

Public Health and The European Customs Regulations as a Means in the struggle against "The Settlements"



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In November 2015 the European Union published a "Clarification" concerning the indication of the source of products from the territories captured by the State of Israel in June 1967.

It was determined that in order to determine the "source" of such products the expression "settlement" or "Israeli settlement" should be added to the description "product of the West Bank" or of the "Golan Heights" (as the case may be).

The European Union Regulation 1169/2011 determined that in order to achieve a high standard of health for consumers of food and to ensure the rights of consumers to receive information, it is necessary to ensure that consumers are appropriately informed regarding the food they consume. The consumers choices are influenced by matters of health, economic, environmental, social and ethical considerations. Accordingly, the Regulations determine that food will be described in that manner which will not mislead as to the country or district where the food is produced and stating specifically that the name of the producer and it's address are not sufficient and do not comply with the obligation to identify to the consumer the country or district of production of the food produced.

At the end of 2013 the European Union published the "Community Customs Code". Section 60 of Code states that in respect of a product which is produced in more than one country or territory in which the most significant economic activity connected to the production, constitutes the country or territory of production.

In November 2015 the European commission published an interpretive notice on the indication of origin of goods from the territories occupied by Israel since June 1967. The Notice further stated that in order to identify the source of the products it is not sufficient only to state "product of the Golan Heights" or of "the West Bank" and that the words "Israeli settlement" or "settlement" should be added.

The question of whether the above "clarification" is binding was considered by the Court of Justice of the European Union which is situated in Luxembourg. In its Judgement of 12 November 2019, Case No. 363/18 in the matter of Vignoble Psagot, the Court ruled that foodstuffs originating in territories occupied by the State of Israel must be labelled not only by the area where they are produced but also by addition of the expression "Israeli Settlement".

The court stated that the "west bank" is the territory which the Palestinian population is entitled to the right of "self-determination" as determined in an advisory opinion given by the International Court of Justice, in July 2004 in the matter of the "separation fence". In relation to the Golan Heights, the Court determined that this was not part of the State of Israel and that this territory was part of the Republic of Syria.

The court also stated a "state" is a sovereign entity entitled to all the authority within its geographical borders recognized by international law. Accordingly, the court stated that in order not to mislead consumers that at law, as Israel is acting as an "occupying" power and not acting as a sovereign state, it has to be clarified to consumers that products manufactured or



► produced in the above areas are not those of a "State".

The court referred to the situation where it was determined that the establishment of "settlements" and the transfer of "residents thereto constitutes a contravention of the international humanitarian rules (under the Geneva Convention of 1949 for the Protection of Civilians in Time of War and the above Advisory Opinion of 2004).

Accordingly, in the Court's view food products produced in the settlements, as a contravention of International law is included in the "ethical evaluation" which the consumer makes at the time of purchase and for this reason it is necessary to "label" the product accordingly.

In other words, the European Court has determined that the obligation to label "product of the Israeli Settlements" is to allow the European consumer to decide whether or not to purchase the product being a product produced in contravention of International Law.

It is of course possible to disagree with the Decision of the European Union Court. However, one has to recognize the meaning and purpose of the clear description on the products that they were produced in "Israeli settlements" in the West Bank. the Judgement does not distinguish between "recognized" settlements and those which are not recognized and also between settlement blocks and individual settlements. The Judgement is all encompassing and effectively relates to the production of food in any of the settlements which were not within Israel's borders prior to June 1967.

Contrary to the exclusionary approach of the European union in the use of the "Health Regulations" and the instruction of the Customs directives in it's approach to settlements and the settlement blocks established by Israel as from 1967, insofar as the British settlement endeavors in Mauritius, the International arbitration tribunal displayed extreme leniency in the settlements established by the British in the Chagos Archipelago belonging to Mauritius which allowed the United

States and the British, an army base for security and preservation of world peace (the "Lancaster Undertakings") of 1965 (named as such, being the place where the parties met) and if



defence needs should no longer be required, the Archipelago will be returned to Mauritius and rights to the exploitation of minerals and oil would belong to Mauritius.

In order to establish the army base, thousands of Mauritian residents were moved from the area. However, when the British ceased using the area and the army base was abandoned it was not returned to Mauritius instead a law was passed preventing entry into the former army base and even purported to declare rights over, the economic waters adjacent to the base established by them in Mauritius. All of those took place during the years 2004-2010, namely during the time that the European Union issued Regulations and Clarifications against the Israeli Settlements.

Only after an arbitration which extended over a number of years under the auspices of UNCLOS, of which the two countries are members, it was determined (leaving no room for doubt) that the British "Declaration" is not valid in that it does not take into account Mauritius' economic rights in its adjacent waters (which were recognized in the undertaking given by the British) and even awarded costs against Great Britain.

The above article was published in the economic newspaper – "The Marker" (<http://bit.ly/2qUZwCJ>).

Case C-363/18 Vignoble Psagot Ltd Vs. Ministre de l'Economie et des Finances,

The Republic of Mauritius Vs. The United Kingdom of Great Britain and Northern Ireland.