Mr. Pat Breen T.D.
Chairman
Joint Committee on Foreign Affairs and Trade
Leinster House
Dublin 2

2 November 2012

Our Ref: POL0120371

Dear Pat,

Thank you for your letter of 24 September on behalf of the JCFAT, in which you raise a number of issues in relation to the question of banning the importation of products from Israeli settlements in the occupied West Bank. I know the Committee had a wide ranging discussion on this issue recently with members of the Ecumenical Accompaniment Programme in Palestine and Israel. I am aware also that many Deputies have received letters from constituents on this issue, as part of a letter writing campaign generated by Trócaire.

I thought therefore that it would be helpful to set out in detail what is the position in relation to settlement products, and the points raised by the Committee and in the letters received. Much of this has been said already by me in replies to Parliamentary Questions, but I will take this opportunity to go into the matter in more depth. It is also my intention to copy this reply to all TDs, many of whom have asked me for the Government’s views on the issues raised with them. I might add that the Middle East and North Africa Unit of my Department has already met with Trócaire and discussed these issues in detail.

**Background and position to date**

As you know, I have stated many times in the Dáil, and also in Foreign Affairs Council discussions, my conviction that the illegal Israeli settlements in the Occupied Territory are now a major impediment to the achievement of peace in the Middle East. The ongoing settlement project inherently involves injustice to Palestinians and misappropriation of their resources, especially land and water. The priority accorded both in Israeli law and in practice to the settlers, their security and their interests is the basis for most of the restrictions under which Palestinians labour.

The EU and Ireland are absolutely clear that the settlement project, and especially the facilitation and direct support of it by the Israeli Government, is illegal under international law. It is important to be clear also, however, that this does not mean that individual settlers are illegal and does not make their products illegal as such. It is not illegal for settlement products to be imported into the EU, although they are not entitled to benefit from the lower customs duty applicable to goods from Israel.
In May 2012 the EU Foreign Affairs Council, noting the impasse in the political process in the Middle East, adopted a set of Council Conclusions which focussed strongly on the practical ‘viability’ issues on the ground in the Occupied Territory. These are issues which threaten to make a negotiated two state solution impossible to achieve, or unviable, even if talks could be restarted. The Council noted with concern that there is an urgent need for these Israeli policies to be ended or reversed. I therefore stated clearly after that meeting that the Council would need to revisit these issues and that, if it were to decide that stronger measures were needed, consideration should be given to a ban on settlement products entering the EU, as one such measure. That is where matters stand at present.

You raise a number of particular points in your letter, in relation to a possible ban on settlement products:

A ban could have a strong and effective impact on suffering in the region.

I have stated my view that it would be consistent with EU values and positions to exclude settlements products from the EU. I believe that there is a moral case for banning settlement products, and I agree it could have a symbolic impact. But we should not fool ourselves that such a ban would cripple the settlement project, or even seriously impair it. Most settlements are dormitory towns for people who work in Israel and they do not export anything. Products from settlements, for the most part fruit and vegetables, are not a major element of the Israeli economy, and would be a small fraction of imports to the EU from Israel. It is likely that virtually all settlement products could be absorbed by the domestic Israeli market. So such a measure would not, of itself, make settlements unviable.

I am somewhat concerned that attention is being focussed excessively on the issue of settlement products, which form only one aspect, and a comparatively small one, of the problem. The key issue is settlements themselves, and their relentless expansion.

Ireland should pursue a ban on settlement products at EU level.

As stated, my main focus is on the continued expansion of settlements, rather than their exports. However, I have already stated clearly that Ireland would support such a ban at EU level, and put it forward as an option the Council might consider, when we come to review the May Conclusions. I have called, most recently at the Council meeting in October, for such a review to be scheduled soon.

It will be for that future Council meeting to review what response there has been to the May Conclusions, and to decide on any stronger response, which might include a ban on settlement goods. I am pleased that we have put this issue on the table, and we are in contact with other partners on the question. But there are also many partners strongly opposed to it. I have to advise the Committee that I remain convinced that there is no prospect, at this point, of reaching agreement on a ban at EU level. And until there is such a prospect, it would be a mistake for Ireland to focus our energies on this aspect of the problem.

Ireland should consider implementing a ban at national level

External trade policy and controls are an EU competence, not a national one. And most or all settlement produce retailed in Ireland (which is probably a very small volume) reaches us as imports from other EU countries. Trade with (in this case) Israel is regulated by treaties concluded by the European Union and Israel, namely various WTO agreements to which both are parties, and by the EU-Israel Association Agreement.
I know that some NGOs have argued that a national ban can be implemented on grounds of 'public policy'. The 'public policy' exception to the EU rules against restrictions on imports and exports, which is laid down in Article 36 of the TFEU and referred to in Regulation 260/2009, has always been very narrowly interpreted by the European courts. It is very difficult to see the latter accepting so permissive an interpretation.

The case law (from cases relating to intra-EU trade, but the same principles would be likely to apply) shows that the Court of Justice has taken an extremely restrictive view of this provision. The vast majority of cases in which governments have put forward 'public policy' arguments have been rejected. It is even less likely that the Court would accept such an argument in the case of an international agreement which has been negotiated, signed and ratified by the EU and its member States, as there is a duty of loyal cooperation on all member States under the Treaties in relation to the implementation of international agreements to which both the EU and third countries are parties.

It remains the view of the Government, therefore, that a ban on the import of settlement goods could only be effected – both legally and practically – at EU level.

**Ireland should press this issue during our EU Presidency**

In the same way that we have always articulated our priorities and views within the Council, we will continue to signal these when we assume the EU Presidency and will push for a strong EU role in seeking progress on the MEPP. The May Conclusions of the Foreign Affairs Council reflect Ireland's strong engagement on these issues, including settlements and settlement products. However, we have to be realistic about the scope available to the rotating Presidency under the new arrangements relating to the CFSP. As you know, the Foreign Affairs Council is chaired by the High Representative and she and the EAS largely determine the Council's agenda. Similarly, it falls to the EAS to chair the relevant subsidiary working groups and bodies in Brussels, such as the Political and Security Committee.

I hope these points are helpful to the Committee in relation to the ongoing consideration of these important questions, and also to members of the Oireachtas in responding to representations they have received on these issues.

With kind regards,

Yours sincerely,

[Signature]

Eamon Gilmore T.D.
Tánaiste
Minister for Foreign Affairs and Trade