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The Liability of Transport Businesses for Customs in Transit Procedures

Transit transports may become a risk for carriers and forwarders

Finland is in a key position as a transit country for the transportation of goods originating from outside the European Union, in particular from Eastern Europe and Asia. The logistical tasks involved in such transportation are often performed by Finland-based businesses or branches that also take care of customs formalities. The transit procedures available in the EU provide possibilities for simpler customs clearance, but also come with a risk for the transport business.

by

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Traditionally, duty must be paid on all goods that are delivered across borders. The Member States of the European Union form a customs union with the effect that transports across intra-community borders are not subject to customs duties. Customs clearance is however required whenever goods are brought into the European Union from a third country. At the same time, turnover tax is added on these imports.

Relevance of the transit procedures

If the imported goods are intended for transport into another Member State of the European Union, liability for customs and taxes can be delayed using the transit procedures in such way that these obligations are met only at the final destination. For example, if a Russian supplier delivers goods by road to a Spanish customer, the importer can place the goods under transit procedure T1 (external transit procedure) when the goods enter Finland. Customs and tax duties are then complied with only at the Spanish destination at an inland customs office.

The transit procedure offers a number of advantages. The carrier does not need to advance customs and taxes; instead, the actual recipient pays them immediately. The latter can inspect the goods prior to customs clearance and return them immediately in case of faulty delivery.

In addition to the external transit procedure T1, also a special internal procedure T2F is of importance for Finland. This procedure is applicable for transports from and to the autonomous region Åland, which represents a separate tax area. A simplified procedure is in place for transports from and to the rest of Finland. However, transports into other EU Member States are subject to the T2F procedure.

When goods are exported from or via Finland to Russia or otherwise into Eastern Europe, the TIR transit procedure is usually the customs procedure of choice. The procedure is based on a multinational treaty and is presently applicable in 54 countries. Unlike the EU transit procedures that are nowadays widely handled electronically, a TIR transport is al-

ways accompanied by a customs document, the carnet TIR. The carnets are issued by the licensed national transport associations.

No transit procedure without securities

The transit procedure allows temporary suspension of the tariffs and taxes applicable to import. Therefore, the underlying laws and regulations generally require that a security is provided in order to cover the possible customs debt for the transit goods. Only a few cases, such as air transport or transport by national railway companies, are exempted from the obligation to provide security.

Security can be provided in the form of individual guarantee for a specific transit procedure or as a comprehensive guarantee. Security is commonly provided by the carrier that makes the customs declaration initiating the transit procedure. The case is, however, different in the TIR procedure. Here, the customs offices do not require any security from the transporter itself. Instead, customs, taxes, and any other fees that may be payable due to irregularities related to



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the TIR transport, are secured by guarantees given by the licensed national association (in Finland Finnish Transport and Logistics, SKAL).

However, no matter what form the security is presented in, the transporter entering the goods into the transit procedure is in every case liable for the tariffs and taxes. If the customs authorities demand payment from the issuer of the guarantee, then this guarantor is entitled to demand compensation for the paid sum from the original debtor; i.e. from the transport business.

Declaration involves liability

While a logistics or forwarding business that is transporting goods in the transit procedure is released from the obligation to pay tariffs and taxes at the border, it is not discharged from liability for these payments altogether. The risk involved in this liability is not always fully recognised, although it can be significant.

The temporary suspension of customs duties for the transport in the transit procedure is conditional on the fulfilment of the obligations resulting from the procedure. One of these obligations is to deliver the goods to the customs office of destination within the required time and unmodified. Liability for the fulfilment of this obligation lies with the business that has declared the goods to be entered into the transit procedure; i.e. in most cases the transport business. Conversely, it is usually the consignee's responsibility to present the goods to customs and take care of customs clearance. Therefore, the logistics business

does not usually have a direct influence on the proper conclusion of the procedure.

For example, if a Finnish logistics enterprise brings the goods across the border to Finland, declares them to be entered into the transit procedure, and then forwards them to Spain, the procedure is concluded properly only when the customs office in Spain sends confirmation to Finland within the required time. If such confirmation is not received, for example because the consignee has neglected to properly present the goods, then the Finnish customs authorities will demand payment of the tariffs and turnover tax from the Finnish enterprise. The turnover tax on import is usually 22 per cent of the transaction value and therefore represents a serious economic burden.

Liability can arise even where the consignee has not in any way acted negligently. For example, if the goods declared to the transit procedure are stolen during the transport, this act ends the transit procedure and triggers the obligation to pay tariffs and taxes in accordance with the applicable tax rates in the country in which the theft has occurred. The consignee, being the legal importer of the goods, is primarily responsible for these payments. However, the carrier that has initiated the transit procedure is fully liable alongside the consignee, and the authorities have a free choice as to the party from whom to demand payment.

No tax deduction

In a case involving liability such as the scenario described above,

the most substantial damage is often incurred in the form of the turnover tax. It is easy to forget that in such cases the carrier *cannot* deduct the turnover tax paid in its turnover tax statements. Instead, the payment remains a permanent loss for the carrier. The right to deduct paid turnover taxes exists only if the goods were imported for the purposes of the taxable activities of the business itself. This is the case only if the goods become the business's property or if they are otherwise used for economic purposes by the business, and it does not apply where nothing more than commercial transportation of the goods is concerned.

Naturally, the carrier in the scenario described above is entitled to demand compensation from the consignee of the goods if the latter has acted negligently. However, especially where consignees are negligent in their tax obligations, it is frequently the case that they are insolvent. Furthermore, it is usually necessary to initiate such litigation in a foreign court, thus involving significant cost risks.

The order of magnitude of the risk may be illustrated by an example related to TIR transports. In July 2007, the Association Finnish Transport and Logistics (SKAL), which offers guarantees for TIR transports in Finland, increased the security demanded from transport businesses tenfold, from 6,000 euros to 60,000 euros, because the liability risks were not even close to being covered by the old security sum and numerous transport businesses had gone bankrupt due to such



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liability cases. It should be noted that the threat of bankruptcy is not diminished by this increase of security, since payment is demanded from the association only when the transport business is already insolvent. Conversely, a transport business must protect itself by ensuring that its contracts are appropriately drafted.

Controlling and handling liability

Transport businesses can protect themselves against the risks described above by investigating the liability of the consignee and by demanding from their contract partners sufficient security to cover the carrier's tariff and tax liability. Appropriate contract clauses can ensure that the transport business does not need to initiate transit procedures without such security.

If liability has already arisen, it is essential to take swift measures with regard to the authorities in Finland. Under certain conditions, a business can be released from liability to pay tariffs or turnover taxes or be granted a refund. Such relief must, however, be applied for within relatively short time period. These time periods can easily pass by if an enterprise remains passive too long in the hope that the consignee will clarify the matter at the place of destination.