

# Customs & Trade in Israel

## A Legal Newsletter

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### **The Supreme Court: An Importer Will Receive Documents Which The Customs Authority Claimed Were Confidential**

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The Supreme Court recently rejected the request for leave to appeal submitted by the Customs Authority, ordering the Customs Authority to provide an importer with the protocols and background information of a customs committee which handled his case.

#### **Case Overview:**

The case relates to a customs classification dispute between an importer of door profiles and the Customs Authority regarding the appropriate classification of door profiles.

As part of the lawsuit, the importer requested that the Customs Authority provide him with the protocols and background information of a customs committee, which convened in order to determine whether the importer is entitled to an exemption from a deficit demand.

The Customs Authority refused, arguing that the requested material is confidential as it constitutes an "internal record" of the Customs Authority. The Customs Authority argued that its employees are entitled to speak their mind freely in committees, and that revealing the material may generate a "cooling effect", with the employees becoming hesitant to express their opinions.

The importer, on the other hand, argued that the documents are relevant to the case as they pertain directly to him, adding that the right for disclosure supersedes the claim of confidentiality.

The Magistrate Court rejected the importer's claim, but the District Court accepted the claim. The Customs Authority then submitted a request for leave to appeal to the Supreme Court.

#### **The Supreme Court's Ruling on the Leave to Appeal:**

The Supreme Court ruled that conducting lawsuits with "all cards on the table" is a basic principle, meaning all parties must disclose as much information as possible.

The Supreme Court noted that the "internal record" label is not a magical expression which blocks any possibly of examining the document. The proper method should be reviewing each specific document, determining whether it should be disclosed or not.

In this specific case, following an examination of the said documents by the Supreme Court, the court ruled that they should be disclosed, since they pertain to the specific importer, and the filed claim raised allegations aimed at the decision making process of the committee.

The Supreme Court ruled that: **"labeling a document as an "internal record" is not a "magic word", and does not hermetically shield the document from disclosure and review" ; "the Authority's decision that the document is an "internal record" is insufficient for establishing confidentiality"**.

The Supreme Court therefore declined the request for leave to appeal, ordering the state to pay the importer 5,000 ILS in legal expenses.

[LTA 7461/16 **The State of Israel - Customs Directorate V. Pan-Door Industries Ltd.**, presiding judge: Elyakim Rubinstein, on 29.11.16. representatives of the sides: State of Israel - Adv. Yoram Hirschberg, Adv. Roni Zaloshinsky of the State Attorney Office; Pan-Door - Adv. Assaf Weiss]

For additional reviews by our firm on the subject of document disclosure in lawsuits filed against government authorities, please see:

[http://www.goldfarb.com/pdf1/Protocols\\_and\\_Resolutions.pdf](http://www.goldfarb.com/pdf1/Protocols_and_Resolutions.pdf)

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