

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 720

To amend the Export Administration Act of 1979 to include in the prohibitions on boycotts against allies of the United States boycotts fostered by international governmental organizations against Israel and to direct the Export-Import Bank of the United States to oppose boycotts against Israel, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

Amendments In the Nature of a Substitute intended to be
proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Israel Anti-Boycott
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United Nations Human Rights Council
9 (in this section referred to as the “UNHRC”) has
10 long targeted Israel with systematic, politically moti-

1 vated, assaults on its legitimacy designed to stig-
2 matize and isolate Israel internationally.

3 (2) The UNHRC maintains a permanent agen-
4 da item known as “Item 7” to ensure that Israel will
5 be criticized at every gathering of the UNHRC.

6 (3) At its 31st session on March 24, 2016, the
7 UNHRC targeted Israel by laying the groundwork
8 for a politically motivated boycott, calling for the es-
9 tablishment of a database of companies that operate,
10 or have business relations with entities that operate,
11 beyond Israel’s 1949 Armistice lines, including East
12 Jerusalem. For foreign countries that already en-
13 gage in boycott activity, this database is designed to
14 serve as a source of information to further or sup-
15 port that boycott activity.

16 (4) For a half century, Congress has combated
17 anti-Israel boycotts and other discriminatory activity
18 under the Export Administration Act of 1979 (as
19 continued in effect pursuant to the International
20 Emergency Economic Powers Act (50 U.S.C. 1701
21 et seq.)), under part VI of title X of the Tax Reform
22 Act of 1976 (Public Law 94–455; 90 Stat. 1649)
23 (commonly referred to as the “Ribicoff Amend-
24 ment”), in free trade agreements with Bahrain and

1 Oman, and in Saudi Arabia’s accession negotiations
2 to the World Trade Organization.

3 (5) The recent action of the UNHRC is remi-
4 niscent of the Arab League Boycott, which also
5 called for the establishment of a “blacklist” and pro-
6 moted a primary, as well as a secondary and ter-
7 tiary, boycott against Israel, targeting United States
8 and other companies that trade or invest with or in
9 Israel, designed to harm Israel, any business oper-
10 ating in, or doing business with, Israel, or companies
11 that do business with companies operating in Israel.

12 (6) Congress recently passed anti-boycott, di-
13 vestment, and sanctions measures in the Bipartisan
14 Congressional Trade Priorities and Accountability
15 Act of 2015 (19 U.S.C. 4201 et seq.) and section
16 909 of the Trade Facilitation and Trade Enforce-
17 ment Act of 2015 (19 U.S.C. 4452), which establish,
18 among other things—

19 (A) the opposition of the United States to
20 actions to boycott, divest from, or sanction
21 Israel or persons doing business in Israel or
22 Israeli-controlled territories;

23 (B) requirements that the United States
24 utilize trade negotiations to combat state-led or
25 international governmental organization-led ac-

1 tions to boycott, divest from, or sanction Israel
2 or persons doing business in Israel or Israeli-
3 controlled territories; and

4 (C) reporting requirements regarding the
5 actions of foreign countries or international or-
6 ganizations that establish barriers to trade or
7 investment for United States companies in or
8 with Israel or Israeli-controlled territories.

9 **SEC. 3. STATEMENT OF POLICY.**

10 Congress—

11 (1) opposes the United Nations Human Rights
12 Council resolution of March 24, 2016, which, among
13 other things—

14 (A) warns countries against allowing enti-
15 ties subject to their jurisdiction to engage in
16 settlement-related economic or financial activi-
17 ties;

18 (B) effectively urges countries to pressure
19 such entities to divest from, or break contracts
20 with, certain Israeli entities; and

21 (C) calls for the creation of a list of enti-
22 ties that either operate, or have business rela-
23 tions with entities that operate, beyond Israel's
24 1949 Armistice lines, including East Jerusalem;

1 (2) views such policies as furthering and sup-
2 porting actions to boycott, divest from, or sanction
3 Israel or persons doing business in Israel or Israeli-
4 controlled territories;

5 (3) in order to counter the effects of actions to
6 boycott, divest from, or sanction Israel or persons
7 doing business in Israel or Israeli-controlled terri-
8 tories, encourages full implementation of the United
9 States-Israel Strategic Partnership Act of 2014
10 (Public Law 113–296; 128 Stat. 4075) through en-
11 hanced, governmentwide, coordinated United States-
12 Israel scientific and technological cooperation in ci-
13 vilian areas such as with respect to energy, water,
14 agriculture, alternative fuel technology, civilian space
15 technology, and security; and

16 (4) continues to support the right of citizens of
17 the United States to constitutionally protected free
18 speech, including the right to express their political
19 views by engaging in personal boycott activity of
20 their own accord.

21 **SEC. 4. ADDITIONAL PROHIBITIONS RELATING TO FOR-**
22 **EIGN BOYCOTTS UNDER EXPORT ADMINIS-**
23 **TRATION ACT OF 1979.**

24 (a) DECLARATION OF POLICY.—Section 3(5) of the
25 Export Administration Act of 1979 (50 U.S.C. 4602(5))

1 (as continued in effect pursuant to the International
2 Emergency Economic Powers Act (50 U.S.C. 1701 et
3 seq.)) is amended—

4 (1) by amending subparagraph (A) to read as
5 follows:

6 “(A) to oppose restrictive trade practices
7 or boycotts fostered or imposed by foreign coun-
8 tries or international governmental organiza-
9 tions, or efforts by foreign countries or inter-
10 national governmental organizations to collect
11 information that have the effect of furthering or
12 supporting restrictive trade practices or boy-
13 cotts fostered or imposed by foreign countries
14 or international governmental organizations,
15 against other countries friendly to the United
16 States or against any United States person;”;
17 and

18 (2) in subparagraph (B), by inserting “or inter-
19 national governmental organization” after “any for-
20 eign country”.

21 (b) FOREIGN BOYCOTTS.—Section 8 of the Export
22 Administration Act of 1979 (50 U.S.C. 4607) (as contin-
23 ued in effect pursuant to the International Emergency
24 Economic Powers Act (50 U.S.C. 1701 et seq.)) is amend-
25 ed—

1 (1) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) in the matter preceding subpara-
4 graph (A)—

5 (I) by striking “United States
6 person” and inserting “covered per-
7 son”; and

8 (II) by inserting after “foreign
9 country” the following: “or an inter-
10 national governmental organization,
11 or efforts by a foreign country or
12 international governmental organiza-
13 tion to collect information that have
14 the effect of furthering or supporting
15 restrictive trade practices or boycotts
16 fostered or imposed by a foreign coun-
17 try or international governmental or-
18 ganization,”;

19 (ii) in subparagraph (A), by inserting
20 “or international governmental organiza-
21 tion (as the case may be)” after “of the
22 boycotting country”;

23 (iii) in subparagraph (D)—

24 (I) by inserting “(i)” after
25 “(D)”;

1 (II) by inserting “or with the
2 international governmental organiza-
3 tion (as the case may be)” after “in
4 the boycotting country”; and

5 (III) by striking the last sentence
6 and inserting the following:

7 “(ii) Furnishing information to a foreign
8 country or international governmental organiza-
9 tion in response to efforts by a foreign country
10 or international governmental organization to
11 collect information that have the effect of fur-
12 thering or supporting a restrictive trade prac-
13 tice or boycott fostered or imposed by a foreign
14 country or international governmental organiza-
15 tion. Such information includes information
16 about whether any person has, has had, or pro-
17 poses to have any business relationship (includ-
18 ing a relationship by way of sale, purchase,
19 legal or commercial representation, shipping or
20 other transport, insurance, investment, or sup-
21 ply) with or in the country to which the restric-
22 tive trade practice or boycott applies, with any
23 business concern organized under the laws of
24 that country, with any national or resident of
25 that country, or with any other person which is

1 known or believed to be restricted from having
2 any business relationship with or in a foreign
3 country, or with an international governmental
4 organization, that fosters or imposes the re-
5 strictive trade practice or boycott.

6 “(iii) Nothing in this paragraph shall pro-
7 hibit the furnishing of normal business informa-
8 tion in a commercial context as defined by the
9 Secretary.”; and

10 (iv) in subparagraph (F), by striking
11 “United States person” and inserting
12 “covered person”; and

13 (B) in paragraph (2)(F), by striking
14 “United States person” and inserting “covered
15 person”; and

16 (C) in paragraph (5), by striking “United
17 States person” and inserting “covered person”;

18 (2) in subsection (c), by inserting “or inter-
19 national governmental organizations against other
20 countries, or regarding efforts by foreign countries
21 or international governmental organizations to col-
22 lect information that have the effect of furthering or
23 supporting restrictive trade practices or boycotts fos-
24 tered or imposed by foreign countries or inter-

1 national governmental organizations” after “foreign
2 countries”; and

3 (3) by adding at the end the following:

4 “(d) COVERED PERSON DEFINED.—In this section,
5 the term ‘covered person’ means—

6 “(1) any domestic concern (including any per-
7 manent domestic establishment of any foreign con-
8 cern);

9 “(2) any foreign subsidiary or affiliate (includ-
10 ing any permanent foreign establishment) of any do-
11 mestic concern which is controlled in fact by such
12 domestic concern, as determined under regulations
13 of the President;

14 “(3) the government of the United States or
15 any State, territory, or possession of the United
16 States, or any subdivision, department, agency, or
17 commission of any such government; or

18 “(4) an individual who is—

19 “(A) a United States resident or national
20 (other than such an individual residing outside
21 the United States and employed by other than
22 a United States person);

23 “(B) an owner, officer, director, or em-
24 ployee of a domestic concern described in para-
25 graph (1) or a foreign subsidiary or affiliate de-

1 scribed in paragraph (2) or an officer, director,
2 or employee of an entity described in paragraph
3 (3); and

4 “(C) acting in the individual’s official ca-
5 pacity as such an owner, officer, director, or
6 employee.”.

7 (c) VIOLATIONS OF SECTION 8(a).—Section 11 of the
8 Export Administration Act of 1979 (50 U.S.C. 4610) (as
9 continued in effect pursuant to the International Emer-
10 gency Economic Powers Act (50 U.S.C. 1701 et seq.)) is
11 amended—

12 (1) in subsection (a), by inserting “or (j)” after
13 “subsection (b)”; and

14 (2) by adding at the end the following:

15 “(j) CERTAIN VIOLATIONS OF SECTION 8(a).—

16 “(1) IN GENERAL.—Whoever knowingly violates
17 or conspires to or attempts to violate a regulation
18 issued under section 8(a) prohibiting an action de-
19 scribed in paragraph (2) shall be subject to only a
20 monetary penalty under subsection (b) or (c) section
21 206 of the International Emergency Economic Pow-
22 ers Act (50 U.S.C. 1705).

23 “(2) ACTIONS DESCRIBED.—An action de-
24 scribed in this paragraph is any action described in
25 subparagraphs (A) through (F) of section 8(a)(1)

1 taken by a covered person (as defined in section
2 8(d)), or knowingly agreed to be taken by such a
3 person, with respect to the person's activities in the
4 interstate or foreign commerce of the United States,
5 with the intent to comply with, further, or support—

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

12 “(B) efforts by a foreign country or inter-
13 national governmental organization to collect
14 information that have the effect of furthering or
15 supporting restrictive trade practices or boy-
16 cotts fostered or imposed by a foreign country
17 or international governmental organization
18 against a country described in subparagraph
19 (A).”.

20 (d) DEFINITION OF INTERNATIONAL GOVERN-
21 MENTAL ORGANIZATION.—Section 16 of the Export Ad-
22 ministration Act of 1979 (50 U.S.C. 4618) (as continued
23 in effect pursuant to the International Emergency Eco-
24 nomic Powers Act (50 U.S.C. 1701 et seq.)) is amended—

1 (1) by redesignating paragraphs (7) and (8) as
2 paragraphs (8) and (9), respectively; and

3 (2) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) the term ‘international governmental orga-
6 nization’ includes the United Nations and the Euro-
7 pean Union;”.

8 (e) **EFFECTIVE DATE.**—The amendments made by
9 this section take effect on the date of the enactment of
10 this Act and apply with respect to actions described in
11 section 8(a) of the Export Administration Act of 1979 (as
12 continued in effect pursuant to the International Emer-
13 gency Economic Powers Act (50 U.S.C. 1701 et seq.))
14 taken or knowingly agreed to be taken on or after such
15 date of enactment.

16 (f) **IMPLEMENTATION.**—The President shall imple-
17 ment the amendments made by this section by exercising
18 the authorities of the President under the International
19 Emergency Economic Powers Act (50 U.S.C. 1701 et
20 seq.).

21 **SEC. 5. RULES OF CONSTRUCTION.**

22 (a) **NOTHING DIMINISHING FIRST AMENDMENT.**—
23 Nothing in this Act or an amendment made by this Act
24 shall be construed to diminish or infringe upon any right

1 protected under the First Amendment to the Constitution
2 of the United States.

3 (b) NONCOMMERCIAL SPEECH OR OTHER EXPRES-
4 SIVE ACTIVITY.—Consistent with current enforcement
5 practices, nothing in this Act or an amendment made by
6 this Act shall be construed to permit a person’s non-
7 commercial speech or other noncommercial expressive ac-
8 tivity to be used—

9 (1) as evidence to prove a violation of section
10 8(a) of the Export Administration Act of 1979, as
11 amended by section 4(b), including as evidence to
12 prove intent to violate such section 8(a); or

13 (2) as support for initiating an investigation
14 into whether such a violation has occurred.

15 **SEC. 6. DEFINITIONS.**

16 (a) IN GENERAL.—In this Act:

17 (1) ACTIONS TO BOYCOTT, DIVEST FROM, OR
18 SANCTION ISRAEL OR PERSONS DOING BUSINESS IN
19 ISRAEL OR ISRAELI-CONTROLLED TERRITORIES.—
20 Consistent with section 102(b)(20)(B) of the Bipar-
21 tisan Congressional Trade Priorities and Account-
22 ability Act of 2015 (19 U.S.C. 4201(b)(20)(B)), the
23 term “actions to boycott, divest from, or sanction
24 Israel or persons doing business in Israel or Israeli-
25 controlled territories” means actions by states, non-

1 member states of the United Nations, international
2 organizations, or affiliated agencies of international
3 organizations that are politically motivated and are
4 intended to penalize or otherwise limit commercial
5 relations specifically with Israel or persons doing
6 business in Israel or in Israeli-controlled territories.

7 (2) INTERNATIONAL GOVERNMENTAL ORGANI-
8 ZATION.—The term “international governmental or-
9 ganization” includes the United Nations and the Eu-
10 ropean Union.

11 (3) POLITICALLY MOTIVATED.—The term “po-
12 litically motivated” means actions to impede or con-
13 strain commerce with Israel that are intended to co-
14 erce political action from or impose policy positions
15 on Israel.

16 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to alter the established policy of
18 the United States or to establish new United States policy
19 concerning final status issues associated with the Arab-
20 Israeli conflict, including border delineation, that can only
21 be resolved through direct negotiations between the par-
22 ties.

23 Amend the title so as to read: “A bill to amend the
24 Export Administration Act of 1979 to include in the prohi-

1 bitions on boycotts against allies of the United States boy-
2 cotts fostered by international governmental organiza-
3 tions, and for other purposes.”.