

T1 TRANSIT PROCESS IN ILLEGAL HFC TRADE

Introduction

The External Transit (T1) customs transit procedure is designed to facilitate the transportation of *non-union goods* to their destination, either in a non-EU territory, in the EU under a special customs procedure (to a customs (a.k.a. bonded) warehouse, for example), or to be cleared at place of destination within the EU.

The EFCTC suspects that the External Transit (T1) customs transit procedure is being misused AND exploited to engage in illegal HFC trade in the EU. This document outlines the potential problem and offers some recommendations for how to address the issue.

Background

Customs transit is a customs procedure used to move goods:

- between two points of a customs territory, via another customs territory; or
- between two or more different customs territories.

Customs transit is particularly relevant where a single customs territory is combined with multiple fiscal territories: it allows the movement of goods under transit from their point of entry into the Union to their point of clearance, where both the customs and national fiscal obligations will then be taken care of.

Using the External Transit (T1) customs transit procedure allows for the temporary suspension of duties, taxes and commercial policy measures that are applicable at import of non-union goods. As such, it allows any customs clearance formalities to take place at the point destination rather than at the point of entry into the customs territory.

External Transit (T1) under the Union transit procedure starts at the customs office of departure and ends when the goods and the TAD (Transit Accompanying Document) are presented at the customs office of destination, in accordance with the transit provisions. The exchange of electronic messages in the New Computerised Transit System (NCTS) between the customs office of destination and the customs office of departure takes place as part of the T1 procedure.

The European Commission has published an extensive (674 pages) manual on the various Transit regimes¹, which points to the highly complex administrative nature of the various procedures.

The system is open to abuse: 1) in case of goods that are subject to quantitative restrictions, where the T1 transit procedure is not completed (and the goods are improperly released onto the EU market) or 2) the T1 procedure is closed without adequate verification (goods are off-loaded in transit, and procedure closed with the goods reported as having left the EU Customs territory).

¹ https://ec.europa.eu/taxation_customs/sites/taxation/files/transit_manual_en.pdf

External Transit (T1) and Illegal HFC Trade

One potential means of illegal trade is in the case that non-union products under the External Transit (T1) customs procedure are offloaded within the EU and replaced with fakes (physical flow and paperwork don't match) prior to the closure of the T1. In this case, verification of the goods upon arrival at destination may need to be increased or strengthened.

Other means of illegal trade could include:

- Fake paperwork/Faked goods labeling
- The T1 never arrives to destination and goods are improperly placed on the EU market.

While no data are available on the number of T1 HFC shipments, we understand from OLAF that these are considerable. This has been corroborated by Kroll as well as through our discussions with the Croatian Member State authorities

Access to additional data may resolve some of the following questions and strengthen the enforcement of the F-Gas:

- If the T1 never arrives to the destination are the fines/penalties dissuasive?
- What happens if the consignee is not in the registry? What does the customs office do?
- Are transport agents responsible for the consignor? Should transport agents be held responsible?
- How do customs agent know when to look in the registry? Are specific tariff/customs codes triggering actions?
- Could authorized consignors (an authorized consignor is a person who is authorized to carry out transit operations without presenting the goods at the customs office of departure) and authorized consignees (an authorized consignee is a person authorized to receive at his premises or at any other specified place, the goods under a transit procedure without presenting them at the customs office of destination) be playing a role in illegal trade?

Limited Data on Identity of Goods

Surprisingly, "it is not obligatory to enter a commodity code as part of the transit data, except where the transit declaration is made by the same person at the same time or, following a customs declaration which includes a commodity code."² The TAD must hold a description of goods, but this can be vague (e.g. "Refrigeration Fluids" or "Refrigerants"). It is difficult to understand how Customs can determine the level of security to cover the customs duties and other levies payable.

T1 Transit and HFC Quota

According to the EU F-Gas Regulation, quota is required when placing HFCs on the (EU) market and is defined as "supplying or making available to another party in the Union for the first time, for payment or free of charge, or using for its own account in the case of a producer, and includes customs release for free circulation in the Union".

Other customs procedures that are not considered placing on the market are import for transit, temporary storage, customs warehousing or duty free zone procedures.

²https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_code/guidance_transit_info_changes_ucc_en.pdf (page 2)

The New Computerized Transit System (NCTS)

Transit movements are monitored through the NCTS. The NCTS serves as a tool to manage and control the transit system. Based on the use of electronic data-processing techniques, it guarantees much more efficient management than the paper-based system, used previously. The main objectives of the NCTS are:

- to increase the efficiency and effectiveness of transit procedures;
- to improve both the prevention and detection of fraud;
- to accelerate transactions carried out under a transit procedure and to offer security for them.

The NCTS consists of a messaging system that follows the progress of the transit operations and allows Customs to communicate between point of entry and point of customs clearance/departure. It can be a helpful tool in identifying frequent users of the T1 process and checking the history of the consignees.

Recommendations

Recommendation 1: EFCTC recommends an amendment to the Customs Code that would make it mandatory to include the commodity code in the TAD. This will facilitate the adequate surveillance of risk sensitive products.

Recommendation 2: Until Recommendation 1 is implemented, EFCTC recommends Customs to request the consigner to include the commodity code voluntarily and that OLAF request that all shipments that do not have this code be physically checked (through the instructions in the TARIC code).

Recommendation 3: EFCTC recommends requiring any consignee to provide their ID in the EU F-Gas Registry. This will enable customs to check if the consignee holds sufficient quota and check the history of the consignee. (Please, note that if the goods remain under T1, the consignee does not need to have a profile in the EU F-Gas Registry and there is no requirement to hold quota either).

Recommendation 4: EFCTC recommends denying the T1 process for HFCs if the consignee has a record of non-compliance or mandate a security for the Quota value of the HFCs at [currently approx. €20/CO₂eqT].

Recommendation 5: Mandate that a seal is used on ALL HFC goods under Union Transit. (As an additional measure, can a special seal be mandated specifically for HFCs?)

Recommendation 6: Mandate that the customs office of departure do a control of all goods when HFCs are involved. This would have to work in alignment with the recommendation to use specify HFC commodity code on the TAD.

Recommendation 7: Mandate more than 1 form of proof to the Customs office of Departure, for example one from a member state and one from a non-member state.
