Middle East Monthly

Volume III, Number II

February 1979

Boycott Law Bulletin

Timely news coverage and expert analysis of anti-boycott and anti-bribery laws, regulations and court developments for corporate executives, exporters, bankers, attorneys, accountants and U.S. and foreign government officials.

New column on enforcement

Effective with this issue, the *Boycott Law Bulletin* inaugurates a fourth regular monthly feature. The new column, "Commerce/Treasury Enforcement," will concentrate on the anti-boycott enforcement actions, policies and procedures of the Commerce and Treasury Departments.

The column will be written each month by Mark A. Bruzonsky, a Washington-based attorney and consultant. Mr. Bruzonsky is also an editor of two magazines related to the Middle East and U.S. foreign policy.

As the inaugural column of "Commerce/Treasury Enforcement" reveals, the Commerce Department's new anti-boycott compliance and enforcement office has some way to go before it is up to full enforcement effect.

The *Bulletin* will follow developments at the Commerce and Treasury enforcement offices as both departments gear up for their monitoring and investigatory work. The *Bulletin* will welcome queries from subscribers concerning any aspect of the federal enforcement programs.

"Commerce/Treasury Enforcement" joins the three existing *Bulletin* columns, "Boycotting Countries' Policies," "How the Rules Apply," and "Matter of Record."

Subscriptions: $345 annually or $105 quarterly in North America; $425 annually or $125 quarterly overseas. **Editors:** Joseph A. Kamalick and Robert L. Warden. **Editorial advisor:** The Honorable L. Dean Brown, Washington, D.C. **Production:** Robin Robinson. Address correspondence to Middle East Monthly, Boycott Law Bulletin, Box 5714, Chicago, IL 60680. Telephone (312) 642-9614

Commerce/Treasury Enforcement

Commerce enforcement beginning; 'good faith' rules for grace period

"Commerce/Treasury Enforcement" is a regular monthly feature of the *Boycott Law Bulletin*. It provides news and information about the U.S. government's anti-boycott enforcement policies, procedures and actions.

By Mark A. Bruzonsky

Mr. Bruzonsky is a Washington, D.C., consultant on foreign policy and an editor of The Middle East *[London] and* Worldview *[New York magazines.*

Another six months may be required before the Commerce Department's new anti-boycott compliance staff is fully ready to effectively monitor U.S. corporate participation or cooperation in the Arab boycott. The federal government's hiring freeze has caused some delay, but the hiring freeze is apparently no longer a serious impediment.

The new compliance unit is set up within the Bureau of Trade Regulation (BTR), which itself is part of the Commerce Department's Industry and Trade Administration (ITA).

Vincent ("Vin") Rocque is acting director of the anti-boycott compliance staff. Stanley J. Marcuss, Senior Deputy Assistant Secretary of Commerce, heads BTR. And Frank Weil, Assistant Secretary of Commerce, is head of the overall ITA.

The Commerce Department's current fiscal year appropriations provide for thirty-eight new positions for the anti-boycott compliance office. Approximately one-third of that number have either been hired or offered positions with the compliance staff. Some of those already hired are now on the job. Others are in the process of moving over to Commerce and will be on-line in the compliance office in the immediate future. Still others have been offered positions on the staff but have yet to formally accept or decline Commerce's offers. For the immediate present, then, most of the thirty-eight slots remain open.

The Office of Export Administration (OEA)—which used to administer all aspects of Commerce's anti-boycott regulations—will continue to provide the needed technical support for the new compliance staff. Report processing, tabulation of information, and preliminary identification of boycott practices will continue to be provided by OEA under the direction of Rauer Meyer. OEA's boycott report processing unit is also being beefed up; the current appropriations provide for seven additional staff positions, and these are now being filled.

Primarily, the task of the new compliance staff at Commerce will include case development, providing information about Commerce's anti-boycott regulations, and investigation.

One of the new senior enforcement officers noted that "We are still sending back many of the company reports that come in." "In some cases, the forms being filed come in showing apparent violations of the regulations. Some of these cases are being cleared up by the company involved providing additional information which it did not realize should be included."

The enforcement officer noted that the first, earlier reporting forms were not finely tuned enough to elicit the full information needed. The current forms are regarded as far more adequate.

Of considerable importance to the compliance staff is the ability to provide informal advice to companies over the telephone. "There is an important educational aspect" to our responsibilities, the enforcement officer said.

In this sense, the compliance staff operates in a way similar to that of the Internal Revenue Service. Inquiries are handled without formal opinions and without legal liability for either completeness or correctness.

Actually, the office noted, "We're just now deciding how to operate. Our investigations are very flexible and based on the nature of the suspected violation and the type of company involved."

One of the current specific tasks of the still growing compliance office is determining whether to grant one-year grace period extensions for companies with existing contracts in the Arab world that were entered into before the effective date of the EAA statute and rules. The regulations provide for as much as a 12 month extension (to Dec. 31, 1979) for companies with existing contracts, providing the companies can show that "good faith" efforts are being made to bring the contracts into compliance with the anti-boycott regulations.

Thusfar, grace period extensions are not developing as a primary element of the compliance staff's time. Staffers note that there are not many long-term contracts that involve a need for revisions in the contracts themselves. In some cases, existing contracts are not themselves rewritten, according to another senior member of the compliance unit: instead, "amendments" to the existing contracts are drafted.

As to how many companies have applied for grace period extensions, compliance unit officials would only say "a handful." Of those applying, some have already been refused extensions.

In determining whether efforts to bring existing contracts into compliance are "good faith" efforts, compliance officers say there are three areas of inquiry:

1. Type of business.
   A. Size of the company applying for an extension.
   B. Time remaining to run on the existing contract.
   C. Whether materials needed to complete the contract have already been obtained.
   D. What loss of the sale/contract would mean to the company.
2. The possibility of evasion of the anti-boycott regulations.
   A. For how long has the company involved maintained a commercial relationship with the boycotting country.
   B. Is there any evidence that the contract was entered into in order to evade the anti-boycott regulations.
   C. Is there any evidence that the company changed its usual practices in order to comply with the boycott.
3. Ease of renegotiation.
   A. Does the company have an agent or representative in the boycotting country who can handle the renegotiation of the contract? If the company does not have a permanent representative in the boycotting country, can the company easily get a representative into the boycotting country for the renegotiation?