

Legal Brief: Commercial Policy Grounds for Suspension of EU-Israel Trade Provisions

European Citizens' Initiative Supporting Documentation

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Executive Summary

This legal brief establishes the juridical foundation for temporary suspension of trade and commercial provisions of the Euro-Mediterranean Association Agreement with Israel pursuant to European Union Common Commercial Policy competence under Article 207 TFEU. The analysis demonstrates that Israel's systematic violations of Article 2 essential elements provision constitute material breach affecting the integrity of preferential trade relations, warranting proportionate commercial policy measures consistent with established European Union practice.

Legal Thesis: The EU possesses exclusive competence under Article 207 TFEU to suspend trade provisions based on material breach of Article 2's essential elements clause conditioning preferential treatment. This constitutes a commercial policy measure requiring only qualified majority voting, not unanimity.

Recommended Action: Temporary suspension of trade provisions (Titles II-IV) while maintaining humanitarian cooperation, with restoration conditional upon precisely verified compliance using quantitative metrics from established international monitoring bodies.

Expected Outcome: Commercial pressure encouraging compliance with agreement conditionality while preserving trade relationship restoration possibilities, consistent with EU Common Commercial Policy practice and international legal obligations.

I. Common Commercial Policy Foundation

Article 207 TFEU - Exclusive EU Competence

Article 207 of the Treaty on the Functioning of the European Union establishes exclusive Union competence over Common Commercial Policy, including:

- Trade agreement negotiation and modification
- Tariff rates and trade liberalization measures
- Commercial aspects of intellectual property
- Foreign direct investment

Qualified Majority Voting: Article 207(4) TFEU mandates qualified majority voting for commercial policy decisions, requiring 55% of member states representing 65% of EU population. This distinguishes commercial policy from Common Foreign and Security Policy requiring unanimity.

Suspension Authority: The European Court of Justice confirmed in Opinion 2/15 that association agreement trade provisions fall within exclusive commercial policy competence when they primarily regulate trade exchanges.

EU-Israel Agreement Trade Provisions

The Euro-Mediterranean Association Agreement establishes extensive preferential trade arrangements:

Title II - Free Movement of Goods (Articles 6-22):

- Elimination of customs duties on industrial products
- Preferential tariffs for agricultural products
- Rules of origin protocols

Title III - Establishment and Services (Articles 29-34):

- Right of establishment provisions
- Services liberalization commitments

Title IV - Economic Provisions (Articles 35-47):

- Payments and capital movement

- Competition rules
- Economic cooperation

These provisions constitute classic commercial policy subject matter under Article 207 TFEU jurisprudence.

Article 2 Commercial Conditionality

Article 2 establishes: "Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement."

Commercial Conditionality Mechanism: The phrase "all the provisions of the Agreement itself" creates automatic conditionality for preferential trade treatment. Systematic violations of essential elements affect the commercial bargain underlying tariff preferences and market access.

ECJ Jurisprudence: The Court consistently interprets essential elements clauses as creating enforceable conditionality within commercial agreements (Portugal v Council, C-268/94).

II. Material Breach of Commercial Agreement

Breach Standard Under Vienna Convention

Article 60 of the Vienna Convention on the Law of Treaties defines material breach as:

(a) Repudiation of the treaty; or (b) Violation of a provision essential to accomplishment of treaty object and purpose

Commercial Agreement Context: For trade agreements, material breach includes systematic violation of conditions upon which preferential treatment is granted. The ICJ in *Gabčíkovo-Nagymaros* confirmed proportionate suspension as legitimate response to material breach.

Evidence of Systematic Violations

International Court of Justice: Provisional measures order (26 January 2024) found plausible violations of Genocide Convention, creating third-party obligations to employ available measures including trade instruments.

UN Documentation: Security Council Resolution 2334 determined settlement activities constitute "flagrant violation of international law." UN OCHA reports document humanitarian access below 200 trucks daily versus pre-October 2023 baseline of 500+.

Quantitative Breach Indicators:

- Humanitarian access: 60% reduction from baseline
- Settlement expansion: 12,000+ new units approved post-Resolution 2334
- Movement restrictions: 600+ permanent obstacles documented
- Geneva Convention violations: Systematic breaches documented by ICRC

These violations directly contravene Article 2 essential elements conditioning trade benefits.

III. EU Commercial Policy Precedent

Belarus Trade Suspension (2012)

Following systematic human rights violations, the EU suspended trade provisions through Council Decision 2012/642/CFSP:

Commercial Measures:

- Suspended preferential tariffs
- Restricted access to EU procurement markets
- Limited economic cooperation programs

Legal Basis: Implemented under Common Commercial Policy to enforce essential elements clause, using qualified majority voting. The suspension maintained humanitarian exemptions while targeting commercial benefits.

GSP+ Withdrawals

The EU regularly withdraws trade preferences under Generalized System of Preferences Plus for systematic violations:

Sri Lanka (2010): GSP+ withdrawn for human rights violations **Cambodia (2020):** Partial withdrawal for labor rights violations **Philippines (ongoing review):** Threatened withdrawal for extrajudicial killings

Commercial Policy Character: All GSP actions proceed under Article 207 TFEU through qualified majority, demonstrating established practice of trade conditionality enforcement.

Myanmar Trade Restrictions (1997-2013)

EU imposed comprehensive trade restrictions through commercial policy instruments:

- Import prohibitions on certain products
- Export restrictions on equipment
- Investment limitations

Restoration: Trade measures lifted only after verified democratic reforms, establishing precedent for conditional suspension with measurable benchmarks.

IV. Proportionality Analysis

Necessity in Commercial Context

Legitimate Commercial Objective: Maintaining integrity of conditional preferential trade arrangements constitutes core commercial policy objective. Agreement explicitly conditions trade benefits on human rights compliance.

Exhaustion of Alternatives: Diplomatic démarches and statements have proven insufficient. Trade measures provide necessary economic incentive within available EU instruments.

Commercial Policy Coherence: Continuing preferential treatment despite systematic violations undermines EU trade conditionality framework applied globally.

Proportionate Commercial Response

Targeted Suspension: Only trade provisions suspended (Titles II-IV), maintaining:

- All humanitarian cooperation

- Consular/diplomatic relations
- Medical and civilian assistance
- Academic cooperation
- Existing contracts

Measurable Conditions: Restoration tied to quantitative metrics:

- 500 trucks daily (humanitarian baseline)
- Zero new settlement units (UNSC Resolution 2334)
- ICRC verification protocols (Geneva compliance)
- UN movement indicators (freedom restoration)

Time-Limited: 12-month review ensures ongoing proportionality assessment.

Commercial vs. Political Character

Primary Purpose: Enforcing commercial agreement conditionality, not pursuing foreign policy objectives. Measure addresses breach of terms upon which trade preferences granted.

Objective Criteria: Restoration conditions reference established international legal standards and quantitative metrics, avoiding political discretion.

Precedential Consistency: Follows established EU practice of commercial policy enforcement through trade measures.

V. Implementation Framework

Article 207 TFEU Procedures

Commission Proposal: Following ECI validation, Commission must present proposal within EU commercial policy framework. Article 207 ensures streamlined decision-making without foreign policy complications.

Council Decision: Qualified majority voting applies:

- 55% of member states (15 of 27)
- Representing 65% of EU population

- No single state veto possible

Parliamentary Role: European Parliament consulted but approval not required for Article 207 measures, expediting implementation.

Monitoring Through Established Mechanisms

Existing Infrastructure: Utilizes monitoring bodies already operational:

- UN Security Council panels
- OCHA humanitarian tracking systems
- ICRC compliance protocols
- UN Special Rapporteur reports

Quantitative Metrics:

- Humanitarian access: Daily truck counts via OCHA
- Settlement activity: Satellite monitoring per OSCE
- Movement freedom: Checkpoint data from UN
- IHL compliance: ICRC incident reporting

Reporting Framework: Quarterly Commission assessment using dashboard of objective indicators, ensuring transparent evaluation without subjective interpretation.

Legal Certainty for Economic Operators

Clear Scope: Specified Agreement titles suspended provides certainty on affected trade flows.

Transition Provisions: Existing contracts protected, allowing orderly adjustment.

Restoration Pathway: Precise conditions enable business planning based on compliance progress.

VI. International Legal Compliance

Genocide Convention Obligations

The ICJ provisional measures create binding obligations under Genocide Convention Article I to "prevent and punish" genocide. The ICJ in *Bosnia v. Serbia* established duty to employ "all means reasonably available" for prevention.

Commercial Policy as Available Means: Trade measures fall within EU's "reasonably available" instruments:

- Clear competence under Article 207 TFEU
- Established precedent for human rights enforcement
- Proportionate to violation severity
- Effective given trade dependency

Legal Necessity: Continuing preferential trade absent preventive measures may constitute failure to fulfill Convention obligations.

WTO Compatibility

GATT Article XXI: Security exceptions permit measures "necessary for the protection of essential security interests" including international peace obligations.

Human Rights Exception: WTO jurisprudence recognizes human rights obligations as potential justification for trade restrictions (EC-Seals, DS400/401).

Non-Discriminatory Application: Measure applies established EU conditionality consistently, avoiding arbitrary discrimination.

UN Charter Obligations

Article 41: Authorizes economic measures for peace and security maintenance.

Security Council Support: Resolution 2334 provides multilateral backing for addressing systematic violations through available means.

Regional Implementation: EU action complements UN framework through regional economic measures.

VII. Political Feasibility Assessment

Member State Positions

Supporting Coalition: Recent statements indicate qualified majority achievable:

- Ireland, Spain, Belgium: Called for trade review
- Nordic states: Traditional human rights emphasis
- Luxembourg, Malta: Supported accountability measures

Commercial Framing Advantage: Emphasizing trade conditionality rather than foreign policy reduces political sensitivity and ensures QMV applies.

Institutional Dynamics

Commission Precedent: DG Trade has implemented similar measures for Myanmar, Belarus, demonstrating institutional capacity.

Parliament Support: Multiple resolutions calling for concrete measures indicate parliamentary backing.

Civil Society Momentum: Broad coalition supports commercial accountability measures.

Risk Mitigation

Legal Robustness: Strong commercial policy basis minimizes judicial challenge risk.

Gradual Implementation: Phased approach allows diplomatic engagement while maintaining pressure.

Clear Reversibility: Precise restoration conditions provide face-saving exit strategy.

VIII. Conclusion

The suspension of trade provisions represents legitimate exercise of EU Common Commercial Policy competence to enforce agreement conditionality. Article 207 TFEU provides clear legal basis requiring only qualified majority voting, distinguishing this commercial measure from foreign policy requiring unanimity.

Material breach of Article 2 essential elements through systematic violations documented by international bodies undermines the commercial bargain underlying preferential trade

treatment. EU precedent from Belarus, Myanmar, and GSP practice establishes consistent approach to trade conditionality enforcement.

The proposed measure maintains strict proportionality through:

- Limited scope targeting only commercial provisions
- Precise, measurable restoration conditions
- Established monitoring mechanisms
- Time-limited review procedures

Implementation serves multiple legitimate objectives:

- Maintaining EU commercial agreement integrity
- Fulfilling international law obligations
- Encouraging compliance through economic incentives
- Preserving long-term trade relationship viability

This commercial policy response represents available, necessary, and proportionate means to address systematic breach of agreement conditionality while respecting EU institutional framework and international obligations.

Annexes

Annex A: Key Legal Provisions

- Article 207 TFEU - Common Commercial Policy
- Article 2 EU-Israel Association Agreement
- Vienna Convention Article 60

Annex B: Precedent Documentation

- Council Decision 2012/642/CFSP - Belarus Trade Suspension
- GSP Regulation (EU) No 978/2012
- Myanmar Trade Restrictions Archive

Annex C: Monitoring Metrics

- UN OCHA Humanitarian Access Dashboard

- OSCE Settlement Monitoring Reports
- ICRC Protection of Civilians Framework
- UN Special Rapporteur Movement Indicators

Annex D: Trade Impact Assessment

- EU-Israel Trade Statistics 2022-2024
- Sectoral Analysis of Affected Trade Flows
- Economic Incentive Calculations
- Restoration Scenario Modeling