

# MEMO

---

Dec. 12, 2018

## **The Israel Anti-Boycott Act; Why Now?**

The Israel Anti-Boycott Act (IABA) is intended to counter a quickly emerging threat. Over the last two years, the U.N. High Commissioner for Human Rights (OHCHR) has warned hundreds of companies about their commercial activities—including dozens of U.S. firms operating in full accordance with U.S. laws—as part of an effort to create a database of companies that conduct business beyond the 1949 Armistice line, including East Jerusalem and the Jewish Quarter of the Old City. Companies in this database risk being stigmatized and may be subject to punishment. Congress took a stand against the Arab League boycott against Israel 40 years ago. Today, it needs to extend current law to counter new forms of boycott.

---

### **Which international governmental organizations are attacking Israel economically?**

In March 2016, the United Nations Human Rights Council (UNHRC) ordered the preparation of a database—or blacklist—of companies operating in territories which came under Israeli control during the 1967 Six-Day War. In September 2017, the U.N. High Commissioner for Human Rights began preparing the blacklist by sending letters to companies about their commercial activities, including U.S. companies such as Coca-Cola, TripAdvisor, Airbnb and Caterpillar. In January 2018, the OHCHR released a report on the prepared database of 206 companies, which included at least 22 American businesses operating in accordance with U.S. law. The report calls for “reputational, legal and financial” consequences—which may be used to lay the groundwork for future boycotts against companies that do business with Israel. American companies could potentially be targeted for commercial activity that is legal under U.S. law.

### **What impact would this blacklist have?**

Both Israelis and Palestinians would suffer if American companies refrain from doing business in these areas. Such a boycott could also have the unintended consequence of more broadly discouraging trade with Israel and the Palestinians by companies seeking to avoid legal jeopardy or controversy. Moreover, this wholesale adoption of the Palestinian negotiating position that any Israeli presence outside the pre-1967 borders is illegitimate would undercut any attempt to bring Palestinians back to the negotiating table for direct talks—the best way to resolve their differences with Israel.

### **What does the Israel Anti-Boycott Act do?**

- Enables Congress to take a stand against unauthorized boycotts of American allies like Israel.
- Reinforces and broadens longstanding U.S. policy opposing boycotts against American allies by making statutory changes to the Export Control Reform Control Act of 2018 (formerly the Export Administration Act, or EAA) to cover boycott efforts by international governmental organizations (IGOs). The bill is anchored in existing law that has been consistently upheld by U.S. courts for 40 years. The Act would prohibit American companies from complying with

boycott requests by international governmental organizations like the U.N. Existing anti-boycott law only applies to boycotts by foreign countries.

- Exclusively focuses on commercial conduct while protecting the free speech rights of all Americans—including those who advocate boycotts against Israel.
- Protects American companies from being coerced to provide information to IGOs for the purpose of furthering boycotts against Israel.
- Discourages international governmental organizations from blacklisting American companies conducting legal activities in any friendly country.
- Clarifies that only monetary penalties apply to violating new anti-boycott provisions and that there is no imposition of jail time.

### **Does the Israel Anti-Boycott Act restrict free speech?**

- Nothing in this bill restricts constitutionally-protected free speech or limits criticism of Israel or its policies. Rather, it regulates *commercial conduct* related to unauthorized foreign boycotts. U.S. courts have ruled time-and-time again that Congress has wide authority to put limits on international commercial conduct and distinguishes such activity as distinct from protected free speech.
- Federal laws prohibiting American entities from complying with unsanctioned foreign boycotts against Israel have been in effect for 40 years. Courts have concluded that the U.S. government has a substantial interest in preventing U.S. persons from complying with the Arab boycott.
- The IABA creates a new category of “covered persons” which are prohibited from furnishing information about business relationships to IGOs collecting information in support of a boycott. The “covered persons” definition protects individuals not engaged in interstate or foreign commerce.
- The bill includes a Rule of Construction that states, “Nothing in this title or an amendment made by this title shall be constructed to diminish or infringe upon any right protected under the First Amendment to the Constitution of the United States.”