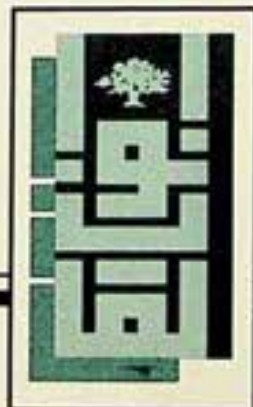

Legal Studies

**Import-Distribution
Relations in the
Palestinian territories**

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Import-Distribution Relations in the Palestinian Territories

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Subject: Distribution Relations in the
Palestinian Territories

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The opinions in this study reflect the point of view of their author

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Abstract

The purpose of this study was to determine the effect of a 12-week training program on the physical fitness and health of sedentary individuals. The study was conducted in a laboratory setting and involved 20 participants who were randomly assigned to either a control group or a training group. The training group followed a structured exercise program consisting of three sessions per week, each lasting 45 minutes. The control group remained sedentary throughout the study. Physical fitness was measured using a variety of tests, including a 1500m run, a 1000m swim, and a 500m row. Health was measured using a variety of blood tests, including cholesterol, triglycerides, and glucose. The results of the study showed that the training group had significantly higher levels of physical fitness and lower levels of health risk factors compared to the control group. The training program was found to be effective in improving physical fitness and reducing health risk factors in sedentary individuals.

Keywords: physical fitness, health, sedentary, training program

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Introduction

Since the signing of the Paris Protocol on Economic Relations in 1994 within the framework of the Peace Process¹ between the PLO and Israel, several studies have been prepared on its trade-related issues both evaluating their content and implementation. Most of these studies are more economic in nature, focusing on technical matters such as the famous fiscal leakage resulting from the clearance mechanism set by the Protocol, and the qualification and implications of the Protocol as a customs union. We set out to study the trade aspects of the Protocol and their implementation under a different, wider perspective. This study looks at the direct subject matter resulting on the grounds from the implementation of the Protocol: import-contractual (agency and distributorship contracts) relations formed since its signing. It attempts to analyze these relations under the different, but related, perspectives of history and political economy, legislation and policy, and contractual stipulations.

During the years of Israeli occupation, the role of Palestinian businessmen was, to a large extent, reduced to that of intermediary traders. They were buyers-resellers buying from Israeli importers-distributors and selling in the Palestinian market, or ordering goods from the Israeli commercial agent. In 1994, the Paris Protocol set the rules and policies of import activities for the two parties, giving the Palestinians a certain margin of independence in the governance and organization of their international-import trade relations.

1. The Peace Process between Israel and the PLO was started in Madrid 1991. It resulted in the signing of several successive agreements, the outcome of which was the Interim Agreement signed in Washington 1995. The Paris Protocol on Economic Relations, which was signed after the Declaration of Principles on April 29, 1994 became annex V of the Interim Agreement.

The Palestinian National Authority (PNA) directed its efforts at encouraging the Palestinian private sector to directly enter the international trade arena. Several strategic reasons were behind these efforts. First, a long-term gain resulting from the successful establishment of Palestinian trade relations would be the beginning of emancipation of the Palestinian economy from its dependence on the Israeli economy to the probable attainment of economic sovereignty that could, in a world ruled by economic might, lead to political sovereignty and international recognition. Second, a short-term gain would be limiting the losses resulting from the fiscal leakage. More direct import by the Palestinians means less indirect import from Israel. It also means less indirect import via Israel that does not fulfill the criteria of import revenues clearance between the PNA and Israel as provided for in the Paris Protocol. Both of these cases, as we shall see, are at the root of the fiscal leakage problem. Third, an intermediate-term gain would be the improvement of the internal business environment and the improvement of the overall Palestinian consumer market with regard to prices, variation of goods and after-sales services. Furthermore, successful import-distribution relations could, at a later stage, be developed into joint ventures and industry licensing agreements permitting the manufacturing or assembling of goods in the Palestinian territories.

As a result of the efforts of the PNA and the Palestinian private sector, contacts with foreign companies were initiated and gradually import-distribution contracts were concluded. These international contracts, in the form of import-distribution contracts concluded directly with international manufacturing and trading partners, are the subject of this study. The tendency towards import relations rather than export owes to the Palestinian economy being, at present, a service and trade oriented one rather than an industrialized one. The timing of the study is of importance as it evaluates the relatively recent import relations since the commencement of the Peace Process and the signing of the Paris Protocol after years of dependence on Israel as a main supplier for the Palestinian territories. It is also of importance regarding the PNA's ongoing revision of legislation governing internal and external trade relations in its territories.

We will attempt to study these recently concluded import-distribution contracts in a global manner descending in order of specificity. In the first

chapter, the evolution and repercussions of import-distribution relations in the West Bank and Gaza Strip (WBGs) will be examined. This mainly descriptive chapter will trace the "reappearance" of Palestinian direct import-distribution relations, the Paris Protocol being the turning point resulting in this reappearance. This chapter will also relate the repercussions of this evolution: the Israeli resistance to the reappearance of Palestinian direct import-distribution relations initiated in fear of losing the Palestinian market which is Israel's secondary importer market after the U.S.

In the second chapter, this study tackles the regulatory framework defining the practice of import-distribution activity in the WBGs. In this chapter, we examine legislation currently governing import-distribution activities. We also examine the PNA's policy in dealing with this matter, notably, the Commercial Agents Activities draft law.

In the final chapter, this study addresses distribution agreements in the broader sense: distributorship agreements and/or commercial agency agreements. For the purposes of this chapter, a sample of 40 distribution contracts concluded by Palestinian companies is examined in order to evaluate the position of the Palestinian party with regards to the stipulations of the contract binding it. This chapter concerning distribution agreements and the second chapter concerning the legal framework, which whilst examined separately for academic reasons, are quite entangled. Thus, chapter three concerning the contractual organization of distribution by the parties remains enclosed within the respective national regulatory framework of the parties and more specifically of the place of performance of the distribution contract (chapter two). Hence, the parties to an international distribution agreement are free to contractually organize their trade relations to the extent allowed to them by their respective relevant legislation of national and international order: the exporter's and importer's legislation.

The sample of 40 contracts was gathered over a period of 8 months (late 1997-1998).² Palestinian companies having recently obtained direct distribution rights or commercial agency were targeted. A foregoing list of Palestinian companies registered in the Commercial Agents Registrar at

2. This study was completed in 1998, but its publication delayed. The entire study was updated, except for the third chapter, based on the results of the empirical work that were initially compiled in 1997-1998.

the Palestinian Ministry of Economy and Trade was obtained. Additional addresses were obtained from advertisements in daily newspapers for companies presenting themselves as either agents or distributors for the PNA territories. The total number of companies contacted was 107 (88 in the West Bank and 19 in the Gaza Strip). The sectors covered were automobile, electrical appliances, cosmetics, food items, building equipment and hardware, medical equipment and medicaments. The information gathered focused on three main issues: the obtaining of distribution rights; the terms of the distribution or agency agreement and the positioning of the Palestinian party within it; the problems encountered throughout the whole process of concluding and implementing the agreement. In this last stage, we have chosen to focus our examination on problems other than those resulting from the political situation. The companies were asked to give copies of their agreements and 40 contracts were obtained.³ Upon examination, as shall be seen, the entirety of these 40 contracts turned out to consist of strictu sensu distributorship agreements.

This three level study aiming at providing as complete a picture as possible concludes with a summary of its findings and with recommendations in view of these findings. However, this study does not purport to give an economic evaluation of import-distribution relations, nor does it attempt to answer the question as to the degree of independence gained by the PNA since the commencement of direct import. Although, the answer to this last question lies partly within the restricting provisions of the Paris Protocol itself, examined in the study.

Finally, for the purposes of clarity, it is important to provide some preliminary definitions of the terms used in this study. The term "distribution" in relation to international trade originally stems from the fields of economy and trade, distribution being the stage of economic activity situated between the stages of production and consumption. As an economic activity, distribution is the stage consisting of commercial, financial, logistical and legal mechanisms used in the transfer of goods from the stage of fabrication to the stage of consumption. It was later on that distribution was seized and organized within contractual and regulatory legal

3. These contracts will be discussed later on and excerpts of them will be given. Absolute anonymity is guaranteed.

mechanisms. In international practice, distributors and commercial agents are regularly used as channels of distribution. While in commercial parlance, these terms might be used interchangeably; in legal parlance, their utilization entails different rights and obligations.

Thus, in legal terms a distributor, undertakes to sell a foreign company's product in the target country and takes as remuneration a profit on the goods sold, bearing virtually all the risks for obtaining products, selling those products and receiving payment from the ultimate purchasers. In this instance, the sales contract is between the distributor and the purchaser.⁴

While a commercial agent, brings the product of the seller to the attention of potential purchases by contacting potential customers, showing and demonstrating samples of the product and soliciting orders. However, the actual sales contract is executed directly between the seller and the purchaser. An agent is normally compensated for his/her efforts on a percentage commission for products actually sold. The actual goods are shipped by the seller directly to the purchaser.⁵

In the WBS, the difference in the legal significance is not apparent and often the terms distributor and commercial agent are used interchangeably in both commercial and legal parlance. Despite the clear legal difference in these terms, we will use them interchangeably throughout this study in accordance with the current PNA's policy, except when the context indicates the contrary. Thus, as we shall see throughout the study, the term "distributor" as understood by the majority of the Palestinian business community and the PNA seems to be a sub-division of the commercial agency destined only to internal national use and excluded from its international function.

The term "relations" will refer to international trade relations in which the Palestinian party is the importer. Finally, the study's focus will be on the period since the arrival of the Palestinian National Authority in 1994 and the territorial reference "Palestinian territories" will be limited to the Occupied Territories of 1967 (WBS).

4. FOX, INTERNATIONAL COMMERCIAL AGREEMENTS, 2d ed., 72 (1995).

5. *Id.*

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. The second part outlines the procedures for handling discrepancies and errors, including the steps to be taken when a mistake is identified. The third part provides a detailed breakdown of the financial data, including a summary of income and expenses. The final part concludes with a statement of the total balance and a recommendation for future actions.

Chapter 1

The Evolvement of Import-Distribution Relations

This first chapter is divided into two sections. The first section gives a brief historical overview of import-distribution relations in the WBGS prior to the peace process and more specifically the signing of the Paris Protocol. The focus will be on the period of Israeli occupation of 1967. The second section traces the "reappearance" of import-distribution relations in the WBGS since the signing of the Paris Protocol and relates the repercussions of its evolvement. These repercussions are the Israeli government's contentions and the resistance of the Israeli business community aimed at negatively affecting the reappearance and initiated in fear of losing the Palestinian market.

1.1. Import-Distribution Relations before the Signing of the Paris Protocol (1994)

Research on the Palestinian economy's evolvement during the years of occupation in general, and especially with regards to foreign trade relations suffers from a paucity of detailed resources. In depth studies that specifically examined the matter of foreign trade and import relations could not be found. Therefore, we will limit this section to quotations of relevant readings.

Describing the state of economy in the Palestinian territories of the aftermath of the 1948 war, Hisham Awartani⁶ notes:

6. ISRAEL'S ECONOMIC POLICIES IN THE OCCUPIED TERRITORIES: A CASE FOR INTERNATIONAL SUPERVISION 399 (1992).

"... the economies of each of the two segments (the Gaza Strip and the West Bank) underwent separate evolution.⁷ The Gaza Strip, its population tripled by refugees, was ignored rather than exploited under Egyptian control... the economy did not take full advantage of its affiliation with the largest Arab state. The West Bank, on the other hand, was better developed in 1948 than Jordan... Although its economy was severely hurt by the disadvantages of the 1947-8 war, yet the West Bank achieved a fairly high growth rate during Jordanian rule. Growth could have been much higher had it not been for Jordan's official policy of giving priority to the East Bank."⁸

This is not to say that there were no agents or distributors in the West Bank and Gaza Strip as during our empirical work we encountered several cases of companies who were long established agents and distributors in the WBGs.⁹

With the advent of the Israeli occupation in 1967, the state of war resulted in the suspension and later the termination of distribution agreements in which Palestinians were parties and representatives of foreign companies. The Israeli occupier administered the occupied Palestinian territories through a military government. Two important spheres administered by the military governor were the economic affairs and the legal affairs. In November 1981, Israel established the Civil Administration. Still subordinate to the

7. Concurrently, the West Bank and Gaza Strip underwent separate legislative evolution. In the West Bank, the British Mandate legislation was substituted with Jordanian legislation during the Jordanian rule. In the Gaza Strip, on the other hand, legislation dating from the British Mandate remained intact.

8. In this regard, Fawzi A. Gharaibeh writes:

"Amman ... has almost exclusively monopolized economic activity in Jordan, possibly to the detriment of other areas in the East as well as on the West Bank. ... trade, banking and finance, and industry, especially large institutions, were concentrated in the Amman region. ... The private sector was, to a large extent, responsible for the concentration of economic weight in Amman. ... The entrepreneurs of Jordan, many of who were actually West Bankers, had almost always initiated business enterprises and had chosen to locate in or around Amman."

FAWZI A. GHARAIBEH, THE ECONOMIES OF THE WEST BANK AND GAZA STRIP 15 (1985)

9. See section 3.2.1.

Israeli military command, the Civil Administration took over, among other departments, taxes, customs and businesses in general.

Throughout the occupation, the Israeli authorities maintained the same policy of rendering the Palestinian market dependent on the Israeli market. Describing Israel's economic policy in the occupied territories Arie Arnon writes:

"Israeli policy in the administered territories created a peculiar combination of economic welfare and rising standards of living for individuals ... combined with ... no development within the territories themselves ... The Israeli authorities and the military government did almost nothing to develop the local economic infrastructure."¹⁰

Specifically describing trade, he continues:

"The trade regime that existed between Israel and the Palestinian economy since 1967 is better described as an involuntary, one-sided, impure, customs union. Exchange between Israeli and Palestinian traders was ostensibly free and the geographical area comprising Israel and the West Bank and Gaza Strip had no internal trade borders, or trade barriers. Trade with the rest of the world was carried out under the Israeli trade regime and according to Israel's (changing) policies."¹¹

This dependence concerning imports and distribution rights was a logical consequence of occupation. Palestinian importers-distributors or agents had lost their agency and/or distributorship relations to Israelis and became instead intermediary resellers buying goods from the Israeli distributors-importers or ordering them from Israeli commercial agents.¹² There was

10. ARIE ARNON ET AL., *THE PALESTINIAN ECONOMY BETWEEN IMPOSED INTEGRATION AND VOLUNTARY SEPARATION*, 6 (1997).

11. *Id.*, at 88.

12. Kanovsky says in this regard: "Israel's trade with the occupied territories increased sharply in 1968. Israeli firms have been employing Israeli Arabs as salesmen and have been opening sales agencies in the occupied territories, primarily in the West bank." Eliyahu Kanovsky, *THE ECONOMIC IMPACT OF THE SIX-DAY WAR: ISRAEL, THE OCCUPIED TERRITORIES, EGYPT, JORDAN* 63 (1970).

no explicit legislation forbidding import by Palestinians, nor was there any legislation reserving the representation rights of foreign companies to Israelis. Instead, there were measures intended at nurturing the dependence relationship and paralyzing Palestinian foreign trade.¹³ Such measures took the form of continuous delay of goods imported by Palestinians at Israeli points of entry causing financial losses; the impediments imposed on the banking system in the occupied territories concerning international payment and transfer of funds.¹⁴ Consequently, few Palestinian businesses were able to reactivate their distributorship and/or commercial agency relation after 1967. Also, few were able to establish new relations of direct import of goods destined for trade. As Brian Van Arkadie states:

"Israel rapidly became both the dominant trading partner for the territories and also the trading intermediary between them and the world market. The West Bank and the Gaza Strip have provided an expanded, protected market for the Israeli products, and, by virtue of the Israeli tariff barriers,¹⁵ consumers in the two territories find their access to overseas commodities limited....

13. In this regard, Sara Roy writes:

"Limitations on the development of Palestinian trade are mainly due to the structural underdevelopment of the economy and Israeli measures that have restricted structural reform and external sector performance. Although it is difficult to disentangle organic from imposed constraints, it is easier to understand the impacts that such constraints have had."

SARA ROY, *THE GAZA STRIP: THE POLITICAL ECONOMY OF DE-DEVELOPMENT* 246 (1995). See also, RICHARD TOSHIYUKI DURY AND ROBERT C. WINN, *THE ECONOMICS OF OCCUPATION IN THE WEST BANK* 16 (1992) and JULIE ROBLET, *PALESTINE: A STRANGLER ECONOMY* 6 (1999) for Israeli Ministry of Defense statements on development activities in the Territories and Israel's economic and security interests.

14. "Immediately following the occupation, all banks and financial institutions in the WEST BANK AND GAZA STRIP were closed in accordance with Military Order no. 7, which was issued only four days after the onset of occupation. A few months later, on the other hand, Israeli banks were permitted and encouraged to open branches in all major towns.... For a variety of reasons, however, Israeli Banks have not succeeded in providing normal banking services to Palestinian residents and firms, especially in the area of credit and foreign trade." AWARTANI, *supra* note 6 at 407.

15. Tariffs were imposed on all imports to the territories as to Israel, and Palestinian businessmen found themselves unable to compete with Israeli importers mainly due to the difference of standards of living and per capita incomes between Israelis and Palestinians in addition to the above-mentioned impediments.

Because of the high levels of Israeli tariffs, West Bank and Gaza Strip consumers either have to pay high prices for imports from overseas or to purchase them from a high-cost Israeli supplier. Yet the high levels of protection are of little use to the West Bank and Gaza Strip producers; typically they are not in a good position to compete with Israeli sources of supply."¹⁶

Furthermore, the practice of importing from Israel (whether Israeli products or Israeli imports) created a situation whereby Israel collected import taxes from Palestinians, as final consumers. This was the consequential loss of import revenues on goods destined to the WBGS, which accrued to the Israeli Treasury with the exception of goods entering the WBGS from border crossings with Jordan and Egypt. These were taxed at the border according to Israeli law; the revenue collected was retained by the Civil Administration.¹⁷

1.2. Post Paris Protocol: The Reappearance of Import-Distribution Relations and its Repercussions

The turning point leading to the gradual reappearance of import-distribution relations enjoyed by Palestinian businesses was the signing of the Paris Protocol in 1994. The PNA, aware of the importance of import-distribution relations, started in its implementation of the Paris Protocol, to incite the Palestinian private sector to circumvent the Israeli importer and to seek the conclusion of direct distribution agreements. This was met with fierce opposition from Israel. The Paris Protocol itself also limited this progressive reappearance. Below, the reappearance is detailed.

1.2.1. The Paris Protocol: The Turning Point

The Paris Protocol is the extra-national and contractual legal framework on economic relations agreed to by Israel and the PLO.¹⁸ Article I of the

16. BRIAN VAN ARKADIE, *BENEFITS AND BURDENS: A REPORT ON THE WEST BANK AND GAZA STRIP ECONOMIES SINCE 1967* 48-9 (1977).

17. See, Mona JAWHARY, *THE PALESTINIAN-ISRAELI TRADE ARRANGEMENTS* (1995).

18. The Protocol was signed on April 29th, 1994, after the Declaration of Principles signed September 13th, 1993 and prior to the Gaza Strip and Jericho Agreement signed May 4th, 1994 and to

Protocol provides for its sphere of application as follows:

"...the Gaza Strip and the Jericho Area and at a later stage will also apply to the rest of the West Bank, according to the provisions of the Interim Agreement and to any other agreed arrangements between the two sides."

After the signing of the Interim Agreement on September 28th, 1995, which superseded the Gaza Strip and Jericho Agreement, the Protocol's application was automatically extended to the rest of the West Bank and it became Annex 5 of the Interim Agreement.¹⁹

The signing of the Protocol set out the above-mentioned framework that constitutes the theoretical turning point thus enabling the Palestinians acquire a measure of economic independence. The preamble of the Protocol states:

"The two parties view the economic domain as one of the cornerstone in their mutual relations with a view to enhance their interest in the achievement of a just, lasting and comprehensive peace."

The preamble's second paragraph proclaims the Palestinian side's right in exercising its own "economic decision making in accordance with its own development plan and priorities." Thus, the mutual understanding of the negotiating parties of the necessity to provide for economic prosperity to attain peace is assumed. However, at the time of the application of the

which it was attached as Annex 4. There is an abundant literature on the Protocol, some of which is very critical of it. We quote what we believe to be a fair opinion on the matter:

"As regards the economic arrangements, the most dramatic change was the mutual recognition that there were two legitimate parties to every economic decision affecting the Palestinian economy...". We emphasise the relation: two parties to decisions affecting one party. The author continues: "The economic agreement, known as the Protocol, turned the *de facto* arrangements into agreed upon ones. Caution should be exercised in referring to the arrangements as being voluntarily, since some duress can exist even when two sides sign an agreement. However, the analysis of such an agreement, and the reasons why the parties accepted them, are totally different from the unilateral arrangements that had characterized the arrangements that were in place up to that point."

ARNON ET AL., *supra* note 10, at 7.

19. Thus, the Protocol is not an independent contractual agreement, but a part of an intriguing contractual set-up subordinate to the security arrangements contained in the Interim Agreement. See *infra*, chapter 3, the problems.

Protocol, a non-negligible disparity between the enunciation of its preamble proclamations and the different interpretations resulting from its ambiguous drafting surfaced. Evidently this disparity could not contribute much in improving the existent conjuncture at the date of the signing of the Protocol, i.e. the state of dependence of the Palestinian economy on the Israeli economy. Below, we will review Article III that regulates import taxes.

Article III (Import taxes and Import policy): This Article grants the Palestinians the right to import while limiting it with regard to the following: the determination of import items (lists A1, A2 & B or outside-lists items); the quantities; the choice of the exporting country and the PNA's powers concerning the setting of import policy (rates of customs, purchase tax, levies, excises and other charges; licensing requirements and standard requirements; and valuation and classification for customs procedures).

List A1 includes 24 commodities and goods whose source is an Arab country, 11 of which have to come exclusively from either Egypt or Jordan. These commodities are mainly variations of the following: cane or beet sugar, rice, dried leguminous vegetables, cotton, live sheep, barley, aluminum, cocoa beans, cement, bar and iron rods, and fertilizers. List A2 includes 20 commodities of which 11 are repeated from list A1. They are mainly variations of those items of list A1, in addition to alcohol and cigarettes. Items of list A2 can be imported from anywhere in the world provided the exporting country has diplomatic relations with Israel.²⁰ List B consists mainly of items for building and sand work, for the textile industry, pharmaceutical products and farm machinery.²¹

Palestinian imports are primarily hindered by Israel's prerogatives concerning the setting of standards and classification when the imported goods are from outside lists A1 and A2 or exceed the agreed upon quantities of these lists. Thus, concerning classification, evaluation, procedures,

20. See Ishac Diwan, *International Economic Relations: Access, Trade Regime, and Development Strategy*, in *DEVELOPMENT UNDER ADVERSITY, THE PALESTINIAN ECONOMY IN TRANSITION 88* (World Bank ed., 1999). See also, *MINISTRY OF ECONOMY AND TRADE, PALESTINIAN NATIONAL AUTHORITY, THE PALESTINIAN EXPORT IMPORT GUIDE 24* (1999).

21. See NU'MAN KANAFANI, *TRADE RELATIONS BETWEEN PALESTINE AND ISRAEL: FREE TRADE AREA OR CUSTOMS UNION?* 19 (1996).

licensing, and standards, Israeli import policy applies to all Palestinian imports except for the quantities agreed upon-corresponding to the Palestinian market needs-concerning lists A1 and A2. The table on the following page illustrates the PNA's powers as to the determination of import policies regarding the lists of Article III.

Article III paragraph 15 sets the clearance system of import revenues. This paragraph reads as follows:

"The clearance of revenues from all import taxes and levies, between Israel and the PNA, will be based on the principle of the place of final destination. In addition, these tax revenues will be allocated to the PNA even if the importation was carried out by Israeli importers when the final destination explicitly stated in the import documentation is a corporation registered by the PNA and conducting business activity in the Areas."

This provision came to be applied within the context of a conjuncture of almost total Israeli hegemony regarding the representation of foreign companies. There were very few Palestinian representatives of foreign companies.²⁴ Due to the adjoining of this provision to this *de facto* situation, the fiscal losses incurred during occupation were still ongoing after the commencement of the application of the Protocol but under more specific terminology: fiscal leakage.

1.2.2. The Fiscal Leakage

According to the wording of Article III, paragraph 15 cited above, the exercise of the right to import by the Palestinians refers to direct import, and refers also to import by the Palestinians via Israeli importers. This importation via Israel during the interim period and whilst the Palestinian economy has barely begun its emancipation is to be naturally expected. Direct import by the Palestinians could only be achieved progressively. Yet, it is the enunciation of the principle of the place of final destination as the general criterion of clearance of revenues in the first sentence of the Article, and the addition of the requirement of explicitly stating the final

24. We were unable to locate any official or unofficial records of distributors/agents importers.

The Powers of Determination of Import Policy by the PNA Regarding the Lists of Article III.²²

Lists	Setting of rates of customs, purchase tax, levies, excises and other charges	Setting of licensing ²⁶ requirements and standard requirements	Setting of valuation and classification for customs procedures
List A1 in respect of specified quantities	PNA's prerogative	PNA's prerogative	PNA / BVD then GATT
List A1 if exceeding specified quantities	limit of Israeli min basis	As Israel, Art III-5b & 10	Harmonized commodity
List A2 in respect of specified quantities	PNA's prerogative	PNA's prerogative	As Israel, Art III-5b & 10
List A2 if exceeding specified quantities	limit of Israeli min basis	As Israel, Art III-5b & 10	As Israel, Art III-5b & 10
List B, no quantity limitations	PNA's prerogative	As Israel, Art III-10	As Israel, Art III-5b & 10
Outside lists items	Minimum: as Israel	As Israel	As Israel

22. It is important to point out that the PNA does not make use of its prerogative of setting lower customs rates and other levies, it adopts the same rates as Israel.

23. Licenses are granted by the PNA regardless of who sets the requirements relative to their issuing.

destination in the import documentation as being a corporation that is registered by the PNA and conducting business activities in its areas in the second sentence that created the problem of fiscal leakage. Thus, unless it is a corporation registered in the PNA areas that has been mentioned on the import documents as the place of final destination, the PNA will not be refunded. Therefore, the criterion is no longer simply that of a place of final destination but of a final destination and the mentioning of the registered corporation.

The mechanism of Article III, paragraph 15 enhances, in our opinion, the existing dependency and reduces the amounts of import revenues to be reimbursed to the PNA. Israel might have been certain that fiscal leakage was bound to occur. First, as a result of the dependence on Israeli importers and suppliers that would not disappear but gradually, Palestinian direct imports would increase very progressively; the bulk of Palestinian imports would still consist of imports from and via Israel. Second, due to its knowledge that the impediments that existed prior to the peace process and that still exist in the way of Palestinian direct imports (lengthy and costly security checks, Israeli standards requirements) might drive Palestinian importers to disguise the place of final destination by asking Israeli importers to declare the goods as their own.²⁵

The fiscal leakage problem becomes perceptible upon the examination of the possibilities of Palestinian imports (of goods from the lists or goods from outside the lists) entering Israeli entry points.²⁶ Three possibilities arise:

1. Palestinian companies import directly, they are in direct contact with

25. In her evaluation of external trade performance under the Paris Protocol, Veronique Kessler confirms this point, she writes:

"Reacting to adverse developments, Palestinians have developed various counter-strategies. Private firms importing from the rest of the world started to use again traditional indirect Israeli routes and intermediaries rather than direct routes and Palestinian agents by whom obstacles were too numerous."

Executive Summary, Veronique Kessler, *Palestine's External Trade Performance Under The Paris Protocol: Hopes And Illusions*, 5 (European Commission June 8, 1999).

26. According to the Protocol, the import revenues on goods entering through Jordan and Egypt are collected directly by the PNA's customs authority, but in the presence of Israeli customs officials who are entitled to ask for inspection of both goods and tax collection (Article III, paragraph 14(a)).

the foreign company. The importing corporation registered in the PNA territories is mentioned as the place of final destination on the import documents: no loss of import revenues occurs.

2. Palestinian companies import via the Israeli importer, i.e. they are in contact with the foreign company but order the quantities of goods they require through the Israeli importer who gains a commission for providing this service. Here, the goods are not necessarily nor systematically declared to be destined to the Palestinian corporation registered in the PNA territories that is ordering the goods. Palestinians may be tempted to disguise the place of final destination, therefore loss of import revenues is possible.
3. Palestinian companies buy [import] from the Israeli importer (as simple buyers or sub-distributors of the Israeli importer representative of the foreign company). The goods are consumed in the PNA territories but the Palestinian buyer is a third party to the import operation, loss of import revenues occurs.

The loss of import revenues consists of the following: customs, purchase tax,²⁷ levies, excises and other charges. Furthermore, loss of purchase tax revenues occurs on sales from Israel of Israeli products to Palestinians. Unlike VAT,²⁸ according to the Paris Protocol, the purchase tax on imports from Israel whether the goods are Israeli goods or Israeli imports is not refunded.

The following are examples illustrating cases of fiscal leakage:

- A Palestinian trader buys electrical items of a foreign mark from the Israeli importer or an Israeli trader and resells it in the Palestinian market. The PNA loses the customs, purchase tax, levies, excises and other charges imposed on this product and paid by the Israeli importer

27. Purchase tax is levied on all subject goods produced locally or imported. Notable items subject to the purchase tax are durable consumer goods and cigarettes. The rate varies greatly by type of goods, ranging from 5-95% (except for cigarettes, which are taxed up to 240%). Over half the Israeli purchase tax revenues are raised on automobiles, for which the rate is 95%.

28. Concerning VAT, there is no loss on imports from Israel whether the goods are Israeli goods or Israeli imports as the clearance system for VAT differs. Nevertheless, loss occurs if the sale operation is not declared.

to the Israeli Treasury, while the product is consumed in the PNA territories by final consumers bearing all the above charges of importation. The only imposition refunded is the VAT provided that the sale transaction is declared.

- A Palestinian trader buys Israeli cigarettes from the Israeli manufacturer or an Israeli trader and resells it in the Palestinian market. The PNA loses the purchase tax paid on the sale of this product, which accrues, to the Israeli Treasury.²⁹

There are several estimates of the amount of fiscal leakage calculated using different methods.³⁰

In conclusion of this section, we are inclined to point to the imbalance of the Paris Protocol in its Article III. Article III Paragraph 1 states that "the import and customs policies of both sides (Israel and the Palestinian Authority) will be according to the principles and arrangements detailed in this Article." The following Paragraphs of Article III provide mainly for the Palestinian Authority's setting of its import policy. The few provisions of this Article that provide for cases of reciprocity do not find room to apply in the current economic and political context. Two examples are paragraphs 6 and 15 of Article III. Paragraph 6 provides for the following:

"Each side will notify the other side immediately of changes made in rates and in other matters of imports policy, regulations and procedures, determined by it within its respective powers and responsibilities as detailed in this Article..."

This demonstrates a case of nonsensical reciprocity, since any change the Palestinian Authority can make remains within the very narrow scope of its own rates of customs and other levies applied to only the agreed upon

29. During empirical work, we have encountered a case of a distributor for an Israeli cigarette manufacturer. As the PNA in accordance with the Paris Protocol lost the purchase tax on this Israeli product, a settlement was found to avoid this loss. The cigarettes were exported abroad and then re-exported to this distributor. According to the person interviewed in this case, the settlement came at the demand of the PNA.

30. JAWHARY, *supra* note 17, at 24.

quantities of its market needs, thus not affecting Israel in any way.³¹ As for paragraph 15, discussed above, it is certain that the clearance system combined with the state of Israeli hegemony on the imports market will be applied in one direction: clearance for the benefit of the Palestinian Authority.

1.2.3. PNA Measures to Remedy the Fiscal Leakage

The PNA tried to reverse the Protocol's flaw that resulted in fiscal leakage by using it as means to encourage direct import. This encouragement came to be, as we shall see, the requirement of a direct link between a Palestinian importer agent or distributor and the exporting international company.

Several interests were at stake for the PNA in addition to the need to stop fiscal leakage and to retrieve the lost revenues on indirect imports. Amongst them were the following: the desire to reduce prices for the Palestinian consumer by reducing the chain of intermediaries and/or by diversifying items, their standards, and exporting partners to the extent possible;³² and the desire to establish world trade relations with all the resulting advantages thereto.³³ Below is a brief chronology of steps taken by the PNA to ascertain its rights in the matter of representatives to foreign companies.

Late in October 1995, the Ministry of Economy and Trade initiated a campaign addressing letters³⁴ to various embassies, stating that foreign companies who are willing to co-operate from the Autonomy Areas will have to adjust to the new rules. The rules, as explained in these letters,

31. Moreover, Israel requests a pledge to be signed by Palestinian importers declaring that the imported goods are only destined to sale in the PNA territories. (See end of Section 1.2.4).

32. See generally KANAFANI, *supra* note 21 regarding trade creation and trade diversion.

33. Such advantages would be for the PNA to get international recognition as constituting a separate customs territory. A customs territory is: "any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories" (definition in GATT, Article XXIX-2). Such recognition might back the PNA's long term quest to become a member of the WTO-former GATT- so as to be able to stand on equal terms with Israel.

34. We were unable to obtain these letters, instead we learned of their existence through interviews with key-personnel from the Palestinian Ministry of Economy and Trade and through the Israeli letters in answer to them that we quote further on in this section.

determine that the foreign companies wishing to distribute their products in the Palestinian Autonomy Areas must appoint "Palestinian representatives registered in the Autonomy registration."

On March 16, 1996, the Palestinian Authority's Ministry of Economy and Trade issued a letter presenting explanatory remarks on the issue of commercial representation in the West Bank and the Gaza Strip (annex 1). This letter reiterated the PNA's authority in the field of representation to foreign companies. The letter reads in part: "The Palestinian Authority is now responsible for the regulation of all commercial and corporate activities including representatives to foreign companies and businesses in the West Bank and Gaza Strip."

In March 1996, the PNA reaffirmed its position regarding the new rules mentioned above in press releases;³⁵ and on October 1, 1996, the PNA issued a "Notification"³⁶ whereby it rendered these rules official and obligatory. This Notification issued by the Ministry of Economy and Trade set the requirement of a direct link between a Palestinian importer-distributor or agent and the foreign exporter. The Notification thereby instituted the right to prevent re-import of goods into the PNA territories. By this Notification, the Registrar of commercial agents, distributors and middlemen, closed at the advent of the Israeli occupation in 1967, was reopened. In August 1997, in order to enforce the implementation of the rules pointed in this Notification, the Palestinian Customs Authority began to take serious measures. Raids were undertaken on retailer shops selling specified types of goods for which Palestinian distributors were appointed, and on which purchase tax and excises are particularly high in order to verify the supplier of the goods. If the Israeli importer or an Israeli trader in violation of the Palestinian distributor's rights was the supplier, the Palestinian Customs Authority would confiscate the goods.

35. In fact, all throughout the PNA's campaign and to date, the PNA's Ministry of Finance did not stop putting announcements in newspapers reminding of the necessity of respecting the PNA's rules in the matter of commercial representation and of the requirement of having to specify the final destination as being the PNA territories in cases of import through an Israeli agent or distributor. See announcement in AL-AYYAM, May 8, 1999.

36. The text of the Notification is quoted in chapter 2.

Also in August 1997, as a result of the Israeli closure that began in spring 1996, the PNA decided to boycott certain products (Israeli and foreign) still indirectly distributed in its territories. A national committee for investigating the boycott possibilities was created.³⁷ The boycott did not attain the objectives hoped for and the PNA progressively started showing some laxness.

On October 1, 1997, another letter (annex 2) was issued by the Ministry of Economy and Trade, yet again reiterating all of the above. In its paragraph two, the letter states the following:

“...all trading companies can operate in the Palestinian territory only through a direct importer, agent or distributor registered with the Palestinian National Authority.”³⁸

In March 1998, Circular no. (1) of 1998 was issued by the Ministry in which a reminder of all of the above was stated, but, in this circular, the matter of requiring exclusivity was for the first time raised in writing. The circular reads as follows:

“In the area of commercial agencies and distributorships, specifically, there are two requirements based on the Commercial Agents and Distributor Law 19 of 1967 and its 1995 directive. The first requirement states that a Palestinian entity be directly appointed to represent the principal/manufacturer, as agent and/or distributor for the Palestinian areas. The second requirement specifies that the appointment be exclusive.”

Furthermore, concerning vehicles (necessitating licensing and upon which customs and purchase tax are quite significant), the PNA issued a circular regulating the licensing procedure. The Ministry of Transport issued the circular in January 1998. According to this circular, a new first-hand vehicle entering into the PNA territories will not be licensed (in the West Bank)

37. See AL-AYYAM, September 23, 1997.

38. Following this letter of October 1, 1997, is an example of a letter addressed by the Ministry to Suzuki Company, dated October 31, 1998, in which the rule of a direct link with a Palestinian agent or distributor is reminded. This letter states as follows: “... It is an indispensable condition for any possible agent to have an original duly signed contract of agency from the mother company...” (letter on file with author).

unless the following three conditions are met:

1. The vehicle is purchased from a Palestinian direct agent "Wakeel" if there is one.
2. The "Maqassa" (clearance) invoice is handed.
3. The wording "Destination: PNA territories" figures on the import documents.

All of these above-mentioned efforts, did yield results. Gradually and starting with vehicles, Palestinian businessmen were able to conclude direct distribution agreements with foreign companies.³⁹

1.2.4. Israeli Contention to Palestinian Measures

It is most certain that all of the above actions of the PNA were met with fierce opposition on the part of the Israelis for whom the loss of the West Bank and Gaza Strip market presented a serious blow. Both the Israeli government and the Federation of Israeli Chambers of Commerce, representing the importers-distributors of foreign companies, contested these actions and combined their efforts in order to disrupt them.

Thus, in response to the PNA's campaign in October 1995, three letters dated January 25, 1996, two addressed by the Federation of Israeli Chambers of Commerce (annexes 3 & 4) and one addressed to the Federation by an Israeli esquire (annex5) stated the following:

"The Autonomy although enjoys some independence, is not a separate country, and does not create any customs border or other borders between the parties."

The letters added: "In our effort to avoid further damage caused by the Palestinian's letters (to foreign embassies) which was intended to mislead the public, we are active together with the Israeli government and army representatives to stop the impact of the said letters ... the guidance in these letters is of course incorrect and is a gross violation of the Paris Agreement."⁴⁰

39. See interview with Mr. Omar Al-Horoub, Director General of Companies Registration and of Protection of Intellectual Property Rights at the Ministry of Economy and Trade, in 2 PALESTINIAN EXECUTIVE MAGAZINE, 15-19 (1999).

40. Letter of Dan Gillerman, president's office, Federation of Israeli Chambers of Commerce.

According to the Israeli business community, the mention of import by the Palestinians in the Paris Protocol does not necessarily refer to direct import by the Palestinians, but refers to import by the Palestinians from Israelis, whether manufacturers or importers, for the goods already represented by an Israeli importer in Israel. Thus, an Israeli importer, distributor of a foreign company or manufacturer in Israel may continue to distribute his/her goods in the West Bank and Gaza Strip. Concerning goods that are not already represented by Israeli importers-distributors, the fact that Palestinians succeed in obtaining distribution rights for these goods does not present an actual loss for the Israelis, which undeniably refutes the Israeli argument. An example that we encountered during our empirical work was the import of Mu'assel, tobacco for the Turkish *Nargilah*.

As for the Israeli government, in a letter dated September 19, 1996,⁴¹ addressed to Mr. Maher El-Masry, Palestinian Minister of Economy, Trade and Industry, Mr. Dan Meridor, Minister of Finance, expressed Israel's opposition to the new restrictions proclaimed by the PNA. Following the official publication of the Notification of October 1, 1996, another letter (annex 6) was sent by Mr. David Brodet, Director General at the Israeli Ministry of Finance to Minister Maher El-Masry. The letter dated December 29, 1996 stated the following:

"I refer to the notice published with respect to the intention of the Palestinian Council to impose new restrictions upon the operation of traders within the areas under the responsibility of the Palestinian Council...We would like to state once more Israel's opposition to the application of those restrictions. It is our contention that those restrictions bear no relationship to what is legitimately reasonable and necessary for the protection of consumers and that they totally contradict both the provisions and the spirit of the Interim Agreement. The Interim Agreement states that there will be free movement of goods, subject to each side's legislation. The principle of free movement should not be jeopardised without justification, and imposition of restrictions in this matter should be limited only to consumer protection. We

41. We were not able to obtain this letter.

object most strongly to the imposition of any restrictive measures which in any way impinge upon the essential free movement of trade. We were advised by you verbally that the restrictions were based upon the Jordanian Commercial Agents Provisional Law of 1967. However on investigation, it would appear that a substantial part of the restrictions are not covered by the aforesaid Law and to the extent that such restrictions are so covered, that Law (which had never in fact been applied) ought to be amended so as to accord with the provisions of the Interim Agreement."⁴²

In our opinion, the Israeli position has no sound legal grounds. The measures taken by the PNA including the issuing of the Notification are entirely concordant with both the spirit and the wording of the Paris Protocol. The Israeli arguments are all built on the basis of opportunity, i.e. the loss of the Palestinian territories market. The argument of impinging upon the free movement of goods does not stand since the PNA does not affect this free movement, as it only regulates it in accordance with the powers given to it by the Paris Protocol. This is certified by the fact that the PNA only stops goods from entering its territory when their entry comes in violation of an existing Palestinian agent's or distributor's rights, or when it loses import revenues on goods which were not declared as destined to its territories. The PNA, for goods not represented by Palestinian representatives, is strictly attentive to avoiding the loss of import revenues whilst it incites the obtaining of direct representation rights. It realizes that the conclusion of direct distribution contacts with Palestinians remains a matter of contractual liberty and that it relies mostly on the exporting company. Therefore, Israelis could only attempt to hinder direct import by the Palestinians by means other than those having a legal basis such as campaigning internationally against direct commercial co-operation with Palestinian companies and the lengthy and costly security checks imposed on Palestinian imports entering Israeli entry points.

Further excerpts of the Federation of Israeli Chambers of Commerce letters testify to the absence of sound legal basis preventing Palestinians from obtaining direct distribution rights:

42. See *infra*, chapter 2, for the contention concerning this law.

Avigdor Dorot: 1- "An Israeli distributor of a foreign manufacturer's goods, who is representing the manufacturer in Israel, and who distributed the goods of that manufacturer in the Gaza area and the West Bank, may continue to do so in the Palestinian autonomy.

3- An Israeli distributor or agent may appoint a sub-agent for the areas under the Palestinian autonomy, or may form a partnership with a Palestinian company, which may benefit from the experience of the Israeli agent."

Y. Raviv: "The agreements declared the Autonomy as a separate Authority from Israel, allows the Palestinians freedom in certain aspects, especially concerning internal matters such as economy and security. Nevertheless, the Autonomy is still under Israeli supervision.

The Autonomy does not have international borders, but rather uses the international borders of Israel (including the occupied territories and the Palestinian authority area), both for foreign affairs such as the entrance of foreigners as well as economical affairs, customs and commercial goods.

Nevertheless, the agreements between Israel and the Autonomy does not create any change in the status of the local representatives or manufacturers or companies in Israel. A local representative who is authorized to represent a foreign manufacturer or company in Israel and the Autonomy, can operate in the Autonomy since the agreements do not create any new or different customs territory from the one existed before the Paris agreement.

In conclusion, any attempt to determine that an Israeli representative can not operate in the Autonomy is legally incorrect."

The Paris Protocol itself refutes all of the above arguments. Thus, in addition to the Protocol's Article III clearly granting the Palestinians the right to import whether directly or indirectly, its preamble's second paragraph proclaims the Palestinian right in exercising its own "economic decision making in accordance with its own development plan and priorities." The contested measures are within this PNA's right of economic decision making.

Furthermore, the one legal basis erected by the Agreements between Israel and the PLO affecting only the "internal" movements between Israel and the Palestinian territories of persons and vehicles is that related to security provided for in the Interim Agreement's Annex I relative to security arrangements Article IX(d).⁴³ Otherwise, and "for the purpose of export and import of goods, the Palestinian side has the right to use all points of exit and entry in Israel designated for that purpose. The import and export of the Palestinians through the points of exit and entry in Israel will be given equal trade and economic treatment."⁴⁴ Finally, the *a contrario* interpretation of the last excerpt containing the phrase "in Israel and the Autonomy" would mean that the Israeli representative who prior to the Peace Process was authorized to represent the foreign company only in Israel can no longer operate in the Autonomy.

Notwithstanding the above controversy, a third party remains concerned, the foreign company-exporter, whose position regarding the continuing of the contractual relation binding him/her to the Israeli importer-distributor is most important. It is according to this position of the foreign exporter, and the case be it, the co-operation of the Israeli importer-distributor contractually binding this foreign company, that the chance for the appointment of Palestinian distributors started to materialize. Here, a legal question arises concerning the analysis of the binding power of the contractual distributorship agreement between the foreign exporter and the Israeli importer-distributor in view of the political change; i.e. the Palestinian Autonomy exercised over the PNA's areas: Does the recognition of the Palestinian Autonomous Areas affect the Israeli party's territorial exclusivity by reducing it? In other words, how does the recognition of the Palestinian Autonomous Areas affect the territoriality stipulation "Israel" and the case be it the territorial stipulation "Israel and the Occupied Territories" in the distribution contract in question?

43. "The provisions of this agreement shall not prejudice Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip. In addition, the provisions of this agreement shall not prejudice the use of safe passage."

44. Article III-13 of the Paris Protocol.

Furthermore, the Protocol being qualified as constituting a customs union⁴⁵ or a semi customs union,⁴⁶ the appointment of an exclusive international importer-distributor for the Israeli territory does neither legally nor logically imply that no other distributors can be appointed in the Palestinian territory territories, the other member of the union even if by definition a customs union has no customs borders.

The Israelis went further in their contention. They riposted by introducing the requirement for the Palestinian importers to sign a pledge in addition to the import documents whereby they declare that the cleared goods are destined to sale and consumption only in the PNA territories, the violation of which might be completely outside of their power and control. By this declaration, a Palestinian importer who obtains distribution rights covering the PNA territories and Israel for goods not represented in the Israeli market cannot sell the goods in question in Israel thereby reducing his/her contractual territory.⁴⁷ In fact, this corroborates the Palestinians' interpretation of the Protocol and specifically of the Protocol's lists and setting of quantities to satisfy market needs in that it indirectly leads to recognizing the idea of separate markets (Palestinian and Israeli), in which case, the Palestinians have every right to seek distribution rights for their "separate" market. This

45. Article XXIV-8 of the GATT Agreement defines a customs union:

"A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce ... are eliminated with respect to substantially all trade between the constituent territories of the union or at least with respect to substantially all trade in products originating in such territories, and, ... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union."

The definition is borrowed for pure academic reasons. The GATT and WTO agreements do not apply on the Paris Protocol, as Palestine is not a party to these agreements. Nevertheless, Israel being a part to the GATT and WTO agreements, certain provisions of the GATT agreement do apply on the Paris Protocol if it were to be qualified as a customs union or a free trade area. Article XXIV-5, 7 & 10 applies on agreements between contracting parties to GATT and states or governments other than contracting parties. These provisions relate to the obligation of notification by the contracting member (i.e. Israel) of the agreement -customs union or free trade agreement- to the members of GATT to enable them to approve the establishment of customs unions and free trade areas, which include non-GATT-members (i.e. Palestine).

46. See KANAFANI, *supra* note 21.

47. According to officials in the Palestinian Ministry of Economy and Trade, an Israeli importer is not requested to sign the same reciprocal pledge. He/she can distribute the goods in question in the PNA territories provided he/she does not violate any Palestinian traders' rights for the same goods. But, we have recently learned, in an interview with an official in the Palestinian Ministry of Economy and Trade, that the signing of this pledge will soon become reciprocal; yet, this has not been put in writing to our knowledge.

idea is totally rejected by Israel who considers that there simply exists a single customs envelope and a one market.

The following chapter examines the legislation and regulation of import-distribution relations.

Chapter 2

The Legislation and Regulation of Import-Distribution Relations

In this chapter, we examine the legislation currently governing import-distribution relations and will attempt to examine the relation between this legislation and the PNA's policy in this matter.

Import-distribution relations are regulated by national and extra-national legislation. Article III of the Paris Protocol (import taxes and import policies), that was examined in the preceding chapter, is the extra-national legal framework regulating import-related activities in Palestine.⁴⁸ Therefore this chapter will be limited to the examination of national legislation and an analysis of the PNA's policy in dealing with import-distribution relations.

As mentioned earlier in this study, during the Israeli occupation, the

48. Another element of the extra-national legislation governing the import-activities is trade agreements and arrangements. Article IX(5)b (Powers and Responsibilities of the Council) of the Interim Agreement allows for the conclusion of such agreements by the PNA but within the frame of the Paris Protocol. It provides for the following:

"Notwithstanding the provisions of this paragraph, the PLO may conduct negotiations and sign agreements with states or international organizations for the benefit of the council in the following cases only: 1- economic agreements, as specifically provided in Annex V of this agreement;..."

The PNA benefits from such arrangements and agreements with several countries that grant duty free treatment to all Palestinian products provided certain rules of origin are respected. These arrangements or agreements also provide for duty free treatment for the signatory country's products entering the Palestinian territory. Evidently, this could only be applied if Israel has similar arrangements with this same country since the Paris Protocol's provisions instituting a semi customs

legislation governing the Occupied Territories consisted of legislation dating from the Jordanian rule in the West Bank, and the British Mandate in the Gaza Strip, in addition to remnants of certain Ottoman legislation and Israeli military orders issued by the Israeli Military and Civil Administration.

With the advent of the Peace Process, the legislation applicable during the occupation remained in force. The Presidential Decision no. 1 of 1994⁴⁹ proclaims that the laws, ordinances and orders that were applicable prior to June 5, 1967 in the Palestinian territories (the West Bank and Gaza Strip) will remain applicable until they are unified.

union obliges the PNA to comply with Israel's import policy. The value of the trade agreements or arrangements entered into by the PNA remains symbolically political since the PNA is bound by the Paris Protocol provisions and since few Palestinian exports do actually make use of the duty free treatment. The resulting political symbolism remains nonetheless important since the PNA, in these agreements or arrangements is looked upon as a full-fledged independent partner having its separate market and economy. A testimony to this is the agreement signed with the EU. Israel objected to this agreement because it treated the Palestinian - territory as a separate market, especially when products of Israeli settlements in the West Bank and Gaza were refused entry to the EU market in accordance with the agreement's provisions. This was the proof that the international community does not entirely share Israel's perception of the Paris Protocol as forming a single customs 'envelope' whereby Palestinians have no separate market.

The following trade agreements or arrangements are entered into by the PNA:

- Declaration of Free Trade - West Bank And Gaza Strip and the United States of America;
- Free Trade Arrangement between the Palestine Liberation Organisation and Canada;
- Interim Association Agreement on Trade & Cooperation between the European Union and the Palestine Liberation Organization;
- Interim Agreement between the EFTA States and the Palestine Liberation Organization;
- Agreement on Commercial Cooperation between the Palestine Liberation Organization and Russia;
- Preferential Treatment: Trading with Jordan, Egypt and Saudi Arabia.

49. This was published in the Official Gazette "*Al-waqa'i al-filisteeniyah*", no. 1, 1994. Also, Article XVIII of the Interim Agreement (legislative powers of the Council) paragraph 4-a provides for the following: "Legislation, including legislation which amends or abrogates existing laws or military orders, which exceeds the jurisdiction of the council or which is otherwise inconsistent with the provisions of the DOP, this Agreement, or of any other agreement that may be reached between the two sides during the interim period, shall have no effect and shall be void ab initio."

Some vagueness appeared with regard to the interpretation of orders contained in the presidential decision, whether they refer to military orders or not. Today, several military orders became defunct, some are still applied in certain fields such as insurances.

Concerning the commercial activity of distribution, the prevailing internal legislation, as cited in a publication of the Palestinian Ministry of Economy and Trade 1996 entitled "Commercial Laws and Investment Procedures in Palestine", is Law no. 19 of 1967 in the West Bank, and Law no. 35 of 1938 in the Gaza Strip.

Furthermore, Livre 11 of The Ottoman Majallah (Articles 1449-1530) in force in both the West Bank and the Gaza Strip⁵⁰ regulates Agency in the strict legal sense of the term. Its application in relation to this study is rudimentary and concerns only commercial agents proper to the extent that they do not conflict with legislation specific to commercial agency.

Articles 80 to 98 of Law no. 12 of 1966 (Law of Commerce) in force in the West Bank regulate the professions of commercial agents proper (articles 80-86), and commission agents proper⁵¹ (articles 87-98 in addition to articles 80-86). Finally, Order no. 324 of September 18, 1954 issued by the Egyptian governor⁵² in Gaza concerning the commercial registrar "Al-sijil al-tijari", organizes the registration of enterprises and companies among which are those exercising the profession of commercial agents.

2.1. Content of the Relevant Legislation

We will review only Law no. 19 (Law of Commercial Agents and Middlemen) and Law no. 35 (Law of Trademarks) which were cited as the prevailing relevant legislation by the Ministry of Economy and Trade. The Notification of October 1996 and the Circular of March 1998 issued by the Palestinian Ministry of Economy and Trade are also considered by the Ministry as secondary legislation.

50. *The Majallah* is the equivalent of the civil code in the civil law countries as opposed to common law countries.

51. A commission agent, *commissionaire*, is a person who internally, i.e. in his/her relationship to his/her principal, is an agent but externally, i.e. in his/her relationship to the third party, is a seller or buyer in his/her own name.

52. Published in the official journal "Al-waqa'i al-filisteeniyah", no. 40, October 14, 1954.

2.1.1. Law no. 19 of 1967: Law of Commercial Agents and Middlemen

Before reviewing this law, a rebuttal concerning the Israeli government's contention in its regard is necessary. The Israelis, in Brodet letter, argue that the "Law (which had never in fact been applied) ought to be amended so as to accord with the provisions of the Interim Agreement." This argument is invalid since Law no.19 is an existing law in view of Article XVIII, paragraph 4(a) of the Interim Agreement and was issued prior to the date of June 5, 1967 in accordance with point 1 of the presidential decision no.1.⁵³

The main characteristics of Law no. 19 of 1967 applicable in the West Bank are:

1. This law does not render the appointment of a distributor or agent the only possible channel of distribution for the exporting foreign companies. A foreign exporting company can perform itself the distribution of its products by incorporating a subsidiary in the host country. But a foreign company cannot establish a subsidiary for the marketing of other companies' or manufacturers' products (article 13).
2. It applies to international distribution professions, namely to commercial agents proper, to commission agents, to distributors and to middlemen.
3. It conditions in its Article 3-a, the practice of the above-mentioned professions, to the registration in the Registrar of Commercial Agents; thus registration is compulsory.
4. It requires in addition to the compulsory registration of the commercial agent, commission agent, distributor or middleman, the registration of the agency or distribution agreements.
5. It requires that the individual agent or distributor be: a national not less than 20 years old; permanently resident and having an office or commercial premises in the Kingdom of Jordan (PNA Territories); registered in the commercial Registrar at the Ministry (the Palestinian Ministry of Economy and Trade); and a member of a Chamber of Commerce or Industry. If the agent or distributor is a company,⁵⁴ where

53. Article XVIII(4)(a) of the Interim Agreement and the presidential decision no.1 *supra* note 52.

54. This case where the agent or distributor is incorporated in the form of a company should not be confused with the case where the exporting foreign company performs - - itself the distribution of its products through a foreign company registered in the host country (which in Palestine cannot be entirely owned by foreigners). See *infra*, chapter 3, the vertical integration option.

it is an ordinary company⁵⁵ it should be a Jordanian (Palestinian) company; the majority of its equity should be held by Jordanians (Palestinians).⁵⁶ Where it is a joint-stock company (whether private or public) it should be a Jordanian (Palestinian) joint-stock company, the majority of the members of its board of directors or management committee should be Jordanian (Palestinian), the majority of Jordanian (Palestinian) shareholders should not be less than 60% of the capital.

6. Article 8 requires that the applicant for registration be connected directly with the company-principal.⁵⁷
7. Article 12 announces that any importer wishing to carry out any administrative formality pertaining to import including import licenses must refer on the submitted documentation to the name and registration number of the agent/middleman. An importer can import directly without an agent/middleman provided that the Ministry is satisfied that the exporter has neither paid nor committed itself to pay any commission to any agent/middleman. Therefore, in addition to the law's silence in the matter, this article creates the possibility of non-exclusivity since it makes it possible for an importer to import directly without an agent/middleman provided that the Ministry is satisfied that the exporter has neither paid nor committed itself to pay any commission to any agent/middleman.
8. Article 17 imposes sanctions (a fine ranging from JD100 - 300) in case of non-conformity with this law.

Thus, the law of 1967 has only administrative functions; it is not a law that deals with the rights and obligations of agents and distributors or with the essence of their activities. Furthermore, it does not set a mechanism of protection of their rights.

55. An ordinary company is either a partnership or a limited company (Law No. 12 of 1964, Company Law, article 9).

56. The required majority in this case is 51% of equity.

57. There is no specification in the law as to the definition of the principal, but we are inclined to say that since a direct link is required, then the principal will unlikely be an importer of the mother company. Therefore, the principal is most likely to be the manufacturing mother company or a marketing company subsidiary of the manufacturer, or a marketing international company contracted by the manufacturer.

2.2.2. Law no. 35 of 1938: Law of Trademarks

This law applicable in the Gaza Strip is not equivalent to the law applicable in the West Bank; it is a law organizing the registration of trademarks for purposes of protection of their use. It does not regulate the professions of agents, middlemen or distributors. Article 6 renders the registration of a trademark a choice the trader (who could be an agent or a distributor) could opt for so as to preserve his/her exclusive use of the trademark. Article 6 provides for the following:

"A person desiring to have the exclusive use of a trademark in order to distinguish goods of his own production, manufacture, working, selection, certification or *which he deals with or offers for sale*, or intends to deal with or offer for sale, may apply for registration in accordance with the provisions of this ordinance."

2.2.3. The October 1996 Notification

The following is the text of the Notification:

Notification

Palestinian National Authority
Ministry of Economy and Trade

Preamble

Pursuant to the commercial and business laws applied in Palestine, the Ministry of Economy and Trade (the Ministry) announces the instructions for the registration of commercial agents and agencies and its measures for the protection of their rights. The issuance of these instructions constitutes part of a campaign undertaken by the Ministry to regulate the internal trade in the Palestinian market and to enforce and protect the rights of agents and agencies.

In its implementation of such laws, the Ministry has opened⁵⁸ the Registers for (1) agencies, (2) agents and (3) distributors and middlemen, which were suspended during years of occupation.

58. The choice of words should have been ~~reopened~~ according to the laws in force.

Implementation and Compliance

Beginning October 1, 1996, the Ministry will implement the laws and regulations; full compliance must be adhered to no later than January 1, 1997.

Instructions

First: Individuals and companies that have obtained direct agency agreements for the Palestinian National Authority (PNA) areas must register as agents (individual and/or company) and register the agency agreement itself with the Ministry of Economy and Trade.

Second: The direct agency rights are deemed to cover the entire areas of the Palestinian National Authority (West Bank and Gaza Strip).⁵⁹

Third: Foreign companies distributing goods in the PNA areas, must appoint a direct agent who is to register with the Ministry in compliance with prevailing laws and regulations.

Fourth: Foreign companies distributing goods in the PNA areas, where agents are not required or used in the ordinary course of business, must qualify for an exception from the Ministry whereby they may distribute through distributors and middlemen.

Fifth: Distributors and middlemen who distribute goods for foreign companies, as mentioned in Fourth above, must register at the Registrar of Distributors and Middlemen at the Ministry.

Sixth: Those agencies having agencies for special category goods, including cigarettes, electrical appliances, pharmaceuticals, cars, certain food stuffs and agricultural items, must attest to compliance with the technical requirement of the concerned ministries and departments of the PNA before registering with the Ministry.

Seventh: Direct agents may authorize primary, sole or more distributor(s) in the PNA areas in order to facilitate delivery of goods to and between the West Bank and the Gaza strip.

59. Thus, the Notification creates the obligation of registration in the Gaza Strip where a liberal law applied.

Eighth: To protect direct agency rights, the Ministry will prevent the import, the entry and distribution of goods into the Palestinian market unless authorized by the agent.

The Minister

Ministry of Economy and Trade

October 1, 1996

Several problems arise in addition to problems of implementation discussed later. First, there exists a conceptual terminology problem: As mentioned in the introduction, in the WBS, the terms "distributor" and "commercial agent" are used interchangeably in both the commercial and legal parlance. Moreover, the term "distributor" as understood by a large majority of the Palestinian business community and the PNA seems to be used only as a sub-division of the commercial agency destined only to internal-national use and excluded from its international function. This is the case despite the fact that the Ministry of Economy and Trade distinguishes between commercial agent and distributor-in that the first does not acquire property of the goods object of the contract contrary to the second. In the Ministry's understanding, the party to an international contract is an agent, and this agent will later on appoint internal distributors. Point seven of the Notification depicts this understanding: "Direct agents may authorize primary, sole or more distributor(s) in the PNA areas in order to facilitate delivery of goods to and between the West Bank and the Gaza Strip." Here, a conceptual terminology problem arises. According to this understanding and to certain key personnel in the Ministry, the Notification was issued to prevent the case of an Israeli "agent" of a foreign company appointing a Palestinian "distributor" in the aim of seeking economic independence in addition to overcoming fiscal leakage. By using the terms "agent" and "distributor" as such, the Ministry disregards international practice that acknowledges the international dimension of the profession of distributor. This also results in the following incoherence: no fiscal leakage would occur if the Israeli agent, in the proper legal sense of the term, is to appoint a Palestinian distributor since this agent would not be the importer. It is the distributor appointed by this agent (who orders the goods from this agent who then passes these orders to the principal) who would be the

importer. The goods are to be owned by the Palestinian trader-importer. On the import documents, the place of final destination of the Palestinian's trader-importer corporation figures, consequently clearance of import revenues occurs. The issue here is that an Israeli is nearly always the distributor, he/she is an international distributor or an agent and distributor. By selling to the Palestinian trader, loss occurs. Thus, the concepts of agency and distributorship as practiced in international trade are not yet quite anchored in the Palestinian society's public and private sector due to long years of absence from the international trade arena.

Second, there exists a problem of drafting precision. The Notification's third point could be read to mean the following: foreign companies are obliged to pass through an agent for the distribution of their goods in the PNA areas, which would be contrary to article 13 of Law no. 19 of 1967 (according to which foreign companies can distribute themselves their products in the PNA areas), provided they appoint a local agent, in the strict legal sense of the term, to represent the foreign company's subsidiary in the areas.

Notwithstanding all the problems, the Notification is being applied and the number of registered agents and/or distributors is increasing.⁶⁰ But, the Ministry of Economy and Trade has not yet succeeded in fully implementing the Notification. The reason is the absence of control over borders and entry points, a matter that we will see below. A significant number of agents and/or distributors do business regularly without complying with the Notification's requirement of registration or with the requirement of a direct link.⁶¹

60. According to an article published by Al-AYYAM newspaper November 17, 1999 in the economics section, the number of registered agents/distributors is around 500.

61. During empirical work, we encountered a certain number of unregistered agents and/or distributors. However, it is difficult to put such cases in perspective. Therefore, the number of registered agents and distributors is not necessarily, in our view, representative. We also encountered cases where the direct link was either not respected or disguised. In the latter case, the Palestinian company would be an agent or distributor of the Israeli agent or distributor who would ask his/her principal to send a letter of appointment to the Palestinian party as a cover to be able to go on with business in the PNA territories by incorporating a company respecting the 60% rule of law no. 1967. (See Section 2.1.1).

2.2.4. Circular no. (1) of 1998 (Commercial Agents and Distributors)

The text of the Circular reads as follows:

Circular No. (1) of 1998
Commercial Agents and Distributors

The Palestinian National Authority since the 1993 announcement and signing of the Declaration of Principles has been exercising jurisdictional, legal and economic control over its independent areas. The political changes set the stage for the development of an economic foundation based on a free market principle. Local businesses are consequently seeking to import directly and conduct related activity exclusively for the Palestinian market.

Foreign businesses are welcome in Palestine. For those foreign principals and manufacturers desiring to do business with Palestinian companies, local laws and regulations must be complied with. In the area of commercial agencies and distributorships, specifically, there are two requirements based on the Commercial Agents and Distributor Law 19 of 1967 and its 1995 directive.⁶⁵ The first requirement states that a Palestinian entity be directly appointed to represent the principal/manufacturer, as agent and/or distributor for the Palestinian areas. The second requirement specifies that the appointment be exclusive.

The fulfillment of these two requirements followed by the proper registration by the local exclusive agent and/or distributor grants the agent or distributor the full protection of the law against the sale of goods or provision of services by non-registered agents.

Additionally, the local entity, as the importer, must have its name imprinted in Arabic on the imported goods as part of its compliance with the labeling requirements. While these goods enter Palestine

65. We were not able to obtain this directive, which we assume reflects the beginning of the campaign started by the PNA in this matter, mentioned earlier in the study.

through the Israeli ports, the import documentation must clearly indicate the final destinations to be the Palestinian National Authority areas.

The Palestinian market is ready to receive and welcome all forms of business transactions. The Company Registrar, the Commercial Agents Registrar and the External Economic Affairs Directorate, along with all other divisions at the Ministry are ready to answer any questions related to doing business in Palestine.

Maher Masri
Minister of Economy and Trade

The Circular's novelty is that it introduces explicitly the requirement of exclusivity; a requirement that was not explicitly put in writing. The Circular explicitly mentions full protection resulting from registration and exclusivity. We will address these issues in the coming section on policy analysis.

2.2. Policy Analysis

In this section, we trace and examine the policy line adopted by the PNA throughout the evolution of import-distribution relations including the draft law that the PNA intends to adopt in this matter. The draft law has received third reading by the Legislative Council and currently awaits the President's signature.

The setting for the PNA's choice of policy was and still is as follows: The PNA's primary objective in this matter is to minimize its dependence on Israel for imports-along with its fiscal implications-to the extent allowed by the Paris Protocol by inciting the Palestinian business community to seek direct distribution rights from international companies. Evidently, its prolonged objective is to create the business and legal environment to help preserve the obtained distribution rights. On one hand, the PNA declares that it has chosen the open market economy;⁶⁶ on the other hand, the PNA is faced with several limitations, some having legal basis and others based

66. See paragraph 1 of the 1998 Circular (Section 2.2.4).

on opportunity: the PNA has no control over external borders and entry points and has only an unsystematic possibility of control over its internal borders; and it is limited by Article III of the Paris Protocol concerning its import partners and the variety of imported goods. As for the obstacles based on opportunity, they firstly concern the Israeli *de facto* hegemony in the field of distribution and agency agreements resulting from years of occupation. Secondly, there was the Israeli attitude and contention towards the PNA's objective of emancipation. Thus, the PNA had to decide upon a policy that would allow the realization of its objective within the above-mentioned limitations.

The PNA opted for a protectionist policy for the integrity of its territory. The major traits and evolvement of this protectionism policy set by the Ministry of Economy and Trade are as follows:

- It explicitly requires that the distributor or agent be a national-if an individual-and that the majority of shares be owned by Palestinians-if the agent or distributor is a company.
- It requires registration as a tool of keeping data and of control. We have inquired about the requirement of registration, not simply as provided for by the applicable legislation, but as actually applied by the Ministry. Registration, as explained by government officials aims at providing protection. Therefore, an active distributor or agent who does not register simply does not obtain protection. The Ministry does not pursue active agents or distributors who have not complied with the registration requirement.⁶⁷
- It requires that the contractual relation be an exclusive one for the integrity of the Palestinian territory. This exclusivity requirement, put forward by the Ministry, came at the start of its campaign instigating the conclusion of direct distribution and agency agreements. It was not explicitly stated and had no legal basis in any legislation⁶⁸ until the

67. We have interviewed some businessmen during our empirical work who have not registered and who see no benefit in so doing as they do not believe in the protection provided by registration. According to these businessmen, registration or not, the key to protection is control over borders.

68. Law no. 19 of 1967 addressed the issue of registration; it did not explicitly address the issues of neither exclusivity nor protection, see *supra* on legislation.

issuance of the Circular of March 1998. According to statements of key personnel within the Ministry, the objective behind setting this requirement was to help reaffirm the independence of the Palestinian market as a separate one from the Israeli market, enter the international trade arena and break through the Israeli opposition to the appointment of Palestinian distributors. Requiring exclusivity is an easier way to attain these objectives and administer the evolutionary process of Palestinians entering the international trade arena as active partners. Today, according to government officials, these objectives have attained a satisfactory level and therefore exclusive appointment is no longer required; it is left to the appreciation of the contracting parties.⁶⁹

- Currently, and since the summer of 1999,⁷⁰ there is no exclusivity requirement but registration is still compulsory. The reason behind the requirement of registration is to enable the Palestinian authority in as much as possible to keep track of direct imports and indirect imports for the clearance of import revenues. Thus, although exclusivity is not required, registration helps in identifying direct from indirect imports since all registered agents or distributors should by definition be direct importers.⁷¹

In our opinion, the option for a protectionist policy setting the condition of nationality was the most reasonable choice the PNA could opt for in the short run since the PNA adopted the free market economy model, and in view of its feeble and dependency situation.

As regards the PNA's changing position concerning exclusivity, the result is that a registered agent or distributor in the Palestinian territories who

69. Certain doctrines consider that registration without the specification by law of the requirement of exclusivity, regardless of the contractual agreement, results in the obtaining of an exclusive right. The Ministry does not perceive registration as such. See RICHARD CHRISTOU, *INTERNATIONAL AGENCY, DISTRIBUTION AND LICENSING AGREEMENTS* 137 (1996).

70. There were no written instructions, that we are aware of, that explicitly state that the requirement of exclusivity no longer stands.

71. Some agents and distributors disguise their imports. They resort to the Israeli agent or distributor and ask for him/her to effectuate the order of goods in his/her name in order to avoid the lengthy and costly security checks.

does not benefit from a contractual exclusive appointment is liable to face competition from another non-exclusive agent or distributor who is subsequently appointed and who completes registration. Thus, protection is no longer an issue that is linked with exclusivity as a legal requirement but only as a contractual option. Protection only becomes an issue when the registered Palestinian agent or distributor is contractually exclusive and is faced with unfair competition.

This appears when attempting to answer the question of what protection exists for the rights of a Palestinian company who has obtained commercial agency or distribution rights from a foreign exporter for a certain product in the Palestinian territories. In general, we identify six kinds of protection with differing answers when exclusivity is contractually provided for or not. But, even these channels remain at the theoretical level, and rather speculative, as we have not seen applications of them.⁷² We will review only the first three, which consist of concerted actions within the public sector; the last three are civil suits filed between civil parties.⁷³

- Protection provided by the Customs Department-Ministry of Finance.
- Protection provided by the Internal Commerce and Inspection Department-Ministry of Economy and Trade.
- Protection provided by the Ministry of Supplies (for certain goods).

The Customs Department: Its main preoccupation is to track origins of goods, i.e. direct imports or indirect imports, to retrieve import revenues. The customs department cooperates with the Ministry of Economy and Trade, but this cooperation can only take place on an internal level, as Palestinians have no control over borders. At Gaza entry points, protection

72. There is no recent caselaw in this matter or pending cases in front of Palestinian courts.

73. In the civil cases, protection will be provided for cases providing for exclusivity, two cases of violation exist. First by the principal selling to another company in the same exclusive territory, where the law of contract applies and damages could be obtained (article 174 of the Civil Procedures Law applicable in the West Bank). Second, violation by a third party, - here The Civil Wrongs Law no. 36 of 1944 applies. The damaged party can present a case on the basis of three articles of this law. The basis of negligence by a third party, article 50. The basis of breach of statutory duty by a third party, article 55. And the basis of passing off of products by a third party, article 33. There is also the Labeling of Goods Law and Ministry instructions to which the damaged party can resort to in case of violation of his/her exclusivity.

to a registered exclusive agent or distributor can be more easily ensured since the entry points of goods to Gaza are controlled (rather impermeable). Palestinian officials at these points have lists of the registered agents or distributors and permit the entry of goods accordingly.

Here, the customs department can intervene only when it has interest to do so. This would not be the case of competition from a duly registered agent appointed by the same principal or another authorized principal, as here the customs department treasury is not affected. Also, if competition is caused by a Palestinian simple trader, who is not a registered agent and who is simply buying the goods from another trader who has obtained the goods from the non-exclusive duly registered agent or another non-exclusive duly registered agent, again the customs department has no interest to intervene and prevent the entry of these goods. It would, on the other hand, have interest to intervene if the goods were obtained from an Israeli trader thus causing the loss of import revenues.

Concerning the West Bank, the problem is further complicated for two reasons: the discontinuity of the Palestinian controlled zones within the West Bank and in relation with Israel and the absence of control over the international entry points of goods whether those on the borders with Jordan and Egypt or the Israeli ones. Palestinian customs officials have no authority at Israeli entry points and they have joint authority at Jordan and Egypt entry points but at neither points can they check entering goods with the lists of registered commercial agents and distributors. Thus, Palestinian agents and distributors undergo the risk of violation of their rights and the Palestinian Treasury consequently undergoes the risk of losing revenues of imported goods. Here, the customs department verifies the origins of goods on the internal entry points of the Palestinian territories, but these verifications can only be of a non-systematic nature. The same cases as those above arise.

The Internal Commerce and Inspection Department: The Department of Internal Commerce and Inspection launches raids on stores and selling points to check where goods originate from, i.e. direct or indirect imports in accordance with the list of registered agents and distributors. The Ministry

depends mostly on complaints from concerned agents or distributors to launch these raids. Nonetheless, the Ministry can take no action in a case of competition coming from a duly registered non-exclusive agent or from a trader who has in turn bought from that same agent. It can only take action in cooperation with the customs department in cases of competition coming from a trader who has obtained the goods from the Israeli agent or distributor.

The Ministry of Supplies: The Ministry of Supplies also cooperates with the Ministry of Economy and Trade and the Ministry of Finance. It launches raids to verify quality, standards of goods, and their origins, i.e. direct or indirect imports in relation with the list of registered agents and distributors.

In conclusion, it is primarily up to the damaged Palestinian agent or distributor to claim his/her rights before the courts or the responsible authorities. The fact remains that since exclusivity is no longer required and that there may be registration of more than one agent for the same good, protection can only be relative: a duly registered exclusive agent is to enjoy full protection, a duly registered non-exclusive agent will enjoy partial protection. Protection is presumably ensured for a duly registered non-exclusive agent if this later undergoes competition from a non-duly registered agent (as registration is compulsory). Accordingly, there can be no objection to the case of a Palestinian company importing directly a good making the object of a non-exclusive agency or distributing contract to which a Palestinian company is a party.

Also, in our understanding, in the case of a non-exclusive duly registered agent undergoing competition from a trader buying from the Israeli importer, this agent has no interest to litigate the trader since he is non-exclusive but he can present a complaint to the customs department who in turn has an interest to take action.

Registration remains a requirement to track direct imports on a national level, since these cannot be tracked through the licensing system since import licenses are imposed on only about 5% of Palestinian imports, which follow the Israeli import system. Registration does not provide protection for non-

exclusive agents or distributors on an internal level, except when interests of the Palestinian Treasury are at stake.

2.2.1. The Commercial Agents Activities Draft Law

For the analysis of the Commercial Agents Activities draft law adopted by Legislative Council on the third reading, currently awaiting the President's signature, we will list the major traits of this draft law after which we will comment on it briefly.

Major traits of the draft law:

1. It combines the legally distinct concepts of commercial agent and distributor.
2. It treats the distributor as having more of an internal role confined to the internal market of Palestine. The distributor is, according to the concept set by the draft law, to be appointed by the commercial agent who himself/herself is appointed by the foreign principal and whose nature of work combines between the legally speaking agent and distributor.
3. It defines the contracting party according distribution or agency rights to the Palestinian party as a manufacturer or a supplier/exporter (Montij or Mowared).
4. It requires that the commercial agent be a "direct commercial agent", i.e. directly appointed by the principal as defined above.
5. It requires that the commercial agent be a Palestinian; if the agent is a company, it requires that at least 51% of its capital be owned by Palestinians.
6. It requires registration of both the agent and the agency contract.
7. It requires that the agency contract be written and it determines certain elements the contract must contain.
8. It sets out various provisions aiming at protecting consumers such as the agent's commitment to warrantees and the regular providing of spare parts (Articles 7, 8 respectively).
9. It allows for mediation or arbitration, but at the same time provides for exclusive jurisdiction for Palestinian courts (Article 16).

10. Article 20 states that non-Palestinian regional commercial agents will be treated in the same manner Palestinian regional agents are treated.
11. Article 22 provides for sanctions in case of non-conformity with the provisions of the law, these sanctions are fines of a minimum of 1000 JD and a maximum of 5000 JD.
12. The law does not require or call for exclusivity; it remains silent in this matter.

In our opinion, the draft law, which originally set out to provide for the protection of Palestinian agents or distributors, does not afford this protection. It also allows for a potential Israeli interpretation according to which an Israeli importer-re-exporter/supplier can be the principal-contracting party since the law, does not define clearly what is meant by a direct relation, and since it defines the principal as being the manufacturer⁷⁴ or an exporter or re-exporter/supplier. It is true, that in such a case the Ministry will refuse to register the agent or distributor.

The draft law, which originally set out to be protectionist, rests between being aborted protectionism and semi-liberalism. It set out to be protectionist, mostly in the requirement of being a national, but it could not completely accomplish protectionism because it is limited by the political and economic situation. Indeed, the PNA has no control over borders to implement protectionism, and is bound by an economic agreement with Israel that does not follow the licensing system as a control system for imports -except for certain goods. It set out to be semi-liberalist because it did not require exclusivity, thus calling for competitiveness in the Palestinian market.

On the other hand, the draft law combines between, and is wrongful in so doing, protection of agents or distributors and protection of consumers. It is heavily loaded with clauses that are superfluous in the text of a law such as those mentioned in point 8 above. Furthermore, the draft law contains clauses that are, in our opinion, inconsistent with its other provisions. This is the case of point 10 concerning non-Palestinian regional agents, which is

74. The case where the principal is an Israeli manufacturer does not raise any difficulties.

inconsistent with the requirement of being a national regardless of the scope of representation: restricted to Palestine or not. Otherwise, this provision allows for non-Palestinians, for example Israelis to be agents practicing in the region of Palestine and Israel.

Most of all, we believe that the law, if promulgated, will be regarded by other countries and by international companies, most of which are partisans of liberalism, as a heavy constraining law that does not take into consideration international practice. An important element, at which international potential partners would look, is court jurisdiction. Point 11 above constrains this jurisdiction to Palestinian courts, which makes yet another deterring factor for international potential partners. The draft law, regardless of the political and economic constraints is far from being flawless. We are inclined to conclude by asking the question whether it is really opportune to promulgate it, or even any improved version of it at a time when the political and economic situation is still unfavorable, and especially that Palestinian direct imports are running relatively smoothly on simple contractual basis.

Chapter 3

Distribution Practices

The objective of this chapter is to present a rapid horizontal view of contractual stipulations of distribution contracts concluded between Palestinians and international partners. It is based on the results of 8 months (1997-1998) of the survey during which interviews⁷⁵ were conducted with Palestinian businesses having recently obtained distribution or commercial agency rights for the PNA territories. As mentioned in the introduction, we do not consider that the sample of 40 contracts gathered gives a whole picture of distribution agreements, at the time of the publication of this study, but we do consider it to be representative of distribution practices in the WBGs. We look upon this horizontal presentation of the contractual stipulations contained in these contracts as being the message itself that we would like to convey in this third part of the study.

The sample was the result of contacts established with companies whose addresses were obtained from a foregoing list of Palestinian companies registered in the Commercial Agents Registrar at the Palestinian Ministry of Economy and Trade. This foregoing list consisted of 91 addresses at the beginning of the survey. It is an ongoing list since not all agents and/or distributors comply with the requirement of registration. In order to be more thorough, addresses of randomly chosen companies -presenting themselves as either agents or distributors for the PNA territories- were obtained from advertisements in daily newspapers. The total number of

75. The information obtained during these interviews was used only for the purpose of this study.

companies contacted was 107 (88 in the West Bank and 19 in the Gaza Strip). As for the sectors covered, they were automobile, electrical appliances, cosmetics, food items, building equipment and hardware, medical equipment and medicaments.

The 40 agreements were obtained from 31 companies. Among these 40 agreements, 7 are simple letters of appointment while the rest vary enormously in consistency, some agreements consist of 30 pages, and others consist of 2-3 pages.⁷⁶ Nearly all the contracts are concluded for short periods of time, 1-3 years, one year renewable.

We have prepared a table in which we illustrate the main characteristics of these agreements. In this table figure the terminology used to the relationship between the foreign party and the Palestinian party (appellation used); the territory; the duration of the agreements; and whether an arbitration clause, a court jurisdiction and an applicable law clause figure in the agreements (this table is provided in annex 7). In the analysis of the 40 agreements, the study will focus on three main issues: the stage of obtaining distribution rights; the terms of the agreement and specifically the positioning of the Palestinian party within it; and the problems encountered throughout the whole process of concluding and implementing the agreement. The aim of this analysis is to evaluate the Palestinian party's standpoint regarding the recent reappearance of distribution agreements. First, it is indispensable to classify this sample of 40 contracts among the typology of the different legal channels -legal forms- of distribution allowed by national legislation in Palestine. In order to classify this sample, we will rapidly review these channels -which we already examined in an indirect manner in chapter 2.

76. It was not possible to identify the exact number of oral agreements, as a certain number of companies did not respond for reasons of confidentiality. Thus, we could not know if they were parties to written or oral agreements, who by definition would not be registered, but we estimate the number to be non-negligible.

3.1. The Theoretical Possible Channels of Import-Distribution in Palestine

In general, the main options open to a company seeking to expand and acquire foreign territorial markets are the following: vertical integration—the incorporated form, commercial agents, or distributors. The choice between these options is usually for the parties to decide; more precisely it is the choice of the company or manufacturer seeking expansion. Nonetheless, this choice is enclosed within the permissible national legislation of the territory of expansion. We will examine briefly each option firstly as the independent choice of the foreign exporter, and secondly in light of the national relevant legislation in the Palestinian territories.

3.1.1. Vertical Integration, the Incorporated Form

A foreign company exporter may opt for vertical integration for several reasons. Among these is the certainty of the success of the marketing operation of the product in the host country; the will to retain the resulting profits and the will to maintain the maximum degree of control over the marketing operation. Vertical integration may take several corporate forms. The choice of a subsidiary provides for a maximum degree of control, retaining a maximum of profits, but this choice may involve a high management cost, a high risk of failure, and more tax burdens.

In Palestine, the option of vertical integration is provided for by the *a contrario* interpretation of article 13⁷⁷ of Law no. 19 of 1967 (Law of Commercial Agents and Middlemen discussed in chapter 2). The exporting foreign company may opt for incorporating an ordinary company (a partnership or a limited company) or a joint stock company (whether private or public). The relevant legislation in force is Company Law no. 12 of 1964 in the West Bank, Companies Ordinance no. 18 of 1929 and Partnership Ordinance no. 19 of 1930. These laws condition the practice of trade by a foreign company to its registration on the Companies Registrar after approval of its registration application⁷⁸ and specifically obtaining the necessary authorizations.

77. According to this article, foreign registered companies cannot represent other than themselves for the marketing of goods in the Territory.

78. Registration of foreign companies: foreign companies, their subsidiaries/branches, and representative offices may do business in Palestine. As all other companies, foreign companies

Although the incorporated form is undoubtedly a very effective method of overseas marketing, it has not been frequently opted for in Palestine due to the political and economic instability in the country. Foreign manufacturers prefer marketing through non-risky channels such as distributors. Nonetheless, during the survey, we encountered a few cases of distribution through the incorporated form. For most of these cases, the incorporated company has its mother company in Jordan.

3.1.2. Commercial Agents

Fox discusses this relationship in the following manner:

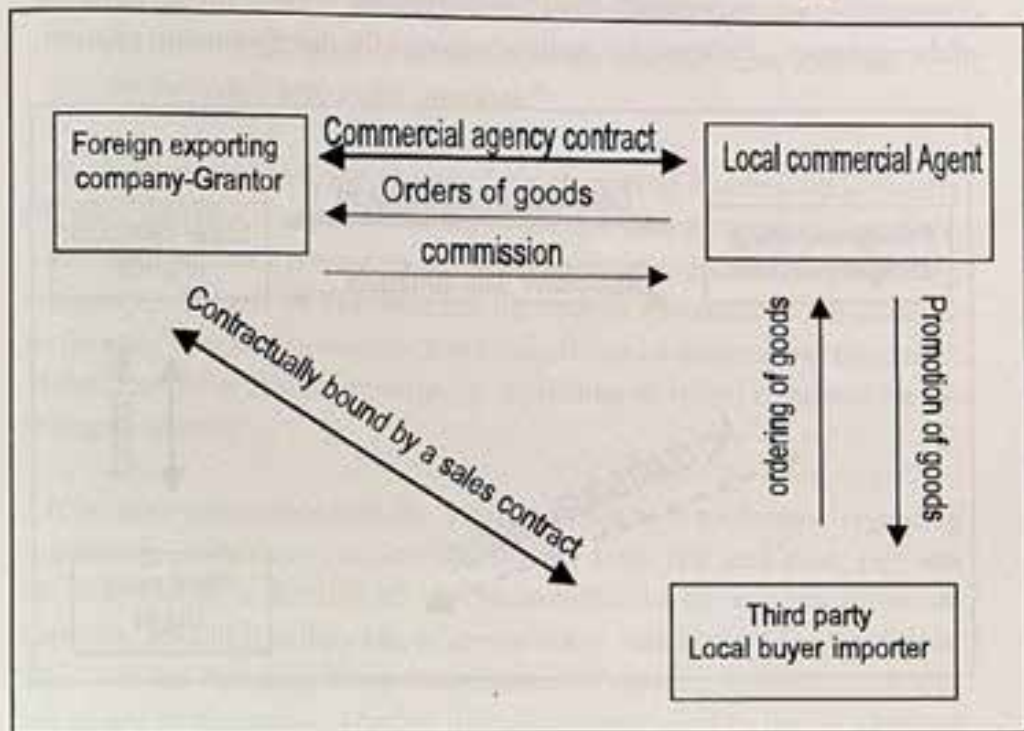
"An agent brings the product of the seller to the attention of potential purchasers by contacting potential customers, showing and demonstrating samples of the product and soliciting orders. However, the actual sales contract is executed directly between the seller and the purchaser. An agent is normally compensated for his/her efforts on a percentage commission for products actually sold. Often, the agent does not even see the product change hands and works on the basis of samples, models and printed specifications. The actual goods are shipped by the seller directly to the purchaser."⁷⁹ On the following page is an illustration of the commercial agency relation.

The choice of a commercial agent reflects the foreign company's will to diversify the risk of non-payment, as payment comes from different customers; of controlling the clientele base; of monitoring performance (more closely than for a distributor) and of controlling selling prices (as opposed to a distributor who sets his/her own prices). The choice also depends on the type of industry and goods sold. Where the goods are of a type that requires a presence in the territory for technical support and after sales service, and/or extensive and varied inventory, an agency operation is

must register with the Companies Registrar, file their Memorandum and Articles of Association and other relevant information required by the Companies Registrar. The relevant articles are: in the West Bank, article 38 for ordinary companies; articles 219-224 for stock companies. In the Gaza Strip, articles 70-71 for ordinary companies and article 248 for stock companies.

79. WILLIAM F. FOX, INTERNATIONAL COMMERCIAL AGREEMENTS 72 (2d ed. 1992).

not suitable, since, in most cases, the agent's commission will not be sufficient to fund the investment required. In Palestine, the recourse to this channel of distribution is theoretically possible, i.e. allowed by law.



3.1.3. Distributors

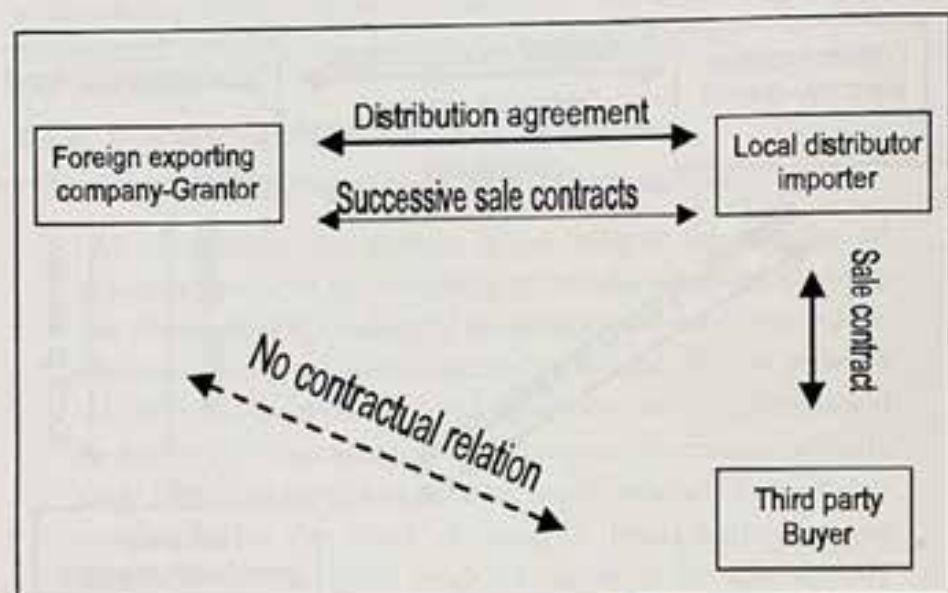
Fox defines distributorships as

"A distributorship, by contrast, is a commercial arrangement by which the distributor undertakes to sell the foreign company's product in the target country and takes as remuneration a profit on the goods sold, bearing virtually all the risks for obtaining products, selling those products and receiving payment from the ultimate purchasers. In this instance, the sales contract is between the distributor and the purchaser."⁸⁰

A distributorship agreement is not a contract of sale of specific goods. It lays down the general terms on which later individual successive contracts

80. Id.

of sale will be concluded. It is not merely a contract to conclude a contract, but an agreement, which is presently effective. Thus, even when individual sales are never concluded, the restrictive clauses, such as clauses of non-competition, are immediately effective and remain in force for the duration of the agreement. Following is an illustration of the distributorship relation.



As for the choice of this channel, it reflects the foreign company's will not to assume heavy responsibilities stemming from the fact that the distributor is an independent entity and the entire financial investment of putting up the showrooms is supported by him/her. Also, the distributor cannot hold the foreign company (grantor) liable except in very limited cases, mainly product defect.

This channel, as we shall see in the coming sections, is by far the channel the most used in Palestine.

It is important at this stage to note two clarifications. First, in business practice, the term "commercial agent" is often used to describe a variety of commercial representatives, e.g., a legal or commercial agent, an employee or a distributor. This is the case in Palestine where the two terms distributor and agent are used interchangeably in the commercial parlance.

Second, a distinction of the following:

- An importer is not necessarily a distributor;
- An international buyer-distributor is an importer;
- A commercial agent is not an importer; it is the client solicited by the agent who is the importer.⁸¹

As mentioned above, the choice of the channel of distribution is usually for the exporting company seeking to acquire foreign territorial markets. Thus, distribution agreements are concluded as a result of the exporting company's initiative. This was not the case in Palestine, as we shall see further on,⁸² the initiative came from Palestinian businesses, but the choice of the channel of distribution (of the marketing strategy) remained for the foreign company.

It is quite expectable that the foreign company's preference regarding marketing in Palestine is one bearing the least risk and cost, i.e. the appointment of a distributor. An examination of the entirety of the 40 contracts reveals that they are, in *strictu sensu*, distributorship agreements. This was the first step in our examination of these agreements, as it was necessary to determine whether the terminology used to the relationship between the foreign party and the Palestinian party reflected the reality of the obligations of the parties. The result is that despite the terminology used, the entirety of the agreements consisted of unquestionable distributorship contracts. The Palestinian party was in the entirety of the 40 contracts a buyer reseller bearing the obligations of a distributor in the proper legal sense of the term.

Thus, despite the reference to the term agent or/and commercial agent or agency within the stipulations of the agreements as well as in the titles of the agreements, the examination of the stipulations of the agreements indicates that this reference is either imprecise or inserted as a commercial

81. In fact, in most of the cases of agency, the agent does not take (physical) possession of the goods. See CLIVE M. SCHMITTHOFF, *THE LAW AND PRACTICE OF INTERNATIONAL TRADE* 261, 280 (1990). However, a combination of functions, agent and distributor is possible.

82. See the stage of obtaining distribution rights, Section 3.2.1.

term in the sense of commercial parlance. The entirety of the 40 contracts provides for the obligation of buying stocks of goods and acquiring the property thereupon, an obligation that is incumbent on a distributor not an agent. Furthermore, none of the 40 contracts provide for a commission, i.e. the remuneration of an agent.⁸³

3.2. The Agreements

We do not purport to provide a thorough examination of the 40 agreements. Instead, we will select clauses⁸⁴ reflecting, in our view, the most important stipulations that constitute the equilibrium of a contract.

A contract is unique; it is a balance of the parties' rights and obligations. The division of its clauses for examination will undoubtedly distort, to a certain extent, the picture given of this balance; hence we will try to minimize this effect as much as possible by attempting to give the counterpart obligations of the cited clauses. The selection of clauses will be made in accordance with the life span of a contract: the negotiation and conclusion of it; its performance and implementation; and its termination. We will differentiate between two types of clauses. First are clauses that reflect the balance of the contract - which is not necessarily a just one, it is the parties' balance- in order to situate the Palestinian party within this balance. In general, in the balance of distributorship agreements the stronger party is more likely to be the principal/grantor. Second are clauses that we estimate to be abusive and having the potential of violating mandatory rules of the place of performance of the contract. Mandatory rules should be applied regardless of the jurisdiction seized and regardless of the law designated applicable to the contract and are normally determined by the judge. In the Palestinian territories there is a legal vacuum concerning the determination of mandatory rules; jurisprudence determining mandatory rules is yet to be established. Thus, the analysis undertaken here remains speculative with

83. As mentioned above, since we do not consider this sample to be representative of distribution agreements in Palestine, we do not by this study state that there are no Palestinian international commercial agents established in Palestine.

84. In the selected clauses, the foreign exporter will be referred to as grantor; the distributor will be referred to as distributor or grantee.

regard to clauses violating the inconclusive mandatory rules that we attempted to determine by measurement and comparative law. Also, we will refer to cases of imprecision of drafting that render the clauses in question subject to conflicting or various interpretations.

In the following paragraphs we will proceed in examining the selected clauses according to the life span of a contract. For this purpose, a rapid survey of international practice regarding each clause will be given when pertinent to allow a comparative outlook.

3.2.1. Obtaining Distribution Rights

The focus will be on companies having recently⁸⁵ obtained distributorship rights. The Ministry of Economy and Trade campaign of encouraging Palestinian businesses to seek distribution rights and establish successful confidence-building foreign trade relations obtained relatively favorable responses. Palestinian businesses had to gain the trust of foreign companies, to convince them of the reality of an existence of a Palestinian consumer market. Moreover, they had to fight off their Israeli opponents; i.e. the distributors who were, and partly still are, contractually bound with the foreign company, and who would suffer the loss of the Palestinian market if the foreign company were to appoint a Palestinian distributor.

The success of Palestinian businesses in concluding distribution agreements may be classified as follows:

1. Palestinian companies that succeed in obtaining distribution rights due to the shareholders commercial relations with the foreign exporting company abroad such as Palestinian businesses of the Diaspora who beforehand enjoyed fruitful international business relations and who decided to put these relations in the service of the Palestinian market.⁸⁶
2. Certain companies are able to re-establish old business relations, as they were the distributors before the Israeli occupation. There are

85. During empirical work, we have encountered a few companies who were representatives of foreign manufacturers prior to the arrival of the PNA.

86. According to several small and medium size companies, this takeover by these Palestinian business tycoons of the Diaspora had the adverse effect of driving them out of business.

several examples of this category, one cited in a recent interview with businessmen published in the *Palestinian Executive Magazine*⁸⁷ concerning the obtaining of the internationally renown trade marketed-product CHICCO by a company that was an agent for several international companies until the 1967 war. This is also the case of Contract no. 8. Translated excerpts of the fax sent by the management of this company in response to our study are provided:

"The relation between (us) and the (exporting mother company) goes back for more than 50 years. We started as an agent for Lebanon, then Syria, then Jordan and the West Bank was at that time under Jordanian rule. ...We started thinking about forming our company with the advent of the peace process in 1994 and were encouraged by the exporting company. The main difficulties lied in the applicable laws, and with the study of market needs.

The Israeli agent tried approaching individuals from the West Bank, also the Egyptian agent tried approaching individuals in Gaza, both wanting to safeguard their interests. But we stood firm in our right to represent the whole of Palestine directly, and we succeeded after presenting the results of our market study that lasted 18 months to the exporting company who was very impressed. We were far more prepared in our presentation than the Israeli agent and presented very convincing arguments such as the difficulty for the Israeli agent to accomplish sales or perform maintenance services in the Palestinian territory."

3. Other companies succeed due to family relations. Members of their family were distributors for the same goods in neighboring Arab countries and helped them establish contacts with the foreign partner.
4. Also some companies are able to establish direct contacts with the foreign company after being, for a long time, the link to the Palestinian market, a sub-distributor of the Israeli distributor-importer.

87. In issue no. 2, 1999, at 18.

5. A few companies simply resort to formalizing their successful business relation (some of which started prior to the Peace Process) with a certain foreign exporter by concluding a written agreement granting them distribution rights. This is the case of Contract no. 24: "After the healthy business relationship between the two parties above for over five years, they both realized that it is to their mutual benefit to come up with the following agreement."

3.2.2. The Conclusion of the Contract

The conclusion of the contract is based on clauses relating to the appointment of the distributor. These clauses pertain to three interrelated elements: *Intuitu personae* (personal consideration); exclusivity; and the delimitation and qualification of the legal relationship by the exclusion of other legal relationships.

3.2.2.1. *Intuitu Personae*

This clause emphasizes the personal consideration of the distributor; the justifications for which he/she was chosen such as his/her capabilities. This personal consideration denotes that the contractual relationship is absolutely restricted to the distributor who cannot assign the contract or appoint sub-distributors unless allowed by the grantor. It is an inherent stipulation to the appointment of a distributor. The personal choice of the distributor by the grantor implicitly involves that all obligations contained in the contract should be performed personally by the chosen distributor, unless he/she obtains the consent of grantor to appoint sub-distributors or to assign the contract. The following selected clauses accede to international practices concerning clauses of personal consideration:

Contract no. 5: "The distributor represents that he has the means, knowledge, experience and economic and technical ability (including, but not limited to, storage facilities, loading equipment and means of transport) to act as a salesperson for grantor in the Territory and is able to purchase and supply to the customers the entire amount of Products which may be ordered by the customers without delay and immediately after supply of the Products to distributor by grantor.

Additionally, the distributor acknowledges and represents that the representation made above is a fundamental material condition for the

inducement of grantor to enter into this Agreement, and if distributor breaches any of the above representations, grantor may, at its option, terminate this Agreement immediately and without prior notice to the distributor."

The above clause justifies the grantor's subjective choice of the distributor. It reflects the confidence the grantor places in the distributor with regards to how this latter person presents him/herself and makes of this confidence in the distributor's aptitude a condition subsequent.⁸⁸ It is an important clause for the grantor who somehow looks upon the conclusion of a distribution contract with a Palestinian party as a risky operation. This risk is not necessarily a financial risk, as he/she will try to protect him/herself as much as possible in the contract. The matters at risk could be the grantor's brand name, or yet the cost of having to manage another distributorship agreement for a small market, such as, the Palestinian territories market, that was successfully covered by the Israeli distributor. Furthermore, we can see the inexact wording contained in this clause "to act as a salesperson" which gives the allusion of a commercial agency contract or an employee salesperson.

Contract no. 9: "The primary responsibility of the agent/distributor is to promote sales of the Product in the Territory. Such sales may be made either directly by the Agent/distributor's own employees or by independent entities, referred to as Sub-distributor to be engaged under terms and conditions that conform to the same obligations and limitations of the Agent/Distribution Agreement. The responsibility for appointing Sub-Distributors shall be the duty of the Agent/distributor, but if the Manufacturer reasonable believes that the appointment of any person(s), company(ies), affiliate(s), etc., as Sub-distributor is prejudicial to the commercial interest of the Manufacturer, and so advises the Agent/distributor, the Agent/distributor shall refrain from appointing such Sub-distributor from engaging such person(s), company(ies), affiliate(s), etc., until and/or unless the Agent/distributor shall have obtained the consent of the Manufacturer to such engagement. Manufacturer will be copied by Agent/distributor of any correspondence regarding the final decision."

88. A condition subsequent is a condition referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

The clause above is intended to provide for the various forms of sub-distribution to which the distributor can resort. Nevertheless, the drafting of the clause is imprecise as to whether grantor should be informed prior to the appointment of sub-distributors or after such appointment. This could be beneficial for the Palestinian party in case of default by the sub-distributor.

3.2.2.2. Clauses Related to Exclusivity

Exclusivity clauses fall under the exclusivity of appointment, for which the specification of both the territory and product of the exclusivity is necessarily adjoined. In general, a distributor is not prepared to assume the risk and investment in making a market unless he/she is safeguarded from either the principal or competing distributors or both, taking advantage of his/her marketing activities, and taking away from the distributor sales of the products for which he/she has created the demand by his/her own efforts. Exclusivity of appointment entails subsequently the designation of the territory upon which, and the designation of the products on which, the distributor will enjoy exclusivity. Apart from the European Union, most areas of the world have no special legislation relating to exclusive as opposed to non-exclusive distributorships.

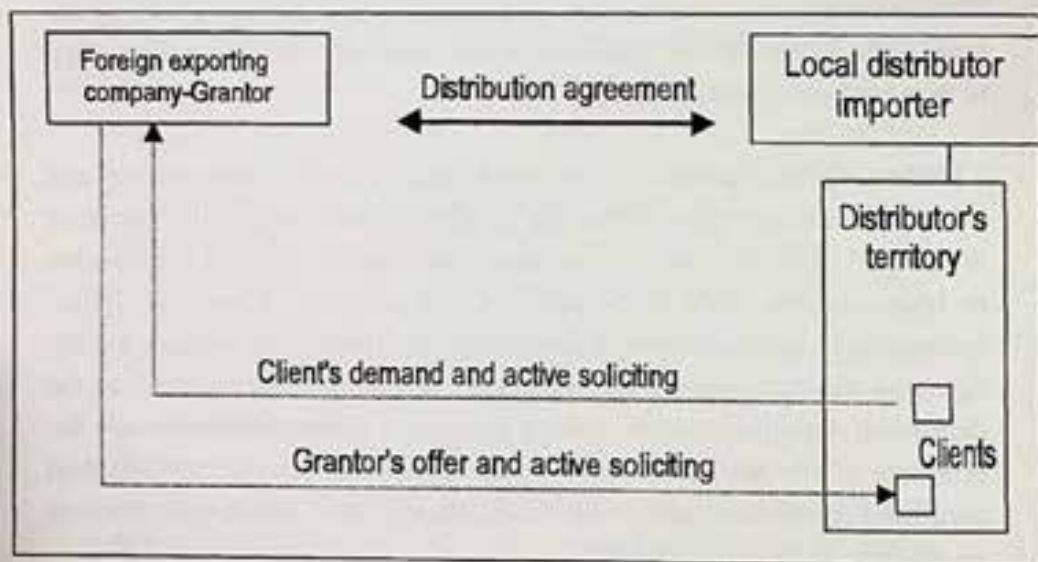
Exclusivity arrangements vary considerably. Usually, they concern sole buying and selling rights, direct sales, and prohibition of parallel import or non-export. The alteration of these provisions renders exclusivity permeable or impermeable, open or closed, and one sided or reciprocal. Thus, exclusivity is reciprocal when establishing sole selling rights and sole buying rights by which the grantor undertakes not to supply anyone other than the distributor with the products, and the distributor undertakes to sell only the products of the grantor. This type of exclusivity is carefully weighed regarding competition law in the US and the EU, as it should not constitute an obstacle to fair competition.⁸⁹

The distributor's exclusivity is permeable or impermeable regarding direct sales and parallel imports. Direct sales are sales to buyers within the distributor's territorial exclusivity by the grantor. The contractual treatment

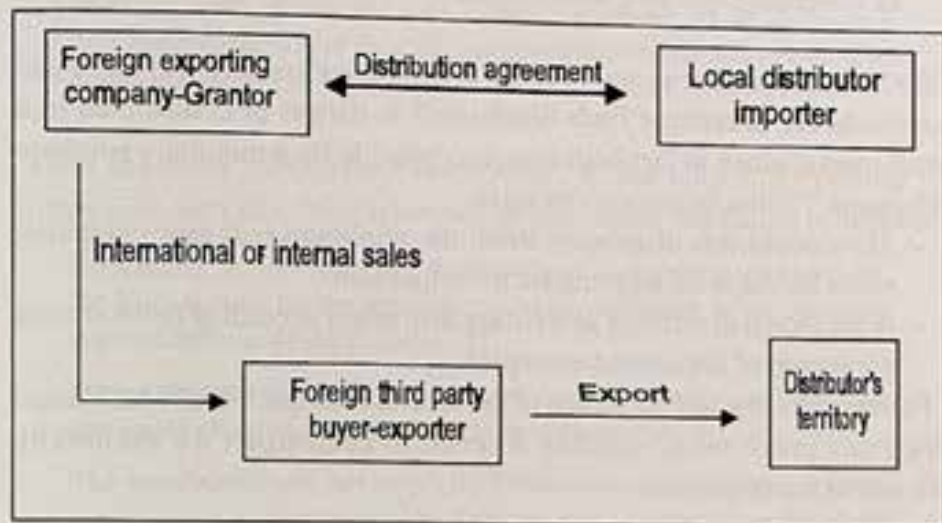
89. This, in our opinion is a matter that Palestinian policy makers should carefully look into in the coming future.

of direct sales may differ with regards to the initiator of the sales operation: the initiative may come from the buyer (demand, passive receiving), or from the grantor (offer, active soliciting). As for parallel imports, these are the operations by which a tierce party procures and/or buys the products covered by the distributor's exclusivity from outside the distributor's exclusive territory and then sells them in this same territory. Thus clauses of prohibition of parallel imports or clauses of non-export are clauses by which the grantor commits himself/herself not to sell to buyers outside the distributor's territory who have the intention to export to this territory. This contractual prohibition of parallel imports is not acceptable within the European Union's countries as it contravenes the Union's competition laws; the grantor cannot be prevented from benefiting from such a stipulation. Following are illustrations on direct sales and parallel imports:

Direct sales:



Parallel imports:



The distributor's exclusivity is also open or closed with regards to the contractual set-up concerning how he/she should respond to orders from outside his/her territory. It is open when the distributor is not restricted to selling in his/her territory. It is closed when the distributor is limited to selling in his/her territory. This could contractually include unsolicited orders. Below we will review examples of clauses of appointment of distributors, following which we will provide a cursory summary of clauses of territory. As for products, these could either be the integrity of the grantor's products or parts of them.

3.2.2.2.1. Exclusive, Non-exclusive Appointment Clauses

Contract no. 16: "The object of the present contract is for grantor to grant the distributor the right to import and sell to the end user the Product, supplied by grantor, ... it being specified that grantor reserves the right to appoint at any time any other importer and/or distributor of its choice for the zone designated above."

Contract no. 23: "Grantor hereby agrees that the distributor shall act as non-exclusive distributor for the Contract Products in the Territory.

Grantor expressly reserves the right to continue deliveries to existing distributors or customers in the Territory or to appoint new distributors in the Territory. In the latter case, grantor will inform the distributor hereof on beforehand.

During the term of this agreement the distributor shall not without the prior written consent of grantor manufacture or sell or be interested in the manufacture or sale of products of third parties which grantor considers to be competitive with the Contract Products.”

Both clauses present a good example of the parties’ balance. A Palestinian non-exclusive distributor finds him/herself in danger of competition in a small market when in fact both contracts provide for a minimum purchase obligation.⁹⁰ Thus, two questions arise:

- How could this distributor attain the minimum purchase obligation when he/she is undergoing such competition?
- Is the Israeli distributor an existing distributor according to the second paragraph of the second example?

Furthermore, the last paragraph of the second example is really far fetched since this provision is normally inserted to counterpart the exclusivity granted to the distributor.

Further examples follow:

Contract no. 18: “Subject to the terms and conditions of this Agreement and for the effective term hereof, grantor hereby appoints distributor, and distributor hereby accepts appointment by grantor as exclusive/non-exclusive distributor for the sale of grantor Products in the Territory. Distributor hereby acknowledges that it hereby irrevocably waives any claims against, and therefore shall not object to, the establishment and operation of grantor subsidiary to be located in the regional area designated by grantor wherein the Territory is located which will carry out the importation and coordinating the distribution of grantor Products in said regional area in order to more effectively market grantor Products in said regional area.”

By this clause, distributor accepts unconditionally that grantor puts up a subsidiary in the regional area wherein the territory is located. Thus, grantor may put up the subsidiary for the importation and co-ordination of his/her distribution network in Palestine. The drafting “importation and co-ordination” may not necessarily include the opening of selling showrooms,

90. See Section 3.2.3.2.

but the drafting of exclusive/non-exclusive seems to leave the possibility of direct sale in the territory by the subsidiary.

Contract no. 21: "We hereby certify that Grantee Co. LTD., Jerusalem, Palestine, shall, during the term of this Certificate, be an authorized distributor in Palestine of the undermentioned items which will be available during the period."

Here the term "authorized distributor" is the least constraining of distribution contracts. No exclusivity or purchasing obligation is imposed.

Contract no. 9: "Subject to the terms and conditions hereinafter set forth, the Manufacturer hereby appoints the Agent/distributor as the exclusive Agent/distributor of the Products ...

During the term of this Agreement....the Agent/distributor shall purchase any and/or all products exclusively from the manufacturer.

The manufacturer will not supply the Product to any other person or entity having commercial interest in the Territory now or in the future during the term of this Agreement except the Agent/distributor. Any and all inquiries from the territory shall be forwarded immediately to the Agent/distributor."

In this example, the contract clearly indicates a distributorship agreement (provisions regarding minimum purchase obligation and title to goods) and not a mixed agency and distribution agreement. Here the exclusivity is both ways: the grantor's obligation of exclusive sale to distributor, and the distributor's obligation of exclusive purchase from grantor, in addition to grantor's refraining even from direct sales by him/her as he/she obligates him/herself to forward all inquiries to the distributor. It is a good example of a strong position of the Palestinian party.

Contract no. 4: "Grantee is the only importer from grantor and agent for Palestine Market.

Grantee accept that grantor can sell directly to the old customers of grantor: X, Y, Z (in Israel).

Grantor agree that from this date he/she will not accept or load any orders for any customers Arab or Jewish people in Israel or Palestine Market except the three customers mentioned above."

Once again, there is confusion as to the use of the terms "agent and importer." The Palestinian party is clearly a distributor-importer. Paragraphs 2 and 3 of this example stipulate that the grantor will not sell to any "Arab or Jewish people in Israel" except for X, Y and Z. Thus, the question to raise is the following: does this stipulation enlarge distributor's territory from the "Palestine market" to the Palestinian and Israeli market except for X, Y and Z who are placed in Haifa and Tel Aviv? In other terms, could this clause be interpreted to mean that the Palestinian party is the exclusive distributor for Palestine and Israel except for Haifa and Tel-Aviv, thus mandating that X, Y and Z do not have the right to sell outside Haifa and Tel Aviv?⁹¹

Contract no. 17: "The distributor may accept unsolicited orders for the Products listed in Annex 'A' from outside the Territory but will not actively solicit such orders and will not advertise the Products or establish any branch or maintain any distribution depot for the Products outside the Territory.

Grantor may sell to customers outside the Territory even if they (grantor) are aware that they will export the Products into the Territory but will not actively solicit such sales with the intention of circumventing the distributor's exclusivity."

Contract no. 25: "Grantor undertakes the obligation to prohibit any direct or indirect selling which are suspected of importing its products to the Territory."

These are good examples regarding direct sales. The first two clauses provide for the treatment of cases of active soliciting of customers and passive receiving of customers' orders for both distributor and grantor. In the second paragraph,⁹² distributor's exclusivity is affected by the possibility for grantor to sell to non actively solicited customers outside the territory while being aware of the possibility of export into the territory by these customers. This, being acceptable in international practice, is not quite a negative stipulation as to the Palestinian party; nonetheless, the difficulty lies in proving the positive soliciting actions and intentions of the grantor. In other words how should the sale by grantor to the Israeli distributor be regarded?

91. In fact, according to an interview of the Palestinian party here, this later presented itself as distributor for Israel also, but we do not know how this could be in combination with the pledge Palestinian importers have to sign, mentioned earlier.

92. There seems to be an error, or at least an ambiguous drafting, the first they refers to grantor.

Contract no. 24: "The first party (grantor) will sell only to the second party (Grantee) unless the special authorize by the second party."

This is an example of weak language. The grantor commits him/herself to sell to other than the grantee only if the latter authorizes the sale. The Palestinian party is therefore in a good position.

Contract no. 10: "Also outside the territory distributor shall refrain from accepting assignments as distributor, dealer, commissioner or agent for any third party who manufactures or sells identical or similar products. Exceptions from this provision are subject to the written consent of Manufacturer.

Active marketing outside the agreed territory is prohibited: distributor shall not be engaged in active marketing of products listed in part — towards customers whose place of business or (in the absence of place of business) or residence is located outside the agreed territory. Information of all inquiries received by distributor from customers outside the territory shall be conveyed to manufacturer.

All orders received by Manufacturer from customers within the territory shall be passed to distributor.

Manufacturer shall place his/her other distributors under obligations corresponding to distributor's obligations as set forth in this agreement."

This example also details the treatment of orders of customers outside the territory. The last sentence of the second paragraph obligates distributor to convey all inquiries to manufacturer, which would also include unsolicited orders from customers outside the territory. The last paragraph is undoubtedly in favour of the Palestinian party as it places him/her on equal grounds regarding obligations as other distributors, namely the Israeli distributor. The first paragraph extends the non-competition requirement to outside the exclusive territory.

Contract no. 15: "Grantor appoints the distributor as its sole distributor.... Grantor reserves the right to sell any of the products direct to any person in the territory under an international agreement entered into by grantor and also to sell direct to the government, or any government controlled agency or corporation in the Territory."

This clause obviously places the Palestinian party in a rather exposed position. Thus, any transaction by which any person in the territory imports from grantor is considered to be an international agreement. In addition, this clause gives the right to grantor to enter into any governmental invitation to bid thereby abating the distributor's exclusivity.

Contract no. 33: "The grantor must be obligated not to market any kind of his/her products in another trademark or motto in Gaza Strip and West Bank."

This is a sharp stipulation in favor of distributor.

3.2.2.2.2. Territory Clauses

Territory clauses accompany exclusivity clauses. Where a non-exclusive distributor is appointed, the specification of a territory becomes dispensable. In the international practice of distribution agreements, as the recourse to exclusivity is rather common, the specification of an exclusive territory becomes indispensable; some countries such as France make of the element of territory a condition *sine qua non* to the qualification of an exclusive distribution contract. The contract should provide for a precise definition of the geographical territory.

In Palestine, agency rights should cover the entire areas of the Palestinian National Authority (West Bank and the Gaza Strip),⁹³ the contractual division of the unity of the West Bank and Gaza is unacceptable.

There is a variety of appellations that figure in the table figuring in annex 7, all designate more or less the West Bank and Gaza. Nevertheless, a few questions arise as to some cases:

The case of "Autonomy areas of the PNA, with future changements." This stipulation is provided, according to the spirit of the agreement in question, in view of positive change. What happens if the peace process fails and the Israeli army re-occupies the West Bank? Will the territory at that moment be reduced to the Gaza Strip? (Indeed, the same question could be raised regarding the advent of the peace process and the recognition of the autonomy of Palestinian Territories and the case of an Israeli distributor

93. See chapter 2.

whose exclusivity covered Israel and the Occupied Territories. But, as discussed further above, this remains basically a matter of contractual negotiation).

The case of "Palestine market" could be understood to mean more than the West Bank and the Gaza Strip. The distributor may be inclined to interpret this clause as allowing him to distribute in Palestinian markets within the green line, for example, non-Jewish markets of Arab towns and villages in Israel.

A case designating the territory as being the WBGS, Palestine, Jordan, Iraq and Egypt in which the Palestinian Agent/distributor is appointed in the same instrument as agent/distributor in Palestine as well as in the other mentioned states. This form of appointment "requires some nomineehip arrangements in the agreement so as to comply with the rules regarding the nationality of the agent/distributor and of the corporate vehicle carrying out commercial agency/distributorship activities, it being subject to restrictions and limitations operating in most of the legal systems operating in the Arab Middle East which require that their own nationals and locally incorporated companies be appointed as agent/distributor, and be directly connected with the principal manufacturer."⁹⁴

One case concerns a situation where the Palestinian distributor enters into an agreement with the Israeli distributor for the purposes of determining respective distributorship territories. The preamble of the agreement states:

Contract no. 23: "As both parties (Israeli distributor and Palestinian distributor) are willing to specify the territories of their business activities for grantor's contract products, in West Bank and Gaza Strip,..."

The parties to this agreement enumerate the territories in great detail while referring to "Oslo Agreement, ... and there after all other agreements came or will come." Article 4 states:

94. See SAMIR SALEH, *COMMERCIAL AGENCY AND DISTRIBUTORSHIP IN THE ARAB MIDDLE EAST* 4-8 (1995).

"Although we do here specify the territories (in Appendix 1), both parties agreed that this agreement should comply with the PNA regulations, where and as stated in Oslo II Agreement (Between PNA and Israel) -all civilian authorities in Gaza Strip and the West Bank has been controlled by the PNA-, therefore the (Palestinian distributor) will be authorized to continue his/her business activities all over West Bank and Gaza Strip in those areas which are populated with Palestinian people, but within the terms stated in this agreement and as grantor agreement with Palestinian distributor specifies."

Concerning East Jerusalem and Area C a Palestinian distributor will be able to conduct business in East Jerusalem; and the Israeli distributor will only be able to do business in the Israeli settlements in Area C.

In our opinion, there was no need for detailing Areas A, B, and C. The mention of the West Bank and Gaza Strip is sufficient. Nevertheless, one benefit comes out of this agreement: the signature and commitment of the Israeli distributor acquiescing to the terms of the agreement. This is not the case of most Israeli distributors who do not approve of the appointment of a Palestinian distributor and act accordingly by transgressing his/her territory.

3.2.2.3. The Exclusion of Other Legal Relationships

This is the parties' intention (specifically the grantor) to include, beyond doubt, a clause of no agency or partnership or any such stipulation by which they affirm their total independence with regards to each other and to third parties. This is common practice in distributorship agreements, and through it the fact that the overseas importer acts as buyer and not as agent of the seller is reaffirmed. Examples of clauses follow:

Contract no. 23: "The distributor shall be deemed to be an independent contractor and shall, save as may be provided herein meet all its expenses in connection therewith, and nothing in this agreement is to be construed as giving the distributor the right to commit grantor or to act as the legal representative of grantor."

Contract no. 1: "Nothing in this agreement can be construed as creating any form of partnership, agency, subsidiary or any other such relationship. The sole relationship created by virtue of this agreement is that of vendor of certain specified equipment, for the account of the distributor, in which the distributor is granted the right to resell equipment supplied to it by grantor, on behalf of the distributor."

By these clauses, the parties intend to avoid problems of ostensible authority regarding third parties. Thus, they reaffirm their independence. As we have mentioned earlier, the entirety of the agreements consist of distribution agreements despite the terminology used, and several agreements contain such clauses. Nevertheless, it is important to point that the insertion of such clauses does not necessarily rule out a requalification of the parties' relation according to the stipulations of the contract and the interpretation made thereof by a judge.

Another important element pertaining to the conclusion of the contract is the setting of the price, also an important element of negotiation. Articles 237 and 238 of the *Majallah*-equivalent to the Civil Code-in force in the West Bank and the Gaza Strip require the setting of the price as a condition of validity of a sale contract. However, a distribution contract is not a sale contract but a contract organizing successive future sales. Thus, the following question arises: do these articles apply to distribution contracts that do not determine the price whether by referring to the general conditions of sale or not? Below are examples of clauses where the price is neither determined nor determinable.

Contract no. 1: "Grantor shall supply the distributor with grantor's grantor products at competitive prices, if such prices are obtained by grantor from grantor's grantor.

Such prices shall be agreed upon at the time of making such orders." (Here grantor is the distributor of another grantor).

3.2.3. The Performance of the Contract

The performance of a distribution contract consists of a multitude of obligations between the distributor and the grantor. We will not review all

of the distributor's and grantor's obligations, which would simply require a separate study. Instead we will review the most essential ones: all clauses relative to the title of goods, the minimum purchase and sales quota obligation, and guarantees and liabilities. In addition, we will review Force Majeure clauses since they affect the performance of the contract.

3.2.3.1. Clauses Relating to Title to Goods

In general, concerning the issue of transfer of property, international distribution contracts refer to the seller's/grantor's general conditions of sale. At times, the contract itself provides for this issue and in case of conflict between the general conditions of sale and the distribution contract, the latter usually prevails. The most important contractual arrangement the parties to an international distribution agreement could opt for regarding title to goods is a clause of reservation of title. A clause of reservation of title is a clause by which the seller chooses to defer the moment of transfer of property that occurs the moment the sales contract is formed- and conditions it to the full payment by the buyer of the agreed price. Its effectiveness depends on the law applicable in the country where the goods are situated. This clause is effective in Palestine and is frequently inserted in the examined contracts.

Another issue related to the delivery of and the transfer of title to goods is the risk of loss. In international practice of distribution agreements, the parties have the possibility of regulating the risk of loss of the transported goods and the insurance contracted thereto by the ICC Incoterms. Below are examples of clauses pertaining to title to goods and risk of loss:

Contract no. 1: "Title to products in each order shall pass to the distributor only after full and complete payment for such order is made and received by grantor."

Contract no. 18: "All title and risk of loss of grantor Products sold hereunder shall pass to distributor at such time as they shall have effectively passed the ship's rail at any — port of shipment.

In the event of delivery being made for any reasons before the full price has been paid. Grantor's Products supplied shall be deemed to be grantor's property between the parties hereto until full payment has been received

by grantor from distributor. Distributor shall insure grantor Products against fire, burglary, third party liability risks and damages to grantor Products in such a manner that the rights resulting from the insurance agreements vested in grantor until grantor has received the balance due to grantor. The policies as well as the receipts for the premiums paid must be immediately produced to grantor on request. Distributor further agrees to defend and indemnify grantor against any claims, actions lawsuits, proceedings, penalties, damages, expenses, or other cost in connection with grantor's Products the full price of which has not been paid by distributor.

If payment is not made on the date or dates agreed upon, grantor shall be entitled to regain possession of any grantor Products supplied and to refuse to deliver further grantor Products to distributor until grantor's claim has been fully satisfied.

So long as grantor is deemed to retain ownership to grantor Products, distributor shall not alienate, pledge or transfer ownership thereto by way of security to any creditor or otherwise, unless distributor obtains grantor's prior written consent. In the event of any contravention of this provision, an amount equaling twice amount of the balance of the price then outstanding shall be payable by distributor as liquidated damages."

In international practice, the seller's resoluteness to ensure payment is quite apparent, but it is yet more discernible in the examples above due to the grantor's fear of the country's instability.

Contract no. 5: "The consideration shall be paid by distributor to grantor according to the credit terms of "Shotef plus 45 days". [payment shall be due to grantor 45 days after the last day of the calendar month in which the Products were delivered to the distributor].

As a condition to the supply of products to the distributor, the distributor shall provide to grantor a bank guarantee of a sum no less than ... issued by a recognised IsraelBank or by another bank, if grantor's bank authorises the credibility of the other bank guarantee, to secure the payments the distributor will owe to grantor from time to time. The amount of the guarantee will be adjusted from time to time in the sole discretion of grantor and in relation to the amount of credit given to the distributor.

The providing of the Security to grantor is a fundamental and material condition to the validity of this agreement."

This example of contract no. 5 utilizes another way of securing payment through a bank guarantee. It was used in two contracts, both of which were concluded with Israeli grantors. The difference with the clauses above is that the distributor enjoys a few weeks' credit, but of course has to secure payment through a bank guarantee.

3.2.3.2. The Requirement of Minimum Purchase or Sales Quota

A minimum purchase level is a minimum amount of goods the buyer-distributor is obliged to meet within a certain period of time. A minimum sales quota is a minimum amount of sales the seller-distributor has to achieve within a certain period of time. Generally, it is easier to monitor the achievement of a minimum purchase level than a minimum sales quota, but a minimum sales quota reflects more the reality of the distributor's situation, who might be piling up his/her stock and thus respecting his/her minimum purchase obligation. The recourse to such clauses of minimum purchase or minimum sales separately or jointly is quite frequent in international practice. It is the logical counterpart of the distributor's exclusivity, otherwise the grantor would appoint simply authorized (non-exclusive) dealers without imposing any minimum purchase or sales quotas. The drafting of these clauses varies in rigidity; the non-attainment of the quotas imposed can give the grantor the right to terminate the agreement if such a provision is included in the contract. Both types of clauses are included in the agreements examined. They are sometimes included even when the distributor is non-exclusive. Here are some examples:

Contract no. 23: "The minimum purchase level shall not be construed nor interpreted as a firm purchase order but as a common objective of both parties which justifies to continue the co-operation hereunder." [Here the distributor is non-exclusive].

Contract no. 10: "This agreement is based on the following sales achievements by the distributor: ... Should the distributor have failed to achieve the minimum sales, the manufacturer may terminate the agreement with immediate effect." [Here the distributor is exclusive].

Contract no. 18: "distributor agrees to purchase at least the following units mutually agreed by the parties If distributor fails to comply with 80% of the foregoing minimum purchase requirement for a period of two consecutive years, grantor is entitled to terminate this Agreement pursuant to section —.

Distributor agrees that in order to retain the distribution right for grantor Products in the Territory..., it will undertake endeavor to sell the sales quotas... . In the event that the sales quotas ...are not met," [Here the distributor is exclusive/non-exclusive].

The clause below uses net turnover as a condition to the agreement, but the drafting of the clause is imprecise. The wording of the clause should not be if the following prerequisites are met, but as long as the prerequisites are met. In other terms, the condition of achievement of net turnovers is a condition subsequent and not a condition precedent.

Contract no. 21: "This agreement shall be in force if the following prerequisites of net turnover amounts are met each year.

This agreement shall be in force up to the year 2000. grantor products can also be sold in Iraq, Jordan and Egypt. In case the aforesaid turnover is not reached, the grantor may give 30 days notice of cancellation, and if grantor does not meet its obligations, Grantee has the right to premature cancellation."

Concerning sales by distributor, we came upon an interesting clause according to which the grantor imposes a maximum price of resale.

Contract no. 15: "The distributor agrees that it will not sell any of the products at a greater profit margin than 33.3% over the landed cost to the distributor of the products."

The effectiveness of this clause depends on the law of the distributor's country. In general, it is logically acceptable that the grantor imposes a minimum price of resale, as he/she would want to maintain the brand name and image of his/her products at a certain level. On the other hand, the imposition of a maximum price of resale has been, in certain countries, interpreted as distorting the independence relation that should exist between the grantor and the distributor leading to a requalification of this relationship into an agency. In Palestine, both legislation and caselaw are absent with this regard.

3.2.3.3. Clauses Relating to Warranty and Liability with Regard to Third Parties

It is frequent that a distributorship agreement contains a warranty clause whereby the products are warranted against defects in materials and workmanship.

"These clauses very often exclude any implied warranty of merchantability or fitness for a particular purpose and state that the liability of the manufacturer, which is limited to the replacement or repair of the defective products, does not extend to indirect damage (e.g. consequential loss or loss of profits). In addition, these clauses may include a short limitation period by submitting a claim for defective materials or workmanship."⁹⁵

It is in this part that the interests of a third non-professional party, the consumer, are at stake and that it is most likely to encounter abusive clauses. Here also, there is a legal void, as no caselaw exists in Palestine with regard to consumer protection. Following are some examples of clauses:

Contract no. 1: "The distributor shall give such warranties and guarantees to the buyers of the equipment as are necessary for the proper handling of such equipment, or as requested by grantor from time to time in line with the requirements of grantor's grantor. (Here grantor is the distributor of another grantor).

Nothing in this agreement or in any sales contract, or in any relationship existing by virtue of this agreement or the transactions relate thereto shall be construed as creating any direct or indirect relationship between grantor and any third parties, other than provided herein. Grantor disclaims any responsibility or liability towards any third party, howsoever arising, including but not limited to, any such liability to the customers, buyers, employees, etc... including, but not limited to, liability for injury or death, loss of life or limb, loss of profit or business, costs, damages, or any other liability whatsoever."

Contract no. 23: "In no event shall grantor be liable for any incidental or consequential damages of any kind or for loss of profit and distributor shall hold grantor harmless from any respective claims of third parties.

95. *Id.* at 4-16.

Grantor shall not be liable for any damage or injury occurring to persons or property or the environment by the transport, storage, handling, use or disposal of the Contract Products or parts thereof or waste generated by the Contract Products, irrespective whether respective instructions or recommendations furnished by grantor have been complied with and distributor will hold grantor harmless against respective claims of third parties."

All of the above clauses are undoubtedly abusive clauses that are most probably liable to be rendered ineffective by a Palestinian judge following a lawsuit filed by a damaged Palestinian consumer. Furthermore, in the legislation and caselaw of several countries, direct action⁹⁶ cannot be contractually forbidden with regards to consumer protection.

Concerning liabilities to fiscal charges, the clause below is also wide in scope. There are no reasons for the grantor to be appointed taxpayer in the assigned territory since he/she is an independent contractor, not a partner of the distributor. Furthermore, a fiscal charge cannot be assigned.

Contract no. 23: "All rates and taxes, which are or may be levied by the authorities of the Territory on amounts to be paid by the distributor to grantor are for the account of the distributor, also in the event that by the law in question or by legal measures grantor would be appointed taxpayer."

3.2.3.4. Clauses of Force Majeure

Force majeure is the occurring of an unexpected event, not attributable to any of the contracting parties that temporarily exonerates them from their obligations, suspends the contract or leads to its termination. Clauses of *force majeure* are of systematic use in international practice. Their drafting should be precise and wholesome, especially concerning the organization of the contractual relations during and after the *force majeure* event. They are of importance when it comes to a contract to be performed in Palestine due to the country's instability, and the on and off closures imposed by Israel. They provide a very legitimate and legal justification enabling the

96. Direct action is an action that can be filed by third parties within a chain of contracts. For example, party C to a contract with B can file suit against party A who holds a contract with B.

distributor to be temporarily relieved with regards to certain obligations, such as the distributor's obligation of minimum purchase or sales quotas. Below are some examples:

Contract no. 23: "If the performance of any obligations (other than the payment of money when due) under this agreement is delayed or prevented by reason of any event or circumstance beyond the control or risk of any of the parties and which is by law, act in law or generally prevailing opinion not attributable to the party liable to carry out such obligation, such party shall be excused from the performance thereof, while and to the extent such party is delayed or prevented from performing by reason of any such event. Such events include in any case war, labor disruption, disputes, or strikes, fire, flood, riots, civil disobedience and acts of God."

This clause excludes the obligation of "payment of money when due" from the effect of suspension resulting from events of *force majeure*. This exclusion goes against the concept of *force majeure* and is, in our opinion, abusive. It puts the Palestinian party distributor in a difficult position. Presuming that the obligation of payment of the price of the goods is due on the 15th of the month for a shipment leaving on the 30th of the month, and an event of force majeure occurs on the 10th; the distributor would, according to this clause, still be obliged to pay while knowing that the performance of obligations will be suspended during *force majeure*, and consequently the grantor will be excused during *force majeure* from his/her obligation of delivery. Also, presuming that *force majeure*, for example closure imposed by Israel, occurs before the distributor were able to market and sell the goods and obtain payment for them, he/she would not then be able to pay his/her grantor for he/she has no liquidity. Other more moderate examples follow:⁹⁷

Contract no. 1: "Civil commotion, wars (whether declared or not), acts of hostility, expropriation or confiscation for public needs, embargo, acts of God, Acts of State, discontinuation of public or private transportation or supply of energy, ..."

Contract no. 9: "The period of any complete or partial non performance caused by the events causes or happenings in clause -above together with

97. None of the clauses below, or in the remainder of the examined agreements explicitly mention the word "closure" nor extensive abusive security checks as events of force majeure.

such period as maybe necessary for the restoration of any damage done during such period shall be added to the time in this agreement for the fulfillment of minimum purchase quotas as specified in clause - and also any other time limit including the term of this agreement as specified in section —."

Contract no. 6: "As soon as the effect of the obstacle arising from the Force majeure has ended, the obligations of this Agreement shall once again come into effect and shall remain in force throughout the remainder of the duration thereof. The duration of this Agreement shall not be extended by a period equivalent to the period for which it has been suspended. The Minimum Purchase Requirement provided for in exhibit A shall be reduced on a prorata basis.

If the performance in whole or in part of any obligation under this Agreement is delayed by reason of said Force Majeure event for a period exceeding two months, the parties shall meet and review in good faith the desirability and conditions of terminating this Agreement, being understood that neither party shall be obliged to compensate the other in any way.

This Force Majeure clause does not concern the obligations contained in Articles 6 to 15 which shall remain in effect." [These clauses concern use of trademarks, confidentiality, i.e. restrictive clauses that are of post-contractual effects].

3.2.4. The Termination of the Contract

Several clauses pertain to the termination stage: confidentiality and non-competition clauses, stocks of products clauses, industrial and intellectual property rights clauses. We will only examine clauses related to the term of the agreement, the compensation after termination, and litigation and arbitration clauses.

3.2.4.1. Clauses of Term and Termination

In international practice, "with a distributorship it is highly unlikely that there will not be an initial fixed term. Compared to an agent, a distributor has to invest much more of his own resources in creating a market for the products in the territory, and to take much more risk, in that he will have to purchase stocks of the products and then create the demand to make them sell. Particularly where the products have not been sold in the territory before, he will require the initial period to assure himself that he will have

sufficient time not only to create a market, but also to get back his investment.⁹⁸

Nevertheless, the parties are free as to the duration of the agreement. In general, the choice extends from two possibilities: limited and indefinite open-ended terms. Where an agreement provides for an open-ended term, it is terminable at will with prior notice. Where an agreement is concluded for a definite term, the possibility of premature termination for breach of contract can arise. Nonetheless, the parties must carefully designate which are the substantial obligations the violation of which could lead to breach of contract. This could be the case of the non-attainment of a minimum purchase target. Some countries have protective attitudes towards the distributor with regards to the contract term and termination. In the United States, in distribution termination cases, exists the doctrine of recoupment.

"The idea behind the recoupment doctrine is that after the distributor has made a substantial investment on the assumption that it will have access to the manufacture's product line, the distributor should be allowed to recoup the investment even if the manufacturer has an unfettered right to terminate. Recoupment implies a minimum term in an at will agreement (indefinite open-ended term), defined as the length of time in which the dealer can reasonably be expected to recoup its investment and holds that it is a breach of contract if the agreement is terminated before that minimum period has expired. Recoupment applies only where the agreement is terminable at will, and is usually confined to recovery of preliminary expenses for agreements that were terminated shortly after they were signed."⁹⁹

Thus, in the United States, it is customary that distribution agreements concluded for a definite period of time be of rather reasonable duration. In France, a distribution agreement where an exclusive distributor is bound

98. RICHARD CHRISTOU, INTERNATIONAL AGENCY, DISTRIBUTION AND LICENSING AGREEMENTS 155 (3rd ed. 1996).

99. AUGUSTIN JAUSAS, AGENCY AND DISTRIBUTION AGREEMENTS, AN INTERNATIONAL SURVEY 276 (1994).

by an exclusive purchase obligation -by which he/she is not allowed to buy similar or competitive products from other suppliers-is, by law, limited to a maximum of 10 years.

There are a variety of contractual set-ups concerning the contract term and the possibility of renewal in the agreements. But, none of the contracts providing for a certain term and for automatic renewal provide for clauses of revision, thus obligating the parties to renegotiate the contract. This could be more beneficial to the Palestinian party than the mere renewal of the contract in some cases. Following are examples of clauses of term and termination:

Contract no. 16: "The contract shall end December 31, 1997, regardless of the state of deliveries, tacit renewal being excluded. Apart from the termination cases provided for in the articles — and —, either party not wishing to sign a new contract when the present contract expires, must warn the other party at least three months in advance by registered letter. If no such advance notice is sent, and the parties are unable to agree on the clauses and conditions involved in signing a new Import and Distribution Contract before December 31 of the year in progress, their business relations shall legally end on March 31 of the next year."

Contract no. 33: "The two sides agreed that the second side (Grantee) is to become an agent for the first side (grantor) to all of its products under any trade mark or motto in Gaza Strip, West Bank without any date limitation."

The reasons calling for premature termination are diverse and include reasons such as bankruptcy, fusion or absorption of companies. Below are some examples of other causes for termination.

Contract no. 18: "Termination due to disruption: If distributor fails to take immediate actions to cure adverse effects to other Distributors and the disruption of orderly distribution of grantor Products world wide pursuant to section —, grantor may terminate this agreement with giving thirty days prior written notice to distributor.

Termination due to reorganization of Distribution Network: In the event that it is necessary, in the opinion of grantor, to reorganize the whole or a substantial part of distribution network in the Territory, grantor may terminate this Agreement with giving at least one year prior written notice to distributor."

Contract no. 1: "Grantor may terminate this agreement forthwith if grantor's grantor stop their supplies to grantor for any reason whatsoever."

3.2.4.2. Clauses of Distributors' Compensation Upon Termination

Distributors are less likely to receive compensation than agents due to the legal independence that marks a distributor's relationship with their grantors. Most national legislation and caselaw do not provide for distributors compensation upon termination. In countries¹⁰⁰ where such compensation is compulsory, the distributor cannot be contractually deprived of it, as it is considered to be a mandatory rule.

"Where the local law does not provide for compulsory compensation on a particular basis, the ordinary law relating to compensation for breach of contract would govern the situation in these cases of unjustified termination. On general principles, the future period which can be looked at for lost profits can only be the unexpired portion of the fixed term, if relevant, or the period of notice which should have been given by the principal to terminate the agreement."¹⁰¹

In Palestine, no legislation or caselaw grants distributors right to compensation upon termination. Nevertheless, indemnification could be sought on the grounds of contract law in case of abusive termination. Below is an example certainly inserted by the grantor:

Contract no. 18: "It is expressly understood and agreed that the right of termination of this agreement as provided in section — is absolute, and, the parties having considered the possibility of making investments and expenditures in preparing for performance of the terms of this agreement, and possible losses and damages incident to such termination of this agreement, it is the express intention and desire that neither party shall be liable to the other for damage or otherwise by reason of such termination

100. The cases of Belgium and Lebanon provide for such compensation even in the event of expiry of the agreement by effluxion of time or after proper notice on the basis of net profits.

101. JAUSAS, *supra* note 99, at 267.

of this agreement, distributor hereby irrevocably waives and renounces any and all termination compensation and consequential damages to which it may have a right under local laws in connection with such termination of the agreement. Distributor hereby expressly and irrevocably agrees to apply for and obtain any and all due approvals on such waiver and renunciation or the protection and privileges afforded the distributor under any local laws, orders and decrees if such waiver or renunciation is allowed under local law.

In the event that all approvals on distributor's such waiver and renunciation are not duly obtained by the dead line set by grantor, or in the event that such waiver and renunciation is not allowed under local laws, grantor may request distributor to cause to be opened by reputable financial institutions a standby letter of credit in an amount and terms designated by grantor. Distributor further agrees to defend and indemnify grantor from all claims of its employees or sub-representatives for similar compensation or severance disability or social security pay."

Despite that the clause above does not affect the Palestinian party since he/she does not have by law any right to compensation, it is by far an abusive clause.

Contract no. 3: "This agreement shall be for an unlimited period, and may be terminated as follows... At any time, upon grantor's demand, including during the first two years of the agreement."

In this last clause, the wording "including during the first two years of the agreement" is inserted in view of reiterating the possibility of terminating the agreement even before the distributor has the chance to amortize his/her investment. No contract includes a clause that prohibits the grantor from terminating the agreement (for reasons other than default of distributor) during the first few years in order for the distributor to be able to amortize his/her investment. The inclusion of this frequently internationally used clause is a matter of negotiating power.

3.2.4.3. Clauses of Litigation and Arbitration

In an international distribution agreement where generally the grantor is the stronger party, he/she usually wants to impose his/her national law and

jurisdiction. In the case arbitration is provided for, he/she wants to apply his/her choice of law and/or of the place of arbitration in order to be sure the award will be enforced. The table inserted in annex 7 illustrates in the 40 examined contracts the recourse to arbitration, the insertion of a jurisdiction clause and the designation of an applicable law to the contract.

It is in this part, where litigation is addressed, that a Palestinian judge plays a role. Thus, in the cases of the 24 agreements¹⁰² where no clauses of arbitration, of jurisdiction or of law applicable figure, the chance for the Palestinian party to be able to seize a Palestinian judge is much greater. The judge would then have to determine the law applicable to the contractual relation in accordance with the principles of private international law. In general, he/she will look for the characteristic obligation of the contractual relation and determine the law applicable as to where the performance of this obligation is mostly linked. Thus, most likely, the Palestinian judge will designate the Palestinian law as the law applicable to the contract.

Concerning the cases of the remaining 16 contracts, the Palestinian judge will certainly have a role to play in enforcing the foreign judgment or the arbitral award whether the arbitration took place in Palestine or elsewhere when the losing party¹⁰³ fails to comply. In the West Bank and the Gaza Strip, the governing laws (Law no. 18 of 1953 article 2, and Law no. 9 of 1926 article 2 respectively) require that the arbitration agreement be in writing. Article 17 of Law no. 18, and article 14 of Law no. 9 both provide for the enforcement of arbitral awards in the same manner as any court judgment. The prevailing legislation for the enforcement of foreign judgments and arbitral awards is: Jordanian Law for Enforcement of Foreign Judgments no. 8 of 1952 in the West Bank, and the British Enforcement of Judgments Law no. 22 of 1922, the Procedures for Enforcement of Judgments no. 16 of 1929, and the Law of Basis of Foreign Judgments of March 6, 1928 in the Gaza Strip. The criterion according to which a foreign judgment or an award is enforced is reciprocity of treatment in the country issuing the judgment or in the country of arbitration. Concerning awards, a problem exists in that the judge's review is not guaranteed to be carried out

102. As mentioned earlier, some companies handed only letters of appointments. Thus, an agreement designating an applicable law might exist.

103. Logically the Palestinian party is the failing party because enforcement is solicited in Palestine.

on an expedited basis,¹⁰⁴ as he/she can review the award on a substantive basis such as respect of the arbitration rules by the arbitrators- or violation of public policy.

Finally, we cite the clause below for its abnormality regarding the reference to the law under which the distributor's company is registered:

Contract no. 18: "This Distributorship Agreement ...between X Co. ... hereinafter grantor and Z Co., a corporation duly organized and existing under the law of P.L.O (Palestine Liberation Organization),"

After having reviewed the drafting of the agreements, we now move to expose the problems the Palestinian distributor encounters in the day-to-day implementation of his/her contractual obligations and the running of his/her business.

3.3. The Problems

Palestinian importer-distributors face several problems on a daily basis. Such problems include the lengthy and high cost security checks at the Israeli entry points for goods, in addition to the high cost of the transport of goods within the discontinuity of the PNA territories. This high cost is caused by the fact that Palestinian companies registered within the PNA territories are not allowed to use their own trucks or transport services for the transportation of goods from Israel to the Palestinian territories. Instead, they have to resort to the costly rental of yellow plated trucks and the system of back-to-back loading and unloading of goods. Also, they face the problem of the continuous closure by the Israelis of borders with Israel and within the West Bank due to political instability.¹⁰⁵

104. This is where the signing of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1858 becomes beneficial.

105. This state of closure is provided for in the Interim Agreement's Annex I relative to security arrangements Article IX(d) "The provisions of this agreement shall not prejudice Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip. In addition, the provisions of this agreement shall not prejudice the use of safe passage."

Other problems originating from relations with the Israeli side is the limited access granted to Palestinian clearing agents as to the final stages of the clearing process at Israeli ports of entry. Palestinian importers can use Palestinian clearing agents but only for part of the clearing process; Palestinian clearing agents are not allowed actual access to Israeli points of entry. For this purpose an Israeli intermediary is introduced thereby adding more costs to the process. There are also problems concerning Israel's discretionary control over standards and specifications for items Palestinians want to import. During empirical work, we encountered a few cases where the imported items were held at the entry points or had to be shipped back due to Israel's decision of non-conformity of these goods with Israeli standards and specifications.

Unrelated to political instability, the most common problem encountered is that pertaining to the violation of contractual exclusivity. The violations are committed either intentionally or unintentionally in two ways: first, by the Israeli importer-distributor by selling to Israeli traders who, in turn, resell to Palestinian traders, or, second, by directly selling to Palestinian traders. Also, on an unofficial level, there have been cases where Israeli customs employees have collaborated with the Israeli importer-distributor of a certain good by informing him of the arrival of a shipment of this same good destined to the Palestinian importer-distributor so as to enable the Israeli distributor to sell the goods at a quicker rate and possibly cheaper prices. The implementation of protection of contractual exclusivity is unfortunately far from being efficiently guaranteed. This is due to the absence of control over borders between Israel and the Palestinian Territories. The PNA can hardly control the multitude of points of passage between its territories of the West Bank and Israel. Also, the PNA has no means to prevent the import of a good, entering through the Israeli entry points, since not all goods require the issue of an import license.

Another problem that is not related to the political situation concerns the issuing of import licenses. According to officials in the Ministry of Economy and Trade, the issuing of an import license is rapidly expedited within ten to fifteen days after the submission of the completed application to the Customs Department. Nevertheless, several companies complained during interviews that the issuance of import licenses was very lengthy. In reality,

bureaucracy has doubled in many domains with the advent of the PNA. The Ministry of Economy and Trade is not solely responsible as the approval of the Israeli authorities Civil Administration is still required, contrary to the signed agreements.¹⁰⁶

The fact remains that control over the crossing of goods by the PNA is irregular and not systematic, and that it is up to the concerned distributor to report cases of violation of his/her exclusivity, such as the smuggling of goods. This as it happens, is the normal course of events since it is the distributor's interests that are at risk. Nonetheless, in the case of Palestine, the PNA being greatly affected by the losses of indirect import revenues that are incurred-in comparison with states that suffer ordinary smuggling problems-it has every interest in protecting its revenues.

Unfortunately the problems do not stop here as we encountered a case where the violation of the exclusive rights of a certain Palestinian distributor was committed by Palestinian government institutions. In one case, the Ministry of Finance, in an invitation to bid for office machines, accepted the bid of a Palestinian trader buying from the Israeli importer-distributor, thus violating the Palestinian importer-distributor's rights. The Palestinian company in question gave us a copy of the letter of complaint it addressed to several government officials regarding the violation of its rights.¹⁰⁷

Also, several Palestinian businessmen complain of 'monopolies', whether those retained by the PNA's Commercial Services Company, or those retained by the Palestinian private sector's tycoons. The PNA's companies imports certain basic items such as cement and fuel, but officials say that the monopolies on these items will only be upheld for a certain period of time. They add that the reason for the existence of these monopolies is due to the better negotiating power of the PNA. In addition, they point to the benefits of centralizing the clearance process of import revenues as one

106. Article I. paragraph 5 of the Interim Agreement provides for the following: * After the inauguration of the Council, the Civil Administration in the West Bank will be dissolved, and the Israeli military government shall be withdrawn... *. The Civil Administration of Bet-El is still in place, and still has authority in matters such as the approval of import licenses.

107. Letter on file with author.

centralized importer guarantees that no loss of import revenues will occur since the Paris Protocol clearance mechanism is based on individual and not centralized clearance documents. As for the 'monopolies' retained by the private sector, these are not veritable monopolies since they are based on freely negotiated distribution contracts. However the fact remains that many medium and small sized companies are driven out of the market by these large companies, and that the PNA should start organizing its internal market in a way so as to insure fair competition.

Finally, a problem exists concerning the abusive currently applied rule of foreign equity¹⁰⁸ (maximum of 40%). Israeli distributors wanting to safeguard their interests in the Palestinian market mount cover-up duly registered corporations with Palestinians using this rule and go on with distributing their products affecting business and trade opportunities of Palestinians.

108. See Chapter 2.

Conclusions and Recommendations

In this conclusion, we will give a brief summary of the findings of this study upon which we will attempt to set up a series of recommendations. The trend stated as a result of this study, especially the empirical work would be that of a relative success of the Palestinian private sector's efforts put into direct import and the establishing of direct distribution rights. This trend would be considered inexact when confronted with currently available Palestinian foreign trade figures indicating that Palestinian imports from Israel still count for 84% of total imports.¹⁰⁹ Nevertheless, this is merely the logical result of the restrictive provisions and implementation of the Paris Protocol. Therefore we remain inclined to state that concerning direct import and the establishing of direct distribution rights, the Palestinian private sector's experience within the current regional political context is on the outset of the right track.

The PNA's approach regarding import-distribution relations is very clear: the Palestinian market has to rid itself, to the extent possible, from dependence on the Israeli market regarding imports and it has to help its private sector enter directly the international trade arena. Three main motives are behind this objective. First, the PNA wants to stress independence in its economic decision making in accordance with the wording and the spirit of the Paris Protocol. For the PNA, the attainment of a certain degree of economic independence may, in a world where economic strength rules

109. ECONOMIC MONITOR, (THIRD QUARTER 1999) (based on PCBS Palestinian Central Bureau of Statistics 1997 Palestinian foreign trade figures).

over political or military strength, present the chance of obtaining international recognition as an independent state. Second, it is concerned with overcoming or stopping the fiscal leakage resulting from Palestinian indirect imports, mainly goods procured from Israeli importers. In the PNA's case, fiscal leakage did not only occur when goods were smuggled from Israel to its territories, but it also occurred when goods were simply bought by Palestinian traders from Israeli importers or traders. Third, the PNA desires to create a better business environment for both its traders and consumers by allowing better competition.

In its actions to reach its objective of directly entering the international trade arena, the PNA, through the Ministry of Economy and Trade issued a series of circulars rendering compulsory the direct appointing of a locally registered distributor/agent by foreign companies distributing their goods in its areas. But the PNA, being to a certain extent legitimately preoccupied by the problem of fiscal leakage was inattentive to the flaws and imprecision of its policy, and to the lack of control and follow-up regarding its implementation. Thus, it disregarded the essential legal difference established by international practice between a commercial agent and a distributor. It went even further in its conceptualization of these two terms by restricting the distributor's role to that of an internal trader. The agent was to be the party internationally involved and the distributor would be appointed by this agent to distribute within the agent's territory.

Concerning implementation, the PNA was not rigorous. It did not set efficient mechanisms guaranteeing compliance. Thus, many importers-distributors did not comply with the compulsory registration. In reality, the PNA does not have the ability to guarantee such compliance. It has no means to prevent import of goods committed in violation of the rights of a registered exclusive distributor since it has no control over borders, and since not all goods necessitate the issuing of an import license.

It is in considering the efforts of the private sector that we regard the Palestinian experience to be rather successful. We do not purport to be able to evaluate the success rate of the companies visited during empirical work. Our evaluation is built firstly on the rapid increase of the concluded

distribution agreements and the analysis we conducted on the 40 distribution agreements that we consider to be a representative sample.

Our findings indicate that the dominant channel of distribution in Palestine is distribution agreements and not commercial agency agreements. All of the 40 examined contracts establish distributorship relations and not commercial agency relations. Nearly all of the examined contracts provide for a minimum purchase target imposed on the distributor, the non-attainment of which gives right to the grantor to terminate the contract. This minimum purchase obligation is even inserted in cases where the distributor is appointed as a non-exclusive distributor which indicates the Palestinian party's weak position. A non-negligible number of the agreements contain very disadvantageous stipulations for the Palestinian distributor concerning liability to third party; several of these stipulations may be regarded as abusive. Almost all of the agreements are concluded for a short period of time. None of the agreements provide a certain period of time during which the grantor cannot terminate the agreement if the distributor is not in default, in order to enable him/her to amortize and recuperate the investment. Thus, as much as the efforts put into obtaining direct distribution rights have been fruitful, the agreements resulting from these efforts reflect the long years of absence of the Palestinian businessman from the international trade arena.

In light of this summary of our findings, it is essential to provide some recommendations. A major leading factor in the improvement of the Palestinian economy relates to the political situation and rigorous future negotiation of economic matters between Israel and the PNA. Although certain violations on the internal level within the PNA have occurred and are occurring; these are external violations that the political situation does not affect. It is in this domain that the PNA can maneuver in order to ameliorate the milieu of distribution of foreign goods in Palestine. The PNA's measures should therefore include spreading awareness amongst Palestinian traders as to international practices enabling these to conclude more advantageous contracts. It should clarify as much as possible the national legal framework of distribution of foreign goods in Palestine for interested foreign companies.

Also, the PNA's measures should extend to encouraging Palestinian direct import towards the emancipation of the Palestinian economy by giving the chance to Palestinian importers to be more competitive in face of the Israeli competition. The PNA's applying of the same rates of customs and purchase tax as Israel on all of the goods in lists A1 and A2 imported within the quantities and list B without limitation of quantities when in fact it has the prerogative of setting lower rates of customs and purchase tax does not help encourage Palestinian traders to conclude distributorship agreements. Palestinian distributors who import smaller quantities in comparison with the Israeli importer's larger market share are disadvantaged concerning price negotiations. * As a result, they find themselves facing the unlawful competition of Israeli importers-distributors selling at cheaper prices in PNA territory. Palestinian distributors are advantaged only by the limited variation of standards of the imported goods.

As to the passage of a law regulating distribution professions, a draft law adopted by third reading in the legislative Council currently awaits promulgation. Unfortunately this draft, bound by the current political situation, does not quite satisfy the Palestinian business community's needs, nor does it present the image of an appealing legislation to foreign potential business partners.

Import distribution relations are of extreme importance for Palestine. The PNA's success in entering the international trade arena is one of the most important tasks it faces. Its efforts, along with the efforts of the Palestinian private sector in Palestine and in the Diaspora, must all be exerted in establishing successful international business relations. Success in this area, alongside areas of services and of high-tech and information technology, could be the start of the of the PNA's veritable economic independence.

Annexes

- Annex 1: Ministry of Economy and Trade *To Whom It May Concern Letter* of March 16, 1996.
- Annex 2: Ministry of Economy and Trade *To Whom It May Concern Letter* of October 1, 1997.
- Annex 3: *To Whom It May Concern Letter (Dan Gillerman)* of the Federation of Israeli Chambers of Commerce of January 25, 1996.
- Annex 4: *To Whom It May Concern Letter (Y. Raviv)* of the Federation of Israeli Chambers of Commerce of January 25, 1996 (legal opinion letter).
- Annex 5: Letter addressed to the Federation of Israeli Chambers of Commerce dated January 1, 1996 (legal opinion letter).
- Annex 6: Israeli Ministry of Finance letter of December 29, 1996.
- Annex 7: Table of the 40 examined contracts.

APPENDIX

The following table shows the results of the experiments conducted during the course of the investigation. The data are presented in a tabular form for convenience of reference. The first column gives the name of the subject, the second column the date of the experiment, and the third column the time of day. The fourth column gives the number of trials, and the fifth column the number of correct responses. The sixth column gives the percentage of correct responses, and the seventh column the standard error of the mean. The eighth column gives the number of errors, and the ninth column the number of omissions. The tenth column gives the number of commissions, and the eleventh column the number of failures. The twelfth column gives the number of successes, and the thirteenth column the number of failures. The fourteenth column gives the number of correct responses, and the fifteenth column the number of incorrect responses. The sixteenth column gives the number of correct responses, and the seventeenth column the number of incorrect responses. The eighteenth column gives the number of correct responses, and the nineteenth column the number of incorrect responses. The twentieth column gives the number of correct responses, and the twenty-first column the number of incorrect responses. The twenty-second column gives the number of correct responses, and the twenty-third column the number of incorrect responses. The twenty-fourth column gives the number of correct responses, and the twenty-fifth column the number of incorrect responses. The twenty-sixth column gives the number of correct responses, and the twenty-seventh column the number of incorrect responses. The twenty-eighth column gives the number of correct responses, and the twenty-ninth column the number of incorrect responses. The thirtieth column gives the number of correct responses, and the thirty-first column the number of incorrect responses. The thirty-second column gives the number of correct responses, and the thirty-third column the number of incorrect responses. The thirty-fourth column gives the number of correct responses, and the thirty-fifth column the number of incorrect responses. The thirty-sixth column gives the number of correct responses, and the thirty-seventh column the number of incorrect responses. The thirty-eighth column gives the number of correct responses, and the thirty-ninth column the number of incorrect responses. The fortieth column gives the number of correct responses, and the forty-first column the number of incorrect responses. The forty-second column gives the number of correct responses, and the forty-third column the number of incorrect responses. The forty-fourth column gives the number of correct responses, and the forty-fifth column the number of incorrect responses. The forty-sixth column gives the number of correct responses, and the forty-seventh column the number of incorrect responses. The forty-eighth column gives the number of correct responses, and the forty-ninth column the number of incorrect responses. The fiftieth column gives the number of correct responses, and the fifty-first column the number of incorrect responses. The fifty-second column gives the number of correct responses, and the fifty-third column the number of incorrect responses. The fifty-fourth column gives the number of correct responses, and the fifty-fifth column the number of incorrect responses. The fifty-sixth column gives the number of correct responses, and the fifty-seventh column the number of incorrect responses. The fifty-eighth column gives the number of correct responses, and the fifty-ninth column the number of incorrect responses. The sixtieth column gives the number of correct responses, and the sixty-first column the number of incorrect responses. The sixty-second column gives the number of correct responses, and the sixty-third column the number of incorrect responses. The sixty-fourth column gives the number of correct responses, and the sixty-fifth column the number of incorrect responses. The sixty-sixth column gives the number of correct responses, and the sixty-seventh column the number of incorrect responses. The sixty-eighth column gives the number of correct responses, and the sixty-ninth column the number of incorrect responses. The seventieth column gives the number of correct responses, and the seventy-first column the number of incorrect responses. The seventy-second column gives the number of correct responses, and the seventy-third column the number of incorrect responses. The seventy-fourth column gives the number of correct responses, and the seventy-fifth column the number of incorrect responses. The seventy-sixth column gives the number of correct responses, and the seventy-seventh column the number of incorrect responses. The seventy-eighth column gives the number of correct responses, and the seventy-ninth column the number of incorrect responses. The eightieth column gives the number of correct responses, and the eighty-first column the number of incorrect responses. The eighty-second column gives the number of correct responses, and the eighty-third column the number of incorrect responses. The eighty-fourth column gives the number of correct responses, and the eighty-fifth column the number of incorrect responses. The eighty-sixth column gives the number of correct responses, and the eighty-seventh column the number of incorrect responses. The eighty-eighth column gives the number of correct responses, and the eighty-ninth column the number of incorrect responses. The ninetieth column gives the number of correct responses, and the ninety-first column the number of incorrect responses. The ninety-second column gives the number of correct responses, and the ninety-third column the number of incorrect responses. The ninety-fourth column gives the number of correct responses, and the ninety-fifth column the number of incorrect responses. The ninety-sixth column gives the number of correct responses, and the ninety-seventh column the number of incorrect responses. The ninety-eighth column gives the number of correct responses, and the ninety-ninth column the number of incorrect responses. The hundredth column gives the number of correct responses, and the hundred-first column the number of incorrect responses.

Annex 1

Ministry of Economy and Trade To Whom It May Concern Letter of March 16, 1996

March 16, 1996

To Whom It May Concern

The Palestinian Authority's Ministry of Economy and Trade wishes to present the following explanatory remarks on the issue of commercial representation in the West Bank and Gaza Strip. While we are actively involved in the organization of our domestic market and the establishment of our regional and international trade relationships, the following remarks are the Ministry's guidelines in its efforts to promote Palestine and the Palestinian business community as business partners in this region:

- 1- The West Bank and the Gaza Strip have always and continue to be a separate territorial and political entity.
- 2- The West Bank and the Gaza Strip maintained their distinct legal jurisdiction, since they were never annexed to Israel even when Israel administered the West Bank and the Gaza Strip, as an occupier, between 1967-1994.
- 3- While Israel was administering the West Bank and the Gaza Strip, existing laws continued to apply in this area distinct from laws applied in Israel. The court systems were also different and decisions were rendered independently. Thus, two parallel legal structures existed.
- 4- Contractual agreements were entered into by and between Israelis and

Palestinians, each of which had their own binding effects. Agreements made with third parties, which applied in Israel, did not necessarily apply to the West Bank and the Gaza Strip and vice versa.

- 5- In 1993, the Declaration of Principles was signed between the PLO and Israel followed by several Agreements. As a result, Israel has ceased its administration over the West Bank and Gaza Strip.
- 6- The essence of the Agreements is rooted in the establishment of a Palestinian self-government authority leading to the establishment of an independent Palestinian State.
- 7- Pursuant to the Agreements, the Palestinian Authority has assumed full responsibility and control over legal and civil matters in the West Bank and Gaza Strip. These include, but are not limited to, economic spheres, such as taxation, trade, industry, banking, commercial and corporate transactions and the judiciary.
- 8- The Palestinian Authority is now responsible for the regulation of all commercial and corporate activities including representatives to foreign companies and businesses in the West Bank and Gaza Strip.
- 9- A corporate entity cannot function as representative to a foreign company in the West Bank and Gaza Strip unless it is registered in the Companies Register of the Palestinian Authority which is separate from the Israeli register. Intellectual property can only acquire protection in the West Bank and Gaza Strip if it is also registered in the Palestinian Authority registers.
- 10- Each corporate representative has to comply with Palestinian Authority regulations in the sale and distribution of products within the West Bank and Gaza Strip including matters of labeling, health and safety regulations.
- 11- Foreign citizens, companies or other entities can only operate in the West Bank and Gaza Strip if they have an explicit authorization and/or registration with the relevant Palestinian Authority department according to prevailing laws and regulations.

We trust these explanatory notes can help in clarifying the distinctions between the Palestinian and Israeli markets and hope that the necessary steps will be taken by your company to appropriately adjust to the changing political, economic and legal realities in light of the recent Palestinian-Israeli peace agreements.

We also trust that supporting a viable Palestinian economy, competent and strong Palestinian business community, in full cooperation with the regional and international partners, would be the cornerstone for a sustainable peace in Palestine and in the Middle East.

Thank you in advance for your cooperation.

Samir Huleih

Assistant Under Secretary
Ministry of Economy and Trade

The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1900. The names are given in alphabetical order of their surnames.

1. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

2. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

3. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

4. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

5. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

6. The names of the persons who have been elected to the office of Justice of the Peace for the year 1900 are: [illegible names]

Annex 2

Ministry of Economy and Trade To Whom It May Concern Letter of October 1, 1997

October 1, 1997

To Whom It May Concern

This is to notify international companies that the Palestinian National authority (PNA) has just signed an agreement with Israel that extends its authority over the West Bank & the Gaza Strip in the field of Trade and Industry. This means that the Palestinian territory will be under a unified integrated trade policy & system controlled by the (PNA).

Accordingly, all international companies must adjust their operations in Israel and the Palestinian territories to accommodate the new realities. In particular, we would like to draw your attention to the fact that all trading companies can operate in with the Palestinian territories only through a direct importer, agent or distributor registered with the Palestinian National Authority.

We hope that the new changes would facilitate your operations in our areas and will expand your work to new regions.

Thank you in advance.

Omar Al Hroub

Director General of General Companies
Administration & Controller of Companies

Annex 3

To Whom It May Concern Letter (Dan Gillerman) of the Federation of Israeli Chambers of Commerce of

January 25, 1996

To Whom It May Concern Letter

The new political era following the Paris Agreement brought hope and expectations concerning the economics and trade in the surrounding region.

The changes which are followed by the creation of self-government in the Autonomy, have their own impact on the commerce and trade in this area.

During recent month, letters were sent by Palestinian's to various Embassies, stating that foreign companies who are willing to operate from the Autonomy areas will have to adjust to the new rules. The rules, as explained in these letters, determine that the representatives could operate in the Autonomy only through Palestinian representatives registered in the Autonomy registration.

The guidance in these letters is of course incorrect, and is a gross violation of the Paris Agreement as explained in the following legal opinions attached to this letter.

We have no doubt that Palestinians suggestion to nominate many representative in such a small territory is not only a mistake from the legal aspect, but is also an economic error which may cause financial damages to foreign companies, in case they will choose to follow the Palestinian advice.

In our effort to avoid further damage caused by the Palestinian's letters which was intended to mislead the public, we are active together with the Israeli government and army representatives to stop the impact of the said letters. We hope that the attached legal advice will be useful in your contacts with foreign companies who have hesitations concerning their future policy in our area.

Sincerely Yours,
Dan Gillerman

Annex 4

To Whom It May Concern Letter (Y. Raviv) of the Federation of Israeli Chambers of Commerce of (legal opinion letter)

January 25, 1996

To Who It May Concern Letter

This paper comes to testify on the nature of the relationship between Israel and the Palestinian Autonomy as agreed upon in the Agreements Signed between the two sides in Paris:

The agreements declared the Autonomy as a separate Authority from Israel, allows the Palestinians freedom in certain aspects, especially concerning internal matters such as economy and security. Nevertheless, the Autonomy is still under Israeli supervision.

The Autonomy although enjoys some independence, is not a separate country, and does not create any customs border or other borders between the parties.

The Autonomy does not have international borders, but rather uses the international borders of Israel (including the occupied territories and the Palestinian authority area), both for foreign affairs such as the entrance of foreigners as well as economical affairs, customs and commercial goods.

In accordance with the agreements, products from Arab countries are subject

to Israeli customs to be collected by the Palestinian Authority. Importing from Arab countries are subjected to regulations and quotas like is a required from any other country. There are certain discounts for importing from Egypt and Jordan on several basic products.

Customs and other Taxes in the Autonomy are based on Israeli taxation. However, certain differences are allowed by the agreement, subjected to Israel's consent.

Nevertheless, the agreements between Israel and the Autonomy does not create any change in the status of the local representatives or manufacturers or companies in Israel. A local representative who is authorized to represent a foreign manufacturer or company in Israel and the Autonomy, can operate in the Autonomy since the agreements do not create any new or different customs territory from the one existed before the Paris agreement.

In conclusion, any attempt to determine that an Israeli representative can not operate in the Autonomy is legally incorrect.

Y. Raviv, Advocate
Legal Advisor

Annex 5

Letter addressed to the Federation of Israeli Chambers of Commerce dated (legal opinion letter)

January 25, 1996

Re: New Agreements with the Palestinian Autonomy & Jordan

After reviewing the abovementioned agreements we can draw the following conclusions:

- 1- An Israeli distributor of a foreign manufacturer's goods, who is representing the manufacturer in Israel, and who distributed the goods of that manufacturer in the Gaza area and the west bank, may continue to do so in the Palestinian autonomy.
- 2- If the foreign manufacturer appointed a distributor in Jordan, who sells the goods in the Jordanian territory, the manufacturer should enforce the obligation of that distributor not to sell the goods outside the territory, to prevent parallel importation outside the distribution channels of that manufacturer.
- 3- An Israeli distributor or agent may appoint a sub-agent for the areas under the Palestinian autonomy, or may form a partnership with a Palestinian company, which may benefit from the experience of the Israeli agent."
- 4- In our Opinion, the Israeli government and the Federation should address the following problems:

- i- The problem of enforcement of court judgments and arbitration judgments in the Palestinian autonomy.
- ii- The problem of protection of intellectual property rights (patents, trademarks, industrial designs, copyright and others) in the areas under the Palestinian autonomy.
- iii- The problem of smuggled goods between Jordan and Israel, and between the areas of the Palestinian autonomy and Israel.

Sincerely Yours,

Avigdor Dorot, Esq.

Annex 6
Israeli Ministry of Finance letter

December 29, 1996

Ministry of Finance

The Hon. Mr. Maher El Masry
Minister of Economics, Trade and Industry
Palestinian Council

Dear Mr. El Masry

New Restrictions on the Operation of Traders within the Areas under
the Responsibility of the Palestinian Council

I refer to the Notice Published with respect to the intention of the Palestinian Council to impose new restrictions upon the operation of traders within the areas under the responsibility of the Palestinian Council.

In a letter dated 19 September 1996 the Minister of finance, Mr. Dan Meridor, wrote to you and expressed Israel's opposition to those restrictions.

We would like to state once more Israel's opposition to the application of those restrictions. I refer to the notice published with respect to the intention of the Palestinian Council to impose new restrictions upon the operation of traders within the areas under the responsibility of the Palestinian

Council... We would like to state once more Israel's opposition to the application of those restrictions. It is our contention that those restrictions bear no relationship to what is legitimately reasonable and necessary for the protection of consumers and that they totally contradict both the provisions and the spirit of the Interim Agreement. The Interim Agreement states that there will be free movement of goods, subject to each side's legislation. The principle of free movement should not be jeopardized without justification, and imposition of restrictions in this matter should be limited only to consumer protection. We object most strongly to the imposition of any restrictive measures which in any way impinge upon the essential free movement of trade. We were advised by you verbally that the restrictions were based upon the Jordanian Commercial Agents Provisional Law of 1967. However on investigation, it would appear that a substantial part of the restrictions are not covered by the aforesaid Law and to the extent that such restrictions are so covered, that Law (which had never in fact been applied) ought to be amended so as to accord with the provisions of the Interim Agreement.

In recent months we have made several attempts to obtain clarification concerning these measures and to hold consultations with you in regard thereto as was suggested in our Minister's aforesaid letter to you. We regret that our efforts have met with no success and that no reply been received to that letter.

You are aware that we have been receptive to approaches made by your Administration from time to time for consultations on matters of particular concern to you. It is accordingly regretted that, from your lack of response to our approaches to you in this matter, such desire for co-operation does not appear to be reciprocated by you.

We accordingly request your immediate confirmation that the restrictive measures will not be put into effect and that comprehensive and exhaustive discussions will be held between our respective representatives with regard to these measures. We trust that you will refrain from taking any unilateral steps in contradiction to the foregoing so as to preserve the spirit of goodwill and co-operation which has prevailed in the past.

Yours sincerely

David Brodet
Director General

Annex 7

Table of the 40 examined contracts

Notes:

- Starting no. 30, the original contracts are in Arabic.
- For the contracts having the territory as Israel in addition to the PA areas, these are companies who also are registered in Israel.
- Where there is a --- mark, the information is not available.

No	Appellation used	Territory	Duration	Arbitration	Court Jurisdiction	Applicable Law
1	Agent	Wb & Gaza	---	---	---	---
2	Sole authorized agent and representative	Palestine (WBGS)	Undetermined	---	---	---
3	Marketer	Autonomy areas of the PA, with future changes	Ultimated period	---	Courts of Israel	Laws of Israel
4	Only importer and	Palestine market	Open	---	---	---

No	Appellation used	Territory	Duration	Arbitration	Court Jurisdiction	Applicable Law
5	Distributor, acting as a salesperson on behalf of	Judea & Samaria & Gaza under the authority of the PA	Open	---	---	---
6	Exclusive authorized distributor	WBGS	Open	---	Courts of Lyon	French courts
7	Exclusive distributor	Palestine	Till 8/1998 - Renewable	---	UK courts	Uk law
8	Dealer	---	---	---	Courts of Geneva	Laws of Switzerland
9	Dealer representative Agent/distributor	WBGS Palestinian autonomous region, WBGS & any other territory considered to be part of above	open 3 years renewable	Arbitration	---	Laws of California
10	Distributor	Israel, WBGS, East Jerusalem enclosed	Open	Arbitration, ICC, in Barcelona	---	Spanish law
11	Sole agent	Autonomous authority of Palestine	---	---	---	---
12	Sole agent	Autonomous authority of Palestine	---	---	---	---
13	Sole agent	Autonomous	---	---	---	---

No	Appellation used	Territory	Duration	Arbitration	Court Jurisdiction	Applicable Law
14	Agent	authority of Palestine	---	---	---	---
15	Sole distributor	Israel, WBGS	One year renewable	---	---	Laws of England
16	Distributor	Territories of the PA	---	---	Paris trade court, possibility distributor's court	French law
17	Only authorized distributor	WBGS & East Jerusalem	2 years renewable	Arbitration, ICC, in London	---	Laws of England
18	Distributor	WBGS	2 years	Arbitration	Seoul District Court	Laws of Korca
19	Sales representation	WBGS, Palestine, Iraq, Jordan & Egypt	Year 2000	---	---	---
20	Authorised distributor	Palestine	2/1998	---	---	---
21	Only distributor	Jordan, Egypt, Saudi Arabia, Syria, Lebanon, Qatar & Palestine	---	---	---	---
22	Non exclusive distributor	<i>An agreement on distributorship territories exists, discussed in chapter 3</i>	1 year then indefinite	---	Dutch courts	Dutch law, Vienna Convention excluded

No	Appellation used	Territory	Duration	Arbitration	Court Jurisdiction	Applicable Law
23	Exclusive importer distributor	WBGS, Palestine area	1 year renewable	---	---	---
24	Sole agent	In Palestine via Israel	1 year renewable	---	---	---
25	Importer granted exclusive selling rights	PA regions	---	---	---	---
26	Dealer	---	---	---	---	---
27	Non-exclusive licensee	---	Perpetually unless	---	---	English law
28	Exclusive agent	WBGS	Open	---	---	---
29	Exclusive agent	WBGS	Open	---	Courts of Istanbul	---
30	Agent, importer & sole distributor	PA territories	---	---	---	---
31	Distributor	---	1 year renewable	---	---	---
32	Distributor	---	2 years	---	---	---
33	Agent	Nablus and its region	1 year renewable	---	---	---
34	Sole agent	PA territories	1 year renewable	---	---	Laws of Jordan
35	Commercial agent	PA territories and future Palestine State	2 years renewable	---	Courts of Egypt	Laws of Egypt
36	Commercial agent	PA territories and	2 years	---	---	---

No	Appellation used	Territory	Duration	Arbitration	Court Jurisdiction	Applicable Law
		future Palestine State	renewable			
37	Commercial agent	PA territories and future Palestine State	3 years renewable	---	---	---
38	Agent	PA territories	---	---	---	---
39	Agent	GS	2 years	Arbitration	Courts of Gaza	Laws of Palestine
40	Distributor	---	1 year renewable	---	---	---

Year	Month	Day	Time	Location	Activity	Remarks
1950	Jan	1	8:00 AM	City Park	Walking	Clear, cold
1950	Jan	2	9:00 AM	City Park	Walking	Clear, cold
1950	Jan	3	10:00 AM	City Park	Walking	Clear, cold
1950	Jan	4	11:00 AM	City Park	Walking	Clear, cold
1950	Jan	5	12:00 PM	City Park	Walking	Clear, cold
1950	Jan	6	1:00 PM	City Park	Walking	Clear, cold
1950	Jan	7	2:00 PM	City Park	Walking	Clear, cold
1950	Jan	8	3:00 PM	City Park	Walking	Clear, cold
1950	Jan	9	4:00 PM	City Park	Walking	Clear, cold
1950	Jan	10	5:00 PM	City Park	Walking	Clear, cold
1950	Jan	11	6:00 PM	City Park	Walking	Clear, cold
1950	Jan	12	7:00 PM	City Park	Walking	Clear, cold
1950	Jan	13	8:00 PM	City Park	Walking	Clear, cold
1950	Jan	14	9:00 PM	City Park	Walking	Clear, cold
1950	Jan	15	10:00 PM	City Park	Walking	Clear, cold
1950	Jan	16	11:00 PM	City Park	Walking	Clear, cold
1950	Jan	17	12:00 AM	City Park	Walking	Clear, cold
1950	Jan	18	1:00 AM	City Park	Walking	Clear, cold
1950	Jan	19	2:00 AM	City Park	Walking	Clear, cold
1950	Jan	20	3:00 AM	City Park	Walking	Clear, cold
1950	Jan	21	4:00 AM	City Park	Walking	Clear, cold
1950	Jan	22	5:00 AM	City Park	Walking	Clear, cold
1950	Jan	23	6:00 AM	City Park	Walking	Clear, cold
1950	Jan	24	7:00 AM	City Park	Walking	Clear, cold
1950	Jan	25	8:00 AM	City Park	Walking	Clear, cold
1950	Jan	26	9:00 AM	City Park	Walking	Clear, cold
1950	Jan	27	10:00 AM	City Park	Walking	Clear, cold
1950	Jan	28	11:00 AM	City Park	Walking	Clear, cold
1950	Jan	29	12:00 PM	City Park	Walking	Clear, cold
1950	Jan	30	1:00 PM	City Park	Walking	Clear, cold
1950	Jan	31	2:00 PM	City Park	Walking	Clear, cold

Bibliography

References on Palestine

- Arnon et al., Arie, *The Palestinian Economy Between Imposed Integration and Voluntary Separation*, Brill 1997.
- Cotran, Eugene, & Mallat, Chibli, *The Arab-Israeli Accords: legal Perspectives*, Kluwer International, Cimel Book Series No.1.
- Gharaibeh, Fawzi A., *The Economies of the West Bank and Gaza Strip*, Westview Press, 1985.
- Jawhary, Mona, *The Palestinian-Israeli Trade Arrangements*, MAS, 1995.
- Kanafani, Nu'man, *Trade Relations Between Palestine and Israel: Free Trade Area Or Customs Union*, MAS 1996.
- Kanovsky, Eliyahu, *The Economic Impact of the Six-Day War: Israel, the Occupied Territories, Egypt, Jordan*, Praeger Publishers 1970.
- Kleiman, Ephraim, "The Economic Provisions of the Agreement between Israel and the PLO", *In Israel Law Review*, vol. 28(1994).
- Kessler, Veronique, *Palestine's External Trade Performance Under The Paris Protocol: Hopes And Illusions*, Executive Summary, European Commission June 8, 1999.

Roblet, Julie, *Palestine: a strangled economy*, Belgian-Palestinian Association 1999.

Roy, Sara, *The Gaza Strip, the Political Economy of De-development*, Institute for Palestine Studies 1995.

Toshiyuki Dury, Richard, & Winn, Robert C., *The Economics of Occupation in the West Bank*, Beacon Press 1992

Van Arkadie, Brian, *Benefits and Burdens: A Report on the West Bank and Gaza Strip Economies since 1967*, Carnegie Endowment for International Peace 1977.

Country Profile, Israel and the Occupied Territories, E.I.U. 1998-99.

Development Under Adversity, the Palestinian Economy in Transition, World Bank 1999.

Israeli impediments to investment in Palestine in background materiel for workshop I on creating a legal and enabling environment for investment in Palestine/Israel, organized by private sector investment unit-orient house, the International Centre for Peace in the Middle East on April 19-20 1996.

International Commercial Transactions in the West Bank and Gaza: Model Contracts and Commentary, Iris Center 1996.

The Palestinian Export Import Guide, Palestinian Ministry of Economy and Trade 1999.

The proceedings of a conference by al-Haq in Jerusalem in January 1988. *Israel's Economic Policies in the Occupied Territories: A case for International Supervision*, Clarendon Press-Oxford 1992.

Al-AYYAM newspaper.

Palestinian Executive Magazine.

General References, English and French

- Carreau, Dominique, & Flory, Tiebeaut, & Juillard, Patrick, *Droit International Economique*, L.G.D.J. 1993.
- Christou, Richard, *International Agency, Distribution and Licensing Agreements*, Sweet & Maxwell 1996.
- Folsom, Ralph H., & Wallace Gordon, Michael, & Spanogle Jr., John A., *International Business Transactions*, West Publishing 1992.
- Ferrier, Didier, *Droit de la Distribution*, Litec 1995.
- Fox, William F., *International Commercial Agreements*, Kluwer Law International 1992.
- Jausas, Augustin, *Agency and Distribution Agreements, An International Survey*, Kluwer International 1994.
- Mousseron, Jean Marc, *Technique Contractuelle*, Francis Lefebvre 1988.
- Saleh, Samir, *Commercial Agency And Distributorship In the Arab Middle East*, Graham and Trotman, an imprint of Kluwer Law International, Jordan 1995.
- Schmitthoff, Clive M., *The Law and Practice of International Trade*, London Stevens 1990.
- The ICC Model Distributorship Contract, Sole-importer Distributor*, ICC Publishing 1993.
- Concurrence Distribution Consommation*, Lamy Droit Economique 1995.
- Bruxelles Etablissements Bruylant. *Le Contrat Economique International, Stabilité et Evolution*, Paris Editions A. Pedone 1975.

The Institute of Law

The Institute of Law, in accordance with Birzeit University's academic mission, aims at contributing to the modernization of Palestinian legal structures, while building human capacities both at the academic and professional levels. The objectives of the Institute of Law consist of training legal professionals through regular seminars, conferences and workshops; conducting applied research; offering a master's program in legal studies; establishing a specialized library and a modern documentation center and a computer database of present and future legislation in force in Palestine.

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معهد الحقوق في جامعة بيرزيت

ص.ب: ١٤ بيرزيت - فلسطين

هاتف: ٩٧٠-٢-٢٩٨٢٠٠٩

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The author sets out to examine, in three interlinked chapters, import-distribution relations and activities in the Palestinian territories. In the first chapter, the author relates the evolution of import-distribution relations, in particular since the signing of the Paris Protocol in 1994. In the second chapter, an attempt is made to analyze the current applicable legislation governing these relations in relation with the current practices and the draft law regulating the profession of import-distribution prepared by the Palestinian Legislative Council. In the last chapter, a review of the contractual stipulations of 40 distribution contracts compiled by the author is attempted.