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## **Customs & Trade in Israel**

### **A Legal Newsletter**

Adv. Gill Nadel, Chair of the firm's Import, Export and International Trade Law Practice, Tax Department

#### **The Court: a Customs Debt Notice which is not Backed by Tangible Evidence may be Annulled**

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#### **Background:**

In the following article we will review the Tel Aviv Magistrate Court's ruling on the customs classification of a "turkey flavored paste".

The court determined that the importer proved his claim regarding the essence of the goods and accepted the importer's classification. The court criticized the Customs Authority for its conduct in the case, as it failed to preserve samples of the product and submitted opinion reports based on theories and assumptions rather than facts.

#### **Case Facts and Detailed Arguments:**

Ersaban Import Ltd. imported two crates with boxes of turkey flavored paste with a variety of seasonings.

Upon their release, the goods were classified under Customs Heading 21.06-9099, labeled as "Various Edible Products - Unspecified Products". Since the goods were imported from EU countries, they were exempt from duty.

The Customs Authority was of the opinion that the proper classification of the goods should be under Customs Heading 16.02-3190, labeled as "Meat, Meat Scraps or Blood", which is liable to customs duty even if imported from EU countries.

#### **The Court's Ruling:**

The court determined that the difference between the classifications offered by the differing sides is based on the question of the amount of meat the product contains. This is due to clause 2 of Customs

Heading 16 of the Customs Tariff Order, which states that food products will be classified under Customs Heading 16 "as long as they contain over 20%, by weight, of sausage, meat, meat scraps, blood, fish or crabs, shellfish, or other aquatic invertebrates, or any combination thereof".

Both sides presented expert opinion reports analyzing the product in order to determine whether its meat content is higher or lower than 20%.

The expert on behalf of the Customs Authority noted that since the product undergoes a cooking process which completely dissolves the cell structure, it is impossible to determine the meat content's percentage in the paste through direct chemical testing.

Conversely, a British expert who testified on behalf of the importer presented a scientific methodology for testing. He suggested determining the protein content of a sample, from which protein attributed to non-meat components will be subtracted, with the remainder being attributed to meat.

The court criticized the Customs Authority's conduct once it became clear their sample of the product was thrown away, due to spoiling and 'stinking'.

The court rejected the claims of the Customs Authority's expert regarding the calculation method of the meat percentage, since he failed to present scientific research to support his claim. The expert presented printouts from popular internet sites, which are used to calculate calorie consumption.

The court's impression was that the Custom Authority's classification was not based on a thorough, detailed examination, founded on a scientific methodology, but on a simplistic, indefinite calculation.

The court concluded that it was presented with a scientific opinion, based on the experience of the British expert provided by the importer. On the other hand, the Customs Authority presented speculations, assumptions and unproven evaluations, based on internet sites and untested mathematical calculations.

In light of the above, the court accepted the results of the British expert's examination, determining that the meat content in the product is between 16% to 18%, and therefore should be classified under Customs Heading 21.06-9099/6, as claimed by the importer.

The court charged the Customs Authority 50,000 ILS for part of the importer's legal expenses, as well as 29,250 ILS for his attorney's fee.

[TA (Tel Aviv Magistrate Court) 58062-11-12 **Ersaban Import Ltd. V. The State of Israel**,  
presiding judge: Amit Yariv, on 7.10.15]

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

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