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ISSUANCE OF NEW BOYCOTT GUIDELINES


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.


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.


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.

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DEPARTMENT OF THE TREASURY GUIDELINES

BOYCOTT PROVISIONS (SECTION 999) OF THE INTERNAL REVENUE CODE

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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, boycots 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) existed, an agreement to 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 parts H-M, a person dealt with either 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, or 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;

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 5 percent or more of the 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 if 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 36(c) and that person is required to report under section 999(a), the corporation 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(c) 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 for 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 ordering 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.
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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 that is not a boycotting country, then the definition of operations in or related to a country, see the questions and answers under part B.)

A-2. Does the reporting requirement under section 996(a) apply to all operations of any member of a controlled group that includes a foreign corporation under section 996(a)?

A-3. If the member of a controlled group that includes a foreign corporation under section 996(a) is a U.S. person, then the reporting requirement applies only to the portion of the operations of such foreign corporation that is attributable to the U.S. person, and not to the entire operations of such foreign corporation.

A-4. If one U.S. shareholder of a foreign corporation files a report under section 999(a), is it sufficient to discharge the obligation of all shareholders of that foreign corporation?

A-5. How will the reporting requirements under section 996(a) be satisfied?

A-6. What degree of confidentiality will the international boycott report be required to contain?

A-7. How should the Form 5713 be filed?

A-8. Do individual taxpayers use Form 5713?

A-9. Does the requirement to file Form 5713 apply to all taxpayers?

A-10. A taxpayer required to file Form 5713 is required to file a report with respect to operations of any controlled group that includes a foreign corporation under section 996(a) that are attributable to the U.S. person.

A-11. Q. Company C sells goods or services outside a boycotting country. Is it required to disclose the sale of goods or services to that country?

A-12. Q. Company A is a U.S. shareholder (within the meaning of section 951(a)(3)) of company C, a foreign corporation that includes company A. If company C does not file Form 5713 for the taxable year ending on January 31, and company C has a taxable year ending June 30, then company C is required to file Form 5713 for the 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, is it required to disclose information for the period of time that should be reflected in the report, and when should the report be filed?

A-14. Q. Each person described in Answer A-1 shall be considered as having filed a report for the period of time covered by the report.
the controlled group for each member's taxable year that ends with or within the common taxable year of the controlled group.

In addition, each reporting person is required to report any requests and participation or cooperation of each foreign corporation having a United States shareholder that is a member of the controlled group whose taxable year ends 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 has been selected, the common taxable year of the controlled group will be the taxable year of the member of the controlled group whose taxable year ends within 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 listed in the 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 consent must be attached to each member's Form 5713 filed during the first taxable year of such member to which the common taxable year applies. The consent to a common taxable year election is a binding election and is made once and forever. 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 998(a), 952(a)(1)(A) and 952(b)(11)(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 998(a), 952(a)(3) and 952(b)(11)(F).

More detailed information 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 report are contained in the Instructions to Form 5713 and in Temp. Rgs. §7.399-1 and Proposed Regs. §1.958-2.

As stated in Answer A-1, 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 998(a). Company A is also a subsidiary or a sister corporation to another company that is not required to report under section 998(a). Is Company A required to report the operations, requests and participation or cooperation of the foreign parent or sister corporation?

A. Generally, under sections 958(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 986(a), 952(a)(3), and 952(b)(11)(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 (b) operations, requests and participation or cooperation do not relate to Branch A, Company C must report all operations, requests and participation or cooperation—

(i) If of Branch A, and

(ii) If 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 B 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 which Company C does not participate, and those operations are also operations in which Company C does not participate, as well as all requests and participation or cooperation relating to those operations, must be reported by Company C.

A-15B. Q. Company C, a foreign corporation engaged in operations in the United States through U.S. Branch A, is required to report under section 998(a). Company C may also have a parent, subsidiaries or sister corporations that are 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 998(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 is waived if Company C neither participates in nor requests and to tender nor responds 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 its compliance with such requests. 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 cannot now be ascertained. Will Company C's report under section 999(a)(2) be deemed deficient?

A. No. The United States shareholder 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 detail 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 with respect to 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 a national of a boycotting country, and is engaged in an international boycott in a national of a boycotting country. Is each partner required to file Form 5713?

A. Generally, a United States shareholder with 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 control of a boycotting country, 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 a 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)(9)) 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 has no operations connected with 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 believe 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 also describe in a statement attached to 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 that Company C has operations in or related to Country X. The United States shareholder has made to obtain all the information required under section 999(a). Although each case must be based on the particular facts and circumstances, the United States shareholder will not be subject to the section 999(f) penalties for willful failure to provide the information relating to Company C if it can demonstrate that the respondent has made a good faith effort 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 United States shareholder C does not own 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 provisions of sections 959(b)(1)(F) and 959(c)(2) are not applicable. Therefore, the United States shareholder will be subject to the sanctions of section 999(a). Thus, if the United States shareholder applies an international boycott factor, that factor is applied to its foreign tax credits in accordance with Answer A-6, A-14, and A-20. If the United States shareholder identifies specifically attributable taxes and income under section 999(c)(2), it will lose its section 902 foreign tax credits 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 the participation in or cooperation 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 A-21.

A-20. Q. Individual G is an individual 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 airline passenger, the operation might involve the purchase of a ticket or a hotel, or G might be a stockbroker, the operation might involve the purchase or sale of a security, or if Company C were a hotel in Country X, 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 no significant differences between transactions between 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 related operations 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. The transaction in connection with the operation; and
4. a. The sale or purchase of property, funds or services to or from Company C is made or received by any party to the operation; and
b. The operation does not involve the importation of property, funds or services to or from Country X or from Company C does not know or have reason to know that the property, funds or services to or from Country X are to be used, consumed, or disposed of in a boycotting country.

b. The value of the property, funds or services involved in the operation does not exceed 4,000,000.
The answer to the question would be the same if Company C were an individual or any other type of person.

A-21. Q. Individual G, a U.S. citizen, owns 18 percent of the stock of Company A. Company A has operations in Country X. Is Individual G required to report the operations of Country X?

A. Generally Individual G is not required to report the operations of a domestic corporation of which the individual is a shareholder. However, if Individual G controls Company A and if Individual G is required to report under section 999(a), then under section 999(b) 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. multinational corporations with the 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. Under section 999(a), both Company C must report the operations of Company D in the calendar year because the operations in Country X of Company D 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 C for the period January 1-May 31. The Form 5713 filed by Company C must reflect the operations of Company D for the entire calendar year and the operations of Company D for the period January 1-May 31. The Form 5713 filed by Company D must reflect the operations of Company D for the entire calendar year, except for 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 also be waived. Under Reg. §1.1502-7(b)(6)(v)(5) Company D is included in the consolidated return filed by Company E for the period June 1-December 31.
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days or less would be waived unless under Reg. §1.1502-76(b)(5) Company C is included in the consolidated return filed by Company C for the purpose of the provisions of section 1502 of the Code, or under Reg. §1.1502-76(b)(5) Company D is included in the consolidated return filed by Company C for the purpose of the provision of section 1502 of the Code. In each of these cases, a 30-day period would be permitted to Company C, Company D, Company E, and that Company D report the operations of Company C and that Company E report the operations of Company D. For purposes of determining the 30-day period, for purposes of computing the stock of foreign tax credits, for use or by the benefit of the government, a company, or a national of a non-bycott country that has operations in Country X that constitute participation in or cooperation with an international boycott, Company C is a controlled foreign corporation. Company C reports on a calendar year basis and computes its loss of tax benefits using the section 989(c)(3) specific attribution of taxes paid 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 respect of 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 902(a) applicable?

A. Company C's operations are reported by Company A in 1977. The sanction of section 902(a) of the Code is not applicable to 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 810, Company A must nevertheless file Form 810 in 1978 (which will show no reportable operations) and complete Schedule B and C to Form 810, 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 963(a)(5) would have 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 902(a), Company A would lose in 1977 the section 963 foreign tax credits accompanying Company C's income included in Company A's income under section 963(a)(5).

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)?

1. 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. Carried on in whole or in part in a boycotting country ("in a boycotting country");
   2. 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. Carried on outside a boycotting country for the government, a company, or a national of a non-bycotting country if the person having the operation knows or has reason to know that the specific goods, services or funds provided by the operation are for the benefit of the government, a company, or a national of a boycotting country, for use by or for the benefit of the government, a company, or a national of a boycotting country that has operations in Country X that constitute participation in or cooperation with an international boycott, and that person knows that others have received such requests. Whether a request 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 that country to participate in or cooperate with an international boycott will depend on an analysis of the facts and circumstances surrounding the request. However, the 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 an international 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 953(a)(3)) enters into an agreement that constitutes participation in or cooperation with an international boycott (within the meaning of section 963(b)(1)), 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 the 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 separable and identifiable operation and that the operation in connection with which the agreement with the country was made, and which the particular country clearly demonstrates to be a clearly separable and identifiable operation. The presumption of participation in or cooperation with the boycott and will not apply
with respect to operations outside the countries described in (a) and (b) above, but such operations shall not include operations in connection with which there was participation in or cooperation with an international boycott if so warranted by the facts.

D-3. Q. Who has the burden of proof of clearly demonstrating that a particular operation is '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, 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. What does a taxpayer determine 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 factors to be considered are 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 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 counties conducting the international boycott in question were being conducted simultaneously, did 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 is to be given to any factor that 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 constructed any buildings in Country X prior to such contract. Nine months later Company C enters into a separate contract to build a 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 construction of the pipeline, Company C must retain engineering consulting services to both related and unrelated parties. Company C does not have a separate and identifiable operation in Country X such that services are provided for the furnishing of providing engineering consulting services to both related and unrelated parties. Company C's competitors may be involved in the business of providing engineering consulting services to both related and unrelated parties. Company D, a member of the same controlled group of which Company C is a member, does not have any management personnel with Company D. Company C contracts to provide engineering consulting services 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 components 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 operating separately 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 city. The sales offices are located in cities in various cities in Country X. The managers of the sales offices are authorized to handle local matters relating to the sale of the vehicles. There is no close supervision or 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 proportionate share of corporate overhead. The marketing activities of the various sales offices do not constitute operations separate and identifiable from each other.

(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 products are manufactured by Company C in Country X by Company X, a wholly-owned subsidiary of Company C, and the home entertainment equipment is manufactured in Country Y by Company Y, 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 reales to the independent retailers are made pursuant to separate and distinct contracts, each of which is separately negotiated. The board of directors of the companies C, D, and E are composed of the same individuals and the same individuals also serve as president of each company. The products of Companies D and E are manufactured in the same plant, and the executive offices of Companies D, E, and Company C are located in a building adjacent to that plant. Company C's various resale operations are not separate and identifiable from the separate and distinct 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 offices in a number of foreign branches and subsidiaries. The services include wholesale lending, retail lending, deposit gathering and letter of credit services. The letter of credit services are provided by a specialized bank personnel that are organized into separate sections in the respective offices of Bank C and 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 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 unrelated and unauthorized boycott agreement was entered into by the employees of Company C. Will that agreement trigger the application of the sanctions of sections 906(a), 952(a)(X), or 955(b)(1)(F)?

A. An agreement to participate in or cooperate with an international boycott in connection with a minor aspect of Company C's operations will not null the operations of Company C in boycotting countries and will not trigger the application of the sanctions of sections 906(a), 952(a)(X), or 955(b)(1)(F) if the agreement was unintentional and unauthorized.

D-5. Q. The facts are the same as in example (c) of A. Will that agreement trigger the application of the sanctions of sections 906(a), 952(a)(x), or 955(b)(1)(F)?

A. An agreement to participate in or cooperate with an international boycott in connection with a minor aspect of Company C's operations will not null the operations of Company C in boycotting countries and will not trigger the application of the sanctions of sections 906(a), 952(a)(X), or 955(b)(1)(F) if the agreement was unintentional and unauthorized.

Example of computer sales, each made pursuant to a separately negotiated contract, are as follows:

(a) Sales in Country X with boycott agreement:
(b) Sales in Country X without boycott agreement
(c) Sales in Country Z related to Country X with boycott agreement
(d) Sales in Country Z related to Country X without boycott agreement
(e) Sales in Country Z not related to Country X

Example of total sales of computers:

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

(a) Sales in Country X with boycott agreement
(b) Sales in Country X without boycott agreement
(c) Sales in Country Z related to Country X with boycott agreement
(d) Sales in Country Z related to Country X without boycott agreement
(e) Sales in Country Z not related to Country X

Example of total sales of computers: 100
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(i) Sales in Country Z related to Country X without boycott participation—40

(kx) Sales in Country Z not related to Country X

Total sales of computers—129

To which sales does the section 998(b)(1) presumption apply, and to which sales do the sanctions of section 998(a), 952(a)(3), and 952(b)(1)(F) apply?

A. Since Company C has participated in an international boycott in connection with at least one of the presumptions of section 998(b)(1) applies to Company C's 60 sales in Country X (a+b+c+d+e+f+h). The presumption does not apply to the 55 sales related to Country X (a+d+e+f+h) or to the 70 sales that are not in or related to Country X (c+k). The sanctions of 998(a), 952(a)(3), and 952(b)(1)(F) also apply to these 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 998(a) apply to all operations referred to in section 998(a)(1) or (2) after November 3, 1976, regardless of whether there has been an agreement to participate in or cooperate with an international boycott or whether the operations are carried out by the person who entered into a binding contract entered into before September 2, 1976. All operations on or before November 3, 1976, are reportable even 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 and to agreements made before that date that continue in effect after December 31, 1977. 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 election on November 20, 1976, to participate in or cooperate with an international boycott, which of that person's operations conducted during the taxable year are reportable, which operations are included in the international boycott 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, 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 998(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 998(b)(1) these operations will not be denied. 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 998(c)(2) the tax benefits or credit or deduction 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 998(a), 952(a)(3), and 952(b)(1)(F) after it has been multiplied by the fraction 58/365, representing the number of days after the December 31, 1976, effective date remaining during the calendar year. If a person identifies specifically attributable taxes and income, the tax benefits denied under sections 998(a), 952(a)(3), and 952(b)(1)(F) are computed by first ascertaining the percentage 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 16.6%.

E-3. 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 citizen, that has been entered into after September 2, 1976, and is at all times thereafter binding on that person, foreign corporation or member, and under which all material terms are fixed and determinable with reference to an objectively determinable standard.

E-4. Q. If, under a binding contract existing before September 2, 1976, a person made an agreement described in section 996(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, or before December 31, 1977, the agreement to participate in or cooperate with the boycott was denounced, the renunciation was communicated to the government or person with which the agreement was made, and the agreement was not reaffirmed after 1977.

E-5. Q. If, under a contract made in 1970, a person reports tax liability on a calendar year basis makes an agreement described in section 996(b)(3), does not report the operation or operations that are the subject of the contract, will the operation or operations be subject to the
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A. Yes, unless the person establishes that, on or before December 31, 1980, the agreement to participate in or cooperate with the boycotting company was not 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(a)(1) and later renounces the agreement and communicates such renunciation to the government or person with which the agreement was made, the 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 reinitiated (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 determining the international boycott factor (or the amount of taxes or income attributable) to operations in which there was participation in or cooperation with an international boycott for the taxable year. However, under section 998(b)(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 demonstrable to be clearly separate and identifiable to 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 998(c)(3), the tax benefits specifically attributable to such operations will not be denied. See also Temp. Regs. § 1.999-1. Therefore, the tax benefits specifically attributable to such operations will not be denied. See also Temp. 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 provisions for participation in or cooperation with an international boycott. Will the tax benefits specifically attributable to such operations be denied?

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 or before December 31, 1977, the operations will be reflected in the numerator of the international boycott factor. The operations will be reflected in the numerator of the international boycott factor.

E-11. Q. Are operations of a person that constitute participation in or cooperation with an international boycott reflected in the numerator of the person’s international boycott factor before December 31, 1977, if those operations were 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. The operations are reflected in the denominator, however. See Temp. Regs. § 1.999-1 and Proposed Regs. § 1.999-1.

E-15. 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, to a foreign corporation and was required to report any operations, requests or participation or cooperation of Company C for calendar year 1977. 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 in Company C, no reportable 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 calculations.

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 on or after that date reportable if the person or by another person?

A. No. Operations and participation in or cooperation with an international boycott of a person for that person’s 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(1)(D) provides that the international boycott factor is determined under regulations prescribed by the Secretary. The regulations contain the method of determining the fraction of the numerator of which reflects boycotting operations in or related to countries associated in carrying out an international boycott. 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. § 1.999-1 and Proposed Regs. § 1.999-1.

F-2. Q. In the case of a controlled group (within the meaning of section 959(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 the members of the group are domestic or foreign corporations. This means that the members of the group 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 959(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 999(a)(1), 951(a)(3), and 959(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

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to all operations during the taxable year under each of sections 989(a), 952(a)(3), and 952(b)(1)(X), and if a person directly or indirectly participates in a dis-advantageously attributable taxes and income under sec-

tion 999(c)(2), that method must be applied to all operations during the year, and must be applied under each of sections 989(a), 952(a)(3), and 952(b)(1)(X).

F-5. Q. In the case of a controlled group (within the meaning of section 952(a)(3)) of which member or 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 independently chooses 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 foreign boycott factor, then it must apply the international boycott factor to determine its loss of tax benefits that is attributable to foreign operations for tax years 96 and 97 under section 909 indirect foreign tax credit in risk of a dividend paid to it by another member of the controlled group, Company B, even if Company C also determines its loss of tax benefits by identifying specifically attributable taxes and income. Company A would also determine the amount described distributed to foreign operations for tax years 96 and 97 under section 909 indirect foreign tax credit in risk of a dividend paid to it by another member of the controlled group, Company C, even if Company D also determines its loss of tax benefits by identifying specifically attributable taxes and income. In addition, if an affiliated group of corporations files a consolidated return, then the affiliated group must determine its loss of tax benefits by applying the international boycott factor to the consolidated return, or by having each member determine its loss of tax benefits by applying the specific attributable taxes and income method set forth in section 999(c)(2), may it demonstrate the amount of foreign taxes paid and income attributable to 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 or at the partner level?

A. No. The international boycott factor is computed separately by each partner based on information submitted by the partner 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 participation in or cooperation with an international boycott. That person is also able to clearly demonstrate the taxes and income attributable to operations. With respect to the remainder of its operations in boycotting countries, that person is either unable to clearly demonstrate that those operations were separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott or that the taxes and income were 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 that are clearly separate and identifiable, or by applying the international boycott factor to its 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 while in another year it computes its loss of tax benefits using the specifically attributable taxes and income method?

A. Yes. The person may choose 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 determination, 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)(X))

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 (or by a group of persons blacklisted by Country X). Does this 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 persons blacklisted by Country X) in order to avoid participating in or cooperating with an international boycott, will constitute an agreement under section 999(b)(3). Blacklisting by Country X is not maintained to provide a convenient list of persons that engage in activities that are in conflict with the boycotts.

However, such an agreement does not constitute participation in or cooperation with an international boycott if it is established that the blackout is 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 C, which are blacklisted 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 this 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 company organized under the laws of Country Z, and Company D's ownership, management or directors, Company C's section in entering into such a contract would not constitute participation in or cooperation with an international boycott.

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 practices of Country X will apply to Company C's performance of the contract in Country X. The laws, regulations, requirements or practices of Country X prohibit the importation into Country X of goods manufactured by any company owned, in whole or in part, by a government, companies or nationals of Country Y. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Generally, yes. This 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-
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Mounts 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 are inconsistent with the laws, regulations, requirements, or administrative practices of Country Y. However, such an acknowledgment in addition to other factors could give rise to such an inference.

H-5. Q. Company C signs a contract to export goods to Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-6. Q. Company C signs a contract to export goods to Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-7. Q. Company C incorporates a subsidiary in Country X and submits the documents required by section 999(b)(3) to the incorporator of the subsidiary. The incorporation of the subsidiary is not subject to the laws, regulations, requirements, or administrative practices of Country X. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Yes. The incorporation of a company in Country X does not give rise to such an inference.

H-8. Q. Company C enters into a contract with an individual who is a citizen of Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-9. Q. Company C enters into a contract with an individual who is a citizen of Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-10. Q. Company C enters into a contract with an individual who is a citizen of Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-11. Q. Company C enters into a contract with an individual who is a citizen of Country X. The contract contains no clause concerning a boycott. The conditions of performance of the contract are consistent with the laws, regulations, requirements, or administrative practices of 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 will not be inferred solely from the conduct of the parties if they are consistent with the laws, regulations, requirements, or administrative practices of Country X. However, if the conduct is not consistent with the laws, regulations, requirements, or administrative practices of Country X, the contract will give rise to such an inference.

H-12. Q. The facts are the same as in Question H-11, except that the individual who is a citizen of Country X is a government official. Does Company C's action constitute an agreement under section 999(b)(3)?

A. Yes. The existence of an agreement under section 999(b)(3) will not be inferred from company C's action.
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 (whether or not specified as permitted subcontractors for reasons not related to the boycott. See answer H-1A.

H-15. Q. Company C signs a contract to carry out a project in count 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 company C does not wish to use. While the contract is being carried out, none of the companies that country X proposes to prequalify or invite to bid are included on the list. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. See answer H-1A.

H-16. 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 company C does not wish to use. While the contract is being carried out, none of the companies that country X proposes to prequalify or invite to bid are included on the list. 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 with country Y. Company C furnishes the requested information to country X. Later company C signs a contract with country Y to export goods to country X. Does company C's action constitute an agreement under section 999(b)(3)?

A. No. The facts are the same as in question H-20, except that company C does not 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 with country Y. Therefore, an agreement under section 999(b)(3) does not constitute an agreement under section 999(b)(3).

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. However, purchases some of the goods from one of the blacklisted companies. Does company C's action constitute an agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agreement according to the agree
No. Company C's agreement to take actions enumerated in section 999(b)(3) is not as a condition of making the deposit. The branch agrees to this condition. Does Bank C's action constitute an agreement under section 999(b)(3)?

Yes. For the same reasons with the same qualifications as in Answer H-32A. Section 999(b)(3) is not as a condition of doing business with Country X.

E-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 none of the components on the airplane may be produced by blacklisted companies. Company C enters into an agreement with another country which blacklists Company C to manufacture the airplanes. Does Bank C's action constitute an agreement under section 999(b)(3)?

No. Company D has agreed to refrain from doing business with blacklisted persons as a condition of doing business indirectly with Country X.

I. REPRINTING FROM DOING BUSINESS WITH A FOREIGN COUNTRY (SECTION 999(b)(3))

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, the contract provides that the goods shall not be manufactured in whole or in part in a country that is the object of an international boycott. According to section 999(b)(4)(B), does such a prohibition does not constitute participation in or cooperation with an international boycott. (Similarly, Company C's action constitutes participant in or cooperation with an international boycott. See Answer I-1.)

No. Company C's action constitutes an agreement under section 999(b)(3) as a condition of making the deposit, Country X.

E-33. Q. Company X deposits money in a foreign branch of Bank C, a U.S. bank. As a condition of the deposit, Country X requires that all loans by the branch be made only to companies that can supply certain materials to Cone X. Does Bank C's agreement constitute an agreement under section 999(b)(3)?

Yes. For the same reasons with the same qualifications as in Answer H-29A. Section 999(b)(3) is not as a condition of doing business with Country X.

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A. Yes. Company C has agreed to refrain from doing business with nationals of Country Y and any company incorporated under the laws of Country Y, or any country other than the United States of 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 Boycott Country (Section 999(b)(3)(A)(II))

J-1. Q. Company C signs a contract with Company A for the construction of an industrial plant in Country X. The contract provides that Company C will not use any goods manufactured by Company A in performing the contract. Company A is blacklisted by Country Y 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. No. Company C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(II).

J-2. A State company C enters into a contract to export goods to Country X. The contract provides that the capital of Country Y or the country C will use 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)(II)?

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

J-3. 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 in a country other than the United States or to a company incorporated in a country other than the United States or to a company incorporated under the laws of another country. 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 Y 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 blacklist.

J-4. 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 deliver a D 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 indicates 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)(II)?

A. No. 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).

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participation in or cooperation with an international boycott under section 999(b)(3)(A)(III). A. Generally, 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)(III). If, however, Bank C can establish that the blacklist is maintained for reasons other than defense of the sovereignty, the participation of the boycott, Bank C's action does not constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(III). See 57-3, Example H-1A.

J-1. Q. Company C signs a contract to construct an industrial plant in Country X. The laws, regulations, or 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 exercising the project, Company C invites bids to furnish all goods and equipment on a delivered-in-Country-X basis. No company on the blacklist may be bid by Country X. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(III)?

20. No. By the terms of the agreement, Company C has not agreed to refrain from doing business with any of the blacklisted companies. The laws, regulations, or requirements or administrative practices of Country X are not applicable because they are not enforceable. Company C's action constitutes participation in or cooperation with an international boycott under section 999(b)(3)(A)(III).

J-2. Q. Company C signs a contract to purchase goods from a foreign company for export to Country Y. The contract requires vendors to reimburse Company C for the purchase price and transportation costs, plus interest, of any goods that are not imported 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-1. 21. Q. Company C signs a contract to purchase goods from a foreign company for export to Country X. 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 purveyors 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)(III)?

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)(3)(A)(III).

J-3. Q. Company C signs a contract to export goods from the United States. The contract requires that the goods be produced by Company A and that a certain component in the goods be provided by Company B. If Company C produces the goods in accordance with the laws, regulations, requirements or administrative practices of Country X, prohibit the importation into Country X of goods manufactured by any company blacklisted by Country X, Company A and Company B are not required to produce or provide the goods. Does the action of Company C's action constitute an agreement under section 999(b)(3)(A)(III)?

A. No. The existence of an agreement to purchase original issues of stocks or bonds directly from a U.S. company blacklisted by Country X will not be inferred solely from a provision in a contract that precludes the goods being 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)(A)(III).

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 Company C'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 constitute participation in or cooperation with an international boycott under 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 be marked to symbolize Country X's religion. 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 with individuals of a particular nationality, race or religion. 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 with individuals of a particular nationality, race or religion. Does Company C's action constitute participation in or cooperation with an international boycott under section 999(b)(3)(A)(III)?

K-2. Q. As a condition of doing business in Country X, Company Y, a subsidiary of Country X agrees that the board of directors of the subsidiary must consist of a specified percentage 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. 23. 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. The syndicate is maintained in accordance with an international boycott under section 999(b)(3)(A)(III). During the loan negotiations Country X indicates that Company E, which is not a U.S. company, is excluded from the syndicate because of the behavior 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. Generally, the action of Company C and Company D is an agreement to refrain from doing business with a company whose manufacturing, management, distribution or religious practices are different from those of nationals of Country X. 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 E-3, except that Country X indicates that Company E may be included only if it removes some 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 to refrain from doing business with a company whose manufacturing, management, distribution, or religious practices are different from those of nationals of Country X.

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 individuals of nationality Y. Does Company C'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 individuals 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 Y 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. 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 comply with an international boycott.

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 conduct business only with nationals of Country X. Does such action con-
stitute participation in or cooperation with an international boycott under section 998(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 participation in or cooperation with an international boycott under section 998(b)(3)(A)(iv) 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 998(b)(3)(A)(iv)?

A. Yes. Any agreement to discriminate among individuals on the basis of national origin for employment on a project constitutes participation in or cooperation with an international boycott under section 998(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 998(b)(3)(A)(iv)?

A. Yes.

M. AS A CONDITION OF THE SALE OF A PRODUCT, REQUIRING FROM SHIPPER OR INSURER THAT PRODUCT ON A CARRIER OWNED, LEASED, OR OPERATED BY A PERSON WHO DOES NOT PARTICIPATE IN OR COOPERATE WITH AN INTERNATIONAL BOYCOTT (SECTION 998(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 to be shipped on a vessel not to be 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 998(b)(3)(B)?

A. Yes. Company C has entered into an agreement described in section 998(b)(3)(B), as well as section 998(b)(X)(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 vessel 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 998(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 998(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. Does Company C's action constitute participation in or cooperation with an international boycott under section 998(b)(3)(A)?

A. Yes. Any agreement to discriminate among individuals on the basis of national origin for employment on a project constitutes participation in or cooperation with an international boycott under section 998(b)(3)(A).

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 New York 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 and that the goods will not be 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 998(b)(3)(B)?

A. Company C's action is not made as a condition of the sale of a product to Country X. The contract provides that the action does not constitute participation in or cooperation with an international boycott under section 998(b)(3)(B). However, Company C's action may constitute participation in or cooperation with an international boycott under section 998(b)(3)(A).

M-5. Q. Company C enters into 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. Does Company C's action constitute participation in or cooperation with an international boycott under section 998(b)(3)(B)?

A. Yes.

M-6. Q. Company C signs a contract to export goods to Country X. The contract provides that the seller will 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 998(b)(3)(B)?

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

M-7. Q. Company C signs a c.i.f. contract to export goods to Country X to be paid for by a letter of credit. Does the letter of credit for this transaction require, as a condition of payment, that Company C certify as to the nationality of the insurer of the credit? Does Company C provide a certificate to the paying bank? Does Company C's action constitute participation in or cooperation with an international boycott under section 998(b)(3)?

A. No. An agreement under section 998(b)(3)(K) must be entered 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-1. Q. In the case of a taxpayer applying the international boycott factor under section 998(c)(1), how is the reduction of foreign tax credits for the current year computed under section 998, and how are the foreign taxes carried from the current year to other years treated?

I. A. An international boycott factor is applied to the foreign tax credits available after applying the limitations of sections 904 and 907. The international boycott factor is applied to the foreign tax credits in the current year and to the foreign tax credits in any other years for which the foreign taxes are carried forward. The amount of this product is disregarded in the current year under section 908(a).

II. B. Foreign tax credits attributable to current-year sections 901, 902, and 969 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 969 are multiplied by the taxpayer's international boycott factor for the current year. The factor is the factor in the year from which the foreign tax credits were carried. Foreign tax credits in the amount of this product are disregarded in the current year under section 908(a).
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Q. Other section 902(c) and 907(f) taxes. There is no disallowance in the current year under section 902(c) or 907(f) in respect of any income 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 the limitations of 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 any foreign tax credits paid or deemed paid that are not available as credits solely by reason of the limitations of sections 904 and 907. Instead, those foreign tax credits 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-13.)

c. If, the taxes were 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 those credits multiplied by the taxpayer's international boycott factor for the year from which the taxes were 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 taxes that were first carried.

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 income attributable to the carried-over taxes 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 carried from a year, by the amount of 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 ending before May 1, 1977. If the operations are carried out in accordance with the terms of a binding contract entered into before May 1, 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 this rule.

After the amount of the reduction of foreign taxes has been determined, the taxpayer determines which of the disallowed foreign tax credits are deductible 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, the taxpayer multiplies the foreign tax credits that are attributable to foreign taxes carried from a year in which the taxpayer applied the 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 foreign tax credits attributable to foreign taxes carried from a year in which the taxpayer applied the international boycott factor.

A. The section 901 taxes denied deductibility by reason of section 908(a) are deductible, but the section 902 taxes are not. Section 902(b) already renders sections 902(a)(4) and 78 inapplicable to taxes denied deductibility under section 908(a). Since section 902 taxes are already deductible under the Code, and since no section 78 gross-up is required in respect of section 902 taxes denied deductibility, 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 deductibility will be deductible under section 902?

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

O. SUBPART F INCOME

O-L. Q. In determining the amount of sub-
part F income included in gross income by
reason of section 952(a)(3), may any deduc-
tions be taken into account?
A. Yes. In computing subpart F income in-
cluded in gross income under section
952(a)(3), a reasonable allowance may be
made for deductions (including foreign
taxes) proper allowable to that income.
See Regs. sections 1.861-8 and 1.894-1(c) for
guidance in this regard.


W. Michael Blumenthal,
Secretary.

[F.R. 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 initiat-
ed for the purpose of determining whether nylon yarn from France is
sold 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.


FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Operations Offic-
er, United States Customs Service,
Office of Operations, Duty Assess-
ment 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 §§ 153.20 and 153.27, Customs Regu-
lations (19 CFR 153.20, 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 Antidump-
ing Act, 1921, as amended (19 U.S.C.
160 et seq.).

For purposes of this investigation, the term "nylon yarn" means nylon
and grouped nylon filaments, not
textured, provided for in items
308.3030, 305.3130, 310.0149, and
310.0194, Tariff Schedules of the
United States, Annotated.

Pricing information thus far ob-
tained 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 concern-
ing 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 undersell-
ing prices of domestic nylon yarn by
approximately 10 percent. This under-
selling is fully accounted for by the
alleged dumping margins. In addition, the
petitioner's production of nylon yarn which had previously been returning
profits has now declined to a loss posi-
tion. Employment in petitioner's
plants producing nylon yarn have de-
clined approximately 21 percent be-
 tween 1975 and 1977, accompanied by a
decline in production of similar propor-
tions. Capacity utilization and cap-
ital investment have also declined.

Having conducted a summary investi-
gation 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 in-
stituting an inquiry to verify the informa-
tion submitted and to obtain the
facts necessary to enable the Secret-
ary of the Treasury to reach a deter-
mation as to the fact or likelihood of
sales at less than fair value.

This notice is being published pursu-
ant to § 153.30 of the Customs Regula-
tions (19 CFR 153.30).

Henry C. Strockell, Jr.,
Acting General Counsel of the
Treasury.


[F.R. Doc. 78-2162 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 BOXCAR

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 condi-
tions 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 transpor-
ting traffic offered for shipments to points remote
from the car owners; and that compli-
ance with Car Service Rules 1 and 2
prevents such use of these cars, result-
ing in unnecessary loss of utilization of
such cars.

It is ordered, That pursuant to the
authority vested in me by Car Service Rule
18, 50-ft. plain boxcars described in
the Official Railway Equipment
Register, I.C.C.-R.E.R. No. 405 issued
by W. J. Tresize, or successive issues
thereof, as having mechanical designa-
tion "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., report-
ing marks: AN.
Camino, Placerville & Lake Tahoe Railroad Co., reporting marks: CPT.
Clareen and Pittsford Railroad Co., reporting marks: CLP.
Duluth, Missabe and Iron Range Railroad Co., reporting marks: DMIR.
Greenville and Northern Railroad Co., reporting marks: GRN.
Greenville and Johnsonville Railroad Co., reporting marks: GJ.
Lake Erie, Franklin & Clarion Railroad Co., reporting marks: LEDP.
Loulaville and Wadley Railroad Co., reporting marks: LW.
Loulaville, New Albany & Corydon Railroad Co., reporting marks: NAC.
McClure River Railroad Co., reporting marks: MR.
Middletown and New Jersey Railroad Co., Inc., reporting marks: MNR.
Minneapolis, Northfield and Southern Rail-
way, reporting marks: MNS.
Missouri-Kansas-Texas Railroad Co., reporting marks: BKTY-MKT.
Municipality of East Troy, Wisconsin, reporting marks: Metro.
New Orleans Publie Belt Railroad, reporting marks: NOPB.
North Louisiana & Gulf Railroad Co., reporting marks: NLG.
Pearl River Valley Railroad Co., reporting marks: PV.
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 Railroad, reporting marks: SN.
St. Johns & Lamolloy County Railroad, reporting marks: SJ.
St. Lawrence Railroad, reporting marks: SSL.
Sierra Railroad Co., reporting marks: SRA.
Terminal Railway, Alabama State Docks, reporting marks: TADS.
Tidewater Southern Railroad Co., reporting marks: TS.
Toledo, Peoria & Western Railroad Co., reporting marks: TPW.
Vermont Railway, Inc., reporting marks: VTR.
Western Union Co., reporting marks: WCTR.
Yerks Western Railroad Co., reporting marks: YW.

Addition.