

Customs & Trade in Israel

A Legal Newsletter

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The Court: Imported Pipes Treated In Israel Shall Be Considered Made In Israel

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Background:

The Mandatory Tenders Regulations (Preference For Israel Products And Mandatory Business Cooperation) 5755-1995 state that a 15% preference is to be given to Israeli products in government or municipal tenders in which both Israeli and foreign entities are competing.

For example, if the Israeli product's price was 100 ILS, and the foreign product's price was 90 ILS, the price of the Israeli product should be considered as 15 ILS less. The Israeli product would therefore win the tender, as its price is considered 85 ILS for tender purposes, thus offering the best price.

The court is occasionally asked to determine what would be considered a product made in Israel under these regulations, since many of the products are not manufactured entirely in Israel. In most cases, the products are based on imported foreign raw materials, which then undergo varied processes until completion.

In the following article we will review a recent ruling of the Tel Aviv District Court, which determined that certain products are considered products made in Israel for tender purposes. These products include pipes which were imported from Turkey, and subsequently coated externally and internally in Israel, as well as steel rolls imported from Turkey, which were rolled and coated in Israel.

Case Facts & Arguments:

The Mekorot Water Company Ltd. (Israel's national water company) published a tender for the supply of steel and concrete pipes.

Two companies with similar business models competed in the tender: Middle East Tube - Industries 2001 Ltd., and Avrot Industries Ltd. Both companies imported 16-20 cm diameter pipes from Turkey, which were then coated both externally (polyethylene) and internally (cement plaster). As for 24 cm diameter pipes, Middle East Tube imported steel rolls from Turkey and both rolled and coated them in Israel, while Avrot imported pipes and then coated them in Israel.

As part of the tender, Avrot requested to receive Israeli product preference for both pipe types, claiming that the external and internal coating of the product is enough for the purpose of considering the product an Israeli product.

On the other hand, Middle East Tube requested to receive Israeli product preference only for the 24 cm diameter pipes, which it both rolled and coated in Israel.

The tender committee classified the products of both companies according to their requests, and subsequently declared Avrot as the winner of the tender.

Middle East Tube turned to the court with a request to annul the tender committee's decision, claiming that coating alone is insufficient to classify the product as an Israeli product for preference purposes, and therefore it should have been declared the winner of the tender.

Middle East Tube argued that the coating action performed in Israel is negligible and insignificant, and cannot change the product's origin, which preserves its chemical composition, characteristics, traits and uses following the coating. Middle East Tube argued further that the pipes were manufactured in Turkey as high pressure water pipes, and that they remain as such after the coating process in Israel, which is intended only to provide better protection against corrosion and to meet Israeli standards for drinking water.

Avrot defended the tender committee's decision, arguing that the coating process is a significant, complex process involving dozens of workers and heavy machinery, a fact which entitles the product to the Israeli product classification, which deserves a 15% preference.

The Court's Ruling:

The court began by criticizing Middle East Tube, as it was proven that in 2009 it received an Israeli product preference for foreign pipes which were only coated in Israel, and did not claim at the time that the action was negligible and insignificant.

The court continued by stating that Middle East Tube could have requested such a preference in this tender as well, and if it failed to do so, it has only itself to blame.

Moreover, the court rejected Middle East Tube's reliance on an inquiry it made with Israel's Customs Authority, which answered that the coating of a pipe does not make it into an Israeli product. The court criticized Middle East Tube for conducting a simultaneous proceeding without notifying the parties involved, and ruled that with all due respect to the customs laws, they can be no more than an aid to interpretation of tender laws, and by no means do they constitute a decisive argument in these circumstances.

Furthermore, the court ruled that the determining test for the question of whether or not the pipe is considered a product made in Israel should be focused on the essence of the matter, not whether or not the customs classification of the product was changed between its import and the Israeli processing. In this case, the court ruled that in light of the intent of law, which is to encourage Israeli manufacturing, the pipes in question should be given an Israeli product preference. This is due to the fact that the coating of the pipes is performed in Israel, requiring many workers and heavy machinery, without which the pipes would not meet Israeli standards; and due to the fact that it was proven that the actions performed in Israel increase the value of the pipes by 45%.

In light of the above, the court rejected Middle East Tube's claim, ruling that the coating of the pipes classify them as Israeli products, and charging the plaintiff 150,000 ILS for attorney fees.

[TA (Tel Aviv Administrative Court) 13765-01-17 **Middle East Tube - Industries 2001 Ltd. V. Mekorot Water Company Ltd.**, presiding judge: Dr. Kobi Vardi, on 13.3.17.]

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

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