

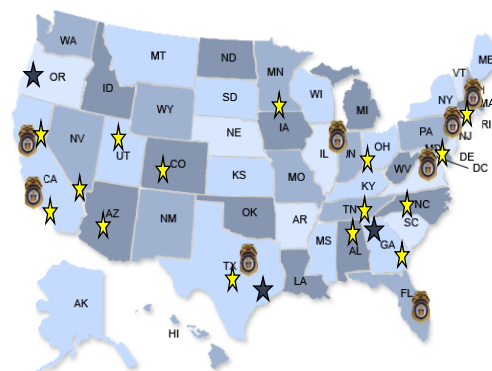
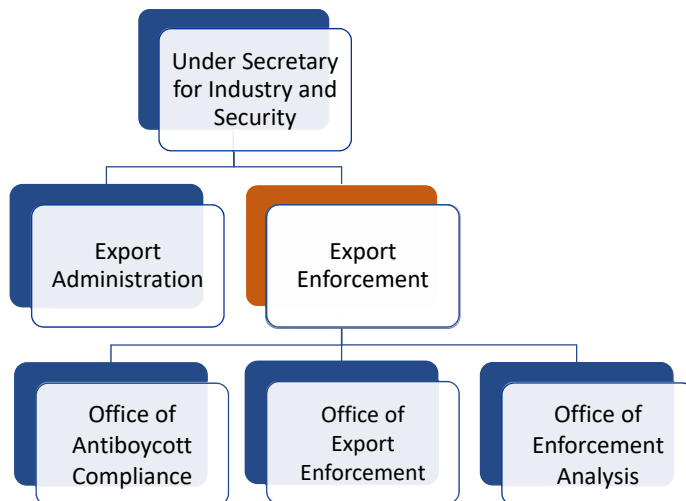


Export Enforcement Panel

Kevin Kurland, Acting Assistant Secretary for Export Enforcement
 John Sonderman, Director, Office of Export Enforcement
 Dan Clutch, Deputy Director, Office of Export Enforcement
 Linda Minsker, Acting Director, Office of Enforcement Analysis
 Cathleen Ryan, Director, Office of Antiboycott Compliance
 Opher Shweiki, Acting Chief Counsel for Industry and Security



EXPORT ENFORCEMENT ORGANIZATION



- EE Headquarters in Washington, DC
- OEE Field Offices - 26 domestic locations
- OEA assigned regional Export Control Officers: Beijing and Hong Kong, China (3); Frankfurt, Germany (2) covering Russia area of responsibility and Western Europe; New Delhi, India; Singapore; Istanbul, Turkey; and Dubai, UAE



Recent Enforcement Highlights

➤ OEA

- Identified high-performance computing, laser, and C4ISR entities supporting China's military modernization efforts and/or WMD programs for addition to the Entity List in April/July 2021
- Identified 14 entities in China for enabling human rights abuses in July 2021
- Identified 13 entities located in Russia, Germany, and Switzerland based on their proliferation activities in support of Russia's weapons of mass destruction programs and one Russian Government Ministry of Defense facility associated with Russia's chemical weapons activities for addition to the Entity List in March 2021

➤ OEE

- Published a regulation in November 2020 to implement the enhanced enforcement authorities of ECRA; OEE Director now the designated BIS official to issue denial orders related to prior convictions
- Brought the first Russia industry sectoral sanctions case resulting in five individuals and four companies in three countries criminally charged with ECRA, IEEPA, conspiracy, money laundering, and wire fraud. To date, three individuals arrested, two individuals and two companies convicted, and \$2.8 million cash, an \$800,000 home, and two cars seized
- Three new MOUs signed with interagency partners and new OEE Posts in Detroit, Las Vegas, Memphis, New Haven, Pittsburgh, Seattle, and Tampa by the end of FY 2021

➤ OAC

- Added Supplement No. 17 to part 760 of the EAR in June 2020 to reflect the termination of the United Arab Emirates' participation in the Arab League Boycott of Israel



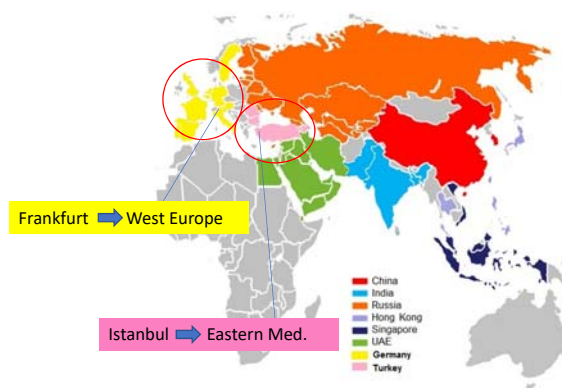
Revisions to Export Enforcement Provisions

- Final Rule published November 18, 2020 (85 FR 74311)
- Implements enhanced enforcement authorities of ECRA:
 - Overseas investigations and end-use checks, consistent with U.S. legal commitments/agreements
 - Denial orders may be issued based upon convictions for conspiracy, smuggling, false statements, etc.
 - Standard denial order terms now include in-country transfer prohibitions
 - OEE may:
 - Search, inspect, detain, and seize items and conveyances involved in unlawful export activities
 - Order the return/unloading of cargo
 - Administratively forfeit seized property
 - Enforce controls on specific activities of U.S. persons
- Clarifies or revises BIS processes:
 - Pre-license check results will be considered in determining the outcome of a license application and must be reported to licensing officials within 5 days of completion
 - Licenses obtained based on misrepresentation or concealment of facts are void
 - OEE Director is the designated BIS official to issue denial orders related to prior convictions



Office of Enforcement Analysis

- 1) Create opportunities for enforcement actions/operations
- 2) Inform adjudication of export control license applications;
- 3) Prevent diversion through end-use checks, outreach, and cooperation with foreign governments and industry;
- 4) Identify violators; and
- 5) Alert exporters about suspicious inquiries



Goals: *Bona fides assessment; prevention/detection/assessment of export control violations*



Mitigating Threats

- Evolving Threat: increasingly sophisticated tactics of adversaries
 - Utilization of lesser-controlled items for unauthorized end uses/users
 - Knowledge of U.S. regulations
 - Layering of transactions
 - Domestic shell companies
- Threat Mitigation:
 - Vet customers per screening tips
 - Review military and end user/use and other BIS guidance/FAQ documents
 - Pay attention to restrictions on specific activities of U.S. persons
 - Implement an Internal Compliance Program

Screening Tips:

- Company/3rd party website
- Address/phone anomalies
- Business registration (see OEA ECO webpage)
- Consolidated screening list
- Geo-location
- Military affiliation
- Contact OEE/ECO



Reminders/Best Practices

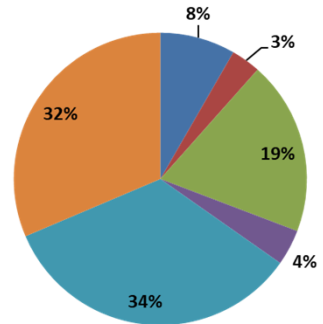
- License Applications:
 - Complete/accurate information
 - Fulsome consignee/end-user information (websites, other research)
 - Timely response to further information requests
 - Review support documents for anomalies
 - China end-use certificates:
 - Apply early; recognize red flags; do not ship prior to receipt
 - Inform customer of license conditions
- Exports:
 - Ensure AES filings are accurate (esp. if using a freight forwarder)
 - Ensure EEI filed for all CCL exports to China, Russia, and Venezuela, regardless of value (758.1(b)(10))
 - Ensure purported ultimate consignees are not actually intermediaries, banks, or other unrelated end users (e.g., hospitals)
 - Know foreign export control rules



End-Use Checks and Guardian Program

- Encourage customers to cooperate with EUCs **FY2020 – 987 Checks in 37 Countries**

UNFAVORABLE
<ul style="list-style-type: none"> • Check is found to be unfavorable due to an EAR violation. • BIS will take a proactive enforcement-related action.
UNVERIFIED
<ul style="list-style-type: none"> • Bona fides of the foreign party(ies) could not be verified. • Parties are added to OEA watchlist and potentially added to the UVL, dependent on circumstances.
FAVORABLE
<ul style="list-style-type: none"> • Not Unfavorable or Unverified. • Subject is considered to be a reliable recipient.



- Project Guardian
 - Focuses on specific items illicit procurement networks actively seek to acquire
 - BIS initiated 75 Project Guardian leads in FY2020



■ North America ■ South America
■ Europe ■ Africa
■ Asia ■ Middle East





RETURN ON TAXPAYER INVESTMENT

Fiscal Years 2010-2021*



Deterrence through Active Enforcement

- **Over 609 Years of total Prison Time**
- **\$625.9 Million in Criminal Fines**
- **\$991.1 Million in Criminal Forfeitures**
- **Nearly \$2 Billion in Unique BIS-only Regulatory Penalties**

**BIS investigations resulted in over
\$3.6 Billion in sanctions**

*Through June 22, 2021



OFFICE OF EXPORT ENFORCEMENT (OEE)



Mission:

The mission of the Export Enforcement (EE) is to protect U.S. national security, homeland security, foreign policy, and economic interests through a law enforcement program focused on: sensitive exports to hostile entities or those that engage in onward proliferation; prohibited foreign boycotts; and related public safety laws. EE is an elite law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. EE accomplishes its mission through preventive and investigative enforcement activities and then by pursuing appropriate criminal and administrative sanctions against export violators.



ENFORCEMENT STATISTICS – CRIMINAL

Criminal Action	FY2021*	FY2020	FY2019	FY2018	FY2017
Convictions – Individuals	25	35	35	29	28
Convictions – Companies	2	1	1	1	3
Criminal Fines	\$2,423,000	\$111,200	\$1,238,470	\$618,500	\$287.1 million
Forfeitures	\$2,006,460	\$903,062	\$1,064,015	\$9,642,496	\$166.2 million
Imprisonment – Months	479	615	1,038	506	576

*Through June 22, 2021. These numbers are estimates. The final numbers will appear in the BIS Annual Report.



ENFORCEMENT STATISTICS – ADMINISTRATIVE

Administrative Action	FY2021*	FY2020	FY2019	FY2018	FY2017
Matters Resolved/ Orders Issued	15	26	35	43	52
Civil Penalties	\$8,206,843	\$32,082,760	\$17,998,500	\$1.1 billion	\$692.3 million
11(h)/1760(e) Denial Orders	20	10 + 1 amended order	25	25	36
Warning Letters Issued	351	454	485	486	536

*Through June 22, 2021. These numbers are estimates. The final numbers will appear in the BIS Annual Report.



VOLUNTARY SELF-DISCLOSURES

Self-disclosure of violations are a great weight mitigating factor



REASON VSD CLOSED	FY2021 ¹	FY2020	FY2019	FY2018	FY2017
Warning Letter	73%	69%	79%	81%	80%
No Action/No Violation	17%	23%	17%	14%	18%
Other ²	8%	7%	4%	4%	2%
Administrative Penalty	<1%	<1%	0	<1%	<1%

¹ As of June 22, 2021

² "Other" most commonly indicates referred to another agency



FY2021 ENFORCEMENT HIGHLIGHTS

- Despite the impact of COVID-19, criminal convictions (25 to date) remain on pace with FY2020 and FY2019
- Highest criminal fines since FY2017
- Longer sentences for firearms smuggling cases – 120 months imprisonment for firearms to the Caribbean

FY2020 ENFORCEMENT TRENDS

- As in several years past, China, Iran, and Russia are the most frequent countries of ultimate destination for cases resulting in criminal convictions
- The UAE is the most commonly used transshipment point for investigations involving exports to Iran that resulted in a criminal conviction
- The items involved in investigations resulting in criminal convictions varied greatly and include electric tachometers, industrial valves, carbon fibers, guns, rifle scopes, vehicles, gas chromatography systems, turbine parts, military helmets and face masks, communications equipment, UAV parts, scrap metal, filter modules, oilfield equipment, motors and pumps, handcuffs, tasers, pepper spray, batons, thermal imaging cameras, alloys and fibers



FY2021 ECRA VIOLATIONS/CHARGES

The following are examples of the many recent OEE investigative actions involving ECRA violations:

- In May 2021, Gene Shilman was sentenced to 24 months in prison in connection with exports of defense equipment subject to the EAR to Ukraine and Russia. The items, which have both defense and civilian uses, include firearms parts, night vision equipment, and bulletproof vests.
- An ongoing investigation thus far resulting in multiple guilty pleas and indictments involves a conspiracy to attempt to purchase a power turbine and generator designated EAR99 on behalf of a party in Russia that appears on the BIS Entity List.
- In December 2020, two individuals were indicted in connection with the illegal export of semiconductor equipment to a party in China appearing on the BIS Entity List.



OTHER NOTABLE CASES IN FY2021

- Three individuals were sentenced to a combined 75 months in prison, 6 years supervised release, a \$50,000 criminal fine, and \$500 in special assessments in connection with a conspiracy to illegally export ECCN 8A992 military-grade combat raiding craft to China.
- A U.S. citizen and California resident was sentenced to 63 months in prison for his role in a scheme to illegally export integrated circuits with military applications to China. As part of his sentence, the Judge ordered the defendant to pay \$362,698 in restitution to the IRS and fined him \$300,000.
- A Virginia company agreed to an administrative settlement to resolve allegations they sold and/or transferred maritime jet boots with underwater propulsion systems for military end use in Russia with knowledge that a violation had occurred or was about to occur. The company agreed to pay \$200,000.00 to settle the charges.



IMPORTANCE OF INDUSTRY-OEE PARTNERSHIP

Effective export controls can only be achieved with your support and partnership

In connection with ongoing investigations, the following significant actions occurred in FY2021 based on information provided by industry:

- An individual was sentenced to time served and deportation from the United States in connection with making false statements related to the theft of biological material being carried to Iran.
- An individual was sentenced to 18 months in prison in connection with a conspiracy to export aircraft parts classified under ECCNs 6A998, 7A994, and designated EAR99 to Iran, including to parties that appear on OFAC's Specially Designated Nationals List.
- Two individuals and one organization were indicted in connection with the theft of trade secrets and the illegal export of U.S.-origin technology classified under ECCN 3E001.
- An individual was sentenced to time served plus 12 months of home confinement and a forfeiture of \$5,960 in connection with the illegal export and attempted export of cesium atomic clocks classified under ECCN 3A002 to Hong Kong.
- An individual was sentenced to 36 months in prison and ordered to pay \$640,172 in restitution in connection with the export of fraudulently obtained export-controlled sensitive communications equipment.





Office of Antiboycott Compliance (OAC)

❖ **Mission:** Compliance with antiboycott provisions of EAR

- Provides guidance to the export community on the substance and application of the Regulations to particular transactions
- Monitors trends in boycott activity
- Coordinates antiboycott policy with governmental partners (State, Treasury, USTR)
- Assists boycotting countries to eliminate at source boycott-related terms in commercial documentation sent to U.S. businesses
- Pursues administrative and criminal enforcement as appropriate

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John S. McCain National Defense Authorization Act (NDAA)

August 2018:

Export Control Reform Act of 2018 (ECRA)

* Permanent authority for the Regulations

Anti-Boycott Act of 2018

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OAC

❖ **Objective:** Antiboycott Provisions of EAR

TO PROHIBIT U.S. COMPANIES AND PERSONS FROM
PARTICIPATING IN UNSANCTIONED FOREIGN
BOYCOTTS, FOSTERED OR IMPOSED BY A FOREIGN
COUNTRY, AGAINST A COUNTRY FRIENDLY TO THE
UNITED STATES

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Abraham Accords



- Historic agreement to **normalize** diplomatic and commercial relations between the UAE and Israel (August 2020)
 - Only third time, since Egypt (1979) and Jordan (1994), that Israel is “recognized” by one of the twenty-six Arab States
 - Includes: opening embassies, direct flights, trade and technology exchanges, cooperation on energy/security/intelligence
 - Bahrain joins the Accords; Sudan and Morocco follow
- UAE issues decree to **abolish** 1972 Israel Boycott Law (August 2020)
 - *** June 8, 2021: **BIS amends the EAR by adding Supplement No. 17 to part 760** to reflect the UAE’s Termination of Participation in the Arab League Boycott ***

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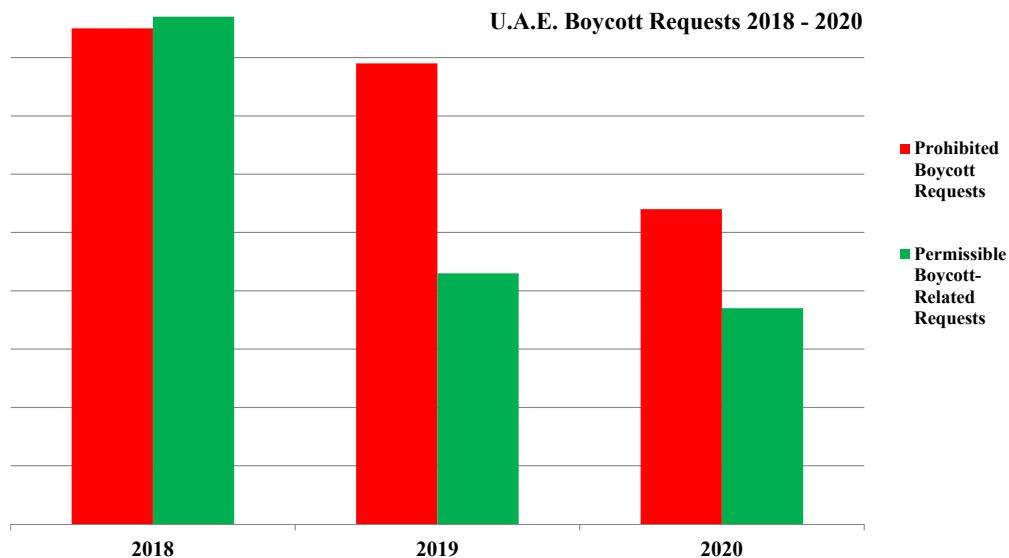


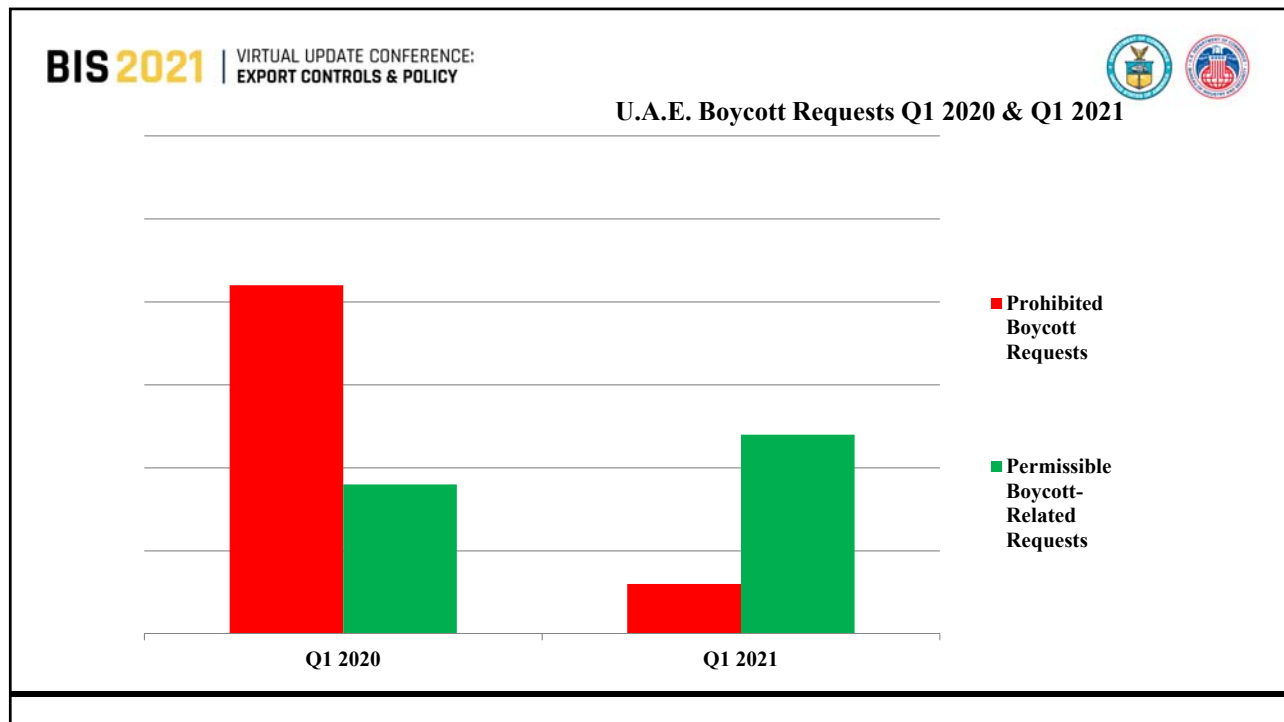
SUPPLEMENT NO. 17 TO PART 760

Pursuant to the agreement between the UAE and Israel establishing diplomatic and commercial relations (the “Abraham Accords”), on August 16, 2020, the UAE issued Federal Decree-Law No. 4 of 2020, **abolishing Federal Law No. 15 of 1972 Concerning the Arab League Boycott of Israel**, thereby formally terminating UAE’s participation in the Arab League Boycott of Israel as of that date. On the basis of this action, it is the Department's position that **certain requests**...from the UAE, which were presumed to be boycott-related...if issued prior to August 16, 2020, **would not be presumed to be boycott-related if issued after August 16, 2020**, and thus **would not be prohibited or reportable** under this part of the EAR. For example, a request from the UAE that an exporter certify that the vessel on which it is shipping its goods is eligible to enter UAE ports...made after August 16, 2020, would no longer be presumed to be boycott-related **because the underlying boycott requirement/basis for the certification was eliminated as of August 16, 2020**.



U.A.E. Boycott Requests 2018 - 2020





BIS 2021 | VIRTUAL UPDATE CONFERENCE:
EXPORT CONTROLS & POLICY

BUT....

- Not all Arab States have agreed to “normalize” relations with Israel
- January 2021: Qatar announced that it will not, conditioning “normalization” on Israel’s commitment to the **Arab Peace Initiative (API)** :
 - Endorsed by the Palestinian Authority, Saudi Arabia, and Arab League summits
 - Normalization in exchange for:
 - Israel’s withdrawal from the “occupied territories”
 - The establishment of a Palestinian state with East Jerusalem as its capital
 - The “right of return” of refugees.
- **Conclusion** : Normalization is a fluid, evolving situation

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REPORTING REQUIREMENT § 760.5

WHAT: U.S. PERSONS MUST REPORT QUARTERLY RECEIPTS OF BOYCOTT-RELATED REQUESTS TO TAKE ANY ACTION TO COMPLY WITH AN UNSANCTIONED FOREIGN BOYCOTT

HOW: BIS 621-P (SINGLE) OR 6051-P (MULTIPLE)

WHEN: QUARTER + ONE MONTH

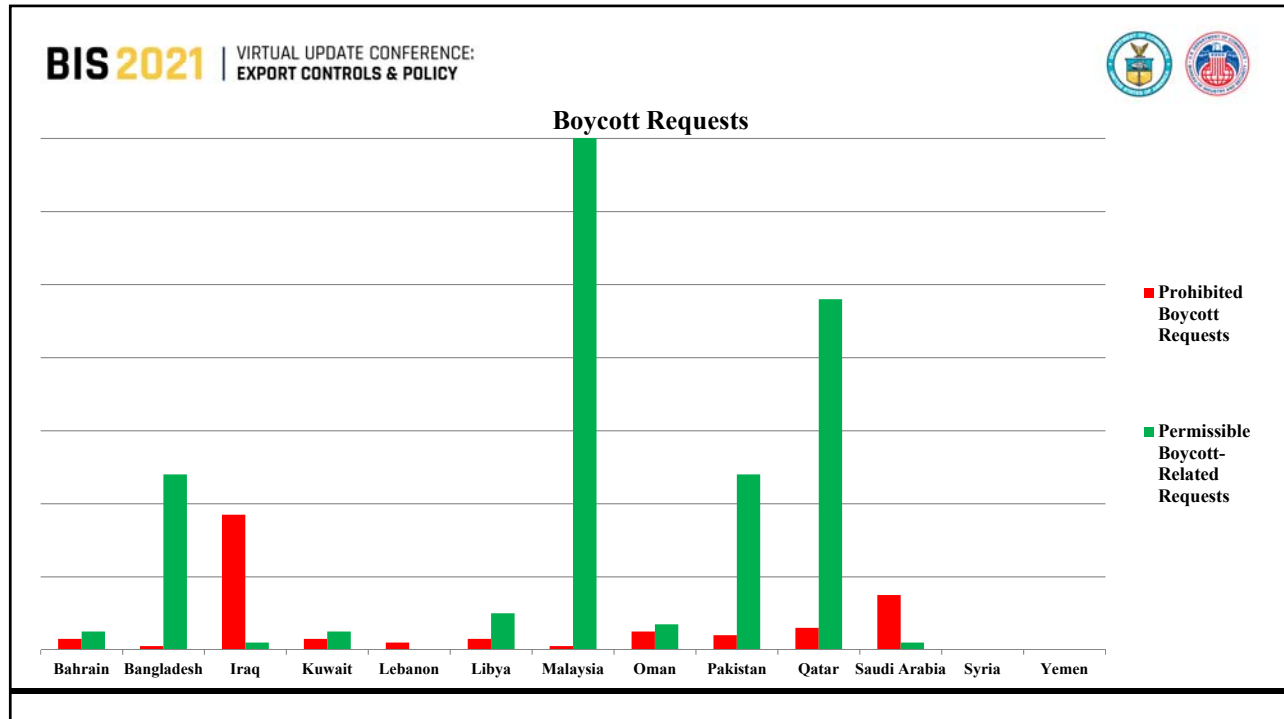
NEWish: ELECTRONIC REPORTING

NOT: RECORDKEEPING
(5 Years: Documents relating to a reportable boycott request)



Sources of Boycott Requests

- Letters of Credit
- Purchase Orders
- Tenders
- Requests For Proposals
- Shipping Instructions
- E-Mails
- Conversations



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Prohibited Actions: § 760.2

- **REFUSING TO DO BUSINESS WITH A BOYCOTTED COUNTRY OR BLACKLISTED BUSINESS/PERSON**
 - PASSIVE AGREEMENT (FAIL TO OBJECT)
 - ACTIVE AGREEMENT (REFUSE TO DEAL)
- **TAKING DISCRIMINATORY ACTIONS BASED ON RELIGION OR NATIONAL ORIGIN**
 - REFUSAL TO EMPLOY
- **FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS WITH A BOYCOTTED COUNTRY OR A BLACKLISTED PERSON**
 - NEGATIVE CERTIFICATES OF ORIGIN
 - BLACKLIST STATUS
 - VESSEL CERTIFICATES

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EVASION
§ 760.4

**“We Get By With A Little Help From
Our Friends..... “**

NOT!!



OAC



**Denial Order
Charging Letter**





OAC

How to Avoid a Violation

Don't do business in boycotting countries

NO!

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OAC ADVICE LINE

202.482.2381

YES!

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Office of Chief Counsel for Industry and Security

Wide-range of support for BIS/OEE export control enforcement matters:

- Support to OEE agents during investigative stages.
- Involvement in all phases of admin enforcement actions:
 - Charging process, settlement resolutions, litigation phases before ALJ.
- Support during criminal enforcement actions.
- Assistance with enforcement-related proposed rules, and
- Assistance with various enforcement program initiatives.

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Questions?