Rev 2
January 2011

UNCTAD Trust Fund for Trade Facilitation Negotiations
Technical Note 17

Bonded Customs Transit

Background

Customs transit regimes are one type of the wider concept of bonded Customs Regimes. Therefore, they are also sometimes referred to as bonded transit regimes. Other examples of bonded Customs regimes include, inter alia, temporary admission, transport of duty free goods, warehouses or Customs free zones, processing under Customs supervision, inward processing regimes, and outward processing regimes.

A common denominator of bonded Customs regimes is the fact that under such regimes it is normally required that the economic operator, benefiting from the Customs procedure in question, has posted a bond, i.e. a financial guarantee or a surety with the authorities to ensure that all fiscal obligations towards the country are met.

Benefits

Customs transit regimes simplify the process of goods crossing the Customs territory of a third country. Operators benefit from standardized procedures and avoidance to pay import and export taxes and duties on transit goods, provided that a guarantee is furnished. Using a bond as a guarantee offers benefits to traders as it does not involve using owns money during the transit operation. On the other hand guarantees provide greater reliability to Customs securing of revenues as it is a bank or financial institution that is liable for the payment of the guaranteed amount.

Customs transit

Customs transit is defined in the Revised Kyoto Convention, 1999 (RKC) managed by the World Customs Organization (WCO) as a "Customs procedure under which goods are transported under Customs control from one Customs office to another". Unlike Art.V of GATT 1994 which limits the definition of traffic in transit to the so-called through-transit i.e. across a Customs territory from the entry border post to the exit border post, the WCO definition of Customs transit regimes also covers inward transit (from a Customs office of entry to an inland Customs office), outward transit (from the inland Customs office to the Customs office of exit) and interior transit (from one inland Customs office to another in the same country).

A distinction has to be made between national and international Customs transit procedures. A national Customs transit procedure covers only transit in one Customs territory with the offices of entry and departure in the same Customs territory. Multilateral transit procedures (bilateral, regional or international) on the other hand cover transit across several Customs territories, for example, either through a fully integrated regime such as the EU community transit system, or through a harmonization of certain aspects of transit operations such as the TIR system so that, for example, a uniform document and/or guarantee can be used for the entire transit operation across several countries.

Customs transit regimes normally also contain provisions regarding the sealing of loading units and other security measures, standardized and required documentation, and mutual recognition of authorized traders. (See Annex E of the RKC for Standards and recommended practices for Customs transit procedures).

It is general practice that, with a view to securing the duties and taxes of goods in transit, thereby reducing the risk of the goods being diverted for inland consumption without duty and tax payment, a financial guarantee/surety is required by Customs authorities when permitting a transit operation to be carried out.

Transit guarantee requirements:

Guarantee requirements are defined by the national regulations of the transit country or alternatively in the framework of regional or international agreements. These regulations clarify amongst others the amount of the guarantee required, persons responsible to furnish the guarantee, and the form of the guarantee.

In some countries, cash deposits are accepted, although this form of guarantee is neither practical nor recommended. In the case of cash deposits the transit operator is the directly liable debtor towards the Customs authorities. Otherwise, guarantees can have various forms. In the context of national transit regimes, transit guarantees are often sold at the border of entry by national insurance or financial institutions, e.g. the Iranian transit guarantee scheme. Such guarantees cover only the transit liabilities in one country. In the context of multilateral transit schemes the transit guarantee is often purchased in advance of the transit operation, although it will only be activated once the transit operation is commenced. This is for instance the case with the EU Community guarantee system and the TIR system.

In general, it is the transit operator who is required to obtain the guarantee from a third party. It customarily can be provided by a bank, insurance company or other financial institution, who, thus, is becoming the principal debtor for the guarantee. The beneficiary of the guarantee is normally the national Customs authorities.

Guarantees are considered either individual or comprehensive. An individual guarantee covers one single transit operation. It normally covers the full amount of taxes and duties applicable to the goods in the transit country. The calculation of the guarantee is based on the highest rates of duties and taxes applicable to the goods according to the Customs' classification of the goods.

A comprehensive guarantee, on the other hand, is a running guarantee that can be reused and that covers several transit operations carried out by the same operator up to a given reference amount fixed by Customs. The reference amount is usually calculated on the basis of the total amount of duties and taxes that an operator may incur for the estimated number of transit operations that he would carry out during a specified period of e.g. one week or one month. Under certain conditions, guarantee obligations can be if the transit operator fulfils certain operational and financial criteria, e.g. under schemes such as "Authorized Economic Operator" (AEO).

Alternatively, some Customs transit guarantee systems, e.g. the TIR system, operate with a flat rate guarantee amount per transit operation. In the case of the TIR system the amount covering duties and taxes is equal to US$ 50,000 per TIR transit.

In other cases, for example, when state owned companies act as transit operators, Customs exceptionally dispense with the guarantee requirement, as such companies are considered to be self-insured. Some countries further operate with the concept of "bonded carriers", i.e. carriers that are approved to carry out transit operations or transport operations with duty-free goods based on a general authorization, normally backed by a comprehensive guarantee or guarantee dispensation.

Customs transit operations are terminated when the goods are presented at the office exit of a Customs territory or the office of final destination, where Customs authorities should verify that no unauthorized interference with the goods happened. Customs authorities normally only release the operator from his financial liability subsequently, when it has been verified that the transit operation has actually been correctly terminated and discharged. In case of detected irregularity, interference or fraud national transit legislation normally require that the responsibilities of the persons involved in the transit operation has to be determined and lost duties and taxes subsequently recovered, principally from the person(s) engaged in the unlawful practice or, at the latest resort, from the guarantee.

Implementation Issues

The proper operation of a Customs transit regime and a transit guarantee system requires that proficient legislation is implemented and applied. The lack of implementation and correct application has been seen in a number of cases to undermine the usefulness of Customs transit systems both for the public and private sector.

The posting of a financial guarantee/surety, which should normally be a requirement, remains a challenge in terms of implementation. It pre-supposes a relatively mature financial market or a banking infrastructure which can sustain the issuance of guarantee. The lack of the latter often means that countries are asking for the deposit of full duties and taxes to cover the transit operation.

Example: TIR system

In terms of Customs transit, it is worth noting that the TIR Convention is the most broadly used international Customs transit system currently available. The TIR Convention provides that goods carried under the TIR procedure in approved and sealed road vehicles and containers, are exempt from Customs examination, unless irregularities are suspected. The Convention reduces the regular requirements of national transit procedures, while avoiding the need for physical inspection en route during transit, other than checking of the transit document (TIR Carnet) and checking of seals and the external conditions of the load compartment or container. In addition, it dispenses with the need to operate national guarantees and national systems of documentation as the so-called TIR Carnet provides for an internationally recognised document with a guarantee included. One of the major challenges that remain in respect of efficiency gains from the TIR Convention is the full implementation of information technology at international level.

References and tools available

WCO Revised Kyoto Convention at www.wcoomd.org.

TIR Convention www.unece.org/trans/bcf/tir/welcome.html

Further UNCTAD Technical Notes

Technical Note No. 8 (Freedom of Transit and Regional Transit Arrangements) at http://www.unctad.org/technicalnotes.

The *Technical Notes* have been produced by technical experts contracted by UNCTAD within the Trust Fund project "Capacity building in developing countries and least developed countries to support their effective participation in the WTO Negotiations Process on trade facilitation", financed by the Governments of Sweden and Spain. Their purpose is to assist Geneva- and capital-based negotiators to better understand the scope and implications of the various trade facilitation measures being proposed in the context of multilateral negotiations on trade facilitation. The opinions expressed in the Technical Notes may not necessarily coincide with those of the organization or the donors of the Trust Fund. For comments and enquiries please contact trade.logistics@unctad.org. All Technical Notes are available via http://www.unctad.org/technicalnotes.