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Office of the General Counsel

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To: Gail Walls, Ford Transportation Purchasing
Affected Freight Forwarders contracted to Ford US
All Suppliers to Ford US in Europe
All Ford Buyers of Parts and Material from Europe

Cc: Julie Parks, Ford Customs, MP&L
Kandi MacDonald, Ford Customs, MP&L

From: Paul Vandever, International Trade Attorney, Ford OGC

Re: **Requests for Ford US to authorize Freight Forwarder Preparation of
Export Documentation for shipments from Europe to North America**

Background: Historically, while Ford's delivery terms for suppliers from Europe to North America have generally been "FCA", Ford US has assumed responsibility for engaging and paying the freight forwarders in Europe to arrange the export and movement of those shipments from European sellers/suppliers to Ford in North America. Moreover, some Ford North American business units, such as Ford Customer Service Division have used the "ex works" delivery term, which by definition makes Ford in North America responsible for export from Europe.

In the past several years, the European Union (EU), which now comprises 27 European countries in which most, if not all, of Ford US's suppliers reside, has modernized and reinforced export procedures and regulation. This heightened enforcement requires freight forwarders to have documentary proof of their authorization to act on behalf of exporters from Europe. For security purposes, required export declarations must now be filed prior to shipment departure. This decreases the time that suppliers and freight forwarders have to complete necessary documentation and declarations for export shipments.

Ford US's European freight forwarders typically rely on export documentation provided by the supplier. However, in those cases where the supplier either has not provided the export documentation at all or not provided it on a timely basis, Ford US's European freight forwarders would typically generate the export documentation utilizing in order not to delay the shipment.

Issue: Where European authorities require freight forwarders to provide documentary proof of their authorization to make export declarations, who should provide that authorization: Ford US or the European supplier?

Analysis: Under the EU Customs Code¹, Customs declarations may be made only by a "stakeholder" or an authorized agent of a stakeholder. Normally, a stakeholder must be legally established within the EU. There is an exception for exports, where a properly authorized agent in the EU may make a declaration for a non-EU resident party. However, the party, not the agent, remains responsible for the fiscal aspects of the export shipment. "Fiscal" means all Customs duty and other export related taxes, including VAT. Moreover, even though the authorized agent for exports is responsible for the accuracy of all information and statements in the export document ("EX1"), practically speaking, only the supplier can provide the agent with complete and accurate information with respect to a specific export shipment.

Ford US should not be the authorizing party for export shipments from Europe for at least two reasons.

- First, VAT is a tax that is imposed at every stage of a transaction for goods and services. Suppliers can reclaim (or get a credit) for VAT they have paid in inputs when they export their finished goods from the EU. It is my understanding that for suppliers to reclaim VAT, they must be the exporters of the finished goods. If Ford US authorizes the freight forwarders for export shipments, Ford US, not the European suppliers, will be deemed to be the exporter and that will, at the very least, complicate the suppliers' ability to recover their VAT payments. Typically, where a supplier is not able to recover VAT, particularly in a situation like this, where Ford has taken action that interferes with the supplier's VAT recovery, the supplier passes on the increased cost of unrecovered VAT on to Ford. (Ford US cannot recover the VAT, because Ford US is not registered for VAT purposes in the EU.)
- Second, European Customs authorities (along with most other Customs authorities around the world) have put an increased emphasis on the completeness and accuracy of information for shipments outbound from and inbound to their jurisdictions. For shipments exported from Europe, the only party that can provide complete and accurate information for a specific shipment is the supplier. Ford US does not have access to this information independently of the supplier. But, if Ford US were to authorize the freight forwarders to make declarations, Ford US would be held ultimately responsible for the completeness and accuracy of any information filed by the freight forwarders on behalf of Ford US. Ford US would not be able to shift that responsibility and liability to the European supplier or the freight forwarder.

Conclusion: Ford US cannot and should not authorize freight forwarders to make export declarations from Europe on its behalf for the reasons discussed above. Ford US must require all of its suppliers in Europe, both internal and external, to provide necessary and

¹ See "Representation in Case of Customs Declarations" published by Netherlands Customs at <http://www.douane.nl/zakelijk/vertegenwoordiging/en/>.

appropriate authorizations to the freight forwarders, as well as, and more important, to provide all required information and documentation for an export shipment from the EU.

In addition, the preferred delivery term for all Purchase Orders, Material Releases (via systems or e-mail) and Contracts issued to suppliers shipping from Europe should be "FCA". This will reinforce the obligation on the suppliers to provide complete and accurate export documentation on a timely basis.