

# Politics vs. Policy: Why an EU Ban on Israeli Settlement Goods Would Require Unanimity



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**T**he European Commission has been considering whether to propose an import ban on products originating in Israeli settlement areas in the West Bank (Judea, Samaria and East Jerusalem) and, if so, on which EU Treaty basis. Article 24(1) of the Treaty on European Union<sup>1</sup> (TEU) requires that the Common Foreign and Security Policy (CFSP) be defined and implemented according to unanimity in the European Council, unless otherwise provided in the TEU or in the Treaty on the Functioning of the EU<sup>2</sup> (TFEU). This constitutes a significant hurdle to proponents of a settlement ban due to the opposition of a number of EU States to measures targeting Israel. However, several EU legal experts have argued<sup>3</sup> that such restrictions would fall under Article 207 of the TFEU, which governs the Common Commercial Policy (CCP) and requires a qualified majority vote in the Council (at least 15 EU states representing at least 65% of the EU's population).

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1 [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

2 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

3 <https://drive.google.com/file/d/1sD1fHawTukMgyXnx34uLdLUDfYysL3o/view>

## ► 1 | The Legal Basis must be Determined by Objective Criteria

EU case-law is clear that the European Council or Commission cannot arbitrarily choose a legal basis for political convenience. The Court of Justice of the EU (CJEU) has ruled that the choice of legal basis must be determined by objective criteria. In *Commission v. Council (Titanium Dioxide)*<sup>4</sup>, Case C-300/89 (1991), the CJEU held that “*the choice of the legal basis for an EU measure must rest on objective factors amenable to judicial review, which include the aim and content of that measure*”. The measure in question in that case pursued both environmental objectives and harmonization of national measures to eliminate distortion of competition in the EU’s internal market. These were governed by separate Treaty provisions applying inconsistent legislative procedures. The CJEU ruled that the measure could not be based on both provisions and decided that it should be based on the harmonization provision, since provisions of the Treaty expressly contemplated that environmental protection requirements should be a component of other policies.

A series of CJEU judgments have held that “*If an examination of a European Union measure reveals that it pursues a twofold purpose or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component*”. In *Parliament v. Council (Pirate-Transfer Agreement with Tanzania)*, Case C-263/14<sup>5</sup> (2016), the European Parliament argued that an agreement between the EU and Tanzania, relating to the suppression of piracy, was incorrectly concluded under the CFSP alone, as it had a dual purpose of judicial and police cooperation as well as foreign policy. Citing the above formulation, the CJEU held that the main objective of the Agreement was to “*preserve international peace and security, in particular by making it possible to ensure that the perpetrators of acts of piracy do not go unpunished*” and was therefore correctly based on the CFSP. Conversely, in *Commission v. Council (CEPA / Armenia)*, Case C-180/20 (2021)<sup>6</sup>, the Court held that although the Partnership Agreement with Armenia had a CFSP component, the agreement should be considered as a whole, and its main purpose was trade and development cooperation. The EU’s position in relation to all aspects of its implementation should therefore be established by qualified majority voting.

The CJEU acknowledged in these and other cases that “*Exceptionally, if it is established, however, that the act simultaneously pursues a number of objectives, or has several*

4 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61989CJ0300>

5 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62014CJ0263>

6 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62020CJ0180>

components, which are inextricably linked without one being incidental to the other, such that various provisions of the Treaty are applicable, such a measure will have to be founded on the various legal bases corresponding to those components.” On the other hand, the CJEU has also held that a measure can only be based on multiple grounds where the procedures under the separate grounds are compatible: *Parliament v Council (European Investment Bank)*<sup>7</sup>, Case C-155/07 (2008), *Parliament v Council (Usama bin Laden)*<sup>8</sup>, Case C-130/10 (2012), *Commission v. Council (CEPA / Armenia)*, Case C-180/20 (2021)<sup>9</sup>.

The “predominant purpose” of a proposal to ban imports of goods originating in areas of Israeli settlement in the West Bank would clearly be to pressure Israel to end its policy of allowing and supporting settlement of Israelis in the West Bank. This is evident from many statements made by its proponents and from the fact that they do not propose any similar ban in relation to other territories regarded by the EU as occupied. Accordingly, there appears to be a strong argument that such a measure should be based on the CFSP, since its main purpose would be to promote a particular foreign policy and/or security objective, rather than to promote international trade or to avoid distortions of competition in the internal market or to further other objectives of different EU policies.

This conclusion does not exclude the fact that such a ban would also fall within the scope of the CCP. The CJEU has held in numerous cases that the CCP covers a measure “if it relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade”: *Kadi*<sup>10</sup>, Cases C-402/05P and C-415/05P (2008); *Commission v Council (conditional access / illicit devices to receive broadcasts)*<sup>11</sup>, Case C-137/12 (2013); *Daiichi Sankyo v DEMO*<sup>12</sup>, Case C-414/11 (2013); *Commission v Council (revised Lisbon Agreement on Appellations of Origin)*<sup>13</sup>, Case C-389/15 (2017). A ban on imports of goods produced in areas of Israeli settlement in the West Bank would govern trade in these goods and have direct and immediate effects on such trade. It would fall within both the CFSP and the CCP, but since the procedures for adopting measures on these bases are incompatible, it could not be adopted on the basis of both of them. It could only be adopted on the basis required by its predominant purpose, namely the CFSP, by the procedure applicable to a measure adopted on that basis.

Article 24(1) of the TFEU states that the CFSP “shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties [the TEU or TFEU] provide otherwise”. (The European Council consists of its President, the Heads of

7 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli%3AECLI%3AEU%3AC%3A2008%3A605>

8 <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62010CJ0130>

9 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62020CJ0180>

10 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62005CJ0402>

11 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0137>

12 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62011CJ0414>

13 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0389>

State or Government of each EU Member State and the President of the EU Commission, while the Council consists of Ministers representing the Governments of each EU Member State.) However, decisions under the CFSP are not legally binding. Article 215 of the TFEU therefore states that where a decision adopted under the CFSP “*provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures.*” This provision would appear to apply to a ban on imports from areas of Israeli settlement in the West Bank. Thus such a measure would require first a unanimous decision by the European Council and the Council, and then implementing measures proposed jointly by the Commission and High Representative for Foreign Affairs and Security, and adopted by qualified majority in the Council.

Proponents of an EU ban on imports from areas of Israeli settlement in the West Bank argue that the International Court of Justice (ICJ) has advised<sup>14</sup> that trading with Israeli settlements in the West Bank is contrary to international law, that this view has been accepted by other UN bodies, and that the EU must comply. However, even if this strongly disputed contention is correct, the Kadi<sup>15</sup> case makes it clear that the EU must still respect its own constitutional processes and that a measure adopted in breach of those processes will be invalid. If an EU Member State or an EU body considers that the European Council or the Council has failed to act in breach of the EU Treaties, that State or EU body can apply to the EU Court of Justice for a ruling under Article 265 of the TFEU, with which the European Council and Council must then comply in accordance with Article 266.

## ► 2 | The Russia Precedent

The operation of these provisions is illustrated by the sanctions imposed by the EU in response to Russia’s annexation of Crimea and Sevastopol. On 23 June 2014, the European Council took a unanimous decision, 2014/386/CFSP<sup>16</sup>, under the CFSP to prohibit the import of goods originating in Crimea or Sevastopol, unless they were granted a certificate of origin by the Government of Ukraine. The Council then adopted EU Regulation 692/2014<sup>17</sup> under Article 215 of the TFEU implementing the import ban.

On the other hand, the European Commission’s proposal for a Regulation to phase out

14 <https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-jud-01-00-en.pdf>

15 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62005CJ0402>

16 <https://eur-lex.europa.eu/eli/dec/2014/386/oj/eng>

17 <https://eur-lex.europa.eu/eli/reg/2014/692/oj/eng>

Russian gas imports on the basis of the CCP rather than the CFSP was criticized<sup>18</sup> by Szep and Schaupp, who argued that it blurred the boundary between foreign policy and trade in a manner that might be contrary to the EU legal framework. However, the proposal had a significant economic purpose, namely the reduction of the EU's dependence on Russian energy. The ensuing Regulation 2026/261<sup>19</sup>, adopted under the CCP on 26 January 2026, emphasizes Russia's weaponization of the EU's reliance on Russian gas, situates the measure in the wider context of diversification of Europe's gas supply, and refers to the harm that Russia had caused to the European economy by withholding gas supplies. It remains to be seen whether these points will be sufficient to defend the Regulation in the EU Courts against challenges by Hungary and Nord Stream: *Hungary v Parliament and Council, Case C-46/26*<sup>20</sup>, and *Nord Stream 2 v Parliament and Council, Case T-264/26*<sup>21</sup>. By contrast, no such points could be invoked to support a ban on the import of goods from areas of Israeli settlement in the West Bank based on the CCP. Such a ban would be aimed solely at pressuring Israel over its policies.

### ► 3 | A Ban on Imports from Areas of Israeli Settlement in the West Bank is Country Specific

Szep and Schaupp distinguished between “horizontal” bans on goods made using forced labour or used for torture, which apply a neutral principle across goods and countries, and measures targeting specific countries and goods. In their view, the latter align “*more closely with CFSP-style restrictive measures than with broader human rights trade instruments.*” If and to the extent that this is a relevant consideration, it supports the view that a ban on imports from areas of Israeli settlement in the West Bank should properly be categorized as a CFSP measure.

Although proponents of banning imports from areas of Israeli settlement in the West Bank argue that this would merely apply neutral principles of international law, such as non-recognition or self-determination, comparison with other cases of disputed or occupied territories indicates it would be an Israel-specific measure.

UN Security Council (UNSC) Resolution 550 (1984) labeled northern Cyprus, part of an EU member state, as “occupied”, while UNSC Resolution 541 (1983) mandated the non-recognition of the Turkish Republic of Northern Cyprus (TRNC). The duty of non-

18 <https://verfassungsblog.de/energy-sanctions-russia-eu/>

19 <https://eur-lex.europa.eu/eli/reg/2026/261/oj/eng>

20 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62026CN0046>

21 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62026TN0264>

recognition of the TRNC was also recognized by the European Court of Human Rights in the *Loizidou*<sup>22</sup> case as well as *Cyprus v. Turkey*<sup>23</sup>. Despite this, the EU still imports goods from northern Cyprus through a specific legal channel. Under the EU's Green Line Regulation<sup>24</sup> (EU Regulation 866/2004), goods produced entirely in northern Cyprus—mainly agricultural products like citrus fruits, wood furniture, plastics, and certified PDO Hellim/Halloumi cheese—can legally cross the UN-monitored buffer zone into the south of the island. Once they enter the government-controlled Republic of Cyprus and clear standard EU safety and sanitary inspections, they gain the status of legal EU products. From there, they can be freely shipped and sold throughout the EU's single market.

Western Sahara is another territory generally considered to be occupied, with the local Saharawi people denied by Morocco their right to self-determination. In 1979 and 1980, the UN General Assembly (UNGA) condemned the “continued occupation” of Western Sahara by Morocco (Resolutions 34/37 and 35/19). UN Secretary-General Ban Ki-Moon referred to the Moroccan occupation in 2016. In 2012, the European Union General Court held that the Euro-Mediterranean Agreement, signed between the European Communities and Morocco, could not apply to Western Sahara, as it had a “separate and distinct” status from that of the Kingdom of Morocco.

The CJEU has previously ruled that goods from Western Sahara may not be labeled as Moroccan. However, the European Commission has consistently opposed<sup>25</sup> any limits or bans on the importation of goods from Moroccan-occupied Western Sahara. In October 2025, the EU and Morocco concluded an amendment<sup>26</sup> to the EU-Mediterranean Agreement that would essentially grant tariff preferences to products from occupied Western Sahara. This insistence on continued imports from this territory would appear to belie any claim that a ban on imports from areas of Israeli settlement in the West Bank would be a neutral application of international law.

In reality, while such a ban would fall with the scope of the CCP, its predominant purpose would be political and its adoption by the EU would require unanimity under the CFSP.<sup>27</sup>

22 <https://hudoc.echr.coe.int/eng?i=001-58007>

23 <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-59454%22%7D>

24 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004R0866>

25 <https://euperspectives.eu/2025/10/eu-morocco-agricultural-deal/#:~:text=The%20agricultural%20supply%20from%20Morocco%20to%20the,via%20long%2Ddistance%20cables.%20Spanish%20farmers'%20concerns%20grow.>

26 <https://www.ejiltalk.org/how-not-to-trade-with-occupying-powers-western-sahara-and-the-amendment-to-the-eu-moroccan-association-agreements/>

27 This article has not considered other possible challenges to the legality of such a ban, including whether it would be compatible with WTO agreements, agreements between the EU and Israel, or EU rules relating to particular products.