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Commerce Pulls the Export Suspension Trigger on a Pair of Boycott Violations

The U.S. Commerce Department recently imposed export suspension sanctions against two U.S. companies for alleged violations of the Department's antiboycott regulations in connection with exports to Syria. In each case, the companies had furnished invoices to the National Bank of Egypt in New York in connection with the exports at issue stating that the goods being shipped were not of Israeli origin and that no Israeli origin materials had been used in their production. One of the cases involved three exports; the other only one.

The monetary fines imposed in each case were relatively small, $7,200 in one and $2,400 in the other, but the export suspension orders, not atypically, are draconian in their terms. They provide that for a period of two years, neither company "may … participate … in any way in any transaction involving any commodity, software or technology … exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates or the Republic of Yemen (collectively, the 'Territory') … <u>or</u> [engage] in any <u>other</u> activity relating to the Territory [that is] subject to the Regulations." (Emphasis supplied.) Included in the prohibition is "<u>[b]enefitting</u> [sic] <u>in any way</u> from any transaction involving any item exported or to be exported from the United States to the Territory." (Emphasis supplied.)

Commerce Department boycott penalty guidelines indicate that monetary penalties only will typically be sought where a violation is not "knowing," but that, in cases involving "knowing violations, conscious disregard of the antiboycott provisions [of the Regulations], or other such serious violations (*e.g.*, furnishing prohibited information in response to a boycott questionnaire with knowledge that such furnishing is in violation of the [Regulations], [Commerce] is likely to seek a denial of export privileges or an exclusion from practice, and/or a greater monetary penalty…."

The settlement documents in these cases do not indicate why these cases warranted a penalty reserved for more serious violations, but a two-year suspension of the ability to engage in or in any way benefit from any transaction involving exports to the wide array of countries named is a striking reminder of the ways in which violations of the Export Administration Regulations can seriously interrupt business expectations.

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