

Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967

(2015/C 375/05)

(1) The European Union, in line with international law, does not recognise Israel's sovereignty over the territories occupied by Israel since June 1967, namely the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem, and does not consider them to be part of Israel's territory ⁽¹⁾, irrespective of their legal status under domestic Israeli law ⁽²⁾. The Union has made it clear that it will not recognise any changes to pre-1967 borders, other than those agreed by the parties to the Middle East Peace Process (MEPP) ⁽³⁾.

(2) The application of existing Union legislation on indication of origin of products to products originating in Israeli-occupied territories has been the subject of notices or guidance adopted by the relevant authorities of several Member States. There is indeed a demand for clarity from consumers, economic operators and national authorities about existing Union legislation on origin information of products from Israeli-occupied territories ⁽⁴⁾. The aim is also to ensure the respect of Union positions and commitments in conformity with international law on the non-recognition by the Union of Israel's sovereignty over the territories occupied by Israel since June 1967. This notice also aims at maintaining open and smooth trade, is not hindering trade flows and should not be construed to do so.

(3) This Notice does not create any new legislative rules. While this Notice reflects the Commission's understanding of the relevant Union legislation, enforcement of the relevant rules remains the primary responsibility of Member States. According to the case-law, while the choice of penalties remains within their discretion, Member States must ensure that penalties for infringements of provisions of Union law are effective, proportionate and dissuasive ⁽⁵⁾. The Commission ensures, as guardian of the Treaties, compliance with these obligations of Member States if need be by way of infringement proceedings. This Notice is without prejudice to other requirements established by Union legislation, and to the interpretation which the Court of Justice may provide.

⁽¹⁾ See Case C-386/08 *Brita* [2010] ECR I-1289, paragraphs 47 and 53.

⁽²⁾ Under Israeli law, East Jerusalem and the Golan Heights are annexed to the State of Israel, whereas the West Bank is referred to as 'the territories'.

⁽³⁾ See, inter alia, the Foreign Affairs Council conclusions on the MEPP adopted in 14 May 2012, 10 December 2012, and 17 November 2014.

⁽⁴⁾ The interpretation in this Notice as to what constitutes origin information in conformity to the Union legislation will apply to any future provision having content similar to the provisions currently in force and covered by this Notice.

⁽⁵⁾ See, inter alia, Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraphs 23 and 24; Case C-326/88 *Hansen* [1990] ECR I-2911, paragraph 17; Joined Cases C-387/02, C-391/02 and C-403/02 *Berlusconi and Others* [2005] ECR I-3565, paragraph 65.

(4) Several pieces of Union legislation currently provide for mandatory indication of origin of the product in question. The requirement often relates to the designation of the 'country of origin' ⁽⁶⁾, but sometimes other expressions, such as the 'place of provenance', for foods, are also used ⁽⁷⁾. Subject to any specific provision to the contrary in the relevant provisions of Union legislation, in principle determination of the country of origin of foods will be based on the Union's non-preferential rules of origin laid-down in customs legislation ⁽⁸⁾.

(5) When the indication of origin of the product in question is explicitly required by the relevant provisions of Union law, it must be correct and not misleading for the consumer.

(6) When the indication of origin is not mandatory, if the origin is provided on a voluntary basis, the information must be correct and not misleading for the consumer ⁽⁹⁾.

(7) Since the Golan Heights and the West Bank (including East Jerusalem) ⁽¹⁰⁾ are not part of the Israeli territory according to international law, the indication 'product from Israel' ⁽¹¹⁾ is considered to be incorrect and misleading in the sense of the referenced legislation.

(8) To the extent that the indication of the origin is mandatory, another expression will have to be used, which takes into account how these territories are often known.

(9) For products from Palestine ⁽¹²⁾ that do not originate from settlements, an indication which does not mislead about the geographical origin, while corresponding to international practice, could be 'product from the West Bank (Palestinian product)' ⁽¹³⁾, 'product from Gaza' or 'product from Palestine'.

⁽⁶⁾ See, for example: **for cosmetics** Article 19(1)(a) of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products, (OJ L 342, 22.12.2009, p. 59); **for fresh fruit and vegetables**: Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671), and Article 6 and Part A 4(B) of Annex I to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1); **for fish**: Article 38 of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1); **for wine**: Article 119(1)(e) of Regulation (EU) No 1308/2013, and Article 55 of Commission Regulation (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (OJ L 193, 24.7.2009, p. 60); **for honey**: Article 2(4) of Council Directive 2001/110/EC of 20 December 2001 relating to honey (OJ L 10, 12.1.2002, p. 47); **for olive oil**: Article 4 of Commission Implementing Regulation (EU) No 29/2012 of 13 January 2012 on marketing standards for olive oil (OJ L 12, 14.1.2012, p. 14); **for beef and veal**: Articles 13 to 15 of Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1); **for pre-packaged poultrymeat from third countries**: Article 5 of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (OJ L 157, 17.6.2008, p. 46); **for fresh, chilled and frozen meat of swine, sheep, goats and poultry**: Annex XI to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18), and Articles 5 to 8 of Commission Implementing Regulation (EU) No 1337/2013 of 13 December 2013 laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry (OJ L 335, 14.12.2013, p. 19).

⁽⁷⁾ Article 2(2)(g) and Article 26 of Regulation (EU) No 1169/2011.

⁽⁸⁾ Recital 33 and Article 2(3) of Regulation (EU) No 1169/2011.

⁽⁹⁾ Article 6(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22), which mentions also 'geographical or commercial origin' as one element which may render a practice misleading, and Articles 26(3) and 36 of Regulation (EU) No 1169/2011.

⁽¹⁰⁾ There have been no Israeli settlements in Gaza since 2005.

⁽¹¹⁾ Or comparable expressions, such as 'originating in', 'product of' or 'made in', which may also be used depending on the context.

⁽¹²⁾ This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

⁽¹³⁾ If need be also mentioning East Jerusalem.

(10) For products from the West Bank or the Golan Heights that originate from settlements, an indication limited to 'product from the Golan Heights' or 'product from the West Bank' would not be acceptable. Even if they would designate the wider area or territory from which the product originates, the omission of the additional geographical information that the product comes from Israeli settlements would mislead the consumer as to the true origin of the product. In such cases the expression 'Israeli settlement' or equivalent needs to be added, in brackets, for example. Therefore, expressions such as 'product from the Golan Heights (Israeli settlement)' or 'product from the West Bank (Israeli settlement)' could be used.

(11) In any event, in accordance with Union consumer protection legislation, indication of origin becomes mandatory when, as regards food, the omission of that information would mislead the consumer as to the true origin of the product⁽¹⁴⁾, and, as regards all other goods, when information is omitted that is material, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise⁽¹⁵⁾. In such cases the examples in previous paragraph would be relevant.

(12) Information on origin is often available to economic operators in various forms⁽¹⁶⁾. In many cases information on the origin of products can be found on customs documentation. If they benefit from preferential treatment on importation, the products will be accompanied by proof of preferential origin issued by Israel⁽¹⁷⁾, or by the Palestinian authorities⁽¹⁸⁾. Other documents such as invoices, delivery notes and transport documents may provide an indication of the origin products. If the information is not readily available from accompanying documents, economic operators may request information on origin, directly from their suppliers or importers.

⁽¹⁴⁾ Article 26(2)(a) and (3) of Regulation (EU) No 1169/2011.

⁽¹⁵⁾ Article 7(1) of Directive 2005/29/EC

⁽¹⁶⁾ See, for example, for foods, as regards the relationship between retailers and their suppliers, Article 8 of Regulation (EU) No 1169/2011.

⁽¹⁷⁾ See, on this point, Notice to importers – Imports from Israel into the EU (OJ C 232, 3.8.2012, p. 5).

⁽¹⁸⁾ A range of products from the West Bank, Gaza and East Jerusalem, are covered by the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 (OJ L 187, 16.7.1997, p. 3).