THE INTERNATIONAL LEGAL FORUM

EU ECONOMIC DISCRIMINATION AGAINST ISRAEL

Executive Summary

- Non-Discrimination is a fundamental principle of the WTO. Rules or practices must apply generally to all countries, as opposed to particular countries.
- The EU does not have a general policy on territories that it considers as occupied. Rather, the EU's policies uniquely target Israel and are thus discriminatory. The Western Sahara case demonstrates this.
- Despite two ECJ rulings finding that including Moroccan-occupied Western Sahara in EU trade agreements with Morocco would violate international law principles, the EU continues to treat products originating in occupied Western Sahara as Moroccan territory.
- The EU has considered Moroccan organizations and elected officials as part of the indigenous people of the Western Sahara and has ignored the need to receive native Saharawi approval for any economic agreement. The EU has stated that Western Sahara's occupied status should not prevent economic development from taking place even in the absence of a political and diplomatic solution to the conflict.
- The EU is expected to raise the WTO's "security exception" to justify its discriminatory policies towards Israel. However, a recent WTO panel has defined the security exception quite narrowly.
- Security concerns must refer to a state's essential security interests, namely the protection of its territory and its population from external threats, and the maintenance of law and public order internally. It will be hard for the EU to justify settlement labelling policies based on this definition.
- The EU itself has argued for a narrow definition of the security exception to prevent states from using the exception to justify erecting trade barriers due to political and diplomatic disagreements.

Professors Avi Bell and Eugene Kontorovich wrote a report for the Kohelet Policy Forum in 2015 entitled "*Challenging the EU's Illegal Restrictions on Israeli Products in the World Trade Organization* [1]". The report argues that the European Union's ("**EU**") policy on labelling agricultural products originating in Israeli communities in Judea and Samaria violates World Trade Organization (WTO) agreements. In the subsequent five years since the publication of the report, there have been two important developments regarding discrimination and the WTO's security exception. These will be discussed below.

A. Anti-Discrimination

1. The Principle of Non-Discrimination

The WTO agreements are based on the fundamental principles of non-discrimination and equality. As the WTO explains on its website: "*Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members*."[2] Rules or practices must apply generally to all countries, as opposed to particular countries. For the EU's labelling restrictions on Israeli products to be non-discriminatory, they must apply as a general policy to all territories considered occupied or disputed by the EU.

Bell and Kontorovich argue that, "*the discriminatory customs treatment against Israeli "settlement" products is not duplicated by the European Union elsewhere in the world, even with respect to territories like Western Sahara, which the EU acknowledges is belligerently occupied by Morocco and outside Morocco's internationally recognized boundaries. While Morocco has actively settled its citizens in occupied Western Sahara, and Moroccan businesses openly carry on commercial activity in the occupied territory, the EU accepts Moroccan products from occupied Western Sahara as Moroccan for purposes of customs and trade agreements*.[3]"

As Bell and Kontrovich explain, the principle of non-discrimination has nothing to do with the legitimacy of Israel's control over Judea and Samaria. Even if one were to accept that Israel has no right to these territories and that its activities there are illegal, if the EU doesn't apply these same standards to all such territories, it violates the principle of non-discrimination.

2. Western Sahara: Background

[1] Avi Bell & Eugene Kotorovich, *Challenging the EU's Illegal Restrictions on Israeli Products in the World Trade Organization*, (2015), Kohelet Policy Forum, available at https://euiha41fnsb2lyeld3vkc37i-wpengine.netdna-ssl.com/wp-content/uploads/2016/02/KPF35_challenge-EU_141015PublicElectronic-november20151.pdf

[2] "Principles of the trading system" https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

[3] Bell and Kontorovich, 10

The situation in the Western Sahara provides an interesting parallel by which to examine the European Union's discriminatory standard towards other territories considered occupied. As will be explained, Western Sahara is a territory occupied by the Kingdom of Morocco, and its occupation is considered illegal by the United Nations, the European Union and the international community. The conflict involves many parallel issues, such as Sahrawi refugees, Moroccan residents settling in Western Sahara, and even a large separation barrier marking Moroccan-controlled territory.

Western Sahara is a territory in north-west Africa, bordering Morocco, Algeria, Mauritania and the Atlantic Ocean. It was colonized by Spain in the late 19th century. Morocco considers Western Sahara to belong to it and has demanded its "liberation" since Morocco gained independence in 1956. In 1963, the UN added Western Sahara to its list of non-self-governing territories where it remains to this day.

On 20 December 1966, the UN General Assembly adopted Resolution 2229 (XXI) on the Question of Ifni and the Spanish Sahara, reaffirming the 'inalienable right of the peoples … of the Spanish Sahara to self-determination'. The Resolution called upon Spain, as the administering power, to hold a referendum to determine the future of the territory, with the view of enabling the indigenous Sahrawi population to exercise their right to self-determination.

The *Front populaire pour la libération de la saguia-el-hamra et du rio de oro* ("**Front Polisario**") was created on 10 May 1973. According to its foundational document, it is 'a national liberation movement, the fruit of the long resistance of the Sahrawi people against the various forms of foreign occupation'.

In August 1974, Spain informed the UN that it proposed to organize a referendum in Western Sahara under UN auspices. The UN General Assembly requested the International Court of Justice for an Advisory Opinion on whether the Western Sahara was, at the time of Spanish colonization, a territory belonging to no one (*terra nullius*), and if not, on the status of the legal ties between the territory and Morocco and Mauritania. The UN General Assembly requested that Spain, which it considered as the administering power, postpone the referendum until the General Assembly decide on a policy to be pursued in the territory.

The International Court of Justice handed down the Advisory Opinion on 16 October, 1975[4]. According to the Opinion, Western Sahara was not *terra nullius* at the time of Spanish colonization. Additionally, although the territory did have legal ties with Morocco and Mauritius, these did not establish any claims of territorial sovereignty.

In autumn of 1975, the King of Morocco called upon Moroccan citizens to march towards Western Sahara and to seize the territory. In February 1976, Spain informed the UN that it was withdrawing its presence from the territory of the Western Sahara and would no longer be considered the administering power. Meanwhile, an armed conflict broke out between Morocco, Mauritania and the Front Polisario in Western Sahara. In 1979, Mauritania signed a

[4] Western Sahara [Advisory Opinion] [1975] ICJ Rep 12

peace agreement with the Front Polisario and withdrew from the territory, thus allowing Morocco to extend its occupation over more Western Sahara territory.

In Resolution 34/37 of 21 November 1979 on the Question of Western Sahara, the UN General Assembly reaffirmed the 'inalienable right of the people of Western Sahara to self-determination and independence' and welcomed the peace agreement between the Islamic Republic of Mauritania and the Front Polisario. It also deeply deplored 'the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania'. It urged the Kingdom of Morocco to join in the peace process and, to that end, it recommended that the Front Polisario, 'the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara'.

A UN supervised cease fire between Morocco and the Front Polisario has been observed since 1991, although the referendum on the territory's future status has not yet been held, despite negotiations between the parties.

Most of the territory of Western Sahara is controlled by the Kingdom of Morocco, while the Front Polisario controls a smaller, very sparsely populated area in the east of the territory. The territory controlled by the Front Polisario is separated from that controlled by the Kingdom of Morocco by a wall of sand constructed by the latter and guarded by the Moroccan army. Many refugees from Western Sahara live in camps administered by the Front Polisario, situated in Algerian territory close to Western Sahara.

3. <u>ECJ Cases on Western Sahara</u>

The European Communities and their Member States established a free trade area with Morocco with the signing of the Euro-Mediterranean Agreement ("**the Association Agreement** ") in February 1996. In 2012, Morocco and the EU signed an agreement concerning reciprocal liberalization measures on agricultural and fist products (the "**Liberalization Agreement**"), replacing several sections of the Association Agreement. European Council Decision 2012/497/EU of 8 March 2012 (the "**Council Decision**") adopted the Association Agreement. Although the Association Agreement did not explicitly state that it covered Western Sahara, Morocco *de facto* included products originating there.

On 19 November 2012, the Front Polisaro filed an action before the European Court of Justice ("**ECJ**") for the annulment of the Council Decision as it applies to Western Sahara, arguing that it violated EU and international law, including the right to self-determination and the principle of permanent sovereignty over natural resources. The Front Polisario argued that, as the representative of the Sahrawi people, it is directly affected by the Liberalization Agreement. The Front Polisario put forth 11 pleas in law. The pleas were variations on the claim that the agreement violated EU and international law principles such as self-determination and human rights obligations.

The General Court[5] confined itself to examining the Front Polisario's legal personality under the Treaty on the Function of the European Union, as opposed to its wider international status. Having observed that the EU has accepted the UN-led peace process in Western Sahara to which the Front Polisario is a party and that it indeed was affected by the Liberalization Agreement, the General Court concluded that the Front Polisario had legal standing to bring the action.

Turning to the substance of the action, the General Court defined the main issue as whether there was an *absolute* prohibition against concluding an international agreement on behalf of the EU regarding territory controlled by a third state. The General Court found that: *"no absolute prohibition derives, either from those provisions or from those of the Charter of Fundamental Rights, which precludes the EU from concluding an agreement with a third State on trade in agricultural products, processed agricultural products, fish and fishery products which may also be applied to a territory controlled by that third State, even though its sovereignty over that territory has not been internationally recognised."*[6]

Regarding the charge of the EU's inconsistency in applying standards protecting the right of self-determination, the General Court found that: *"In the present case, in order to rely on a breach of the principle of consistency, the Front Polisario starts from the premise that the approval by the contested decision of the agreement at issue between the European Union and the Kingdom of Morocco 'supports' the 'sovereignty' of the latter over Western Sahara. That premise is, however, incorrect: since no clause having such an effect appears in the agreement concerned and* ***the mere fact that the European Union allows the application of the terms of the agreement by the Kingdom of Morocco to agricultural or fishery products exported to the European Union from the part of the territory of Western Sahara it controls, or to products which are imported into that territory does not amount to recognition of Moroccan sovereignty over that territory****."*[7] Having established that there was no absolute prohibition under European law of concluding an agreement with State regarding disputed territory under that state's control, and that EU allowing Morocco to apply the terms of the agreement to Western Sahara did not imply recognition of Moroccan sovereignty, the General Court dismissed the 3rd to 9th pleas.

Having found that the EU was not prohibited from concluding agreements with states regarding disputed territory under that state's control, the General Court turned to the conditions under which the EU could conclude such an agreement. "…*the fact remains that the protection of fundamental rights of the population of such a territory is of particular importance and is, therefore, a question that the Council must examine before the approval of such an*

[5] Case T-512/12 Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (Polisario Front) v. Council of the European Union [2015]

[6] Case T-512/12 Par. 146

[7] Par. 154

agreement.[8]" When concluding an export agreement regarding disputed territories, the Counil must ensure that the production of goods for export is not conducted to the determinant of the local population or the infringement of its fundamental rights.

The General Court concluded that the Council did not sufficiently consider Morocco's exploitation of Western Sahara's resources for the detriment of its inhabitants. "*Given the fact, inter alia, that the sovereignty of the Kingdom of Morocco over Western Sahara is not recognised by the European Union or its Member States, or more generally by the UN, and the absence of any international mandate capable of justifying Moroccan presence on that territory, the Council, in the examination of all the relevant facts of the present case, with a view to exercising its wide discretion as to whether or not to conclude an agreement with the Kingdom of Morocco which may also apply to Western Sahara, should have satisfied itself that there was no evidence of an exploitation of the natural resources of the territory of Western Sahara under Moroccan control likely to be to the detriment of its inhabitants and to infringe their fundamental rights. The Council cannot merely conclude that it is for the Kingdom of Morocco to ensure that no exploitation of that nature takes place*.[9]" As such, the Council failed to fulfill its obligation to examine all elements of the case before the adoption of the Agreement. The General Court therefore ruled that the Front Polisario's action must be upheld and the contested decision annulled so far as it approves the application of the agreement to Western Sahara.

Following the ruling, the Council appealed to the Grand Chamber to set aside the General Court's decision. The European Commission, which joined the proceedings, argued that the Liberalisation Agreement could not be interpreted as meaning that it was legally applicable to the territory of Western Sahara. The Council held that the General Court erred in law in ruling on the lawfulness of the rights or obligations resulting, for the other party, from that agreement to which it subscribed freely and at its absolute discretion.

The Grand Chamber held that *a priori* the Liberalization Agreement could not be said to apply to Western Sahara[10]. Self-determination is a principle of international customary law applicable to all non-self-governing territories and to all peoples who have not yet achieved independence. It is enforceable *erga omnes* and is one of the essential principles of international law. Given the fundamental nature of the principle of self-determination, it would be necessary for the Association Agreement to explicitly exempt itself from this general rule in order to apply to Western Sahara. Furthermore, "*under the general international-law principle of the relative effect of treaties, of which the rule contained in Article 34 of the Vienna Convention is a specific expression, treaties do not impose any obligations, or confer any rights, on third States without*

[8] Par. 228

[9] Par. 241

[10] Case C-104/16 P Council v. Front Polisario [2016] ECLI:EU:C:2016:973

their consent."[11] The people of Western Sahara must be regarded as a "third party" whose consent must be sought. It is not enough to show that the implementation of such an agreement would benefit it. Therefore, the General Court erred in holding that the Liberalization Agreement applied to Western Sahara and its judgement must be set aside.

Despite this judgement, the EU seeks to extend the application of these agreements to Western Sahara and to continue to grant Western Sahara products preferential treatment under the terms of the Liberalisation Agreement. The Council authorized the Commission on May 12, 2017 to negotiate an agreement "on the adaptations of protocols to the EU-Morocco Association Agreement[12]." The agreement continues to provide preferential treatment to products from Western Sahara under the terms of the Liberalisation Agreement, although the Council's negotiation mandate requires it the agreement to comply with the Court's judgement, to benefit the people of the Western Sahara and to promote the UN regional solution.

The Grand Chamber followed a very similar line of reasoning in *Western Sahara Campaign UK*[13]. Western Sahara Campaign UK, a voluntary organization that supports the right to self-determination of the people of Western Sahara, submitted that the importation of goods originating in the Western Sahara as if originating in Morocco for the purposes of various free trade agreements violated international law. The Grand Chamber held *a priori* that these agreements could not apply to Western Sahara. Application of the EU-Morocco ageements to Western Sahara would contravene several principles of international law such as the principle of self-determination[14].

4. <u>EU Trade with Western Sahara and Comparison with Israel</u>

Despite these two cases in which the ECJ ruled that trade deals between the EU and Morocco violated international law if they included the Western Sahara, the European Parliament approved a new trade deal in January 2019 that explicitly included the Western Sahara[15]. The agreement's text explicitly notes Polisaro Front opposed the new trade deal and did not take part in the consultation process[16]. This is contrary to the Grand Chamber's ruling that it was necessary to receive the consent of the people of the Western Sahara, not merely to demonstrate that they would benefit from an agreement. Close to 100 Sahrawi civil society organizations

[11] Case C-104/16 Par. 101

[12] Recommendation for a COUNCIL DECISION authorising the opening of negotiations on the adaptation of protocols to the Agreement between the European Union and the Kingdom of Morocco COM/2017/191 final

[13] Case C-266/16 Western Sahara Campaign [2018] ECLI:EU:C:2018:118

[15] "MEPs adopt new Fisheries Partnership with Morocco including Western Sahara" https://www.europarl.europa.eu/news/en/press-room/20190207IPR25218/meps-adopt-new-fisheries-partnership-with-morocco-including-western-sahara

[16] "EP mission report on Western Sahara: all politics, no trade" https://www.wsrw.org/a106x4281

signed an appeal to members of the European Parliament asking them to vote against the agreement. The appeal stated:

> "*There have been no efforts from the EU Commission to obtain the consent of the people of Western Sahara nor have we seen responsible engagement from the EU in negotiating with the POLISARIO Front. Quite the contrary, we have witnessed the attempt by the Commission to mislead and divide the people of Western Sahara in the course of fake consultations, which failed to meet the requirement by the Court of ensuring the consent as the main condition for the legality of any economic activity in the occupied Western Sahara. Moreover, our people remains largely excluded from the fisheries sector which is overwhelmingly run and staffed by Moroccan settlers and therefore, the fisheries agreement*
> *will only reinforce our exclusion, while expanding the external, illegal control over the exploitation of our fisheries resources*.[17]"

Recently, a legal opinion prepared by the European Parliament's legal service has questioned whether Sahrawi consent has been obtained. Referring to the Commission's consultation process, the opinion states that "*it seems difficult to confirm with a high degree of certainty whether these steps meet the Court's requirement of a consent by the people of Western Sahara, also taking into consideration that the conclusion of a positive consent is reached in spite of the negative opinion expressed by the Polisario Front*.[18]"

Interestingly, Members of the European Parliament supporting the trade agreement argued that "the local [Sahrawi] people have the right to develop while awaiting a political solution" to the status of the Western Sahara[19].

The double standard between the EU's treatment of Moroccan-occupied Western Sahara and Israeli-occupied (according to the EU) Judea and Samaria is blatant. Despite the ECJ's rulings that the Western Sahara cannot be considered part of Morocco, the EU continues to benefit from Moroccan economic activity in the Western Sahara. Clearly, the EU does not have a principled stance on goods from occupied territories but has a policy uniquely targeted at Israel. This violates WTO principles of equality and non-discrimination.

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[17] "98 Saharawi groups call on European Parliament to reject fish deal"
https://www.wsrw.org/a105x4445

[18] "Parliament lawyers cast doubt on legality of Western Sahara trade deal"
https://www.wsrw.org/a105x4277

[19] "Preferential tariffs to help Western Sahara to develop"
https://www.europarl.europa.eu/news/en/press-room/20190109IPR23018/preferential-tariffs-to-help-western-sahara-to-develop

As mentioned above, the EU considered Moroccan officials and organizations as part of the local population beneficiaries[20], a policy never extended to Israeli residents in Judea and Samaria. In her EU-sponsored fact-finding mission to Western Sahara, MEP Lalonde met with Moroccan GONGOs, officials elected under Moroccan-held elections and members of the Moroccan Chamber of Commerce. This would be the equivalent of a European Union fact-finding mission to Judea and Samaria meeting solely with members of the Yesha Council, Israeli businesspeople and the mayors of Israeli communities, with the PLO refusing to cooperate. Such a scenario barely seems imaginable. Lalonde also argued that the absence of a political solution to the question of Western Sahara's status should not preclude the possibility of economic development[21]. This of course stands in stark contrast to the EU's opposition to any and all Israeli economic activity in Judea and Samaria.

B. The Security Exception

5. The Security Exception Defined

Despite the prohibition of discriminatory policies, Article XXI of the General Agreement on Tariffs and Trade ("**GATT**") allows for exceptions based on security concerns. The Article provides:

> *Nothing in this Agreement shall be construed (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests…*
>
> *(iii) taken in time of war or other emergency in international relations; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.*

Bell and Kontrovich expect the EU to raise the WTO's security exception to justify their discriminatory policy towards Israel. A recent WTO Panel decision, adopted on 26 April 2019, demonstrates the narrow conditions under which a country can invoke the security exception[22].

In November 2014, Russia banned the transit of goods subject to veterinary surveillance from Ukraine, except through specific checkpoints and subject to various restrictions. In January 2016, Russia banned rail and road transit across the Ukraine-Russia border for all traffic destined for Kazakhstan except through Belarus, and subject to numerous restrictions related

[20] MEP Lalonde's Mission Report following visit to Western Sahara on 3 and 4 September 2018, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/INTA/CR/2018/10-10/1163925EN.pdf

[21] Video of MEP Lalonde Interviewed on Western Sahara television https://www.wsrw.org/files/dated/2018-10-17/lalonde-ws-visit_2018.mp4

[22] DS512: Russia — Measures Concerning Traffic in Transit

to identification and registration cards. In July 2016, Russia banned the transportation of particular categories of goods through Russia destined for Central Asia. This ban led to a major reduction in trade with Asia and the Caucuses. Ukraine disputed these bans before the WTO and claimed that they were inconsistent with Russia's obligations under Article V of the GATT (freedom of transit) and related commitments.

Russia argued that these measures were necessary for the protection of its essential security interests, which it took, "[i]n response to the emergency in international relations that occurred in 2014 that presented threats to the Russian Federation's essential security interests". It also argued that the security exception is self-judging and thus not subject to WTO review.

The WTO Panel accepted Russia's security claims, determining that the situation between Russia and Ukraine since 2014 was an "emergency in international relations" and that Russia's actions were objectively taken in such a time[23]. The Panel found that the security exception must be made in good faith and members must show that the challenged measures are "not implausible" as measures to protect those essential security interests. As such, the 2014 emergency threatened Russia's essential security interests and came close to the "hard core" of war or armed conflict. The measures were not so unrelated to the 2014 emergency that it was implausible that Russia implemented these measures for the protection of its essential security interests. Importantly, the Panel interpreted "emergency in international relations" by reference to a "situation of armed conflict, or of a latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state". It found that "political or economic differences" between WTO Members would not be sufficient in themselves to fall within the security exception. As the Panel explained:

> *7.130 "Essential security interests" which is evidently a narrower concept than "security interests", may generally be understood to refer to those interests relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.*
>
> *…*
>
> *7.132 However, this does not mean that a Member is free to elevate any concern to that of an "essential security interest". Rather, the discretion of a Member to designate particular concerns as "essential security interests" is limited by its obligation to interpret and apply Article XXI(b)(iii) of the GATT 1994 in good faith. ..*
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> *7.133 The obligation of good faith requires that Members not use the exceptions in Article XXI as a means to circumvent their obligations under the GATT 1994. A glaring example of this would be where a Member sought to release itself from the structure of "reciprocal and mutually advantageous arrangements" that constitutes the multilateral trading system simply by re-labelling trade interests*

[23] Par 7.126. – 7.5.7.

that it had agreed to protect and promote within the system, as "essential security interests", falling outside the reach of that system.

7.134 It is therefore incumbent on the invoking Member to articulate the essential security interests said to arise from the emergency in international relations sufficiently enough to demonstrate their veracity.

7.135. What qualifies as a sufficient level of articulation will depend on the emergency in international relations at issue. In particular, the Panel considers that the less characteristic is the "emergency in international relations" invoked by the Member, i.e. the further it is removed from armed conflict, or a situation of breakdown of law and public order (whether in the invoking Member or in its immediate surroundings), the less obvious are the defence or military interests, or maintenance of law and public order interests, that can be generally expected to arise. In such cases, a Member would need to articulate its essential security interests with greater specificity than would be required when the emergency in international relations involved, for example, armed conflict.

The EU, as a third party submission, argued that "essential security interests" should be subject to judicial review and that a panel should review whether the interests at stake can "reasonably" or "plausibly" be considered essential security interests. The panel must also review whether the action is "capable" of protecting a security interest from threat[24]. The EU welcomed the ruling setting a high bar for the "security exception." Applying this to Israel, according to their own argument, the EU would need to demonstrate essential security interests involving Israeli communities in Judea and Samaria, and that labelling agricultural products can actually protect these interests. As the situation in Judea and Samaria cannot be said to threaten EU with armed conflict or the breakdown of law and order, they would need to articulate the "essential security interest" in greater specificity. Additionally, the EU claimed before the ECJ that the labelling requirements were due to consumer protection reasons, thus weakening any later claims to security considerations.

The WTO rejected the idea that the security exception is self-judging and stated that it is subject to judicial review. If the EU claims that its labelling requirements are necessarily on security grounds, Israel will have legal recourse to the WTO.

The EU, along with eight countries, has already gone to the WTO to challenge US tariffs and quotas on steel imports, justified by the US under security grounds[25]. Section 232 of the Trade Expansion Act of 1962, a cold-war era law, allows the president to place restrictions on imports on national security grounds. In March 2019, the US imposed tariffs on steel and aluminum imports. The US has rejected the WTO's ruling in *Russia — Measures Concerning Traffic in Transit* and argued that the security interest is "self-judging".

[24] Par. 7.43

[25] WT/DS548 - United States — Certain Measures on Steel and Aluminium Products

The EU has argued, both in its oral statement and written submission, that the security exception must be seen narrowly and must be subject to judicial review to prevent its abuse. The EU representative said in its oral submission to the WTO on November 4, 2019 that: "*the provision does not allow Members the power to decide "with finality" whether their measures fall within it; its intent is "not to reserve full power of unilateral interpretation". In other words, "the interpretation of the content of the security exceptions is not reserved to the country taking action". Instead, this question "rests solely within the general power to interpret otherwise conferred" by the WTO agreements. This stands to reason, because the contrary reading would "make unchallengeable by the Organization or any other Member a justification, however far-fetched, of any action labelled as related to national security*." [26] This high standard should make it more difficult for the EU to justify its labelling policies against Israel under the security exception.

In conclusion, this ruling makes it more difficult for the EU to justify its labelling requirements on security grounds as it will need to prove the existence of essential security interests and demonstrate that these measures indeed protect those interests.

[26] Par. 23