

Customs & Trade in Israel

A Legal Newsletter

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As of November 1st – Importers Must File an Affidavit on the Global Gateway System

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Mr. Avi Arditi, Head the Israeli Customs Directorate, recently announced that as of 1.11.18, any import declaration with a value of over \$5,000 submitted through the 'Global Gateway' system, new IT system customs, requires the submission of an importer affidavit as well. An import declaration submitted without an importer affidavit will not be processed.

Q: What is an importer affidavit, and why is it necessary?

A: the general rule is that import duties are set according to the value of transaction (Section 132 of the Customs Ordinance), as well as various related costs, such as shipping, insurance, royalties and more (Section 133 of the Customs Ordinance).

Through the importer affidavit, the Customs Authority seeks to receive information regarding the relationship between the importer and the supplier or other third parties. Thus, the Customs Authority determines whether there are other costs beyond the transaction price which should be included in the valuation of the transaction for customs purposes.

In addition, even though the transaction price is the basis, there are instances in which the Customs Authority has the legal right to invalidate the declared price. For example, if a special relationship exists between the exporter-seller and the importer-buyer (such as subsidiary companies) which affects the transaction price, or if there are restrictions on the sale of the goods in Israel.

Therefore, the importer is required to provide details regarding his relationship with the supplier in the importer affidavit, and the Customs Authority may use these details to examine the validity of the declared transaction price.

Q: What is the legal basis for requiring an importer affidavit?

A: The Customs Authority requires the submission of an importer affidavit under Section 134 of the Customs Ordinance, which states that the Customs Directorate may set regulations for acting under Sections 129-133I (which deal with goods valuation): "and specifically, in order to obligate every individual related to the import of goods to Israel to provide the Directorate, in the form set by the Directorate, any information he deems required in order to accurately assess the goods".

The Customs Authority also acts in this instance under section 27 of the Customs Ordinance, which states that: "the submitter of an entry must answer any question regarding the goods specified in the entry, if required to do so by the Customs Collector or other customs official".

By the power vested in it, the Directorate set regulations called the Customs Regulations (Goods Valuation), 1970, which obligate importers to submit declarations regarding the value of the goods (Section 1(a)):

"the owner of the goods that are all or partially dutiable, by value, will submit to the Customs Collector a declaration alongside the entry, in a form set by the Directorate, regarding the said goods, unless otherwise directed by the Directorate".

A short discussion on one example of a question from the importer affidavit.

This limited article is too short to review all the questions of the importer affidavit, so we will focus on one question as an example.

Question 6 of the importer affidavit is written as follows:

"Did you directly or indirectly provide any services or means of program production, technical assistance, equipment, materials, machinery as specified in the Guidelines at no cost or at a reduced price in connection with the production and sale of the goods for export?"

One case this question relates to, for example, is if the importer splits the transaction payment among two parties. The importer pays one party for the supply of raw materials, which the importer then provides to the supplier for free or at a reduced rate. The supplier then manufactures the product, which is eventually imported to the importer's country of residence. This question aims to prevent a situation in which the importer declares a partial cost for tax purposes, rather than the full price.

A typical example of such a case can be found in the World Customs Organization's (WCO) case study 5.1. In this case, importer A acquired 10 cars in a certain country for their full price, and supplied the cars for free to a different supplier in the same country which armored the cars. The armored cars were then imported to the importer's country. The WCO ruled that for customs valuation purposes the cost of the cars supplied to the supplier by importer A for free should be included, under a section similar to section 133A(2)(a), as the unarmored cars are considered "materials / components" supplied by the importer at no cost for the production of the goods.

Another example of the implementation of these sections is a case in which the importer supplies the supplier with moulds for the production of the goods, either for free or at a reduced rate. The underlying assumption is that in such a case, the importer is reducing production costs for the supplier, for if the moulds were not supplied by the importer, the supplier would have been required to purchase them himself, resulting in an increase in the goods' price.

It should be noted that the condition for the application of this section is that the tools were supplied by the importer to the supplier for free or at a reduced rate. In other words, if the tools were sold to the supplier for their full price, the costs of the tools should not be included in the transaction value for custom purposes under this section. This is due to the assumption that in such a case the supplier will not reduce the price of the supplied goods, as he received no discount on the tools.

Of note is the fact that the Customs Authority included this clause in a list of "tax positions which requires reporting", which states:

"It is required to add to the valuation of the goods for customs purposes all the costs of moulds and similar items which were used in the manufacturing process of the goods, and were supplied by the importer either directly or indirectly for free or for a reduced rate, or which were separately priced by the supplier, and were not included in the sales accounts provided to the importer. The above is in accordance with sections 132 or 133 of the Customs Ordinance, as applicable. For example, products manufactured out of plastic, such as plastic trays, plastic boxes, plastic parts for various tools, and more. The manufacture of these products is conducted, among others, by injection of the raw material (plastic) into a mold made of steel, which allows industrial production of plastic products and parts in large quantities. If the mold was provided for free or for lower than its cost by the importer, either directly or indirectly, the cost of the steel mold is to be included in the transaction value for customs valuation purposes."

Q: What is the significance of signing an importer affidavit?

A: An importer affidavit is an official document that binds the importer to its content. Thus, the importer must ensure that all the details presented in the affidavit are true and accurate.

Signing an affidavit with incorrect details, or with details which are later discovered as untrue, may place the importer at risk, both in the civil and criminal levels. Civil risks may include the issuance of deficit notices, for example, while in severe cases the importer may be criminally liable, as certain section of the Customs Ordinance impose criminal liability for providing false information to the Customs Authority (under certain circumstances).

The entity which may sign the importer affidavit is one of the following: the company's CEO, Legal Counsel (GC), CPA or import manager, as long as they are authorized signatories.

The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

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