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DID BEN AND JERRY'S¹ VIOLATE UNITED STATES ANTIBOYCOTT LAWS IN CHOOSING NOT TO RENEW THEIR LICENSING CONTRACT WITH THEIR ISRAELI LESSEE?

Recently, Ben & Jerry's announced its plan to cancel their contract renewal with THEIR Israel-based lessee.² Inherently, this decision raises the question of whether its conduct overstepped federal and state antiboycott laws.³ In particular, Ben & Jerry's conduct possibly violated Commerce Department antiboycott laws,⁴ Tax Department antiboycott laws,⁵ and state antiboycott laws.⁶

While most boycott-related inquiries are answerable in a straightforward manner, Ben & Jerry's conduct created additional new inquiries that are in need of evaluation: is a company violating a federal antiboycott provision by complying with a foreign boycott conducted by a

¹ Ben and Jerry's is a global ice cream retailer. Their parent company is Unilever. Ben and Jerry's announced in July of 2020 its plan to stop selling its products in what it called "Occupied Palestinian Territory," presumably referring to the West Bank and East Jerusalem. This decision coincides with the ending of Ben & Jerry's licensing deal with its Israeli franchise at the end of 2022. See TOI Staff, *Ben & Jerry's founders: It's a Boycott of Settlements, not of Israel*, TIMES OF ISRAEL (Oct. 11, 2021), <https://www.timesofisrael.com/ben-jerrys-founders-its-a-boycott-of-settlements-not-of-israel>. The company put out a statement attesting their belief. See Media-Center/Opt-Statement, *Ben & Jerry's Will End Sales of Our Ice Cream in the Occupied Palestinian Territory* (July 19, 2021), <https://www.benjerry.com/about-us/media-center/opt-statemen> [<https://perma.cc/5L93-FHG5>].

² See Media-Center/Opt-Statement, *Ben & Jerry's Will End Sales of Our Ice Cream in the Occupied Palestinian Territory* (July 19, 2021), <https://www.benjerry.com/about-us/media-center/opt-statemen> [<https://perma.cc/5L93-FHG5>].

³ This article explains some of the general federal provisions relating to boycotts but for a further analysis and a historical review of the BDS movement and antiboycott laws see Marc A. Greendorfer, *The Bds Movement: That Which We Call a Foreign Boycott, By Any Other name, Is Still Illegal*, 22 ROGER WILLIAMS U. L. REV. 1, 5 (2017).

⁴ 15 C.F.R. §760.

⁵ 26 I.R.C. § 999. For a comprehensive practical guide to U.S. antiboycott laws, See Melissa Proctor, *Export Regulation: US Antiboycott Laws by Practical Law Commercial Transactions*, PRACTICAL LAW PRACTICE NOTE 3-509-2210 (2022).

⁶ See Fla. Ann. § 215.4725 (2018). Other state antiboycott laws are possibly implicated, as will be explained. See *Infra* part 4.

country unrecognized by the United States?⁷ Furthermore, does it matter that while Ben & Jerry's claimed that it was pulling its business only from the West Bank, or at least its parent-company Unilever put out a statement to that effect, it actually cancelled its entire contract with Israel?

In more specific legal terms, can a boycott fostered by a foreign non-state—yet autonomous government—be considered as a state when determining whether a company violated U.S. antiboycott regulations by complying with that state's boycott request? That is, if Ben & Jerry's is cooperating with a Palestinian Authority (PA) promotion to boycott Israel, or even merely the West Bank, have they violated federal antiboycott law?

Similarly, how have U.S. states responded to similar company decisions that stopped doing business in Israeli-occupied territories, and did they make legally permissible choices that were not subject to state antiboycott regulation?

After discussing the history of antiboycott laws and the State of Israel, I will argue that due to the general acceptance of Palestine⁸ as a state for many practicable purposes, Israel's continuing presence in the West Bank, the legislative and precedential history of antiboycott laws, and the strong public policy motives behind antiboycott laws, when a company decides to boycott Israel or even just stop doing business in the West Bank, like Ben & Jerry's promised to do, it should be in violation of federal antiboycott law.

⁷ Yet the act of merely withholding business from a an unsanctioned-boycotted country, for instance, doing so for pure business concerns, is likely not illegal since boycotting regulations inherently require a company to be following a boycott to trigger the relevant prohibitions. *See* EAR § 760.2(a)(1).

⁸ This article provides the reader with a basic understanding of the history of Israel in the last century, as it relates to the West Bank. For a more in-depth understanding of the history of Israel prior to its founding, see the following: JOAN PETERS, *FROM TIME IMMEMORIAL: THE ORIGINS OF THE ARAB-JEWISH CONFLICT OVER PALESTINE* (1984) and ILAN PAPPE, *A HISTORY OF MODERN PALESTINE: ONE LAND, TWO PEOPLES* (2d ed. 2006). These two books are specifically chosen, as they provide a history of Israel from diametrical viewpoints and remove a possible bias in choice by the author. This approach has been similarly taken by other authors. See Marc A. Greendorfer, *The Bds Movement: That Which We Call a Foreign Boycott, by Any Other Name, Is Still Illegal*, 22 *ROGER WILLIAMS U. L. REV.* 1, 146 (2017).

Part 1: Anti-Boycott Laws

a. Anti-boycott laws of the United States:

The general body of antiboycott law consists of sets of regulations that prohibit U.S. companies from complying with aspects of other countries' boycotts that the U.S. does not support. Boycott is another name for export controls or embargoes administered by other countries.⁹

Although much of international trade compliance programs tend to be clearly outlined in particular and somewhat defined boundaries, antiboycott laws are complex and governed by a host of overlapping regulations making the exact restrictions imbedded in these laws quite confusing and leaving many wondering about their meaning.

That central thesis of the antiboycott regulations is that if a company takes part in a boycott of an unsanctioned country that is friendly to the United States, the boycotting company is likely to be federally sanctioned¹⁰ via Congress' Commerce and Treasury Antiboycott Laws and Regulations.¹¹ The most recently updated antiboycott statutory laws can be found in the Anti-Boycott Act of 2018:

[T]he 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,

⁹ University of Pittsburgh–Office of Trade Compliance, Antiboycott, <https://www.tradecompliance.pitt.edu/manual-guidelines/guidance-documents/antiboycott> [<https://perma.cc/AA9W-BMD8>] (last visited Jan. 24, 2022).

¹⁰ State related sanctions are discussed below but over thirty-five states have their own form of antiboycott laws, regulations, and related sanctions.

¹¹ See the illustrated table available on BIS's website, <https://www.bis.doc.gov/index.php/documents/enforcement/404-distinctions/file> [<https://perma.cc/X8CZ-VZHL>] (last visited Feb. 23, 2022) (outlining several of the differences between Congress's Commerce and Treasury related regulations).

or support any boycott fostered or imposed by any foreign country, 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.

50 U.S.C. § 4842.

Often, boycott questions can be answered by reviewing conduct examples set forth in the rules themselves by identifying cases that are most similar to the conduct at issue.¹² Also, generally boycott requests assume the form of a questionnaire by a company found in a boycotting country requesting another company to follow its country's boycott.¹³

Regarding the federal regulations in place, under Section 760 of the Export Administration Regulations (EAR),¹⁴ those who partake in a boycott may have their export licenses revoked. Also, they may face civil or criminal penalties under the Anti-Boycott Act of 2018.¹⁵ Furthermore, they may lose tax benefits under the Tax Reform Act of 1976, which can be found in Section 999 of

¹² See 43 Fed. Reg 3454 (1978), 44 Fed. Reg 66272, 49 Fed. Reg 18061 52 Fed. Reg 2511; BIS, Examples of Boycott Requests, <https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examples-of-boycott-requests> [<https://perma.cc/S8TJ-H45V>]. Mentioned there are several boycott examples including, "Prohibited Boycott Condition in a Purchase Order: 'In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League.'"

¹³ See BIS, Examples of Boycott Requests, <https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examples-of-boycott-requests> [<https://perma.cc/S8TJ-H45V>].

¹⁴ 15 C.F.R. Part 760. 50 U.S.C. § 2407.

¹⁵ § 4:2. Overview of the Arab boycott, Corp Couns Gd to Documenting Intl Trans § 4:2.

the Internal Revenue Code (IRC).¹⁶ Lastly, under Section 999, any taxpayer involved or requested to be involved in any prohibited boycott must file a report regarding the boycott involvement or request.¹⁷

The federal government promulgated these laws to prevent U.S. companies from participating in or supporting the Arab League boycott of Israel or any other boycott of a foreign country that is not sanctioned by the U.S. Government. The purpose behind these laws are stated in the federal statutory provision of the Antiboycott Act of 2018:

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;

(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 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.

¹⁶ 26 U.S. Code § 999.

¹⁷ *Id.*

50 U.S.C. § 4841. In specific, the U.S. Business of Industry and Security (BIS) regulations regarding boycotting considers the following as the main elements of an antiboycott prohibition: (1) a U.S. person; (2) that is engaged in activities in the interstate or foreign commerce of the United States; (3) is prohibited from taking certain enumerated and prohibited actions; (4) with the “intent” to comply with, further, or support; (5) an “unsanctioned” boycott; (6) unless an exception applies.¹⁸ To comply with a boycott, under IRS regulations, a company must be cooperating with the boycott of another country.¹⁹

As of 2008, eight countries, including Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates (Dubai, Abu Dhabi, Sharjah), and Yemen, were part of the international group of Arab countries that publicly boycotted Israel.²⁰ However, recently, Israel has signed several treaties with Arab countries, facilitated by the Trump administration.²¹ This has made

¹⁸ See 21.03 Bis Antiboycott Controls, 2013 WL 5356798, 1 (2021).

¹⁹ See 26 U.S.C. 999 (outlining there the general rule against participating in a boycott and the negative tax consequences to come if one participates in one, while inherently making it clear that one needs to participate in the boycott of another “country”: “If the person [. . .] cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that *country* and in any other *country* which requires participation in or cooperation with the boycott as a condition of doing business *within that country, or with the government, a company, or a national of that country*, shall be treated as operations in connection with which such participation or cooperation occurred, except to the extent that the person can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which there was no participation in or cooperation with an international boycott.” (emphasis added)).

²⁰ *Id.*; the 1977 Export Administration Amendments amended the Export Administration Act of 1969 to include prohibiting supporting any boycott and not one relating to Israel (“to direct the President to promulgate regulations. (1) to prohibit any United States person from supporting any boycott by a foreign country against any country friendly to the United States; and (2) to require the reporting of requests for such compliance to the Secretary of Commerce). shall not permit activities or agreements (express or implied) otherwise prohibited, which are not within the intent of such exceptions”). See H.R. 5840 95th Cong. (1977-1978). 5 C.F.R. Part 760.

²¹ Abraham Accords Peace Agreement: Treaty Of Peace, Diplomatic Relations And Full Normalization Between The United Arab Emirates And The State Of Israel, https://www.state.gov/wp-content/uploads/2020/09/UAE_Israel-treaty-signed-FINAL-15-Sept-2020-508.pdf [<https://perma.cc/DXX5-9KWM>] (Aug. 13 2020) (Detailing there the plan to increase in trade between Israel and the UAE the treaty states “The Parties shall enhance and expand their cooperation in innovation, trade and economic relations, so that the dividends of peace are felt across their societies. Recognizing that the principle of the free and unimpeded flow of goods and services should guide their relations, as well as the potential for diversification of bilateral trade opportunities, the Parties shall cooperate in order to enable favorable conditions for trade, and the reduction of trade barriers.”).

several antiboycott laws no longer relevant in certain Arab countries. For instance, the United Arab Emirates is no longer on the list of countries that boycott Israel thanks to the elimination of its boycott laws under the so-called Abraham Accords.²² Furthermore, Sudan has retracted its Israel boycott and Bahrain later joined the Abraham Accords.²³ Few Arab countries enforce the Arab boycott laws, although outdated tender documents or the documented acceptance of formal business offers include the boycott language but can be easily amended.²⁴

While Arab boycotts date back to 1922, the Arab League itself was founded in 1944 with one of its principal purposes the boycott of Zionistic Israel. The boycott was intended to directly prevent Israel from doing business with Arab countries.²⁵ However, since the 1950s, the boycott extended itself into a secondary boycott that extends the boycotting activity to third persons who are not involved in the primary transactions.

The first of Congress's acts under the commerce clause, which preceded the Antiboycott Act of 2018, was the Export Administration Act of 1969 which was as an element of the over 100 year

Peter Baker Et al., *Israel and United Arab Emirates Strike Major Diplomatic Agreement*, NY TIMES (Sep. 2, 2020), <https://www.nytimes.com/2020/08/13/us/politics/trump-israel-united-arab-emirates-uae.html> [https://perma.cc/U5XW-HSDE].

²² Kerry B. Contini, Borys Dackiw, *The UAE-Israel Abraham Accords – UAE Boycott of Israel Repealed but No Change in U.S. Antiboycott Laws*, SANCTIONS NEWS (Sep. 21, 2020), <https://sanctionsnews.bakermckenzie.com/the-uae-israel-abraham-accords-uae-boycott-of-israel-repealed-but-no-change-in-us-antiboycott-laws>.

²³ Abraham Accords, *Declaration Of Peace, Cooperation, And Constructive Diplomatic And Friendly Relations*, https://www.state.gov/wp-content/uploads/2020/09/Bahrain_Israel-Agreement-signed-FINAL-15-Sept-2020-508.pdf [https://perma.cc/F9AP-TWCE]; Daniel Sonnenfeld, *Sudan Annuls Its Israel Boycott Law*, <https://themedialine.org/by-region/sudan-annuls-its-israel-boycott-law>, THE MEDIA LINE (April 2021).

²⁴ See USTR 2013, pp. 15–18. Algeria, Morocco, Tunisia, the Palestinian Authority, Comoros, Djibouti, Somalia, Yemen, Lebanon, and the Gulf Cooperation Council countries do not implement the secondary or tertiary aspects of the boycott.

²⁵ See *Infra* note 30.

U.S. policy to control exports at a time of war.²⁶ Yet since the end of World War II, the export control policy has been used as a peace-keeping policy.²⁷ Furthermore, since the Cold War led to a major refocusing of export control policy on the Soviet-Bloc countries, enactment of the Export Control Act of 1949 was a formal recognition of the new security threat and of the need for an extensive peacetime export control system.²⁸

In addition to federal regulation, thirty-five states in the United States have their own laws against the—Palestinian Authority supported—Boycott, Divestment, and Sanction (BDS)²⁹ movement. Florida is one of several states with a warning provision.³⁰ For instance, Florida put out a statement with regard to the divestment of Ben & Jerry's from the West Bank, stating that Florida will “encourage the company to cease the boycott of Israel within 90 days in order to avoid qualifying for investment prohibition.”³¹ While New York’s antiboycott laws do not outright include the West Bank, its laws have been applied to include the West Bank or “territories occupied by allied nations.”³² Generally, antiboycott laws apply to any country that imposes its boycott on

²⁶Ian F. Fergusson, *The Export Administration Act: Evolution, Provisions, and Debate*, Cong. Res. Serv., RL31832 (2009). For a full explanation of the evolution of the Export Administration Act and recommended changes see RL31832. *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ BDS is used by a number of affiliated groups seeking to foster, inter alia, boycotts of Israel.

³⁰ See FLA. STA. ANN. § 215.4725 (West 2018).

³¹ *Id.*

³² N.Y.S. Exec. Ord. No. 157 (June 5, 2016), <https://www.governor.ny.gov/news/no-157-directing-state-agencies-and-authorities-divest-public-funds-supporting-bds-campaign> [<https://perma.cc/3C3G-WRQ8>]; for a First Amendment overview and challenge to NY’s executive order regarding boycotts, see Lindsey Lawton, *A New Loyalty Oath: New York’s Targeted Ban on State Funds for Palestinian Boycott Supporters*, 42 N.Y.U. REV. L. & SOC. CHANGE 649, 671 (2019). Like Ben & Jerry’s, Danske Bank, a Danish bank that appeared on New York’s initial blacklist but was subsequently removed, previously excluded from its investment portfolio three companies that construct and finance illegal settlements in the “Occupied Palestinian Territory.” *Id.*; Palestinian Legal, Overview, <https://legislation.palestinelegal.org/location/new-york> [<https://perma.cc/EGE6-XV2S>] (last visited Oct. 15, 2021).

another country it intends to do business with. Yet practitioners need to be most scrupulous when working with any member of the Arab League that originally participated in the Israeli boycott.³³

b. Boycotts, their end, and their loopholes.

There are three forms of boycotts spoken of when discussing the boycotts instituted the Arab League of Nations: primary, secondary, and tertiary boycotts.³⁴ A primary boycott is a collective refusal to patronize another and decide to dis-include this other entirely from business dealings or really any dealings at all.³⁵ A secondary boycott extends the boycotting activity to third persons who are not involved in the primary transactions, such as customers or suppliers and requires them to not do business with the primary boycotted. Secondary boycotts may include picketing or other concerted action against such third persons; such boycotts are subject to regulation and may be enjoined under some circumstances.³⁶ A tertiary boycott prohibits a company from doing business with another company that refuses to comply with a secondary boycott.³⁷ There have been tertiary

³³ Cal. Transactions Forms--Bus. Transactions § 7:134, 1. At the present time, the following are members of the Arab League: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and The Republic of Yemen. The United Arab Emirates is a federation of seven Emirates: Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Kaimah, Sharjah, and Umm Al-Quwain. Although not every member of the Arab League continues to boycott Israel (i.e., Egypt and the UAE), business transactions with the foregoing countries must nevertheless be closely reviewed. Thus, boycott related requests may originate from countries other than those listed above.

³⁴Office of the U.S. Trade Representative, NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS, 18 (2020) ([HTTPS://USTR.GOV/sites/default/files/2020_National_Trade_Estimate_Report.pdf](https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf), [<https://perma.cc/PWZ4-YBTC>]). The above source can also be referenced for the latest comprehensive authoritative source on the Israeli boycott according to particular countries and in general.

³⁵ See WITKIN, Summary of California L., Agency and Employment §§ 522, 524 (9th ed.). Yet, note that due to the sheer number of antiboycott provisions included in the antiboycott laws, many transgressors violate these laws but pass by unscathed due to the difficulty in catching each transgressor. *Id.*

³⁶ *Id.*

³⁷ *Id.*

boycotts regarding business dealings with U.S. and other firms that do business with blacklisted companies.³⁸

Secondary boycotts are not unique to Israel and other Arab countries; they have been around, at the least, since the early 1900s.³⁹ In reality, even before 1900, there were courts that routinely held secondary boycotts unlawful as criminal conspiracies.⁴⁰ In the past, secondary boycotts caused great harm to both Arab and Israeli consumers because of the companies that refrained from doing business with either of them to avoid conflict.⁴¹ However, in recent years, many countries that formally partook in either or both primary or secondary boycotts ceased doing so either formally or informally.⁴² Now, only three countries, Iraq, Libya, and Syria, still have secondary boycott regulations, with only Syria seriously enforcing their secondary boycott.⁴³

The end of the secondary boycott is possibly why Israel never filed a complaint against these countries with the World Trade Organization (WTO).⁴⁴ Still, Israel is known to be involved in private talks with the WTO regarding countries pulling out of the secondary boycott⁴⁵ because of

³⁸ Office of the U.S. Trade Representative, NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS, 18 (2020).

³⁹ RALPH M. DERESHINSKY ET AL., THE NLRB AND THE SECONDARY BOYCOTTS 1 (1981) (referencing the Frankfurter-Greene definition).

⁴⁰ *Id.*

⁴¹ See Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, <https://www.un.org/unispal/document/auto-insert-185434> [<https://perma.cc/LB6B-2NWX>] (Sep. 28, 1995).

⁴² Office of the U.S. Trade Representative, NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS, 19 (2020), https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf [<https://perma.cc/PWZ4-YBTC>].

⁴³ *Id.* While Lebanon still strongly maintains its primary boycott, it does not appear to maintain a secondary one. *Id.*

⁴⁴ Michael Freund, *Israel not bringing Arab boycott to WTO*, JPOST (May 25, 2006), <https://www.jpost.com/Business/Business-News/Israel-not-bringing-Arab-boycott-to-WTO> [<https://perma.cc/8FBQ-ZLK8>].

⁴⁵ *Id.*

the possibility that the secondary boycott is a violation of International Law.⁴⁶ These talks can possibly lead to a complete end of secondary boycotts.⁴⁷

The PA, in effect, agreed not to enforce the Arab boycott for five years after the 1995 Interim Agreement between the PA and Israel,⁴⁸ but the recently resigned Prime Minister Rami Hamdallah of Palestine signed a cabinet resolution in late March 2016 banning the import of goods made by five Israeli companies into Palestinian markets: Tnuva, Strauss, Tara, Soglowek, and Jafora-Tabori.⁴⁹ While the PA is participating in an Israeli boycott, it does not necessarily prove that the PA requested any other entity to follow suit. Regardless, if a company cites their support for the PA when joining a boycott, they are in effect, joining in a boycott by the PA and entering the firing line of antiboycott law.

The U.S. Treasury Department's Office of Foreign Asset Control (OFAC) has supported doing business in the West Bank with the PA, as well, stating that organizations are permitted to provide "donations of medicine, medical devices, and medical services to the Palestinian Authority Ministry of Health."⁵⁰ Yet, as mentioned above, the U.S. discourages doing any business with any

⁴⁶ Eugene Kontorovich, *The Arab League Boycott and WTO Accession: Can Foreign Policy Excuse Discriminatory Sanctions?* 4 CHI. J. INT'L L. 283, 284 (2003).

⁴⁷ *Id.*

⁴⁸ See the 1995 Interim Agreement regarding the West Bank Gaza Strip (commonly known as Oslo II), https://peacemaker.un.org/sites/peacemaker.un.org/files/IL%20PS_950928_InterimAgreementWestBankGazaStrip%20OsloII%29.pdf [https://perma.cc/LB6B-2NWX%20IL%20PS_950928]. The history regarding Interim Agreement runs deeper than what is discussed here. After the agreement was signed, it was later reconfirmed years later but never fully upheld with claims running from both sides.

⁴⁹ Liran Ofek, *The Delegitimization Phenomenon: Challenges and Responses The Palestinian Authority, the BDS Movement, and Delegitimization*, <https://www.inss.org.il/wp-content/uploads/2017/10/The-Palestinian-Authority.pdf> [<https://perma.cc/SK9F-E9FY>] (2015).

⁵⁰ See Neve Gordon, *Palestinian Health Care: Neglect and Crisis*, PALESTINE-ISR. JOUR., <https://pij.org/articles/483> [<https://perma.cc/2XCJ-DZAP>] (last visited Jan. 24, 2022).

connection to Hamas, which is a part of the PA.⁵¹ To that extent, under Title 31 of the Code of Federal Regulations,⁵² donations given to the PA “are strictly for distribution in the West Bank or Gaza and are not intended for . . . payment . . . to any account blocked,” which likely refers to entities like Hamas.⁵³

Part 2: The Application of Anti-Boycott Laws to the West Bank:

a. Can a foreign entity,⁵⁴ like the PA, qualify as a Foreign Country for purposes of Anti-Boycott Legislation while not being considered a sovereign state by the United States?

There has been much legal and scholarly debate over the status of the statehood of Palestine, particularly whether it is now a state or whether it ever stopped being one, which in turn affects whether a U.S. company would be violating antiboycott regulation if that company would follow a boycott promoted by the PA.⁵⁵ The UN gave the PA observer status beginning in 1998 but did not offer the PA status as a state.⁵⁶ From an international law standpoint, the PA may arguably

⁵¹ Jonathan Schanzer, *HAMAS VS. FATAH THE STRUGGLE FOR PALESTINE*, 13. Hamas was a splinter faction of the Palestinian Muslim Brotherhood. *Id.*, at 5. The driving ideological force behind Hamas (which is an acronym for Harakat al-Muqawamma al-Islamiyya, meaning “Islamic Resistance Movement”) is radical Islam. *Id.*, at 13.

⁵² Payment of Taxes and Incidental Fees to the Palestinian Authority, OFAC (https://home.treasury.gov/system/files/126/plc_gl3.pdf [<https://perma.cc/V4TA-HNS2>] (last visited Jan. 24, 2022)).

⁵³ *Id.*

⁵⁴ As will be explained in §B of Part 4, it is important to understand whether the PA is a state or should be for boycott related inquires because it affects the liability of a company that chooses to comply with a boycott that the PA may advocate for.

⁵⁵ See JOHN QUIGLEY, *THE STATEHOOD OF PALESTINE, INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT* (2010). Quigley details the evolution of Palestine and makes several arguments why Palestine is a state.

⁵⁶ Ralph M. Dereshinsky Et Al., *THE NLRB AND THE SECONDARY BOYCOTTS 1* (1981) (referencing the Frankfurter-Greene definition).

exist as a state.⁵⁷ Yet from the United States' view, the PA or PLO does not constitute obvious statehood,⁵⁸ and it may or may not be de-jure (legal) state⁵⁹, and may or may not be de-facto (in actuality) state.⁶⁰ Thus, if our inquiry ended here, even if the PA boycotted Israel and promoted others do the same, a U.S. company that adhered to such a boycott would not be in violation of U.S. antiboycott regulations because a company must be adhering to the boycott of another country to be liable.⁶¹

Yet due to the PA's autonomous stature—including its own healthcare system which has its own setbacks,⁶² school systems, government, and military—it is arguably a country for boycotting purposes because the primary policy reason behind the boycott regulations was to oppose the Arab League's boycott against Israel, which includes the PA, and is otherwise enabled to continue to

⁵⁷ See the definition of “state” from the Restatement (Third) of the Law of Foreign Relations, § 201, which provides: “a state is an entity that has a defined territory and a permanent population under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”¹ Therefore, the elements are: (1) a defined territory;² (2) a permanent population; (3) under the control of its own government; and (4) that conducts, or has the capacity to conduct, foreign relations. These criteria are interdependent but each element to some degree impacts the other.

⁵⁸ See § 11:13. Ved P. Nanda, David K. Pansius, Et al., *Common Law Definition of State*, LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS, 2.

⁵⁹ See Salvatore Fabio Nicolosi, *The Law of Military Occupation and the Role of De Jure and De Facto Sovereignty*, 31 POLISH Y.B. INT'L L. 165, 171 (2011). Regarding de facto and de jure sovereignty, only the latter constitutes legal title to possess a territory.

⁶⁰ See *Thorington v Smith*, 75 U.S.1, (1868); *Waldman v Palestine Liberation Org.*, 835 F3d 317, 329 (2d Cir 2016);. The two requirements to be a de-facto state as set out in *Thorington*, (1) that its existence is maintained by active military power, within the territories, and against the rightful authority of an established and lawful government; and (2), that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. This discussion would likely depend on who the rightful owners of the West Bank are. *Thorington* discussed the recognition of Confederate notes.

⁶¹ 50 U.S.C. § 4842.

⁶² See Neve Gordon, *Palestinian Health Care: Neglect and Crisis*, PALESTINE-ISR. JOUR, <https://pij.org/articles/483> [<https://perma.cc/UU96-LJQA>] (last visited Jan. 24, 2022).

harm Israel.⁶³ Essentially, the same logic can apply to any boycott against Israel which is being performed by any foreign non-state yet autonomous government. This is because leaving such action unregulated leaves room for companies to partake in a foreign boycott, continuing to harm the economy of a foreign entity friendly to the U.S., and claim that they were not participating in another country's boycott, or, at least, not a boycott of an actual country but rather one of a non-state government.⁶⁴ Thus, for a company to evade sanctions, the company would not need to stop the boycott at all, nor need to claim that its actions were unintentional.⁶⁵

While the PA promised not to partake in the boycott of Israel via letter to the U.S. and public statements,⁶⁶ President Abbas has publicly advocated for the boycott of the West Bank.⁶⁷ Additionally, The PA Foreign Ministry said it further “calls on companies working, directly or indirectly, with the settlement system to take similar positions and immediately stop their dealings and business.”⁶⁸ This raises the question whether removing one's business from the West Bank is to be considered complying with a boycott, even if the PA was to be considered a state. This matter

⁶³ Office of the U.S. Trade Representative, NAT'L TRADE ESTIMATE REP. ON FOREIGN TRADE BARRIERS, 19 (2020), https://ustr.gov/sites/default/files/2020_National_Trade_Estimate_Report.pdf [<https://perma.cc/PWZ4-YBTC>].

⁶⁴ *Id.* However, this logical conclusion need not be taken to the extreme to apply to any private party because one could single out the PA. That is, applying this idea to the PA would be unique because the PA is a state and one would need to qualify as a state to some extent before the U.S. would attempt to label what they did as a state boycott, like the PA which has at least obtained observer status in the UN.

⁶⁵ See *Infra 140*, the Official Complaint of *Honest Reporting* to has made a formal request to the U.S. Office of Antiboycott Compliance, a part of the larger federal administrative body of the Bureau of Industry and Security, and requested, <https://honestreporting.com/wp-content/uploads/2021/08/Unilever-U.S.-Department-of-Commerce-OAC-WEB.pdf> [<https://perma.cc/DGK3-KN9N>] (last visited January 1, 2022).

⁶⁶ *Id.*

⁶⁷ Yoel Goldman, *Abbas: Don't boycott Israel*, TIMES OF ISRAEL (Dec. 13, 2013, 5:08 PM), <https://www.timesofisrael.com/abbas-we-do-not-support-the-boycott-of-israel> [<https://perma.cc/MT3U-6YDH>].

⁶⁸ TOI Staff, *PA applauds Ben & Jerry's for ending sales in settlements*, TIMES OF ISR. (July 20 2021), <https://www.timesofisrael.com/pa-applauds-ben-jerrys-for-ending-sales-in-settlements> [<https://perma.cc/98L7-GD5E>].

can go both ways because on the hand, the PA is part of the Arab League. Yet on the other, the West Bank is not clearly included in federal antiboycott legislation, which merely includes the prohibition on the boycotting of a U.S. ally.⁶⁹

Still, one could argue there has been a tacit U.S. recognition of at least part of the West Bank as part of Israel because the U.S. has already begun allowing Israeli goods made in Area C of the West Bank to be labeled “Made in Israel.”⁷⁰ Furthermore, the United States has worked in the three decades since signing the U.S. Israel Free Trade Agreement to grow trade and investment ties exponentially with Israel, which is the first such agreement with any country. Additionally, the U.S. government has stated that it opposes economic measures against companies doing business with West Bank settlements.⁷¹ On that note, the objectives of the antiboycott provisions of the EAR encourage, and in specified cases, require U.S. persons to refuse to participate in unsanctioned foreign boycotts.⁷² That is, antiboycott regulations have the positive effect of preventing U.S. persons from advancing foreign policies of other nations that run counter to U.S. policy.⁷³ Thus, from both a policy standpoint recognizing where the U.S. stands, boycotting the

⁶⁹ See 26 U.S.C. 999

⁷⁰ 85 FR 83984 (2020); Tovah Lazaroff, *U.S. to label all of West Bank Area C goods 'made in Israel'*, JPOST (Dec. 24, 2020), <https://www.jpost.com/israel-news/new-us-labeling-policy-for-israeli-settlement-products-goes-into-effect-653146> [<https://perma.cc/KVB7-P7VE>].

⁷¹ HR 246 (2019); CRS Report, *Israel and the Boycott, Divestment, and Sanctions (BDS) Movement*, 12 (June 9, 2019).

⁷² See Office of Antiboycott Compliance (OAC), *Objectives*, BUREAU OF INDUSTRY AND SECURITY U.S. DEP'T OF COMMERCE, <https://www.bis.doc.gov/index.php/enforcement/oac#:~:text=The%20antiboycott%20provisions%20of%20the%20EAR%20encourage%2C%20and%20in%20specified,run%20counter%20to%20U.S.%20policy> [<https://perma.cc/HE4N-WRXB>] (last visited Feb. 23, 2022).

⁷³ *Id.*

Israeli settlements in the West Bank can arguably be considered to be the same thing as boycotting any other part of Israel.

Thus, as will be discussed in the next section, it should be considered that the purpose of the federal antiboycott laws would be undermined if Ben & Jerry's was not sanctioned after explicitly pulling its business from Israel as a purely political move.⁷⁴

b. A Case Study: Ben & Jerry's and Its Parent Company Unilever:

Allowing free trade in the Jewish settlements in the West Bank has evoked a lot of backlash from public interest groups in the United States.⁷⁵ These groups have pushed companies to exit Israel, or at least the West Bank, including direct letters to Ben & Jerry's.⁷⁶ This was also likely the reason of Ben & Jerry's to pull out its operations in the West Bank by cancelling its licensing deal with its local franchise ends at the end of 2022 and promising not to renew the deal stating how it “believe[s] it is inconsistent with our values for our product to be present within an internationally recognized illegal occupation.”⁷⁷ Yet the U.S. government has traditionally regulated international trade and included in its regulations prohibitions on boycotting Israel.⁷⁸

1. Has Ben & Jerry's actually triggered a federal anti-boycott regulation?

⁷⁴ *Id.*

⁷⁵ See *Ben & Jerry's out of Israel and the Illegal Settlements-Organizations worldwide call on Ben & Jerry's to end its complicity in Israel's occupation and illegal settlements in the West Bank and East Jerusalem*, VTJP (Sept. 9, 2013) <https://www.vtjp.org/icecream/internatletter.html> [<https://perma.cc/RA6U-G9AL>].

⁷⁶ *Id.*

⁷⁷ Audrey Cocklin, *Ben & Jerry's Will End Sales of Our Ice Cream in the Occupied Palestinian Territory*, FOX BUSINESS (July 19, 2021), <https://www.benjerry.com/about-us/media-center/opt-statement> (<https://perma.cc/LPG3-LX4W>).

⁷⁸ *Briggs & Stratton Corp. v Baldrige*, 728 F2d 915, 918 (7th Cir 1984).

It depends on how one looks at it. Under C.F.R. § 760.2 (1) (a), “No United States person may: refuse, knowingly agree to refuse, require any other person to refuse, or knowingly agree to require any other person to refuse, to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person, when such refusal is pursuant to an agreement with the boycotting country, or a requirement of the boycotting country, or a request from or on behalf of the boycotting country. (2) Generally, a refusal to do business under this section consists of action that excludes a person or country from a transaction for boycott reasons.”⁷⁹

Still, whether Ben & Jerry’s is actually acting pursuant to a boycott of another country is in of itself hard to say because any actual evidence on the matter is meek and hard to find. An actual investigation of the matter by a government agency can answer questions and help decide the issue. Once approached with a federal inquiry, the company would have to admit to any request if there was any. Reasonably though, merely responding to an angry U.S. mob does not constitute to a foreign entity for boycott related inquires.

One could argue that the case of Ben & Jerry’s is somewhat similar to what happened in the Kuwait Airways case.⁸⁰ In that case Kuwait Airways chose not to board fourteen passengers, who were holders of Israeli passports because of a Kuwait law that forbid entering into any agreements with a person living in Israel or an Israeli citizen.⁸¹ Kuwait Airways was later fined \$600,000 by the United States government. The argument that Kuwait Airways is similar likely is that in both

⁷⁹ C.F.R. § 760.2 (1)(a).

⁸⁰ See Alleged Antiboycott Violations, <https://efoia.bis.doc.gov/index.php/documents/antiboycott/alleged-anitboycott-violations-2020/1263-a763/file>, [<https://perma.cc/S5SH-N455>].

⁸¹ Kuwait Law No. 21.

cases companies did not clearly state that they were choosing to follow a country's anti-boycott laws while actually boycotting Israel in one form or another. Yet, Kuwait Airways may be different because it involved an airline inherently tied to the boycotting country (Kuwait), while Ben & Jerry's is not inherently tied to Israel.

2. What will the Federal Government do?

Yet, so far, the federal government, along with several U.S. states, has done and said nothing to stop Ben & Jerry's from discontinuing business in Israel, and all the more so in the Jewish settlements in the West Bank. The reason for inaction is likely because of the belief that until there is an actual full-stop to Ben & Jerry's ice cream sales in Israel, there is no actual boycott and everything that was said publicly by Ben & Jerry's should be seen as mere political posturing geared to appease groups that feel Israel is in the West Bank illegally.⁸² Yet if Ben & Jerry's follows through with its promise, it is possible it will be found liable under federal antiboycott regulations triggering civil fines, losing favorable tax incentives, and possible criminal prosecution.⁸³ The individuals involved may additionally (or alternatively) face up to 20 years of imprisonment if a criminal case is pursued.⁸⁴

⁸² See Eugene Kontorovich, *Ben & Jerry's Israel Boycott Could Cost Unilever*, WSJ OPINION (July 21, 2021), <https://www.wsj.com/articles/ben-jerrys-boycott-unilever-israel-palestine-11626895917> [https://perma.cc/496E-UWND] ("Ben & Jerry's operates in Israel through a licensee, an Israeli company that has been with the brand for 30 years and operates one of its few foreign manufacturing facilities. After a social-media pressure campaign from anti-Israel leftists, the company insisted that the Israeli licensee not sell ice cream in parts of Jerusalem, including the Jewish Quarter, and the West Bank, much of which is controlled by the Palestinian Authority and parts of which are under Israeli civil jurisdiction.").

⁸³ While the statutory language of the tax benefit denial is simple, its computation is not. For a full exploration and explanation of what tax benefits a company that participates in a company is likely to lose, see Charles Wagner, *I.R.C. Section 999: Taxing the Arab Boycott*, 10 CORN. INTERNAT'L L. JOUR 2, 7. A civil fine can be up to \$1 million dollars. Office of Antiboycott Compliance (OAC), <https://www.bis.doc.gov/index.php/enforcement/oac#Penalties> [https://perma.cc/PVL5-UGJH] (last visited Jan. 25, 2022).

⁸⁴ *Id.*

Regarding the intent required to be found liable under the Anti-Boycott Act, federal law requires that the party whose action is in question need intentionally boycott or intend to comply with a boycott against the boycotted country or entity.⁸⁵ This intent does not need to be stated outright by a company to be found liable, and instead can be inferred from the circumstances.⁸⁶ For example, if a person receives a request to sign a contract stating a promise to withhold business from a specified country, the furnishing of which is prohibited by an antiboycott regulation, and he or she knowingly complies, he or she is held to have clearly intended to comply with that boycott request.⁸⁷ He or she may even disagree with or object to the boycott itself but information will be deemed to be furnished with the requisite intent if the person furnishing the information knows that it was sought for boycott purposes.⁸⁸

Externally, Ben & Jerry's reason for cancelling its upcoming licensing deal appears boycott neutral because it suggested that its action was only motivated by the Israeli "occupation."⁸⁹ Ben

⁸⁵ 50 U.S.C. § 4842(a)(1) (finding that a covered person violates the Commerce antiboycott laws by engaging in prohibited activities, but only if it acts with the intent to comply with, further, or support any unsanctioned boycott); 15 C.F.R. § 760.2 ("This prohibition, like all others, applies only with respect to a United States person's activities in the interstate or foreign commerce of the United States and only when such activities are undertaken with intent to comply with, further, or support an unsanctioned foreign boycott. 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 national(s) or resident(s) of the boycotted country, or with any other person does not indicate the existence of the required intent.").

⁸⁶ 15 C.F.R. § 369.1(e)(4) (2021); *United States v. Meyer*, 864 F.2d 214, 218 (1st Cir. 1988) (Affirming where the Government brought action to collect \$5,000 civil fine posed on attorney charged with violating antiboycott regulations issued under Export Administration Act by completing and failing to inform Commerce Department about Saudi Arabia trademark registration form that asked whether his client had business relationship with Israel and intent was inferred from the circumstances). Yet for tax law purposes, intent is not required to be found liable, but the tax laws for unintentional transgressors are less stringent. *Carl Estes II, Federal Tax Consequences of International Boycotts*, 8 GA. J. INT'L & COMP. L. 685, 699 (1978).

⁸⁷ 15 C.F.R. § 369.1(e)(4) (2021).

⁸⁸ *Id.*

⁸⁹ Eugene Kontorovich, *Ben & Jerry's Israel Boycott Could Cost Unilever*, WSJ OPINION (July 21, 2021), <https://www.wsj.com/articles/ben-jerrys-boycott-unilever-israel-palestine-11626895917> [https://perma.cc/496E-UWND].

& Jerry’s board member, Anuradha Mittal is also the executive director of the Oakland Institute, a California-based progressive think tank that has already written tens of articles supporting the PA and arguing for international sanctions against Israel.⁹⁰ Thus, it is possible to infer Ben & Jerry’s intent from the circumstances.

To illustrate this point further, U.S. persons who merely alter their normal pattern of dealing to eliminate the passage of ownership of the goods or services to avoid the application of the antiboycott regulations, still violate antiboycott regulations.⁹¹ One organization, Honest Reporting, has filed a formal request with the BIS, against Ben & Jerry’s to stop the company from taking any form of boycott action or at least receive a penalty for trying to do so. As part of their claim, they write:

The United States does not recognize “Palestine” as a sovereign state, yet a long history of U.S. case law holds that there is a difference between a sovereign state versus a “country.” In this case, the PA fits the U.S. definition of a government that bears the responsibilities of a “country.” Furthermore, a so-called “State of Palestine” is recognized by the UN and 136 of its 193 member states. Accordingly, it would undermine U.S. policy if a technicality such as U.S. statehood recognition were to allow an active foreign government to flout U.S. laws with impunity.⁹²

⁹⁰ This is Hell, On Life, *Land and the Wall Between Them in Occupied Palestine*, OAKLAND INST. (Oct. 28, 2017), <https://www.oaklandinstitute.org/life-land-and-wall-between-them-occupied-palestine> [https://perma.cc/X3SU-F7VF].

⁹¹ See Supplement No. 8 to 15 C.F.R. Part 760.

⁹² Honest Reporting’s complaint letter to BIS, <https://honestreporting.com/wp-content/uploads/2021/08/Unilever-US-Department-of-Commerce-OAC-WEB.pdf> [https://perma.cc/DGK3-KN9N] (July 29, 2021).

Essentially, their argument stresses the strange outcome of how a company can evade antiboycott legislation via a mere technicality: the PA is not recognized by the U.S. as a country.⁹³ Nonetheless, as mentioned above, the fact that the PA is a fully capable and autonomous government should be sufficient to constitute a party promulgating a boycott because of the focus and purpose behind boycotts.⁹⁴ Additionally, the PA has already been recognized as a country by nearly 136 countries around the world. Lastly, the company made its decision in May, which was after Hamas unleashed a ten-day rocket barrage on Israeli civilians, so that may have been a specific catalyst for Ben & Jerry's decision.⁹⁵

3. State Responses:

Thus far, five states have made statements against Unilever, and in effect Ben & Jerry's, because of their independent antiboycott and discrimination laws that include the West Bank in a potential boycott violation.⁹⁶ Twelve state attorney generals joined a coalition and sent a letter to Unilever warning of an oncoming divestment action against the company.⁹⁷ They likely sent the

⁹³ *Id.*

⁹⁴ 50 U.S.C. § 4841.

⁹⁵ Eugene Kontorovich, *Ben & Jerry's Israel Boycott Could Cost Unilever*, WSJ OPINION (July 21, 2021), <https://www.wsj.com/articles/ben-jerrys-boycott-unilever-israel-palestine-11626895917> [https://perma.cc/496E-UWND].

⁹⁶ TA, Jacob Magid, *Five Us States Take Aim at Ben & Jerry's Over Settlement boycott*, TIMES OF ISRAEL (24 July 2021, 3:31 am) <https://www.timesofisrael.com/five-us-states-take-aim-at-ben-jerrys-over-settlement-boycott> [https://perma.cc/PF3C-XBPU]. Note, while twenty-one states have some form of legislation that includes the West Bank in their antiboycott regulations, only five of them have taken some form of action.

⁹⁷ Audrey Conklin, *Ben & Jerry's Israel boycott: Missouri leads 12 states urging parent company Unilever to reverse decision Vermont-based ice cream company announced in July that it would no longer sell its products in Israel*, FOXBUSINESS (Nov. 24, 2021), <https://www.foxbusiness.com/politics/ben-jerrys-israel-boycott-missouri-letter> [https://perma.cc/LPG3-LX4W].

letter because several states outright forbid boycotting Israeli settlements in the West Bank,⁹⁸ which they often sanction through divestment and procurement laws, as if the company joined a boycott of any other part of Israel.⁹⁹

i. Will Ben & Jerry's be required to re-invest in Israel, or otherwise be sanctioned by any states if they choose to not renew their agreement with Israel?

Ben Jerry's statement and decision may conflict with U.S.'s antiboycott laws, and in the alternative, may violate the U.S. policy of encouraging business in the West Bank, by allowing free trade there.¹⁰⁰ Unilever, the parent company of Ben & Jerry's, claimed that it did not endorse what Ben & Jerry's did.¹⁰¹ Accordingly, there is now a clash between Unilever and Ben & Jerry's independent board.¹⁰² However, many states in the U.S. did not accept Unilever's statements and chose instead to penalize Unilever.

⁹⁸ As of the year 2019, at least 14 states clearly refer to the West Bank as part of Israel regarding their antiboycott regulations and they include Arizona, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Nevada, New Jersey, North Carolina, Ohio, and Texas. CRS Report, *Israel and the Boycott, Divestment, and Sanctions (BDS) Movement* (June 9, 2019).

⁹⁹ Sara J. Watkins, *State Anti-Bds Laws Counteracting the Bds Movement and the Constitution*, 56 DUQ. L. REV. 199, 206 (2018). Watkins goes details the different approaches of federal and state governments while arguing that states should not interfere because matters of foreign policy are truly best left to be dealt with by the federal government.

¹⁰⁰ Whether an individual should be able to participate in a boycott privately is a subject that has been broached in several articles. *See generally* Patrick Keogh, *Confusion in the Marketplace: Anti-BDS Laws and Free Speech Principles*, 27 CARDOZO J. EQUAL RTS. & SOC. JUST. 609 (2021).

¹⁰¹ Unilever CEO says Fully Committed to Israel amid Ben & Jerry's Row (July 22, 2021), <https://www.reuters.com/business/retail-consumer/unilever-ceo-says-fully-committed-israel-amid-ben-jerrys-row-2021-07-22> [<https://perma.cc/M7H4-VYFF>].

¹⁰² *See* Olivia Solon, *Ben & Jerry's withdraws sales from Israeli settlements but clashes with parent company Unilever*, NBC NEWS (July 19, 2021), <https://www.nbcnews.com/business/business-news/ben-jerry-s-withdraws-sales-israeli-settlements-clashes-parent-company-n1274403> [<https://perma.cc/YJ63-G9BD>].

Taking the first shot, Arizona sold off \$93 million in Unilever bonds with plans to sell the remaining \$50 million it invested in Unilever; the latest in a series of actions by states with anti-Israel boycott laws.¹⁰³ Arizona's antiboycott regulations have seen their own set of backlash with a federal judge, in September 2018, calling one of the laws unconstitutional and unwilling to enforce a penalty on a private individual boycotter.¹⁰⁴ In response, Arizona amended its antiboycott regulations to only require enforcement against a company of at least ten people and a violation of at least \$100,000.¹⁰⁵ In effect, the 2018 suit become moot and was remanded accordingly in 2020.¹⁰⁶ As of now, Arizona's law remains unchanged and boycotting Israel with a company larger than ten people and in an amount larger than \$100,000 is illegal there.

Other states, including Texas and New Jersey, issued ninety-day warnings to Unilever to stop the boycott or risk losing its state-backed investments.¹⁰⁷ The New York State Common Retirement Fund, the third-largest public pension fund in the U.S., planned to sell \$111 million in

¹⁰³ Bob Christie, Arizona sells Unilever bonds over Ben & Jerry's Israel move, <https://apnews.com/article/middle-east-business-israel-boycotts-arizona-ee58d0d7ea761c527f14204fbc440e32> [<https://perma.cc/38FA-W3XR>] (Sept. 10, 2021). Also see the statement by Arizona's State Treasure Kimberly Yee who released a letter that she sent Parent-Company Unilever in the United Kingdom: "On August 3, 2021, the Arizona Treasurer's Office informed Unilever PLC that it was actively boycotting Israel due to the actions of Ben & Jerry's, a subsidiary of Unilever, announcing that it will withdraw sales from Israel. These actions would be in direct violation of Arizona statutes." [Aztreasury.Gov](https://www.aztreasury.gov)

¹⁰⁴ *Jordahl v. Brnovich*, 336 F. Supp. 3d 1016 (2018) (denying a motion to dismiss and allowing a preliminary injunction withholding the enforcement of the state's rule against a company. This was after the company sued alleging that Arizona law aimed at divesting state funding from companies that engage in a boycott of Israel, or decline to sign contract stating the company will be partaking in the boycott of Israel, violated the First and Fourteenth Amendments.).

¹⁰⁵ See the 2016 and 2018 house bills. Arizona House Bill No. 2617, Arizona 52nd Legis.- 2nd Regular Sess., 2016 Ariz. HB No. 2617, Ariz. 52nd Legis.- 2nd Reg. Sess. ("Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either.").

¹⁰⁶ *Jordahl v. Brnovich*, 789 F. App'x 589, 591 (9th Cir. 2020).

¹⁰⁷ Meghan Roos, *Texas Takes Step to Divest From Ben & Jerry's Over Refusal to Do Business With Israel*, NEWS WEEK (Sept. 23, 2021), <https://www.newsweek.com/texas-takes-step-divest-ben-jerrys-over-refusal-do-business-israel-1632128> [<https://perma.cc/Q9P8-EQFX>].

Unilever investments, accusing the company of breaking its policy that prohibits the boycott of Israel.¹⁰⁸ The most recent divestment was in Illinois.¹⁰⁹

The penalties against Unilever were not merely at issue because of the statements sent out by Ben Jerry's, nor merely because Ben & Jerry's is not doing business with the settlements within the West Bank. Rather, Ben & Jerry's will not be renewing its licensing agreement with Israel, which expires in December of 2022.¹¹⁰ One problem with this is clear: Israel is now de-facto boycotted by Ben & Jerry's until there is a renewed agreement. In essence then, individual U.S. states have chosen, to a degree, to recognize Israel's presence in the West Bank.

Florida is another state that issued a letter in which its governor, Ron DeSantis, called on the state's Board of Administration to immediately place Ben & Jerry's and Unilever on the Continued Examination Companies that Boycott Israel List and initiate the process to place both companies on the Scrutinized Companies that Boycott Israel List.¹¹¹ In his letter, he claims that the actions taken by Ben & Jerry's fall squarely within the prohibited activities defined by Florida law, which includes boycotts of "Israeli-controlled territories."¹¹² Furthermore, he demanded in his letter that

¹⁰⁸ Nick Kostov, *NY State to Sell Unilever Shares After Ben & Jerry's Israel Decision*, WSJ, <https://www.wsj.com/articles/new-york-state-to-sell-unilever-shares-after-ben-jerrys-israel-decision-11635520354> (Oct. 29, 2021) [<https://perma.cc/T5WB-YSDA>].

¹⁰⁹ *Illinois to divest from Unilever over Ben & Jerry's Israel ban*, i24NEWS (Dec. 23, 2021), <https://www.i24news.tv/en/news/international/americas/1640279853-illinois-bars-state-pensions-from-owning-unilever-over-israel> [<https://perma.cc/JEJ2-6FGN>].

¹¹⁰ Olivia Solon, *Ben & Jerry's Withdraws Sales from Israeli Settlements but Clashes with Parent Company Unilever* (July 19, 2021), [nbcnews.com/business/business-news/ben-jerry-s-withdraws-sales-israeli-settlements-clashes-parent-company-n1274403](https://www.nbcnews.com/business/business-news/ben-jerry-s-withdraws-sales-israeli-settlements-clashes-parent-company-n1274403) [<https://perma.cc/48FU-QQW3>].

¹¹¹ Staff News Releases, *Governor Ron DeSantis Calls on State Board of Administration to Place Ben & Jerry's on the Continued Examination Companies that Boycott Israel List*, FL. GOV. (July 22, 2021), <https://www.flgov.com/2021/07/22/governor-ron-desantis-calls-on-state-board-of-administration-to-place-ben-jerrys-on-the-continued-examination-companies-that-boycott-israel-list> [<https://perma.cc/K8NL-PKB5>].

¹¹² Fla. Stat. § 215.4725 (2018) ((a)““Boycott Israel’ or ‘boycott of Israel’ means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner.” (emphasis added)).

if Ben & Jerry's action is later found to be in violation of state laws, then the state must refrain from acquiring any and all Unilever assets consistent with the law.

Even though Ben & Jerry's is still selling ice cream in Israel and the West Bank, at least until the end of 2022 when their contract will end with Israel, it can be seen from the letters of both the Governor of Florida's and the State Treasurer of Arizona that they believe that the actions taken by Ben & Jerry's to change its business relationship with Israel may likely constitute discrimination against Israel.¹¹³ Thus, from the viewpoints of several states, Ben & Jerry's should likely re-invest in Israel, if Ben & Jerry's wants those individual states to re-invest in Unilever.

Ben & Jerry's may make the arguments that it is only following the secondary boycott of Palestine, which is not a country recognized by the U.S. or Israel or that it is merely withholding business from Israeli-controlled territory but not Israel itself. These arguments may stand up against federal antiboycott laws that do not clearly include Israeli-controlled territory.¹¹⁴ However, several state antiboycott laws focus on the discriminatory aspect of a boycott, and outright include Israeli-controlled territory, thus they will likely enforce their antiboycott laws against Ben & Jerry's.¹¹⁵

¹¹³ See *Supra* note 102 and note 97.

¹¹⁴ 50 U.S.C. § 4841.

¹¹⁵ Florida Fla. Stat. § 215.4725 (“Boycott Israel’ or ‘boycott of Israel’ means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in *Israeli-controlled territories*.”); N.Y.S. Exec. Ord. No. 157 (June 5, 2016); Ariz. Rev. Stat. Ann. § 35-393 (“Boycott’ means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in *territories controlled by Israel*.”); N.J. Stat. Ann. § 52:18A-89.14 (West) (“[N]o assets of any pension or annuity fund under the jurisdiction of the Division of Investment in the Department of the Treasury, or its successor, shall be invested in any company that boycotts the goods, products, or businesses of Israel, boycotts those doing business with Israel, or boycotts companies operating in Israel or *Israeli-controlled territory*”); Ill. Comp. Stat. 5/1-110.16 (2021) (“Boycott Israel’ means engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel and companies based in the State of Israel or in *territories controlled by the State of Israel*”).

ii. Zinger V. Ben & Jerry's Homemade Inc. & The Viewpoint of Israeli Law on Boycotts:

Recently, Avi Zinger, Ben Jerry's Israeli licensee and manufacturer of their ice cream in Israel, attempted to pre-empt Ben & Jerry's from holding back its renewal of its license by bringing suit in federal court in New Jersey against it and its parent-company Unilever.¹¹⁶ There are four causes of action, thus far, alleged in the complaint: (1) breach of contract; (2) wrongful termination; (3) breach of the covenant of good faith and fair dealing; and (4) false light invasion of privacy.¹¹⁷

To explain the relevant parts of the contract, in 2001, Ben & Jerry's agreed to a consent decree issuing 60% of Zinger's company stock to Zinger to comply with the Israeli Competition Authority (ICA).¹¹⁸ This agreement included the agreement that Ben & Jerry's and Unilever were not allowed to narrow or degrade the terms of the license without approval of the ICA.¹¹⁹ Furthermore, the contract expressly required selling and distributing products in the West Bank (or "territories").¹²⁰

¹¹⁶ Ginger Adams Otis, *Ben & Jerry's Israeli Manufacturer Files Lawsuit Over License Termination*, WALL ST. JOUR. (Mar. 3, 2022), <https://www.wsj.com/articles/ben-jerrys-israeli-manufacturer-files-lawsuit-over-license-termination-11646322615> [<https://perma.cc/2CUF-XJR4>].

¹¹⁷ See *Zinger v. Ben & Jerry's Homemade, Inc.*, 2:22cv01154; See the complaint to the case, <https://www.bloomberglaw.com/product/blaw/document/X1Q6ODSRR3O2> [<https://perma.cc/ADX7-XVH7>]. Also, the case is governed by New York law because of the choice of law provision in the contract. See page 62 the complaint.

¹¹⁸ See the complaint to the case, <https://www.bloomberglaw.com/product/blaw/document/X1Q6ODSRR3O2> [<https://perma.cc/ADX7-XVH7>]. This was done to alleviate anti-trust issues because Unilever also owns Strauss and several other large ice cream companies, which means it has over 50% of the Israeli ice cream market at the time.

¹¹⁹ *Id.*

¹²⁰ *Id.*

The breach of contract related claims are primarily backed by Zinger's reliance on Ben & Jerry's in upgrading his ice cream making facilities and losing a large sum of money in preparing for the coming year assuming that the licensing deal would continue.¹²¹ He claims that he was assured by Ben & Jerry's and Unilever that the license would be renewed while Ben & Jerry's has made public statements to the contrary.¹²² Thus, if Zinger wanted to continue to continue doing business with Ben & Jerry's, Israeli law disallows Ben & Jerry's from narrowing the scope of its license without permission from the ICA, which it did not acquire.

Second, by narrowing the license arrangement to mean that Zinger would not be allowed to continue his business dealing with Ben & Jerry's ice cream in the West Bank, Zinger was made unable to continue doing any business at all with Ben & Jerry's. This is due to the Israeli antiboycott law that disallows discrimination in products or public services based on place of residence in Israel or its territories.¹²³

The law states that individuals or organizations who publicize a call for an economic, cultural or academic boycott against a person or entity merely because of its affiliation to the State of Israel and/or to an Israeli institute and/or to a specific region under Israeli control, may be sued civilly, in tort by a party claiming that it might be damaged by such a boycott.¹²⁴ The law also allows Israeli authorities to deny benefits from individuals or organizations – such as tax

¹²¹ *Id.*

¹²² *Id.*

¹²³ Prohibition of Discrimination in Products, Services and Entrances to Entertainment Places and Public Spaces, 5761-2000, https://www.nevo.co.il/law_html/law00/74365.htm [<https://perma.cc/Z8BL-4M2W>] (for an English version see <https://law.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf> [<https://perma.cc/KU9V-V5X3>]).

¹²⁴ *Id.*

exemptions or participation in government contracts – if they have publicized a call to boycott and/or if they have obligated to participate in a boycott.¹²⁵

While this law was partially struck down in 2015 by the Supreme Court of Israel in *Avneri v. The Knesset*, the law's other provisions were upheld by the Court in its 5-4 majority decision.¹²⁶ The Court unanimously struck down section 2c of the law—permitting the imposition of compensation payments even if damages were not proven—ruling that it was unconstitutional.¹²⁷ The anti-discrimination law in Israel was successful in 2018 in requiring two New Zealanders to pay damages for harming the “artistic welfare” of three Israeli teenagers after the pop star Lorde cancelled a planned performance in Tel Aviv.¹²⁸ It was the first effective use of the anti-discrimination law.¹²⁹ However, its enforceability was doubted in that case.¹³⁰

Along with the filing of the complaint, Zinger attached the licensing contract he made with Unilever and Ben & Jerry's. The contract includes several provisions that would allow Ben & Jerry's to cancel the contract (with two weeks' notice) if it finds that Zinger violated the

¹²⁵ *Id.*

¹²⁶ H CJ 5239/11 Avneri v. The Knesset (2015) (Isr.), <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Avneri%20v.%20Knesset.pdf> [<https://perma.cc/TB45-343N>].

¹²⁷ *Id.*

¹²⁸ Israeli rights group sues New Zealanders who urged Lorde to boycott concert, ABC Au. (Jan. 31, 2018), <https://www.abc.net.au/news/2018-01-31/israelis-sue-new-zealanders-over-lorde-boycott/9380508> [<https://perma.cc/Q4BW-WVY8>]. Judge Mirit Fohrer ruled that Justine Sachs and Nadia Abu-Shanab of New Zealand must pay damages to Israeli teenagers Shoshana Steinbach, Ayelet Wertzel and Ahuva Frogel totalling more than NZ\$18,000 for writing a letter urging the singer to cancel her concert in Tel Aviv

¹²⁹ *Id.*

¹³⁰ See Maria Hook, Applying Israel's Anti-Boycott Law to New Zealand Activists: A New Zealand Conflict of Laws Perspective, UNIV. OF OTAGO, <https://ourarchive.otago.ac.nz/bitstream/handle/10523/12281/Applying%20Israel%27s%20Anti-Boycott%20Law%20to%20New%20Zealand%20Activists%20%20A%20New%20Zealand%20Conflict%20of%20Laws%20Perspective.pdf?sequence=1&isAllowed=y> [<https://perma.cc/BUT2-57ML>].

contract.¹³¹ One such provision is that if Zinger's company goes against the social mission intended by Ben Jerry's, Ben & Jerry's can then cancel the contract.¹³² However, Zinger would then get the chance to remedy the issue, even if it means stopping his business proceedings in the West Bank.¹³³ Nonetheless, Zinger claims that he has his hands tied and will be unable to remedy this issue because of the Israeli antiboycott law.¹³⁴

a. The Case of Airbnb:

According to the "blacklist" report issued by the UN, among the 112 companies with business ties to Jewish settlements in the West Bank, ninety-four of these companies are domiciled in Israel, and eighteen are listed in six other countries: the United States, Britain, Luxembourg, the Netherlands, Thailand, and France.¹³⁵ In particular, at the time of the report, home-rental company Airbnb had already acknowledged having listings in settlements and stated its plans to donate proceeds from any bookings in the contested "territory" to international humanitarian aid organizations.¹³⁶ Similarly, General Mills defended its business practices in the Jewish settlements of the West Bank by claiming that about 50% of the workers there are Palestinians, who enjoy full social benefits.¹³⁷

¹³¹ *Id.*

¹³² *Id.* at 51 (of the attached contract).

¹³³ *Id.*

¹³⁴ *Id.* at 30 (of the complaint).

¹³⁵ See JOHN QUIGLEY, *supra* note 55.

¹³⁶ *Id.*

¹³⁷ *Id.*

Airbnb, in November of 2018, said it would remove about 200 listings in West Bank settlements that “are at the core of the dispute between Israelis and Palestinians.”¹³⁸ It did this after the UN came out with their “blacklist” compilation of companies doing business in the West Bank, Israeli-annexed East Jerusalem, and the Golan Heights.¹³⁹

While Airbnb felt compelled to stop doing business in Israel because of alleged international war crimes, the company did not go through with it.¹⁴⁰ The company likely pulled out because the UN published a list of companies that “violate the human rights of Palestinians by operating in Israeli settlements in land Palestinians claim for a future state.”¹⁴¹

Airbnb likely did not follow through with its promise because of the four lawsuits that it was pulled into for exiting from the West Bank and the Golan Heights.¹⁴² These lawsuits were primarily rooted in the argument that by pulling out of the West Bank and the Golan Heights, Airbnb would

¹³⁸ See Mila Kelly, *An Analysis of Corporate Liability and A Shareholder Proposal Solution for Mitigating Risky Business Activity*, 12 WM & MARY BUS L. REV. 803, 818 (2021). Furthermore, explained therein are case studies of Airbnb, HP Enterprises, and Caterpillar which are geared to similarly telling companies what they should expect if they intend to stop their business enterprises with the West Bank. *Id.*

¹³⁹ Isabel Kershner, *Airbnb Bans Listings in Israeli Settlements on West Bank*, NY TIMES, <https://www.nytimes.com/2018/11/19/world/middleeast/airbnb-west-bank.html> [https://perma.cc/C6D7-85CD] (Nov. 19, 2018).

¹⁴⁰ Amnesty International, *Airbnb Listing: Company is “Deeply Compromised” By Israeli Settlement Properties*, <https://www.amnesty.org/en/latest/news/2020/12/airbnb-listing-company-is-deeply-compromised-by-israeli-settlement-properties> [https://perma.cc/DP3S-6EXG] (Dec. 10, 2020). Saleh Higazi, the Deputy Regional Director for Amnesty International is quoted as saying, “These settlements are a war crime under international law. Airbnb needs to do right by future investors and stop benefiting from illegal settlements built on stolen Palestinian land in the Occupied Palestinian Territories.” *Id.* As explained above, the claim that these lands are “stolen” likely emanates from the fact that Israel took control of the West Bank in the 1967 Six-Day war. *See Supra*, note 81. Yet these lands were for different periods of time under British rulership, Jordanian rulership, and Israeli rulership. Thus, it is unclear what makes these lands particularly “Palestinian.”

¹⁴¹ Daniel Estrin, *List of Companies Working with Israeli Settlements Made Public*, WFSU PUBLIC MEDIA, <https://news.wfsu.org/2020-02-13/list-of-companies-working-with-israeli-settlements-made-public> [https://perma.cc/JTF6-KFCJ] (Feb. 13, 2020). Among the companies singled out in the UN report are several from the United States, including General Mills and Airbnb. *Id.*

¹⁴² *Id.*

be acting unfairly, thus violating the Fair Housing Act (FHA), as it continued its business in other disputed territories.

For example, in one of those cases (*Silber v. Airbnb Inc.*) eleven U.S. citizens—comprised of Israeli settlers in the West Bank—sued Airbnb after they attempted to list their properties on Airbnb but were unable to do so.¹⁴³ The plaintiffs there claimed that under the FHA, Airbnb's decision to delist “illegal” settlement properties in the occupied West Bank facially discriminated against Jews and Israelis based on their race, religion, and national origin.¹⁴⁴ Not long after their filing, all four of the legal actions brought against the company were settled. It should be noted that the suits did not address whether Airbnb violated antiboycott legislation, thus leaving that question open.¹⁴⁵

d. What This All Means to Companies that Choose to Stop Doing Business in the West Bank:

There are many benefits and reasons for the U.S. to allow business in the West Bank and to ensure fewer boycotts there. Among others: (1) to follow through with the general shift in view of the Jewish settlements in the West Bank; (2) alleviate poverty in the West Bank; (3) for the U.S. to foster its international relationships; and (4) to act as an example to other foreign nations.

U.S. Companies that choose to boycott Jewish settlements in the West Bank are likely to incur some form of liability from the federal, or, more so, from state governments. This does not mean

¹⁴³ *Silber v Airbnb, Inc.*, 1:18-CV-01884-RGA, 2019 WL 3997098 (D. Del. Aug. 23, 2019). Also, in that same case, nine U.S. citizens sought out Airbnb rental properties in West Bank Settlements but were unable to attain them.

¹⁴⁴ *Id.*

¹⁴⁵ Update on Listings in Disputed Regions, AIRBNB NEWSROOM (Apr. 9, 2019), <https://press.airbnb.com/update-listings-disputed-regions> [<https://perma.cc/B2Q3-C56H>].

that companies that do not yet do business in the West Bank should begin doing business there out of fear of being sanctioned by any state or the federal government. Yet this may be the case in coming years, as the United States becomes more and more receptive to the idea that businesses in the Jewish settlements in the West Bank should be treated as part of Israel outside of the West Bank.¹⁴⁶ To that extent, in November of 2019, Mike Pompeo visited a winery in the Israeli settlement of Psagot, which was the first time a serving U.S. Secretary of State ever visited an Israeli settlement.¹⁴⁷

The United States favors businesses in the West Bank, and especially in the Palestinian territories there, because American business can help alleviate their increasing poverty.¹⁴⁸ While the United States does not only allow trade with any entity connected to Hamas, it does not demand any tariffs for imports from any part of the West Bank unconnected to Hamas. This in of itself encourages trade in the West Bank, in contrast to the debatable effect of boycotts on a foreign entity.¹⁴⁹

Conclusion: It is not in a party's best interest to boycott any part of Israel or the West Bank.

¹⁴⁶ Mark Landler, *Trump Recognizes Jerusalem as Israel's Capital and Orders U.S. Embassy to Move*, N. Y. TIMES, (Dec. 6, 2017) <https://www.nytimes.com/2017/12/06/world/middleeast/trump-jerusalem-israel-capital.html> [<https://perma.cc/2DHW-YSCD>].

¹⁴⁷ Paul Goldman, Lawahez Jabari, Et al., *Pompeo Recasts U.S. Policy Towards Israel with Visit to Settlement Winery*, NBC NEWS, (Nov. 19, 2020, 1:30 PM), <https://www.nbcnews.com/news/world/pompeo-recasts-u-s-policy-towards-israel-visit-settlement-winery-n1248126> [<https://perma.cc/Y4RJ-GJ98>].

¹⁴⁸ See State Reports, *2020 Investment Climate Statements: West Bank and Gaza*, <https://www.state.gov/reports/2020-investment-climate-statements/west-bank-and-gaza> [<https://perma.cc/DG6Y-KKMA>] (last visited, Dec. 11, 2021). Access to foreign markets through trade is essential for private sector growth, thus there are many incentives given to companies to invest in the PA.

¹⁴⁹ From an economics perspective, the exact effects of a boycott are controverted and debated with scholars going both ways, as the empirical evidence can be explained to show that a boycott can have a largely detrimental affect or no affect at all on the boycotted country. See generally, Panle Jia, Barwick, Shanjun Li, Et al., *Commercial Casualties: Political Boycotts and International Disputes*, CORNELL UNIVERSITY] (Nov. 24, 2018), https://barwick.economics.cornell.edu/CommercialCasualties_v5.pdf [<https://perma.cc/4VUU-V6MC>].

Companies should be wary of following a boycott promoted by the PA. Whatever the reason, be it because the PA is considered a state for boycott reasons or because a company divesting from Israel or the West Bank is committing an FHA violation, companies need to be careful before divesting from Israel and also from the West Bank.

By following a PA-promoted boycott, companies put themselves at risk from a social, federal, and state liability perspective. Using Ben & Jerry's as an example, by pulling its business, and in effect boycotting, what Ben & Jerry's calls the "occupied territories," Unilever lost substantial revenue. On the state level, many states have already divested Unilever. Federally, there has been a complaint filed with the Office of Antiboycott Compliance. Thus, companies stand to lose by joining a boycott of any part of the West Bank.

In a more general sense, the history of Israel—and particularly of the West Bank—is marked by strife and conflict. However, throughout the past century in the United States, and in the past twenty years globally, it has become the primary view that allowing free trade in Israel and in the entire West Bank is the proper policy choice. Public policy has likely been affected by the understanding that the world is a better place when working together. Taking the initiative, many countries like the United Arab Emirates have stopped their Israeli boycott. Furthermore, many boycotts have become irrelevant and have lost their need for enforceability, particularly in light of many countries backing out of secondary boycotts. Nonetheless, we can expect to see in the future that this backlash will lessen, especially as the world trend continues with countries legislating for policies that benefit their economic agendas, which are more and more open to free trade principles.