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Levant Section  
Middle East Branch  
Department of Foreign Affairs and Trade  
By email: israeltrade@dfat.gov.au

## **STRENGTHENING TRADE AND INVESTMENT WITH ISRAEL SUBMISSION ON POSSIBLE AUSTRALIA-ISRAEL FREE TRADE AGREEMENT**

New Israel Fund Australia welcomes the opportunity to provide a submission on how best to strengthen trade and investment with Israel, including the possibility of a free trade agreement (FTA) between the two countries.

### **Background**

NIF Australia is the leading Australian organisation supporting democracy and equality in Israel. We are dedicated to ending the Israeli-Palestinian conflict and alleviating hardship and suffering caused by inequality.

We are part of the global New Israel Fund, an organisation founded more than 40 years as a partnership of Israelis and Diaspora Jews and committed to equality and democracy in Israel. In that time, NIF has invested more than AU\$500 million in Israeli civil society in a range of projects which combat racism, promote gender equality, protect civil rights and oppose the occupation of the Palestinian territories.

Our primary method of realising NIF's vision of a pluralist, open and democratic Israeli society is to fund Israeli civil society organisations. As such, we welcome the potential to further grow the economic relationship between Australia and Israel.

NIF wants to ensure that any possible agreement between Australia and Israel, including a free trade agreement, upholds Australia's values, furthers Australia's goals in global trade and recognises existing Australian foreign policy.

## Key issue

In the course of the 1967 war, Israel captured a number of territories – the West Bank, Gaza Strip, Golan Heights and East Jerusalem – which it continues to hold under military occupation to this day.

The Israeli government has never claimed sovereignty over the West Bank and the Gaza Strip. The Australian government has never accepted Israeli sovereignty over these territories.

In 2018, [Australia recognised Israeli claims over West Jerusalem](#) – ie the parts of Jerusalem Israel controlled pre-1967 – and [acknowledged Palestinians claims over East Jerusalem](#) as its future capital.

Currently, the Australian government explicitly recognises a demarcation between:

- sovereign Israeli territory; and
- the territory currently occupied by Israel but designated for a future Palestinian state.

Since 1967, successive Israeli governments established a number of civilian settlements across the ‘Green Line’<sup>1</sup> in the occupied West Bank and Gaza. While civilian settlements were withdrawn from Gaza in 2005, today more than [440,000 Israelis live in the occupied West Bank](#) and another [225,000 in East Jerusalem](#).

## Recommendation

Any opportunity to strengthen trade and investment with Israel must only apply to sovereign Israel and differentiate between Israel (in the boundaries recognised by Australia, ie from before the 1967 war) and Israeli settlements in the West Bank and East Jerusalem.

Preferential treatment provided to products must not apply where it is produced in an Israeli settlement in the West Bank.

These products, businesses and operations do not operate from within the territory Australia recognises as ‘Israel’ so cannot benefit from any deal, including a free trade agreement.

**This recommendation is in line with the Australian government’s existing arrangements and recognition of sovereignty in the region.**

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<sup>1</sup> A reference to the armistice line from 1948, also referred to as the ‘pre-1967’ borders.

## Mechanisms for differentiation

Ensuring the effective differentiation between sovereign Israel and Israeli settlements in the occupied territories need not be overly complex.

There are already existing arrangements agreed to by Israel with its major political allies and trading partners which provide a blueprint to enforce such a distinction.

Two models which could be used to enable this distinction are detailed below.

### A simple and effective ‘territorial clause’

The most effective option to ensure goods, products, services and firms operating out of Israeli settlements in the West Bank do not receive preferential access under an Australia-Israel FTA is to specify that areas which came under Israeli administration after 5 June 1967 are not covered.

A useful precedent for this is post-2012 agreements signed between Israel and the European Union.

Since that time a ‘territorial clause’ has been included in each agreement:

*“In accordance with EU policy, this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967. This position should not be construed as prejudicing Israel’s principled position on this matter. Accordingly, the Parties agree that the application of this agreement is without prejudice to the status of those areas.”*

This language was included, for example, in the [2014 agreement including Israel](#) in Horizon 2020, the EU’s research funding program, and other agreements.

Using this language allows Australia to uphold its current recognition of Israeli sovereignty (and lack of recognition over post-1967 lands currently administered by Israel) without enforcing this position on Israel.

The inclusion of a territorial clause would likely have to be accompanied by a more specific arrangement on how the Israeli authorities would practically exclude settlement products from preferential treatment.

For the sake of simplicity, this model is preferable.

## **Post code disclosure and enforcement by Australia**

### **Precedent in the European Union**

An [early trade agreement](#) between the European Union and Israel (1995) specified only that “the Agreement shall apply … to the territory of the State of Israel”, which in turn created confusion about the treatment of products of Israeli settlements in the occupied Palestinian territories, as both the European Union and Israel interpreted the statement differently.

In 2004 the EU and Israel [agreed on a ‘technical arrangement’](#) in which Israel would ensure the postcode for the place of production appeared on the documentation for exported goods. This enabled EU customs and importers to identify settlement products and deny preferential treatment.

As part of the arrangement, the EU [published a notice](#) to importers<sup>2</sup> – first in 2005, adapted in 2012 – which says:

*“products produced in the Israeli settlements located within the territories brought under Israeli administration since June 1967 are not entitled to benefit from preferential tariff treatment under the EU-Israel Association Agreement”*

Such an arrangement does not require Israel to sign up to any determination of borders or sovereignty by the European Union. Israel provides postcodes for settlements beyond its 1967 borders and Europe deals with goods imported as required by the EU’s position.

### **Precedent in the United Kingdom**

A similar arrangement has been agreed to by Israel and the United Kingdom in its recently completed, post-Brexit trade deal. The [agreement itself](#) contains no territorial clause.

In its 2019 explanatory memorandum, the UK affirmed the exclusion of settlements:

*“The UK does not recognise the Occupied Palestinian Territories (OPTs), including the settlements, as part of the State of Israel. The OPTs are not covered by the current EU-Israel Trade Agreements, nor by the UK-Israel Agreement. Products produced in the Israeli settlements located within the territories brought under Israeli administration since June 1967 are not entitled to benefit from preferential tariff treatment under the EU-Israel Trade Agreements. The arrangement by which this is achieved will be replicated under the UK-Israel Agreement.”*

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<sup>2</sup> See C 232/5, p.5.

In January 2021, it published a [notice to importers](#), similar to the EU notice, which also confirms that settlement products are not entitled to benefit from preferential treatment.

As in the EU case, Israel was not required to agree to these conditions. It only has to ensure the correct postcodes for settlements outside of sovereign Israel are provided. The UK arrangement continues the pre-2012 EU conditions.

## Summary

This mechanism is suitable and is built on solid precedent from key Australian (and Israeli) allies.

It does, however, have issues with implementation, as has been [noted by the EU itself](#). It places the burden of differentiation on Australian officials (rather than being embedded in the FTA itself) and adds a layer of complexity to compliance, both for customs officials and importers in Australia.

## Other examples of differentiation in global agreements signed by Israel

These other examples highlight global efforts to ensure differentiation between sovereign Israel and post-1967 occupied territories:

- More than a dozen member states of the European Union, as well as the United Kingdom, have issued [separate ‘business advisories’](#) on the risks of economic activities in Israeli settlements in the West Bank. The advisory states:

*“The Financial transactions, investments, purchases, procurements as well as other economic activities (including in services like tourism) in Israeli settlements or benefiting Israeli settlements, entail legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel’s territory.”*

- In 2017, as part of a deal to [bring Chinese investment and labour into Israel](#), it was agreed that none of the 6,000 workers covered by the agreement would work in Israeli settlements in the West Bank.
- In 2013, the European Union [issued funding guidelines](#) as part of its Horizon 2020 research program to ensure no European funding flows to Israeli settlement entities or activities.

- The Brazilian parliament [conditioned approval](#) of the 2007 Mercosur-Israel trade agreement on the exclusion of settlement products.
- A [free trade agreement between Israel and South Korea](#) specifically excluded Israeli settlements in the West Bank.
- In 2015, the European Commission issued an [interpretative notice](#) stating that products from Israeli settlements on sale in the EU must not be labelled as “Products of Israel”. They should be labelled as “Product of West Bank (Israeli settlements)” or “Product of Golan Heights (Israeli settlements)”.
- The European Union has also inserted territorial clauses excluding Israeli settlements into other acts relating to trade with Israel, including transfers of personal data between EU and Israel, certificates of conformity with marketing standards for fresh fruit and vegetables and imports of active substances for medicinal products.

## **What is not recommended**

NIF Australia does not recommend banning the importation of goods produced in the settlements altogether. We recommend only that such goods are appropriately differentiated from goods imported from sovereign Israel.

## **Follow up**

New Israel Fund Australia would welcome further discussions with the Department of Foreign Affairs and Trade and other relevant Australian government departments on why it's important to implement this recommendation as well as the mechanisms by which an FTA could do so.

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