Her Excellency Ursula von der Leyen
President of the European Commission

Her Excellency Kaja Kallas
High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission

His Excellency Maroš Šefčovič
Commissioner for Trade and Economic Security

Berlaymont Building, Rue de la Loi 200
B-1049 Brussels, Belgium

31 July, 2026

Re: European Commission's Options Paper on trade with Israeli settlements in the occupied territories

Dear President von der Leyen, dear High Representative Kallas, dear Commissioner Šefčovič

As scholars of EU and international law, we were concerned by several claims made in the Commission's Options Paper on trade with Israeli settlements, which we have had the opportunity to examine. Given the importance of the subject and the fact that the paper's contents had already been reported by several media outlets despite its restricted status, we consider it necessary to respond publicly to three central claims which, in our assessment, are manifestly incorrect and misleading. We confine ourselves to quoting only these three points, which we consider necessary to permit informed public discussion on this matter.

Firstly, the paper states that *"[t]he illegal settlements do not benefit from preferential treatment under the EU-Israel Association Agreement. Consequently, goods originating in the settlements are therefore subject to Most-Favoured Nation (MFN) tariffs. This differentiation regime is in line with the 2024 International Court of Justice (ICJ) Advisory Opinion."*

This claim is factually untenable. The ICJ Advisory Opinion affirms that states have an obligation *"to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory"*. Allowing trade with settlements on Most-Favoured Nation terms cannot reasonably be characterised as taking steps to prevent such trade as required by the ICJ. Moreover, as the Options Paper itself points out, the Israeli government has in place a reimbursement scheme for settlement exports to the EU, which annuls the purported effect of the existing EU policy. The Commission's claim that the existing differentiation regime is "in line" with the ICJ Advisory Opinion is therefore unsustainable.

Secondly, with regard to the legal basis of a potential EU measure, the paper argues that *"[a] measure restricting or banning trade with the illegal settlements would appear to seek to promote a change of conduct of the Israeli government, in relation to the Israelian [sic] stance to the illegal settlements. The measure would thus go beyond a pure economic/trade logic and aim at achieving foreign policy objectives of the Union - including respect of international public law."*

This reasoning mischaracterises the objective of the proposed measure as advanced by its proponents. Members of the European Parliament, civil society organisations, legal scholars, and various EU foreign ministers have been calling for a measure predominantly aimed at ensuring consistency of the EU's own Common Commercial Policy with international law, as required by Articles 3(5) and 21 TEU and 207(1) TFEU. In line with the ICJ Advisory Opinion, the measure would seek to prevent EU trade from contributing to the economic viability of the settlements. These objectives are trade-related and fall squarely within the scope of Article 207 TFEU, which should thus be the legal basis, in line with CJEU jurisprudence and as argued at greater length in the above-mentioned legal scholars' letter. Given the separate and distinct status of the occupied territories from Israel,[1] a ban on trade with settlements would only concern the trade relations between the EU and the occupied territories – not the Israeli state or its economy. Therefore, while promoting a change of conduct of the Israeli government and ensuring its respect for international law is also justified and necessary, that would clearly not be the main purpose of this particular measure.

Thirdly, the paper argues that the previous point is *"reinforced by the comparatively small volume of trade actually at stake: settlement-origin exports to the EU represent a very small fraction of total EU-Israel trade, which suggests that the measure's primary purpose is not economic regulation but the pursuit of a foreign policy objective, namely, increasing the costs for Israel of expanding illegal settlements and expressing non-recognition of the illegal situation in the Occupied Palestinian Territory, using trade as the vehicle for that purpose much as sanctions regimes use asset freezes or travel bans as vehicles for a political objective rather than as measures aimed at regulating the underlying economic activity in its own right."*

This reasoning is self-contradictory. If, as the Commission claims, settlement trade represents only a small share of EU-Israel trade, this would disprove rather than strengthen the assertion that the measure's predominant purpose is to increase the cost for Israel or alter its conduct. Rather, it supports the conclusion that the measure is directed principally at ensuring that the EU does not itself contribute to sustaining the settlements economically, in line with the obligations affirmed by the ICJ. Regardless of its share of EU-Israel trade, trade with settlements contributes to their economic viability, which is precisely why preventing it

[1] Case C-386/08, Firma Brita GmbH v Hauptzollamt Hamburg-Hafen, ECLI:EU:C:2010:91.

matters. This aligns with the argument for using Article 207 TFEU as the appropriate legal basis.

Taken together, the Options Paper does not appear to satisfy the standard of careful and impartial examination of the relevant facts and legal considerations that the Court of Justice has consistently required of the Commission in the exercise of its powers. Given the striking deficiencies in the reasoning outlined above, we cannot avoid the impression that the analysis was shaped to justify inaction, rather than providing an objective assessment.

We therefore urge the Commission to reconsider its position and proceed swiftly to tabling a proposal to prevent trade with the settlements under Article 207 TFEU in line with its obligations under international law and the EU Treaties. We would welcome the opportunity to discuss this matter further.

Sincerely,

List of signatories

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