

INFORMATIVE NOTE



MEASURES AGAINST THE GENOCIDE IN GAZA AND TO SUPPORT THE PALESTINIAN POPULATION AND ITS LEGAL

On 8 September 2025, the Council of Ministers, at the proposal of President Pedro Sánchez and the Minister of Foreign Affairs, José Manuel Albares, approved a package of nine urgent measures aimed at curbing the *genocide in Gaza and strengthening support for the Palestinian population*.

These measures reflect the political will of the Spanish government to increase the "pressure" on Israel to stop the offensive on the Gaza Strip. However, its legal viability depends on the distribution of competences between the Spanish State and the EU, as well as on the international commitments adopted with third countries.

From the perspective of customs law and export controls, the measures adopted by the Council of Ministers have different levels of feasibility and affect the **entry and exit of goods** to/from the national territory, establishing an arms embargo on Israel, restrictions on maritime and air transit, and a ban on the import of products from settler settlements in Gaza and the West Bank.

i. Arms embargo on Israel

The arms embargo on Israel will be formalized through the **approval of a Royal Decree-Law freezing the granting of new export licenses and consolidating the suspension of licenses that have already been in**

force since October 2023. This measure is based on Law 53/2007, of 28 December, which regulates foreign trade in defense material and dual-use goods.

Thus, article 1 of this Law establishes that its purpose is to prevent the diversion of weapons into the illicit market and to ensure that exports do not contribute to human rights violations or armed conflicts. Therefore, Articles 4 and 8 establish that any transfer of arms or defense material requires prior administrative authorization with clauses that guarantee the destination and final use.

Therefore, this so-called embargo is implemented through the denial, suspension or revocation of licenses, when there is a risk that the weapons will be used in serious violations of international humanitarian law or human rights.

We cannot forget that Article 7 of Royal Decree 679/2014 authorizes the suspension of licenses if there are "rational indications" that the material may be used in internal repression or serious human rights violations.

Consequently, we are not dealing with a traditional trade embargo resulting from regulations approved by the EU, but rather with the application of national instruments that seek a result similar to that of an embargo, through the non-

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granting or suspension of the licenses necessary to trade those products.

Since it is not an embargo as such, this measure will not affect civilian products or technological exports that are not included in the Defense Material list.

Nor will it interfere in the shipments of material to the bases of Rota and Morón destined for Israel, as they are covered by bilateral defense agreements with the United States. Thus, Article 25.1 of the Defense Cooperation Agreement between Spain and the United States expressly recognizes that aircraft of the US Armed Forces deployed in Spain may fly over, enter and leave Spanish airspace and use such bases *"without any requirements other than compliance with Spanish air traffic regulations"*.

In addition, Article 32.1 establishes that the loading or unloading of ammunition and explosives within the indicated bases do not require additional authorization from the Spanish authorities.

ii. Restrictions on ports and airspace

In this case, the **aim is to deny transit authorizations to ships and aircraft carrying military equipment bound for Israel.**

This decision is based on two fundamental pillars of international law:

to. Sovereignty over airspace:

Article 1 of the 1944 Chicago Convention states that "every State has complete and exclusive sovereignty over the airspace above its territory". By virtue of this principle, Spain may deny the overflight or landing of civil or State aircraft carrying military equipment, provided that the measure is motivated by reasons of national security or in compliance with international obligations in the field of peace and human rights.

b. Control of territorial waters and ports:

The United Nations Convention on the Law of the Sea (UNCLOS) recognizes the right of the coastal State to take necessary measures to protect its security (art. 25) and to regulate innocent passage in its territorial waters. This gives Spain leeway to prevent the entry or transit of ships carrying weapons if such operations are considered to contravene national security or principles of international humanitarian law.

It is important to note that, from a customs perspective, the Union Customs Code (EU Regulation No. 952/2013) establishes that all goods entering or leaving the customs territory of the Union are subject to control, so controls on this type of operation will be intensified.

As in the previous case, this measure has limitations in its practical application since the transit of material at the Rota and Morón bases cannot be prevented, as they are movements protected by the

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Defense Cooperation Agreement with the United States.

That said, this measure may be executed, provided that it is exercised within the margins of proportionality and with sufficient justification for reasons of security and compliance with international law.

iii. Import ban on settler settlement products in Gaza and the West Bank

On this point, it should be recalled that, in accordance with the provisions of Article 3(1)(e) of the Treaty on the Functioning of the European Union (TFEU), it establishes that the common commercial policy is the exclusive competence of the Union, so that no Member State may unilaterally impose general import bans from third countries or occupied territories. since such a decision is a matter for the Community legislator.

However, Member States retain some room for maneuver through customs and labelling controls. Thus, the Court of Justice of the European Union, in the judgment of 12 November 2019 (case C-363/18, Psagot Winery Organization), determined that products originating from Israeli settlements in occupied territories must bear specific labelling that allows the consumer to know their

origin and distinguish them from products originating in the State of Israel.

Therefore, in application of this doctrine, Spain can strengthen surveillance and require clear and differentiated labelling to prevent products from illegal settlements from being marketed as if they were Israeli, thus avoiding the violation of the principle of truthfulness and transparency towards consumers.

In conclusion, although in our opinion the unilateral import ban would exceed the State's competences and would be legally unfeasible; we understand that the reinforced control of the labelling and traceability of products is a valid legal tool aligned with the jurisprudence of the CJEU and with the common commercial policy of the Union and would serve as an element to limit imports of products from these settlements.

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