

Florin TUDOR¹

**SETTING UP A GUARANTEE SUFFICIENT TO ENSURE THE
PAYMENT OF DEBTS (CUSTOMS) FOR GOODS PLACED UNDER
A COMMON TRANSIT PROCEDURE / COMMUNITY**

Abstract

The customs duties and other taxes applicable to goods shall be temporarily suspended if the goods are placed under the common transit / community. To ensure the payment of customs duties and other charges resulting from debt incurred (customs) during a transit operation, the principal bound must provide a guarantee.

Keywords: Common Transit / Community, guarantee, principal bound, guarantor.

1. Introduction

A guarantee can be set up in the form of a deposit or a guarantor. The guarantee can be isolated and then is covering a single transit operation, or it could be global - in which case covers several operations².

The isolated guarantee furnished by a guarantor may take the form of isolated guarantee vouchers issued by the principal bound. The use of the global security is a simplification measure in relation to the normal rules regarding transit and is therefore subject to authorization.

According to the Article 7 of the Convention, appendix 1 in conjunction with Article 95, Article 342 CCC (3) and Article 446 of the Customs Regulation (CCC) as an exceptional measure, is not necessary to set up a guarantee in the following cases:

- the exemption from setting up a guarantee provided by regulations:
 - for certain modes of transport,
 - for public authorities under the Community transit
- exemption from setting up a guarantee granted by authorization
- exemption granted by a by national decision:

¹ Dunarea de Jos University of Galati, Faculty of Law, Florin.Tudor@ugal.ro

² See Article 6 (1) Appendix 1 of the EC-EFTA Convention on a common transit procedure of 20 May 1987, Jol 226, 18.08.1987 as amended (the Convention) and Article 193 the Community Customs Code (CCC).

- if the Contracting Parties agree among themselves on a bilateral or multilateral agreement, to abandon the set up of the guarantee regarding the common transit operations involving only their territories;
- if a contracting party decides to waive the guarantee for the transit operation taking place between the office of departure and the first office of transit;
- if the customs authorities of the State shall not claim a guarantee for a Community transit operation whose total amount due to be guaranteed is below 500 Euros.

2. The need of a guarantee

Setting up a guarantee sufficient to ensure the payment of debts (customs) which are likely to be born - in regarding of goods - is a mandatory condition for the transport of goods under cover common transit / community.

If the amount of the guarantee proves to be insufficient, the office of departure cannot deliver the goods in transit as long as a guarantee is not brought to cover the full amount of debt (customs) which are likely to be born. The office of departure in this condition will not grant the status of free of customs for the goods if the documents presented shows that the guarantee was not set up by the principal bound of the transit operation concerned.

3. The calculation of the guarantee

As a general rule, this calculation is based on the higher fees related to those goods from the country of departure. It is necessary to take account of all customs duties and other taxes, egg.: duty, VAT, generally applicable to the import of these types of goods concerned. Regarding the customs duties, the highest fees are the conventional one. The privileges derived from the presentation of some elements at the time of release for free circulation (movement), such as benefits of preferential tax, or of a contingent, are not considered.

The calculation of the flow is based on the import duties which would have been imposed to the imported goods of the same type from the country of departure, in case of free circulation.

The Goods in free circulation in a contracting party (EU member state) should be treated as goods imported from third countries (non EU member states). The same rule will be applied if community goods are placed under the common transit. They are regarded as non-EU at the time of the calculation in order to guarantee the payment of any of customs debts that would arise in a contracting party other than the Community.

The goods in question are classified under Customs Tariff. If they are not included in Annex I Appendix I of the Convention / Annex 44C RVC and their classification is not possible or appropriate, the amount of guarantee can be estimated. This estimation will take into account the fact that the guarantee shall cover the full amount of debt (customs) likely to be born. In exceptional cases where an estimate is not possible, total guarantee is allegedly set to 7000 Euros.

The main idea of Article 56, paragraph 1 of Appendix I of the Second Convention applies both to global guarantee and to guarantee isolation.

If the goods constitutes a increased risk of fraud, listed in Annex I Appendix I of the Convention (Annex 44c RVC), the calculation is made based on classification of goods.

If when establishing the amount of an isolated guarantee for goods for which a minimum charge is indicated in Annex I Appendix I of the Convention (Annex 44c RVC) and the minimum quantities are exceeded, the result of calculation must will be compared with the minimum amount. If the result exceeds, the total amount of guarantee is based on calculation. If not, the amount of guarantee is based on the minimum amount of the Annex.

Example¹:

A transport of 3 tons of butter (position HS 0405.10) is placed under transit country X. The customs duties and other taxes applicable to goods in this country normally require a guarantee of 7500 Euros. However, as in column 5 of Annex indicated that the guarantee applicable to the product covered amounts to less than 2600 per ton, the guarantee will be set at 7,800 Euros.

¹ See the Handbook of transit - the document TAXUD/801/2004, with the amendment of 2005.

4. The guarantor

The guarantor can be a third person, or entity, distinct from the principal. The guarantor is established in the contracting party and is where the guarantee is approved by the competent authorities.

Regarding the Community, the guarantor is not necessary to be established in the Member State where the guarantee is lodged or approved by the customs authorities.

When a bond has been approved in another Member State, the proof of the approval must be consistent with the existing provisions of the state guarantee officer.

A guarantor must choose residences in all countries where the guarantee was valid or when the law of a country does not provide this option, it must be to appoint a trustee. Choosing the residence offers to the guarantor a place to operate his activity and to the competent authorities may carry out all formalities and procedures to guarantee, in writing, in the legal form provided.

The trustee is a person or entity designated by the guarantor.

This procedure permits verifying the receipt of written notification and the documents addressed to a guarantor in any country where a customs debt is likely to be incurred in relation to goods placed under transit.

5. The isolated guarantee

A guarantee in form of a deposit in cash may be lodged at the office of departure as provided by the provisions of the country of departure. It is returned when the system is downloaded.

As a general rule, usually the leaving office is responsible for redemption. This office announces the principal bound at the time of the deposit and it will interest about the preferred method of reimbursement. If the principal bound opts for a transfer, the office of departure notes the bank account references and advises him that the transfer costs will be in his charge.

When the guarantee office is not the office of departure, shall retain a copy of the bail. The office of departure must inform the office of guarantee of resubmitting the original to the principal bound.

The guarantee act for the guarantees securities isolated by TC 32, does not contains the maximum amount of obligations.

The office of guarantee shall ensure that the guarantor has sufficient financial resources to pay full customs duty that may arise.

6. The obligations of the principal bound¹

The principal bound must ensure that the amounts involved do not exceed the reference set. He takes all necessary measures to comply with this requirement and to monitor the reference amount is not exceeded.

The competent authorities specify the control procedures in the authorization. They can examine the proposals made by the principal bound. Control method should enable the principal bound to determine whether the amount committed for transit operation shall not exceed the reference amount.

From this point of view the competent authorities could ask in particular to the principal bound to keep a copy of each transit declaration that submitted it and also the amount plus other charges as calculated and estimated.

In particular, he can calculate the reference amount by deducting from this, the amount committed for each transit operation when placing goods under transit. Then pay again the reference amount when he is informed about the end of the transit operation.

The principal bound can stipulate that the transit operation has ended after the goods must be presented to the office of destination.

When the principal bound finds that the reference amount can be overcome he must take appropriate action in relation to authority and if necessary, to make predictions in order to prevent possible following transit operations.

If the principal bound does not inform the office of guarantee about the exceed reference amount, his authorization can be revoked.

Bibliographical resources:

- COM (97) 188 final, 30.4.1997 - Action plan for transit in Europe
New Computerized Transit System (NCTS)

¹ For details see art. 56 (1) (4) Appendix I of the Convention, Art. 379 (1) (4) CVR, Art. 53 (2) Appendix I of the Convention, Art. 376 (2) CVR.

- Customs Regulation - (EC Regulation no. 2454/93 from 2 July 1993, OJ L 293 of 11.10.1993 and its amendments)
- http://europa.eu.int/eur-lex/en/lif/ind/en_analytical_index_02.html
- http://europa.eu.int/comm/taxation_customs/customs/transit/index_en.htm
- EC / EFTA Convention on a common transit procedure from 20 May 1987, J.O.L. 226, as amended 18/08/1987