IS PSAGOT DRINKING ALONE? APPLICATION OF THE CJEU PSAGOT JUDGEMENT TO OTHER TERRITORIES THE EU CONSIDERS UNDER OCCUPATION

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I. INTRODUCTION

In the second half of the twentieth century and the early twenty-first century, a new phenomenon emerged in the international system: territorial conflicts that do not find closure. The establishment of the United Nations, and the formal adoption of the principle of inviolability of borders and inadmissibility of use of force to change them, has created an increase in protracted conflicts. As a result, close to a dozen territories around the world have been controlled for decades by forces which are not widely recognized as the sovereign over the territories.¹ Yet economic activity still takes place in these territories. The November 2019 Court of Justice of the European Union (“CJEU”) judgment in Organisation juive européenne and Vignoble Psagot Ltd v. Ministre de l’Économie et des Finances (“Psagot”) relates to trade with a territory of this type.² The Psagot case covered trade between Israeli controlled areas, the West Bank, East Jerusalem and the Golan Heights, and the EU.³

In Psagot, the CJEU upheld that exporters of goods produced in Israeli settlements, in the West Bank, East Jerusalem, and the Golan Heights, and imported into the EU could not designate as country of origin “Products of Israel” on consumer products labels, since the EU does not recognize Israel’s jurisdiction over these territories.⁴ In addition, the consumer product labels should designate explicitly that the goods are produced in Israeli settlements, in order not to potentially mislead consumers that the goods are produced by Palestinian entities.⁵ The Psagot

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³ Id. ¶ 2.

⁴ Id. ¶¶ 34-38.

⁵ Id. ¶¶ 51-58.
judgment, thus, requires that consumer products labels explicitly indicate a geographic location’s status under international law.6

This article examines the question of whether this judgment should be applied to other territories where the EU does not recognize the jurisdiction of occupying powers. Has the CJEU established a new standard that goods imported into the EU produced in settlements in occupied zones must be labeled as such, or is this a lex specialis judgment specific to Israel? There are several regions in close proximity to Europe where the EU does not recognize the occupying power’s sovereignty or jurisdiction over these territories, including six regions occupied by Russia and Armenia’s occupation of Nagorno-Karabakh and other territories of Azerbaijan.7

Among those cases, Armenia’s occupation of territories of neighboring Azerbaijan is particularly relevant. The Republic of Armenia captured Nagorno-Karabakh and seven other territories of Azerbaijan from the Republic of Azerbaijan during the 1992-1994 war between the two states.8 These territories remain under Armenia’s occupation.9 Armenia, like Israel, conducts an extensive settlement project in the territories it occupies.10 These territories are recognized by the UN, US, EU, and other European states as lawfully part of Azerbaijan, and Armenia is not recognized as having jurisdiction or sovereignty over the territories.11 Many of Armenia’s settlements produce products that are imported into the EU. However, as will be shown in this article, products from Armenian settlements in Azerbaijan’s territories are labeled and marketed throughout the EU as “Product of Armenia.”

This article examines the applicability of the CJEU’s Psagot case labeling requirements to other territories. This article surveys the policy and practice of the EU toward the import of goods produced in regions that the EU considers to be under foreign occupation, including a case study on the labeling of goods produced in Armenia’s settlements in territories of Azerbaijan that it occupies. Finally, this article concludes that the Psagot CJEU judgement is likely to generate additional cases of labeling requirements for occupied territories, such as Nagorno-Karabakh.

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6 Id.
7 Cornell & Shaffer, supra note 1, at 7-19.
8 Id. at 14-15.
10 Cornell & Shaffer, supra note 1, at 26-27, 29-31.
11 Id. at 6; POPJANEVSKI, supra note 7, at 23.
II. Psagot Judgment: A New Legal Standard on Goods Imported into the EU Produced in Occupied Zones?

On November 12, 2019 the CJEU published its judgement in the Psagot case. The case was submitted to the CJEU after the publication of two notices. First, a 2015 EU Commission Notice specified that, under international law, the territories of the Golan Heights, the West Bank and East Jerusalem are not part of Israel. The EU Notice stated that, in order not to mislead EU consumers, the labelling of food products must explicitly indicate the origin of the products as products from Israeli settlements in such territories. France first applied this requirement domestically by a notice on November 24, 2016 from the French Minister for the Economy and Finance, referring to the 2015 EU notice, in which it reiterated its labelling mandate for products from Israeli settlements in the occupied territories. The case was referred to the CJEU following proceedings brought by the Organisation juive européenne and Vignoble Psagot against the French Minister for the Economy and Finance seeking the annulment of the French Notice. The CJEU judgement was proceeded by the publication of an opinion by the CJEU Advocate General.

The CJEU held that goods produced in Israeli settlements, in the West Bank, East Jerusalem, and the Golan Heights, and imported into the EU could not designate their country of origin on consumer product labels as Israel, since the EU does not recognize these territories as legally part of Israel. In addition, the CJEU held that the consumer products’ labels should denote explicitly that they were produced in Israeli settlements, in order not to mislead consumers that Palestinian entities produced the

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12 See Psagot ¶ 1.
13 See id. ¶¶ 2, 12, 17.
17 A European Jewish communal organization.
18 A company that specializes in wine produced from vineyards in the West Bank.
21 Psagot ¶¶ 13, 34-38.
goods.\textsuperscript{22} The \textit{Psagot} judgment upheld the legality of requiring a geographic location’s status under international law to be included in consumer product labels.\textsuperscript{23}

In the judgment, the CJEU referred to EU Regulation No. 1169/2011 on the provision of food information to consumers,\textsuperscript{24} which states that indication of a product’s origin should be provided where failure to indicate this might mislead consumers as to the actual country of origin or place of provenance of the product.\textsuperscript{25} The CJEU explained that the regulation’s stated goal is not only to achieve a high level of health protection for consumers, but also to guarantee a consumer’s ability to “make informed choices, with particular regard to health, economic, environmental, social and ethical considerations.”\textsuperscript{26} In the context of these considerations, the CJEU stated that the international legal status of the production site is relevant information.\textsuperscript{27} Furthermore, the judgment held it is reasonable that a consumer’s purchasing decision may be influenced by whether a product comes from a settlement established in breach of international humanitarian law.\textsuperscript{28} The court explained that consumers cannot be expected to guess whether a product from an occupied region came from a locality constituting a settlement established in one of those territories, in breach of the rules of international humanitarian law, and therefore the omission of such information is likely to mislead consumers.\textsuperscript{29} Accordingly, the court concluded that products that originate from occupied territories must bear the indication of that territory, as well as the indication that they come from an Israeli settlement within that territory.\textsuperscript{30}

The CJEU’s reasoning focused on the legal status of the occupied territories in question.\textsuperscript{31} In its interpretation of a product’s origin, the court differentiated between the notion of a “state,” which refers to “a sovereign entity exercising, within its geographical boundaries, the full range of powers recognised by international law,”\textsuperscript{32} and the term “territory,” which refers to, inter alia, “geographic spaces which, whilst being under the
jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law.”

The CJEU noted that the products at issue in the Psagot case originate in territories occupied by the State of Israel since 1967, and, under the rules of international humanitarian law, these territories are subject to the limited jurisdiction of the State of Israel, as an occupying power, while “each has its own international status distinct from that of that State.” According to the Psagot judgment, the EU recognizes the West Bank as a territory of the Palestinian people. In light of this, the CJEU held that indicating Israel as the product’s country of origin is likely to deceive consumers. Similarly, the CJEU held that stating the origin as the West Bank may lead consumers to think the products are of Palestinian origin and not from an Israeli settlement there.

The CJEU claimed that the settlements established in territories occupied by the State of Israel are a concrete expression of a policy of population transfer conducted by the State outside its territory, in violation of international humanitarian law. Moreover, the CJEU noted that the settlement policy has been repeatedly condemned by the United Nations Security Council and the European Union.

In sum, the CJEU held that imported goods produced in Israel’s settlements in occupied territories must be labelled as such, in order not to mislead consumers as to the origin of such products since this information is relevant as an ethical consideration for consumers when making a purchase.

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33 Psagot ¶ 31. The Psagot court bases this interpretation on the CJEU’s judgment in Council v. Front Polisario and Western Sahara Campaign UK v. Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs. See Front Polisario, ¶¶ 92, 95; Case C- 266/16, Western Sahara Campaign UK v. Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs, 2018 EU:C:2018:118 ¶¶ 62-64 (Feb., 27, 2018) [hereinafter Western Sahara Campaign UK].

34 Psagot ¶ 34.

35 Id. ¶ 35. It should be noted that the EU does not recognize Palestine as a state. The European Commission states, regarding the term “Palestine,” that “[t]his 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.” See Palestine, EUROPEAN COMM’N, https://ec.europa.eu/neighbourhood-enlargement/neighborhood/countries/palestine_en (last updated Jan. 22, 2020). Several EU member states have recognized Palestine as a state. See Luxembourg Said Pushing for EU States to Recognize Palestine, TIMES OF ISRAEL (Dec. 9, 2019, 2:45 AM), https://www.timesofisrael.com/luxembourg-said-pushing-for-eu-states-to-recognize-palestine/.

36 Psagot ¶ 49.

37 Id. ¶¶ 36-38. The court mentioned that it was important to prevent consumers being misled as to the fact that the State of Israel is present in those territories as an occupying power and not as a “sovereign entity.” Therefore, according to the CJEU, it is necessary to inform them that those products do not originate in Israel.

38 Id. ¶ 48; see Convention Relative to the Protection of Civilian Persons in Time of War, art. 49 ¶ 6, Aug. 12, 1949, 75 U.N.T.S. 287.

39 Psagot ¶ 48.
purchasing decision. As shown above, the CJEU explained that the
information deemed relevant in this context is the legal status of the
territories where the products are produced and whether the production
takes place in settlements that are established in those territories in breach
of international law. Accordingly, it is reasonable that this requirement
should be applied to other regions where the EU does not recognize the
jurisdiction or sovereignty of the occupying powers in those territories.
Goods produced in settlements in those territories should require the same
designation as required by goods produced in Israeli settlements in the
territories it occupies.

III. EU POLICY ON IMPORTED GOODS FROM REGIONS UNDER OCCUPATION

The European Union has an exceptionally inconsistent policy
toward trade with regions under occupation. There are several regions in
close proximity to the borders of the EU for which the EU and member
countries do not recognize the controlling party as the legal sovereign or as
having jurisdiction over these regions. These regions include: five regions
under Russian occupation (Donbas, Crimea, Transnistria, Abkhazia, and
South Ossetia); Armenia’s occupation of Nagorno-Karabakh and
surrounding territories of Azerbaijan; Morocco’s lack of jurisdiction over
Western Sahara; and Turkey’s occupation of Northern Cyprus.

While, in theory, consumer product labels should be accurate in all
cases, the EU only enforces this policy in the case of imports of goods from
Israeli settlements and from Russian occupied Crimea, the latter in the case
of broader international sanctions that target Russia’s invasion and
annexation of Crimea. In addition, the EU conducts a trade embargo on
Northern Cyprus, even though this region is located within the European
Union. In contrast, the European Union has encouraged trade with
Western Sahara, explicitly including the region in its trade agreements with
Morocco, even though Morocco’s jurisdiction over the region is not
recognized by the EU.

In the case of the Russian occupied region of Transnistria, the EU
has a unique policy. The EU has set up a mechanism to enable export from
the occupied region, requiring that the label list the origin of goods as
Moldova, thus upholding the principle of declaration of the geographic
locality per its legal status. However, in labeling requirements on goods

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40 Id. ¶¶ 51-58.
41 For more on EU policies and trade with zones in protracted conflicts, see Cornell &
Shaffer, supra note 1, at 6, 35-39.
42 Id. at 35-39.
43 Id. at 6, 35-39.
44 See id. at 38.
45 Id. at 37-38.
46 Id. at 36-37.
47 Cornell & Shaffer, supra note 1, at 38-39.
imported into the EU, there is no additional denotation that this region is under Russian occupation and not subject to Moldova’s food safety regulations and oversight. Nor is there any indication regarding the producers, such as whether they are Russian settlers or Moldovan nationals. Thus, this practice also deprives consumers of the information that the goods are produced under Russian occupation, which, per Psagot, could be a factor in consumers’ preferences. As such, the EU policy regarding goods from occupied Transnistria misleads EU consumers and deprives them of relevant consumer information.

Moldova supported the EU established mechanisms that enabled export to the EU of consumer goods labeled “Products of Moldova,” that were produced in the occupied territories. The 2007 Autonomous Trade Preferences granted to Moldova enabled EU market access to companies operating in Transnistria, which is occupied by Russian military forces. The EU required companies to register in Moldova’s capital, Chisinau, even though they were operating in Transnistria, under Russia’s control, as a condition to receive EU market access. Over 2,000 companies operating in Transnistria have used this mechanism to gain entrance to the EU market. This arrangement for export from Transnistria was strengthened by a 2016 technical agreement between the EU and local authorities in Transnistria, which stated that Moldova’s Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU would also apply to Transnistria.

The EU’s policies toward other regions occupied by Russia are also inconsistent. Prior to the full ban on imports from Crimea, the EU did not accept goods from Crimea without a Ukrainian stamp on its certificate of origin. Yet, there is no interference with trade with other regions under Russian occupation: Donbas, Abkhazia, South Ossetia. Similarly, as will be discussed in the next section of this article, the EU has not taken any steps to ensure accuracy in certificates of origin or labeling of consumer goods on products produced in Nagorno-Karabakh and surrounding occupied territories, and goods produced in settlements in these territories easily enter the EU with certificates of origin and consumer product labels that state “Product of Armenia.”

48 See id. at 39.
49 See Psagot ¶¶ 53-56.
50 See Cornell & Shaffer, supra note 1, at 38-39.
51 Id. at 39.
52 Id.
53 Id.
54 Id.
56 Id. at 38.
57 Cornell & Shaffer, supra note 1, at 35.
IV. Case Study: Products Produced in Armenia’s Settlements in Nagorno-Karabakh and Adjoining Territories of Azerbaijan Imported into the EU

This article will next examine the potential applicability of the CJEU judgment in the Psagot case to the case of products produced in Armenia’s settlements in Nagorno-Karabakh and adjoining territories of Azerbaijan. This case study is especially illuminating regarding the question of the applicability of the CJEU Psagot judgement to other zones besides Israeli held territories. There are many similarities to the Psagot case, including: the EU does not recognize Armenia’s sovereignty over Nagorno-Karabakh and other territories of Azerbaijan; Armenia has established extensive settlements in these occupied territories of Azerbaijan; and goods produced in the settlements are imported into the EU and marketed in almost all states in the EU. Indeed, one might argue that given the concerns about international law raised in the Psagot case, Armenia’s occupation of Nagorno-Karabakh and additional territories of Azerbaijan should be at the forefront. Not only does Armenia encourage and give financial incentives to people to move into the occupied territories, but Armenia has expelled the Azerbaijani inhabitants from the territory. In addition, for the last two decades, Armenia has not made a diplomatic offer to return any part of the territories. 58

However, unlike in the Psagot case, there is no enforcement that consumer products’ labels specify that the goods are from an occupied territory, and in some cases from settlements, and the place of origin of these goods is listed in the EU as “Product of Armenia.” The legal status of Armenia’s settlements in Nagorno-Karabakh meets the criteria laid out in the Psagot decision. Despite this, products from these illegal settlements are imported into the EU and marketed in most of its states, while their consumer product labels state “Product of Armenia,” even though such labeling could mislead consumers as to their actual country of origin or place of provenance, according to the Psagot judgment rationale.

A. Background on the Armenia-Azerbaijan Conflict

The Armenia-Azerbaijan conflict centered on control of Nagorno-Karabakh and was one of the deadliest in the post-Soviet space. 59


Karabakh is a region of the Republic of Azerbaijan that had an ethnic Armenian majority at the time of the Soviet collapse. After the Soviet collapse in late 1991, a full-scale war erupted between the newly independent states of Armenia and Azerbaijan. Armenia sought to capture Nagorno-Karabakh and surrounding territories, especially those territories that would create a physical link between Armenia and Nagorno-Karabakh. During their capture of Nagorno-Karabakh and seven additional districts of Azerbaijan, Armenian forces evicted more than 700,000 ethnic Azerbaijani residents of the region. According to Serzh Sarkisian, who commanded Armenian forces during the war and later became the country’s president, Armenia employed a deliberate policy of mass killing in certain locations during the war to cause the civilian Azerbaijani population to flee. Russian forces took part in certain battles and provided arms, stoking the conflict, and Russian forces remain in Armenia, manning several of its border regions and its air defense and air space.

In 1994, Armenia and Azerbaijan signed a Russia-brokered ceasefire, leaving Armenia in control of the Nagorno-Karabakh region and seven adjacent administrative districts of Azerbaijan, which had no significant Armenian populations before the war. As a result of the 1992-1994 war between the two states, the Republic of Armenia occupied close to twenty percent of the territory of the Republic of Azerbaijan.

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60 Cornell & Shaffer, supra note 1, at 14.
61 Id.
62 Id.; Interviews by Authors with Armenian officials in Cambridge, MA (2002).
64 See de Waal, supra note 59, at 184-85, 355-56.
66 See de Waal, supra note 59, at 213-17; Cornell, supra note 65, at 10-11. Iran’s support was also critical to Armenia’s success in conquering Azerbaijan’s territories. During the war, the only regular trade open to Armenia was from Iran (Georgia was engulfed in a civil war, with Russia’s participation, and Azerbaijan and Turkey had closed land borders with Armenia). Iran supplied critical fuel and food supplies and, potentially, arms. Without the supplies from Iran, Armenia could not have sustained the war effort. For more on Iran’s role in the conflict, see generally Brenda Shaffer, The Islamic Republic of Iran’s Policy Toward the Nagorno-Karabakh Conflict, in The International Politics of the Armenian-Azerbaijani Conflict 107-24 (Svante Cornell ed., 2017).
68 See id.
69 For a detailed analysis of the Nagorno-Karabakh conflict under international law, see generally Heiko Krüger, The Nagorno-Karabakh Conflict: A Legal Analysis 93-112, 116 (2010) (“Neither from the point of view of Soviet law nor international law did any right to secession emerge on the part of the Karabakh-Armenians. For this reason, Nagorno-Karabakh continues to belong to the Republic of Azerbaijan which in this respect is able to invoke the principle of territorial integrity that applies under international law.”).
Despite several UN Security Council resolutions calling for withdrawal, Armenia refuses to withdraw from these territories.\(^{70}\) To circumvent actions from the international community against its occupation, Armenia claims that it in fact does not occupy the territory, despite the fact that its military is deployed in the occupied territories and its units are in active combat with Azerbaijani forces at the line of contact at the occupied territories.\(^{71}\) It has created a fictitious “Nagorno-Karabakh Republic”\(^{72}\) that it claims is the sovereign over the occupied territories.\(^{73}\) No states have recognized Nagorno-Karabakh as a country, including Armenia.\(^{74}\)

**B. Status of the Territories According to the EU**

Both EU entities and member states do not recognize Armenia’s sovereignty or jurisdiction over the territories it captured from Azerbaijan.\(^{75}\) In addition to the EU and its member states, the UN, the United States, and the European Court of Human Rights (“ECHR”) recognize Nagorno-Karabakh and adjoining regions as occupied Azerbaijani territory.\(^{76}\)

In official statements and documents, the EU frequently reaffirms its position that it does not recognize Armenia’s claim over Nagorno-Karabakh and surrounding territories. For instance, in response to elections held in Nagorno-Karabakh in 2002, the EU Commission issued the following statement: “The European Union confirms its support for the territorial integrity of Azerbaijan, and recalls that it does not recognise the independence of Nagorno Karabakh.”\(^{77}\) During a July 2019 meeting with Azerbaijan’s President Ilham Aliyev, Donald Tusk, who at the time served as President of the European Council, emphasized the EU’s support for

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\(^{71}\) Cornell & Shaffer, *supra* note 1, at 22-23; see also Krüger, *supra* note 69, at 93-112.

\(^{72}\) The region is referred to as “Artsakh” in Armenian.

\(^{73}\) For more on “proxy regimes” and Armenia’s use of a proxy regime in territories it occupies, see Svante Cornell & Brenda Shaffer, *The United States Needs to Declare War on Proxies*, FOREIGN POLICY (Feb. 27, 2020, 5:34 AM), https://foreignpolicy.com/2020/02/27/russia-iran-suleimani-the-united-states-needs-to-declare-war-on-proxies/.


\(^{75}\) Cornell & Shaffer, *supra* note 1, at 6.


Following the meeting of the Cooperation Committee between the EU and the Republic of Azerbaijan, held in Brussels on 12 July 2002, the Committee issued a statement reconfirming the “well-known EU position on the settlement of the Nagorno-Karabakh conflict between Azerbaijan and Armenia on the basis of the full respect to the territorial integrity of Azerbaijan.”\footnote{Final Statement & Recommendations of the EU – Azerbaijan Parliamentary Cooperation Committee (4th Meeting), ¶ 2 (May 14, 2003), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/498/498231/498231en.pdf} In that respect, the committee reconfirmed its position “on non-acceptance of the \textit{fait accompli} as a basis for the settlement” and called “on Armenia to refrain from the actions undertaken in the occupied territories of Azerbaijan including the Nagorno-Karabakh region, which may in a way consolidate the status quo.”\footnote{Id. ¶ 38 (emphasis in original).} In the statement, the Committee recognized that a “just and lasting solution to the conflict on the basis of relevant principles and norms of international law [must be reached], notably those of respect to the territorial integrity and inviolability of
According to the central judgment of the ECHR related to the conflict between Azerbaijan and Armenia, it is estimated that, in 1988-1994, around 750,000-800,000 Azerbaijanis were forced out of Armenia, Nagorno-Karabakh, and the seven Azerbaijani districts surrounding Nagorno-Karabakh. 

In Chiragov and Others vs Armenia, six Azerbaijani refugees lodged a complaint with the ECHR claiming they were unable to return to their homes and property in the district of Lachin in Azerbaijan, from where they had been forced to flee in 1992 during the Nagorno-Karabakh conflict. In the judgment, the ECHR held that there had been continuing violations of Article 8 (right to respect for home and private and family life), Article 13 (right to an effective remedy), and Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights. The Court found Armenia responsible for the breaches of the applicants’ rights and held that the Armenian Government had to pay 5,000 euros damage to each of the applicants. Thus, the Court upheld that the former Azerbaijani residents were the lawful residents of the occupied territories and upheld that Armenia has effective control over the territories.

C. Armenia’s Settlements in the Territories Under Occupation

Armenia operates an extensive settlement project in Nagorno-Karabakh and the other occupied territories of Azerbaijan. Armenia’s settlers are housed both in homes that belonged to the former Azerbaijani residents and new buildings built since Armenia’s occupation. The Organization for Security and Co-operation in Europe (“OSCE”) has documented Armenia’s establishment of settlements in the occupied territories, including in the homes of the former Azerbaijani occupants.

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84 Id. ¶ 39.
85 Chiragov ¶ 25.
86 Id. ¶ 32.
87 Id. ¶¶ 202-224.
89 Chiragov ¶ 186.
90 For more details on Armenia’s settlement project, see Cornell & Shaffer, supra note 1, at 29-31; see also Babayan, supra note 58.
Several entities engage in the efforts to increase the number of settlers in the occupied territories, including officials in Armenia, local authorities in Nagorno-Karabakh, and Armenian diaspora organizations.\(^{92}\) Settlers also receive financial incentives to move to the occupied territories, such as the rights to lease land for free, receive loans for livestock and small businesses, and enjoy free utilities.\(^{93}\) Armenia’s settlements in the occupied territories receive funding from multiple sources, including direct Armenian government funding and funds from Armenian diaspora organizations.\(^{94}\)

Starting in 2012, a new wave of settlers has arrived to Nagorno-Karabakh and other occupied territories, as ethnic Armenians left Syria as a result of the Syrian civil war.\(^ {95}\) Syrian ethnic Armenian emigres were encouraged to settle in the occupied territories.\(^ {96}\) Armenia has received funds from the EU to settle these Syrian refugees in Armenia, and there is no evidence that the

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EU has taken steps to prevent funds from being used to settle the Syrian emigres in Nagorno-Karabakh and the other territories Armenia occupies.\footnote{Cornell & Shaffer, supra note 1, at 31. See EU Regional Trust Fund in Response to the Syrian Crisis, the ‘Madad Fund,’ supra note 91; Anna Grigoryan & Aneta Harutyunyan, EU Plans to Implement Support Project for Syrian-Armenians In Armenia, ARMENPRESS (June 26, 2018, 9:48 AM), https://armenpress.am/eng/news/938882.htm.}

D. Goods Produced In Armenia’s Settlements In Occupied Territories Marketed In The European Union

Several businesses operate in the occupied territories of Nagorno-Karabakh and surrounding regions, including in the fields of tourism and food products. Products produced in the occupied territories are exported to most states in the European Union. As will be seen in this section, companies producing these goods in Armenia’s settlements in the occupied territories declare in consumer product labels that the goods are produced in Armenia, despite coming from an occupied territory of Azerbaijan. Below is a survey of some of the products produced in the occupied territories that are imported into the EU.\footnote{This list is not all-inclusive and represents a sample of products.}

i. Wineries in the Occupied Territories That Export to the European Union

Over a dozen wineries and distilleries (vodka, cognac, etc.) operate in Nagorno-Karabakh and adjacent occupied territories. Many of their products are marketed in the EU through local European distributors, including many in the EU capital Brussels (see Fig. 3). The companies exporting these products erroneously write in consumer product labels that the goods are “Product of Armenia,” despite writing in marketing pieces that the goods are produced in the occupied territories.

For example, the Kataro Winery advertises itself as the “flagship winery of Artsakh” (the Armenian name for Nagorno-Karabakh).\footnote{KATARO, https://kataro.am (last visited May 1, 2020).} The winery is located in the village of Tuğ in the Khojavend district in Nagorno-Karabakh.\footnote{Id. Yet, per Figures 1 & 2 below, its bottled wine is labelled as a “product of Armenia.”}
**Figures 1 & 2:** Label of Kataro wine bottle, purchased in Brussels, labeled “Product of Armenia.”
**Figure 3**: Kataro Winery’s official distributors based in the European Union.\(^{101}\)

Below, *Figure 4* shows an invoice for wine purchased from the Kataro Winery for delivery in France. The invoice states that the wine is “direct import from Armenia.” The winery openly uses a company registered in Yerevan as a front in order to hide the wine’s origin. “The company exports to the United States, Canada, Russia, and the EU, all via a corporate registration in Armenia, a tool all Karabakh producers use.”\(^{102}\)

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\(^{101}\) Contacts, KATARO, https://kataro.am/contacts (last visited May 1, 2020).

Figure 4: Receipt for purchase of Kataro wine in France, marketed as “direct import from Armenia.”

Several wineries operating in the occupied territories label their wines as “Product of Armenia” on consumer product labels in the EU. For instance, another winery operating in the occupied territories that markets in the EU is the “Artsakh Brandy Company.” (see Figs. 5-8) This winery also labels its wine as “Product of Armenia” when exported to the EU.  

**FIGURES 5-8:** Artsakh Brandy Company wine labeled in the EU as a product of the Republic of Armenia
Similarly, per Figure 9, distributor Armenian Brandy and Wine markets and sells, throughout the EU, wines produced both in Armenia and in the occupied territories without distinguishing between them.

![Shipments safe and fast in 27 countries in Europe *](image)

**Figure 9:** Armenian Brandy and Wine distributes wines from both Armenia and the occupied territories throughout the EU.

Under the category of “Armenian wines”, the Armenian Brandy and Wine distributor lists wines produced in the occupied territories as “Armenian Wines” (see Fig. 10).

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Armenian Wines

There are 44 products.

Voskevaz Katarine Liqueur

⭐⭐⭐⭐⭐

16.50 €

Delivery In European Union

Add to cart

Voskevaz Areni Noir Amphora Wine

⭐⭐⭐⭐⭐

32.00 €

Delivery In European Union

Add to cart

Crossroads Syrah Areni 2018

⭐⭐⭐⭐⭐

15.00 €

Delivery In European Union

Add to cart

Triniti Areni Ancestors’ 2018 Natur...

⭐⭐⭐⭐⭐

Trinity 6100 Areni Noir 2018

⭐⭐⭐⭐⭐

17.00 €

Out of stock

Kataro Reserve Armenian Red Wine

⭐⭐⭐⭐⭐

32.40 €

Delivery In European Union

Add to cart

**Figure 10:** Armenian Brandy and Wine distributor in the EU advertises wine produced in the occupied territories, such as Kataro, as “Armenian Wines.”

ii. Food Products Produced in the Occupied Territories That Are Exported to the EU

Several companies produce food products in the Armenian-occupied territories. One of the largest is the “Artsakh Berry” company.108 “Artsakh Berry” operates in the largest city in the occupied territories (called Xankhendi in Azerbaijani and Stepanakert in Armenian) (see Figs. 11-12),109 but inaccurately label their products as “Product of Armenia” when distributed in the EU (see Figs. 13-16). This company, alongside many others, does not make any effort to hide the fact that it is located in the occupied territories, even doing so openly on the websites,110 all while labeling goods exported as “Product of Armenia.”

![Figure 11](image_url)

**Figure 11:** Website of “Artsakh Berry” showing its location in the occupied territories.

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110 Id.
FIGURE 12: “Artsakh Berry” website showing that the company registers with the U.S FDA as if it is located in the Republic of Armenia.

FIGURES 13-14: “Artsakh Berry” capers, purchased in Belgium, labeled “Product of Armenia.”
V. SUMMARY OF APPLICABILITY OF THE Psagot JUDGMENT

In *Psagot*, the CJEU concluded that products that originate from territories that are governed by Israel, as an occupying power, but have a separate and distinct status from that state under international law, must be labeled in a way that does not mislead consumers as to that product’s true place of provenance. The CJEU further stated that it is reasonable that a consumer would want to know before purchasing and had a right to be informed, whether a good’s production could indirectly involve violations of international humanitarian law. It held it is not reasonable for consumers to be expected to guess that a product from the occupied territories comes from a locality constituting a settlement established in breach of the rules of international law and not from a Palestinian

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111 *Psagot* ¶¶ 36-38.
112 *Id.* ¶ 55.
Therefore, the fact that a product originated in an Israeli settlement should be clearly labelled on goods imported into the EU.\textsuperscript{113} As seen in the above case study, the legal status of the territories that Armenia captured from Azerbaijan in 1992-1994 meets the criteria under international law laid out in the \textit{Psagot} decision, as these territories remain as internationally recognized part of Azerbaijan, and thus are not legally under Armenia’s jurisdiction.\textsuperscript{114} Moreover, Armenia is an occupying power, which has expelled Azerbaijani residents of the occupied territories and engaged in the transfer of population (often with explicit cash grants, as well as violations of international humanitarian law, such as taking property of the Azerbaijani refugees). However, products from these areas are imported into the EU and marketed in most of its states with consumer product labels declaring them as a “Product of Armenia.” In this case, Armenia is not “a sovereign entity exercising, within its geographical boundaries, the full range of powers recognized by international law” in the territory of Nagorno-Karabakh,\textsuperscript{115} to use the test of \textit{Psagot}. Therefore, according to the rationale of the \textit{Psagot} decision, labeling products from Nagorno-Karabakh as “Products from Armenia” could mislead consumers as to their actual country of origin or place of provenance. Furthermore, the current labeling does not take into account the ethical considerations of consumers when making a purchasing decision, specifically whether a product comes from a settlement established in breach of international humanitarian law.\textsuperscript{116} Despite this, the EU and member states have taken no action to end this mislabeling. To date, the EU has not published a note, similar to the 2015 EU Note regarding import of goods from Israeli settlements,\textsuperscript{117} clarifying that goods produced in Armenia’s settlements should not be marked as “Product of Armenia,” but rather products of the settlements in Azerbaijan’s territories. Nor does it appear that there have been any documented discussions among EU officials to pursue such labeling.

VI. CONCLUSION

The CJEU \textit{Psagot} judgement addresses an important aspect of trade with territories under occupation. It states that information on labels indicating the origin of products from these territories and entities that produce the goods must be compatible with these territories and entities’

\textsuperscript{113} Id. ¶ 50.
\textsuperscript{114} Id. ¶ 58.
\textsuperscript{115} Cf. id. ¶¶ 26-38. As shown supra in notes 75, 76, & 91, the EU considers these territories as occupied under international law and the ECHR and OSCE (all EU member states are OSCE members) have documented Armenia’s illegal settlement activity in these territories.
\textsuperscript{116} See \textit{Psagot} ¶ 29.
\textsuperscript{117} See id. ¶¶ 46-58.
status under international law. In this sense, the *Psagot* judgment is not momentous. In fact, there are other cases where the EU has also insisted on detailed labeling, such as demanding a Ukrainian stamp on goods from Crimea since Russia’s occupation and setting up a mechanism for import of goods from Transnistria as “Products of Moldova.” Yet, in contrast to the requirement in the *Psagot* judgment, in the case of Crimea and Transnistria, the EU has not gone so far as to demand a stipulation if the products are produced by settlers of the occupying force. It is highly likely, for instance, that in Transnistria, many of the operating companies belong to Russian citizens or operate under the auspices of Russia’s military base in the occupied region. If the EU wanted to provide full information to consumers, like in the *Psagot* case over the labeling of goods from Israel’s settlements, the EU should require that this information appear on the labels of all goods imported to the EU.

This article presents an exceptionally similar parallel to the *Psagot* case with Armenia’s occupation of Azerbaijan’s territories. According to the EU, like Israel, Armenia does not have jurisdiction over these territories. Like Israel, Armenia has established extensive settlements in the occupied territories. Like goods produced in Israeli settlements, goods produced in the Armenian settlements are imported into the EU and marketed in almost all states in the EU. Per *Psagot*, if ethical considerations are pertinent to EU consumers, the fact that Armenia expelled the native Azerbaijani residents of the territories where the goods were produced should indeed be relevant.

Yet, on the consumer product labels, the place of origin of these goods is listed as “Product of Armenia.” If the EU does not apply the principles set out in the CJEU *Psagot* judgement to the products produced in Armenia’s settlements in the territories it occupies, and to goods from similar regions such as those occupied by Russia, then indeed this will be a judgment specific to Israel. Various member state governments and entities in the EU have already declared, in response, that if this judgement is not applied to other occupied territories from which the EU imports goods, then the labeling requirement is discriminatory.\(^\text{119}\) The *Psagot* judgment stated that the purpose of the labeling requirement was to properly inform consumers of the origin of goods;\(^\text{120}\) failure to do so from all occupied territories would not fulfill this objective.

In light of the CJEU *Psagot* judgment, it is likely that, in the near future, parties to other territorial conflicts will request that the same requirements set out in the *Psagot* judgement be applied to goods produced in other occupied regions, such as the territories occupied by Armenia and by Russia. The *Psagot* CJEU judgement is thus likely to generate additional

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\(^{120}\) See *Psagot* ¶ 46-58.
cases. If the labeling requirement is not applied to goods produced in other occupied territories, then the discriminatory element of this policy toward Israel will be revealed, and Psagot will indeed drink alone.