



Memorandum

VIA EMAIL

Date: July 29, 2011

To: Clients and Friends

From: Stanley J. Marcuss

Re: Proposed Changes in U.S. Anti-Boycott Law

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Congressman Berman (D. Cal.) has proposed an amendment to the law governing the U.S. Commerce Department's anti-boycott regulations to eliminate the mandate that the Regulations contain their current exceptions for compliance with foreign boycotts. Those exceptions permit compliance with a boycotting country's prohibitions on imports from and exports to a boycotted country, compliance with certain boycotting country import and shipping document requirements, compliance with so-called unilateral selections and compliance by boycotting country residents with boycotting country laws pertaining to imports in and the performance of contracts within a boycotting country. Under the amendment, the executive branch would be given the discretion to provide for such exceptions but would not, as now, be required to do so.

These exceptions have been in U.S. statutory and regulatory law for over thirty years. They reflect part of the delicate set of compromises that made adoption of the anti-boycott provisions of the Export Administration Act possible in the first instance way back in 1977. Indeed, they were thought by many to be essential to making the legislation workable as a practical matter given the realities of commercial and regulatory practice around the world.

Giving the executive branch the discretion to decide whether the regulations continue to contain such exceptions would send shivers down the spines of those who worry about upsetting an apple cart that has delivered the goods pretty well over the years in both combating the Arab boycott of Israel and preserving the ability of U.S. companies to do principled business in the Middle East. The proposal is a powerful reminder of the wisdom of the adage about not attempting to fix something that ain't broken.