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Press and Information

Advocate General's Opinion in Case C-386/08
Brita GmbH v Hauptzollamt Hamburg-Hafen

# In Advocate General Bot's opinion, products originating from the occupied territories are not entitled to preferential customs treatment under the EC-Israel Agreement

*The Community customs authorities must refuse to recognise the Israeli origin of those products.*

In the framework of the Euro-Mediterranean Partnership, bilateral agreements have been concluded between the Community and its Member States, of the one part, and the majority of countries of the Mediterranean basin, of the other part. Those agreements provide, in particular, that products originating from the Mediterranean countries concerned may be imported into the European Union free of customs duty and that the competent authorities of the parties are to cooperate in order to determine the exact origin of the products entitled to preferential treatment.

The Community and its Member States concluded such an agreement both with Israel[1] (EC-Israel Agreement) and the Palestine Liberation Organisation[2] (EC-PLO Agreement), the latter acting for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip.

Brita is a German company which imports drinks makers for sparkling water including accessories and syrups manufactured by the company Soda-Club based in Mishor Adumin in the West Bank to the east of Jerusalem.

Brita wished to import into Germany goods supplied by Soda-Club. The company informed the German customs authorities that the products originated in Israel and therefore sought preferential treatment under the EC-Israel Agreement. Suspecting that those products originated in the occupied territories, the German authorities asked the Israeli customs authorities to confirm that those products had not been manufactured there.

Although the Israeli authorities confirmed that the products concerned originated in an area under their responsibility, they failed to reply to the question whether they had been manufactured in the occupied territories. For that reason, the German authorities ultimately refused to grant Brita entitlement to preferential treatment on the ground that it could not be established conclusively that the goods imported were covered by the EC-Israel Agreement.

Brita challenged that decision and the Finanzgericht Hamburg (Finance Court, Hamburg, Germany) asked the Court of Justice whether goods manufactured in the Palestinian occupied territories and whose Israeli origin is confirmed by the Israeli authorities are entitled to the preferential treatment established by the EC-Israel Agreement.

In his Opinion today, Advocate General Bot points out that the administrative cooperation mechanism established by the EC-Israel Agreement is based on mutual trust between the customs authorities of the States parties and on mutual recognition of the documents which they issue.

[1] Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed at Brussels on 20 November 1995.
[2] 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 at Brussels on 24 February 1997.

He notes, in that regard, that there is a presumption that the customs authorities of the exporting State are in the best position to verify directly the facts which determine the origin of the products. Therefore, the customs authorities of the importing State are, in principle, bound by the result of the subsequent verification by the customs authorities of the exporting State.

However, the Advocate General takes the view in this case that, since the origin of the products imported is known and not contested, the dispute in fact concerns whether the place of manufacture situated in the Palestinian territories is covered by the EC-Israel Agreement.

Therefore, the presumption that exists with respect to the authenticity of the verification of the accuracy of the facts by the customs authorities of the exporting State does not apply in this case as none of the parties to that agreement is in the best position to give a unilateral interpretation of its scope.

Consequently, the German customs authorities **are not bound** by the result of the subsequent verification carried out by the Israeli customs authorities.

The Advocate General also rejects the argument that entitlement to preferential treatment should, in any event, be granted to producers based in the occupied territories either under the EC-Israel Agreement or on the basis of the EC-PLO Agreement.

First, the Advocate General states that the entitlement to preferential treatment is directly linked to the origin of the goods and that the verification of that origin is a necessary element of the system. The certificate issued by the customs authorities of the exporting State must therefore be capable of certifying unambiguously that the products concerned do in fact originate in a particular State, in order that the preferential treatment relating to that State may be applied to those products.

In that context, the Advocate General recalls that Israel's borders were defined by the Plan for the Partition of Palestine[3], approved on 29 November 1947 by the United Nations. According to that plan, the territories of the West Bank and the Gaza Strip do not form part of Israeli territory. Moreover, pursuant to the Israeli-Palestinian Agreement, Israel and the PLO both view the West Bank and the Gaza Strip as a single territorial unit.

Second, the Community concluded the EC-PLO Agreement in order to develop the flow of trade from and to the West Bank and the Gaza Strip and to rectify an anomaly, namely that those territories were the only territories in the region whose manufacturers were not entitled to preferential treatment. The Community therefore established such a system for the Palestinian territories specifically because it took the view that the goods from those territories were not entitled to such preferential treatment under the EC-Israel Agreement.

Accordingly, **preferential treatment under the EC-Israel Agreement cannot be applied to goods originating in the West Bank and, more generally, in the occupied territories.**

Finally, Advocate General Bot concludes that the entitlement to preferential tariffs under the EC-PLO Agreement may be granted to goods manufactured in the occupied territories **only if the certificates of origin necessary are issued, in accordance with that agreement, by the Palestinian authorities.**

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of

[3] The plan was drawn up by the United Nations Special Committee on Palestine. Composed of eleven States, that committee, which was set up by the United Nations General Assembly in 1947, was entrusted with the task of finding a solution to the conflict in Palestine, in particular by drawing up a partition plan.

Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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