

OPINION | A RECURRING PROBLEM IN MARITIME TRANSPORT

ABANDONED CONTAINERS

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A recurring problem in maritime transport is the abandonment of containers loaded with goods. When the consignee of the goods does not come to collect them after having been requested to do so as the authorised party, shipping companies are faced with a series of costs such as delays due to the occupation of the container with other people's goods, the storage of the container or the internal transport costs of the container.

In this situation, there are two possible solutions: to initiate a procedure for abandonment and auction of the cargo by the competent customs office, or to initiate a notarial procedure for the deposit and sale of the goods.

Abandonment procedure

In order to initiate this procedure, a declaration of abandonment must first be issued by the competent customs administrator and the following rules must be complied with.

As soon as the goods are in a situation of abandonment, in accordance with the provisions of Article 316 of the Decree of 17 October 1947 approving the revised and amended text of the General Customs Regulations, a file is opened, headed by the written declaration of the interested party or by a statement of the facts justifying the abandonment.

Within a maximum of 5 days from the opening of the file, the goods shall be examined and, after hearing the second head of customs, the administrator shall decide whether or not the abandonment is admissible. This decision shall be notified to the person concerned with the goods, if known, and he shall be given a period of 5 days in which to accept or contest it.

If the person concerned is not known, the decision is published in the BOP and on the notice board of the customs office, and a further period of 5 days is granted for the submission of any objections. At

the end of this period, the file is sent to the General Directorate of Customs for a decision.

If abandonment is finally declared, the administrator seizes the goods on behalf of the Treasury, which sells them by public auction.

From the proceeds of the sale, customs duties, fines, storage and warehousing costs and any other costs relating to the goods shall be deducted in order. Freight and the costs of loading and unloading the goods may then be deducted and, after the above deductions have been made, the balance, if any, shall be paid to the Public Treasury as abandoned goods.

Notarial procedure

This procedure for the deposit and sale of goods, regulated in Law 14/2014 on Maritime Navigation (articles 513 et seq.), may be initiated when the law applicable to the charter party of the vessel authorises the carrier to request the deposit and sale of the goods in cases where the consignee does not pay the freight or does not appear to collect the goods transported (containers and their contents).

In order to initiate the procedure, the interested party must indicate the transport in question and provide a copy of the Bill of Lading (B/L); it is also necessary to identify the consignee, the freight or expenses claimed, the type and quantity of goods and an approximate value of the same.

Once the application has been accepted, the Notary will request payment from the addressee, unless the title is not nominative, in which case payment will only be requested if the applicant so wishes and

designates a person to do so.

If the addressee is not found within 48 hours, or if the addressee does not pay, the notary will order the goods to be deposited.

Once the goods have been deposited and the depositary has been appointed, the notary shall authorise their valuation and sale by a specialised person or body or by public auction; the amount obtained from the sale shall be used first to pay the deposit and the costs of the auction, and the remainder shall be delivered to the applicant to pay the freight or expenses claimed, and only up to that limit.

However, if the holder of the goods objects to payment at the time of the summons or within 48 hours thereafter, the remainder of the sale proceeds shall be deposited pending the outcome of the case. In this case, the holder must initiate legal or arbitration proceedings before the competent court. If the action is not brought within the time limit set, the Notary will return the balance to the claimant in payment of the freight or expenses claimed and up to that limit.

Finally, if the deposit has been avoided or cancelled by the provision of sufficient security by the addressee, the latter must file an action within the time limit. If he fails to do so, the notary will order payment of the claim from the security provided.

Since the notarial procedure involves costs (notary, expert opinions, etc.), it is not advisable for goods of low value, in which case it is preferable to use the customs abandonment procedure.

THERE ARE TWO POSSIBLE SOLUTIONS FOR THE ABANDONMENT OF CONTAINERS: THE INITIATION OF AN ABANDONMENT AND AUCTION PROCEDURE OR THE INITIATION OF A NOTARIAL PROCEDURE FOR THE DEPOSIT AND SALE OF GOODS