

Illegal EU Trade Policy on Israeli Products

A July 2015 report by the Kohelet Policy Forum, authored by Professors Avi Bell and Eugene Kontorovich, entitled 'Challenging the EU's Illegal Restrictions on Israeli products in the World Trade Organization', argues convincingly that the upcoming European Union policy initiative on labelling the produce of Jewish residents and companies in Judea and Samaria, as well as the Golan Heights, would be unlikely to sustain legal challenges from Israel, should the Jewish State decide to contest the matter.

The EU labelling initiative would be unlikely to succeed due to its highly discriminatory nature, where products from other territories contested long-term, e.g. Tibet, Cyprus, and Western Sahara, are not subjected to the same treatment. Rather hypocritically, the EU has defended its [summary notes](#):

- The European Commission is expected to take new measures in the coming months to impose special labelling requirements on Israeli products from areas where it regards Israel as lacking a legitimate claim to sovereignty. The Commission is also in the process of imposing what amounts to complete exclusion on agricultural products from these areas. Since 2013, the EU has been steadily imposing sanctions of rapidly escalating severity, despite vigorous Israeli diplomatic efforts. If the planned measures are not challenged, more will quickly follow.
- Israel has a powerful, but thus far entirely unused tool against the EU sanctions. The EU's proposed measures restrict Israeli trade in violation of international trade law found in numerous multilateral treaties, including articles 2.1 and 2.2 of the World Trade Organization Agreement on Technical Barriers to Trade; Articles IX, X and XIII of the General

Agreement on Trade and Tariffs; and Article 2.3 and 5.6 of the Agreement on the Applications Sanitary and Phytosanitary Measures, among others. [...]

- The question of trade violations is entirely separate from the underlying merits of the conflict. Thus even if Israel were to concede for purposes of the dispute that the EU is correct about the illegitimacy of Israel's presence in the territories and parts of Jerusalem, this would not provide a basis for the for the restrictive trade practices.

- Any justifications the EU could adduce for its policies are undermined by their admittedly discriminatory application. The EU does not have a general set of rules for dealing with occupied territories, settlements or territorial administrations whose legality is not recognized by the EU. Rather, the EU has special restrictions aimed at Israel. This violates the fundamental rules of the GATT/WTO system, under which even otherwise valid trade restrictions are void if not applied uniformly to WTO members. Thus Israel's successful assertion of its rights in no way involves having the WTO accept its position on the status of the territories.

- EU arguments that these territories are not part of Israel are irrelevant in this context. The scope of the WTO agreements explicitly extend beyond a country's sovereign territory, and include territories under its "international responsibility." The drafting history and subsequent application of the GATT make clear that this involves territories under military occupation.

The full report can be