under section 908(a).

c. *Other section 904(c) and 907(f) taxes.* There is no disallowance in the current year under section 908(a) for foreign tax credits attributable to foreign taxes deemed paid in the current year under section 904(c) and 907(f) that are carried from a year: (i) in which the taxpayer did not participate in or cooperate with an international boycott; or (ii) in which the taxpayer applied the specific attribution of taxes and income method under section 999(c)(2); or (iii) ending before November 4, 1976.

If Answers E-2 or E-3 are applicable, the disallowance of foreign tax credits may be computed on a pro rata basis in accordance with those Answers.

After the amount of disallowed foreign tax credits has been determined, the taxpayer determines the amount of the disallowed foreign tax credits that may be deducted under Answers N-4 and N-5. No adjustment is made under sections 901, 904 or 908 to reflect the deduction for disallowed credits. Thus, the allowable foreign tax credits for the current year equals the foreign tax credits available (after applying sections 904 and 907 without regard to section 908) less the foreign tax credits disallowed under a. and b. above.

2. *Treatment of foreign taxes not available as a credit by reason of the limitations of sections 904 and 907.* There is no reduction or disallowance in the current year for foreign taxes paid or deemed paid that are not available as credits solely by reason of the limitations of sections 904 and 907. Instead, those foreign taxes remain available for carrying-over and will be disallowed in the year to which they are carried in accordance with the following rules:

a. If the foreign taxes are carried to a year in which the taxpayer applies the international boycott factor, there will be a disallowance (after applying the limitations of sections 904 and 907) of foreign tax credits attributable to the carried-over foreign taxes in an amount equal to the product of those credits multiplied by the taxpayer's international boycott factor for the year from which the taxes were carried.

b. If the foreign taxes are carried to a year in which the taxpayer applies the specific attribution of taxes and income method, there will be a disallowance (after applying the limitations of sections 904 and 907) of foreign tax credits attributable to the carried-over foreign taxes in an amount equal to the product of those credits multiplied by the taxpayer's international boycott factor for the year from which the taxes were carried. (See Answer N-1B.)

c. If, the foreign taxes are carried either to a year in which there was no participation in or cooperation with an international boycott or to a year ending before November 4, 1976, there will be a disallowance (after applying the limitations of sections 904 and 907) of foreign tax credits attributable to the carried-over foreign taxes in an amount equal to the product of those credits multiplied by the taxpayer's international boycott factor for the year from which the taxes were first carried.

If Answers E-2 or E-3 are applicable, the disallowance of the credits attributable to the carried-over taxes may be computed on a pro rata basis in accordance with those Answers. No adjustment is made under sections 901, 904 or 908 to reflect any deduction that may be allowed under Answers N-4 and N-5 for the disallowed credits.

N-1B. Q. In the case of a taxpayer applying the specific attribution of taxes and

income method under section 999(c)(2), how is the reduction of foreign taxes or foreign tax credits computed for the current year under section 908, and how are foreign taxes carried from the current year to other years treated?

A. 1. *Treatment of foreign taxes other than foreign taxes carried from a boycott factor year.* The taxpayer first reduces the amount of all foreign taxes paid or deemed paid in the current year, other than foreign taxes deemed paid in the current year under sections 904(c) and 907(f) that are carried from a year in which the taxpayer applied the international boycott factor, by the sum of those foreign taxes that are attributable to specific operations that are—

(a) related to boycotting countries and in connection with which there was boycott participation or cooperation, or

(b) in boycotting countries and have not been clearly demonstrated to be clearly separate and identifiable from operations in connection with which there was boycott participation or cooperation.

There is, of course, no reduction for foreign taxes that are deemed paid in the current year but are attributable to operations completed before November 4, 1976, or to operations completed before December 31, 1977 if the operations are carried out in accordance with the terms of a binding contract entered into before September 2, 1976. Additionally, if Answers E-2 or E-3 are applicable, the reduction of foreign taxes may be computed on a pro rata basis in accordance with those Answers.

After the amount of the reduction of foreign taxes has been determined, the taxpayer determines which of the disallowed foreign taxes are deductible under Answers N-4 and N-5. The taxpayer then computes its section 904 limitation, which will reflect a reduction in both taxable income from sources without the United States and entire taxable income for the entire amount of the disallowed foreign taxes that are deducted under Answers N-4 and N-5.

2. *Treatment of foreign taxes carried from an international boycott factor year.* After the taxpayer has determined the reduction in foreign taxes (other than taxes carried from an international boycott factor year) and after the limitations of sections 904 and 907 have been applied in accordance with 1. above, the taxpayer multiplies the foreign tax credits that are attributable to foreign taxes carried from a year in which the taxpayer applied the international boycott factor by the international boycott factor for the year from which the taxes were carried. Foreign tax credits in this amount are disallowed. If Answers E-2 or E-3 are applicable, the disallowance of these credits may be computed on a pro rata basis in accordance with those Answers. No adjustment is made at this point under sections 901, 904 or 908 to reflect any deduction that may be allowed under Answers N-4 and N-5 for the disallowed credits attributable to foreign taxes carried from a year in which the taxpayer applied the international boycott factor.

3. *Treatment of foreign taxes carried from a specific attribution of taxes and income year.* Since, in a year in which the taxpayer uses the specific attribution of taxes and income method, the reduction in foreign taxes is made before the determination of the section 904 limitation (see 1. above), no "tainted" foreign taxes will be available for carrying-over to another year. Thus, there will be no reduction in foreign taxes and no

disallowance of credits in another year for taxes carried from a year in which the taxpayer used the specific attribution of taxes and income method.

N-2. Q. After the reduction of foreign taxes or the disallowance of foreign tax credits has been determined in accordance with the processes described in Answers N-1A and N-1B, some of the disallowed taxes or credits may be deductible under section 908(b). If the disallowed taxes or credits are deducted, is a new limitation under section 904, a new section 901 amount or a new section 908(a) amount computed to reflect the reduction in income by reason of the deduction?

A. See Answers N-1A and N-1B.

N-3. Q. Company A owns 20 percent of the stock of Company C, a corporation organized under the laws of Country Z, a foreign country. Company C participates in an international boycott in connection with all its operations. Company C pays a dividend to Company A and Country Z withholds income tax on the dividend paid to Company A. Company A computes its loss of tax benefits by identifying specifically attributable taxes and income under section 999(c)(2). Will Company A be denied its section 901 direct foreign tax credit in respect of the income tax withheld by Country Z on the dividend paid by Company C?

A. If Company A can clearly demonstrate that its investment in Company C is a clearly separate and identifiable operation in connection with which Company A did not participate in or cooperate with an international boycott, Company A will not be denied its section 901 direct foreign tax credit in respect of the withholding tax on the dividend paid by Company C. On the other hand, even if Company C had not participated in an international boycott, if Company A participated in or cooperated with an international boycott in connection with its investment in Company C, Company A would lose its foreign tax credit in respect of the withholding tax on the dividend. Thus, whether Company C participates in an international boycott is not relevant to the determination of Company A's loss of foreign tax credit under the facts of this question. (To determine the denial of the section 902 indirect foreign tax credit for foreign income taxes paid by Company C, see Answer A-19.)

N-4. Q. As a result of participation in or cooperation with an international boycott and the application of section 908(a), Company A loses a portion of its foreign tax credit under both sections 901 and 902. Are the foreign taxes denied creditability under both sections 901 and 902 deductible under section 908(b)?

A. The section 901 taxes denied creditability by reason of section 908(a) are deductible, but the section 902 taxes are not. Section 908(b) merely renders sections 275(a)(4) and 78 inapplicable to taxes denied creditability under section 908(a). Since section 902 taxes are not otherwise deductible under the Code, and since no section 78 gross-up is required in respect of section 902 taxes denied creditability, no deduction is allowed for those section 902 taxes.

N-5. Q. Company A has foreign tax credits under both sections 901 and 902. Company A applies the international boycott factor to determine its loss of foreign tax credits under section 908(a). What portion of the taxes denied creditability will be deductible under section 908(b)?

A. Since the section 901 taxes denied creditability under section 908(a) are deductible

but the section 902 taxes are not, Company A may deduct that portion of the total taxes denied creditability under section 908(a) that the total section 901 taxes (before application of section 908(a)) bear to the total section 901 and 902 taxes (before application of section 908(a)).

O. SUBPART F INCOME

O-1. Q. In determining the amount of subpart F income included in gross income by reason of section 952(a)(3), may any deductions be taken into account?

A. Yes. In computing subpart F income included in gross income under section 952(a)(3), a reasonable allowance may be made for deductions (including foreign taxes) properly allocable to that income. See Regs. sections 1.861-8 and 1.954-1(c) for guidance in this regard.

Dated: January 20, 1978.

W. MICHAEL BLUMENTHAL,
Secretary.

[FR Doc. 78-2171 Filed 1-24-78; 8:45 am]

[4810-22]

NYLON YARN FROM FRANCE

Antidumping Proceeding Notice

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether nylon yarn is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market or to third countries.

EFFECTIVE DATE: January 25, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Operations Officer, United States Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On December 15, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from E. I. duPont de Nemours & Company, Inc., Wilmington, Del., indicating the possibility that the subject merchandise from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this investigation, the term "nylon yarn" means nylon

yarn and grouped nylon filaments, not textured, provided for in items 309.3030, 309.3130, 310.0149, and 310.0249, Tariff Schedules of the United States, Annotated.

Pricing information thus far obtained indicates that imports of nylon yarn from France may be sold up to 40 percent below French home market prices for such or similar merchandise.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This information indicates that imports of nylon yarn from France are underselling prices of domestic nylon yarn by approximately 10 percent. This underselling is fully accounted for by the alleged dumping margins. In addition, petitioner's production of nylon yarn which had previously been returning profits has now declined to a loss position. Employment in petitioner's plants producing nylon yarn have declined approximately 21 percent between 1975 and 1977, accompanied by a decline in production of similar proportions. Capacity utilization and capital investment have also declined.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is being published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

HENRY C. STOCKELL, Jr.,
*Acting General Counsel of
the Treasury.*

JANUARY 19, 1978.

[FR Doc. 78-2102 Filed 1-24-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 241, Rule 19; 35th Rev.
Exemption No. 90]

50-FT. PLAIN BOXCARS

Exemption Under Mandatory Car Service Rules

To all railroads:

It appearing, that the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote

from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 405 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Apalachicola Northern Railroad Co., reporting marks: AN.
Camino, Placerville & Lake Tahoe Railroad Co., reporting marks: CPLT.
City of Prineville, reporting marks: COP.
The Clarendon and Pittsford Railroad Co., reporting marks: CLP.
Duluth, Missabe and Iron Range Railway Co., reporting marks: DMIR.
Greenville and Northern Railway Co., reporting marks: GRN.
Greenwich & Johnsonville Railway Co., reporting marks: GJ.
Lake Erie, Franklin & Clarion Railroad Co., reporting marks: LEF.
Louisville and Wadley Railway Co., reporting marks: LW.
Louisville, New Albany & Corydon Railroad Co., reporting marks: LNAC.
McCloud River Railroad Co., reporting marks: MR.
Middletown and New Jersey Railway Co., Inc., reporting marks: MNJ.
Minneapolis, Northfield and Southern Railway, reporting marks: MNS.
Missouri-Kansas-Texas Railroad Co., reporting marks: BKT-MKT.
Municipality of East Troy, Wisconsin, reporting marks: METW.
New Orleans Public Belt Railroad, reporting marks: NOPB.
North Louisiana & Gulf Railroad Co., reporting marks: NLG.
Pearl River Valley Railroad Co., reporting marks: PRV.
The Pittsburgh and Lake Erie Railroad Co., reporting marks: P&LE.
Providence and Worcester Co., reporting marks: PW.
Raritan River Rail Road Co., reporting marks: RR.
Sacramento Northern Railway, reporting marks: SN.
St. Johnsbury & Lamolille County Railroad, reporting marks: SJL.
St. Lawrence Railroad, reporting marks: NSL.
Sierra Railroad Co., reporting marks: SERA.
Terminal Railway, Alabama State Docks, reporting marks: T ASD.
Tidewater Southern Railway Co., reporting marks: TS.
Toledo, Peoria & Western Railroad Co., reporting marks: TPW.
Vermont Railway, Inc., reporting marks: VTR.
WCTU Railway Co., reporting marks: WCTR.
Yreka Western Railroad Co., reporting marks: YW.

¹Addition.