

SUPPLEMENT NO. 4 TO PART 760—
INTERPRETATION

The question has arisen how the definition of U.S. commerce in the antiboycott regulations (15 CFR part 760) applies to a shipment of foreign-made goods when U.S.-origin spare parts are included in the shipment. Specifically, if the shipment of foreign goods falls outside the definition of U.S. commerce, will the inclusion of U.S.-origin spare parts bring the entire transaction into U.S. commerce?

Section 760.1(d)(12) provides the general guidelines for determining when U.S.-origin goods shipped from a controlled in fact foreign subsidiary are outside U.S. commerce. The two key tests of that provision are that the goods were “(i) * * * acquired without reference to a specific order from or transaction with a person outside the United States; and (ii) * * * further manufactured, incorporated into, refined into, or reprocessed into another product.” Because the application of these two tests to spare parts does not conclusively answer the U.S. commerce question, the Department is presenting this clarification.

In the cases brought to the Department’s attention, an order for foreign-origin goods was placed with a controlled in fact foreign subsidiary of a United States company. The foreign goods contained components manufactured in the United States and in other countries, and the order included a request for extras of the U.S. manufactured components (spare parts) to allow the customer to repair the item. Both the foreign manufactured product and the U.S. spare parts were to be shipped from the general inventory of the foreign subsidiary. Since the spare parts, if shipped by themselves, would be in U.S. commerce as that term is defined in the Regulations, the question was whether including them with the foreign manufactured item would bring the entire shipment into U.S. commerce. The Department has decided that it will not and presents the following specific guidance.

As used above, the term “spare parts” refers to parts of the quantities and types normally and customarily ordered with a product and kept on hand in the event they are needed to assure prompt repair of the product. Parts, components or accessories that improve or change the basic operations or design characteristics, for example, as to accuracy, capability or productivity, are not spare parts under this definition.

Inclusion of U.S.-origin spare parts in a shipment of products which is otherwise outside U.S. commerce will not bring the transaction into U.S. commerce if the following conditions are met:

(I) The parts included in the shipment are acquired from the United States by the controlled in fact foreign subsidiary without ref-

erence to a specific order from or transaction with a person outside the United States;

(II) The parts are identical to the corresponding United States-origin parts which have been manufactured, incorporated into or reprocessed into the completed product;

(III) The parts are of the quantity and type normally and customarily ordered with the completed product and kept on hand by the firm or industry of which the firm is a part to assure prompt repair of the product; and

(IV) The parts are covered by the same order as the completed product and are shipped with or at the same time as the original product.

The Department emphasizes that unless each of the above conditions is met, the inclusion of United States-origin spare parts in an order for a foreign-manufactured or assembled product will bring the entire transaction into the interstate or foreign commerce of the United States for purposes of part 760.

[61 FR 12862, Mar. 25, 1996, as amended at 65 FR 34949, June 1, 2000]

SUPPLEMENT NO. 5 TO PART 760—
INTERPRETATION

A. Permissible Furnishing of Information

The information outlined below may be furnished in response to boycott-related requests from boycotting countries or others. This information is, in the view of the Department, not prohibited by the Regulations. Thus, a person does not have to qualify under any of the exceptions to be able to make the following statements. Such statements can be made, however, only by the person indicated and under the circumstances described. These statements should not be used as a point of departure or analogy for determining the permissibility of other types of statements. The Department’s view that these statements are not contrary to the prohibitions contained in antiboycott provisions of the Regulations is limited to the specific statement in the specific context indicated.

1. A U.S. person may always provide its own name, address, place of incorporation (“nationality”), and nature of business.

2. A U.S. person may state that it is not on a blacklist, or restricted from doing business in a boycotting country. A company may not make that statement about its subsidiaries or affiliates—only about itself. A U.S. person may not say that there is no reason for it to be blacklisted. To make that statement would provide directly or by implication information that may not be provided. A U.S. person may inquire about the reasons it is blacklisted if it learns that it is on a blacklist (see §760.2(d) of this part example (xv)).

3. A U.S. person may describe in detail its past dealings with boycotting countries; may