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Palestine Economic Policy Research Institute

Round Table Discussion (5)

**The EU-Israel Association Agreement and
Trade Abuses in Regards to Settlements Products**

2012

Summary

The EU-Israel Association Agreement and Trade Abuses in Regards to Settlement Products

July 17, 2012

Introduction

The subject of the roundtable was Israel taking advantage of the 1995 EU-Israel Association Agreement (AA) to export settlement goods to Europe under preferential terms. This is important for the Palestinian Territories because, by treating settlements as part of Israel, it denies their territorial boundaries and undermines their efforts to establish a state, and because it economically supports the settlements. It is important to the EU because it is a violation of their trade law and calls into question their ability to enforce their trade agreements.

Themes of Roundtable Discussion

The core themes of the roundtable were the reasons why the EU has failed to successfully enforce the regulations of their trade agreement with Israel for so long, and what the EU can do to enforce the agreement and to influence Israeli actions with regards to exports of settlement goods and with regards to its policies towards the Palestinian Territories more generally.

Speakers

John Gatt-Rutter is the EU Representative to the West Bank and Gaza Strip, a position to which he was appointed in December 2011. Prior to this, he has held numerous positions both in the Middle East and relating to Middle Eastern affairs, including as the member of the Council of the EU's Middle East/Mediterranean Task Force responsible for the peace process and relations with the Palestinians.

Charles Shamas is a Palestinian expert on trade and legal issues. He is founder and senior partner of the MATTIN Group, which applies law, economics, and trade policy to enforcement of international human rights and humanitarian law. He is also co-founder of Al-Haq, and a member of Human Rights Watch's Middle East and North Africa advisory board.

Summary of the Session

Dr. Numan Kanafani, MAS Research Director, chaired the roundtable and provided an introduction which gave a background for the session.

The 1995 EU-Israel Association Agreement (AA) created preferential trade between the EU and Israel, particularly with regard to agricultural products, which were not covered under previous trade agreements. It falls within the framework of the EU's 1995 Barcelona Declaration stating their objective of enhancing trade cooperation between Mediterranean states. Israel has continually taken advantage of the agreement to export settlement products as Israeli ones, under the preferential trade terms of the agreement, even though the AA specifically states that it applies only to products produced within "the State of Israel". In 1998, the European Parliament stated to the European Community that "most of the products certified as originating in 'Israel' were actually produced in the occupied Palestinian territories."

Mr. John Gatt-Rutter - Introductory notes

Mr. Gatt-Rutter began by stating that the EU has taken a strong position against settlements, based in international law, particularly in their latest position, given in the Council Conclusions on the Middle East Peace Process in May. This position recognized that the time had come to move beyond words – "declaratory diplomacy" – towards action, and give teeth to their position against settlements. Because the EU is a complex supranational body rather than a national one, action is

by nature more difficult for it than words, and implementing agreements (such as the AA) more difficult than signing them.

He emphasized again that the EU had taken a very strong position against settlements, and that their latest statement had taken them time because they had been seeking for ways to add teeth to it, and noted the impact of political considerations, contrasting them with the legal considerations. He described the EU's strong position against settlements as a reflection of the substantial concern among all EU foreign ministers about the absolute lack of progress in the peace process, and stated that settlements would be receiving less focus if there was more progress in the peace process.

He emphasized that the EU was not talking about any boycott of settlement products, but about "the correct implementation of existing legislation," in particular the rules of origin in the technical arrangement. He acknowledged that there were loopholes in it and the loopholes are something the EU is looking into.

Mr. Gatt-Rutter then discussed guidelines on labeling of settlement products that have been adopted by the UK and by Denmark, and are being considered by other EU member states. He believes it has been effective, and is valuable in enabling consumers to make informed decisions.

He then returned to a discussion of the technical arrangement and how to strengthen it. The one means of strengthening it that he mentioned the EU was considering was to publish the list of settlement postal codes, whereas previously they had only been supplied to national foreign services and the European Commission.

Mr. Charles Shamas – Introductory notes

Mr. Shamas provided an in-depth legal analysis of the situation relating to the trade agreement and violations concerning settlement products, which he argued arose from a fundamental contradiction between Israeli domestic law and EU and international law.

The European Union's agreements with Israel, including the AA, entitle Israel to implement them "in accordance with its domestic law," but the EU chose to overlook what Israel's domestic law actually is. Israel's basic laws from 1948 define the territory of Israel as incorporating all of mandate Palestine, and state that Israeli law is automatically applied to any part of that territory once the IDF has taken control of the territory.

Before 1986, this situation did not pose a problem for the EU. However, in 1986 the European Council passed a regulation that separated the territory of the State of Israel from the Occupied Territories. This brought Israeli and EU law into conflict.

While the EU may be concerned about settlements and the peace process, the question is not whether it cares, but the amount of effort and costs it is willing to accept. Diplomats think in terms of carrots and sticks, but the EU has few to use against Israel: when they threatened to suspend the AA in 2003, Israeli Prime Minister Peres essentially said, "Go ahead!", thinking that the EU had more interest in the agreement than Israel. The one thing that the EU cannot tolerate, that poses an existential threat to it, is if it can't implement its own law, because law is the only thing that holds the EU together. And Israel's actions have created that threat to the EU.

The EU has, ever since 1995, been trying to deal with this matter in using its own actions, rather than requiring a change to Israel's actions. All their attempts have been unsuccessful. The last one was the Technical Arrangement. After the EU tried and failed to deal with the violations internally, they told Israel they would freeze any further developments in their trade relationships with Israel unless a solution was found, and Israel offered the technical arrangement, which Europe had been trying to get from them since 1998. It's an arrangement, not an agreement, because the EU realized that, by asking Israel to add postal codes for settlement foods, they would be accepting into law the idea of Israel applying the agreement to the Occupied Territories. So

instead they made a non-legally-binding arrangement. But the way it works is very cumbersome and involves high administrative costs, and has been ineffective.

And now the EU is finally demanding that Israel act in a way that is in accordance with international law and EU law when it comes to Israel's agreements with the EU. This doesn't relate only to settlements, but to nine different areas of EU-Israel relations. Although it's politically convenient, it isn't part of a political game – it's based on the EU's need to be able to implement its own law. And in order for the EU to be able to apply its own law, Israel's actions in its relations with the EU need to accord with international law, and not with the internationally unlawful domestic law of Israel.

Summary of the Discussion

Dr. Kanafani [To Mr. Gatt-Rutter]: *You talked about labeling settlement products. Does that mean that if settlement products are labeled, it's okay for them to receive preferential trade treatment?*

Mr. Gatt-Rutter: No; but the labeling is for products that may get through loopholes in the AA.

Mr. Shamas: Labeling is another attempt by the EU to deal with Israeli violations through their own actions rather than by changing Israel's actions. It's gotten a lot of interest from NGOs and governments, and many of the governments – especially Britain – that are its strongest supporters are trying to deflect pressure on them for greater customs enforcement. A lot of the NGO demands that appear to be coming from civil society have actually been instigated by governments whispering into the ear of European NGOs. We need to focus on developments that will force Israel to bring its own practice in accord with international humanitarian law. Labeling is a distraction; it vents the pressure from where it should be focused.

Amal Masri, Palestine Business Focus Magazine: *Both your speeches seem very focused on procedural issues, as if we're not talking about a real human issue. Israel refuses to apply international law, or UN resolutions, or its own agreements with the Palestinians. Why would it adhere to Israel-EU agreements? And if the EU can't even force Israel to apply agreements made with it, how can we imagine that the EU could force Israel to move forward with the peace process? I am now even more worried about EU involvement in the peace process, and feel even more that the US remains the force with the greatest influence on the peace process. As for having the settlements label their products: how can we know that they are not labeling them as Tel Aviv products, or that we're not legitimating settlements further by asking them to label, since the settlements shouldn't even exist in the first place? Now I'm even more confused.*

Akel Abu Karea, UNDP: *If I am an EU citizen and want to buy a tomato, how can I know whether it came from a Jordan Valley settlement or from Israel?*

Suhail Khalilia, ARIJ: *This is more of a comment than a question. You're getting around the real issue here. It's not about settlement products, the issue is Israel itself. These settlements belong to Israel, and Israel is violating international law. It doesn't matter where the products originate from, and besides, Israel can evade [correct labeling] and have been evading it – companies inside the settlements are now having their headquarters inside Israel, so they're changing their labels to show them as originating from inside Israel. Furthermore, the Palestinians will help the settlements market their products not only to the US and Israel, but to the Arab region, when the industrial zones are created in the near future, because the industrial zones as we know will be open to all investors, and all the settlement factories will move to these industrial zones by using other names, probably even Palestinian names. So eventually we won't be doing anything. The problem is Israel, not just settlements, and that's what we should be focusing on.*

Mr. Gatt-Rutter: The EU conducts its foreign policy through soft power. We do not have an army or uniforms; as I said, we are a collection of member states with supranational institutions.

We are ultimately a soft power, and we lead through example, and leading by example is our main way of exerting influence. On the EU role in the peace process: we are not here to compete with the Americans. The Americans have their role and their very strong links with Israel, and we're not there under the mistaken impression that we can replace them. But we have taken an increasingly strong role in the peace process, especially when it comes to highlighting some of the problems. We are the ones to talk about and highlight Area C, over 60% of the West Bank – no one else has highlighted Area C.

On food labeling – we make a distinction when it comes to food products. With food products there has to be labeling, but I'm a little confused because it remains voluntary. But I think when it comes to food products coming into Europe, it has to be clear where those products originate from.

Mr. Shamas: I think we have to keep our eye on the ball here. The issues that we're talking about are not stopping some settlement products. It's to break the application by Israel of its legal framework that defines the status of occupied territories as something it can implement conquest over, something it can settle its people in, something it can deny to the self-determination of the Palestinian people. Israel is full of lawyers, it is very legalistic, and they have designed their framework of law from 1948 to do a certain job in Palestine. They anticipated conquering more of Palestine in Administrative Ordinance 29, which is one of the basic administrative laws of Israel.

The issue here is – it's all right to take positions. The EU is a normative power: they say the right things, they really mean it, they really wish everybody would just see the light and apply enlightened policies in accordance with international law. The problem is to get Israel to alter *its* practice, and there the EU doesn't have tools of coercion, it doesn't have very powerful carrots or sticks to use against Israel. It can use them against an aid-dependent country, a third-tier country, a marginalized regime that has no political support, but Israel has tremendous assets.

I'll give you one practical example. One of the agreements under negotiation now – this is a bit sensitive – is an operational cooperation agreement between EUROPOL and Israel. Now, the EU has nice legislation in place. One of the pieces of its legislation applicable to EUROPOL is that EUROPOL may not process any information “clearly acquired in obvious violation of human rights”. I'm quoting the Council regulation and the EUROPOL regulation. Another is that the EU cannot recognize actions of Israeli authorities carried out under Israeli domestic legislation in occupied territory. So what happens? The EU has to go back to its negotiating text and amend it and introduce a simple requirement on Israel (now, this is still under negotiation, but I think there's enough will in the EU, and they've publicly stated their resolve to ensure the correct territorial application of this agreement and others): to notify the EU whenever any information transmitted by Israel “stems from activities of Israeli authorities in territories brought under Israel's administration after,” June 6, 1967.

Dr. Kanafani: To clarify: you are saying that there is a contradiction between Israel's international legislation, that considers the settlements and Jerusalem part of Israel, and Israel's international obligations, in its agreement with the EU for example? You are saying that this can be resolved. How can this be resolved?

Mr. Shamas: Israel can say: “I signed this agreement in good faith; it applies to the territory of the State of Israel; it obliges me to implement the agreement in accordance with my domestic legislation; under my domestic legislation, the ‘territory of the State of Israel’ has a clear meaning.” Domestic legislation of a state always takes precedence over generally applied public international law in terms of treaty interpretation. So, when you conclude an agreement with Israel, first of all, find out what their domestic legislation really is, how they will interpret and apply its provisions. Recognize that you have to have Israel's practice under that agreement conform with

distinctions and criteria of lawfulness in public international law that the EU must apply internally, if it has to rely on Israel to do that.

Dan Goldenblatt (IPCRI): *So, you're saying the 'or else' is that the EU will not enter into agreements with Israel? What about the existing agreements that are already, according to what I hear, operating where Israel's policy is violating or contradicting EU policy? And I also want to ask – I'm not sure how related this is, but it's something that's very heated right now, and I wonder if there's anything the EU can do – about the Ariel University, that's on the table right now? Is there anything that can be done on the EU level in order to create a stick –"*

Mr. Gatt-Rutter: We're not very good with sticks – both Charles and I seem to agree on that. Our strength lies in soft power, examples and agreements, and this is how we seek to advance our interests. On the specific case of Ariel – there are many other cases, there's also the college on the Mount of Olives, which has also given rise to a number of concerns inside the Union – we don't do boycotts. We don't do those kinds of things. We raise our concerns, in public and in private; we try and engage. I'm not saying that that's the most effective, but that's normally what the political market will bear: you have to see what member states can agree to. There has to be consensus on this kind of thing. If there's one commandment in the Union, it's "thou shalt negotiate"; we negotiate everything. So every piece of text is negotiated with the 27, soon to be 28.

Mr. Shamas: Just to pick up on the last one and move backward. The Brita case only confirmed that within the EU's own legal order preferential treatment could not be granted to settlement products. The Brita case did not settle the unsettled dispute between Israel and the EU –"

Dr. Kanafani: Charles, can you say a few words about the Brita case?

Mr. Shamas: The Court of Justice in Luxembourg that was taking this case was only applying EU law. And fortunately, in EU law preferential trade with the Occupied Territories had been assigned to an agreement concluded with the PLO, and previously that Council regulation that I mentioned in 1986 had separated the Occupied Territories from falling under the Israeli agreement at that time. But that was only in EU law. That was not international law. Israel said, "I disagree. I don't recognize this. I don't recognize the EC-PLO agreement." But as far as a European court, applying European law, it was clear. Those products could not be granted preferential treatment under the EU-Israel agreement.

They could be granted preferential treatment, according to the court, under the EC-PLO agreement, and for a while the European Commission, in 2000-2001 [laughing], attempted to convince the PA to hire an Israeli company to conduct inspections in settlement factories so that settlement products could be exported under the EC-PLO agreement. And this was fortunately rejected by the then-foreign minister. But it was one of the efforts of the EU to get itself out of the jam it was in because it couldn't implement its own law correctly and refuse preferential treatment to settlement products.

So, the point here is that the EU has a good system of law internally, and it has to apply public international law to analyze the situation in the Occupied Territories in order to decide whether a German customs official should collect customs on a product or not. It's only applying international law internally.

Dr. Samir Abdullah, MAS: *Aside from the political value if the EU achieves full implementation of the AA, can this really have a significant economic impact on the settlements and settlement exports, and contribute to our drive to at least have settlement growth slow down, since nothing is working on the political scene? Also, settlements are a grave violation of international law, and some legal schools say they are a war crime. How can we use law to restrict the settlers who are threatening the peace of our villages and people, and terrorizing them?*

Alamm Jarar, PNGO: *We appreciate the EU's position, especially the latest one that appeared in May, though it has been their position for a long time. We have a legal argument, based on two issues. First, that Israel is not entitled to preferential treatment, because it has consistently violated international and EU law over a long period of time. Secondly, since the EU has recognized the Palestinian Territories as territories under occupation, the settlements are considered illegal, so how can the EU allow imports of settlement products that support this illegal action, not even taking into account the issue of preferential treatment? Our demand is that the EU reconsider its position with regard to preferential trade relations with Israel, and to ban importation of settlement products into the EU. We don't want to talk about political games and power struggles, we just want the EU to respect its own legal framework, and Palestinians and European civil society need to pressure EU policymakers to do so.*

Mr. Gatt-Rutter: I've already made my position [on boycotts] very clear; I don't think I need to repeat that. If you talk about the EU-Israel Association Agreement, you should actually address my colleagues in Tel Aviv. And I do honestly and sincerely encourage you to have this discussion with them, because you'll get a different perspective (though it should be consistent, because we all represent the EU).

You also asked about violent settlers. It's something we have taken very seriously, and all the heads of missions in Jerusalem have reported about it jointly, and those reports have made recommendation and been formally submitted to our headquarters in Brussels. Some of those recommendations, which have not been implemented, include the development of a list of violent settlers who will not be allowed entry into the EU. So some of the recommendations we have made, like this one, are quite strong, and there is a discussion taking place in Brussels on that.

The AA, a bilateral agreement, was part of a larger, regional agreement, and it was supposed to eventually lead to free trade between our southern partners, not just between the south and Europe: between the Algerians and Moroccans, which would be difficult, and ultimately between the Israelis and the Palestinians and the Jordanians.

Mr. Shamas: I think that the settlement economics issue is almost non-existent. Firstly, Israel has a subsidy scheme to compensate settlement-based exporters or producers for any loss of preferential treatment and any additional costs that result from that. The EU has not protested that subsidy; it is a violation of WTO agreement concepts, allowing countervailing measures, but the EU prefer not to pick it up. Then there is the issue of production for the domestic market.

I wanted to talk about the demands being made. You know, Palestinian civil society makes lots of demands. What I try to point out here is the EU is not very good at getting the demands it may acted on. The only thing that makes a difference is if a power like the EU has to do something as long as it makes the demand [it says I make the demand], does it have to, for example, deny visas to vibrant settler? No. If it doesn't, if there's nothing in the law that requires it to do it or nothing can be found that requires it to do it, it will take a very special act of political will to get back little measure done. You may get it but you won't get much more than that.

Alexander Rasid, FES: First I would be interested in talking about a political boycott? What the obstacles actually are? I mean Is it only the Germans or is there more that stands in the way of a political boycott? Because, I mean, the Irish farm ministry has recently having suggested that this country will push for a boycott of settlement products within the EU, starting next year. Then secondly, maybe you could put a number on settlement produce coming into the EU, rough percentage. I read in the background paper that in 2008 it was maybe 30 percent of the imports of the EU. Is there any estimate how much actually gets into the U? And then also I would be interested in a legal view on the question of a settlement boycott, from common sense point of view to me it seems if we say we have a very clear position on settlements; they are illegal then how come we do business with them? My understanding would be that if it's illegal we don't deal with it. So I would be interested, is there any legal route that might be pushed in the U.

Mr. Gatt-Rutter: Since you mention Germany, I would tell you quite clearly it's not the Germans. I mean, I don't like to talk about individual member states without them being around, but since I speak for all of them, but it is a lot more complicated than that. And you know, it is not very black and white inside the EU, it is a bit like the Middle East in many ways; it is shades of grey and shades of white everywhere.

But there is a constant evolution of position; countries which were traditionally very close to the Arab World, very close to the Palestinians, are today very close to Israel and very close to Israeli security. I would actually argue that the importance attached to the Israeli security by U has never been as important as it is today, and that's my assessment my judgment. I would say the reasons are Iran, I mean a lot of it is perceived and created artificially in a way so it has taken advantage of, Iran, the large numbers of Muslim populations in Europe, so it plays on people's fears and politicians use it to play on people's fears. Islamic extremism which you know has been, I know this is very sensitive things but I will say it over here with us, but these are the kind of things I think that have in a way shifted Europe to the right, you know.

Mr. Shamas: There are a couple of legal bases that would look at, but let me be clear. Law is codified policy so I'm not talking about this as if it is not good. 1) You have in the treaty provisions mandating restrictive measures at the political decision by the 27; it's purely council, comes part of a security policy. They can do it if they want they can do it for any reason as long as they don't violate the international law, that's unlikely to happen. This is unlikely that the association agreement would be suspended with requirement decision but not on the same legal basis. And another legal basis has to do with internal legislation, the fact that indeed certain settlement products can be considered to represent the proceeds of crime if the facts are actually documented and brought to competent EU authority who never had to think about this question before. You may be surprised how many areas of EU laws can be tact but you have to look for them; they don't fire automatically, they have to be identified and you have to construct. You have to say, "I'm not telling the EU what its law should be. I'm starting from understanding what the EU's law actually is and what the EU authority will say yes, and now that you mention it and now that you bring this to my attention I see a problem and I have to deal with it." So there are interesting potentials for moving from just refusing preferential treatment to actually excluding trade in certain items.

Hani Al-Ahmad: My question is a simple one, what is the punishment or the legal action for the product which are the origin of its product? Another, I don't know if it is a suggestion to Mr. John to understand that the only action and negotiation between the EU and Israel is have more deferential to the manufacture and comply to the EU legislation.

Mr. Shamas: look, if you play the game right, and an Israeli exporter is considered to be misrepresenting origin, this may not have to do with preferential trade but it may have to do with conformity to marketing standards industrial or actually be a kind of agricultural arrangements there made from 2005.

Mr. Gat-Rutter: And if an Israeli entity is considered, but there, it is not an agreement for the marketing standards that European commission to accept Israel's certificate of conformity to marketing standards. So the only law that applies is the EU law, there's no difference of interpretation of an agreement where you have to take that into account. You can very easily put an Israeli entity for operator on a black list for bailing to conduct themselves and for benefitting from a privilege under EU legislation without complying with EU legislation and representing them for the facts of production as EU legislation requires. So, there are all sorts of things that are there, it's just the question of looking for them and finding them and getting them activated.

Anonymous: *I like to ask one question? Is there anything that the Palestinians can do, you know, except for round tables such as this in Ramallah, but is there anything that the Palestinians can actually do in order to lobby and to bring this more to life?*

Mr. Gat-Rutter: Well I think it is a fair point and I think there's something I mentioned a little bit before. I think that you need to take this discussion to Tel Aviv and you need to speak to our colleagues in Tel Aviv and address the Israelis.

Mr. Shamas: I think that you have to take it Europe. But to be honest with you, first, Palestinians— if you wanted to invoke European responsibilities you need to understand their law and how they understand international law, you can't tell them they should have this responsibility, understand what they do recognize as their responsibilities so you can get quite far. Sometimes we assume that we have to get the Europeans to accept our position on things. Actually their position in the preparation is very close to ours, our problem is invoking responsibility. When we use law carelessly we talk about this person is a criminal, well can you prove they are criminal? That is illegal the claim you are making. This product should not be traded in Europe on what bases. We don't do our homework, to be honest with you; we need to do our homework more.

Background Paper: The EU-Israel Association Agreement and Trade Abuses in Regards to Settlements Products

The Problem of Israeli Settlement Contraband

The issue of Israeli exportation of products originating in the illegal settlements throughout the West Bank and Golan Heights presents a serious challenge for the European Union and is of utmost importance for the Palestinian Authority (PA) and its internationally endorsed goal of creating an independent contiguous and economically viable state. Article 7 in the EU-Israel Association Agreement (AA) clearly states, “The provisions of this chapter [Chapter 1, Basic Principles for free movement of goods] shall apply to products originating in the Community and in Israel”. The same principle is re-asserted in Article 83: “This Agreement shall apply...to the territory of the State of Israel”.¹

The EU, along with the international community, does not recognize the occupied territories as being a part of the State of Israel. Thus, products originating from Israel’s colonial settlements in the occupied territories should not benefit, upon exportation to the EU, from the preferential terms of the AA. In fact, many experts argue that these products should not be allowed to enter EU markets at all, with or without preferential treatment.

For years Israel has abused the system and breached the AA’s rules of origin by exporting settlement products labeled as if they ‘originated in Israel’. As a result, settlement products have become eligible for preferential trade treatment when entering EU markets.

EU – Israel Trade Relations: The 1975 Cooperation Agreement & the 1995 Association Agreement

Israel has enjoyed a special status with the European Union since the inception of the European Economic Community (EEC) in 1958. By 1975 Israel was already closely tied with the EEC via a free-trade agreement, one of the earliest trade agreements of the EEC. After a transitional period, during which Israeli exports enjoyed generous and non-reciprocal trade preferences, the free-trade arrangement became fully operational in 1989.¹

The agreement guarantees free and reciprocal trade in manufactured products together with a comprehensive level of trade coordination in various aspects. However, Israel’s agricultural products were treated, in principle, just like agricultural exports from other Mediterranean countries, i.e. subject to limited preferential access based on selected products with specific quantities during pre-determined seasonal periods.

The current agreement between the EU and Israel falls within the framework of EU-Mediterranean cooperation, which began in November 1995 with the Barcelona Declaration. The Declaration established a partnership between 12 Mediterranean countries on the one hand and 15 EU countries on the other. The overall aim, as envisaged later in the Barcelona Declaration, was to create a framework for political, economic, cultural and social links between the EU and the 12 states on the Eastern and Southern Shore of the Mediterranean. The EU vision, more specifically, implies the creation of a Euro-Med free trade area by year 2010, a process that would bring with it the establishment of free trade among the 12 Mediterranean partners. In other words, by signing free trade agreements with each of the Southern and Eastern Mediterranean countries individually, the EU wished to utilize these agreements as leverage for creating a regional free-trade block among the Mediterranean countries themselves.²

¹ From ‘Protocol 1’ of the Association Agreement, http://eeas.europa.eu/delegations/israel/eu_israel/political_relations/agreements/index_en.htm

² European Union: External Action. *The Barcelona Process*, http://eeas.europa.eu/euromed/barcelona_en.htm

The 1975 EU-Israel free trade area agreement was updated in 1995 into an Association Agreement (AA). The AA guaranteed wider cooperation on various fronts alongside greater trade liberalization, particularly in agricultural products. The AA became fully operational in year 2000.

³ In conjunction with the Barcelona Declaration, the EU also signed an Interim Association Agreement with the PLO, on behalf of the Palestinian Authority, in February 1997. The signing of this association agreement with the PLO implies that the EU recognizes the West Bank and Gaza as a separate and sovereign customs territory.

The Association Agreement and the issue of Israeli Settlement Products

There were doubts in the EU from the outset on the effectiveness of the rules of origin clause of the trade agreement with Israel. Ali (2012) points to communications between the European Commission (EC) and the European Parliament in 1998 concerning the:

Obstacles in implementing the EU-Israel Association Agreement, especially Protocol 4 [regarding the rules of origin]... that most of the products certified as originating in "Israel" were actually produced in the occupied Palestinian territories.⁴

However, the mechanisms adopted by the EC to enforce the rules of origin clause were not very effective. The main difficulty emerged from the fact that the ability to adequately scrutinize the origin of products before they are exported lies with the Israeli customs authorities, creating a significant conflict of interest.

The EC had attempted to prevent the breach of the AA and the illegal duty-free entrance of settlement goods into the EU by “providing EC customs authorities with a list of goods and produce suspected of originating within the Israeli settlements.”⁵ This process, however, proved too bureaucratic and burdensome given the delay in replies from Israeli authorities for proof of origin. Consequently, the European authorities engaged the Israeli’s to create an alternative vetting mechanism for products.

The Technical Arrangements

As a result of discussions within the EU-Israeli Customs Cooperation Committee, a Technical Arrangements between the EC and Israel was adopted early in 2005 in order to put an end to the violation of the AA.⁶

Specifically, the arrangement required all goods from Israel to be labeled with their place of origin and postcode. Under the terms of this arrangement Israeli exporters are bound to indicate on all proofs of preferential origin (EUR1/Invoice Declarations), the precise place of production of the goods, together with its postcode.⁷

To help implementing this Technical Arrangements, the EU’s delegation in Tel Aviv drew up a list of settlements with their postcodes. A paper by the UK Revenues & Customs Authority stated that

“The European Commission has confirmed that full guidance has been issued by Israeli Customs authorities to their economic operators and customs offices. These Guidelines will explain how the place of production should be determined, and how the name and postal code should be indicated on the proof of origin. The guidance provides that where an EUR1 or invoice declaration covers a mixture of goods, some of which have been produced in Israel and some of which have been produced in a Settlement, the relevant location and postcode

³ Council decision of 20 October 2009,

http://eeas.europa.eu/delegations/israel/eu_israel/political_relations/agreements/index_en.htm

⁴ Ali, Muhammad Abdulrahman. (2012). *Jewish settlements in the rulings of the European Court of Justice*, <http://www.middleeastmonitor.org.uk/articles/guest-writers/3334-jewish-settlements-in-the-rulings-of-the-european-court-of-justice>

⁵ HM Revenues & Customs. (2009) *Customs Information Paper (09) 19*.

⁶ HM Revenues & Customs

⁷ European Parliament, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-007328+0+DOC+XML+V0//EN>

will be inserted against each type of product. Preference will be allowed for the 'Israel' products only.”⁸

However, the Technical Agreement did not put an end to the violation of the AA and to the continued illegal preferential treatments of the settlements products upon entry to the EU markets.

The Limitations of the Technical Arrangement

The difficulty with effective enforcement of the EU-Israel trade agreement is either that the product documentation is insufficiently detailed for a EU customs official to recognize settlement-produced goods or that there is an intentional falsification of documents from the originating Israeli exporter.⁹

The process through which an Israeli exporter circumvents the tariffs on settlement-produced goods was detailed in a 2006 report by the Israeli business magazine, *Globes*:

“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”¹⁰

Cases: ‘Ahava’ and ‘Soda-Club’: More than a Customs Dispute ¹¹

A BBC report in 2008 revealed that the UK’s tax Authority was concerned about Israeli exporters abusing the EU free trade agreement.¹ The report specifically mentioned Ahava, an Israeli skin care company headquartered in Tel Aviv. The problem: some of its main manufacturing facilities were located in the settlement of Mizpe Shalem besides the Dead Sea. In effect, Ahava had been able to avoid tariffs on its products since its headquarters was in Tel Aviv.

In 2003, German customs authorities demanded post-clearance recovery of customs duties from the German company *Brita GmbH* for importing equipments from an Israeli firm, Soda-Club, operating in Ma’ale Adumim, an Israeli settlement. The goods entered as Israeli products, thus benefited from duty exemptions under the EU-Israel free trade agreement. German customs officials had asked for verification of the place of origin of the products. Israeli customs officials responded that the goods originated with a company located in the territory under control of the Israeli customs authority. However, when German customs contacted Israeli authorities again to ask if the goods had originated in an Israeli settlement, they received no answer.

Brita GmbH challenged the post-clearance recovery demand of German customs authorities in a German finance court, but the court passed on the case to the European Court of Justice because the case depended on the interpretation of both the EU-Israel Association Agreement and the EU-PLO Interim Association Agreement. In 2010, after more than 5 years from the beginning of the dispute between German customs authority and Brita, the European Court of Justice ruled illegal the exportation of settlement products from Israel to Europe under the Europe-Israel Association Agreement.

PS. In 2008, for example, Israeli companies exported €12 billion (\$16.8 billion) in goods to Europe. Der Spiegel claims that an estimated one-third of these goods are either fully or partially made in the Palestinian occupied Territories. (<http://www.spiegel.de/international/world/0,1518,636019,00.html>)

It is quite evident that the systems current condition makes it easy for Israeli exporters to circumvent EU-Israeli agreement.¹²

⁸ HM Revenues & Customs

⁹ Parliamentary Business, UK,

<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100127/halltext/100127h0010.htm>

¹⁰ Parliamentary Business

¹¹ For the BBC report see ‘Concern over Israeli exports’ at, http://news.bbc.co.uk/2/hi/middle_east/7708244.stm.

For the Brita settlement goods case see: Jewish settlements in the rulings of the European Court of Justice at -

<http://www.middleeastmonitor.org.uk/articles/guest-writers/3334-jewish-settlements-in-the-rulings-of-the-european-court-of-justice>

¹² For comprehensive treatments of the shortcomings in the Technical Agreement see Shamas & Starkey: EU-Israel Association Agreement – 2005 Technical Arrangement - Why it needs replacing.

The other part of the problem lies in the receiving end of Israeli exports, in Europe. Since the customs enforcement of the free trade agreement is relegated to individual member states, varying customs enforcement measures throughout European countries make it difficult to equally enforce the trade agreement across the continent.

Legal Aspect of the Association Agreement

The European Court of Justice ruling has made it clear that, after taking into consideration both the EU-Israel Association Agreement and the EU-PLO Interim Association Agreement, Israeli settlement products are not entitled to benefit from preferential treatment under the EU-Israel Association Agreement.¹³ The ruling of the European Court of Justice, the highest judicial body in the EU, also affirmed that European States must not submit to the status quo created by Israeli settlements by prohibiting preferential tariff treatment for products originating in Israeli settlements.

On February 15, 2012, the European Parliament adopted a resolution that took European Court of Justice ruling into consideration and called on the European Commission to “review and, if necessary, renegotiate the Technical Arrangement with the intention of making it more effective and simple”. The EP also noted that “Israel's customs authorities and exporters already make a distinction between production operations carried out in Israeli settlements in the Occupied Territories and production carried out in the internationally-recognized territory of the State of Israel”. However, Israeli authorities do not transfer this information to EU customs officials.¹⁴

The governments of Denmark and South Africa have also recently instituted specific measures to ensure that products originating from the Israeli settlements on the Occupied West Bank are labeled as such.

Issues for Discussion

The European Parliament recently affirmed that the current Technical Agreement between the EU and Israel does not provide the adequate mechanisms to scrutinize and differentiate between products originating in Israel and products emanating from Israeli settlements in the Palestinian Occupied Territory. For years, the EU has tolerated the systematic breach of the trade agreement by Israel, an unprecedented behavior in the EU's history of international trade relations. Israeli export practices and the subsequent sloppy EU reaction threaten the whole process of “Bilateral and Diagonal Cumulation” of the rules of origin, which are central to the Euro-Med free trade initiative.

If the current Association Agreement and technical arrangement enforcement mechanisms regarding rules of origin remain unchallenged, it will be difficult to effectively confront the problem of Israel settlement exports that unintentionally receive duty-free treatment in the EU.

The present roundtable discussion aims to investigate and shed the light on the following four issues/questions:

- ❖ Why did the EU tolerate the non-compliance of Israel for such a long time?
- ❖ Why was the Technical Agreement such a weak document failing to put an end to the breach of trade rules and designating the documentation to Israel itself in spite of the obvious conflict of interest?
- ❖ What can be done to enforce the ‘rules of origin’ element of the EU-Israel Association Agreement?
- ❖ What can the EU do to force Israel to respect the PA-EU Interim Association Agreement and to deal with the West Bank and Gaza as sovereign trade partner?

¹³ See clause 29 of the Advocate General's opinion, <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-386/08>

¹⁴ European Parliament resolution of 16 February 2012 on the proposal for a Council decision on the conclusion of the regional Convention on pan-Euro-Mediterranean preferential rules of origin. From - <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-60>

**The EU-Israel Association Agreement and
Trade Abuses in Regards to Settlement Products
July 17, 2012**

Name	Institute
Charles Shamas	MATTIN Group
Rania Felfil	Translator
Samer Salameh	Ministry of Labor
Nahid Shoublak	Ministry of Agriculture
Akel Abu Karea	UNDP
Wajdi Alkekhen	Ministry of Agriculture
Ismail Alamsi	Public Relation Department-PLO
Nasim Shahin	Palestinian Legislative Council
Hans	Norway
Erik Berggrav	Norway
Alexender Rasid	FES
Helten Gohdenir	FES
Hani Al Ahmad	PCBS
Dr. Fathi Srouji	Birzeit University
Dan Goldenblatt	IPCRI
Hana Abu Daia	BISAN
Marian Khouri	MAS
Adnan Abu Alhomous	PADICO
Ibrahim Hamad	Watan TV
Salah Hamzi	Palestine TV
Tremaine Tucker	MAS
Barbara Sabitzer	MAS
Daniela Andreveska	MAS
Nur Arafeh	MAS
Alam Jarar	PNGO
Reem Kader	Wafa press
Jamil Tahir	PIF
Yosef Husaien	Palestine TV
Sabri Samhan	Palestinian Water Authority
Bashir Assi	MAS
Zaid Shuaibi	BDS Movement
John Nasir	World Bank
Katherine Wall	MAS
Shireen Abdel Razeq	Freelance
Ghalib Bader	Palestinian Water Authority
Ziad Karablia	Ministry of Labor
Feras Tenia	Ma'an News Agency
Mohamad Abu Khdair	Alquds Newspaper
Suhail Khalilia	ARIJ
Fatima Abu Sbetan	Alquds.com