



October 10, 2023

## **Submission of 43 Canadian and U.S. Academics in Response to CFIA Consultation on Origin Labelling of Imported Foods from a Contested Territory**

We write in response to your request for “Consultation on origin labelling of imported foods from a contested territory,” announced on July 10. The consultation document states that it in particular seeks input from “academia and experts.” We are a group of professors from Canadian and U.S. universities in a variety of fields, primarily law, but also history, Jewish studies, psychology, and more. Individually, we have a wide variety of viewpoints about salient territorial disputes, including the Israeli-Palestinian conflict. Despite our broad range of political beliefs, we all agree to the following facts, principles, and recommendations.

- 1) Currently, no country has a food labelling policy that requires special geographic or territorial specifications in the case of contested territories in general. The CFIA appears to be the first government agency in the world to consider such a policy. As a result, it must tread carefully to ensure it does not introduce more consumer confusion than it resolves, especially given the lack of empirical evidence of significant confusion around the relevant labels.
- 2) There exists no empirical evidence that current practice regarding labelling of contested territories anywhere in the world is “misleading” to consumers in a way that prevents them from making “informed choices.” The overwhelming practice of states to not require clarifying information in such contexts suggests that even for contested territories, simple country of origin labelling does not produce demonstrable confusion among customers.
- 3) The Supreme Court of the United Kingdom, in the only case that has examined such questions as a factual matter, concluded that there is no evidence that the “average consumer” would be misled into buying a product by the “Made in Israel” labeling of Judea & Samaria products under analogous British product labelling laws.<sup>1</sup> Indeed, persons buying products from such regions often have a high level of awareness about the underlying conflicts and particularly seek out products labelled in accordance with

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<sup>1</sup> Richardson v. Director of Public Prosecutions [2014] UKSC 8 (Eng.) par. 22.



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their personal understanding of the conflict. Conversely, those seeking to impose additional labeling requirements are typically also fully aware of the contested status and are seeking to impose labelling requirements as a diplomatic tool in the underlying dispute.

- 4) Because of the dearth of evidence that the lack of geographic indications for such territories is currently misleading consumers, combined with the average consumer's lack of general knowledge about the existence and context of territorial disputes, such a new labelling scheme could introduce more confusion than it resolves, especially given the lack of agreed names for such territories. Thus, we recommend an approach that is not overly regulatory or prescriptive, since any new policies will be entering uncharted territory.
- 5) However, assuming a contested territories policy is desirable, a generally applicable rule is correct and commendable, as opposed to dealing with particular contested territories on a case-by-case basis. The E.U. has previously sought to create labelling rules for one particular conflict, while notoriously *not* creating any labelling rules for other occupied territories, such as Western Sahara or Northern Cyprus.<sup>2</sup> This approach has made its consumer confusion justification in the former case implausible and has been generally recognized as discriminatory and inequitable.<sup>3</sup> Such discriminatory treatment may give rise to violations of WTO international trade rules.<sup>4</sup>
- 6) There is a large and indeterminate number of contested territories in the world, from Kashmir (contested by India/Pakistan) to the Falkands/Malvinas<sup>5</sup> (contested by Argentina/UK), from Western Sahara/SADR (contested by Morocco/Polisario) to Northern Cyprus/TRNC (contested by the Republic of Cyprus and the Turkish Republic of Northern Cyprus), from Catalonia (contested between Spain and local successionists) to the Chagos Islands (claimed by the United Kingdom as a “British

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<sup>2</sup> European Parliament, *Labelling of Products from Western Sahara*, Question for written answer E-000487/2020 (Jan. 21, 2020) [https://www.europarl.europa.eu/doceo/document/E-9-2020-000487\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-000487_EN.html); Joint answer given by High Representative/Vice-President Ashton on behalf of the Commission Written questions: E-001004/11, P-001023/11, E-002315/11, 30 of September 2011, O.J. (C 286 E) [https://www.europarl.europa.eu/doceo/document/E-7-2011-001004-ASW\\_DE.html?redirect](https://www.europarl.europa.eu/doceo/document/E-7-2011-001004-ASW_DE.html?redirect) (“Morocco could register as geographical indications products originating in Western Sahara.”).

<sup>3</sup> See Olia Kanevskaia, *WTO Rules for Trade with Disputed Territories*, 26 J. OF INT’L ECON. L. 397, 398 (2023) (“EU policy towards trade with Israeli settlements is argued to be selective or even discriminatory.”); see generally Guy Harpaz, *Labelling Settlement Products: When EU Consumer Law Meets Public International Law (But Ignores International Trade Law)*, 55 J. OF WORLD TRADE 359 (2021).

<sup>4</sup> See generally Harpaz, *supra* note 3.

<sup>5</sup> CIA WORLD FACTBOOK, “CIA Listing—Administrative divisions,” <https://www.cia.gov/the-world-factbook/field/administrative-divisions/>.



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Indian Ocean Territory,” but also claimed by Mauritius<sup>6</sup>). As this selective list shows, one common feature of contested territories is that the rival claimants typically use different names to refer to the same place.

For instance, Pakistan refers to Kashmir as “Indian-occupied Kashmir.” The government in Taipei calls itself the “Republic of China,” while Beijing refers to it as “Taiwan, China.” Sikhs refer to their homeland as “Kalistan,” India, as “Punjab.” Transnistria, occupied by Russia,<sup>7</sup> calls it the “Pridnestrovian Moldavian Republic,” while Moldova calls it *Stînga Nistrului* (“Left Bank of the Dniester”).<sup>8</sup> **In short, contested territories have contested names.** In fact, “[b]y a conservative estimate, there are seventy-one territorial disputes today, most having endured for a considerable period of time, and involving 41% of the world’s sovereign states.” See Krista E. Weigand, *Enduring Territorial Disputes: Strategies of Bargaining, Coercive Diplomacy, & Settlement* 1 (2011).

- 7) It cannot be assumed that consumers are aware of these territorial conflicts, let alone the varied appellations for the territories. Geographic literacy is low and rapidly declining in North America and Canada, in particular.<sup>9</sup> It cannot be assumed that the average consumer can find one of the aforementioned territories on a map.<sup>10</sup> Thus, the role of additional geographic and territorial indicators should not be understood as “locating” the product to consumers, who are even less likely to know where the geographic area is than the country of origin which it modifies. Rather, a requirement for geographic indicators should best be understood as flagging for the consumer the fact that the territory is contested. This approach does not require the CFIA to tightly specify or regulate the geographic or territorial indicators that exporters can use.

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<sup>6</sup> Mauritius’ claim to the Chagos Islands is backed by both an International Court of Justice Advisory Opinion, *see* Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. (Feb. 25), and the Universal Postal Union, *see* Universal Postal Union Press Release, UPU adopts U.N. resolution on Chagos Archipelago (Aug. 27, 2021).

<sup>7</sup> Eur. Parl. Ass., *Consequences of the Russian Federation's aggression against Ukraine*, Extraordinary Sess., Opinion 300, par. 5 (Mar. 15, 2022).

<sup>8</sup> CIA WORLD FACTBOOK, “CIA Listing—Administrative divisions,” [\[web.archive.org/web/20120527052132/https://www.cia.gov/library/publications/the-world-factbook/fields/print\\_2051.html\]](https://www.cia.gov/library/publications/the-world-factbook/fields/print_2051.html).

<sup>9</sup> See Sally Turner & Joseph Leydon, *Improving Geographic Literacy among First-Year Undergraduate Students: Testing the Effectiveness of Online Quizzes*, 111 J. GEOGRAPHY 54, 54 (2012) (Documenting the “low level of geographic literacy across Canada”); Allison Segren, *Mapping Geographical Education in Canada: Geography in the Elementary and Secondary Curriculum across Canada*, 2 REV. INT’L GEOGRAPHICAL EDUC. ONLINE 118, 131 (2012) (“[F]ormal education in geography across Canada is drastically reduced as students move through the education system from primary to secondary streams and beyond” in ways that may interfere with civic participation.”).

<sup>10</sup> *Professor says students can't identify continents on map*, CBC NEWS (Jan. 15, 2013), <https://www.cbc.ca/news/canada/newfoundland-labrador/professor-says-students-can-t-identify-continents-on-map-1.1324022>.



- 8) If the CFIA simply chooses to require only one of the contested territories names, it will not provide more information about the product’s provenance other than one of its alternative names. However, requiring a single nomenclature might amount to the CFIA taking one side’s position in a foreign policy or diplomatic dispute. Moreover, such labeling could itself be misleading, as it could deceive the consumer about whose legal system or health inspections, environmental, and labor standards governed the production of the product. For example, a requirement that products from Taiwan be labelled “Taiwan Province, China” might lead people to believe they are produced under the supervision of the Beijing government.<sup>11</sup> In turn, consumers who wish to avoid PRC products might make erroneous purchasing decisions.
- 9) **In light of all of the above, the best approach would be to allow the exporter to clarify the contested nature of the territory with any generally known geographic or territorial description** (e.g., “Made in Morocco (Western Sahara)”, “Made in UK (Falklands)”, “Made in India (Kashmir)”).
- a. **For consumers ignorant of the conflict, the mere provision of such additional or parenthetical information will inform them that a dispute exists, especially given how unusual such additional labeling is.** With the addition of such terminology, consumers can investigate the merits further for themselves, regardless of whether the geographic indication on the label matches how they would ultimately describe the area (if they care at all). Crucially, almost all contemporary consumers can be assumed to have a cell phone. Once they see the parenthetical phrase, they can simply look it up on the internet.
  - b. For those not ignorant of the conflict, the geographic name will also be enough, whether they agree with it or not. For example, even those who vehemently deny the legality of Turkish control over northern Cyprus will understand from a “TRNC” label that the product in fact comes from there.
  - c. This approach does not require tightly regulating geographic indicators. Furthermore, the large number of contested territories—and the surrounding disputes over appropriate naming conventions—make requiring a unique geographic indicator in each case unworkable. It would mire the CFIA in endless disputes and challenges.
- 10) **To maintain the CFIA’s neutrality and not enter into political or foreign policy debates, any rule for providing clarifying information from contested territories must be generally applicable and non-discriminatory. In practice,**

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<sup>11</sup> A WTO dispute resolution panel ruled that a U.S. requirement that Hong Kong products be labelled “Hong Kong, China” was improperly politically motivated and not merely descriptive. WTO Appellate Body Reports, *United States—Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R / WT/DS386/AB/R (adopted July 23, 2012).



**this approach means that such a rule should simply state, “In cases of contested territories, the exporter should provide as clarifying information any relevant geographic or territorial designation that is not inherently inaccurate.”**

- 11) We understand this consultation originally arose out of questions about the labelling of Israeli products. As such, we should say a few words about applying the above principles and considerations to that context. Again, we do not believe marking such products as “Made in Israel” is inherently misleading. The product was produced under Israeli laws, as well as under Israeli labor, health, and environmental standards. It is treated by Canada as an Israeli product for customs purposes. And while customs status may not translate directly into origin labelling, having a label that is at odds with the customs status can itself product confusion.
- 12) Both wines originally in question in the Canadian litigation, Psagot and Shiloh, already bear geographic indications. Indeed, the wines are named after towns near where they are produced, a fact which gives possibly interested consumers extremely precise information about where they were produced.
- 13) If CFIA decides geographic indications are necessary for products from contested territories, it should do so with a general rule, not targeted at any particular conflict, consistent with our recommendation in Paragraph 10 above. **Under such a rule, “Judea and Samaria” (or simply “Judea” or “Samaria”) in addition to the “Made in Israel” label, would provide additional information to consumers while avoiding confusion. It also would satisfy the proposed rule in Paragraph 10.**
- 14) Judea and Samaria is a widely-accepted geographic term for the region, used by the United Nations in its famous Resolution 181 in 1947. It is also the official Israeli governmental term for the region, which makes its use even more informative for consumers. If an exporter chooses to write “Made in Israel (Judea and Samaria),” he or she makes clear that the exporter is located in Israeli-administered areas, a fact that some consumers might see as a positive, and others, a negative. Thus “Made in Israel (Judea & Samaria)” is not a false or misleading designation, even though some will disagree with its emotional tenor. Dealing with a very similar question, the U.K. Supreme Court held that a label describing a product from Judea and Samaria as being from “Dead Sea, Israel,” was not “misleading” under U.K. consumer protection law. As the Court explained, though the geographic region may not fully capture the “political status” of place, it does in fact “accurately” indicate where they are from—the Dead Sea area.<sup>12</sup> The same reasoning would apply to geographic names like Judea and Samaria.

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<sup>12</sup> See Richardson, *supra* note 1, at par. 23.



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15) The CFIA should not require such products to be labelled “West Bank” because it is inconsistent with the general and flexible approach described above. Worse, it might lead consumers to conclude that the product was made under Palestinian supervision, approval, or auspices, thus magnifying confusion. At the same time, the approach advocated here would allow exporters to label their products “Made in Israel (West Bank)” if they so choose.

Thank you for your consideration and time.

Sincerely,

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