



## From the Dutch Customs Administration to the court

Many of the fresh fruits and vegetables on European supermarket shelves come from Israel. However, a portion of these imports come from Israeli settlements in the Israeli-occupied Palestinian territories. These settlements are illegal and have disastrous consequences for local, Palestinian, people and economy. Human rights and international humanitarian law are being violated. Nonetheless, products from these settlements are being imported into Europe. The EU orders that if a product comes from an "Israeli settlement", that must be explicitly stated on the package or on the shelf. However, this is never done in Dutch supermarkets. SOMO has been trying to investigate the scope of imported fruit and vegetables to the Netherlands from illegal Israeli settlements.

The Netherlands is the second-largest European importer of fruit and vegetables from Israel (France is the largest). It is known that a portion of European imports from Israel originates from Israeli settlements in the Palestinian territories.<sup>1</sup> In 2015, the European Union clarified regulations for labelling products originating from these illegal settlements,<sup>2</sup> based on the right of European consumers to correct, non-misleading information on the origin of products. If a product originates from an "Israeli settlement", that must be explicitly stated on the package or shelf. However, this information is seldom if ever found in Dutch supermarkets. Fruit and vegetables from the illegal settlements are most likely to be labelled as "Product of Israel". SOMO has been trying to find out the extent of fruit and vegetable imports of from illegal Israeli settlements to the Netherlands.

During our search we arrived at the Dutch Customs Administration, where we requested data on fruit and vegetable imports from Israel and the importers/exporters concerned. We hoped to use this information to gain more insight into whether Dutch imports of products from illegal Israeli settlements takes place. Unfortunately, we hit a brick wall, experiencing obstruction and disproportionate insistence on Customs' confidentiality obligation. We therefore decided to make use of the Dutch Public Access to Government Information Act [*Wet openbaarheid van bestuur, WOB*]. SOMO submitted a Freedom of Information [*WOB*] request, which ultimately resulted in legal action. ◯

### Why the Customs Administration?

The Dutch Customs Administration is the most suitable agency to find data on the import, transit and export of products. Customs has a key monitoring function. All goods that are imported, exported or transited must comply with Dutch and European regulations. Goods that are transported within the EU are generally free from customs control, but an import declaration must be submitted to import goods from countries outside the EU. Customs also has the task of monitoring the correct application of tax rates. Based on the EU-Israel Association Agreement<sup>3</sup>, products from Israel enjoy a tax advantage on the European market. However, this is not the case for products from the illegal Israeli settlements and thus also not for any goods from those settlements that have been imported to the Netherlands incorrectly labelled as "Product of Israel". Dutch Customs is responsible for monitoring the origin of imported goods, including fresh fruit and vegetables, in order to prevent that companies gain a tax advantage they are not entitled to<sup>4</sup>. In order to properly execute this task, Customs must of course have access to correct information.

### SOMO's Freedom of Information request

In late June 2016, SOMO wrote to Customs, in search of information on fresh fruit and vegetable imports from Israel. We requested details on imports in the 2014-2015 period, such as types, quantities, importers and exporters. By finding out about the supply chain of fruit and vegetables from Israel, we hoped to find leads for our investigation into settlement products in Dutch shops.

In August 2016, we received a reply from a complaint coordinator at Customs: "Customs is the supervising body for transnational transport of goods and for this legal task

### The Freedom of Information Act [WOB]

The Dutch Public Access to Government Information Act [*Wet openbaarheid van bestuur, WOB*] safeguards the right to information and to gain insight into the actions of the Dutch government.<sup>3</sup> Based on this Act, information can be requested from government bodies, such as ministries, including in this case the Customs Administration, with a so-called Freedom of Information [WOB] request.

*receives data in the form of declarations. [...] The data received is confidential in nature."* Customs stated that our request for information had been assessed strictly on the basis of the confidentiality obligation, as laid down by the European Union Customs Code. What it finally came down to was that Customs could tell us nothing. We could however submit a Freedom of Information request, and this we did, even though Customs also immediately informed us that it would not rule out that it might submit an appeal on "specific grounds for exclusion"; in other words, give grounds for not answering some or all of our questions.

### No response to Freedom of Information request

On 19 September, SOMO submitted a Freedom of Information [WOB] request to Customs, via the complaint coordinator. However, we received no response. SOMO then declared Customs in breach through a default notice, as a first logical step in a formal complaint in which no response was received. But Customs again did not respond.



Photo: Tama66 CCO

**Figuur 1: Timeline of the Freedom of Information [WOB] request**

19 June 2016	SOMO submits a WOB request to Customs via email.
16 Nov 2016	SOMO files a default notice against Customs after 56 days have passed (the legal deadline) with no response.
16 Nov 2016	Customs informs SOMO that a WOB request must be submitted in writing.
17 Nov 2016	SOMO sends a WOB request to Customs via registered post.
25 Jan 2017	SOMO files a default notice against Customs following the 56-day limit for reply.
21 Feb 2017	SOMO appeals to the Amsterdam Court against no timely decision taken by Customs on our WOB request.
22 Feb 2017	Customs promises to send us a reply by the end of the week.
22 Mar 2017	Customs informs SOMO that the WOB request was denied on 9 March.
28 July 2017	The court orders Customs to reimburse SOMO's court costs and to pay a fine.
28 Aug 2017	SOMO details its objections in a hearing at Customs.
06 Nov 2017	Customs takes a decision to refuse access to the requested information.

SOMO felt obliged to appeal to the Court in Amsterdam. This was the second step in the process, in which the Administrative Court was requested to take action. SOMO had not planned to make use of this legal instrument, but it seemed to be the only way to get an answer to our request for information on fruit and vegetable imports labelled as originating from Israel.

**Appeal to the court**

Our approach appeared to work. The day after introducing our appeal, Customs notified us: "The procedure was not satisfactorily handled internally, whereby you unfortunately received no reply. We will respond to your request and reply by the end of this week."

SOMO decided to leave the appeal in place until we received a response from Customs. But a month later, SOMO had still heard nothing.

Then something odd happened. On 21 March 2017, the Customs complaint coordinator notified SOMO that her office had denied SOMO's WOB request on 9 March. But that had never been communicated to SOMO. Instead, notification of this decision had mistakenly remained at Customs. Customs had however notified the Amsterdam Court that it had taken a decision.

**Court session**

The case came before the court in Amsterdam on 28 July 2017. The appeal, however, did not address the content of SOMO's WOB request, but only the delayed decision of Customs. For that delay, the judge ruled that Customs must reimburse SOMO's court costs and pay a fine to SOMO. The WOB request was referred back to the complaint stage. That meant that SOMO could then file an objection against the decision. At the court's request,

SOMO's notice of appeal, containing all the arguments for releasing the requested information, would be used for the objection.

**Explaining the objections to Customs**

On 28 August, SOMO responded to an invitation from Customs to explain our objections at a hearing. During the hearing at the Customs office in Rotterdam, it became clear that Customs had no plans to release the requested information.

Customs steadfastly repeated its "union law confidentiality obligation"; in other words, Customs refused to provide the requested information under the pretext that European law prohibits it.

**A decision at last**

And, indeed, on 6 November 2017, nearly a year and a half after the first request was submitted to Customs and a year after submission of our WOB request, SOMO received a "decision on the objection" from Customs, which in essence stated that most of our request for information on the import of fruit and vegetables from Israel was refused, with reference to the confidentiality obligation in the European Customs Code. Providing SOMO with the remaining information was refused because Customs did not have it.

**Clear obstruction**

WOB expert Roger Vleugels provided assistance to SOMO throughout the entire process. Looking back, he states: "Customs responded to this WOB request with all manner of obstruction. In the first place, they did not even respond to the actual request. They just tried to stall for time. The court had to get involved to require Customs to take a decision. That is fairly exceptional. Now they have taken

*a decision, but the result is fairly meagre. They hid behind all types of regulations and grounds for refusal so that they pretty much provided no information at all."*

### What's next?

One option is to appeal, attempting to force Customs to provide the information via the courts. During the hearing at the Customs office in Rotterdam and based on Customs' "decision on appeal", SOMO gained more insight into which documents must be available from Customs on fruit and vegetable imports which "originate from Israel". In the following step in the continuing procedure, we would be confined to the text in the original WOB request, as submitted in November 2016. However, the documents we now presume are available are not specifically listed in that request. We are also concerned that it could take a long time, possibly till the end of 2018, before our appeal would be decided. But by that time the requested information (on the period 2014-2015) would be out-of-date.

Therefore, in early January 2018, we decided to submit a new WOB request for the 2016-2017 period. We hope that our next efforts bring us closer to obtaining information on imports from Israel.

To be continued...

### References

- 1 Who profits website, Research report: "Made in Israel. Agricultural Exports from Occupied Territories", April 2014, [https://www.whoprofits.org/sites/default/files/made\\_in\\_israel\\_web\\_final.pdf](https://www.whoprofits.org/sites/default/files/made_in_israel_web_final.pdf).
- 2 European Union website: Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, 12-11-2015, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC1112\(01\)&from=NL](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC1112(01)&from=NL)
- 3 Dutch Government website, Wet openbaarheid van bestuur [Freedom of Information Act], <http://wetten.overheid.nl/BWBR0005252/2016-10-01,19-12-2017>



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### Colophon

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