

Submission of the United Church of Canada to Consultations on the Canada-Israel Free Trade Agreement

May 2013

Introduction

The United Church of Canada supports a two-state, just resolution to the Israeli-Palestinian conflict based on the Armistice Green Line 1967 borders and the equal and consistent application of human rights and international law to Israelis and Palestinians. The United Church of Canada has consistently advocated for non-violent approaches to solving the conflict and ending the occupation of the state of Palestine.¹ At the heart of the church's involvement in this region is our belief in the human dignity of all people, inspired by the theological vision that every human being is made in the image of God. As people of faith, we have a vision motivated by the economy of God, an economy of life and abundance that promotes global solidarity, human dignity, and care for the integrity of Creation.

Instruments of trade and diplomacy play an important role in ensuring compliance with internationally accepted human rights standards and laws, and related agreements must themselves comply with these standards and laws. Therefore, agreements such as the Canada Israel Free Trade Agreement (CIFTA) are not merely technical agreements governing the exchange of goods and services, but political documents that have a significant bearing on the quality of life for those affected by their provisions. There are moral and ethical choices to be made in constructing economic agreements and it is for this reason that the United Church of Canada chooses to make its voice heard in the consultation process.

The United Church of Canada believes that one of the most serious obstacles to peace remains the Israeli occupation of Palestine which is most clearly manifested in the over 200 illegal Israeli settlements in the West Bank. We note the policy of the government of Canada regarding the illegality of the Israeli settlements and the threat they pose to a viable Palestinian state: *"Israeli settlements in the occupied territories are a violation of the Fourth Geneva Convention. The settlements also constitute a serious obstacle to achieving a comprehensive, just and lasting peace"* (Department of Foreign Affairs and International Trade website). This provides a mutual policy foundation to discuss concrete measures to address the illegal settlements.

Entry of settlement products into Canada

Presently there are numerous settlement products entering into Canada. Because there are no Canadian requirements either of the Israeli government or of companies producing products from the settlements to accurately identify the origin of settlement products, there is no way to

¹ Following the November 29, 2012 United Nations vote to recognize Palestine as a non-member observer state, the UNITED CHURCH OF CANADA refers to the occupied Palestinian territories as "Palestine".

ascertain their overall value and volume for any given year in Canada. However, settlement products such as toys, plastic storage containers, filing cabinets, cosmetics, and wine can be found across Canada in many major retail stores.² A 2012 World Bank report estimated that in Europe, the value of goods produced in the West Bank settlement exports amounts to US\$300 million per year and that if considering goods partially produced in the settlements, the estimate rises to US\$5.4 billion (2008).³ The \$300 million figure represents about 2% of all European imports from Israel. A similar percentage for Canada would result in an estimated value of settlement products imported to Canada of \$19.6 million.⁴

CIFTA Rules of Origin Provisions

The CIFTA entered into force on January 1, 1997 and was amended twice in 1999 and 2003. Surprisingly, the current CIFTA makes no mention of the need to distinguish settlement products from products made in Israel.⁵ Under the current agreement, CIFTA's "Basic Rules for Originating Goods" (Section 3.1) state that "a good shall originate in the territory of a Party where: (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 3.13;". The preamble of the agreement defines "territory" as follows:

"(b) with respect to Israel the territory where its customs laws are applied;"

Israeli custom laws are applied to the state of Israel and to occupied Palestine, the latter as a result of the 1994 Paris Protocol which was a part of the Oslo Peace Accords. It should be noted that the Paris Protocol, which was based on the model of a "customs union" and gave Israel extensive control over the Palestinian economy, was meant to be interim and temporary until a full Palestinian state would emerge from the Oslo Accords. Since then, the Protocol has been used by Israel to pressure and punish the Palestinian Authority (PA). For example, the Protocol gives Israel the power to collect taxes for the PA which it is to then remit at agreed upon times. Israel has often delayed the remittance of tax revenues which has severely hampered the ability of the PA to pay salaries and provide basic public services in the West Bank and Gaza. While the Protocol remains in force, it is evidence of the continued inequality between the PA and the Israeli government and of the occupation, namely Israeli government control of the day to day life of Palestinians.

² These and other products have been identified through research and with the assistance of civil society groups in Israel and Palestine. See *Who Profits* (www.whoprofits.org), an initiative of the Israeli organization *Coalition of Women for Peace*. Some settlement products being imported into Canada can also be identified through the use of an American database (www.importgenius.com) that tracks the origin and final destination of merchandise that passes through U.S. seaports to Canada.

³ World Bank, "Fiscal Crisis, Economic Prospects: The Imperative for Economic Cohesion in the Palestinian Territories", September, 2012, p. 13.

⁴ Based on total imports from Israel of \$982,084,862 (2011). Source: Department of Foreign Affairs and International Trade website.

⁵ Throughout this submission, "Israel" is meant to refer to the state of Israel within the boundaries of the Green Line borders as they existed on June 4, 1967.

Canada has further justified the inclusion of settlement goods in CIFTA by pointing to the Canadian-Palestinian Framework on Economic Cooperation and Trade (CPFECT) agreement signed with the PA in 1999. The agreement extends the free trade provisions of CIFTA to cover the areas of the West Bank and Gaza. The PA saw an opportunity in this agreement to expand Palestinian exports to Canada but for the year 2011, total Palestinian exports amounted to US \$1,789,000, likely far less than even the total of settlement exports and only 0.02% of total Israeli exports for the same year. For the years 2009 – 2011, Palestinian exports to Canada have fallen steadily.

One of the harmful consequences of the Paris Protocol and the CPFECT has been to sweep up settlement products in the free trade provisions of CIFTA. This can and must be corrected.

The European Union Example

The example of the European Union (EU) demonstrates that it is possible to separate settlement products from those originating in Israel and exclude them from trade agreements. The EU free trade agreement with Israel came into force in 2000 and while the original agreement did not expressly exclude settlement products, a European Court of Justice ruling in 2010 stipulated that such products cannot legally benefit from the agreement.

There have been implementation problems in excluding settlement products, problems that Canada can and should learn from. For example, presently the onus is on European customs officials to identify settlement products and exclude them. A 2005 Technical Agreement with Israel allows Europe to check products against location codes and exclude those with settlement location codes. The process is laborious and has resulted in lax implementation of the Technical Agreement. There is political impetus now in Europe to oblige Israel to clearly identify settlement products to make the process more transparent, feasible and consistent. There is growing political will among many European governments to ensure that trade with Israel does not support or encourage settlements.

Aligning trade policy with foreign policy

It is clear that in the case of Israel and Palestine, Canada's trade policy does not align with its foreign policy. The latter acknowledges the importance of international law and the fact that the settlements violate this law. The CIFTA encourages the existence and growth of the settlements by including settlement products in the provisions of the agreement. Such treatment de facto legitimizes the settlements, encourages their economic growth, and contributes to their permanence. Allowing settlement goods to benefit from reduced tariffs means that they can be sold at a lower price in Canada and therefore at larger volumes than if they were taxed at normal levels. Settlement industrial zones such as the large Barkan Industrial Zone next to the settlements of Barkan and Ariel, and Mishor Edumim Industrial Zone next to Ma'ale Adumim provide a significant source of tax revenue for the settlements which sustains them and facilitates their growth. As the settlements grow larger in population, the industrial zones also grow. The

net result is further confiscation of Palestinian land, displacement of people, deeper entrenchment of the occupation which is a key contributor to violence, and a diminishment of the possibility for a viable Palestinian state.

While Canada has a moral obligation to oppose Israeli settlements both in word and action, it also has a legal obligation and responsibility in terms of its relationship with a state that is breaching international law. As a signatory to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Canada has a legal obligation to require compliance by Israel with international humanitarian law as it is embodied in that Convention, specifically by not recognizing an unlawful situation—in this case, the Israeli settlements in the West Bank.⁶ By including settlement products in CIFTA, Canada may in fact be recognizing and supporting an unlawful situation.

Recommendations

1. That Canada immediately create a new Technical Agreement with Israel that establishes a clear process and implementation mechanism for identifying settlement products. The Agreement should specify that it is Israel's responsibility to clearly identify settlement products as distinct from products made in Israel. This Technical Agreement should apply as long as the occupation and settlements continue, in violation of international law.
2. That Canada amend the rules of origin in the CIFTA so as to exclude products from any territory outside of Israel's internationally-recognized borders (that is, as they existed on June 4, 1967).
3. That Canada update any related agreements such as the CPFECT so as to make them consistent with the recommendations above.

⁶ See for example, the January 2013 report of the UN Human Rights Council, *Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory including East Jerusalem*, as well as the opinion ruling of the International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (July 9, 2004)* which refer to this legal obligation.