

Briefing Document:

Goods from Jewish settlements in the Occupied Palestinian Territories (OPT)

There appears to be 4 issues here:

- (1) The labelling of goods from Jewish settlements, so that customers in Ireland can identify them and, if they wish, choose not to buy them
- (2) The collection by Ireland of the appropriate customs duties on settlement goods imported into Ireland
- (3) The use of non-renewable resources, contrary to Article 55 of the Hague Convention, for example, by Ahava in the manufacture of Dead Sea products
- (4) The legality of importing settlement goods

First, the basic facts:

- (1) Goods produced in Israel – within its internationally recognised 1967 borders – have preferential access to the EU market, under the EU-Israel Association Agreement, which has operated since 2000, that is, they can be imported into EU countries at a preferential tariff rate but, in some cases, they are subject to quotas.
- (2) Goods produced in Jewish settlements in the Occupied Territories certainly haven't got preferential access to the EU market. Their importation into the EU, including Ireland, is most likely legal, but they should not benefit from the preferential treatment afforded to goods produced in Israel.
- (3) Goods produced in the Occupied Palestinian Territories – the West Bank (including East Jerusalem) and Gaza – have preferential access to the EU market, under a Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, and the Palestine Liberation Organisation (PLO), which has operated since 1997, that is, they may be imported into EU countries at a preferential tariff rate but, in some cases, they are subject to quotas.

Israeli evasion of customs duties

Since the EU-Israel Agreement came into force in 2000, customs authorities in EU countries have had great difficulty distinguishing goods from Israel that were eligible for preferential treatment and goods from Israeli settlements that weren't, because Israeli exporters frequently labelled the latter "Produce of Israel".

In 2005, a requirement was introduced that the paperwork for goods seeking preferential treatment should indicate the goods' place of production and an accompanying postcode. This has been of little help in eliminating fraud, since Israeli exporters commonly give addresses in

Briefing Document: Israel-Hamas Ceasefire

Israel as the place of production for settlement goods, and/or mix settlement goods with goods from Israel and specify that the whole lot originated in Israel.

In the UK House of Commons on 27 January 2010 [\[1\]](#), Labour MP, Dr Phyllis Starkey, pointed to a report in 2006 in the Israeli business magazine *Globes* describing how easy it is to avoid paying duty on settlement goods:

"The method is easy: you invent an address within the Green Line and operate using this address. In this way you do not have to pay the customs fees that apply to products exported from across the Green Line. The method works, but not for those whose company carries a name that gives away the true location-such as Golan Height Wineries.'

She continued:

"The Israeli authorities clearly turn a blind eye to this practice, although it is interesting to see that, at the same time, they have set aside 30 million Israeli shekels through the Israel Export Institute to be used for compensation for manufacturers from across the Green Line, by paying the import duties for them. However, presumably that is only done for those whose names give away where they are, because only four exporters have applied."

The British experience

In the same speech, Dr Phyllis Starkey, suggested that as much as 80% of the settlement goods imported into Britain may be avoiding customs duties and gave evidence that it is next to impossible for the British customs authorities to prevent this fraud, under the present arrangements for importing these goods.

According to Dr Starkey, information on exactly where goods are produced is often available to British retailers and importers in their traceability systems, which exist primarily to meet food safety requirements, but also to provide customers with information on the origin of goods. However, at present, this information is not used by the British customs authorities to deny preferential treatment to settlement goods. A UK government minister assured Dr Starkey that the UK custom authorities would look into using this information to check on the origin of goods.

Labelling settlement goods

On 10 December 2009, the UK Department for Environment, Food and Rural Affairs (DEFRA) issued advice about the labelling of settlement products on sale in the UK in the document *Technical advice: labelling of produce grown in the Occupied Palestinian Territories* [\[2\]](#) The document begins:

"The Government has received requests from retailers, consumer groups and NGOs for greater clarity about which origin should be stated on food and drink goods that have been produced and packed in the Occupied Palestinian Territories (OPT). Their enquiries have focused particularly on the distinction between products from Palestinian producers and products from Israeli settlements in the OPT."

The advice is as follows:-

"For produce from the West Bank, labelling currently states country of origin as '**Produce of the West Bank**'. Traders and retailers may wish to indicate whether the product originated from an

Briefing Document: Israel-Hamas Ceasefire

Israeli settlement or from Palestinian producers. This could take the form, for example, of '**Produce of the West Bank (Israeli settlement produce)**' or '**Produce of the West Bank (Palestinian produce)**', as appropriate." (paragraph 4)

Note that this is merely advice, not a legal requirement.

Note that the document also says:

"Separately, the Government considers that traders would be misleading consumers, and would therefore almost be certainly committing an offence, if they were to declare produce from the OPT (including from the West Bank) as 'Produce of Israel'. This would apply irrespective of whether the produce was from a Palestinian producer or from an Israeli settlement in the OPT. This is because the area does not fall within the internationally recognised borders of the state of Israel." (paragraph 5)

Big retailers have an interest in providing accurate place of origin information to customers. Whereas there is no downside for suppliers in giving false information about the origin of goods to customs authorities in order to evade customs duty, they have to be more careful about lying to purchasers lest they cease to purchase. So, my guess is that the DEFRA proposals will work in practice – and UK customers will be provided with accurate information about settlement goods.

Will this have any impact on what seems to be widespread evasion of duty on settlement goods? That depends on whether the customs authorities make use of information that is already in the hands of retailers about the origin of goods.

The use of non-renewable resources

Avava cosmetic products are based on Dead Sea mud, a non-renewable resource from the OPT. Arguably, this is contrary to Article 55 of the Hague Convention on the Laws and Customs of War on Land, which says:

"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." [3]

There may be other settlement products which use of non-renewable resources from the OPT.

The situation in Ireland

In the Dáil, on 21 January 2010, Chris Andrews suggested that Ireland follow the UK's example with regard to the labeling of goods from the West Bank. Responding for the Government, Dick Roche, Minister of State in the Department of Foreign Affairs, said:

"The Minister for Foreign Affairs and I have discussed this and he has followed the UK consultation process with interest and he took careful note of the issuing of the new guidelines in December. It is important to make clear that there is nothing to stop Irish retailers now from clearly labelling goods to distinguish settlement produce. The example of the UK suggests, however, that many retailers feel more comfortable doing so, or requiring such labelling from





Briefing Document: Israel-Hamas Ceasefire





their suppliers, when there are clear Government guidelines to follow, to which the Deputy referred. ...

“Produce from the West Bank, including from settlements, is not and should not be labelled as “Product of Israel” but an identifier of “Produce of the West Bank”, or something similar, could well mislead consumers into assuming they were buying goods from Palestinian producers. There is an element of a double edged sword to this. Many Irish consumers might well wish to be aware if they are buying produce originating in illegal settlements. I am, therefore, in favour of consumers being given the information to make this choice, and of similar guidelines issuing here. The Minister for Foreign Affairs is in agreement with this view. Product labelling is not the responsibility of the Department of Foreign Affairs but rather a matter primarily for other Departments. However, the Minister has requested officials in his Department to discuss with the other relevant Departments with a view to following best practice observed in other countries.” [\[4\]](#)

That is a positive development but it falls short of a firm commitment by the Government to follow the UK's lead on this matter.

Mary Coughlan, the Minister for Enterprise, Trade and Employment, whose department would certainly be involved in the production of labelling advice, answered questions from Aengus Ó Snodaigh on 2 February 2009. Here are his questions and her reply:

“182. Deputy Aengus Ó Snodaigh   asked the **Tánaiste and Minister for Enterprise, Trade and Employment**   if her attention has been drawn to the issues surrounding labelling of products from illegal Israeli settlements; and her plans to address these issues. **[4816/10]**

“183. Deputy Aengus Ó Snodaigh   asked the **Tánaiste and Minister for Enterprise, Trade and Employment**   if her attention has been drawn to the practice of shopping centres here renting floorspace to Israeli outlets selling Dead Sea products which are in fact products from illegal Israeli settlements; the action she will take regarding same. **[4817/10]**

“Tánaiste and Minister for Enterprise, Trade and Employment (Deputy Mary Coughlan):

I propose to take Questions Nos. 182 and 183 together.

“The issue raised by the Deputy involves a number of different policy considerations. In so far as my own area of direct policy responsibility is concerned, the Consumer Protection Act 2007 includes specific provisions in relation to the provision of information to consumers in the course of commercial transactions. Specifically the Act provides that the provision of false information in relation to the geographical or commercial origin of a product and where that information would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make, such a practice is a misleading commercial practice. Traders who engage in misleading commercial practices commit an offence and are liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided for under the Act. Evidence of traders engaging in misleading commercial practices should be brought to the attention of the National Consumer Agency, which is the body responsible for the enforcement of the Consumer Protection Act 2007.

“Should the products referred to in the Deputy's questions relate to food products, there are Regulations governing the labeling of certain food products. These Regulations are enforced

Briefing Document: Israel-Hamas Ceasefire

by the Food Safety Authority of Ireland, which operates under the auspices of my colleague the Minister for Health and Children.

As regards issues relating to Israeli settlements, these issues essentially involve foreign policy considerations, which are the responsibility of the Minister for Foreign Affairs." [\[5\]](#)

Strangely, the Minister didn't say anything about bringing in a voluntary labelling scheme, when it is apparently under discussion within the Government.

What needs to be done in Ireland?

(1) Labelling

Judging by Mary Coughlan's answer, it appears that it is an offence under the Consumer Protection Act 2007 to sell settlement goods as if they originated in Israel and evidence of this should be brought to the attention of the National Consumer Agency. Assuming this is correct, we should recommend that consumers do this and tell them how to do it.

We should get a member of the Oireachtas to find out what's happening about providing advice about labelling of goods from the West Bank.

(2) Collection of customs duties

We need to find out about the evasion of customs duty on settlement goods in Ireland, and if information in the hands of retailers about goods origin could be used to reduce evasion. This would seem to a job for a member of the Oireachtas.

(3) Using a non-renewable resource

On whether Ahava is breaching Article 55 of the Hague Convention by using a non-renewable resource from the OPT, we should get question asked in the Oireachtas and investigate whether there is a legal remedy in Ireland.

(4) The legality of importing settlement goods

Most likely this is legal, but it would be worth looking into.

References:

- [\[1\]](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100127/halltext/100127h0009.htm#10012764000002) www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100127/halltext/100127h0009.htm#10012764000002
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