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P & I CLUB CORRESPONDENTS

CUSTOMS PURSUIT FOR SHORT AND EXCESSIVE DELIVERY IN TURKIYE

I) GENERAL INFORMATION

In case of a discrepancy between the declared cargo quantity and the quantity weighed by customs through shore scales that exceeds the customs allowance limits (which vary as per the type of cargo), customs will serve a notification on the Local Agents of the vessels in order to declare the commencement of the pursuit against them, which is not a legal action but an administrative pursuit. In the notifying document, it is shortly stated that the relevant cargo is short or excessively delivered, and the Agents are granted three (3) months from the service date of the notification to explain and prove the reason for the shortage or excess.

To explain and prove the reason for the shortage or excess, in practice, a Short or Excessive Certificate is being submitted to the Customs Office. If the Short or Excessive Shipment Certificate could not be obtained within the period of 3-month, the Customs Office could be applied for an extension towards the end of the due date. Accordingly, first a 3-month extension and then an additional 1-month extension can be obtained from the Customs.

At the end of this period, if a Certificate is being submitted to the Customs, an examination will be conducted, and the Customs will decide whether they will accept the Certificate/explanation or not. Following the examination of the Customs, if the Certificate/explanation is accepted, no Customs fine is to be imposed on the Vessel. However, if no explanations are submitted to the Customs Office or the Certificate/explanation is not accepted by Customs, being fined is inevitable.

The reason for the fine is to compensate the Government's loss of Customs tax, along with VAT, due to a shortage or excess that is beyond the customs allowance limits. For the Customs Fine, Agents/Owners/Vessel/Master are jointly and severally responsible, and as the imposition of the Customs fine is related to Public Law; the Authorities, in practice, impose the fine on the Local Agent and collect it from the Agents, by force of Law, regardless of whether the Agents are representing the Owners or Charterers, etc.

II) SHORT OR EXCESSIVE SHIPMENT CERTIFICATE

Following a Customs Pursuit started, imposition of a fine for shortage or excess can only be avoided by presenting a Short or Excessive Shipment Certificate/Document to the Local Customs, by the Local Discharge Port Agents, advising that the Cargo is already short or excess shipped; however, was erroneously (by clerical error or by weighing error, or wrong tally) manifested as this. Please note that the mentioned document should be issued and signed by the **Shippers and/or Load Port Agents and/or Local Authorities** and their signature needs to be

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legalized (not the contents) by the Local Chamber of Commerce, or Customs Office, or Port Authorities and the Turkish Consulate at the country of origin. If the Consulate is not available there, this should be stated in the content of the Short of Excessive Shipment Certificate.

For guidance purposes only, please be advised that, in practice, the Short or Excessive Shipment Certificates that are issued by the Load Port Agents and legalized (not the contents) by the Local Chamber of Commerce are usually accepted by the customs.

For information only, the draft wording of the Short or Excessive Shipment Certificate should include the following: -

“We, [Load Port Agent], are a registered ship agency company that runs in [place], and have been appointed by the [Charterers/Owners/Vessel Interests] and acted as the loading port agent during the above vessel’s call at [loading port] between [date of loading operation]. This is to inform you that, based on the findings of the investigation at the port of loading, [name]; it has been ascertained that the quantity of [amount] in air was short shipped into [name of the Vessel] which loaded [type of cargo] at [name] terminal within the dates of [XX/XX.XXX.2023] We kindly ask you to amend your records accordingly and are sorry for the inconvenience caused.”

Meanwhile, we kindly recommend considering applying to Customs without waiting until the end of the three-month period in case no Short or Excessive Shipment Certificates will be obtained during the above-mentioned period in order to prevent the fine from being increased due to the variable tax rates.

III) ISSUANCE AND CALCULATION OF THE CUSTOM FINE

If the above “Short or Excessive Shipment Certificate” could not be obtained or the Customs does not accept the explanation, a fine will be imposed in respect of the short or excessively delivered cargo based on the figure, which is exceeding customs allowance limits for the subject type of cargo.

As per the Customs Code (Code No. 4458) of Turkey, the general customs allowance limit for bulk cargo is 3%, and the natural gas (not imported by pipe line) is 6%. The customs allowance limit of some specific cargoes like leather, petroleum products, and cottons are noted in Attachment 11 of the Customs Regulations based on the HS codes, some of which were noted hereinafter for ease of reference: -

Cargo	HS Code	Customs Allowance Limit by Seaway
Jet Fuel	2710.11.70.00.00	0.5%*
Gas oil	2710.19.41.00.11	0.5%*
ULSD 10ppm	2710.19.43.00.11	0.5%*
White Oils	2710.19.85.22.11	0.4%*
Salty-dry South America Leather	-	5%*
Cotton	-	1.5%*

(*) For instance, when the Jet Fuel cargo is short-landed or excessively discharged for 0.8% against the declared figure, the calculation for the fine to be made for exceeding the rate of 0.3% against the customs allowance limit of the cargo, which is 0.5%. However, the customs allowance limits

and tax rates may change over time and should be controlled for every case as per the regulations in force.

The general tariff for Customs to calculate the fine is as follows: -

The shortage amount exceeds the trade allowance X Invoice Value of the goods (which is shown on the cargo manifest) X Exchange Rate (USD to TRY) X duties / taxes (which are received from the Customs own tariff for each cargo)

Following the issuance of the customs fine, the below steps could be taken: -

i. Settlement of the Fine

The customs fine shall be paid within 1 month from the service date of the decision, and a 1/4 deduction will be applied unless the fine is not being objected to during the period of 1 month.

Please be advised that proceeding with the settlement of the fine within 1 month from the service date of the decision on without prejudice basis will not prejudice the rights of the Members to challenge the customs fine afterwards.

ii. Proceeding with the Negotiations

Within 15 days from the service date of the decision, the relevant Customs Office could be applied for proceeding with the negotiations on the fine amount. The negotiations proceedings should be concluded within 45 days from the date of bringing the matter before the Reconciliation Committee (and may be longer depending on the process).

If the parties reach an agreement during the negotiations, the fine will not be subjected to objection anymore, and the agreed amount of the fine shall be paid within 1 month of the date of the decision.

The objection period of 1 month would be suspended during the negotiation process, and if the parties did not reach an agreement during the negotiations, the objection period of 1 month would be continued from the decision date.

iii. Objection against the Fine

The customs fine could be objected within 1 month from the service date of the decision. The objection will be submitted to the authority that was expressly designated in the decision.

If an objection is raised against the fine, the examination shall be concluded within 30 days from the date of the objection. In the event that the objection is rejected, an annulment for administrative fine could be commenced before the competent Administrative Court.

Please note that, for the Customs and Courts, the shore figures/Customs outturn weighbridge figures are final and definitely binding as per the regulations in force and are taken as a basis for pursuit/fine. Given that the ship's documentation cannot overcome the Customs' establishments and does not enable members to resist Customs fine, the prospects of success would not be high unless there are some procedural deficiencies and miscalculation of the fines.

IV) ISSUANCE OF THE TAX AND EVASION PENALTY

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Following the customs fine is imposed, the Customs Office notifies the short or excessive delivered cargo to the relevant Tax Office.

In accordance with the Customs Office's notification, based on our previous experiences, the Tax Office will impose the special consumption tax and VAT on the special consumption tax, along with the tax evasion penalties for both the special consumption tax and VAT on the special consumption tax based on not fulfilling tax obligations or over- or under-declaring the cargo in violation of tax laws.

To sum up, kindly note that the customs fine will most likely be followed by taxes (the special consumption tax and the VAT on the special consumption tax) and tax evasion penalties due to the Government's losses that have occurred in respect of not fulfilling the tax obligations.

The above was noted for guidance purpose only, and please contact with us if you have any further queries.

Our Emergency phone number is: +90 530 129 12 12

Our general e-mail address is: vitsan@vitsan.com.tr

Best regards,

VİTSAN MÜMESSİLLİK VE MÜŞAVİRLİK A.Ş., İSTANBUL