Fordham International Law Journal

Volume 26, *Issue* 3 2002 *Article* 4

Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip

Moshe Hirsch*

*

Rules of Origin as Trade or Foreign Policy Instruments? The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip

Moshe Hirsch

Abstract

This Article aims to shed some light on linkage between rules of origin and territorial disputes, and to analyze the alternative approaches available to policy makers in such cases. The choice between these alternatives is closely related to the broader subject of the interrelationships between international trade law and politics, which this Article will also address. It should be emphasized at the outset that this Article does not aim to address the substantive territorial disputes regarding the West Bank and the Gaza Strip (nor the legality of the settlements located therein), Western Sahara, Taiwan, Northern Cyprus, or other disputed territories. The aim here is, rather, to explore the link between the particular position undertaken by a State (or an economic bloc) regarding the status of the disputed territory and the rules of origin applied to products manufactured in that territory.

RULES OF ORIGIN AS TRADE OR FOREIGN POLICY INSTRUMENTS? THE EUROPEAN UNION POLICY ON PRODUCTS MANUFACTURED IN THE SETTLEMENTS IN THE WEST BANK AND THE GAZA STRIP

*Moshe Hirsch**

INTRODUCTION

Rules of origin are not often involved in international territorial disputes. Their ordinary aim is to determine whether a particular preferential arrangement (e.g., duty-free import) will be applied to a given product in international trade.[1] Yet, where

* Arnold Brecht Chair in European Law, Faculty of Law and Department of International Relations, Hebrew University of Jerusalem.

1. *See* MICHAEL J. TREBILCOCK & ROBERT HOWSE, THE REGULATION OF INTERNA-

products are manufactured in a territorially disputed area, these rather technical rules of international trade are found at the forefront of political disputes regarding the status of that area. The ongoing controversy between the European Union ("EU") and Israel regarding the origin of goods produced in the Israeli settlements in the West Bank and the Gaza Strip is an exemplary case of such a link between rules of origin and territorial disputes. This Article aims to shed some light on linkage between rules of origin and territorial disputes, and to analyze the alternative approaches available to policy makers in such cases. The choice between these alternatives is closely related to the broader subject of the interrelationships between international trade law and politics, which this Article will also address.

Rules of origin constitute an essential component of any preferential trading regime. The surge of regional trade arrangements in the recent decade indicates that the importance of rules of origin is expected to increase in the coming years.[2] The aim of these rules in preferential agreements is to avoid free-riding by third parties. The parties to such agreements are interested in reducing trade barriers on a mutual basis, while maintaining existing external trade protection *vis-à-vis* non-contracting parties. This rationale also applies to the operation of the 1995 free-trade-area agreement between the EU and Israel (the "1995 EU-Israel Agreement").[3]

TIONAL TRADE 127-28 (2d ed. 1999) (discussing the functions of rules of origin in international trade); Moshe Hirsch, *International Trade Law, Political Economy and Rules of Origin: A Plea for a Reform of the WTO Regime on Rules of Origin*, 36(2) J. OF WORLD TRADE 171 (2002); BERNARD M. HOEKMAN & MICHEL M. KOSTECKI, THE POLITICAL ECONOMY OF THE WORLD TRADING SYSTEM 102-04 (1995).

2. Several scholars consider the rapid spread of regional trade arrangements in the world trading system to be "the most important policy issue in the global trading system." *See* Jean-Marie Grether, *Preferential and Non-Preferential Trade Flows in World Trade* 2 (Staff Working Paper ERAD-98-10, World Trade Organization, Economic Research and Analysis Division, 1998). Most countries in the world, in all parts of the globe, are members of preferential arrangements and the share of these arrangements in the world trade is 40%-42%. The majority of the 150 regional trade arrangements that are currently in effect, have been concluded in the past decade. *See* World Trade Organization, *Regionalism* (Sept. 5, 2002), *available at* http://www.wto.org/english/tratop_e/region_e/region_e.htm; TREBILCOCK & HOWSE, *supra* n.1, at 129-34 (discussing the recent surge in regional trade arrangements); MARKET INTEGRATION, REGIONALISM AND THE GLOBAL ECONOMY 1 (Richard E. Baldwin, Daniel Cohen, Andre Sapir & Anthony Venables eds., 1999).

3. Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the State of Israel, of

The rupture of the peace process in September 2000, and the ensuing conflict between Israel and the Palestinians, raised numerous questions of international law, including many in the commercial sphere. These questions relate not only to the direct relations between Israel and the Palestinian Authority ("PA") but also to the relations between the EU and these parties. The EU is a major trading partner of both rival parties to the long-standing dispute in the Middle East, and its trade policy is of major importance for Israel and the PA.[4] This explains why the EU's determination of origin regarding goods produced in the settlements in the West Bank and the Gaza Strip is of major significance to both parties. The determination of origin in this case is associated with the vexed political dispute regarding sovereignty over the West Bank and the Gaza Strip.

It should be emphasized at the outset, that this Article does not aim to address the substantive territorial disputes regarding the West Bank and the Gaza Strip (nor the legality of the settlements located therein), Western Sahara, Taiwan, Northern Cyprus, or other disputed territories. The aim here is, rather, to explore the link between the particular position undertaken by a State (or an economic bloc) regarding the status of the disputed territory and the rules of origin applied to products manufactured in that territory.

I. *THE FUNCTION OF RULES OF ORIGIN IN INTERNATIONAL TRADE*

Rules of origin function as a differentiating mechanism to determine whether a particular discriminatory arrangement will be applied to a given product in international trade. Discriminatory arrangements operate in both directions, providing for either preferential or detrimental treatment (e.g., tariff concessions or anti-dumping measures, respectively). As rules of origin

---

the other part, O.J. L 147/3 (2000) [hereinafter the 1995 EU-Israel Agreement]. *See* Moshe Hirsch, *The 1995 Trade Agreement Between the European Communities and Israel: Three Unresolved Issues*, 1 EUR. FOREIGN AFF. REV. 87-123 (1996) [hereinafter *Three Unresolved Issues*]; Peter Malanczuk, *The Legal Framework of the Economic Relations Between Israel and the European Union*, *in* ISRAEL AMONG NATIONS 263 (Alfred E. Kellermann, Kurt Siehr, & Talia Einhorn eds., 1998) (both discussing the 1995 EU-Israel Agreement).

4. *See* Ben R. Soetendorp, *The EU's Involvement in the Israeli-Palestinian Process: The Building of a Visible International Identity*, 7 EUR. FOREIGN AFF. REV. 283 (2002) (discussing the relations between the EU, Israel, and the Palestinian Authority ("PA")).

constitute an accessory element within a larger discriminatory system, their relative weight is contingent, to a large measure, upon the importance of the discriminatory system itself. The significance of rules of origin in a preferential arrangement corresponds to the existing gap between the preferential arrangement and the general Most Favored Nation ("MFN") regime.[5] Overall, current trends in international commerce, particularly the accelerated spread of preferential arrangements outside the MFN regime, indicate that the weight of rules of origin is likely to grow in the coming decades.

The determination of origin does not present special difficulties when the product is "wholly obtained or produced" in one State.[6] Unfortunately, with the increasing trend that has been labeled as the "global factory,"[7] most final products in contemporary international commerce involve factors of production from more than one country. Well-known examples are computers and automobiles. In such cases, rules of origin are designed to identify which of the States involved is the "originating State." The general principle widely accepted in international trade law is that the State carrying out the "last substantial process" or "sufficient working or processing" is the originating State.[8]

---

5. *See* Moshe Hirsch, *The Asymmetric Incidence of Rules of Origin: Will Progressive and Cumulation Rules Resolve the Problem?*, 32 J. OF WORLD TRADE 41, 42-44 (1998) (discussing the relative importance of rules of origin in various settings) [hereinafter *Asymmetric Incidence*].

6. Still, some rules (relatively uncomplicated) are commonly included in preferential agreements to define products "wholly obtained" in a certain State. *See, e.g.*, 1995 EU-Israel Agreement, *supra* n.3, Protocol 4, art. 4, O.J. L 147/3 at 51 (2000); North American Free Trade Agreement, 32 INT'L LEGAL MATERIALS 289, art. 415 (1993) ("NAFTA"); 1973 International Convention on the Simplification and Harmonization of Customs Procedures, 950 U.N.T.S. 269, Annex D.1, rule 2, O.J. L 166/3 (1977) ("Kyoto Convention").

7. *See* Jacques H.J. Bourgeois, *Rules of Origin: An Introduction, in* RULES OF ORIGIN IN INTERNATIONAL TRADE 1, 4-5 (Edwin Vermulst, Paul Waer & Jacques Bourgeois eds., 1994) (discussing this trend).

8. The term "last substantial process" is used in non-preferential contexts. *See, e.g.*, WTO Agreement on Rules of Origin, THE LEGAL TEXTS — THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 241, arts. 3(b) and 9(b) (1994) [hereinafter 1994 WTO Agreement]; Council Regulation 2193/92, art. 23, O.J. L 302/1 (1992) (establishing the Community Customs Code). The term "sufficient working or processing" is used in numerous preferential agreements. *See, e.g.*, 1995 EU-Israel Agreement, *supra* n.3, Protocol 4, art. 5, O.J. L 147/3 at 52 (2000). *See also* Paul Waer, *European Community Rules of Origin, in* RULES OF ORIGIN IN INTERNATIONAL TRADE, *supra* n.7, at 85, 146 (discussing the rules of origin included in agreements concluded by the

The principle of the "last substantial process" and "sufficient processing" is vague and leaves wide discretion to national customs authorities. This feature generates an undesirable situation of uncertainty and undermines predictability for traders. Three economic tests are employed to define the general principle more precisely:

> (i) *a domestic content test*, requiring a minimum percentage of local value added in the originating State (or setting the maximum percentage of value originating in non-Member States);
> (ii) *a technical test*, prescribing that the product must undergo specific processing operations in the originating State; and
> (iii) *a change in tariff classification*, requiring the product to change its tariff heading under the Harmonized Commodity Description System ("Harmonized System") in the originating State.[9]

In sum, rules of origin are primarily designed to facilitate trade liberalization through reciprocal arrangements. This method is implemented through preferential agreements that are intended to allow trade concessions only to the contracting parties, while maintaining existing barriers towards non-contracting parties.

II. *THE OPERATION OF RULES OF ORIGIN IN TERRITORIAL DISPUTES: TWO ALTERNATIVE APPROACHES*

Rules of origin are commonly perceived as important, but rather "technical," rules of international trade law. Applying these rules to goods produced in disputed territories, however, is likely to constitute a source of political friction. Such international settings are characterized by disagreements regarding the issue of sovereignty over a particular territory or with respect to recognition of a certain government.

Rules of origin are relevant to territorial disputes because the origin of goods is commonly defined in international trade

---

EU); Ian S. Forrester, *EEC Customs Law: Rules of Origin and Preferential Duty Treatment - Part I*, 5 EUR. L. REV. 167, 179-80 (1980).

9. *See* JOHN H. JACKSON, THE WORLD TRADING SYSTEM, 167-69 (2d ed. 1997); Edwin A. Vermulst, *Rules of Origin as Commercial Policy Instruments -- Revisited*, 26 J. OF WORLD TRADE 61, 63-74 (1992); Joseph A. LaNasa III, *Rules of Origin and the Uruguay Round's Effectiveness in Harmonizing and Regulating Them*, 90 AM. J. INT'L L. 625, 629-36 (1996) (all discussing these tests in detail).

law on a territorial basis. Ordinarily, only products that are manufactured within a particular State are eligible to benefit from the preferences accorded to that State. Consequently, the determination of origin of a product may involve a prior decision regarding whether the particular product has been manufactured within or outside of the exporting State. A similar question arises with regard to the competence of unrecognized governments to issue valid certificates of origin. Where the exported goods are produced in a disputed territory, rules of origin are suddenly found at the heart of the international political battle.

Territorial disputes are not so rare in the international arena (e.g., Cyprus, Kashmir, Taiwan, Tibet, and Western Sahara), and importing States that encounter such situations may pursue one of two alternative approaches:

> (i) *The practical-trade approach* considers the issue of origin from a commercial perspective and resolves the relevant questions in accordance with rules of international trade law that emphasize the factors of *de facto* control, jurisdiction, and ensuing responsibility. This course of action seeks to minimize the role of political factors in the operation of rules of origin;
> (ii) *The political-sovereignty approach* considers the issue of origin from an international political perspective, underlines the involved questions of sovereignty and recognition, and addresses the question of origin as flowing from an early determination regarding the questions of sovereignty or recognition.

A. *The Practical-Trade Approach*

This approach addresses the issue of origin as a question of international trade law. The point of departure for this approach is that treaty provisions should be interpreted in light of their ordinary meaning, as arising from their particular context and object. This canon of interpretation is included in the 1969 Convention on the Law of Treaties[10] and has been widely employed by the World Trade Organization ("WTO") tribunals.[11]

---

10. Vienna Convention on the Law of Treatises, May 23, 1969, art. 31, 8 I.L.M. 679. *See* OPPENHEIM'S INTERNATIONAL LAW 1266-75 (Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. 1992) (discussing this principle of interpretation).

11. *See, e.g.*, WORLD TRADE ORGANIZATION, REPORT OF THE PANEL: UNITED STATES SECTION 301-310 OF THE TRADE ACT OF 1974, paras. 7.58–7.72 (Dec. 22, 1999), *available*

Trade treaties, such as the free-trade-areas agreements, are ordinarily aimed at liberalizing trade relations between the contracting parties, and not at determining the legal status of a certain territory. Consequently, interpretation of the relevant rules of origin included in such agreements should not be based on the various rules regarding sovereignty, acquisition of territory, or international recognition, but rather, on factual factors like *de facto* control, jurisdiction, and ensuing international responsibility.

Support for the practical–trade approach is found in the General Agreement on Tariffs and Trade ("GATT") rules and practice. Questions regarding the application of trade agreements to disputed territories have arisen several times in GATT history and they are addressed in Article XXVI(5)(a) of the GATT. This Article provides as follows:

> Each government accepting this Agreement does so in respect of its metropolitan territory *and of the other territories for which it has international responsibility*, except such separate customs territories as it shall notify to the Executive Secretary to the CONTRACTING PARTIES at the time of its own acceptance.[12]

This GATT principle directs our attention to the question of which State is internationally responsible for the relevant territory, rather than the question of who is the sovereign over the particular territory.

This separation of the issue of the application of the trading arrangements to disputed territories from the issue of their legal status under public international law was further upheld in GATT practice. When Portugal sought to accede to the GATT in

---

at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm. *See also* David Palmeter & Petros Mavroidis, *The WTO Legal System: Sources of Law*, 92 AM. J. INT'L L. 398, 406 (2001); Joost Pauwelyn, *The Role of Public International Law in the WTO: How Far Can We Go?*, 95 AM. J. INT'L L. 535, 573-76 (2001) (both discussing the application of the interpretation rules, including the Vienna Convention, by the WTO tribunals).

12. General Agreement on Tariffs and Trade, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 7 (1994) [hereinafter GATT] (emphasis added). An interpretative note to this Article regarding military occupation was deleted in the Review Session of 1954-1955. The former note provided that territories for which the contracting parties have international responsibility do not include areas under military occupation. The deletion of this interpretative note became effective on October 7, 1957. GUIDE TO GATT LAW AND PRACTICE: ANALYTICAL INDEX 852-53, 858 (6th ed. 1994) [hereinafter GATT LAW AND PRACTICE].

1961, the question regarding the application of the GATT to some of its "overseas provinces" generated concerns in India. The representative of India sought clarification of the relationship between Portugal and these territories. The GATT Executive Secretary replied that:

> [H]e was satisfied that in adopting the text which was proposed . . . the CONTRACTING PARTIES would not be taking any position with respect to the international status of these territories. *Contracting parties were concerned only with what was relevant to the General Agreement, which were the trading arrangements proposed with respect to these territories and not their status in international law.* Therefore, the approval of this protocol would not, in [his] view, in any way affect or conflict with whatever decisions might be taken or had been taken by the General Assembly of the United Nations, on these legal matters.[13]

A similar question arose in the GATT system in 1965 with regard to the disputed sovereignty over Antarctica.[14] Following the issuance of a list of countries and territories where the General Agreement was effective, the United States formally stated in 1965 that it did not recognize the claims of sovereignty regarding the territory of Antarctica and reserved all rights with respect to that territory.[15]

The practical–trade approach was also adopted by the EU[16] with regard to goods imported from the disputed territory of Taiwan.[17] The EU and its Member States do not recognize the Republic of China (Taiwan) as a sovereign State. Rather, they consider it a province of the State of China.[18] Notwithstanding

---

13. GATT LAW AND PRACTICE, *supra* n.12, at 852 (emphasis added).

14. *See* Rudiger Wolfrum & Ulf-Dieter Kelmn, *Antarctica, in* 1 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 173 (Rudolf Bernhardt ed., 1992) (discussing the legal dispute regarding the status of Antarctica).

15. GATT LAW AND PRACTICE, *supra* n.12, at 852.

16. A different approach was undertaken by the EU with regard to products manufactured in northern Cyprus and the Israeli settlements in the West Bank and the Gaza Strip. *See* discussion *infra* in Section II.B. of this Article.

17. *See* Jonathan I. Charney & J.R.V. Prescott, *Resolving Cross-Strait Relations Between China and Taiwan*, 94 AM. J. INT'L L. 453 (2000) (discussing the dispute regarding the status of Taiwan under international law).

18. *See, e.g., The EU's relations with Taiwan (Chinese Taipei): Overview, available at* http://europa.eu.int/comm/external_relations/taiwan/intro/index.htm. *See also* Stephan Talmon, *The Cyprus Question Before the European Court of Justice*, 12 EUR. J. INT'L L. 727, 747 (2001).

this non-recognition, the EU law allows the import of some products from Taiwan to the EU, accompanied by a certificate of origin issued by competent Taiwanese authorities (and not necessarily by the People's Republic of China). For example, EU Commission Regulation 1084/95 states that garlic originating in Taiwan must be accompanied by a certificate of origin issued by a competent governmental authority of the country of origin upon importation.[19]

Similarly, the EU has, apparently, applied the practical-trade approach to goods from Western Sahara. Western Sahara is not considered to be under the sovereignty of Morocco in accordance with international law,[20] but the latter State has taken control of nearly all of the area.[21] The Moroccan government controls Western Saharan trade and economic activities.[22] The EU-Morocco Agreement does not contain any express provision on the question of Western Sahara, but Article 94 provides that the Agreement "shall apply . . . to the territory of the Kingdom of Morocco."[23] Still, the EU apparently also applies the trade preferences included in the EU-Morocco Agreement to goods produced in Western Sahara and imported into the EU.[24]

B. *The Political-Sovereignty Approach*

The alternative approach available to policy makers regard-

---

19. Commission Regulation No. 1084/95, art. 2, O.J. L 109/1 (1995) (abolishing the protective measure applicable to imports of garlic originating in Taiwan and replacing it with a certificate of origin). The authority listed in the Annex to this Regulation is the Bureau of Commodity Inspection & Quarantine, Ministry of Economic Affairs for Export & Import. Certificates are issued on behalf of the Ministry of Economic Affairs, Republic of China. *Id.*; *see* Talmon, *supra* n.18, at 747-48 (discussing this Regulation).

20. *See* Western Sahara, 1975 I.C.J. 12 (providing the International Court of Justice's decision on this issue); Thilo Marauhn, *Sahara, in* 4 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 283 (Rudolf Bernhardt ed., 2000) (discussing the various aspects of the dispute regarding the status of Western Sahara).

21. *See, e.g.*, D.J. HARRIS, INTERNATIONAL LAW 118-19 (5th ed. 1998).

22. Shari Berke, *Sahara Dispute and Environment, in* ICE CASE STUDIES 1 (1997), *available at* http://www.american.edu/ted/ice/sahara.html.

23. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, O.J. L 70/2 (2000) [hereinafter EU-Morocco Agreement].

24. Interview with EU official in Brussels, Jan. 13, 2003 (on file with author). The EU official site that reviews the relations between the two parties describes the "surface" of the Kingdom of Morocco as "710,850 sq. km (*including the territory of Western Sahara*)" (emphasis added); *The EU's Relations with Morocco: Overview, available at* http://europa.eu.int/comm/external_relations/morocco/intro/index.htm.

ing the question of the origin of goods produced in the disputed territories, is to consider this subject from the political perspective and to emphasize the issues of sovereignty and international recognition. This approach accords considerable importance to prior determination regarding sovereignty or recognition with regard to a particular territory, and this earlier stage overshadows the process of determination of origin. Under this approach, the State that is identified as the "sovereign State" is the State of origin, and only a recognized government is authorized to issue certificates of origin.

The process of determining who is the sovereign or the recognized government in a disputed territory may employ the rules of general international law regarding the acquisition of territory, international recognition (of States or governments), and pertinent decisions of international organizations (e.g., the United Nations ("U.N.") Security Council and General Assembly) and international tribunals (e.g., the International Court of Justice ("ICJ")).

In addition to sources of international law, internal tribunals that deal with questions of sovereignty or recognition are likely to take into account the political position adopted by their governments in the particular cases. As to recognition of foreign States, for instance, the English courts have adopted the attitude over many years "that an entity unrecognized by the Foreign Office would be treated before the courts as if did not exist."[25] As for governmental decisions whether or not to grant recognition, "[p]olitical considerations have usually played a large role" in such decisions.[26]

These well-known effects of political considerations upon decisions regarding sovereignty and recognition indicate that the political-sovereignty approach is highly susceptible to the influence of the political positions of the relevant government with regard to the disputed territory. The determination of origin in such cases may constitute a transmission belt between the foreign policy of the relevant State (or economic block) and its

25. MALCOLM SHOW, INTERNATIONAL LAW 318-19 (4th ed. 1997) (referencing court decisions cited therein).

26. *Id.* at 304. The author also observes that "[i]t is stating the obvious to point to the very strong political influences that bear upon this topic. In more cases than not, the decision whether or not to recognize will depend more on political considerations than upon exclusively legal factors." *Id.* at 295.

trade policy. The political-sovereignty approach may constitute an instrument for exerting pressure upon States that illegally retain control over a disputed territory but, as discussed in detail in Section IV of this Article, the approach also blurs the valuable distinction between international trade rules and foreign policy.

Support for the political-sovereignty approach is found in the case law of the EU Court of Justice regarding certificates of origin for products manufactured in the disputed territory of the northern part of Cyprus,[27] as well as in the practice of the EU with respect to the origin of goods produced in the West Bank and the Gaza Strip. The EU Court judgment in *Anastasiou I*[28] involved the interpretation of the 1972 Association Agreement between the European Economic Community and the Republic of Cyprus ("EEC-Cyprus Agreement").[29] Products that originate in Cyprus are entitled to benefit from certain preferential arrangements included in the EEC-Cyprus Agreement and the Protocols thereto. Article 6(1) of the Protocol on Rules of Origin (concluded in 1977) stated that evidence of the originating status of products was to be given by movement certificate "EUR.1." Articles 7(1) and 8(1) of this Protocol specified that the certificate of origin was to be issued by the customs authorities of the exporting State.[30]

The particular products in this case — citrus fruits and potatoes — were imported from the northern part of Cyprus, which was under the control of the Turkish Republic of Northern Cyprus ("TRNC"), into the United Kingdom ("UK"). The UK customs authorities had refused to accept certificates of origin accompanying goods issued by, or bearing customs stamps referring to, the TRNC. The British authorities, however, accepted certificates that bore stamps in the name of the Cyprus Customs

27. *See* Thomas Opperman, *Cyprus*, *in* 1 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* n.14, at 923 (discussing the legal status of the Turkish Republic of Northern Cyprus ("TRNC")).

28. Minister of Agriculture, Fisheries and Food, *ex parte* S.P. Anastasiou (Pissouri) Ltd. and Others, Case C-432/92, [1994] E.C.R. 3087. *Compare The International Practice of the European Communities: Current Survey Re. Cypriot Import Certificates*, 7 EUR. J. INT'L L. 120 (1996), *and* Nicholas Emiliou, *Current Survey: Cypriot Import Certificates — Some Hot Potatoes*, 20 EUR. L. REV. 202 (1995) (both discussing this judgment), *with* Talmon, *supra* n.18 (criticizing this judgment).

29. Agreement of December 1972 Establishing an Association Between the European Community and the Republic of Cyprus, O.J. L 133/1 (1973).

30. Anastasiou I, [1994] E.C.R. at 3120-21 (addressing the parallel question regarding the issuance of phytosanitary certificates).

Authority, which indicated that they were not issued by the authorities of the Republic of Cyprus.[31]

The principal question posed to the EU Court of Justice was whether the 1972 Association Agreement should be interpreted as precluding acceptance by the EU Member States of products from the northern part of Cyprus when accompanied by certificates of origin issued by authorities other than the competent authorities of the Republic of Cyprus.[32] The UK and the EU Commission contended that the special situation in Cyprus allowed the EU members to accept certificates of origin issued not by the government of the Republic of Cyprus, but by the Turkish community in the northern part of Cyprus.[33] The UK and the Commission maintained that:

> Given the special situation of Cyprus . . . *de facto* acceptance of the certificates in question issued by authorities other than the competent authorities of the Republic of Cyprus is certainly not tantamount to recognition of the TRNC as a State, but represents the necessary and justifiable corollary of the need to take the interest of the whole population of Cyprus into account.[34]

The EU Court rejected the contentions presented by the UK and the Commission, and ruled that the *de facto* partition of the territory of Cyprus, as a result of the intervention of the Turkish armed forces in 1975, did not "warrant a departure from the clear, precise and unconditional provisions of the 1977 Protocol on the origin of products . . . ."[35] The Court explained that the Agreement's system of certificates of origin was founded on mutual reliance and cooperation between the competent authorities of the exporting and importing parties. Consequently, the Court concluded:

> A system of that kind cannot, therefore, function properly unless the procedures for administrative cooperation are strictly complied with. However, such cooperation is excluded with the authorities of any entity such as that established in the northern part of Cyprus, *which is recognized neither by the Community nor by the Member States; the only Cypriot State recognized* is

31. *Id.* at 3122.
32. *Id.* at 3125.
33. *Id.* at 3129-30.
34. *Id.* at 3130.
35. *Id.* at 3131.

the Republic of Cyprus.[36]

The facts regarding international recognition (given to the Republic of Cyprus, and the lack thereof regarding the TRNC) were acknowledged by the Court in several paragraphs of this judgment.[37] Generally, this judgment downplays the commercial aspects of the EU-Morocco Agreement and emphasizes the issue of international recognition. A more practical approach was undertaken by the EU Court in *Anastasiou II* with regard to phytosanitary certificates (required under the EU legislation) for goods produced in the northern part of Cyprus and imported via Turkey to the EU.[38]

The EU policy regarding goods produced in the Israeli settlements in the West Bank and the Gaza Strip well illustrates the political–sovereignty approach.

III. *THE EU POLICY ON PRODUCTS MANUFACTURED IN SETTLEMENTS IN THE WEST BANK AND THE GAZA STRIP*

A. *The 1995 EU-Israel Agreement*

The conclusion of the 1995 EU-Israel Agreement was considered a significant development in the relations between the parties.[39] The Agreement's provisions constitute the legal point of departure for the controversy between Israel and the EU regarding the origin of products manufactured in the Israeli settlements in the West Bank and the Gaza Strip.

The provisions of Title II of the Agreement, together with the relevant Annex and Protocols, constitute the core of the 1995 EU-Israel Agreement. Article 6(1) provides that:

---

36. *Id.* at 3131-32 (emphasis added).

37. *See, e.g., id.* at 3122, 3133-34.

38. R. v. Minster for Agriculture, Fisheries and Food, *ex parte* S.P. Anastasiou (Pissouri), Ltd., Case C-210/98, [2000] 3 C.M.L.R. 339 (the relevant certificates in the present case were required by the EC legislation and were issued by a governmental agency of Turkey, and not by the Republic of Cyprus). *See also* [1993] 3 C.M.L.R. 469 (the decision of the United Kingdom ("UK") House of Lords).

39. *See* Ephraim Ahiram & Alfred Tovias, *Introduction* to WHITHER EU-ISRAEL RELATIONS: COMMON AND DIVERGENT INTERESTS 1 (Ephraim Ahiram & Alfred Tovias, eds., 1995) (discussing the relations between the EU and Israel prior to the 1995 Agreement); Daphna Kapeliuk-Klinger, *A Legal Analysis of the Free Trade Agreement Between the European Community and the State of Israel*, 27 ISRAEL L. REV. 415 (1995) (discussing the 1975 trade agreement between the EU and Israel).

> The free trade area between the Community and Israel shall be reinforced according to the modalities set out in this Agreement and in conformity with the provisions of the General Agreement on Tariffs and Trade of 1994 and of other multilateral agreements on trade in goods annexed to the Agreement establishing the World Trade Organization . . . .[40]

As in other free-trade-areas agreements, Article 8 of the 1995 EU-Israel Agreement prohibits the imposition of customs duties on imports and exports, and any charges having equivalent effect. Quantitative restrictions on imports and exports and measures having the equivalent effect are also prohibited in trade between the parties.[41] The parties are to refrain from discriminatory internal fiscal measures and practices, and their products may not benefit from indirect internal tax repayments in excess of the tax actually paid.[42] Different, and generally more restrictive rules are applied to trade in agricultural products between the parties.[43]

These concessions apply only to products originating in the parties to the Agreement. As to the territorial application of the Agreement, Article 83 provides as follows:

> This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community and the European Coal and Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the State of Israel.

Rules of origin are set out specifically in Protocol 4. Article 2 of the Protocol makes a distinction between products "wholly obtained" and those that have undergone "sufficient working or processing" in either the Community or Israel.[44] Article 4 of this

---

40. 1995 EU-Israel Agreement, art. 6(1), O.J. L 147/3, at 5 (2000).

41. *Id.* art. 16-17, O.J. L 147/3, at 6 (2000).

42. *Id.* art. 19, O.J. L 147/3, at 5 (2000).

43. *See id.* art. 10-15, O.J. L 147/3, at 6 (2000); *id.* Protocols 1, 2, O.J. L 147/3, at 35, 43 (2000). *See also Three Unresolved Issues*, *supra* n.3, at 111-22 (providing a detailed analysis of the agricultural trade regime between the parties).

44. 1995 EU-Israel Agreement, *supra* n.3, Protocol 4, art. 2, O.J. L 147/3, at 50 (2000) provides:

> For the purpose of implementing the Agreement . . . the following products shall be considered as:
>
> 1. products originating in the Community: . . .
> 2. products originating in Israel:
>
> (a) products wholly obtained in Israel within the meaning of Article 4 of this Protocol;

Protocol includes detailed rules regarding products "wholly obtained" in Israel or the EU and Article 5, as well as Annex II, elaborate on the origin requirements applicable to products that involve factors of production from more than one contracting party ("mixed products"). Article 6 includes a negative list of insufficient working or processing operations that do not entitle a product to be covered by the Agreement.

B. *The Origin of Products Manufactured in the Settlements in the West Bank and Gaza Strip*

The Israeli settlements located in the West Bank and the Gaza Strip are at the heart of the legal and political dispute between Israel, the Palestinians, and the EU. These territories were seized by Israel during the Six Day War in 1967 and, aside from East Jerusalem[45] and the Golan Heights,[46] are considered to be outside the borders of Israel in accordance with Israeli law. The legal status of these territories, and the legality or illegality of the settlements located therein, are debated among States and scholars.[47] As stated in the Introduction, this Article does not address these issues but rather, examines the link between States' positions on these subjects and the rules of origin applied to products manufactured in the disputed territories.

The value of products that are manufactured in these areas and exported to the EU States amounts to about US$100 million a year (while total Israeli exports to the EU amount to US$7-8 billion a year). The amount of customs duties applied to these products (if disqualified for the free-trade-area's privileges) is assessed at US$7 million a year.[48] Among the products manufac-

---

(b) products obtained in Israel which contain materials not wholly obtained there, provided that the said materials have undergone sufficient working or processing in Israel within the meaning of Article 5 of this Protocol.

Id.

45. *See* MOSHE HIRSCH, DEBORAH HOUSEN COURIEL & RUTH LAPIDOTH, WHITHER JERUSALEM? PROPOSALS AND POSITIONS CONCERNING THE FUTURE OF JERUSALEM 1-21 (1995) (discussing the dispute regarding the status of East Jerusalem under international law).

46. The Golan Heights (that were seized from Syria in 1967) were annexed to Israel by the Golan Heights Law in 1981. Golan Heights Law, 36 L.S.I. 7 (1981).

47. *See* EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 107-48 (1993) (discussing the various positions regarding the legal status of the Israeli settlements).

48. Ora Coren, *EU Duties on Green Line Goods Days Away*, HA'ARETZ (English ed.), Oct. 15, 2002, at 2.

tured in these settlements and exported to the EU are carbonated drinks, wines from the Golan Heights, cosmetic products derived from the Dead Sea minerals, juice from West Bank, and oranges and flowers from the Gaza Strip.[49]

The principal contentious question here is whether goods produced in the settlements are entitled to the trade benefits provided for in the 1995 EU-Israel Agreement. The EU Commission examined this question and concluded that these products are not eligible for preferential treatment under the Agreement.[50] The EU's legal reasoning is articulated in the 1998 Commission's Communication which provides a straightforward interpretation of the Agreement's provisions. As explained in this Communication, the EU-Israel Agreement specifies that it applies to the territories of the Member States of the European Community and "to the territory of the State of Israel."[51] Consequently, the "question arises whether Israeli settlements . . . are part of the State of Israel?"[52] The answer provided by the EU Commission to this question is that "[a]ll relevant United Nations Security Council Resolutions lead to the conclusion that neither Israeli settlements in the West Bank and Gaza Strip, nor East Jerusalem and the Golan Heights, can be considered as part of the State of Israel."[53]

The Communication cites several Resolutions of the Security Council, General Assembly, and other declarations issued by the EU. This straightforward logic led the Commission to the seemingly unavoidable conclusion that "[p]referential access to Community markets for exports originating in Israeli settlements . . . would contravene agreed rules of origin."[54] This legal rea-

49. William A. Orme Jr., *Europe Warns Israel of Limits on Some Duty-Free Goods*, N.Y. TIMES, May 22, 2001; Aluf Benn, *EU to Tax Goods from Outside Green Line*, HA'ARETZ (English ed.), May 21, 2001, at 1.

50. *See* Notice to Importers: Imports from Israel into the Community, Nov. 23, 2001, O.J. C 328/04 (2001) (stating ". . . it is now confirmed that Israel issues proofs of origin for products coming from places brought under the Israeli administration since 1967, which, according to the Community, are not entitled to benefit from preferential treatment under the Agreements.").

51. The Commission's Communication cites Article 38 of the EC-Israel Interim Agreement that is reproduced in Article 83 of the 1995 EU-Israel Agreement. Implementation of the Interim Agreement on Trade and Trade-Related Matters between the European Community and Israel 7, SEC (1998) 695 final (June 1998).

52. *Id.* at 7.

53. *Id.*

54. *Id.* at 8.

soning has been adopted by the EU representatives and represents the EU's official policy on this issue.[55]

The above EU policy relies heavily on the status of the West Bank and the Gaza Strip and is in line with the political-sovereignty approach to the determination of origin of goods produced in disputed areas. This policy is appraised in the next section.

C. *Appraisal: The Hazards of the Political-Sovereignty Approach*

The EU policy regarding goods produced in the West Bank and the Gaza Strip well exemplifies the perils of the political-sovereignty approach to the determination of origin. The inconsistencies presented by the EU practice with regard to disputed areas, expose it to criticism concerning the link between legal and foreign policies. As discussed in detail in Section III, the EU policy regarding the origin of goods produced in disputed territories is not uniform. The EU policy toward products from Taiwan, and apparently also from Western Sahara, is closer to the practical–trade approach that seeks to avoid the disputed questions regarding sovereignty or international recognition.[56] On the other hand, the EU policy regarding the origin of goods produced in the northern part of Cyprus, and in the West Bank and the Gaza Strip, is based upon prior determinations regarding the issue of sovereignty or international recognition. The latter policy is in line with the political–sovereignty approach.[57]

The EU policy regarding the origin of goods produced in the West Bank and the Gaza Strip was not consistent over time, but dependent upon political developments. As explained by the EU highest officials, the decision to raise the subject of origin of these products in 1998 (in contrast to its prior practice),[58] was triggered by the behavior of Israel's Prime Minister at that time (Mr. Netanyahu) and the lack of progress in the peace pro-

---

55. *See, e.g.*, Chris Patten, Statement on Situation in the Middle East (May 16, 2001), *available at* http://europa.eu.int/comm/external_relations/news/patten/speech01_222.htm; Orme, *supra* n.49.

56. *See* discussion *infra* in Section II.A. of this Article.

57. *See* discussion *infra* in Sections II.A. and III.B. of this Article.

58. *See, e.g.*, *More Intifada Fallout*, BUSINESS WEEK (Int'l ed.), May 21, 2001, at 30 (discussing the prior practice of the EU regarding the origin of goods produced in the settlements).

cess between Israel and the PA.[59]

The EU policy regarding goods manufactured in the West Bank and the Gaza Strip is based upon an interpretation of the 1995 EU-Israel Agreement in light of the U.N. Resolutions regarding the status of these areas.[60] This interpretation overlooks the commercial character of the relevant provisions. The omission is conspicuous in light of Article 6 of the Agreement, which states that this "free trade area . . . shall be reinforced according to the modalities set out in this Agreement and in conformity with the provisions of the General Agreement on Tariffs and Trade . . . ."[61] As discussed above, GATT rules and practice are in line with the practical-trade approach. The relevant provisions of the 1995 EU-Israel Agreement and the rules of origin therein, sought to reinforce the free trade area between these parties, and not to predetermine the controversial questions regarding the legal status of the West Bank and the Gaza Strip (which were left by Israel and the Palestinians to the final status negotiations).

As discussed above, GATT rules and practices point out that the issue of territorial application of trading arrangements should be resolved in accordance with the principle of international responsibility, rather than the principles of public international law regarding sovereignty or international recognition.[62] The 1995 Israeli–Palestinian Interim Agreement provides that "Israel will continue to exercise powers and responsibilities" in several areas, including the settlements.[63] These provisions, and the *de facto* control of Israel over the settlements, point out that Israel bears international responsibility for these settlements.[64]

---

59. Interview with Manuel Marin, former EU Commissioner responsible for relations with Mediterranean countries. *See* Judy Dempsey, *EU Commissioner Criticizes Israelis*, FIN. TIMES, May 27, 1998, at 11; Nitzan Horowitz, *The European Union: No More Political dialogue with Israel*, Ha'aretz (Hebrew ed.), May 26, 1998, at 1-2 (author's trans.). *See also* Ora Coren, *The Ambassador of the European Union: Without Renewal of the Peace Process — We Will Impose Customs on Import from the Territories*, HA'ARETZ (Hebrew ed.), Mar. 5, 2003, at C-4 (author's trans.).

60. *See* discussion *infra* in Section III.B. of this Article.

61. *See* 1995 EU-Israel Agreement, art. 6, O.J. L 147/3, at 6 (2000).

62. *See* discussion *infra* in Section II.A. of this Article.

63. *See* 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 36 I.L.M. 551, art. I(1), XVII (1997).

64. *See, e.g.*, Eyal Benvenisti, *Responsibility for the Protection of Human Rights Under the Interim Israeli-Palestinian Agreements*, 28 ISRAEL L. REV. 307-09 (1994); MOSHE HIRSCH, THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS TOWARD THIRD PARTIES: SOME

The EU could have accompanied a policy that follows this legal and factual situation with a declaration stating that the implementation of this policy would not prejudice the question of sovereignty over these areas.

The above inconsistencies in the EU policy regarding the origin of goods from disputed areas, and the almost complete ignorance of the trade character of the relevant provisions of the 1995 EU-Israel Agreement, generate concerns that this policy was influenced by the EU's foreign policy. Bearing in mind the above discussion on the susceptibility of the political-sovereignty approach to foreign policy influences,[65] it is reasonable to expect that the EU policy regarding goods produced in the West Bank and the Gaza Strip will be in line with the EU's foreign policy position regarding the status of these areas and the legality of these settlements.[66] The desirable approach to the determination of origin of goods manufactured in the disputed territories is discussed in the following section of this Article.

IV. *RULES OF ORIGIN AND THE INTERRELATIONSHIPS BETWEEN LEGAL AND POLITICAL FACTORS*

The analysis of the two alternative approaches to the determination of origin of products manufactured in territorially disputed areas relates to the broader question regarding the interrelationships between foreign policy, trade policy, and international trade law. The link between foreign and trade policies is one of the essential elements of the current international trading system, and this connection is the underlying assumption of

---

BASIC PRINCIPLES 76-77 (1995) (both discussing the link between effective control and international responsibility).

65. *See* discussion *infra* in Section II.B. of this Article.

66. *See, e.g.*, Declaration of the European Union, Second Meeting of the Association Council EU-Israel, 14271/01 (Presse 433) (Nov. 20, 2001), *available at* http://ue.eu.int/Newsroom. The Declaration stated that:

> [t]he EU is concerned about the continuing Israeli settlement activities. Settlements are illegal under international law and constitute a major obstacle to peace, and the EU is concerned that intensive construction within exiting settlements, as well as establishment of new settlement outposts, continue unabated. The EU strongly urges the Israeli government to reverse its settlement policy as regards the Occupied Territories, including East Jerusalem, and to put an immediate end to all settlement activities.

Id.; The European Council Declaration on the Middle East, 6 E.C. BULL. 10 (1980) [hereinafter Venice Declaration]; Ralph Atkins & Peter Norman, *EU Puts Peace Onus on Israel*, FIN. TIMES OF LONDON, May 17, 2001, at 11.

scholars dealing with international political economy.[67] The employment of trade measures to further political ends is reasonable in an era in which the use of force is significantly curtailed by international norms. Even from the point of view of the international community at large, this link is desirable in some cases (e.g., imposition of trade sanctions by the Security Council to deter extensive human rights violations).

The interrelationship between political processes and international trade law is more problematic than the link between political and trade policies. The rules of international trade law, as of international law in general, are not shaped in a political vacuum and some political influences are inevitable.[68] Generally, such political impacts are more legitimate (and visible) in the process of creation of legal rules, than in the process of their implementation. Legal rules, once agreed upon and formulated, are fundamentally different from changing patterns in foreign policy. While international law interacts with international politics in various respects, it retains an essential autonomy from political processes.[69]

Legal rules are designed to enhance certainty and predictability in a particular realm of international interaction. These attributes of the rules of law are vital to the development and expansion of the international economic system. The recent trend of increasing "legalization" (or "rule-oriented diplomacy")[70] is noticeable in the multilateral trading system,[71] as well as in world politics in general.[72] While the implementation of

---

67. *See, e.g.*, Roger Tooze, *International Political Economy in the Age of Globalization, in* THE GLOBALIZATION OF WORLD POLITICS: AN INTRODUCTION TO INTERNATIONAL RELATIONS 212, 215 (John Baylis & Steve Smith eds., 1997).

68. *See* LOUIS HENKIN, HOW NATIONS BEHAVE, LAW AND FOREIGN POLICY 88-98 (2d ed. 1979) (discussing the various interactions between international law and international politics).

69. *See* Andrew Hurrel, *International Law and the Changing Constitution of International Society, in* THE ROLE OF LAW IN INTERNATIONAL RELATIONS 327, 331 (Michael Byers ed., 2000) (discussing this autonomy).

70. *See* JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 85-86 (1991) (discussing the difference between "power oriented" and "rule oriented" diplomacy in international economic relations).

71. *See* Arie Reich, *From Diplomacy to Law: The Juridicization of International Trade Relations*, 17 NW. J. INT'L L. & BUS. 775 (1997) (discussing the legalization of the international trading system).

72. *See* Kenneth W. Abbott et al. *The Concept of Legalization, International Organization*, 54(3) INT'L ORG. 401-19 (2000); Miles Kahler, *Conclusions: The Causes and Conse-*

international trade rules is inevitably to a certain degree influenced by foreign policy considerations, it is plain that significant politicization is bound to undermine certainty in the international economic system. Such a trend, if materialized, is likely to weaken the predictability of trading parties, destabilize trading relations, and hinder long-term development of international trade. These weighty considerations call to minimize the role of foreign policy considerations in the implementation of the existing legal rules of international trade.

Rules of origin are also designed to facilitate the flow of international trade in a predictable manner.[73] The WTO Agreement on Rules of Origin reaffirms the need to ensure that rules of origin are "applied in an impartial, transparent, predictable, consistent and neutral manner."[74] These considerations explain why the specific tests employed by rules of origin to determine the origin of goods are of an economic character.

The application of rules of origin to goods produced in territorially disputed areas is particularly susceptible to excessive political influence. This inherent vulnerability, and the ensuing hazards of subverting the security of legal relations, suggest that political influence should be minimized in this sphere. Considering the two alternative approaches to the determination of origin from this point of view, it is clear that the practical-trade approach is more desirable. As discussed in detail above, the political-sovereignty approach is more receptive to political bias, while the practical-trade approach is more likely to lessen this undesirable impact. The need to ensure neutrality, certainty and predictability in the application of existing rules of origin, particularly in settings characterized by high political tensions, calls for a preference for the practical-trade approach.

Finally, it is important to note that new rules of origin, where agreed upon by the various trading parties, may be employed as a policy instrument to enhance cooperation and peaceful relations among rival parties in disputed areas. The cumulation of origin mechanisms allows for the combination of production factors (raw materials, labor, etc.) of several trading

---

quences of Legalization, 54(3) INT'L ORG. 661-83 (2000) (both discussing this trend in the international system).

73. *See, e.g.*, the Second and Sixth Recitals of the Preamble to the 1994 WTO Agreement, *supra* n.8; *see also* discussion *infra* in Section II of this Article.

74. The Sixth Recital of the Preamble to the 1994 WTO Agreement, *supra* n.8.

parties into a unified and larger pool. Establishing a cumulation arrangement among several parties provides a significant incentive for firms to cooperate in order to reap the benefits of cumulation in their trade with third parties. Thus, the borders of the cumulated area demarcate an "area of enhanced cooperation."[75]

Establishing cumulation rules among rival parties is of particular importance because commercial cooperation may very well ameliorate the level of conflict and constitute a precursor to the development of cooperation in other spheres. A network of commercial links between individuals and corporations from States in areas susceptible to armed conflicts, would set a higher "price" for any party considering the possibility of a conflict. This outcome of cumulation is likely to strengthen the prospects for peace in embattled areas like the Middle East. Thus, for instance, it is possible to establish cumulation of origin among Israel, the Palestinian Authority, and Jordan under which the combined factors of these parties would be deemed to be located in each of the parties participating in the enlarged pool.[76]

CONCLUSION

The preceding sections addressed the application of rules of origin to products manufactured in territorially disputed areas. The brief survey of the practice of the GATT members and the EU showed that two principal alternative options are available to policy makers in such situations: the practical-trade approach and the political-sovereignty approach. The discussion of these alternative options showed that each of these approaches may be justified by some considerations. The fact that the political-sov-

75. *See Asymmetric Incidence, supra* n.5, at 52-53 (discussing the "cumulation of origin" as an instrument to support peaceful relations).

76. Some steps have already been taken by the United States, Jordan, and Israel to allow cumulation of origin between Jordan and Israel *vis-à-vis* the United States with regard to products manufactured in industrial zones. *See* 1997 Agreement between Israel and Jordan on Irbid Qualifying Industrial Zone (unpublished) (on file with author); U.S.-Israel Free Trade Area Implementation Act of 1985, Sec. 9, 19 U.S.C. Sec. 2112; Proclamation No. 6955 of the President of the United States of America. *See also* Office of the United States Trade Representative ("USTR"), *United States-Israel Free Trade Area Implementation Act: Designation of Qualifying Industrial Zones*, 65(239) FED. REG. 77688-89 (Dec. 12, 2000) (discussing this legislation); MOSHE HIRSCH, ASYMMETRIC FACTOR ENDOWMENTS, PROGRESSIVE RULES OF ORIGIN, AND COMMERCIAL COOPERATION IN THE MIDDLE EAST 3 (Working Paper, Center for European Studies, Hebrew University, Jerusalem, 1998) (discussing the EU policy on cumulation of origin among Middle Eastern States).

ereignty approach is highly susceptible to the influence of foreign policy considerations, however, is likely to undermine legal certainty and predictability in the implementation of rules of origin. While a certain degree of political influence upon the process of shaping new trade rules is unavoidable (and desirable in some cases), the ensuing outcomes of such influences are undesirable in the process of implementation of the existing legal rules. The essential need to ensure the application of the existing rules of origin in a neutral and predictable way, leads to the conclusion that the practical-trade approach should be preferred. The analysis of the EU practice in that regard reaffirms the need to de-politicize rules of origin and enhance the degree of certainty that is required for long-term development of international trade.