



PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

15 November 2015

Via email [REDACTED]

Director, Foreign National Proceedings Litigation
Department of Special International Affairs
Office of the State Attorney
Ministry of Justice
State of Israel

Re: [REDACTED] Response to Request for Proposal

Dear [REDACTED]

This submission responds to your request for a proposal from [REDACTED] to develop legal talking points and advocacy arguments concerning the “Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967”, published by the EU on 11 November 2015. Based on the Instructions that you transmitted to us on 11 November 2015, we understand that this project is part of your broader efforts to counter BDS activists’ challenges to the legality of doing business and/or investing in Israel, and of doing business or investing, directly or indirectly with businesses operating over the “Green Line”.

Your Instructions include two general deliverables to be prepared in two stages of work as follows:

1. General talking-points as well as a template letter to the relevant audience, including current and potential buyers, investors, and public procurement authorities, based on general principles of law as well as relevant supra-national (EU Law, EU-Israel or EU-Palestinian Authority Association Agreements, WTO Agreements) arguments – for delivery 2-3 weeks from engagement.
2. Country-specific legal advocacy arguments, including Stage-1 countries: United Kingdom, France, Germany, Spain, Norway, Netherlands, Belgium, Denmark, Sweden and South Africa. [REDACTED] has in-house capacity to address all Stage 1 countries except Norway and South Africa, where we would work with our corresponding counsel after obtaining your approval. As part of this stage of

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

work, we propose to prepare a template of BDS-related questions and that would be completed with references to measures in each country reviewed and that will be used to prepare talking points and to support country-specific advocacy – for delivery 6-8 weeks from engagement.

As discussed during our interview call on 12 November, we consider that the foundation for the State of Israel's engagement on this subject matter must include a comprehensive legal memorandum that at least

- sets out the relevant claims underlying BDS activism on product labelling, focusing, from a trade law perspective, on alleged “consumer deception” rules and general exceptions;
- applies the relevant international trade regimes to the facts in the context of the operation of the EU Interpretative Notice, and related origin-marking laws and regulations; and
- reviews the implications of potential legal arguments (and EU counter-arguments) in order to map out strategies based on interests and priorities defined by the State of Israel, including taking a firm stand against the current EU labelling measure and preventing the spread of BDS measures to other sectors in the EU or to countries outside the EU. We would provide advice on attaining these objectives while avoiding prompting the EU or non-governmental activists to providing public “justification” for the origin labelling measure or other such initiatives, or distinguishing EU policy towards settlements from EU treatment of other arguable similar territorial situations.

We propose to deliver the two general deliverables described above on the basis of this legal memorandum. In order to deliver the requested work product, [REDACTED] will apply its expertise on international trade and investment law, public international law, and our experience in working with WTO Member governments to advocate positions across the range of WTO fora as well as representing Members in WTO dispute settlement proceedings.

The annexes to this submission include

Annex 1: Materials on [REDACTED] and our international trade and investment practices

Annex 2: List of WTO Dispute Settlement Cases in which [REDACTED] has been involved

Annex 3: CVs of the proposed [REDACTED] team

In order to deliver the general legal memorandum and the two specific deliverables described above, we propose a budget range from US\$200,000 to a US\$250,000 cap.

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

The proposed budget is all-inclusive and covers [REDACTED] fees and costs, preparation of country-specific advocacy points and coordination with corresponding counsel as necessary (country budget of USD10,000 to a USD15,000 cap), and costs and time for two one-day visits to Tel Aviv, with one visit suggested as soon as possible in the first stage of the project, and a second visit planned in the context of the second stage of the project. The budget does not foresee any other travel or in-person meetings other than telephone conferences or discussions in Geneva, and, given the “background” role that you described, does not foresee any direct [REDACTED] engagement with EU or other non-client government representatives. The per-country budget range and cap will apply to any additional countries that we agree to include in future phases of work under the same scope of work.

The proposed [REDACTED] team consists of the undersigned [REDACTED] as well as [REDACTED] and is designed to deliver the highest level of substantive expertise we provide efficient support to achieve your specific goals. In addition to our core team, we would draw on additional [REDACTED] lawyers as needed for their specific expertise including [REDACTED] (WTO litigation and “TBT” expert [REDACTED] (EU law, sanctions compliance and Brussels-based trade policy advocacy), [REDACTED] (trade and sanctions/boycott laws) and other lawyers as necessary to conduct country-specific research in the EU. The CVs of the core team and additional lawyers are attached in Annex 3 for your reference.

In addition to the scope of work that you have proposed and that we have discussed in our interview, we note that the State of Israel may wish to consider and/or to request additional legal advice on two additional legal / strategic points related to BDS:

- a) potential claims under international humanitarian law in the evolving field of “Business and Human Rights” that seeks to hold businesses responsible for alleged infractions of international human rights law arising in connection with global business operations, supply chains and investments, in proceedings under national law and through international tribunals. We highlight this issue in light of recent efforts in various jurisdictions to apply “international legal norms” or rules of customary international law in domestic law actions concerning businesses operating internationally in addition to enforcing international treaties and conventions directly between governments;
- b) potential claims under bilateral investment treaties or using formal or informal provisions of such treaties to raise BDS issues in consultations with individual EU countries. [REDACTED]’s international treaty arbitration practice is ranked in the top tier of global law firms, and we would be happy to provide additional information on potential claims or consultation procedures; and
- c) the EU angle of BDS in the United States in both trade/investment law and in the context of defenses to challenges to companies operating in Israel. We imagine that you are considering the U.S. angle to EU BDS issues, specifically the anti-

PRIVILEGED AND CONFIDENTIAL
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

boycott provisions in the Trade Promotion Authority (“TPA”) law, but we suggest that a direct connection be made between the current legal engagement in the EU, U.S. anti-boycott law and policy, and advocacy engagement in Brussels, EU capitals, and in Washington, D.C. Our International Trade group, including our Anti-Boycott expert [REDACTED], works closely with our Government Advocacy group in Washington, D.C. I have spoken in recent months with members of our Government Advocacy group specifically about efforts to counter BDS, and know they are following the matter closely.

If you require additional information about [REDACTED] or our proposal, I would be pleased to provide supplementary materials in writing and/or to arrange a follow-up discussion by telephone if that would be helpful.

I would like to confirm once again that [REDACTED] does not have any conflicts in this matter and that attorney-client privilege applies to our correspondence and discussions. If you choose to retain us in this matter, [REDACTED] will follow its standard client opening process including approval by our Business Review Committee and the signing of an engagement letter before work begins. If we move ahead, our the representation will be treated as confidential both inside our firm and externally.

I look forward to hearing from you, and hope to have the opportunity to work with the Ministry of Justice on this matter.

Cordially yours,

[REDACTED]

Annexes mentioned