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## Commerce/Treasury Enforcement

# Procedures of anti-boycott staff at Commerce; charges imminent

"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.

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The third phase in the Commerce Department's anti-boycott enforcement program is about to get underway.

First Congress legislated the anti-boycott provisions of the Export Administration Act (EAA). Then the Commerce Department went through the process of creating the regulations which became, in effect, a "code of good conduct" detailing what is and what isn't permissible.

And now comes the development of a body of administrative and criminal law as Commerce's Anti-Boycott Compliance Staff, headed by Vincent ("Vin") Rocque, prepares to bring cases — both civil and criminal — against suspected violators of the anti-boycott provisions of EAA.

In June the Anti-boycott Compliance unit at Commerce had 15 compliance officers at work on over a hundred cases. Another 8 compliance officers are expected on board during the coming months — the civil service hiring process just having been completed in June.

Divided into two teams, two Supervisory Compliance Officers oversee and direct the work of the unit. They are Howard Fenton, who joined commerce from private practice early in the year, and Arthur Kaplan, a lawyer and investigator previously with the Inspector General's office at the Department of Agriculture.

It is the responsibility of these two Supervisory Compliance Officers to bring their recommendations to Vin Rocque on whether and how to proceed on cases of suspected anti-boycott violations that have been thoroughly investigated by the staff over the past months.

Commerce's enforcement procedures are evolving as follows:

The Supervisory Compliance Officers will inform the companies thought to be guilty of violations of the post-investigation recommendations being made by the staff before any formal action is begun. Usually the company will already be aware that an investigation has been underway and will have complied with requests for documents and explanations. While the supervisors do have subpoena powers, only a few have been necessary so far — cooperation by companies is the norm. And no subpoenas have actually had to be enforced by the courts.

After being notified of the staff recommendations — usually after the supervisor has cleared Commerce's approach with Rocque — a company then has the opportunity to offer a settlement. In such cases, the staff can come up with a proposed administrative complaint and the company can agree to a consent agreement — all this before any formal initiation of legal action.

Senior Deputy Assistant Secretary of Commerce Stanley Marcuss has the responsibility to approve all such consent agreements. When he does so, they would automatically become public. But even though the matter

would then become public knowledge, by agreeing to a consent agreement the company would not have been found guilty of any anti-boycott violations and no formal charging letter would have been issued.

Asked what would happen if members of the public or civic organizations felt Commerce had been too lenient with a company in allowing a specific consent agreement rather than instituting legal action or in not insisting on a tough enough consent arrangement, Rocque told the BLB that this matter is not yet fully decided. But he presumed there would be a period in which the consent agreement would be considered "preliminary" — a period in which other interested parties could make their opinions known and argue that the matter be reopened.

If Vin Rocque's office decides to issue a formal charging letter there will be close coordination with the Assistant General Counsel's office at Commerce. The Anti-boycott Compliance Staff would then develop the pleadings and an on-the-record hearing, as required by the Administrative Procedures Act, would be held before an Administrative Law judge.

In such cases, the judge acts primarily as a finder of fact, deciding if there has been a violation and if so what sanction to impose. The role of the General Counsel's office is to act as solicitor.

Decisions by an Administrative Law Judge are probably going to be appealable to the Assistant Secretary of Commerce's office, though the Assistant General Counsel's office is still determining the specific appeal procedures. Whatever decision is reached on appeal will be considered final so far as Commerce is concerned. But, of course, a company will always have the option of further appeal in the courts.

Any decision to bring criminal rather than civil charges would be made between Rocque's office and the criminal division of the Justice Department, usually on consultation with the U.S. Attorney in the District where the alleged offender is located. It would be the U.S. Attorney

who would actually bring charges seeking fines and/or imprisonment against a company or an individual.

As Rocque told the BLB in April, "The law says that a criminal violation must be a knowing violation. A civil violation need not be a knowing violation." And in a later comment early in the summer Rocque didn't want to preclude the possibility that criminal as well as civil cases would be brought later in the summer. Rocque further noted that other countries than Israel are beneficiaries of the EAA anti-boycott provisions. Both Egypt and Taiwan are examples, in the later case Congress having made this explicitly clear in recent legislation.

### **MARCUSS AND MUNK HAVE "AMICABLE AND PRODUCTIVE" TALKS WITH SAUDIS ABOUT NEW GUIDELINES, BUT ISSUE UNRESOLVED**

The U.S.-Saudi Arabian talks aimed at avoiding a costly conflict between Saudi boycott requirements and the two pending Treasury guidelines have resulted in some progress, but the issue is still unresolved and further discussions will be taking place.

Commerce's Deputy Assistant Secretary Stanley Marcuss and Treasury's General Counsel Russell Munk returned from their Saudi mission with word that, according to sources, the talks were "amicable and productive." However, the question of how to avoid a regulatory clash between the Saudi boycott requirements and the two yet-to-be-released Treasury Guidelines is still unsolved. Sources say that further discussions with the Saudis will have to take place, but it is not known at this point whether Commerce and/or Treasury officials will be making another journey to Saudi Arabia on the issue.

As previously reported, the two new pending Treasury Guidelines would place U.S. companies in violation of the Treasury anti-boycott rules if they comply with Saudi documentation requirements concerning letters of credit and shipping papers. The Saudi requirements were reworked once already, in 1978, in order to accommodate

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the anti boycott requirements of the Commerce Department. Although U.S. companies' compliance with the Saudi requirements is permissible under the Commerce rules, the pending Treasury rules threaten to negate the compromise worked out in 1978 by making those same compliance actions illegal under Treasury regulations.

Mr. Marcuss himself declined to comment on results of the mission, saying that he is not yet ready to publicly discuss the situation.

## NEW IRAQI BOYCOTT REQUIREMENT ON OIL EXPORTS MAY PLACE U.S. OIL COMPANIES IN VIOLATION OF EAA RULES

Commerce Department anti-boycott officials are not yet certain whether reported Iraqi requirements on the transshipment of Iraqi crude oil to or through Egypt will place U.S. oil companies in violation of the EAA rules.

Commerce is in the process of trying to determine exactly what the new Iraqi requirement is, the language used and compliance form demanded of oil companies that purchase Iraqi crude oil. (See "Boycotting Countries' Policies" in this issue.)