

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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¹ For more on these territories, see Svante E. Cornell & Brenda Shaffer, *Occupied Elsewhere: Selective Policies on Occupations, Protracted Conflicts, and Territorial Disputes*, FOUNDATION FOR DEFENSE OF DEMOCRACIES 6-7 (Jan. 2020) <https://www.fdd.org/wp-content/uploads/2020/01/fdd-report-occupied-elsewhere-selective-policies-on-occupations-protracted-conflicts-and-territorial-disputes.pdf> [hereinafter Cornell & Shaffer]; Eugene Kontorovich, *Unsettled: A Global Study of Settlements in Occupied Territories*, 9 J. LEGAL ANALYSIS 285 (2017).

² See Case C-363/18, *Organisation juive européenne v. Ministre de l’Économie et des Finances*, 2019 ECLI:EU:C:2019:954 (Nov. 12, 2019) [hereinafter *Psagot*].

³ *Id.* ¶ 2.

⁴ *Id.* ¶¶ 34-38.

⁵ *Id.* ¶¶ 51-58.

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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.

⁶ *Id.*

⁷ Cornell & Shaffer, *supra* note 1, at 7-19.

⁸ *Id.* at 14-15.

⁹ JOHANNA POPJANEVSKI, INTERNATIONAL LAW AND THE NAGORNO-KARABAKH CONFLICT, in THE INTERNATIONAL POLITICS OF THE ARMENIAN-AZERBAIJANI CONFLICT 23 (Svante Cornell ed., 2017).

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*.¹² The case was submitted to the CJEU after the publication of two notices.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ The case was referred to the CJEU following proceedings brought by the Organisation juive européenne¹⁷ and Vignoble Psagot¹⁸ against the French Minister for the Economy and Finance seeking the annulment of the French Notice.¹⁹ The CJEU judgement was preceded by the publication of an opinion by the CJEU Advocate General.²⁰

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.²¹ In addition, the CJEU held that the consumer products' labels

¹² See *Psagot* ¶ 1.

¹³ See *id.* ¶¶ 2, 12, 17.

¹⁴ See Interpretative Notice on Indication of Origin of Goods from the Territories Occupied by Israel Since June 1967, 2015 O.J. (C 375) 4, 4.

¹⁵ *Id.* at 4-6. In January 2016, the US Custom's and Border Protection (CBP) issued a similar notice related to certificates of origin of imported goods. The US CBP notice also stated that the location requirement could not be circumvented by registering a producing company within Israel's pre-1967 borders. See *West Bank Country of Origin Marking Requirements*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 23, 2016, 12:13 PM), https://csms.cbp.gov/viewmssg.asp?Recid=21420&page=&srch_argv=gaza&srctype=&btype=&sortby=&sby.

¹⁶ JORF No. 0273 texte no. 81 du 24 novembre 2016 Avis aux Opérateurs Économiques Relatif à L'indication de l'Origine Des Marchandises Issues des Territoires Occupés par Israël Depuis Juin 1967 [JORF No. 0273 text no. 81 of November 24, 2016 on the Notice to Economic Operators Relating to the Indication of the Origin of Goods from the Territories Occupied by Israel Since June 1967], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Nov. 24, 2016, p. 95.

¹⁷ A European Jewish communal organization.

¹⁸ A company that specializes in wine produced from vineyards in the West Bank.

¹⁹ Conseil d'État [CE] [Council of State], May 30, 2018, No. 407147, ECLI:FR:CECHR:2018:407147.20180530.

²⁰ See Case C-363/18, *Organisation juive européenne v. Ministre de l'Économie et des Finances*, 2019 ECLI:EU:C:2019:494 (June 13, 2019).

²¹ *Psagot* ¶¶ 13, 34-38.

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should denote explicitly that they were produced in Israeli settlements, in order to not mislead consumers that Palestinian entities produced the goods.²² The *Psagot* judgment upheld the legality of requiring a geographic location's status under international law to be included in consumer product labels.²³

In the judgment, the CJEU referred to EU Regulation No. 1169/2011 on the provision of food information to consumers,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.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."²⁶ In the context of these considerations, the CJEU stated that the international legal status of the production site is relevant information.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.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.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.³⁰

The CJEU's reasoning focused on the legal status of the occupied territories in question.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,"³² and the term "territory," which refers to, inter alia, "geographic spaces which, whilst being under the

²² *Id.* ¶¶ 51-58.

²³ *See id.* ¶ 60.

²⁴ *See Psagot* ¶¶ 7-8; *see also* Council Regulation 1169/2011 2011 O.J. (L 304) 18.

²⁵ *See* Council Regulation 1169/2011, arts. 9 & 26, 2011 O.J. (L 304) 18, 18-63; *see also Psagot* ¶¶ 7-8.

²⁶ *Psagot* ¶ 53.

²⁷ *Id.* ¶ 56.

²⁸ *Id.* ¶ 55.

²⁹ *Id.* ¶¶ 50, 57.

³⁰ *Id.* ¶ 58.

³¹ *See id.* ¶¶ 33-35, 48.

³² *Id.* ¶ 29. The *Psagot* court bases this interpretation on the CJEU's judgment in *Council v. Front Polisario*. *See* Case C-104/16, *Council v. Front Polisario*, 2016 EU:C:2016:973 ¶ 95 (Dec. 21, 2016) [hereinafter *Front Polisario*].

jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law.”³³

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.”³⁴ According to the *Psagot* judgment, the EU recognizes the West Bank as a territory of the Palestinian people.³⁵ In light of this, the CJEU held that indicating Israel as the product’s country of origin is likely to deceive consumers.³⁶ 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.³⁷

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.³⁸ Moreover, the CJEU noted that the settlement policy has been repeatedly condemned by the United Nations Security Council and the European Union.³⁹

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

³³ *Psagot* ¶ 31. The *Psagot* court bases this interpretation on the CJEU’s judgments 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/neighbourhood/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.

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purchasing decision.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ In addition, the EU conducts a trade embargo on Northern Cyprus, even though this region is located within the European Union.⁴⁵ 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.⁴⁶

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

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.

locality per its legal status.⁴⁷ However, in labeling requirements on goods 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.⁴⁸ 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.⁴⁹ 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.⁵⁰ The 2007 Autonomous Trade Preferences granted to Moldova enabled EU market access to companies operating in Transnistria, which is occupied by Russian military forces.⁵¹ 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.⁵² Over 2,000 companies operating in Transnistria have used this mechanism to gain entrance to the EU market.⁵³ 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.⁵⁴

The EU's policies toward other regions occupied by Russia are also inconsistent. Prior to the full ban on imports from Crimea,⁵⁵ the EU did not accept goods from Crimea without a Ukrainian stamp on its certificate of origin.⁵⁶ Yet, there is no interference with trade with other regions under Russian occupation: Donbas, Abkhazia, South Ossetia.⁵⁷ 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

⁴⁷ Cornell & Shaffer, *supra* note 1, at 38-39.

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.*

⁵⁵ *EU Restrictive Measures in Response to the Crisis in Ukraine*, EUROPEAN COUNCIL, <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/> (last visited May 17, 2020).

⁵⁶ *Id.* at 38.

⁵⁷ Cornell & Shaffer, *supra* note 1, at 35.

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easily enter the EU with certificates of origin and consumer product labels that state “Product of Armenia.”

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.

⁵⁸ See *Chiragov v. Armenia*, App. No. 13216/05, Eur. Ct. H.R. ¶ 25 (2015) [hereinafter *Chiragov*]; Knar Babayan, *150 Families Move to “Liberated” Kashatagh in 2011: Will They Stay?*, HETQ (Aug. 17, 2011, 5:08 AM), <https://hetq.am/en/article/3641>; Cornell & Shaffer, *supra* note 1, at 29-31.

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 Nagorno-Karabakh is a region of the Republic of Azerbaijan that had an ethnic Armenian majority at the time of the Soviet collapse.⁶⁰ After the Soviet collapse in late 1991, a full-scale war erupted between the newly independent states of Armenia and Azerbaijan.⁶¹ Armenia sought to capture Nagorno-Karabakh and surrounding territories, especially those territories that would create a physical link between Armenia and Nagorno-Karabakh.⁶² 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.⁶³ 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.⁶⁴ Russian forces took part in certain battles and provided arms, stoking the conflict,⁶⁵ and Russian forces remain in Armenia, manning several of its border regions and its air defense and air space.⁶⁶

In 1994, Armenia and Azerbaijan signed a Russia-brokered ceasefire,⁶⁷ 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.⁶⁸ As a result of the 1992-

⁵⁹ Cornell & Shaffer, *supra* note 1, at 14. For more on the Armenia-Azerbaijan conflict, see generally SVANTE E. CORNELL, SMALL NATIONS AND GREAT POWERS (RoutledgeCurzon 2005) (2001); THOMAS DE WAAL, BLACK GARDEN (New York University Press rev. ed. 2013) (2003); SVANTE E. CORNELL ET AL., THE INTERNATIONAL POLITICS OF THE ARMENIA-AZERBAIJAN CONFLICT (Svante E. Cornell ed., 2017).

⁶⁰ Cornell & Shaffer, *supra* note 1, at 14.

⁶¹ *Id.*

⁶² *Id.*; Interviews by Authors with Armenian officials in Cambridge, MA (2002).

⁶³ *Chiragov* ¶ 25; see U.S. DEP'T OF STATE, AZERBAIJAN 2018 HUMAN RIGHTS REPORT at 24 (2018), available at <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/azerbaijan/>.

⁶⁴ See DE WAAL, *supra* note 59, at 184-85, 355-56.

⁶⁵ *Id.* at 213-217; SVANTE CORNELL, THE ARMENIAN- AZERBAIJANI CONFLICT AND EUROPEAN SECURITY, in THE INTERNATIONAL POLITICS OF THE ARMENIAN-AZERBAIJANI CONFLICT 10-11 (Svante Cornell ed., 2017).

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).

⁶⁷ *Bishkek Protocol*, U.N. PEACEMAKER (May 5, 1994), <https://peacemaker.un.org/armeniaazerbaijan-bishkekprotocol194>.

⁶⁸ See *id.*

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1994 war between the two states, the Republic of Armenia occupied close to twenty percent of the territory of the Republic of Azerbaijan.⁶⁹

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

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.”).

⁷⁰ *See* S.C. Res. 822 (Apr. 30, 1993); S.C. Res. 853 (July 29, 1993); S.C. Res. 874 (Oct. 14, 1993); S.C. Res. 884 (Nov. 12, 1993); *see also* 1993 *UN Security Council Resolutions on Nagorno-Karabakh*, U.S. DEP’T OF STATE, <https://2001-2009.state.gov/p/eur/rls/or/13508.htm> (last visited Jan. 2, 2020).

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/>.

⁷⁴ The Republic of Armenia’s Ministry of Foreign Affairs survey of Armenia’s bilateral relations does not include relations with an entity referred to as “Artsakh.” *See Bilateral Relations*, MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF ARMENIA, <https://www.mfa.am/en/bilateral-relations/> (last visited May 3, 2020).

⁷⁵ Cornell & Shaffer, *supra* note 1, at 6.

⁷⁶ *Id.*; Press Release, Registrar of the Court, Azerbaijani Refugees’ Rights Violated by Lack of Access to Their Property Located in District Controlled by Armenia, Eur. Ct. H.R. Press Release (June 16, 2015).

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 Azerbaijan's sovereignty, independence, and territorial integrity.⁷⁸ Additionally, in response to March 2020 elections held in Nagorno-Karabakh, the EU published the following statement: "the European Union reiterates that it does not recognise the constitutional and legal framework within which they are being held."⁷⁹

On April 18, 2012, the European Parliament passed Resolution 2011/2315(INI) containing the European Parliament's recommendations to the Council, the Commission, and the European External Action Service on the negotiations of the EU-Armenia Association Agreement which, *inter alia*, noted that "deeply concerning reports exist of illegal activities exercised by Armenian troops on the occupied Azerbaijani territories, namely regular military maneuvers, renewal of military hardware and personnel and the deepening of defensive echelons."⁸⁰ The European Parliament recommended that negotiations on the EU-Armenia Association Agreement be linked to commitments regarding "the withdrawal of Armenian forces from occupied territories surrounding Nagorno-Karabakh and their return to Azerbaijani control" and "call[ed] on Armenia to stop sending regular army conscripts to serve in Nagorno-Karabakh."⁸¹

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."⁸² In that respect, the committee reconfirmed its position "on non-acceptance of the *fait accompli* as a basis for the settlement" and called "on Armenia to refrain from the actions undertaken in the occupied

⁷⁷ *Declaration by the Presidency on Behalf of the European Union on Forthcoming "Presidential Elections" in Nagorno Karabakh*, EUROPEAN COMM'N (Aug. 2, 2002), https://ec.europa.eu/commission/presscorner/detail/en/PESC_02_105.

⁷⁸ *Remarks by President Donald Tusk After His Meeting with President of Azerbaijan Ilham Aliyev*, EUROPEAN COUNCIL (July 9, 2019), <https://www.consilium.europa.eu/en/press/press-releases/2019/07/09/remarks-by-president-donald-tusk-after-his-meeting-with-president-of-azerbaijan-ilham-aliyev/>.

⁷⁹ *Nagorno-Karabakh: Statement by the Spokesperson on the So-Called Presidential and Parliamentary Elections*, EUROPEAN EXTERNAL ACTION SERVICE (Mar. 31, 2020), https://eeas.europa.eu/headquarters/headquarters-homepage/76801/nagorno-karabakh-statement-spokesperson-so-called-presidential-and-parliamentary-elections_en.

⁸⁰ *Chiragov* at 18-19 (quoting Negotiations of the EU/Armenia Association Agreement, Resolution 2011/2315(INI), EUR. PARL. DOC. A7-0079/2012 (2012)).

⁸¹ *Id.*

⁸² *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.

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territories of Azerbaijan including the Nagorno-Karabakh region, which may in a way consolidate the status quo.”⁸³ 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 borders of state.”⁸⁴ 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.⁸⁵

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.⁸⁶ 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.⁸⁷ 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.⁸⁸ 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.⁸⁹

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.⁹⁰ 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.⁹¹

⁸³ *Id.* ¶ 38 (emphasis in original).

⁸⁴ *Id.* ¶ 39.

⁸⁵ *Chiragov* ¶ 25.

⁸⁶ *Id.* ¶ 32.

⁸⁷ *Id.* ¶¶ 202-224.

⁸⁸ *Chiragov v. Armenia* (No. 2), App. No. 13216/05, Eur. Ct. H.R. at 23-24 (2017).

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.

⁹¹ See Permanent Rep. of Azerbaijan to the U.N., Letter dated Mar. 18, 2005 from the Permanent Rep. of Azerbaijan to the U.N. addressed to the Secretary-General at 31, U.N. Doc. A/59/747 (Mar. 21, 2005); Cornell & Shaffer, *supra* note 1, at 31. See also *New Flats Are Built*

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

for Syrian Armenians in Nagorno-Karabakh, ARMENPRESS (Aug. 5, 2013), <https://armenpress.am/eng/news/728230/new-flats-are-built-for-syrian-armenians-in-nagorno-karabakh.html>; *Yerevan Expects Further Armenian Exodus from Syria*, ECOI.NET (Sept. 2, 2013), <https://www.ecoi.net/en/document/1051099.html>. "Armenia has actually received funds from the European Union to settle these Syrians in Armenia." Cornell & Shaffer, *supra* note 1, at 31; see *EU Regional Trust Fund in Response to the Syrian Crisis, the 'Madad Fund,'* EUROPEAN COMM'N (Sept. 28, 2018), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eutf_madad_action_document_armenia-v2.pdf.

⁹² Cornell & Shaffer, *supra* note 1, at 29. See Edik Baghdasaryan, *Repopulation is An Essential Question for All Armenians*, HETQ (June 25, 2007, 9:06 AM), <https://hetq.am/en/article/6744>; Melania Harutyunyan, *Deputy Prime Minister of Artsakh Spoke About the Resettlement of Artsakh*, ARAVOT (July 27, 2013, 9:37 PM), <https://www.aravot-en.am/2013/07/27/155729>.

⁹³ Cornell & Shaffer, *supra* note 1, at 29-30; see Permanent Rep. of Azerbaijan to the U.N., *supra* note 91, at 37-38. On subsidies and financial incentives, see Babayan, *supra* note 58; *В Нагорном Карабахе переселенцы получают возможность приватизировать свои квартиры [In Nagorno-Karabakh, Immigrants Will Be Able to Privatize Their Apartments]*, NEWS.AM (Aug. 25, 2010, 7:20 PM), <https://www.news.am/rus/news/28809.html>.

⁹⁴ Cornell & Shaffer, *supra* note 1, at 30. For an example of an annual budget allocation from Armenia's state budget, see, e.g., *В рамках госбюджета 2015 года Армения предоставит Карабаху 45 млрд. Драмов [Within the Framework of the 2015 State Budget, Armenia Will Provide 45 Billion Drams to Karabakh]*, ASYOR (Oct. 28, 2014, 1:24 PM), <https://www.aysor.am/ru/news/2014/10/28/hovik-abrahamyan/863269>. For examples of support for the settlements from Armenian diaspora organizations, see, e.g., *Artsakh Fund Holds Fundraising Event in Greater Boston*, ARMENIAN WEEKLY (Sept. 23, 2015, 1:59 PM), <https://armenianweekly.com/2015/09/23/artsakh-fund-boston-2>; *Support Artsakh Resettlement Projects*, ARMENIAN CULTURAL ASS'N OF AM., <https://acaainc.org/artsakh/> (last visited Dec. 18, 2019); *About Us*, HAYASTAN ALL ARMENIAN FUND, <https://www.himnadram.org/en/mission> (last visited Dec. 18, 2019); *General Donations*, TUFENKIAN FOUNDATION, <http://www.tufenkianfoundation.org/donate/> (last visited Dec. 18, 2019).

⁹⁵ Cornell & Shaffer, *supra* note 1, at 31.

⁹⁶ *Id.* See Gayan Mkrtychan, *Relocation with a Reason: Some Syrian-Armenian Families Find Advantages to Resettle in Karabakh*, ARMENIA NOW, https://www.armenianow.com/society/features/44597/syrian_armenians_kashatagh_resettlement_in_karabakh (last visited May 1, 2020); *New Flats Are Built for Syrian Armenians in Nagorno-Karabakh*, *supra* note 91; *Yerevan Expects Further Armenian Exodus from Syria*, *supra* note 91; Reda El Mawy, *Why Armenia is Welcoming Syrian Armenians*, BBC NEWS (Apr. 23, 2015), <https://www.bbc.com/news/av/world-middle-east-32438128/why-armenia-is-welcoming-syrian-armenians>; *Agricultural Project Supports Syrian Armenians in Nagorno-Karabakh Republic*, ARMENIAN GENERAL BENEVOLENT UNION (Jan. 16, 2014), <https://agbu.org/news-item/agricultural-project-supports-syrian-armenians-in-nagorno->

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to settle these Syrian refugees in Armenia, and there is no evidence that the EU has taken steps to prevent funds from being used to settle the Syrian emigres in Nagorno-Karabakh and the other territories Armenia occupies.⁹⁷

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.⁹⁸

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).⁹⁹ The winery is located in the village of Tuğ in the Khojavend district in Nagorno-Karabakh.¹⁰⁰ Yet, per *Figures 1 & 2* below, its bottled wine is labelled as a "product of Armenia."

karabakh-republic/; Sara Khojoyan, *Families Fleeing Syria Battle Raise Tension in Oil Region*, BLOOMBERG NEWS (Oct. 16, 2013), <https://www.bloomberg.com/news/articles/2013-10-15/families-fleeing-syria-battle-raise-tension-in-oil-region>; Anna Kamay & Anush Babajanyan, *Karabakh: Syrian Refugees Flee One War Zone for Another*, EURASIANET (Oct. 20, 2017), <https://eurasianet.org/karabakh-syrian-refugees-flee-one-war-zone-for-another>.

⁹⁷ 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>.

⁹⁸ This list is not all-inclusive and represents a sample of products.

⁹⁹ KATARO, <https://kataro.am> (last visited May 1, 2020).

¹⁰⁰ *Id.*



FIGURES 1 & 2: Label of Kataro wine bottle, purchased in Brussels, labeled “Product of Armenia.”

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WINERY Domaine Avetissyan Togh Village, Artsakh info@kataro.am	EXPORTER "Anoush-1" LLC Melkumyan str., 18/8 Yerevan, Armenia	VISITS AND WINE TASTINGS visit@kataro.am	
ARMENIA "ARTEXIM" +374 95 365585	USA "KIMBERLY JONES WINE SELECTIONS" +1 818 590-0749 dvgoldenson@gmail.com	RUSSIA "NEW WINE COMPANY" +7 495 6449449 info@newwineco.ru www.newwineco.ru	UNITED KINGDOM "ARMENIAN WINE IMPORTERS" LTD +44 7918 879107 oldprior@hotmail.com www.armenianwines.co.uk
CANADA "KINEDOWN" +1 514 6790451 kevorik@kinedown.com www.kinedown.com	LITHUANIA UAB "GADARA" +37069943600 gadara@ararat.lt www.gadara.lt	BENELUX +32 2 5827706 marc@armenianbrandyandwine.com www.armenianbrandyandwine.com	



KATARO
TOGH VILLAGE, ARMENIA

Artsakh, Togh village | info@kataro.am | visit@kataro.am

FIGURE 3: Kataro Winery's official distributors based in the European Union¹⁰¹

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

¹⁰¹ *Contacts*, KATARO, <https://kataro.am/contacts> (last visited May 1, 2020).

¹⁰² David Kitai, *Nagorno-Karabakh's Nascent Wine Industry Begins to Bear Fruit*, EURASIANET, (Apr. 29, 2019) <https://eurasianet.org/nagorno-karabakhs-nascent-wine-industry-begins-to-bear-fruit>.

Online Shop
Armenian Brandy & Wine
direct import from Armenia

HI [REDACTED]
THANK YOU FOR SHOPPING WITH ARMENIAN BRANDY AND WINE!

ORDER DETAILS

Order: FEMQAXQBS Placed on 01/15/2020 18:07:49

Payment: Payment by Stripe

Reference	Product	Unit price	Quantity	Total price
W211E	Kataro Red Wine of Artsakh	18,00 €	1	18,00 €
TTB	Tote bag offered for any order	0,00 €	1	0,00 €
Products				18,00 €
Discounts				0,00 €
Gift-wrapping				0,00 €
Shipping				5,50 €
Total Tax paid				0,00 €
Total paid				23,50 €

SHIPPING

Carrier: Mondial Relay FRANCE

Payment: Payment by Stripe

DELIVERY ADDRESS

[REDACTED]
Boulevard Saint-Jacques
75014 Paris
France
+33762811 [REDACTED]

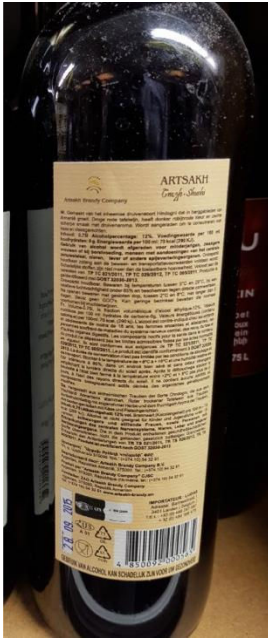
BILLING ADDRESS

[REDACTED]
Boulevard Saint-Jacques
75014 Paris
France
+33762811 [REDACTED]

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.¹⁰³

¹⁰³ See, e.g., *Artsakh Shushi*, Artsakh Brandy Company, <http://artsakh-brandy.am/en/products/show/3/2/51> (last visited May 3, 2020).



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 Wine¹⁰⁴ markets and sells, throughout the EU, wines produced both in Armenia and in the occupied territories without distinguishing between them.¹⁰⁵

Shipments safe and fast in 27 countries in Europe *

- Shipping :
The shipping prices vary according to destination and the amount of the order.

- Free Shipping :
Shipping costs are free for orders exceeding a certain amount.
** For deliveries to Switzerland and Norway please contact us by e-mail: web@armenianbrandyandwine.eu*

	Country	Delivery €	Free delivery starting from	Estimated Delivery Time
1	Austria	15 €	150 €	4 to 5 working days
2	Belgium	6 €	95 €	1 to 3 working days
3	Bulgaria	30 €	200 €	5 to 6 working days
4	Croatia	30 €	200 €	5 to 6 working days
5	Czech Republic	19 €	200 €	3 to 5 working days
6	Denmark	17 €	150 €	3 to 4 working days
7	Estonia	24 €	200 €	4 to 6 working days
8	Finland	27 €	200 €	4 to 6 working days
9	France	15 €	150 €	2 to 5 working days
10	Germany	10 €	150 €	2 to 6 working days
11	Greece	30 €	200 €	6 to 9 working days
12	Hungary	19 €	200 €	3 to 5 working days
13	Ireland	19 €	200 €	4 to 5 working days
14	Italy	21 €	200 €	3 to 6 working days
15	Latvia	24 €	200 €	4 to 6 working days
16	Lithuania	24 €	200 €	4 to 6 working days
17	Luxembourg	9 €	125 €	1 to 3 working days
18	Monaco	15 €	150 €	2 to 5 working days
19	Netherlands	9 €	125 €	1 to 3 working days
20	Poland	19 €	200 €	3 to 5 working days
21	Portugal	25 €	200 €	4 to 6 working days
22	Romania	30 €	200 €	4 to 6 working days
23	Slovakia	19 €	200 €	4 to 6 working days
24	Slovenia	19 €	200 €	3 to 5 working days
25	Spain	24 €	200 €	3 to 5 working days
26	Sweden	22 €	200 €	3 to 6 working days
27	United Kingdom	16 €	150 €	3 to 5 working days

FIGURE 9: Armenian Brandy and Wine distributes wines from both Armenia and the occupied territories throughout the EU.¹⁰⁶

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*).

¹⁰⁴ ARMENIAN BRANDY & WINE, <https://www.armenianbrandyandwine.com/en/> (last visited May 1, 2020).

¹⁰⁵ *Armenian Wines*, ARMENIAN BRANDY & WINE, <https://www.armenianbrandyandwine.com/en/12-armenian-wines> (last visited May 1, 2020).

¹⁰⁶ *Shipments*, ARMENIAN BRANDY & WINE, <https://www.armenianbrandyandwine.eu/screen/page/shipments> (last visited May 1, 2020).

Taste our selection of Armenian wines. Our experts have travelled through Armenia to find the country’s great vintages. Accompanied by local guides, we have developed a real expertise. You can believe us, Armenia’s wines are just as good as those of Europe! We now deliver in Belgium, and soon throughout the rest of the EU.

[More](#)

Armenian Wines

There are 44 products.

SORT BY Reference: Highest first **SHOW** 12 per page







 <p>Voskevaz Katarine Liqueur ★★★★★ 16,50 € Delivery in European Union Add to cart</p>	 <p>Voskevaz Areni Noir Amphora Wine ★★★★★ 32,00 € Delivery in European Union Add to cart</p>	 <p>Crossroads Syrah Areni 2018 ★★★★★ 15,00 € 17,00 € Delivery in European Union Add to cart</p>
 <p>Trinité Areni Ancestors' 2018 Natur... ☆☆☆☆☆</p>	 <p>Trinity 6100 Areni Noir 2018 ★★★★★ 17,00 € Out of stock</p>	 <p>Katara Reserve Armenian Red Wine ☆☆☆☆☆ 32,40 € Delivery in European Union Add to cart</p>

FIGURE 10: Armenian Brandy and Wine distributor in the EU advertises wine produced in the occupied territories, such as Katara, as “Armenian

Wines.”¹⁰⁷

¹⁰⁷ *Armenian Wines*, ARMENIAN BRANDY & WINE, <https://www.armenianbrandyandwine.com/en/12-armenian-wines> (last visited May 1, 2020).

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.”

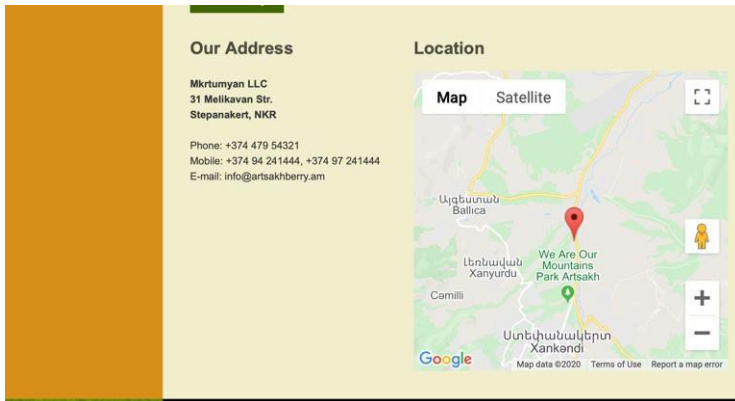


FIGURE 11: Website of “Artsakh Berry” showing its location in the occupied territories.

¹⁰⁸ See ARTSAKH BERRY, <http://www.artsakhberry.am/wp/> (last visited May 1, 2020).

¹⁰⁹ *Contact Us*, ARTSAKH BERRY, <http://www.artsakhberry.am/wp/contact-us> (last visited May 1, 2020).

¹¹⁰ *Id.*

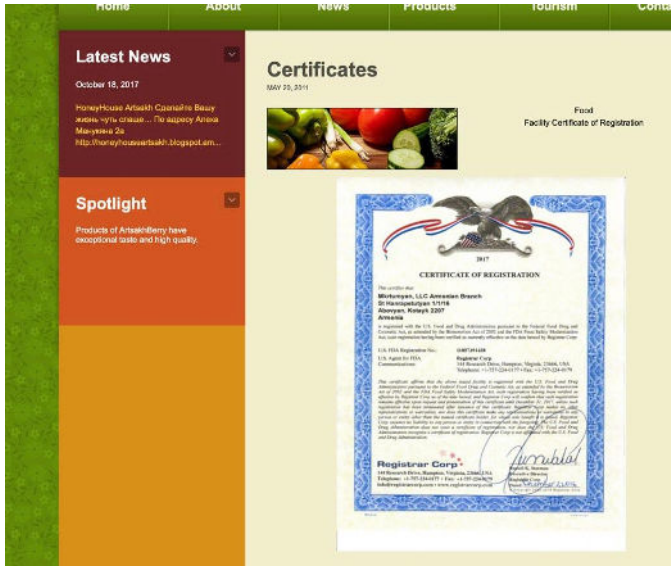


FIGURE 12: “Artsakh Berry” website showing that the company registers with the U.S FDA as if it is located in the Republic of Armenia.



FIGURE 13: “Artsakh Berry” capers, purchased in Belgium, labeled “Product of Armenia.”



FIGURES 15-16: “Artsakh Berry” pomegranate sauce 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.¹¹¹ 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.¹¹² 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 producer.¹¹³ Therefore, the fact

¹¹¹ *Psagot* ¶¶ 36-38.

¹¹² *Id.* ¶ 55.

¹¹³ *Id.* ¶ 50.

that a product originated in an Israeli settlement should be clearly labelled on goods imported into the EU.¹¹⁴

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 *Psagot* decision, as these territories remain as internationally recognized part of Azerbaijan, and thus are not legally under Armenia's jurisdiction.¹¹⁵ 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,¹¹⁶ to use the test of *Psagot*. Therefore, according to the rationale of the *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.¹¹⁷ 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,¹¹⁸ 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 *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' status under international law. In this sense, the *Psagot* judgement 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

¹¹⁴ *Id.* ¶ 58.

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.

¹¹⁶ *See Psagot* ¶ 29.

¹¹⁷ *See id.* ¶¶ 46-58.

¹¹⁸ *See* Interpretative Notice on Indication of Origin of Goods from the Territories Occupied by Israel Since June 1967, *supra* note 14.

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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.¹¹⁹ The *Psagot* judgment stated that the purpose of the labeling requirement was to properly inform consumers of the origin of goods;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 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.

¹¹⁹ *Dutch Parliament Passes Motion Against Mandatory Labeling of Settlement Products*, TIMES OF ISRAEL (Nov. 20, 2019, 5:08 AM), <https://www.timesofisrael.com/dutch-parliament-passes-motion-opposing-labeling-of-settlement-products/>.

¹²⁰ See *Psagot* ¶¶ 46-58.

