

# Customs & Trade in Israel

## A Legal Newsletter

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

### **The Court Limits Document Disclosure Related To Customs Duty On Royalties**

Adv. Gill Nadel, Adv. Dave Zeitoun, Yarden Baruch

#### **Overview:**

In the following article we will review a request submitted by the Customs Authority (Tax Authority) as part of a claim filed by an importer regarding customs duty in respect of payment of royalties.

The Customs Authority requested that the court order the importer, Anonima Trade Ltd., to disclose its correspondence with the suppliers and trademark owners it works with.

The court rejected most of the Customs Authority's requests, ruling that in light of the argument presented by the importer of unreasonable encumbrance, the Customs Authority will receive only the agreements between the importer and the manufacturer or trademark owner. The court determined there is no need to further encumber the importer by ordering disclosure of additional documents, such as email correspondence.

#### **Case Facts:**

A claim was filed by an importer against the Customs Authority, asking the court to annul a customs duty imposed due to royalty payments to trademark owners.

During the trial, the Customs Authority requested that the court order the importer to disclose its correspondence with the suppliers and trademark owners it works with.

The Customs Authority argued that these documents attest to the various circumstances of the import transaction, and are relevant for examining whether there is a practical possibility to purchase imported goods without payment of royalties. The answer to this inquiry is required in order to determine whether or not the royalties are dutiable.

According to the Customs Authority, these documents are evidence of direct or indirect control of the importer by the trademark owners or their representatives, and should therefore be disclosed.

### **The Parties Arguments:**

The importer argued that the Customs Authority's request for document disclosure constitutes an improvement in the factual basis that was used at the time of issuing the debit notice, contrary to previous court rulings.

The importer further argued that it does not currently possess the requested correspondence, and that the request refers to thousands of documents. Due to the extremely large quantity of documents, the request not only imposes an unreasonable encumbrance on the importer, it becomes irrelevant, in light of the extensive time it would take to gather and process all the documents.

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

The court determined that the relevance of a document or document type should be considered when weighing the question of unreasonable encumbrance in their disclosure.

In this case, the question pertains to the disclosure of documents related to the relationship between the importer and brand owners based abroad.

Weighing the balance between both parties interests, the court ruled that the Customs Authority need not receive more than the agreements between the importer and the trademark owners in order to understand their relationship. The court found no justification to encumber the importer with disclosing all its correspondence with the trademark owners, part of which dates back seven years.

[TA (Tel Aviv Magistrate Court) 19118-12-13 **Anonima Trade Ltd. V. The Tax Authority - Customs Directorate**, presiding judge: Oshri Frost, on 29.1.17]

**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.**