

The ‘Economic’ Occupation – Illegal Settlement Production and the EU-Israel Association Agreement

Paper presented at the OPGAI and AIC Conference ‘United in Struggle against Israeli Colonialism, Occupation, and Racism: Economic Perspectives and Advocacy Seminar’ held in Bethlehem, 24-25 October 2009.

Michelle Stewart*

European Union-Israel Trade Relations: A Brief Overview

Economic and political relations as between Europe and Israel have always been of a complex and charged nature. Israel’s diplomatic association with the European Community (EC) can be traced back to 1958, when it became one of the first nations, after the United States and Greece, to establish relations with the newly formed Community.¹ The inaugural non-preferential trade agreement concluded between both parties was signed in 1964 and operated to reduce Community tariffs and custom duties on certain goods of particular interest to Israel.² Owing to the outbreak of the Six-Day War in 1967, no further agreements were negotiated until 1970, which witnessed the emergence of the First Preference Agreement between the EC and Israel. In the early seventies, however, the EC began to transform its policy approach to the Mediterranean region. The Community envisaged the establishment of a Euro-Mediterranean Partnership, which would serve to promote peace and economic prosperity in the region and eventually give rise to a Free Trade Area. As affirmed at the Paris Summit of Community leaders in 1972, the principle components of this policy would be the liberalisation of trade in the industrial sector, tariff concessions and forms of cooperation with regard to financial assistance.³

The proposed Euro-Mediterranean Partnership was effectively predicated on achieving regional integration between the EU and third-party Mediterranean countries, in addition

* *Michelle Stewart is a graduate of both the University of Limerick and Queen’s University Belfast, with a BA in Law and Accounting and an LLM in Human Rights and Criminal Justice. She is presently a legal researcher for Al-Marsad, the Arab Centre for Human Rights in the Occupied Syrian Golan.*

¹ Christian Hauswaldt, ‘Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement’ (2003) 14 *European Journal of International Law* 591, 594. The Community at that point was comprised of Belgium, Luxembourg, the Netherlands, France, Germany and Italy.

² Ilan Greilsammer and Joseph Weiler (eds), *Europe and Israel: Troubled Neighbours* (Walter de Gruyter, 1988) at 57.

³ A.E. Kellerman, K. Siehr and T. Einhorn (eds), *Israel Among the Nations* (Martin Nijhoff Publishers, 1998) at 266.

to fostering enhanced relations between third-party Mediterranean countries themselves.⁴ During this period, European-Israeli trade links were further strengthened in 1975 with the signing of the EC-Israel Co-operation Agreement. This 'Free Trade Agreement', as it is often referred to, provided the legal basis for economic relations between both sides and sought to promote the expansion of trade and increase competition on a reciprocal basis.⁵ Furthermore, the Agreement endeavoured to abolish custom duties and other restrictions on trade in both the EC and Israel.

The enlargement of the EC during the 1980's to encompass Spain, Portugal and Greece, proved economically challenging for Israel, in large part due to the substantial increase in market competition amongst agriculture exports, which the accession of these countries engendered. In addition, mounting concerns were raised with regard to Israel's growing trade deficit with the Community. As a corollary, Israel pursued a policy of strengthening ties with Europe and subsequently, its privileged partnership with the EU was underscored at the Essen European Council in 1994. By 1995, Israel had succeeded in renewing negotiations on revising and expanding the remit of the 1975 Agreement, which eventually culminated in the ratification of the EU-Israel Association Agreement in June 2000.

The EU-Israel Association Agreement

The EU-Israel Association Agreement signed on 20 November 1995 and subsequently ratified by the then Member States parliaments, the European Parliament and the Knesset, entered into force on the 1 June 2000 and is presently the legal basis governing relations between the European Communities and Israel. These association agreements, which Europe entered into with countries in the Mediterranean region, were tasked with fulfilling the broad objectives of the Euro-Mediterranean Partnership under the 'Barcelona Process'. The main components of the EU-Israel Association Agreement deal with diverse areas of common interest and include regular political dialogue, provisions regarding the liberalisation of trade and services, in addition to a strengthening of economic, social and cultural cooperation.⁶ The Agreement established two formal institutions, namely the Association Council and the Association Committee. An Association Council was established in accordance with Article 67 of the Agreement and consists of members of the European Council, Commission and members of the Israeli Government. The Council meets once a year to "examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest."⁷ The Council is supported in its functioning by an Association Committee, which is tasked with implementing the provisions of the Agreement.

⁴ Communication from the Commission to the Council and European Parliament on the 'Implementation of the Interim Agreement on Trade and Trade-Related Matters between the European Community and Israel' SEC (1998) 695 final, Brussels, 12.05.1998 at 3.

⁵ Supra note 3 at 3.

⁶ The agreement also aimed to ease trading tariffs and requirements, build upon the 1975 Agreement by means of improving the terms of trade in agricultural and manufactured products and furthermore, foster scientific and technological cooperation.

⁷ Article 67 of the EU-Israel Association Agreement.

The EU-Israel Association Agreement is of considerable economic importance and magnitude to the respective parties involved. Israel is considered one of the largest trading partners in the Euromed region and is ranked as the EU's 25th major trading partner, engaging in trade with the EU in excess of 25.7 billion euro in 2007.⁸ Additionally, the EU imported goods from Israel valued in the region of 11.3 billion in 2007, a substantial figure which serves to underscore the evolving significance and increasing enormity of trade relations established under the Agreement. The strength and depth of economic ties is also readily discernible in light of the fact that the EU is Israel's largest market for exporting goods and represents its second largest source of imports after the United States.⁹ The Association Agreement, however, has been the focus of much controversy and debate, both prior and subsequent to its inception. Much of this controversy has centred on the Israeli Government's practice of certifying or labelling products, originating in illegal Israeli settlements in the West Bank, Gaza, East Jerusalem and the Occupied Syrian Golan, as being Israeli in origin, a practice in direct violation of the EU-Israel Association Agreement.¹⁰ Furthermore, the EC has more recently been charged with a failure to comply with its own human rights obligations under the Association Agreement and international Law.

'Rules of Origin' Dispute

As early as 1997, the European Commission shed light on the improper application and implementation of the Protocol on Rules of Origin attached to the then EC-Israel Interim Agreement, which governed trade relations pending ratification of the Association Agreement.¹¹ Under the Agreement, each party granted the other preferential economic status, a corollary of which is that goods exported by either party would be exempt from custom duties and quantitative restrictions. The fundamental problem derived from the parties differing interpretation of Article 38 of the Interim Agreement (subsequently Article 83 of the Association Agreement) which stated that the Agreement applied to the territories of the EC and "to the territory of the State of Israel."¹² The underlying flaw was that no further clarification or definition on what precisely constituted 'the territory of the State of Israel' was provided. Israel applied this agreement with the EC to the territories it has occupied since 1967 and in accordance with "the same generally rejected interpretations of public international law on which it bases its rejection of its legal status and obligations as an occupying power."¹³ The unilateral annexation of East Jerusalem and the Golan means that, as a matter of Israeli law, they comprise part of the State of Israel. International law and indeed Community law, take a decidedly different view, however, one concluding that neither Israeli settlements in the Golan nor East Jerusalem

⁸ See European Commission website http://ec.europa.eu/trade/issues/bilateral/countries/israel/index_en.htm accessed 19 October 2009.

⁹ Ibid

¹⁰ Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel – Relating Commitments to Actions 2003-2004' (December 2004) at 17 <<http://www.euromedrights.net/usr/00000026/00000027/00000028/00000234.pdf>> accessed 19 October 2009.

¹¹ Supra note 4 at 5.

¹² Ibid at 7.

¹³ Supra note 10 at 28.

form part of the State of Israel.¹⁴ In implementing the Association Agreement, Israel refused to recognise the inherent distinction between products emanating from occupied territories and those emanating from the State of Israel. Products exported to the EC from Israeli settlements in the occupied territories were ineligible for preferential treatment and thus Israel's practice of certifying them as Israeli in origin was in clear violation of the Association Agreement.

After years of diplomatic wrangling on the issue, the labelling dispute was purportedly resolved in February 2005 when the EU and Israel implemented a non-binding 'technical arrangement', the purpose of which was to enable custom officials "to distinguish Israeli settlement products from those originating within Israel's internationally recognised borders for the purpose of denying preferential treatment...to settlement products."¹⁵ Under this 'technical arrangement', Israel would list on each proof of origin the names and Israeli post codes of production locations relied on to establish if the product in question was entitled to preferential treatment. Member State customs authorities would examine the proof of origin issued by Israel by referring to a list of settlement names and postcodes compiled by the European Commission. Accordingly, customs officials would void any proof of origin and refuse preferential treatment where a product was found to originate from a settlement location.¹⁶ Whilst the Commission ostensibly considers that the 'technical arrangement' in place should secure the proper functioning of the Association Agreement, the Euro-Mediterranean Human Rights Network has noted that one Member State representative has acknowledged that "the technical arrangement can be circumvented easily and 'that is undoubtedly happening."¹⁷ Furthermore, HM Revenue and Customs has also raised concerns that Israeli settlement products are circumventing import taxes and illegally benefiting from the EU-Israel Association Agreement.¹⁸

Perhaps the most rudimentary problem regarding the implementation of the Protocol on Rules of Origin under the Association Agreement is that the effective operation of the system relies almost entirely on the 'good faith' assumption that the correct labelling is being applied by the exporting country. Customs officials are not empowered to travel to Israel or the Occupied Territories and verify the origin of the products being exported. In addition, it has been asserted that some Israeli corporations have been known to misrepresent the production address on certificate of origin documentation or

¹⁴ United Nations Security Council Resolution 497 (17 December 1981) which declared the annexation of the Golan null and void and without international legal effect. UNSCR 59/33 on 31 January 2005 reiterated the illegality of settlement construction in the Golan.

¹⁵ Euro-Mediterranean Human Rights Network 'Third Annual Review on Human Rights in EU-Israel Relations – Accommodating to the 'Special' case of Israel 2005-2006' (June 2007) at 42 <<http://www.euromedrights.net/usr/00000026/00000027/00000028/00001339.pdf>> accessed 19 October 2009.

¹⁶ Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel: Mainstreaming or Selectively Extinguishing Human Rights? 2004-2005' (December 2005) <<http://www.euromedrights.net/usr/00000026/00000027/00000028/00000328.pdf>> accessed 20 October 2009.

¹⁷ Supra note 15 at 42.

¹⁸ 'Concerns over Israel Settlement Products' (BBC News 5 November 2008) http://news.bbc.co.uk/2/hi/middle_east/7708244.stm accessed 20 October 2009.

dupliciously apply the postcode of a business premises located inside Israel rather than the actual production location, in order to circumvent the application of custom duties¹⁹.

Product Labelling

The labelling of settlement products is an equally intricate and thorny issue. There is currently no requirement for Israeli settlement products, retailed in the EC, to be labelled as such.²⁰ The European Parliament and Council Directive 2000/13/EC, contains the main Community law provisions governing the labelling, presentation and advertisement of foodstuffs.²¹ The rationale underpinning the Directive is evidenced in recital (6), which affirms that the principal consideration of any rules regarding labelling should be that of ensuring that the consumer is both informed and protected. Furthermore, recital (14) states the labelling laws should prohibit the use of information that would mislead the purchaser. To this end, Article 2(1) provides that:

1. The labelling and methods used must not:
 - (a) be such as could mislead the purchaser to a material degree, particularly:
 - (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;²²

Article 3(8) contains further compulsory measures, requiring that the “particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff”²³ be provided on the label. Goods such as Yarden wine, which characterises its place of origin as ‘produce of Israel’, when in reality it originates from an illegal Israeli settlement, is manifestly incorrect. This is particularly so when one considers that such products do not qualify for preferential treatment under the EU-Israel Association Agreement. However, whilst labelling products as originating in the ‘Golan Heights’ might be considered a more precise description of their geographical origin, the use of such terms may prove misleading to customers who do not realise they are purchasing goods produced in Israeli settlements. These forms of misrepresentation are contrary to the principles established in the 2000 Directive. The same can be equally said with regard to ambiguous product labels that state the ‘West Bank’ as a place of origin.

¹⁹ ‘Settlement Products – the Issues and Advocacy Messages in Relation to the European Union’ at 2 <http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/worldweekforpeace/documents/2009_settlement_products.pdf> accessed 20 October 2009.

²⁰ Ibid.

²¹ Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

²² Directive 2000/13/EC Article 2(1).

²³ Directive 2000/13/EC Article 3(8).

Conclusion

The misleading nature of product labelling notwithstanding, one could argue that the inherent illegality of Israeli settlements under international law is such that it extends to settlement goods produced therein. It is long established that Israeli settlements are illegal under international humanitarian law, in gross violation of Article 49(6) of the Fourth Geneva Convention. Article 55 of the Hague Regulations 1907 states that “the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”²⁴ Furthermore, the right of permanent sovereignty over natural resources as regards the people of the Occupied Syrian Golan and the Occupied Palestinian Territory was reaffirmed by the United Nations, under General Assembly Resolution A/RES/63/201 in 2009.²⁵

Accordingly, importing produce visibly obtained from an illegal occupation is wrong in principle and should not continue unabated. Although the EU’s declarative diplomacy with regard to Israel’s settlement policies and practice have been coherent and legally correct, its operative diplomacy has proved to be highly inconsistent.²⁶ The EU-Israel Association Agreement merely applies a tariff to settlement products when it should instead consider prohibiting the entry of such goods in to European markets or indeed suspending the Agreement in its entirety. Maintaining the status quo serves only to solidify the form of economic occupation which the inhabitants of the Occupied Syrian Golan and the Palestinian Territories are experiencing, whilst concomitantly enabling multinational companies to profit in the process. The practice of importing illegal settlement products into the EU should thus be brought to a swift and resolute end.

²⁴ Hague Regulations IV of 1907 on respecting the Laws and Customs of War on Land, Article 55.

²⁵ See also United Nations General Assembly Resolution 1803 (XVII) (14 December 1962) ‘Permanent Sovereignty over Natural Resources.

²⁶ Supra note 10 at 11