

MEMMO

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BDS: An Overview and Approach

Israel has long been the target of economic warfare designed to weaken the Jewish state and isolate it from international investment and trade. Today's boycott, divestment and sanctions (BDS) campaign is the latest iteration of this nefarious effort. This international attempt to isolate, pressure and delegitimize Israel seeks to sanction all those interacting with Israel. Currently, measures before the House and Senate build on strong precedent to provide America with a new opportunity to combat perhaps the most dangerous element of BDS: state-led efforts to harm Israel's economy.

A History of Fighting Boycotts of Israel

- Congress has long combatted foreign boycotts of Israel. Lawmakers enacted penalties for those abiding by the Arab League Boycott and collaborated with the U.S. Trade Representative (USTR) to press potential free trade partners to end such harmful practices. Congress also routinely condemns the boycott of Israel in annual spending bills and in other legislation.
- The executive branch has repeatedly stated its opposition to anti-Israel boycotts and has worked with Congress to successfully press both Bahrain (2005) and Oman (2006) to end their boycotts as a condition of free trade with the United States.
- The U.S. exerted similar pressure on Saudi Arabia during its accession to the World Trade Organization. Saudi Arabia ultimately committed to grant all member states – including Israel – Most Favored Nation status. The USTR now reports annually on the status of the boycott among Arab League countries.

Old Song, New Dance

- Though philosophically similar to the Arab League Boycott, BDS represents a new and unique challenge to Israel. BDS is an international, decentralized effort to delegitimize, stigmatize and isolate Israel, and it pirates the language of international law in its pursuit.
- While BDS has many components, perhaps the most dangerous actions are led by states or international institutions that make routine business with Israel more difficult, sanctionable or even liable to criminal prosecutions. Examples include:
 - Sweden's Nordea Bank, Denmark's Danske Bank and the Netherlands' largest pension fund have all divested from Israeli financial institutions;
 - Corporations have cancelled contracts with Israeli entities at the urging of home governments for alleged violations of international law. Ironically, Dutch firm Vitens cancelled a contract with Israel's national water carrier, Mekorot, shortly after Mekorot signed a trilateral World Bank accord to help Jordan and the Palestinian Authority meet their water needs;

- The Netherlands undertook a war crimes prosecution of a private company for conducting business in the West Bank;
 - Denmark has officially threatened Israel with sanctions unless it makes unilateral political concessions, such as ending its “blockade” of Gaza, without regard to weapons smuggling and terrorist attacks by Hamas;
 - The European Union has threatened a wholesale boycott of meat, poultry and dairy products from East Jerusalem, the Golan Heights and the West Bank if Israel refuses to label such products as originating outside of Israel.
- In each instance, outside nations have threatened Israel with economic penalties if it does not make unilateral political concessions outside the context of direct Israeli-Palestinian negotiations. Such action bolsters the PA’s belief that it can secure its objectives while avoiding direct talks with Israel. In so doing, these actions only make achieving a lasting peace more difficult.

Building on Precedent, Addressing New Challenges

- Building on strong precedent, measures in the House and Senate would further Congress’ support for trade and investment with Israel and target harmful anti-Israel trade and economic practices.
- The U.S.-Israel Trade Enhancement Acts, led by Sens. Ben Cardin (D-MD) and Robert Portman (R-OH) and Reps. Peter Roskam (R-IL) and Juan Vargas (D-CA) would utilize well-established mechanisms to tell U.S. trade negotiators that one of their key objectives is to discourage potential trading partners from taking actions to limit commerce between the U.S. and Israel.
- This provision would leverage ongoing trade negotiations with the EU to combat the most dangerous element of BDS: state-sanctioned, and international institution-led, efforts to economically harm Israel for political purposes.
- The bills, S.619 and H.R.825, would require the USTR to press its counterparts in the EU to cease and desist activities that deliberately threaten or harm Israel.
- The House measure includes several other important provisions. The bill encourages strengthening the already robust commercial partnership between the U.S. and Israel as the most effective way to combat activities designed to harm Israel economically.
- The Roskam-Vargas measure would establish as United States’ policy America’s opposition to BDS; and it would require the USTR to report annually to Congress on an array of BDS activities around the world and detail the U.S. response.
- The bill would also require foreign companies to disclose in their filing with the Securities and Exchange Commission any participation in trade-related BDS activities. Additionally, the legislation would protect American entities from foreign prosecution waged solely on the basis that operating in Israel is determined to be a violation of international law.
- Importantly, both measures target only specific actions by foreign entities and do not affect constitutionally protected speech or other rights.