

Specifically, the Proposed Charging Letter alleged:

1. *Eight violations of 15 C.F.R. §760.2(d) – Furnishing Information About Business Relationships With Boycotted Countries or Blacklisted Persons:*

In connection with activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations, during the period September 2015 through May 2018, on eight occasions, MSC-USA (Chicago), with intent to comply with, further or support an unsanctioned foreign boycott, furnished information concerning its business relationships with or in a boycotted country.

2. *Two 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:*

In connection with activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations, during the period October 2016 through January 2018, on two occasions, MSC-USA (Chicago) failed to report to the Department of Commerce the receipt of a request to engage in a restrictive trade practice or boycott.

BIS and MSC-USA (Chicago) have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they 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 \$81,000 shall be assessed against MSC-USA (Chicago) and shall be paid by MSC-USA (Chicago) 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, MSC-USA (Chicago) shall complete an internal audit of its antiboycott compliance program ("audit"). The audit shall cover the 12-month period beginning on the date of entry of the Order and shall include a review of all transactions subject to Part 760 of the Regulations (including recordkeeping requirements) and an assessment of MSC-USA (Chicago)'s compliance therewith. Where said audit identifies actual or potential violations of the Regulations, MSC-USA (Chicago) shall include copies of the pertinent transaction documents with the report of results of the audit ("Audit Report"). The Audit Report, including any relevant supporting materials, shall be submitted, no later than fifteen (15) months from the date of entry of the Order, to:

Office of Antiboycott Compliance

Room 6098

Bureau of Industry and Security

U.S. Department of Commerce

1401 Constitution Avenue, NW

Washington, DC 20230

THIRD, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§3701 – 3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if any payment required under this Order is not made by the due date specified herein, MSC-USA (Chicago) shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, MSC-USA (Chicago)'s compliance with the terms of the Settlement Agreement and this Order, as set forth above, including the full and timely payment of the civil penalty of \$81,000 and the timely completion of the audit and submission of the Audit Report, as set forth above, is hereby made a condition to the granting, restoration or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MSC-USA (Chicago).

Accordingly, if MSC-USA (Chicago) should fail to comply in full with the terms of the Settlement Agreement or this Order, the undersigned may issue an order denying all of MSC-USA (Chicago)'s export privileges for a period of one year from the date of issuance of any such denial order.

FIFTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

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



P. Lee Smith
Performing the Non-exclusive Functions and Duties of the
Assistant Secretary of Commerce for Export Enforcement

Entered this 13 day of January, 2021

Attachments

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of

Mediterranean Shipping Company (USA) Inc. (Chicago)

Case No. 18-07

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Mediterranean Shipping Company (USA) Inc. (Chicago) (“MSC-USA (Chicago)”), 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 (2020)) (the “Regulations”)¹.

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 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 14, 2019 (84 Fed. Reg. 41881 (Aug. 15, 2019)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.* (2012)) (“IEEPA”).

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). The Anti-Boycott Act of 2018 is a subpart of ECRA. While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

WHEREAS, BIS has notified MSC-USA (Chicago) of its intention to initiate an administrative proceeding against MSC-USA (Chicago) pursuant to the Regulations² by issuing the Proposed Charging Letter dated August 11, 2020, a copy of which is attached hereto and incorporated herein by this reference;

WHEREAS, MSC-USA (Chicago) 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;

WHEREAS, MSC-USA (Chicago) fully understands the terms of this Settlement Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will enter if he approves this Settlement Agreement as the final resolution of this matter;

WHEREAS, MSC-USA (Chicago) enters into this Settlement Agreement voluntarily and with full knowledge of its rights;

WHEREAS, MSC-USA (Chicago) states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, MSC-USA (Chicago) neither admits nor denies the allegations contained in the Proposed Charging Letter, but wishes to settle and dispose of the allegations by entering into this Settlement Agreement; and

² The violations alleged occurred during the years 2016, 2017 and 2018. The Regulations governing the violations at issue are found in the 2016, 2017 and 2018 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2016, 2017 and 2018)). The 2020 Regulations govern the procedural aspects of this matter.

WHEREAS, MSC-USA (Chicago) agrees to be bound by the appropriate Order (“Order”), when entered;

NOW THEREFORE, MSC-USA (Chicago) and BIS agree as follows:

1. Under the Regulations, BIS has jurisdiction over MSC-USA (Chicago) with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter:
 - a. BIS shall assess a civil penalty against MSC-USA (Chicago) in the amount of \$81,000. MSC-USA (Chicago) shall 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 \$81,000.
 - b. MSC-USA (Chicago) shall complete an internal audit of its antiboycott compliance program (“audit”). The audit shall cover the 12-month period beginning on the date of entry of the Order and shall include a review of all transactions subject to Part 760 of the Regulations (including recordkeeping requirements) and an assessment of MSC-USA (Chicago)’s compliance therewith. Where said audit identifies actual or potential violations of the Regulations, MSC-USA (Chicago) shall include copies of the pertinent transaction documents with the report of results of the audit (“Audit Report”). The Audit Report, including any relevant supporting materials, shall be submitted, no later than fifteen (15) months from the date of entry of the Order, to:

Office of Antiboycott Compliance

Room 6098

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- c. Compliance with the terms of this Settlement Agreement and the Order, when entered, including the full and timely payment of the civil penalty agreed to in Paragraph 2.a, above, and the timely completion and submission of the Audit Report in Paragraph 2.b, above, is hereby made a condition of the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to MSC-USA (Chicago). Failure to make full and timely payment of the civil penalty and to timely complete and submit the Audit Report or to otherwise fail to comply fully with the terms of this Settlement Agreement and the Order, when entered, may result in the denial of all of MSC-USA (Chicago)'s export privileges for a period of one year from the date of issuance of any such denial order.
3. Subject to the approval of this Settlement Agreement, pursuant to paragraph 6 hereof, MSC-USA (Chicago) 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 any civil penalty paid by MSC-USA (Chicago) 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.

MSC-USA (Chicago) also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Regulations arising out of the transactions identified in the Proposed Charging Letter, or in connection with collection of the civil penalty or enforcement of this Settlement Agreement or the Order, when entered, from the date of entry of the Order until the date MSC-USA (Chicago) has paid in full the civil penalty agreed to in Paragraph 2.a, above, and submitted the Audit Report indicated in Paragraph 2.b, above.

- 4. BIS agrees that, upon compliance in full with the terms of this Settlement Agreement and the Order, when entered, BIS will not initiate any further administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against MSC-USA (Chicago) with respect to any violation of 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.
- 5. MSC-USA (Chicago) understands that BIS will make the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered, available to the public.

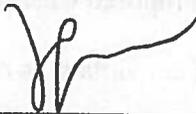
6. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by MSC-USA (Chicago) that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary of Commerce for Export Enforcement, BIS may not use this Settlement Agreement against MSC-USA (Chicago) in any administrative or judicial proceeding, and BIS and MSC-USA (Chicago) shall not be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

7. This Settlement Agreement constitutes and contains the entire agreement and understanding of BIS and MSC-USA (Chicago).

No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise alter or 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 MSC-USA (Chicago)'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 4 of this Settlement Agreement.

- 8. This Settlement Agreement shall become binding on BIS and MSC-USA (Chicago) only when approved by the Assistant Secretary of Commerce for Export Enforcement by entering the Order, which shall have the same force and effect as a decision and Order issued after a full administrative hearing on the record.
- 9. Each signatory affirms that he has the authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.
- 10. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

MEDITERRANEAN SHIPPING COMPANY (USA) INC. (CHICAGO)



DATE: 1/5/21

PAOLO MAGNANI
EXECUTIVE VICE PRESIDENT MSC USA INC

U.S. DEPARTMENT OF COMMERCE

cathleen ryan

DATE: 7 January 2021

Cathleen Ryan
Director
Office of Antiboycott Compliance

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
1401 Constitution Avenue, Suite 3896
Washington, DC 20230

PROPOSED CHARGING LETTER

August 11, 2020

Mediterranean Shipping Company (USA) Inc. (Chicago)
8725 West Higgins Road
Suite 400
Chicago, IL 60631

Attention: Paolo Magnani
Executive Vice President

Case No. 18-07

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, Mediterranean Shipping Company (USA) Inc. (Chicago), on ten occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2020)) (the "Regulations")¹.

¹ The violations alleged occurred during the years 2015 through 2018. The Regulations governing the violations at issue are found in the 2015 through 2018 versions of the Code of Federal Regulations (15 C.F.R. Parts 730 – 774 (2015 through 2018)). The 2020 Regulations govern the procedural aspects of this matter.

The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at <http://uscode.house.gov>) ("the EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 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 14, 2019 (84 Fed. Reg. 41881 (Aug. 15, 2019)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, *et seq.* (2012) ("IEEPA").

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Bureau of Industry and Security
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Section 760.5 of the Regulations requires United States persons to report to the Department of Commerce their receipts of such requests. You failed to report to the Department of Commerce your receipts of these requests.

By failing to report your receipts of these requests, described in Table B, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with two 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.²

You are entitled to an agency 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 one with your answer. You are entitled to be represented by counsel or other authorized representative who has power of attorney to represent you. See Sections 766.3(a) and 766.4 of the Regulations. You may also seek a settlement agreement without a hearing. See Section 766.18 of the Regulations.

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.³

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 of the Regulations, we are 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.

² The alleged violations occurred prior to August 13, 2018, the date of enactment of the ECRA. Consequently, the potential sanctions are provided for in the International Emergency Economic Powers Act (IEEPA).

Administrative sanctions may include any or all of the following:

- a. A maximum civil penalty of the greater of \$307,922 per violation or twice the value of the transaction that is the basis of the violation (see 15 C.F.R. § 6.3(b)(4), § 6.4). The amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015 and 84 Fed. Reg. 2,447 (February 7, 2019) (See also 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).
- d. Any other liability, sanction, or penalty available under law.

³ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

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By failing to report your receipts of these requests, described in Table B, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with two violations of Section 760.5 of the Regulations.

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- 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).
- d. Any other liability, sanction, or penalty available under law.

³ To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

TABLE A

Schedule of Alleged Violations of Section 760.2(d)
**FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS
 WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS**

MEDITERRANEAN SHIPPING COMPANY (USA) INC. (CHICAGO)
 Case No. 18-07

Item	Transaction File(s)	Document Furnished	Date of Furnishing	Boycotting Country	Information Furnished
1	MSCUTP422045/ 038SCT1260018	BILL OF LADING	09/09/15	LIBYA	<p>CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.</p>
2	MSCUOL157713/ 038SCT1010271	SEA WAYBILL	06/06/16	LIBYA	<p>CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.</p>
3	MSCUOL211569/ 038SCT1010396	SEA WAYBILL	07/25/16	LIBYA	<p>CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.</p>
4	MSCUUN506276/ 038NY0246176	CERTIFICATE	09/06/16	OMAN	<p>WE HEREBY CERTIFY THE FOLLOWING: 3.3 THE LOADING VESSEL IS ALLOWED TO ENTER SULTANATE OF OMAN.</p>

TABLE A

Schedule of Alleged Violations of Section 760.2(d)
**FURNISHING INFORMATION ABOUT BUSINESS RELATIONSHIPS
 WITH BOYCOTTED COUNTRIES OR BLACKLISTED PERSONS**

MEDITERRANEAN SHIPPING COMPANY (USA) INC. (CHICAGO)
 Case No. 18-07

Item	Transaction File(s)	Document Furnished	Date of Furnishing	Boycotting Country	Information Furnished
1	MSCUTP422045/ 038SCT1260018	BILL OF LADING	09/09/15	LIBYA	CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.
2	MSCUOL157713/ 038SCT1010271	SEA WAYBILL	06/06/16	LIBYA	CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.
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4	MSCUUN506276/ 038NY0246176	CERTIFICATE	09/06/16	OMAN	WE HEREBY CERTIFY THE FOLLOWING: 3.3 THE LOADING VESSEL IS ALLOWED TO ENTER SULTANATE OF OMAN.

TABLE B

Schedule of Alleged Violations of Section 760.5
FAILURE TO REPORT RECEIPTS OF BOYCOTT REQUESTS

MEDITERRANEAN SHIPPING COMPANY (USA) INC. (CHICAGO)

Case No. 18-07

Item	Transaction File	Date Request Received	Date Reporting Violation *	Boycotting Country	Boycott Request
1	MSCUOL211569/ 038SCT1010396	07/21/16	10/31/16	Libya	“WE NEED A SEPARATE DECLARATION SIGNED BY THE SHIPPING COMPANY OR ITS AGENT: WE CERTIFY THAT THE CARRYING VESSEL IS ALLOWED TO ENTER PORTS OF LIBYA.”
2	MSCUOZ109411/ 038VH1145062	10/25/17	01/31/18	Libya	MANIFEST CORRECTOR OLD VALUE CLAUSE 2 WE HERewith CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL’S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.

* As provided in Section 760.5(b)(4)(i) of the Regulations, 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.

TABLE B

Schedule of Alleged Violations of Section 760.5
FAILURE TO REPORT RECEIPTS OF BOYCOTT REQUESTS

MEDITERRANEAN SHIPPING COMPANY (USA) INC. (CHICAGO)

Case No. 18-07

Item	Transaction File	Date Request Received	Date Reporting Violation *	Boycotting Country	Boycott Request
1	MSCUOL211569/ 038SCT1010396	07/21/16	10/31/16	Libya	“WE NEED A SEPARATE DECLARATION SIGNED BY THE SHIPPING COMPANY OR ITS AGENT: WE CERTIFY THAT THE CARRYING VESSEL IS ALLOWED TO ENTER PORTS OF LIBYA.”
2	MSCUOZ109411/ 038VH1145062	10/25/17	01/31/18	Libya	MANIFEST CORRECTOR OLD VALUE CLAUSE 2 WE HEREWITH CERTIFY THAT THE VESSEL CARRYING THESE GOODS IS NOT OWNED BY ISRAEL NOT BY AN ISRAELI SUBJECT AND WILL NOT CALL AT ANY OF ISRAEL'S PORTS. WE FURTHER CERTIFY THAT THE ABOVE NAMED VESSEL IS NOT BLACKLISTED BY THE ARABIC COUNTRIES.

* As provided in Section 760.5(b)(4)(i) of the Regulations, 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.