

What do we (not) know about the products sold by the largest Dutch supermarkets?



Many of the fresh fruits and vegetables on European supermarket shelves come from Israel. However, a portion of these imports come from Israeli settlements in the Israeli-occupied Palestinian territories. These settlements are illegal and have disastrous consequences for local, Palestinian, people and economy. Human rights and international humanitarian law are being violated. Nonetheless, products from these settlements are being imported into Europe. The EU orders that if a product comes from an "Israeli settlement", that must be explicitly stated on the package or on the shelf. However, this is never done in Dutch supermarkets. SOMO has been trying to investigate the scope of imported fruit and vegetables to the Netherlands from illegal Israeli settlements.

Many of the fresh fruit, vegetables and herbs found on the shelves of European supermarkets come from Israel. The Netherlands is the third largest European importer of fruit and vegetables from Israel, after France and the United Kingdom. In 2016, the Netherlands imported some €83 million worth of fruit and vegetables from Israel. Israel is one of the top five suppliers of potatoes, dates and grapefruits. Israeli avocados, pomegranates and mandarins are also popular on the Dutch market.¹

The Israeli occupation of Palestinian territories has long been condemned by international organisations such as the United Nations and the European Union as a violation of the fundamental rights of the Palestinian population, including the right to self-determination.²

According to Human Rights Watch, Israel is committing illegal killings and war crimes in the occupied Palestinian territories, establishing illegal settlements, institutional discrimination, forced displacement, destruction of homes and property, the long-term blockade of the Gaza Strip and unjustified travel restrictions in the West Bank.³ These gross human rights violations often go unpunished. The occupation also has disastrous consequences for the Palestinian economy.⁴ The Israeli-Palestinian issue is considered an armed conflict where international humanitarian law applies. Human rights organisations condemn the colonisation and plunder of agricultural land and water resources, on the basis of the international humanitarian law. Fruit and vegetables are grown in the illegal settlements on plundered farmland with the help of plundered water sources.⁵

In 2015, the European Union clarified its rules for the labelling of products that originate in these illegal settlements.⁶ This is because the European consumer is entitled to accurate and not misleading information about products origins. When fresh fruit or vegetables are imported from an 'Israeli settlement', this must be explicitly indicated on the packaging or the shelf. However, in Dutch supermarkets you will be hard pressed to find these products labelled as such. This could mean that supermarkets have decided to call off the import of illegal settlement products but SOMO would not be the critical research organisation it is if it assumed a priori that companies are acting out of goodwill and diligence. The strong suspicion is that fruit and vegetables from the illegal settlements are simply labelled

as 'Product from Israel'.⁷ Based on this premise, we have decided to re-examine this supply chain and the involved supermarkets on this issue. For this particular research project, SOMO queried the supermarkets on their compliance to the European labelling rules as well as on the origin of the products they sell.

SOMO has spent over ten years researching and lobbying the problematic import of fruit and vegetables from illegal Israeli settlements to the Netherlands and their availability in Dutch supermarkets. Therefore, in this article, we will also take a brief look back at what we have achieved in recent years.

Box 1 The responsibility of companies to respect human rights

The two most authoritative international standards with regard to responsible business conduct are the UN Guiding Principles on Business and Human Rights (UNGPs)⁸ and the OECD Guidelines for Multinational Enterprises.⁹ These principles and guidelines state that companies have a responsibility to respect human rights.

The UNGPs consists of three pillars:

- 1 The duty of the state to protect people against human rights violations by third parties, such as companies;
- 2 The responsibility of companies to respect human rights. Due diligence is a key concept in its implementation;
- 3 Access to justice and remedy for victims of violations is the responsibility of the state as well as of the companies.

Due diligence is what companies are expected to do to avoid any involvement in human rights violations. Appropriate human rights due diligence involves the constant evaluation of and response to (potential) risks and violations – in both the companies' own business operations and their outsourced business activities. Therefore, the focus in human rights due diligence is on risks for society as a result of business activities, rather than on risks for and rights of a company itself.

Three levels are distinguished:

- 1 A company may cause a violation;
- 2 A company may contribute to a violation (together with or through other parties);

- 3 A link to a violation may exist through the activities, services or products of a company, without the company itself directly contributing to the violation.

Given the extent of the imports of fruit and vegetables from Israel into the Netherlands and the presence of Israeli farms in illegal settlements in the occupied Palestinian territories, it is not unlikely that Dutch supermarkets currently have fruit and vegetables from these illegal settlements on offer. This means that Dutch market parties risk contributing to or being linked to human rights violations. This applies to all of the relevant players including importers, suppliers, trade associations, business organisations, trading platforms and supermarket chains.

'International trade between the settlements and companies such as supermarkets is one of the driving forces behind the settlements,' notes Shawan Jabarin, director of the Palestinian human rights organisation Al Haq. *'To end these human rights violations, it is essential to stop the trade in settlement products'.*¹⁰

SOMO, in a similar vein, argued: *'When supermarkets import their own products (house brands) from the settlements, they are contributing to the violations since, in the case of house brands, they decide whom and where they purchase from. When supermarkets sell branded products imported from the settlements, these supermarkets are linked to the violations, because, although they have no direct control over their origin, they are nonetheless linked to the violations via their supply chain'.*¹¹

Box 2 International humanitarian law

Humanitarian law is the field of law that applies during armed conflicts. Provisions about the protection of the civilian population during times of armed conflict are similar to international human rights standards.¹² The Geneva Conventions consist of treaties related to the international humanitarian law. Four conventions were adopted in 1949. These were supplemented with two protocols in 1977. War crimes are serious violations of the Geneva Conventions. Common Article 3 of the Geneva Conventions lists acts which are always prohibited, including torture, mutilation, corporal punishment, hostage taking, acts of terrorism, 'violations of human dignity', including rape and forced prostitution, executions without trial, and plunder.¹³ The Fourth Geneva Convention, in particular Article 49, prohibits the occupying power from deporting or transferring parts of its own population into the territories it occupies. The Rome Statute (1998), the founding statute of the International Criminal Court, also considers this form of colonisation of an occupied territory a war crime.¹⁴

Brief background

SOMO has on several occasions in recent years sought contact with supermarket chains and other players in the food trade to learn more about the import of fruit and vegetables from Israeli-occupied Palestinian areas into the Netherlands, and the availability of these products in Dutch supermarkets.

As early as 2010, SOMO was already publicly addressing the problem of misleading labels related to fruit and vegetables from illegal settlements. SOMO's January 2011 'Bitter Fruit' report denounced Dutch supermarket chains for not taking responsibility on this issue.¹⁵ After they failed to react with any constructive solutions, SOMO decided to take a different approach. SOMO, in consultation with other Dutch civil society organisations, contacted the Dutch National Contact Point for the OECD Guidelines (NCP).¹⁶ The NCP suggested that, in order to circumvent an official complaints procedure, it would initiate a broad dialogue.

The Centraal Bureau Levensmiddelen (CBL, the Dutch Food Retail Association), the umbrella organisation of supermarkets in the Netherlands, and Frugi Venta, a fruit and vegetable trading platform, agreed to enter into a dialogue with SOMO, chaired by the NCP.

Keeping the UNGPs in mind, SOMO wanted to clarify the extent of required supply chain responsibility and human rights due diligence of supermarket chains when purchasing goods from illegal Israeli settlements. With the support of the NCP, however, the CBL and Frugi Venta managed to limit the focus of the discussion on the issue of proper labelling. The fruit and vegetables sector tried to hide behind the government, stating that it was the government's responsibility to draft labelling guidelines. The Dutch government, apparently afraid to pursue its own course, preferred to refer to the EU process that was already underway regarding the labelling of these kinds of products. In April 2015, the dialogue – which was initiated in 2012 – collapsed without achieving any concrete results, to the considerable frustration of the involved NGOs.¹⁷

In May 2015, SOMO published the report 'Trading settlement products and the role of Dutch supermarkets in human rights violations'.¹⁸ SOMO argued that supermarket chains should proactively take effective steps to prevent contributing to or being linked to specific human rights violations that occur in their production and supply chains. SOMO's report once again pointed out that these supply chains are not very transparent. Who trades what with whom? What product origin information is available at what point in the chain? What are consumers actually buying? These questions have largely remained unanswered.

At the time, SOMO came up with the following recommendations. Supermarkets must:

- Refrain from selling products from illegal settlements;
- Actively inform consumers and civil society organisations about their purchasing policies and practices and their suppliers;
- Map out their supply chains and find out which suppliers provide settlement products, as part of a standard risk analysis;
- Include in contracts with supply chain partners/suppliers that illegal settlement products will not be accepted;
- Actively monitor the execution of (contractual) agreements and verify information obtained, possibly with the help of an independent third party;
- Terminate business relations with suppliers that continue to offer products from illegal settlements.

Supermarket research 2017-2018

In the first quarter of 2017, SOMO again approached the five largest supermarket chains in the Netherlands: Albert Heijn, Aldi, Jumbo, Lidl and PLUS. The central question was how supermarkets implement the European rules on origin labelling. SOMO also inquired about the product assortment of fruit and vegetables from Israeli-occupied Palestinian territories.¹⁹

All five companies reacted – some more elaborately than the others. Their responses form the basis for this article. The draft version of this article was presented to the five supermarket chains in March 2018, with the explicit request to provide up-to-date information and to correct possible factual errors. All of the relevant information that SOMO has received from the involved parties is included in the final version of this article.

The questions that SOMO submitted to the five supermarket chains concerned the following issues:

- Policies that the supermarket chains may have developed with regard to labelling / origin labelling of products from Israel or Israeli-occupied territories;
- Possible discussions between supermarket chains and suppliers of products from Israel and/or Israeli-occupied territories about European labelling regulations;
- The systems that suppliers may have established to be able to label products based on EU rules;
- The supermarket assortments and whether offered products are actually being labelled as originating in Israel-occupied areas by means of labels or indications on store shelves;
- Questions consumers may ask about the origin of products from Israeli-occupied territories.

In correspondence with the five supermarket chains, SOMO had to ask a lot of questions over and over and also had to come up with additional questions in an attempt to clarify their stories. Unfortunately, many questions remained unanswered. Aldi was the least communicative of the five supermarket chains that SOMO approached.

Who sells what?

Product from Israel?

To begin with we wanted to find out which Dutch supermarkets sell fruit and vegetable products from Israel. Jumbo was the only supermarket of the five SOMO contacted that failed to answer this question. Aldi also failed to provide an unambiguous response. Lidl indicated that it does not offer any fruit or vegetables *'from the areas concerned'*.²⁰ Albert Heijn stated to products from Israel, but refused *'for competitive reasons'* to indicate which products were involved. In its response Albert Heijn also distinguished between its own private label and other brands, but did not offer any detailed explanation why this distinction would matter.²¹ PLUS stated that they carried four products from Israel at the time of our research: grapefruits, pomegranates, samphire and Orri mandarins, and pointed out that over the course of a year other products from Israel may be available in their stores. PLUS did not offer details about what products these may be.²²

Products from illegal settlements?

And what about fruit and vegetable products from illegal Israeli settlements in the Palestinian territories; are they currently being sold in the five largest supermarket chains in the Netherlands?

Albert Heijn reported that *'products from the disputed areas are labelled in accordance with EU guidelines'*.²³ In response to the question of specifically which fruit and vegetable products and how they are labelled, Albert Heijn wrote: *'Fruit and vegetable assortments change throughout the year; we currently do not have any of our own brand products that originate from these areas. If this does occur again in the future, they will be labelled in accordance with legislation'*.²⁴ Based on these responses, SOMO determined that Albert Heijn does indeed sell products from the Israeli-occupied territories. In a subsequent notice, Albert Heijn reported that this was wrong, *'because we currently do not sell products from disputed territory'*.²⁵ Jumbo and PLUS explicitly stated that they do not carry any products from the occupied territories in their assortment.²⁶ Aldi reported that inquiries among fruit and vegetable suppliers revealed that no products originate from the occupied areas.²⁷ Lidl said, somewhat cautiously, that Lidl Netherlands did not at that moment nor recently carry any settlement products in its assortment.²⁸

The policy on selling products from illegal settlements?

Jumbo and PLUS stated, in so many words, that the prevailing policy is not to offer any products from (the illegal settlements in the) occupied territories. Lidl reported: *'The (EU sic) interpretation document has had no influence*

on Lidl Nederland's assortment'.²⁹ SOMO has not received policy statements from any of the companies, despite the fact that we have urgently requested them.

What's on the labels and shelves?

In May 2017, volunteers from the documentation centre Palestine docP visited supermarkets from the various chains to search for products labelled 'Israel', 'Israeli settlement in Palestine', or 'Palestine'. They visited the following stores: Albert Heijn, Aldi Dekamarkt, Dirk van den Broek, Emté, Jumbo, Lidl and Nettorama, in Amsterdam, Assen, Den Bosch, The Hague, Enschede, Groningen, Haarlem, Heerenveen, Leeuwarden, Nijmegen Rotterdam and Utrecht. DocP has years of experience with this type of field research. The field research took place in May because there are a relatively greater number of fresh agricultural products from the Middle East available in stores then. The docP team found 99 products from Israel; in 2016 they counted 96. Again, no products labelled 'Israeli settlement in Palestine' or 'Palestine' were found. This docP sample revealed that Albert Heijn was the largest supplier of Israeli products. These included potatoes, citrus fruit, dates and fresh herbs.³⁰

SOMO requested the supermarket chains to provide examples of the precise wording they use on the labels or shelf descriptions of settlement products. None of the five companies responded. Albert Heijn did mention that it follows point 10 of the EU's Interpretative Communication '1-on-1'.³¹ Albert Heijn also reported to only take responsibility for the labelling of its own brand products. Albert Heijn stated that, according to the law, other brands on offer in Albert Heijn stores are responsible for their own labelling. Lidl, in its response to SOMO, once again emphasised *'that it is not up to supermarkets to engage in foreign policy. If something in particular needs to be stated on the labels, then that is up to the legislature to decide'*. Lidl also stated that they operate *'in line with the market'*, without explaining what they meant by that.³²

What does the supply chain look like?

Via our research, we wanted to learn more about the five supermarket chains' current chain partners and suppliers of products from Israel and the Palestinian territories, including the Israeli settlements.

This was not a very fruitful effort; the companies turned out not to be all that generous with this information. In response to the question of how many links or

companies there are between harvest and Albert Heijn's shelves, Albert Heijn noted that *'the number of links in the various chains vary enormously per product'*.³³ PLUS named Nature's Pride as one of its suppliers of, among other products, Israeli pomegranates.³⁴ SOMO's question about what other suppliers PLUS uses for its other Israeli products went unanswered.

How is the information provided by suppliers checked?

It is not an easy task to obtain solid, reliable information about the origin of *'products from Israel'*. Claims by producers and suppliers about the origin of products must be thoroughly checked. Agricultural products from Israel are mixed during storage with products from the illegal settlements, and then marketed as *'products from Israel'*. Agricultural holdings cheat when it comes to information about their registered seat, providing fictitious postal codes. These are well-known practices.³⁵ In 2013, to make matters worse, Israel introduced a new postal code system, also causing s European authorities headaches.³⁶ The question is whether Dutch supermarket chains are able to satisfactorily manage these risks.

SOMO asked the five supermarket chains how their supplier information is checked. We received a variety of answers.

Albert Heijn reported that they have been asking their suppliers for years not to mix end products from the Palestinian territories with Israeli products.³⁷ SOMO was aware of this because Albert Heijn had already mentioned this in earlier contacts with SOMO in 2015. However, the question is how Albert Heijn is verifying the information suppliers provide. Are independent third parties given a role in verification? And if so, which ones? Product information is stored in databases and is *'constantly verified for factuality'*, according to Albert Heijn. Albert Heijn also praised the international Private Label Management (PLM) system TraceOne *'in which all processes are recorded and secured'*. Albert Heijn also performs random (un) announced inspections at its suppliers.³⁸ TraceOne may be more than just a paper validation, but Albert Heijn did not provide any further information about how this validation process really looks like.

Jumbo stated to regularly ask its suppliers to provide evidence regarding the origin of its agricultural products, *'including declarations and mass balance products from suppliers'*,³⁹ to show that products do not originate from the occupied Palestinian territories. Jumbo referred to a

specifications system where suppliers upload this evidence and in which the origin of products must also be specified 'in connection with legally required statements'.⁴⁰ According to Jumbo, this specifications system is always completed before a product ends up on the shelf. This sounds wonderful, but SOMO's requests for something more concrete regarding suppliers' statements or the specifications system – screenshots for example – went unanswered. And more importantly, it remains unclear how Jumbo controls the quality and authenticity of the evidence and statements.

SOMO also submitted questions to Aldi, Lidl and PLUS regarding concerns about the mixing of fruit and vegetable products from different sources in warehouses, about checking suppliers' claims, and about the possible role of third parties in verification. The three supermarket chains did not respond to these questions.

Nature's Pride did provide a lengthy response to the question: *"Mixing" is a concern of the entire sector; checking this is very difficult; it is not obvious from the fruit itself. Our long-term relationship with our suppliers is very good: our agreements and conditions are clear, every supplier conforms to this and we have no reason to doubt their statements*'.⁴¹

What do supermarkets do in cases of doubt or incorrect information?

Apparently, supermarkets believe that with a lot of trust and a little bit of auditing they can go a long way. But what if there are reasonable doubts about the information provided by suppliers or if it is obvious that incorrect information has been provided? What are the warnings or sanctions that supermarket chains employ against suppliers? Aldi, Lidl and PLUS have not shared anything with SOMO. Albert Heijn pointed out that they always do research first. How this research is carried out remains unclear. There is always the possibility of suspending a supplier, but there were no such cases in 2016, according to Albert Heijn.

Jumbo described the following process: *'When a product originates in the occupied territories, we escalate and take action by contacting the supplier. This specification system is always completed before a product ends up on the shelf'*.⁴² SOMO asked Jumbo whether in recent years suppliers have offered products originating from Israeli-occupied areas. And if so, what exactly did this 'escalation' look like? Jumbo has not responded to this point.

What do consumers want to know?

Consumers are entitled to accurate information that does not mislead them about the origin of their products. What do consumers want to know about producers from Israel and the occupied territories? And how do they let their supermarkets know? What does a supermarket do with questions from customers? SOMO asked the five supermarket chains about their experiences. Is information about the origin of products from Israel, Palestine and/or Israeli-occupied territories important for consumers?

Nature's Pride informed SOMO that they regularly received questions from customers and consumers from all over Europe about their policies regarding Israeli products. Nature's Pride emphasised that *'it is a matter that affects more and more people and requires clear answers. We provide answers that are as complete and transparent as possible'*.⁴³ PLUS reported that their customer services only periodically receive questions about the origin of products from Israel, Palestine and/or Israeli-occupied territories.⁴⁴ Albert Heijn dismissed the question with the comment that *'customers can always turn to Albert Heijn with questions about the country of origin of any product; we will do our utmost to answer such questions, including providing the addresses of the manufacturer or grower(s)'*. Aldi, Jumbo, and Lidl did not respond to SOMO's question.⁴⁵

In this context, SOMO also contacted the Dutch Food and Consumer Product Safety Authority (NVWA), which is responsible for the supervision and enforcement of labelling regulations, including rules on origin labelling. NVWA Enforcement is carried out *'on the basis of standing intervention policy. When the NVWA establishes that labels contain erroneous information, policy is maintained and sanctions are applied (warning, fine, etc.)'*

'Supervision of labelling practices is part of the NVWA's current annual programs', according to Minister of Foreign Affairs at the time, Bert Koenders.⁴⁶ After all of its e-mails went unanswered, SOMO decided to contact the NVWA by telephone in March 2017. The NVWA spokesperson stated that the NVWA never received any 'concrete reports' on this topic. Apparently all of the information and publications that organisations such as docP, WhoProfits and SOMO sent them are not considered concrete reports or signals by the NVWA.⁴⁷

However, in May 2018, the NVWA reported that in November 2017 a written warning was issued to a company that offered wine *'from an area that cannot be labelled as Israel.'* The NVWA could not tell us which company was referred to or from which area the wine originated, since

that might then identify the company. The quantity of wine that was offered is unknown. The NVWA said that 'as of March of this year the company will again fully operate

within the rules of the EU's Interpretative Communication, following a repeat visit.' The NVWA has not yet issued any reports on this subject or about this period (2017).

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Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

Sarphatistraat 30
1018 GL Amsterdam
The Netherlands
T: +31 (0)20 639 12 91
info@somo.nl
www.somo.nl

Colophon

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Author **Pauline Overeem**

With contributions from **Lydia de Leeuw** en **Sanne van der Wal**

Editor **Meike Skolnik**

Layout **Frans Schupp**

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