

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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Electro-Motive Diesel, Inc)
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Case No. 14.01

ORDER

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), has determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (2014)) (the "Regulations"), against Electro-Motive Diesel, Inc ("EMD"), a domestic concern, organized under the laws of the United States and doing business in the State of Illinois, based on allegations set forth in the Proposed Charging Letter, dated 10 April 2014, that alleged that EMD committed thirty-one violations of the Regulations.

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 7, 2014 (79 Fed. Reg. 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2006 & Supp IV 2010)).

Specifically, the charges are:

1. *Thirty-one Violations of 15 C.F.R. §760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States*

During the years 2005 through 2006, EMD engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Bangladesh, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

In connection with these activities, EMD on thirty-one occasions, received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott.

EMD failed to report its receipts of these requests to the Department of Commerce, as directed by Section 760.5 of the Regulations.

BIS and EMD have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement have been approved by me.

IT IS THEREFORE ORDERED THAT:

FIRST, a civil penalty of \$ 26,350 is assessed against EMD and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions.

SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, EMD will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$ 26,350 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to EMD.

Accordingly, if EMD should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of EMD's export privileges for a period of one year from the date of the entry of this Order.

FOURTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon EMD.

This Order, which constitutes the final agency action in this matter, is effective immediately.

A handwritten signature in black ink, appearing to read 'D. W. Mills', is written over a horizontal line.

David W. Mills
Assistant Secretary of Commerce for
Export Enforcement

Entered this 8th day of September, 2014

Attachments

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. Department of Commerce
Bureau of Industry and Security
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Francine Dodson

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390-70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900-904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 4 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collection Standards (31 C.F.R. §901.2(b)).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)
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Electro-Motive Diesel, Inc)
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Case No. 14.01

SETTLEMENT AGREEMENT

This agreement is made by and between Electro-Motive Diesel, Inc (“EMD”), a domestic concern, organized under the laws of the United States and doing business in the State of Illinois, and the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2014)) (the “Regulations”), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the “Act”).¹

¹ Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 7, 2014 (79 Fed. Reg. 46959 (August 11, 2014)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2006 & Supp IV 2010)).

WHEREAS, BIS has notified EMD of its intention to initiate an administrative proceeding against EMD pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated 10 April 2014, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, EMD has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; EMD fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and EMD states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, EMD neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, EMD agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, EMD and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over EMD with respect to the matters alleged in the Proposed Charging Letter.
2. BIS will impose a civil penalty in the amount of \$ 26,350. EMD will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$ 26,350 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to EMD..

Failure to make payment of this amount shall result in the denial of all of EMD 's export privileges for a period of one year from the date of entry of the Order.

4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, EMD hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
 - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by EMD pursuant to this Settlement Agreement and the Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against EMD with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.
6. EMD understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.

7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by EMD that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement.

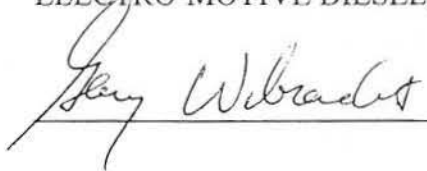
Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against EMD in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

This paragraph shall not limit EMD's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

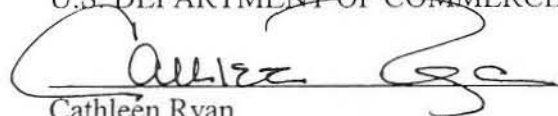
9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

ELECTRO-MOTIVE DIESEL, INC



DATE: 8/25/2014

U.S. DEPARTMENT OF COMMERCE



Cathleen Ryan

Director

Office of Antiboycott Compliance

DATE: 27 August 2014

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

PROPOSED CHARGING LETTER

10 April 2014

Electro-Motive Diesel, Inc
9301 West 55th Street
LaGrange, IL 60525

Attention : Gary Wibracht,
Director of Internal Audit

Case No. 14.01

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Electro-Motive Diesel, Inc, on thirty-one occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2014)) (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000))(the "Act").²

We charge that you committed thirty-one violations of Section 760.5 of the Regulations, in that, on thirty-one occasions, you failed to report timely to the Department of Commerce ("Department") your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

¹ The transactions and violations alleged occurred during the years 2005 through 2006. The Regulations governing the violations at issue are found in the 2005 and 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005 and 2006)). The prior years' Regulations are substantially the same as the 2014 version of the Regulations which governs the procedural aspects of this matter.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 8, 2013 (78 Fed. Reg. 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).



We allege that:

You, Electro-Motive Diesel, Inc, are, and at all times relevant were, a domestic concern, organized under the laws of the United States and doing business in the State of Illinois; as such, you are a United States person, as defined in Section 760.1(b) of the Regulations.

During the years 2005 through 2006, you engaged in transactions involving the sale and/or transfer of goods or services (including information) from the United States to Bangladesh, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

Charges 1 - 31 (15 C.F.R. § 760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)

In connection with the activities referred to above, during the years 2005 through 2006, on thirty-one occasions, you received a request, as described in Table A, which is attached and incorporated herein by this reference, to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott.

Section 760.5 of the Regulations requires United States persons to report to the Department their receipts of such requests. You failed to report timely to the Department your receipts of these requests.

By failing to report timely your receipts of these requests, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with thirty-one violations of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.³

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer.

³ Administrative sanctions may include any or all the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No.110-96, 121 Stat. 1011 (2007)).
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see § 764.3(a)(3) of the Regulations).

Under Sections 766.3(a) and 766.4 of the Regulations, you are entitled to be represented by counsel or other authorized representative who has power of attorney to represent you and, under Section 766.18 of the Regulations, to seek a settlement agreement without a hearing.

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.⁴

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Industry and Security at:

Office of the Chief Counsel for Industry and Security
Room H-3839
Bureau of Industry and Security
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Sincerely,

Cathleen Ryan
Acting Director
Office of Antiboycott Compliance

Enclosures

⁴ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman>.

TABLE A

Schedule of Alleged Violations of Section 760.5
Failure to Report Receipts of Boycott Requests

Electro-Motive Diesel, Inc
Case No. 14.01

Item	EMD Reference/ Tender Number	Date Request Received	Date Reporting Violation*	Boycotting Country	Boycott Request
1	M&S-2/MEH-14/ENG/05/4	06.28.05	07.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
2	M&S-2/MEH-14/ELEC/05/5	06.28.05	07.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
3	M&S-2/BEH-24/AB/05/7	06.28.05	07.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
4	M&S-2/BEH-24/CHS/05/6	06.28.05	07.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
5	P6/10/007/2005	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
6	P6/10/015/2005	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
7	M&S-2/BEH-24/ENG/05/8	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
8	P6/F&G/002/2005	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL

TABLE A

Schedule of Alleged Violations of Section 760.5
Failure to Report Receipts of Boycott Requests

Electro-Motive Diesel, Inc
Case No. 14.01

Item	EMD Reference/ Tender Number	Date Request Received	Date Reporting Violation*	Boycotting Country	Boycott Request
9	M&S-2/BEH-24/ELEC/05/9	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
10	P6/10/009/2005	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
11	P6/10/038/2004	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
12	P6/72/006/2005/R	07.06.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
13	P6/MEL-15/013/2005	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
14	M&S-2/MEG-15/AB/05/10	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
15	M&S-2/MEG-15/CHS/05/11	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
16	M&S-2/MEG-15/ELEC/05/13	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL

TABLE A

Schedule of Alleged Violations of Section 760.5
Failure to Report Receipts of Boycott Requests

Electro-Motive Diesel, Inc
Case No. 14.01

Item	EMD Reference/ Tender Number	Date Request Received	Date Reporting Violation*	Boycotting Country	Boycott Request
17	M&S-2/MEG-15/ENG/05/12	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
18	P6/F&G/022/2005	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
19	P6/MEM-14/015/2003/PI	06.05.05	07.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
20	P6/10/018/2005	07.12.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
21	P6/10/005/2005/PI	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
22	P6/10/023/2005	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
23	P6/10/019/2005	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
24	P6/MEL-15/026/2004/PI	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL

TABLE A

Schedule of Alleged Violations of Section 760.5
Failure to Report Receipts of Boycott Requests

Electro-Motive Diesel, Inc
Case No. 14.01

Item	EMD Reference/ Tender Number	Date Request Received	Date Reporting Violation*	Boycotting Country	Boycott Request
25	P6/MEM-14/025/2004/PI	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
26	P6/10/028/2004	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
27	P6/BEA-20/024/2004/PI	07.30.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
28	P6/10/020/2005	09.16.05	10.31.05	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
29	P6/10/008/2006	06.20.06	07.31.06	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
30	P6/16/006/2006	06.20.06	07.31.06	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL
31	P6/16/007/2006	06.20.06	07.31.06	Bangladesh	GOODS AND RELATED SERVICES FROM THE FOLLOWING COUNTRIES ARE NOT ELIGIBLE: ISRAEL

* Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked by the last day of the month following the calendar quarter in which the request was received (§ 760.5(b)(4)(i)).