



**“Interpretative Notice on  
indication of origin of goods  
from the territories occupied by  
Israel since June 1967”  
published by the European Commission on  
11th November 2015**

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Position paper

EUROPEAN  
COALITION  
FOR ISRAEL

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**Members of the Foreign Affairs Council of the European Union  
Ms. Federica Mogherini, High Representative For Foreign Affairs and Security Policy**

Brussels, 9<sup>th</sup> December 2015

Your Excellencies,

We write to you to express our concern about the “Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967” (“the Notice”) published by the European Commission on 11<sup>th</sup> November 2015.

**For the following reasons, we suggest that this Notice is not in conformity with international and European law, and will be counter-productive.**

- 1) *The Interpretative Notice claims to be a technical matter – clarification about existing Union legislation on origin information of products from “Israeli-occupied territories”.*

The Interpretative Notice and the statements therein by the European Commission indicate that one of the reasons for publishing the Notice concerns only a technical matter (consumer protection)<sup>1</sup>. To the extent this is the case, the Notice follows other similar measures. Over the past years, the EU has repeatedly adopted measures that concern activities of Israeli entities in East-Jerusalem, Gaza and Golan Heights and other parts of the West Bank. For example, on 30 June 2013 the European Commission adopted Guidelines in which it considered Israeli institutions that operate in the territories to be ineligible to receive grants, prizes and financial instruments.<sup>2</sup> On 17 February 2014 it went on to clarify ‘for the sake of market transparency and in accordance with public international law’ the inapplicability of a regulation that was to regulate the certification requirements for the import of meat to the Union with regard to the territories<sup>3</sup>. Also, having effects as from January 2015, the EU restricted the import of dairy products and poultry and eggs coming from the Jewish settlements in 2014.<sup>4</sup>

The suggestion that the Notice is intended to deal with consumer protection is neither logical nor true. The Foreign Affairs Council does not have the jurisdiction to deal with consumer protection issues. The real intent of the Notice is to impose the Union’s position concerning international law.

- 2) *The Interpretative Notice is in violation of the WTO and GATT.*

The Notice raises problems under international trade law. In particular, the Notice conflicts with the obligations of the Union and EU member states under two trade agreements to which the EU, its member states and Israel are party: WTO and GATT agreements. Under the WTO Agreement of the Technical Barriers to Trade it is considered that ‘members shall ensure that in respect of the technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to (...) like products originating in any other country.’<sup>5</sup> The Notice seems to be clearly in violation of this provision as the labelled products that are imported from the territories are treated in a manner less favourable than labelled

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<sup>1</sup> See paragraph (2) of the Notice.

<sup>2</sup> Guidelines on the eligibility of Israeli entities and their activities in the disputed territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards (2013/C 205/05). One exemption is for activities that are aimed at benefiting protected persons under International Humanitarian Law and/or promote the Middle East Process in line with the EU Policy.

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:054:0002:0009:EN:PDF>

<sup>4</sup> [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2014-](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2014-007918+0+DOC+XML+V0//EN&language=en)

[007918+0+DOC+XML+V0//EN&language=en](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2014-007918+0+DOC+XML+V0//EN&language=en) (4 December 2015) Divestment has also received some attention by the EU: Reports of the Heads of Missions in Jerusalem and Ramallah in recent years have called ‘to prevent, discourage and raise awareness about problematic implications of financial transactions (including foreign direct investments) in support of settlement activities, infrastructure and services.’ See for example:

[http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/10\\_01\\_11\\_eu\\_hom\\_report\\_on\\_east\\_jerusalem.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/10_01_11_eu_hom_report_on_east_jerusalem.pdf) (2010) and [http://www.eccpalestine.org/wp-content/uploads/2015/03/EU\\_HOMS\\_REPORT\\_ON\\_JERUSALEM-2014.pdf](http://www.eccpalestine.org/wp-content/uploads/2015/03/EU_HOMS_REPORT_ON_JERUSALEM-2014.pdf) (2014)

<sup>5</sup> Article 2.1. of the WTO TBT Agreement.

products from, for example, the Western Sahara.<sup>6</sup> Moreover this deviation from WTO obligations is not justifiable under GATT as labelling measures should not be applied in a manner that would constitute arbitrary or unjustifiable discrimination.<sup>7</sup>

3) *The Interpretative Notice promotes separation and division, and not co-existence .*

As for the consequences the Notice might have on the ground, the Notice is likely to lead to the opposite of what is desirable in light of the Middle East Peace Process. In the current situation, many Israeli entities operating in these territories promote the process of peace between the two groups by having Israelis and Palestinians working side by side.<sup>8</sup> They bring the two peoples together and as a consequence promote the peaceful coexistence between Israelis and Palestinian. The Notice, however, could lead to restrictions on production of goods in these territories, and as a result cause a decrease in production. It therefore has the potential and likely effect of risking the jobs of many thousands of Palestinian workers in these territories.<sup>9</sup>

4) *The Interpretative Notice imposes the view of the EU in relation to international law and territorial sovereignty upon the consumers.*

One of the objectives of the interpretative notice is giving the consumer the information on the origin of its products.<sup>10</sup> The indication of the label 'product from Israel' on those products that are produced in the disputed territories 'is to be considered incorrect and misleading', because of the European rejection of the sovereignty of Israel over the disputed territories. Thus by labelling these products in the way required by the Notice, the European Commission seeks to have its views on the sovereignty over the territories expressed to consumers in the EU. The Commission recalls that the Foreign Affairs Council has reiterated on various occasions that the European Union considers settlements to be illegal under international law.<sup>11</sup>

This imposition of the EU's position in relation to international law is illegitimate. Israel has legitimate rights to claim sovereignty in relation to all or part of these territories, and the question of sovereignty has never been resolved.

5) *The interpretative notice makes an assumption with regard to the status of Palestinian Statehood and the 1967 borders.*

In paragraph 9 of the interpretative notice it is suggested that the label 'product from Palestine' could be used for those products that come from the territories. By using this terminology, the European Commission goes in many ways beyond just giving information of origin to the products. It places itself in a position that has been reserved for Israel and the Palestinians only; who alone are qualified to determine the status of the territories, which can only be done so by means of negotiations and not by unilateral measures. Moreover, the European Commission makes mention of the 'pre-1967 borders' in paragraph 2. In view of international law this is incorrect, since the boundaries to which the European Commission refer to are not more than the Armistice Lines of 1949. These Armistice Lines were never intended, and cannot be considered, as legally effective borders.<sup>12</sup> Moreover, promoting the idea that these lines somehow constitute

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<sup>6</sup> Goods from the Western Sahara are labelled as 'Made in Morocco' and benefit consequently from the EU Morocco trade agreement (<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-001023&language=SL>) in contrast to the goods that originate from the disputed territories, which do not enjoy the preferential status as they are not covered by the EU-Israel AA.

<sup>7</sup> Article XX GATT; *Supra* note 5.

<sup>8</sup> These Palestinian employees earn two-to-three times more than the average earned by the general Palestinian population and they receive medical insurance and pensions.

<sup>9</sup> The number of Palestinians working in Israeli settlements was estimated around 25,000 in 2014

(<http://www.nytimes.com/2014/02/11/world/middleeast/palestinians-work-in-west-bank-for-israeli-industry-they-oppose.html>) on 4 December 2012).

<sup>10</sup> In the Notice the European Commission claims that there is a demand from the consumers for clarity about existing Union legislation on origin information of products from Israeli-occupied territories.

<sup>11</sup> See the Council's statements of 14th May 2012 and 10th December 2012. See also for example the Commission's Answers to Question 12th December 2014: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-007918&language=EN>

<sup>12</sup> See for example Article VI of the Israel-Jordan Armistice Agreement of 1949.

borders provides recognition and gives legitimacy to the illegitimate acts of aggression by Israel's neighbours in 1947-8 that resulted from their rejection of the 1947 Partition Plan and led to the establishment of the Armistice Lines in 1949.

The European Coalition for Israel shares the concerns of the European Union for a just and sustainable peace between Israel and her neighbors. However, we do not believe this Notice is in compliance with international law nor does it serve the purpose of promoting peace and co-existence between Israelis and Palestinians.

