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## EU-Israeli Relations: Between a Freeze and an Update

### An Evaluation of Rules of Origin Disputes, Labeling and the Commission Guidelines

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It is virtually impossible to fully separate a discussion on relations between the European Union and Israel from a discussion on the stalemate in the Middle East peace process. This stalemate influences not only the relationship between Brussels and Jerusalem, producing a fluctuation between mutually profitable cooperation and periods of caution, but also the European public's opinion and attitude towards Israel.

The EU is currently one of the most important economic partners Israel has and has been so for many years (figure 1). It is difficult to determine the exact volume of exports from the settlements to the EU as the EU does not collect separate trade data from settlements. According to the official government resources, settlement exports to the

EU amount 300\$ million per year. This represents approximately 2% of total Israeli exports to the EU.

A combination of the mutual deterioration of Israel's and the EU's images in the publics' views of the other, along with the continuing Middle East peace process stalemate can be potentially hazardous to Israeli-European trade. The recent heated negotiations regarding the EU's new guidelines only demonstrate the importance of a paradigm shift in the way the EU perceives the situation and acts.

The agenda of the IEPN's meeting in Rome, held on the 23<sup>rd</sup>-24<sup>th</sup> of October 2013, has given the opportunity to the exchange of ideas regarding the causes of EU policy on the matter, its effects and lessons. This publication summarizes the main findings of the meeting.

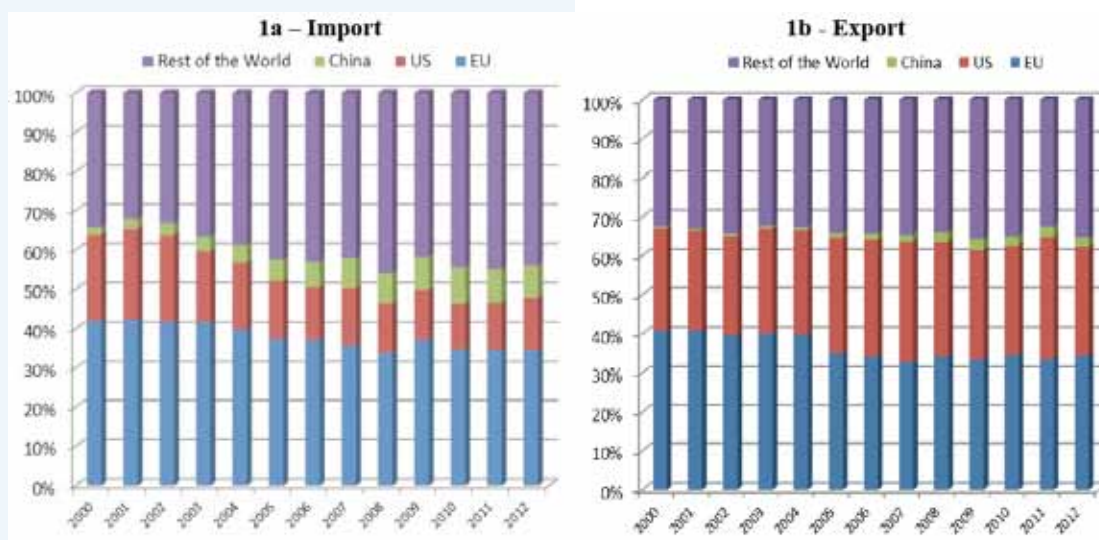


Figure 1: Israel's foreign trade, excluding diamonds<sup>1</sup>

<sup>1</sup> Source: Bank of Israel

### A Comparison Between Previous and Current Limitations

The link between the political situation and trade benefits was first established during the 90’s, with the Israel-EU Association Agreement. It included—as all Association Agreements the EU signed in that period with Mediterranean non-member states in the context of the Barcelona process - provisions expressing the parties’ commitment to democracy, human rights and continuing dialog. A similar agreement was signed with the PA, (regarding the West Bank and Gaza Strip only), serving as an incentive for it to later apply political pressure on the EU to confront Israel regarding the status of exported goods originating in the territories. Conversely, some are of the opinion that the PA has from the outset of the Barcelona Process been accepted by all states involved, including the EU, and for that reason it qualified for a quasi-Association Agreement.

This confrontation has eventually led to the EU depriving all exports from the occupied territories

of the economic benefits resulting from the EU-Israel Association Agreement. However, it was not until 2004 that Israel yielded to the EU’s demand to specify on each certificate of origin the exact origin of the goods, due to intensive pressure applied by the Israeli export community. Up until then, Israeli export has suffered substantial custom delays, even with goods originating from within the 1967 borders, stemming from the need to examine the goods’ precise origin.

This measure did not achieve the EU’s desired effect. Some Israeli manufacturers did relocate to the pre-1967 Israeli borders, but simultaneously caused Palestinians working at said manufacturers to lose their jobs. Table 1 shows Palestinian labor force’s share in the Israeli economy. . It also neither sped up any negotiation towards any agreement in the region nor upgraded Europe’s involvement there. The EU’s image as a fair mediator was further eroded in Israeli eyes. It should be mentioned, that from the EU perspective it is a costly endeavor for EU custom authorities to correctly pinpoint the origin of a product.

Category	Number	Share of Palestinian Labor Force
1. Palestinians working in Israel (with permit)	28250	3.8%
2. Palestinians working in Israel (without permit)	18400	2.5%
3. Palestinians working in the Israeli Settlements	22500	3.0%
3.1 Palestinians working in Israeli Factories in the West Bank	6000	0.9%
<b>Total Palestinians working in the Israeli Economy (Cat. 1+2+3)</b>	<b>69150</b>	<b>9.2%</b>
a. Number of Factories owned by Israelis in the West Bank	600	
b. Average Day Salary for Palestinian Employee in Israel and settlements	164 NIS	
c. Average Day Salary for Palestinian Employee in the Palestinian Authority	87 NIS	

Table 1: Palestinian Labor Force in the Israeli Economy<sup>1</sup>

<sup>1</sup> Source: Manufacturers Association of Israel (2013) GPO Tour to Samaria: Economic issues and coexistence between Israelis and Palestinians.

Furthermore, the European Court of Justice ruling in what is known as the Brita case<sup>1</sup> has deemed the PA as the qualified authority to issue certificates of origin in Gaza and the West bank, creating a situation in which substantial territories are not covered in practice by both association agreements – area C, which is administrated by Israel, as well as the Golan Heights and Eastern Jerusalem.

Recently, the EU Commission published guidelines providing for non-eligibility of Israeli entities established in the territories, or activities held in

<sup>1</sup> When the ECJ was approached by the German customs authorities, asked to interpret the relevant EU law with regard to entitlement of soft drinks imported by the German company Brita from an Israeli factory situated in the territories. Case C-386/08 Brita GmbH v. Hauptzollamt Hamburg-Hafen OJ C 100 (2010).

the territories by entities established in Israel to grants, prizes and financial instruments provided by the EU. These guidelines were reported to be in line with the position held by the EU’s Foreign Affairs Council. The legal effect of the Brita judgment is well reflected in the new guidelines. Their publication had caused a large media frenzy in Israel, further tarnishing European image.

While there are many similarities between the two rounds of “sanctions” (the EU considers them the implementation of international law, whereas the Israeli public views them otherwise), there are several important differences. First, the current guidelines are now operated directly by the EU institutions, thus ensuring uniform implementation, and are published ex ante,

previewing future inclusion of their content in international agreements, protocols thereto or memoranda of understanding with Israeli and other counterparts. Furthermore, Palestinians are explicitly excluded from the potentially affected activities, while, at least potentially, the Israeli population to be affected is greater. Finally, the effects of the guidelines are more difficult to quantify due to their scope and nature. A good example is the loss of possible indirect benefits of international professional networking, exposure and recognition by possible beneficiaries of grants. These differences are the consequence of the EU implementing lessons learnt from the previous round of sanctions.

Israel, however, has not embedded the implications of those same lessons, as seen by many diplomats and politicians caught by surprise by the EU's resolution. Therefore, Israel should improve both its sensitivity and awareness to EU initiatives. Reactions by Israeli decision makers should reflect a more well-informed and considerate point of view and strategy, not only the public rage. On the other hand, if Europe wants to actually affect Israeli public opinion, not just to maintain the image of a staunch defender of international law, it may wish to precede political judgment with "carrots", as it had so far, that would encompass both Israelis and Palestinians and increase economic cooperation without sanctioning.

### **The New Guidelines - Mere Formality or Means of Pressure?**

The main motivation behind the EU's new guidelines (and its previous policy on the subject) is often viewed as a political one. Mainly, to have some leverage when Israeli decision makers determine their Middle East peace process policy. Another possibility, however, is that these guidelines are simply the implementation of existing rules and regulations and are not deliberately directed to pressure Israel. No European country (or any country for that matter) has ever recognized Israel's sovereignty on any of the post 1967 territories, thus this is simply a case of adjusting the Union's policy to international formality.

When considering political reasons, one must consider the EU's goals and motivation, apart from Palestinian pressure. The labeling and guidelines can be made as a statement reflecting a European point of view on the Israeli presence there, to create an economic incentive to reach a settlement and to upgrade the position of Europe as an actor in Middle Eastern politics - not only a "payer", but also a "player". Another reason for the European activism in this issue, then and now, may be that Europe does not view the conflict strictly from the angle of the political rights of the Palestinians or from the angle of international law, but also perceives the fact that it has not yet been resolved as a threat on its own security.

Considering the latter explanation, it is important to understand what Europe "gets" when paying

such a price in the eyes of Israeli public. An important role for Europe, as an international player, is that of a "court of international opinion", setting both formal and moral standards for the rest of the world. Such a unique position is maintained by personal example, mainly acting consistently with its own regulations, abiding by international law and ultimately acting as the international advocate and prosecutor, the same way the US operates as the international policeman. This would require, among other things, strict adherence to international law and matching the policy in practice to it, even if it has a negative effect on EU-Israel relations.

Despite the belief that the new guidelines are the initiative of specific people in the commission, it should be noted that they were issued according to EU mandate and based on a previously unanimously approved decision of the European Council and the Foreign Affairs Council that settlements will not be privy to EU funding. One of the most important institutions in promoting the establishment of these guidelines was the European parliament, which refused to approve Horizon 2020 without it. It was the implementation of the external dimensions of the EU budget in conformity with foreign policy priorities.

Thus, the EU position on the Middle East peace process is increasingly anchored in adherence to what is necessitated by EU law, and one can view the new guidelines as a formality and as a way to close the gap between norms and practices, and not only as the result of a calculated political maneuver. Even by this approach, it is important

to remember that working only according to norms may lead to failure in political practice. What is needed is a mixture of both.

### **Europe as a Political Actor and the Israeli Sentiments**

While the reaction of right-wing politicians, among them senior ministers, was combative, it is worth noting that though leaders from the political center and left criticized the EU's new guidelines as well., They made the case for Israel to view such developments as a warning sign for the need to make clear progress on the two- states solution and thereby resolving the settlement issue. Thus the consequences of Israeli settlement policy were part of the public debate, a subject which is rarely examined publicly.

Notwithstanding, members of the pragmatic political block, and to a lesser extent others in Israel, see Europe as pro-Palestinian entity with no consideration to the Israeli notion of being the underdog versus a sizable and still hostile Arab world. Despite understanding the problem of impunity, they see the markings and the guidelines as biased and unhelpful since Israel is the only one being "punished", never the PA or other Arab countries, and with the sanctions being used by the right-wing to rally support.

A point that most Israelis tend to look over is that there is pressure by the EU on Palestinians as well, regarding specifically transparency and security forces. Another point is that there were and there still are different pressures by the EU on

another Middle East democracy – Turkey. Making such facts known may counterbalance the notion that Israel is being singled out. Furthermore, the limitations can be viewed as a sign of honesty and reliability, as Europe holds Israel up to a higher standard than third-world and developing countries. And finally, it may seem like there's deeper cooperation between the EU and Israel to begin with, compared to neighboring countries.

The United States, which is clearly the driving force behind the Middle East peace process, usually takes an opposite approach even though the US's official stance regarding the settlements has always been, *de jure*, similar to the European one. The US tends to focus on positive incentives and has used their various leverages in a limited way.

Israel cannot have the same expectations regarding Europe as it does the US and, of course, the EU, in its current structure and disposition, cannot fulfill the same part. It cannot, for example, support Israeli security in the same manner, as the EU does not dispatch forces. However, the EU can try to adopt some American notions regarding the Middle East peace process or cooperate with the US to promote it. Two suggested courses of action were suggested in the meeting:

> The first is to adopt American policy and to precede political judgment with "carrots" that would encompass both Israelis and Palestinians and increase economic cooperation without sanctioning. This is probably the easiest way towards redemption in the Israeli public's eyes, but would most likely become an incentive for impunity.

> The second one is an EU-US division of labor, with Europe, being less handicapped in applying its position regarding the settlements, as the "bad cop". The difficulty for Europe will be how to respond if America is formally discouraging further EU steps while at the same time openly acknowledging the inevitability of such steps occurring. Acting under this limitation would require a measure of creativity and political innuendo.

Another mean to improve Europe's image as a fair negotiator, with less danger of impunity, is for EU representatives to change their language and terms. The Israeli public should hear them reestablish their support in the two-states solution, one Jewish, and condemn Palestinian delegitimization and demonization of Israel as adamantly as they condemn Israeli settlements. Europe should indicate that alongside the criticisms they understand Israel's narrative and history.

### Implications of Labeling

Lastly, considering the implications of labeling on the Israeli goods being exported to Europe, specifically the danger of an encompassing boycott on Israeli products, there are two propositions: one is that labeling products originating from the settlements may help prevent that same boycott, and the other is that the labeling itself may not only incentivize boycott, but make it easier to perform as well.

When speaking of 'boycott', it should be noted that only consumers boycott. Institutions, like

the EU, can ban trade. Insofar, Europe did not ban trade with Israel nor is it a real possibility. A voluntary boycott of Israel or just the settlements has become a phenomenon in Europe during the last few years, promoted by various Boycott, Divestment and Sanctions organizations.

In some cases, when consumers and retailers specifically pressured for non-settlement products, and with no guidelines or labels at hand, some of them would just abstain from Israeli products completely. Clear labeling rules will take away the doubts of consumers and allow them to make choices in a better fashion. A good example is how after the labeling has begun to take place, many UK supermarkets pulled some Israeli products off the shelves, but total trade with Israel in other sectors increased.

On the other hand, Israel's Foreign Ministry officials have said that because European public opinion is so negative towards the settlements, publication of such guidelines might well lead European retailers to boycott settlement products entirely, and perhaps even to boycott Israeli products altogether.

Recent developments in the Netherlands provide an example of this. In March 2013, it published guidelines for retailers in regards to labeling settlement products. Later, the government changed its position and said the guidelines would take effect only after the European Commission publishes uniform guidelines for all EU states. But two local retail chains, then began to boycott settlement products altogether. The chains' managers explained that they did not want their customers to have any questions about the products they sell.

### Concluding Remarks

The new guidelines are, in fact, a continuation of previous EU policy and positions and perform the function of both a political instrument and a way to transfer norms and formalities into practice. While succeeding in making Europe's stand quite clear on the matter of the settlements thereby managing to overcome some previous misgivings and begin a discussion on the Israeli side, no advancement in the Middle East peace process has occurred, and the price was the tarnishing of the EU's image from Israel's point of view.

It is obvious the if the EU wants to play a significant role in resolving the Israeli- Palestinian conflict and gain influence in the area, some changes have to be made, not necessarily regarding its positions but in the manner said positions are translated into declarations and actions. Conversely, Israel should be warier as to the consequences of European discontent.

Finally, it appears as though, labeling settlements' products, alongside rigorous efforts in the diplomatic arena, might even lead to more Israeli products being sold in the EU.



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