

# Settlement products – the issues and advocacy messages in relation to the European Union

*A paper for use in the European Union developed by Quaker Peace and Social Witness, UK, participants in World Week for Peace in Palestine Israel*

## The Issues

### 1. Background

There are over 250 settlements and in total about 450,000 settlers live in the West Bank. The Palestinian population amounts to around 2.4 million. Settlements are prohibited under international law and been denounced by the UN and numerous governments, including that of the UK and the EU whose position is that they are illegal. Israeli settlements in the West Bank and East Jerusalem are a barrier to peace in the region. Many settlements have thriving businesses which produce and sell a range of goods, some of which are exported to the EU. The income from this trade helps make settlements financially viable entities and thus arguably helps to perpetuate the conflict.

### 2. Factors facilitating EU trade with settlements

There are a number of factors which potentially facilitate settlement products being sold in the EU. These are:

- Manufacturers of settlement goods illegally applying the EU-Israel Association Agreement to products from settlements in the occupied Palestinian territories and labelling those goods as from Israel.
- The difficulties for customs authorities in policing the above.
- Israel compensating settlement companies for loss of earnings as a result of correct implementation of the EU-Israeli trade agreement.
- Misleading consumer labelling of settlement products
- The potential inability of some EU retailers to differentiate between settlement and Israeli goods.
- The fact that there is no law banning settlement products coming into the EU.

Further information on each of these is set out below.

#### 2.1 Incorrect application of preferential trade agreements

The European Union has a preferential trade agreement with Israel which means that some Israeli products can be imported into the EU with no or a reduced level of duties being applicable. In theory these benefits do not apply to settlement products. However, in practice it is likely that some settlement products are illegally taking advantage of the arrangement by being declared as being of Israeli rather than settlement origin. Where it occurs, this action essentially amounts to tax evasion. It also means that settlement goods can be sold at a lower price than they would if the correct level of taxation was paid.

In response to pressure from campaigners, in 2005 the EU instigated a “technical arrangement” whereby Israeli exporters have to provide proof of the origin of their goods. Exporters are now obliged to indicate “the precise place of production of the goods,

together with its postcode”<sup>1</sup> on the documentation which is required to claim trade benefits under the free trade agreement.

It is the responsibility of EU member states to ensure that the products coming into their jurisdiction which claim to be of Israeli origin are not in fact settlement products. To help with this the EU has drawn up a list of settlements and their postcodes which it considers to be beyond Israel’s 1967 borders and thus ineligible to take advantage of the benefits of the free trade agreement. Individual customs authorities must cross-reference the postcodes provided on customs documents with this list.

Whilst this is a step forward, there remains some concern that settlement products are still illegally coming into the EU under the preferential trade agreement. According to NGOs and the Palestinian Delegation, official trade figures showing EU/settlement trade appear to be artificially low. It has been reported for example that some Israeli businesses falsify the production address on documentation or that they use the postcode of one of their sites located inside Israel as opposed to the actual production location code and that a major Israeli business magazine has published features advising companies how to do this in order to circumvent customs regulations. All of this indicates that in all probability, some settlement products are still slipping through the net.

## **2.2 A problem of implementation**

Late last year a UK ‘Non-paper’ at the EC encouraged other member states to conduct a series of investigations into the origins of some products as being Israeli, to stop the preferential trade agreement being abused in this way. It is unclear what reception these proposals received.

One of the main problems with the implementation of the agreement is that the system largely relies on correct labelling by the exporting company. EU customs authorities do not have the authority to go to Israel/ the Occupied Territories to check the origin of goods and are thus reliant on whatever information they can obtain through documentary checks and EU based examinations of the relevant produce. EU customs authorities can ask the Israeli customs authorities to investigate complaints on their behalf, however apparently the Israeli authorities often fail to respond. All of this makes it extremely difficult to obtain firm evidence about whether the system is being abused, particularly in cases of deliberate deception.

If more member states were to undertake their own investigations this may give the EU sufficient evidence to raise the issue with Israel. It is also possible that the EU could undertake its own investigation of the situation, however there does not at present seem to be sufficient political will to make this happen.

## **2.3 Israeli compensation for settlement companies**

As a response to the ‘technical agreement’ the Israeli government has set up a compensation scheme to assist companies who have lost out as a result of more stringent application of the EU-Israeli preferential trade agreement. This means that those companies can operate more or less in the same way as if they had received preferential trade status.

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<sup>1</sup> HMRC guidance ‘tariff preferences: Importation of goods from Israel’

It is unclear as to whether this is actually permissible under World Trade Organisation (WTO) rules. This has not been tested at the WTO dispute resolution panel, however it is possible that any WTO member could ask for this situation to be investigated. To date, however it does not appear that any WTO member has shown any interest in doing this.

## **2.4 Labelling**

Currently there is no requirement for settlement products being sold in the EU to be labelled as such. Where they knowingly sell settlement products, many UK retailers now label them as being from the 'West Bank'. However, many campaigners feel that this is insufficient to enable consumers to tell whether they are buying from settlements or from Palestinian enterprises and that settlement goods should be clearly labelled as such.

## **2.5 Weak supply chain monitoring by retailers**

Many campaigners/NGOs strongly suspect that some retailers are actually unable to tell whether or not the products they sell are from Israel or the Occupied Territories. Some supermarkets such as Marks & Spencer do appear to have sophisticated sourcing/tracking systems and direct relationships with growers/producers which enable them to tell the exact origin of the goods. Certified organic produce is also subject to similarly rigorous systems. However many retailers, particularly those who buy through intermediaries, appear not to have rigorous systems for identifying the exact origin of goods.

This means that retailers may inadvertently be mislabelling goods as 'Israeli' and furthermore may, inadvertently be selling goods which have unlawfully taken advantage of the EU-Israel preferential trade agreement.

## **2.6 The law and trade in settler products**

Currently there is no explicit law banning settler products being imported into the EU. Ideally EAPPI and other NGOs working on this issue would like to see a straightforward ban on them being imported. There are a number of legal arguments indicating that EU trade in settlement goods could be illegal; however this has not been tested in court.

# **3 What might be done? Possibilities for advocacy**

## **3.1 At National Government/ EU level**

Government action (both at the EU and national government level) is necessary to draw up and/or implement legislation to either ban or stop facilitating trade in settler products.

**At the EU level:** there does not appear to be much appetite for taking action over and above what has already been done concerning the 'technical arrangement'. As such it would seem that there is much work to be done in terms of raising the profile of this issue and building a call for action. Engaging with sympathetic MEPs and encouraging them to raise the issue in the European Parliament could be useful as could be sustained advocacy by sympathetic governments.

**At the National Government level:** Continued public pressure at this time could well encourage the governments to step up their own action on these areas and to put greater effort into encouraging action at the EU level.

A ban on settlement goods is likely to be far more difficult to achieve, as governments will clearly be concerned about the impact this might have on their relationship with Israel. However, by continuing to allow trade with settlements (entities which EU governments view as illegal and have continually spoken out against), this position is contradictory. As a ban is ultimately what is needed to stop EU trade with settlements campaigners must continue to point this out and show that there is public demand for such a measure.

A list of suggested questions/demands for elected representatives can be found in appendix 1.

### **3.2 Actions on retailers**

Although government action is needed to officially end the trade in settlement products, it is the demand by European retailers which actually drives the trade. As such, action by retailers could do much to reduce this, whether or not a ban is put into place. Ideally more retailers would stop sourcing settlement products. However, at the very least they should have a clear labelling policy and have systems which are sufficiently robust to be able to confidently identify the source of their products.

There is some indication that retailers are beginning to notice consumer pressure on this issue; if this were stepped up they may be more likely to implement new policies.

#### **Find out more:**

World Council of Churches policy summary on Israel/Palestine (including a call to boycott settlement products) <http://www.oikoumene.org/en/events-sections/icappi-2008/resources/wcc-policy.html>

Website of the Ecumenical Accompaniment Programme in Palestine and Israel:  
[www.quaker.org.uk/eappi](http://www.quaker.org.uk/eappi)

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## **Appendix 1: Questions/ Demands that could be put to elected representatives**

### **1. In relation to a ban on settlement products coming into the EU**

#### **Questions:**

- Given that Settlements are illegal under international law is EU trade with these entities lawful? What is the EU doing to stop trading with these entities?

#### **Demands:**

Through Elected Representatives, the Foreign Office Ministries or Customs and Excise bodies could be asked to:

- Legislate to ban settlement produced goods entering the country/EU.

(This is best option, but given the political realities this is unlikely to happen in the short term. The following demands would however also be helpful)

- Put more resources into and step up the action to investigate the origin of suspected settlement products, including raising non-compliance of Israeli customs officials if this is the case.
- Be more forceful in its requests for other member states to undertake their own investigations on settlement products illegally taking advantage of the preferential trade agreement.
- Ask the European Commission to launch its own investigation and, if the results of this show that the regulations are being circumvented, to demand that Israel is more pro-active in differentiating between settlement and Israeli goods.
- Push for an examination of the legality of the Israeli settlement compensation scheme, and if appropriate push for a complaint to be made to the WTO.

National Governments could be asked to:

- Issue guidance advising clearer labelling of settlement products.

MEPs could be asked :

about their views on these issues and to ask questions/ raise similar demands via appropriate European Parliamentary processes such as, if they sit on the Foreign Affairs Committee or the International Trade Committee. As external relations are a competency of the European Commission, it is however unlikely that MEPs will have any direct legislative power over these areas. They could however play a useful role in raising the issue, helping to create a general awareness of it and sympathy towards the demands as above.