

Customs duties due to COVID-19 extra shipping costs. A force majeure?

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Article history:

Received: September 05,
2021

1st Revision: October 10,
2021

Accepted: November 26,
2021

DOI:

[10.14254/jsdtl.2021.6-2.9](https://doi.org/10.14254/jsdtl.2021.6-2.9)

Abstract: Sea freight prices have risen sharply due to the COVID-19 crisis, global shortages of ships, declining competition in the field, and containers of contagious demand. In Israel, the value for customs purposes includes the transportation costs, as in Singapore and the majority of the states. On the contrary, the United States, Australia and New Zealand, have chosen to exclude transportation costs for customs value purposes. Therefore, the increase in transportation costs leads to the increase in the value of goods for customs purposes. This increase lead to an additional collection of customs duties in Israel. The Israeli Law allows the state to facilitate importers and waive the extra customs duties, and similar and other facilitations have been made in the past, for example, in a war or strike situation. Therefore, all that is required is the flexibility and activation of goodwill on the part of the State when interpreting the Law to relieve the importers from extra duties caused by the COVID-19 crisis.

Keywords: customs, valuation, transport, Covid-19, Israel

1. Introduction

In the past year, sea freight prices have risen sharply, an increase that is not remembered for many years. Thus, according to various publications, about a year ago, renting a container for sea transportation from China to Israel, cost about 2,000\$, and today, the same transportation costs about 15,000\$.

According to the publications, the reasons for this significant increase are due, among other things, to the COVID-19 crisis, global shortages of ships, declining competition in the field, and containers of contagious demand. In addition, there is a "Made of Israel" reason, since due to the congestion at ports in Israel, there are ships that prefer not to dock in Israel, and then the number of ships that can dock in Israel is even smaller (Ynet, 2021).

The increase in transportation costs may lead to a wave of price increases in the sale of products in Israel. In addition, there is another parameter which is not mentioned, and that is the increase in the



value of goods for customs purposes, due to rising transportation prices. This increase in prices leads to further collection of customs duties, purchase tax, and import taxes due to the increase in value.

As will be presented herein, Israeli Law already allows the state to facilitate importers at this point. The State of Israel waived duties in different situations in the past. So all that is required is the flexibility and activation of goodwill on the part of the State when interpreting the Law.

2. Discussion

How is the value of the goods determined for customs purposes in the State of Israel?

The Israeli Law (Customs Ordinance, 2014a) stipulates that the value of the transaction is:

"The price paid or to be paid for the goods when sold for export to Israel ... plus the expenses and amounts specified in Section 133."...

The relevant Section, which refers to "assists" to the transaction price for customs purposes (Customs Ordinance, 2014b), enumerates a large number of examples, one of which, relevant to our issue, relates to transportation costs, and subscribes (Customs Ordinance, 2014c), which relates to:

"The following costs involved in bringing the goods to the port of import or place of import - (a) The cost of transporting the goods to the port of import or place of import, excluding such costs incurred due to special circumstances beyond the control of the importer and the Director determining not to include them in the transaction; This includes types of goods, types of transportation and other services.

The cost of insurance." (Customs Ordinance, 2014d)

That is, if we try to compare this to the terms of sale of Incoterms (ICC, 2021), it seems that the State of Israel has determined that the customs duty is imposed on the value of CIF (cost, insurance & freight), i.e., the value of the goods including transport and insurance.

How is the value determined for customs worldwide? Is it FOB or CIF?

There is no uniform rule in this matter.

Most countries in the world are members of the World Trade Organization (WTO) and the World Customs Organization (WCO), and following their membership, have signed an international agreement on the valuation of goods for customs purposes (WTO, 2021).

The agreement sets out several rules regarding how goods should be valued for customs purposes, but it does not stipulate any binding rules regarding transportation.

GATT Valuation agreement stipulates that each country member may choose to include or exclude transportation costs and insurance costs from the customs value (WTO, 2021).

On the one hand, United States, Australia, New Zealand impose duties on a FOB value of goods, without international transportation.

On the other hand, the majority of countries have chosen to impose customs duties on a CIF value of the goods, including the international transport cost – such as Israel, Singapore (Singapore Customs, 2021), and many more, as is indicated by the WCO review from 2018 (World Customs Organization, 2018):

"The majority of WTO Members made the one-off decision to include these elements in the Customs value; known as CIF (cost, insurance, freight) basis. The system used by the few Members who chose not to include these elements is known as FOB (free on board)."

Customs valuation in the United States

The United States has chosen a different method than in the State of Israel, and in the United States, the goods value without international transportation cost, are the basis for calculation of customs duties.

Thus, the corresponding Section in American Law to the Israeli Customs Ordinance, which deals with the transaction price, states in American Law that (OLRC, 1930):

"The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States" ..

As for transportation costs, American Law goes on to declare that the value to customs will not include them (United States Tariff, 1930):

"The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1): (A) Any reasonable cost or charge that is incurred for - (ii) the transportation of the merchandise after such importation" .

Customs valuation in Australia

The Australian legislator has chosen to impose customs duties on the FOB value, similarly to the United States. The Australian relevant Law, rules (Federal Register of Legislation, n.d.):

"Unless the contrary intention appears in this Act or in another Act, the value of imported goods for the purposes of an Act imposing duty is their customs value and the Collector shall determine that customs value in accordance with this Section".

The Law defines the customs value as the transaction value (Australian Customs Act, 1901a):

"Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value."

The Law continues and rules that the transaction value should be adjusted, as follows (Australian Customs Act, 1901b):

"The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price-related costs to the extent that those costs have not been taken into account in determining the price of the goods."

Afterward, the Law defines the price-related costs which are added to the transaction value (Australian Customs Act, 1901c):

(c) foreign inland freight and foreign inland insurance in relation to the goods paid or payable, directly or indirectly, by or on behalf of the purchaser;

Therefore, since the Australian Law rules that only inland freight and insurance are added to the customs value, marine or aerial transportation costs are excluded from the customs value.

This point is well explained in the Australian customs valuation guide, as follows (Australian Government, 2011):

"Note that the above provisions are aimed at assessing the total amount paid for the goods, packed and in export condition, at their place of export.

CIF ("cost, insurance, freight") contracts will require adjustments in respect of: (1) overseas inland freight and insurance after the place of export; (2) overseas freight and shipping charges; and (3) other charges imposed after the place of export."

Customs Valuation in New Zealand

The New Zealand relevant Law, defines the customs valuation method as follows (New Zealand Legislation, 2018a):

"The primary basis for determining the Customs value of imported goods is the transaction value of the goods".

The Law continues and notes several adjustments to the customs value (New Zealand Legislation, 2018b):

"The transaction value of imported goods is to be calculated by:

(a) taking the price paid or payable for the goods when sold for export to New Zealand; and

(b) on the basis of sufficient information, adding amounts (to the extent that each amount is not included in the price paid or payable for the goods when sold for export to New Zealand) equal to the following:

(vii) the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods until the goods have left the country of export if those costs, charges, and expenses are paid or payable by the buyer, directly or indirectly, to or for the benefit of the seller as a condition of the transaction;"

The New Zealand Law does not stop right here, but also defines the exclusions, the deductions from the customs value (New Zealand Legislation, 2018c):

(c) on the basis of sufficient information, deducting amounts (to the extent that each amount is included in the price paid or payable for the goods when sold for export to New Zealand) equal to the following:

(i) the costs of transportation and insurance of, and the loading, unloading, and handling charges, and other charges and expenses associated with the transportation of, the imported goods from the time the goods have left the country of export, other than any cost, charge, or expense referred to in subparagraph (ii) (B):

Therefore, it seems that the customs valuation method of New Zealand is similar to the United States and Australia.

Customs valuation comparison. Summary

Hence, it seems that in the United States, Australia, and New Zealand, since the customs valuation method imposes duties on the FOB value, an increase in international freight rates does not increase the value of the goods for customs purposes.

In Israel, Singapore, and most of the States, on the other hand, any increase in international freight also embodies the increase in value to customs and accordingly, increases the customs burden imposed on the importer.

That is, if we assume that a spare part for a car is subject to a purchase tax of about 20% of the value to customs, then any increase of 1,000\$ in transportation prices embodies an additional purchase tax of 200\$, collected by the State of Israel.

Since this is an indirect tax, it will, by its very nature, lead to rising prices on the entire public.

How has the State of Israel dealt with such similar situations in the past?

Price increases in the field of transportation may derive from a wide variety of reasons. War, closures, sanctions, strikes, and a host of other reasons may increase transportation prices.

The Israeli Law stipulates that in exceptional situations beyond the importer's control, certain transportation costs will not be included in the value for customs. The Law stipulates that (Customs Ordinance [New Version], 2014):

"such costs incurred due to special circumstances over which the importer has no control and the manager has determined that they should not be included in the value of the transaction;"

These are, in fact, transportation costs that are a kind of "force majeure" that the importer could not prevent.

The Customs Authority exercised this authority and sometimes exempted transport costs due to unavoidable circumstances.

On April 24th, 2006, Customs ruled that transportation costs due to security incidents would not be included in the customs entry:

"Under my authority under Section 133 (a) (5) (a) of the Customs Ordinance, I stipulate that war levies and additional transportation costs incurred by importers due to the security incidents in the north of the country should not be included in the value of the transaction to calculate the import taxes. These are additional transportation, unloading, and loading costs listed in the cargo account that derived from the security incidents".

On June 6th, 2008, the Customs ruled that the container demurrage fee beyond the agreed, will not be included in the customs entry:

"The demurrage fee in the importing country, charged for the use of the container beyond the agreed period between the ship's agent and the importer, will not be included for import taxes".

On September 7th, 2008, Customs exempted certain transportation costs in respect of strikes from being included in the customs entry, stating:

"Under my authority under Section 133 (a) (5) (a) of the Customs Ordinance, I provide that additional transportation costs incurred by importers due to sanctions in the ports of Israel will not be considered for the transaction value to calculate import taxes. These are additional transportation, unloading, and loading costs listed in the cargo account, which derived from the sanctions, and the importer has no control over them. The importer must prove the existence of such additional costs".

3. Conclusions

Can the state of Israel relieve importers in the current situation?

According to the publications, the Israeli Chamber of Commerce recently appealed to the director of customs to exercise his authority and set a type of ceiling to calculate customs, even if in practice transport costs are currently more expensive, and customs denied this application (Association of Chambers of Commerce (n.d.)).

Customs stated that this was a request to reduce the actual cost of transportation paid, not a request to eliminate "additions" to the cost of transport, such as strikes, demurrage costs, as was in the past.

Customs also diagnosed this situation, ruling it is not similar to vessels that declared "end of a journey" in Cyprus and refrained from entering Israel due to the COVID-19 crisis. This "end of a journey" declaration caused Israeli importers extra costs of transportation to Israel, and in March 2020, customs decided to exempt the importers from those "end of journey" extra transport costs, stating that these costs were beyond of the importers' control, according to the Israeli Law.

So the question is basically: can, in the present case, transportation costs raised by tens or hundreds of percent due to the global COVID-19 crisis, shortage of ships, heavy loads in Israeli ports, shortage of containers, constitute "special circumstances beyond the importer's control"?

This point deserves further thought and discussion.

If security events is an unforeseen event over which the importer has no control, as well as sanctions or strikes, then the interpretation of the Law could be a little more flexible and determine that a global COVID-19 crisis, shortage of ships, containers, to be considered as exceptional circumstances over which the importer has no control.

In this regard, a ruling given in the Israeli court on another issue, has stated that the Corona crisis is undoubtedly an unexpected event (Bachar, 2020):

"It is hard to believe that the reasonable person could or should have expected the full far-reaching consequences of the Corona epidemic, including on the economy and commercial life, in Israel and around the world. We are dealing with an epidemic without precedent in the last hundred years (at least since the Spanish Flu epidemic which caused many deaths around the world between the years 1918 - 1920)".

These right things can and should be applied also in the field of international trade and customs valuation.

Does anyone in the Customs Authority believe that the simple, lone importer, even a wealthy business company, has any control over the changes in world freight rates? Could any importer have anticipated the corona crisis?

In the end, the legal solution is to relieve the importers of the customs duty imposed on the transport that has become more expensive, it already exists. The "invention of the wheel" is not required here.

Now only goodwill is required, and little flexibility in interpreting the Law.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Citation information

Wagner, O. (2021). Customs duties due to COVID-19 extra shipping costs. A force majeure?. *Journal of Sustainable Development of Transport and Logistics*, 6(2), 143-149. doi:10.14254/jsdtl.2021.6-2.9.

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