



# Suggested Business and Trade Questions – January 2024

## Contents

Substantive Question Suggestions:.....	1
Supplementary Question Suggestions: .....	1
Briefing for asking questions on the UK-Israel Free Trade Agreement .....	2
Summary of the briefing: .....	3

Ahead of Business and Trade Questions on the 25<sup>th</sup> January, we are suggesting the following questions on UK-Israel Free Trade Agreement. Information in support of the questions is provided in the second part of this document.

### **Substantive Question Suggestions:**

1. With regard to the UK-Israel Free Trade Agreement, what assessment has been made of the likelihood of Israel interpreting the agreement as applying to the Occupied Palestinian Territories?
2. How will the UK Govt ensure that its Free Trade Agreement with Israel is explicit and beyond ambiguity as to the territory to which it applies?

### **Supplementary Question Suggestions:**

*Can the Minister provide an update on the negotiations of UK-Israel Free Trade Agreement (FTA) and confirm whether the Government is aware that if it omits a geographically explicit territorial clause from the UK-Israel FTA, it will be consenting to Israel's application of that agreement to the Occupied Palestinian Territories in light of Israel's previous interpretation of its 1995 free trade agreement with the EU?*

*How does the UK's negotiating strategy for the UK-Israel FTA reflect the UK's position of not recognising the Occupied Palestinian Territories as part of Israel when there is no provision for a geographically explicit territorial clause that unequivocally indicates their inapplicability to the occupied territories, which the UK will be well aware are considered by Israel to be part of its sovereign territory in accordance with its national laws?*

To date, the UK Government has been bypassing these questions, reiterating their view that the UK does not consider the settlements to be part of Israel and will not be giving preferential treatment to goods sourced from the settlements. However, without an explicit territorial clause, the UK will be allowing Israel to interpret the agreement through its own laws and policies according to which its settlements in OPT are part of its sovereign territory.



## Briefing for asking questions on the UK-Israel Free Trade Agreement

The Government has not committed to an explicit clause defining the territory to which the agreement applies, instead stating that:

*“The UK is clear that under the existing UK-Israel Trade and Partnership Agreement, Israeli goods originating from the State of Israel receive tariff preferences accordingly. Goods originating from illegal Israeli settlements in the West Bank, including in East Jerusalem, are not entitled to tariff and trade preferences under either the agreement between the UK and Israel, or the agreement between the UK and the Palestinian Authority. I can confirm that this will not change in the upgraded FTA with Israel. The UK will not compromise on any of our longstanding positions on the Middle East Peace Process throughout this negotiation, including with respect to settlements.”*

The government has refused to address, or even acknowledge, the prospect of its omitting a geographically explicit territorial clause from the UK-Israel FTA. It has thereby avoided acknowledging any awareness of the omission’s consequences, and avoided disclosing any intention to either prevent those consequences or bring them about.

Given the context of fact and law known to it [reviewed below], the government is fully aware that it cannot elect to omit a geographically explicit territorial clause from the UK-Israel FTA without tendering **the UK’s informed consent** to the FTA’s application by Israel to the Occupied Palestinian Territories, and **recognising as lawful** Israel’s imposition of its sovereign treaty-making and political powers over them. The government’s evasive responses have compounded the certainty of these consequences by demonstrating its intent to obscure them, and pre-empt their discovery until it is too late to prevent them.

The government’s main evasive tactic has been to assure questioners that settlement products are currently not entitled to preferential treatment under the existing UK-Israel Trade and Partnership Agreement, and that this will not change under the new FTA. However, this assurance represents a rather serious sleight of hand if, as appears to be the case, the government intends to fulfil it through the same means that the UK currently relies on under the UK-Israel Trade and Partnership Agreement. Those means were specifically tailored to accommodate Israel’s unilateral application of the UK-Israel Trade and Partnership Agreement to the Occupied Palestinian Territories (and the Occupied Golan Heights). Their only purpose has been to enable the UK to unilaterally refuse preferential treatment to settlement products under these conditions. In short, the government’s assurances regarding settlement products are being offered as an irrelevant and specious digression that masks its intent to consent to Israel’s application of the FTA to the Occupied Palestinian Territories.

### **What the government is fully aware of; further interventions could be built around; and questions could be narrowly focussed on getting the government to acknowledge:**

- Unless a treaty expresses the parties’ different intention, it binds the parties for their entire territory [Vienna Convention on the Law of Treaties, 1969, Article 29].
- The EU-Israel Association Agreement, and the existing UK-Israel Trade and Partnership Agreement that was rolled over from it, have used a generic territorial clause referring to ‘the territory of the State of Israel’ – i.e. Israel’s entire territory.



- Following the conclusion of the EU-Israel Association Agreement, Israel informed the EU, including the UK, that its national law defines the territory of the State of Israel as incorporating the Occupied Palestinian Territories (and the Occupied Golan Heights) and confirmed that it applies that Agreement to them since the agreement expresses no different intention, and since Israel had not consented to define 'the territory of the State of Israel' differently for the purpose of that agreement. Indeed, Israel's national law [ *Israel: Area of Jurisdiction and Powers Ordinance No. 29 of 5708-1948*, which remains in effect] reserves the entire territory of former mandatory Palestine to Israel's application of its law, jurisdiction and administration.
- Since then, the EU, including the UK, have only been able to avoid acquiescing to Israel's application of the EU-Israel Association Agreement to the Occupied Palestinian Territories through a legally non-binding 'technical arrangement'. At Israel's insistence, the 'technical arrangement' is explicitly predicated on Israel's issuing proofs of preferential origin to settlement products under the agreement and can only be implemented on that basis. This means that the EU could not conclude the technical arrangement under the Association Agreement, or in any legally binding form, without consenting to Israel's application of the agreement to the Occupied Palestinian Territories.
- This state of affairs was carried forward under the UK-Israel Trade and Partnership Agreement rolled over from the EU-Israel Association Agreement. However, the EU, including the UK, clearly understood that *the pretext of 'error'* would no longer be available to them should they conclude a new agreement with Israel incorporating a similar territorial clause referring to Israel's entire territory. They could no longer conclude such an agreement *in good faith* unless they *intended* to consent to Israel's application of that agreement to the Occupied Palestinian Territories and *intended* to surrender any right to void or suspend it on those grounds. In short, they understood that they could not elect to omit a geographically explicit territorial clause from any future agreement with Israel, *or renew their reliance on Israel's acquiescence to their unilateral refusal of preferential treatment to settlement products (i.e. through a similar 'technical arrangement')*, without recognising as lawful Israel's imposition of its sovereign treaty-making and political powers over the Occupied Territories and giving it legal effect. In December 2012 they accordingly resolved that all future agreements concluded with Israel must explicitly and unequivocally indicate their inapplicability to the Occupied Territories.

### **Summary of the briefing:**

The government is aware that Israel has concluded a number of agreements with geographically explicit territorial clauses, and consented to their inapplicability to the Occupied Territories. Its responses to questioners indicate that it nonetheless intends to omit a geographically explicit territorial clause from the FTA, and intends to renew the UK's reliance on the 'technical arrangement' to refuse preferential treatment to settlement products with Israel's acquiescence. The government seeks to obscure both this intent, and its consequences until it is too late to prevent them.

No unilateral or joint declaration made in conjunction with the conclusion of the FTA can neutralise or avert the two serious effects of the UK's electing to construct the FTA in this manner: 1) consenting to Israel's application of the FTA to the Occupied Territories; and 2)



recognising as lawful and giving legal effect to Israel's imposition of its sovereign treaty-making and political powers over the Occupied Territories. No 'non-prejudice' clause in the agreement can undo, or even credibly mask, the UK's act of consent.

In short, while continuing to proclaim the illegality of settlements, the government is evidently poised to defect from the UK's longstanding positions on the status of the Occupied Territories in international law, and on Israel's international obligations as an occupying power. *By its own sovereign act of State* the UK will ratify, conform to, and participate in Israel's implementation of an internationally unlawful legal regime that rejects and progressively eradicates the foundations of the Palestinian people's self-determination throughout the Occupied Territories, along with the possibility of a two-state solution to the Israeli-Palestinian conflict.