

HR 5595, the 2020 Version of the “Israel Anti-Boycott Act”
*How it would change current law to criminalize engagement in/support for
voluntary boycotts of Israel/settlements with respect to commercial behavior of
“covered persons”*

Some key points:

- Once again, this legislation – while entitled “The Israel Anti-Boycott Act” – has nothing to do with commercial boycotts of Israel, but is focused on preventing any boycotts or economic pressure on settlements.
 - And once again, this legislation, at its cores, is based on a conflation of coercive boycotts of Israel (i.e., in which US companies are compelled to boycott Israel as a condition for doing business with foreign parties, making such boycotts NOT a form of voluntary political free speech) with voluntary decisions by owners of U.S. businesses to refrain from certain business activities as an expression of their opposition to Israeli policies vis-à-vis the Palestinians and the occupation (e.g., differentiating between Israel and the occupied territories in ones business operations, as a textbook form of voluntary political free speech).
 - The legislation stipulates that violators of the law will face only monetary penalties (not jail) [up to \$300 thousand for civil penalties and \$1 million for criminal penalties]
 - The legislation also includes two mealy-mouthed “Rules of Construction” promising that “*Nothing in this Act or an amendment made by this Act shall be construed to diminish or infringe upon any right protected under the first amendment to the Constitution*” and assuring that individual’s non-commercial speech/activity will be used as a basis to investigate them. [Note: A rule of construction is in effect a non-binding statement of intent; it in no way changes the meaning of the actual binding provisions of the actual law].
 - The text explicitly stipulates, as a matter of law, that the legislation applies to “*efforts by the United Nations Human Rights Council to collect information for the establishment of a database of entities that operate, or have business relations with entities that operate, beyond Israel’s 1949 Armistice lines, including East Jerusalem.*”
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Sec. 1 – Short Title

This section gives the bill the name the “Israel Anti-Boycott Act”

Sec 2 – Sense of Congress

HR 5595 opens with non-binding Sense of Congress (i.e., text that does not make new law or change existing law).

**Sec 3 - ADDITIONAL PROHIBITIONS RELATING TO FOREIGN
BOYCOTTS UNDER EXPORT CONTROL REFORM ACT OF 2018.**

Sec. 3 seeks to amend the Anti-Boycott Act of 2018 ([50 USC 4841 through 50 USC 4843](#)). It also seeks to add a new section, by amending the [Export Control Reform Act of 2018](#). These laws, as they would be amended by HR 5595, are below.

NOTE: Text that is stricken out (~~like this~~) is language in the current law that would be deleted by HR 5595; text that is underlined (like this) is language that would be added to the current law by HR 5595; text that is hyperlinked takes you to the current law]

[§50 USC 4841. Statement of policy](#)

Congress declares it is the policy of the United States-

(1) ~~to oppose restrictive trade practices or boycotts fostered or imposed by any foreign country against other countries friendly to the United States or against any United States person to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations, or efforts by foreign countries or international governmental organizations to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations, against other countries friendly to the United States or against any United States person;~~

(2) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country or international governmental organization against a country friendly to the United States or any United States person; and

(3) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

[§50 USC 4842. Foreign boycotts](#)

(a) Prohibitions and exceptions

(1) Prohibitions

For the purpose of implementing the policies set forth in section 4841 of this title, the President shall issue regulations prohibiting any United States person, with respect to that person's activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by any foreign country or an international governmental organization, or efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by a foreign country or international governmental organization against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country or international governmental organization (as the case may be). The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) (i) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country or with the international governmental organization (as the case may be). Nothing in this subparagraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(ii) Furnishing information to a foreign country or international governmental organization in response to efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country or international governmental organization. Such information includes information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply)—

(I) with or in the country to which the restrictive trade practice or boycott applies;

(II) with any business concern organized under the laws of that country;

(III) with any national or resident of that country; or

(IV) with any other person which is known or believed to be restricted from having any business relationship with or in a foreign country, or with an international governmental organization, that fosters or imposes the restrictive trade practice or boycott.

(iii) Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no ~~United States person~~ covered person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Exceptions

Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements—

(i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country; or

(ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a ~~United States person~~ covered person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Special rules

Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Rule of construction

Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) Application

This section shall apply to any transaction or activity undertaken, by or through a ~~United States person~~ covered person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign policy controls

(1) In general

In addition to the regulations issued pursuant to subsection (a), regulations issued under subchapter I to carry out the policies set forth in section 4811(2)(D) ¹ shall implement the policies set forth in this section.

(2) Requirements

Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in subsection (a) shall report that fact to the Secretary, together with such other information concerning

such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 4841 of this title.

(c) Preemption

The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations against other countries, or regarding efforts by foreign countries or international governmental organizations to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by foreign countries or international governmental organizations against other countries friendly to the United States.

(d) COVERED PERSON DEFINED

(1) IN GENERAL.—In this section, the term ‘covered person’ means—

(A) any domestic concern (including any permanent domestic establishment of any foreign concern);

(B) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(C) the government of the United States or any State, territory, or possession of the United States, or any subdivision, department, agency, or commission of any such government; or

(D) an individual who is—

(i) a United States resident or national (other than such an individual residing outside the United States and employed by other than a United States person);

(ii) an owner, officer, director, employee, or agent of a domestic concern described in subparagraph (A) or a foreign subsidiary or affiliate described in subparagraph (B) or an officer, director, employee, or agent of an entity described in subpara-graph (C); and

(iii) acting in the individual’s official capacity as such an owner, officer, director, employee, or agent.

(2) DOMESTIC CONCERN.—For purposes of paragraph (1), the term ‘domestic concern’ does not include an individual.

§50 USC 4843. Enforcement

(a) Criminal penalty

A person Except as provided in subsection (e), a person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act section 4842 of this title-

- (1) shall, upon conviction, be fined not more than \$1,000,000; or
- (2) if a natural person, may be imprisoned for not more than 20 years, or both.

(b) Civil penalties

The President may impose the following civil penalties on a person who violates section 4842 of this title or any regulation issued under this subchapter:

- (1) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.
- (2) Revocation of a license issued under subchapter I to the person.
- (3) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under subchapter I.

(c) Procedures

Any civil penalty or administrative sanction (including any suspension or revocation of authority to export) under this section may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5 and shall be subject to judicial review in accordance with chapter 7 of such title.

(d) Standards for levels of civil penalty

The President may by regulation provide standards for establishing levels of civil penalty under this section based upon factors such as the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

(e) CERTAIN VIOLATIONS OF SECTION 1773(a).—

(1) IN GENERAL.—Whoever knowingly violates or conspires to or attempts to violate a regulation issued under section 1773(a) prohibiting an action described in paragraph (2) shall be subject to only a monetary penalty under subsection (a) or (b).

(2) ACTIONS DESCRIBED.—An action described in this paragraph is any action described in subparagraphs (A) through (F) of section 1773(a)(1) taken by a covered person (as defined in section 1773(d)), or knowingly agreed to be taken by such a person, with respect to the person's activities in the interstate or foreign commerce of the United States, with the intent to comply with, further, or support—

(A) any boycott fostered or imposed by an international governmental organization against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation; or

(B) efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting restrictive trade practices or boycotts fostered or imposed by a foreign country or international governmental organization against a country described in subparagraph 16(A).

[EXPORT CONTROL REFORM ACT OF 2018](#) (PL 115-232, Subtitle B)

[HR 5595 adds a new section to this Act, as follows:]

SEC. 1775. DEFINITIONS. In this part:

(1) INTERNATIONAL GOVERNMENTAL ORGANIZATION.—The term ‘international governmental organization’ includes—

(A) the United Nations, including organizations within the United Nations such as the United Nations Human Rights Council; and

(B) the European Union.

(2) EFFORTS BY A FOREIGN COUNTRY OR INTERNATIONAL GOVERNMENTAL ORGANIZATION, ETC.— The term ‘efforts by a foreign country or international governmental organization to collect information that have the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country or international governmental organization’ includes efforts by the United Nations Human Rights Council to collect information for the establishment of a database of entities that operate, or have business relations with entities that operate, beyond Israel’s 1949 Armistice lines, including East Jerusalem.

Sec 3 – Rules of Construction

HR 5595 ends with “Rules of Construction” noting:

(a) that “*Nothing in this Act or an amendment made by this Act shall be construed to diminish or infringe upon any right protected under the first amendment to the Constitution*” and

(b), that “*Consistent with current enforcement practices of the Department of Commerce, nothing in this Act or an amendment made by this Act shall be construed to permit a person’s noncommercial speech or other non-commercial expressive activity to be used—(1) as evidence to prove a violation of section 1773(a) of the Export Control Reform Act of 2018 (50 U.S.C. 4842(a)), as amended by section 3(b), including as evidence to prove intent to violate such section 1773(a); or (2) as support for initiating an investigation into whether such a violation has occurred.*”