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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

November 10, 2019

The Honorable Stavros Lambrinidis
Ambassador of the European Union to the United States
2175 K Street,
NW, Washington, DC 20037

Dear Ambassador Lambrinidis,

I write to raise concerns about an imminent ruling from the Court of Justice of the European Union (CJEU) on an issue which could create tensions between the European Union and the United States. As you are well aware, the EU and its Member States have been grappling with the issue of labeling products from Israel since 2015.

As you are most likely aware, the Court of Justice of the European Union (“CJEU”) is imminently expected to issue a ruling on whether a French interpretation of EU Food Labelling Regulation No. 1169/2011, which would mandate discriminatory labeling requirements on food products imported from Israel, is consistent with EU law. However, since this interpretation, the French administrative court suspended its regulation after facing a challenge in the case of Psagot Winery vs. France’s Ministry of Economy and Finance, and asked the CJEU for legal guidance.

The CJEU will consider whether the EU Food Labeling Regulation requires, for a product from a territory occupied by Israel since 1967, indication of that territory and as well an indication that the product comes from an Israeli settlement if that is the case. And if not, the CJEU must determine whether the provisions of the EU Food Labelling Regulation allow a Member State, such as France, to require those indications. The CJEU’s decision will indicate whether the EU may require that Member States mandate that products made by Israeli-owned companies in Jerusalem, including in the Jewish Quarter of the Old City, and in territories beyond the Green Line to be labeled as, for example, “Made in the West Bank (Israeli Settlement).” Products made by Palestinian-owned companies in that very same region could be labeled “Made in Palestine”.

The regulation in question is problematic for a number of reasons, including because it targets specific businesses based on the ethnicity and national origin of their owners.

A recent opinion authored by Advocate General Gerard Hogan raises the possibility of the CJEU mandating the implementation of this policy across Europe. This decision could require or allow Member States to implement such food labels, despite the challenges in doing so including: substantial costs (including for the private sector); near impossibility that customs agencies could ensure that the labels were accurate; lack of a food or product safety nexus; and inconsistencies

with other EU policies, including regarding discrimination, EU international trade obligations and the treatment of disputed territories.

I am deeply concerned that if the CJEU decision empowers the EU to require or allow its Member States to label Israeli and Palestinian products in the manner proposed, it will allow and encourage the politicization of EU rules of origin labeling with potential adverse unintended consequences, including by opening the door to near-unlimited use of “ethical considerations” in food labeling which would enable Member State protectionism and nationalism, and be unhelpful for the EU single market. Additionally, it could facilitate Boycott, Divestment and Sanctions (BDS) tactics and de facto boycotts and discrimination against Israel, and its products, and potentially lead to discrimination on the basis of ethnicity, religion and nationality, contrary to existing EU policies and laws against BDS campaigns, Israel boycotts and discrimination.

The U.S and E.U. traded nearly \$1.3 trillion worth of goods and services last year. Our bilateral trade and investment relationship is the largest and most integrated economic partnership anywhere in the world. If these unfair requirements are mandated or allowed by the CJEU, European countries would be forced to choose whether to single out the world’s only Jewish state for distinct, defamatory treatment, and thereby create policy tensions with the United States, or to continue to delay implementation while finding an appropriate approach.

The United States opposes discrimination or boycotts against Israel, supports a fair and open trading system, and many would see the manipulation of product labeling as negatively contributing to prospects for a durable, peaceful, directly negotiated solution.

The U.S. Federal Government and many U.S. States have enacted strong anti-boycott provisions that impose severe penalties and restrictions on companies that participate in boycotts or other economic pressure campaigns against Israel. If the CJEU decision empowers the EU to mandate or allow Member States to implement such labels which target Israeli businesses and exports there will be serious and far-reaching implications and unintended consequences. We hope you will communicate our concerns to your colleagues in Brussels, Strasbourg, and Luxembourg.
Respectfully,

Sincerely



Robert Menendez
United States Senator