# Trade Rule or Sanction? EU Restrictions on Trade with Israeli Settlements

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## 1. Introduction

On 8 July 2026 the European Commission circulated an options paper on trade with Israeli settlements in the Occupied Palestinian Territory (OPT). It identified import licensing, higher tariffs and a ban, but reasoned that any restriction "would appear to seek to promote a change of conduct of the Israeli government" and thus required a CFSP basis and unanimity (quoted in Alemanno et al., 2026). At the Foreign Affairs Council of 13 July 2026, the High Representative reported that a ban "got the most support" and cited an oral opinion of the Council Legal Service that a qualified majority would suffice (Euronews, 2026). By October 2026 no proposal had been tabled, and the European Council conclusions of 15–16 October called for

reversing settlement expansion but did not announce an EU-wide import ban (European Council, 2026, para. 50).

The trade and CFSP routes differ in voting rule, right of initiative and parliamentary involvement. This article asks: *does EU law require a measure restricting the importation of settlement goods to be adopted under Article 207 TFEU or under Article 29 TEU and Article 215 TFEU?* It applies doctrinal analysis to the Treaties, case law and practice as of October 2026.

## 2. The International Law Baseline after the 2024 Advisory Opinion

Advisory opinions are not binding as such; three judges voted against the findings on third-party consequences, and Israel rejects the characterisation of the settlements as unlawful. For the Union, however, the baseline is firm: it "is bound to observe international law in its entirety, including customary international law" (Case C-366/10, *Air Transport Association of America*, 2011, para. 101).

The International Court of Justice (ICJ) found Israel's continued presence in the OPT unlawful and held, by twelve votes to three, that all States are under an obligation not to recognise that situation as legal and "not to render aid or assistance in maintaining" it, while international organisations are bound by the duty of non-recognition (ICJ, 2024, para. 285(3), (7)–(8)). The duty to distinguish includes obligations "to distinguish between Israel and the Occupied Palestinian Territory" and "to abstain from economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof that may entrench Israel's unlawful presence, as well as to take steps to prevent trade or investment relations that assist in maintaining the unlawful situation" (ICJ, 2024, para. 278). The General Assembly called for steps "towards ceasing the importation of any products originating in the Israeli settlements" (UNGA Resolution ES-10/24, 2024, para. 5(b)).

## 3. The EU's Differentiation Policy and Its Limits

So far the EU has differentiated: products from the West Bank fall outside the territorial scope of the EC–Israel Association Agreement and its preferences (Case C-386/08, *Brita*, 2010, paras 52–53), and foodstuffs from settlements must indicate that provenance (Case C-363/18, *Psagot*, 2019, paras 38 and 57). Yet settlement goods still enter on most-favoured-nation terms, which the options paper considered "in line with" the Advisory Opinion while conceding that Israel reimburses settlement exporters for lost preferences (Alemanno et al., 2026). The stakes are modest: settlement imports were estimated at roughly €76 million in 2025, about 0.5 per cent of EU–Israel goods trade (Agence Europe, 2026). Even the Commission's 2025 proposal to suspend the trade provisions of the Association Agreement by qualified majority under Articles 207(4) and 218(9) TFEU was never adopted (European Commission, 2025).

## 4. Choosing the Legal Basis: Article 207 TFEU or Article 215 TFEU?

The choice of legal basis "must be based on objective factors which are amenable to judicial review", in particular the aim and content of the measure (Case C-300/89, *Titanium dioxide*, 1991, para. 10); a measure with two purposes must rest on the basis required by the predominant one (Case C-130/10, *Parliament v Council*, 2012, paras 42–44). Content points to Article 207 TFEU: licensing, tariffs and bans govern the conditions on which goods enter the customs territory, are "essentially intended to promote, facilitate or govern" trade and have "direct and immediate effects on it" (Opinion 2/15, 2017, para. 36).

Aim does not displace that conclusion. A measure restricting exports "cannot be treated as falling outside the scope of the common commercial policy on the ground that it has foreign policy and security objectives" (Case C-70/94, *Werner*, 1995, para. 10). The common commercial policy "shall be conducted in the context of the principles and objectives of the Union's external action" (Article 207(1) TFEU), which include respect for international law (Article 21 TEU); hence sustainable development "henceforth forms an integral part" of it (Opinion 2/15, 2017, para. 147), and the same logic extends to international law obligations. The EU's Forced Labour Regulation, which prohibits products made with forced labour from being placed or made available on the Union market, relies on Articles 114 and 207 TFEU. It shows that trade restrictions can pursue public-interest objectives without establishing the appropriate legal basis for settlement-goods restrictions (Regulation (EU) 2024/3015). The predominant aim of a settlement measure is to ensure that the Union's own trade does not sustain an unlawful situation, not to coerce a third State (Alemanno et al., 2026; Verellen, 2026). The Commission's claim that the small volume of trade reveals a political aim is self-defeating: if the trade is too marginal to affect Israel's economy, changing Israeli policy can hardly be the measure's centre of gravity.

The CFSP route has serious arguments. Article 215(1) TFEU covers the "interruption or reduction ... of economic and financial relations with one or more third countries", and the Court has upheld it where a measure is "part of the Union's action in the sphere of the CFSP" (Case C-130/10, *Parliament v Council*, 2012, paras 59 and 65). The closest precedent, the 2014 Crimea import ban, was adopted under Decision 2014/386/CFSP and Regulation (EU) No 692/2014 as part of a non-recognition policy, an analogy the High Representative herself has drawn (Irish Times, 2026). However, that practice does not settle the legal-basis question. Conversely, Regulation (EU) 2026/261, based on Articles 194(2) and 207 TFEU, illustrates the continuing dispute over when a trade restriction should instead be treated as a restrictive measure under Article 215 TFEU, as argued by Hungary in

pending proceedings (Case C-46/26, *Hungary v Parliament and Council*, 2026).

These arguments are not decisive. Article 215 presupposes a prior CFSP decision and does not capture every politically motivated trade measure. The Crimea route is practice, and "a mere practice on the part of the Council cannot derogate from the rules laid down in the Treaty" (Case 68/86, *United Kingdom v Council*, 1988, para. 24). Article 40 TEU, moreover, protects TFEU competences against CFSP encroachment: in *ECOWAS*, a CFSP act that could have been adopted on a Community basis was annulled (Case C-91/05, *Commission v Council*, 2008, paras 59–61 and 77).

Finally, the legal basis determines who holds the pen. Under Article 207(2) TFEU only the Commission can propose (Article 17(2) TEU) and the Parliament co-legislates; under the CFSP route, any Member State or the High Representative may initiate the unanimous decision on which an Article 215 regulation depends (Article 30 TEU). By declaring a ban coercive before drafting one, the Commission puts "the cart before the horse" (Angelet, 2026).

## 5. Systemic Risks: National Measures, Litigation and the WTO

In the absence of a common EU approach, Member States have restricted settlement imports. Spain prohibits them under Article 3 of Real Decreto-ley 10/2025, invoking Article 24(2)(a) of Regulation (EU) 2015/478. However, the extent to which Member States may independently adopt such restrictions remains unclear. Ireland's ban became law on 23 July 2026 (President of Ireland, 2026), and the Netherlands has applied a temporary sanctions decree since 22 September 2026 (Staatsblad 2026, 222). Because the common commercial policy is an exclusive EU competence (Article 3(1)(e) TFEU), national commercial measures are permissible "only if they are specifically authorized" by the Union (Case C-83/94, *Leifer*, 1995, para. 12). Article 24(2)(a), as a derogation, must be construed strictly. Divergent regimes invite trade deflection; the Dutch decree permits transit to other Member States (Douane, 2026).

Both routes carry litigation risk: an outvoted Member State may challenge an Article 207 regulation, as Hungary has done regarding Russian gas, while the Commission or the Parliament may invoke Article 40 TEU against a CFSP act. Under WTO law, the Union could rely on Article XX(a) GATT's public morals exception or Article XXI. In *EC – Seal Products*, the Appellate Body accepted the public morals objective but found that the measure did not ultimately satisfy Article XX (WTO Appellate Body, 2014).

## 6. Conclusion

A measure regulating the importation of settlement goods has its centre of gravity in the common commercial policy. Its international law and foreign policy objectives do not remove it from Article 207 TFEU, which itself

requires that policy to pursue them; the CFSP would suit only a broader coercive package. The impasse is therefore institutional rather than legal: because only the Commission can initiate an Article 207 measure, its failure to table a proposal prevents the co-legislators and ultimately the Court of Justice from testing the classification. The timing may be political; the legal basis is not.

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