

Customs & Trade in Israel

A Legal Newsletter

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

The District Court: No Imposition of a Guarantee During a Dumping Investigation Without Proof of Damage

Adv. Gill Nadel, Adv. Dave Zeitoun, Adv. Chen Avner

Case Facts:

The plaintiff, one of Israel's two cement manufacturers, turned to the Israeli Commissioner of Trade Levies ("the Commissioner"), requesting that he investigate dumping allegations regarding the import of cement from Greece and Turkey, and impose temporary guarantees upon the importers of the cement to Israel.

The results of the Commissioner's investigation found factual basis for the allegations of dumping in the importation of cement, as the cement was exported to Israel for a substandard rate, selling in Israel for a significantly lower rate than its market price in the exporting country. Even so, due to insufficient data presented by the plaintiff and the other Israeli cement manufacturer, the Commissioner rejected the plaintiff's request to impose a guarantee, claiming that he cannot examine the damage to the local cement field and the causal link between the dumping and the damage.

The plaintiff filed an administrative claim against this assertion of the Commissioner to the Jerusalem District Court.

Parties' Arguments:

The plaintiff argued that the Commissioner's decision to refrain from action, even though he found that there is indeed excessive dumping import activity in process with potential to critically harm the local industry, constitutes a prohibited deviation from the range of reasonableness. Even though the Commissioner is charged with protecting local manufacturing, and is empowered to act in this regard, he refrained from doing so, and therefore there is room for judicial intervention in the Commissioner's decision.

The Commissioner argued that his decision was reasonable and within his authority, and the plaintiff's call for judicial intervention is baseless. The Commissioner added that he informed the plaintiff regarding the missing data, yet did not receive any further information. In light of the above, the Commissioner argued that he was not presented with a factual basis for determining whether the local manufacture was actually damaged, and due to the lack in data which would enable him to examine the existence of damage, he may not and can not impose a temporary guarantee.

The Court's Ruling:

The court determined that the Commissioner's findings were not that there is actual damage, but an assessment that if the damage continues, it will critically harm the local manufacturing.

The court added that no guarantee should be imposed without alleged proof of damage to local manufacturing, and a causal link between the dumping and the damage. Without sufficient data regarding the alleged damage to local manufacturing, the Commissioner's hands are tied. The missing data is at the core of determining the damage to local manufacturing, and the causal link between the dumping and the damage.

Furthermore, the court stated that prior to imposing a temporary guarantee, the Commissioner must weigh the broader implications of such a move, such as a possible increase in the imported goods market price due to the importers' fear that the claim may be accepted and the guarantee forfeited. In such a case, the temporary guarantee may have a similar effect to any dumping levy that may be imposed in the future.

In light of the above, the court rejected the claim, ruling that under the circumstances the Commissioner acted properly, and no guarantee should be imposed.

[AC (Jerusalem District Court) 5516-12-17, **Har Tuv Cement Ltd. V. The Commissioner of Trade Levies**, before Honorary Judge Arnon Darel, ruling given on 29.3.2018]

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

**For more information, please contact Adv. Gill Nadel, Chair of the Import, Export and Trade
Law Practice**

Email: Gill.Nadel@goldfarb.com Phone: 03-6089979.