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Terminal operators need legal certainty to perform their operations

Introduction

A crucial component of a vibrant economy is an efficient logistical chain. In Europe, the logistical chain forms the backbone of a competitive European market. Terminal operators play a crucial role in this logistical chain as they are the actor that links maritime transport with land transport. To ensure that exports and imports can move in a fast and reliable manner, it is therefore crucial that terminal operators can successfully fulfil their role in the logistical chain.

Maritime transport is the main mode used for the entry of non-Union goods into the European Union (64% of all sea borne goods are transported from ports outside the EU). Terminal operators will be responsible for ensuring that no non-Union goods are removed without being cleared by the relevant customs authority.

This responsibility has been enshrined in European law through Article 147 of the Union Customs Code. However, for terminal operators to be able to carry out this role in an efficient and effective manner it is crucial that they are given clear and concise instructions and/or information at the relevant level from their respective authority.

Removal Permission

The sole piece of information terminal operators require to comply with their responsibility as set out in the Union Customs Code **is removal permission for goods** at the relevant level.

In the case of containers, this removal permission should be required at container level as a terminal operator does not know the contents of a container. On top of this, a container is usually made up of a number of consignments which the relevant customs office of declaration clears individually. The terminal operator is not aware of the number of consignments within a container unless this information is communicated by the supervising customs authority.

To ensure that terminal operators can fulfil their role as set out under the Union Customs Code whist not hampering the logistical chain it is crucial that removal permission is granted to terminal operators at container level where required. This can be achieved via the amendments proposed by FEPORT to Title IV of the Union Customs Code Implementing and Delegated Acts.

Removal permissions (at container level) is already being granted by national customs authorities in some EU ports and countries, very often through local arrangements or through Port Community Systems and this certainly contributes to improve the efficiency and the performance of the whole logistical chain.

For goods known “as goods in temporary storage” the transmission of such removal permission will further allow to ensure keeping records with the relevant information in order to allow appropriate and efficient customs supervision.

Guarantee

The Union Customs Code also introduces a guarantee for a potential or existing customs debt. This guarantee would ensure that all economic actors have a reserve that would cover any potential or existing customs debts that need to be paid. It is extremely unclear how such a guarantee could be applied to terminal operators.

For example, given that a terminal operator does not know the contents of a container, it is impossible for the terminal operator to establish the value of the goods of a container. Under Article IA-III-2-10 of the Union Customs Code Implementing Acts the guarantee is set at between 30-50% of the value of goods in storage. Given that terminal operators have no information on the value of goods within a container it is impossible for them to comply with this Article.

As terminal operators cannot comply with Article IA-III-2-10, it might be expected from them to fulfil the obligations set in Article IA-III-2-07. This Article states that when "the necessary data is not available the amount shall be presumed to be EUR 7000".

If this was translated into reality, presuming that all containers[1] would require a guarantee of 7000 EUR, the ports of Rotterdam, Hamburg and Antwerp would require a guarantee of 103 billion EUR, 63 billion EUR and 58 billion EUR per annum.

This would translate into an average daily guarantee of 282 million EUR, 173 million EUR and 159 million EUR respectively, solely taking into consideration their container traffic. On top of this it should be taken into consideration that, on average, a container can spend 3-4 days in temporary storage so the required guarantee would be significantly higher. These figures are quite simply impossible to comply with.

If the three largest sea ports in the European Union could not provide this guarantee it must also be anticipated that all other European sea ports could not. Were this guarantee enforced throughout Europe, and terminal operators were expecting to provide this guarantee, it would ultimately lead to the closure of a large number of sea port terminals which would in turn have an adverse effect on the European logistical chain and economy.

Conclusion

To be able to fulfil their role in the logistical chain in an appropriate way, it is essential that terminal operators are provided with clear **removal permission at the relevant level** and at container level because of the increasing trend of containerization.

The applicability of the guarantee system as set out in the Union Customs Code Implementing Acts **cannot be possibly envisaged as it is**. We remain ready to cooperate to find satisfactory and feasible solutions that would not impede the competitiveness of the EU terminal operators while allowing Customs authorities to meet their objectives.

[1]Eurostat, *Continued recovery in volume of goods handled in EU ports*, August 2013