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TIR Executive Board (TIRExB)

Forty-seventh session

Geneva, 6 June 2011

Agenda item 6

Issues raised by the Bulgarian national association

Below, the secretariat reproduces, for information of the Board, a letter by the Turkish government, sent to the TIR Secretary, in reply to a request for information on the above issue, together with additional remarks.

REPUBLIC OF TURKEY
PRIME MINISTRY
UNDERSECRETARIAT FOR CUSTOMS
Directorate General for the EU and External Relations

Our Ref : B.02.1.GÜM.0.09.00.(03).09/722.02.TIR/
Your Ref : Your letter dated 18 April 2011, Ref. No. KG/AB 87/2011
Subject : Letter by AEBTRI

Fax

Konstantin GLUKHENKIY
TIR Secretary
Transport Division
UN Economic Commission for Europe
SWITZERLAND
Fax: +41 22 917 06 14

Dear Mr. GLUKHENKIY,

As you might recall, by your above referred letter, you have kindly noted that the TIR Executive Board (TIRExB) was informed of a letter by the Bulgarian guaranteeing association (AEBTRI) at its 46th session on 5-6 April 2011 about the temporary exclusion of some Bulgarian hauliers from the TIR System. In your letter, you further ask providing the copies of the notifications sent by the Turkish Customs authorities to the TIR Carnet holders in question. Additionally, you have requested us to present our observations as regards the "Application of the Example of Best Practices on Article 38" adopted at the 45th Session of the TIR Administrative Committee.

Please take note of a summary of the conducted procedures and our observations regarding the subject matter in the attached document.

I hope this information will be useful for your works. If you need further information, please do not hesitate to contact me.

Yours sincerely,


Rıza Mehmet KORKMAZ
Director General

Encl:
Remarks on AEBTRI's letter (7 pg)
Copies of notification (11 pg)
Court decision (Turkish,English) (3 pg)

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REMARKS BY TURKEY ON AEBTRI'S LETTER

1. AEBTRI submits remarks on implementation of Article 38 of TIR Convention by Turkish Customs Administration in its letter dated 31.03.2011, Ref. No.952 referring to certain cases of Bulgarian hauliers. We would like to reflect both on implementation of Article 38 of TIR Convention and also on the exclusion of some Bulgarian hauliers from the TIR System.

A. LEGAL BASIS

2. Turkey attaches utmost importance to the proper application of Article 38. In those terms both in deciding the exclusion of a TIR Carnet holder and in the process of notification, Turkish Customs follows the TIR Convention provisions and the "Example of Best Practice With Regard to the Application of Article 38" (to be referred as Example of Best Practice hereinafter) adopted by the Administrative Committee at its 45th Session. In that regards, Turkish Customs would like to emphasize its commitment to the principles put forth in "Example of Best Practice" and underline the efforts shown in order to fully align its procedures with the "Example of Best Practice".

3. With regard to Article 38, according to 1st paragraph, establishing an exclusion in the case of a "serious offence against the Customs laws or regulations applicable to the international transport of goods" and according to 2nd paragraph notifying the mentioned bodies in one week set the principles of implementation.

4. With regard to "Example of Best Practice", it is worth underlining some points hereby especially in relation to the cases submitted by AEBTRI. In line with the 2nd paragraph, Turkey considers Article 38 "as a **tool to protect and prevent the TIR procedure from abuses**, rather than as an automatic mechanism of sanction in any circumstances." Turkey bears in mind the "provisions of **Article 6 and of Annex 9, part II** which govern the procedure of access of physical and legal persons to the TIR procedure" in line with the 3rd paragraph. Regarding the notification, **in line with the relevant paragraphs**, in each case Turkey informs the **actors mentioned in Article 38 by fax** (TIR Carnet holder additionally by registered mail) without delay, gives place to crucial particulars about the case (**when applicable** with the TIR Carnet number) and sends **all notifications in English**.

B. ABUSES IN INTERNATIONAL TRANSPORTATION

5. 14 irregularities determined in Turkey since 2009 that the Bulgarian companies have been involved with are:

- 2 cases regarding the leaving of the goods within the Turkish territory in an illegal manner;
- 5 cases regarding the filter-capped cigarette paper smuggling
- 2 cases regarding cement smuggling
- 1 case regarding hashish smuggling
- 2 cases regarding toy smuggling
- 1 case regarding silver smuggling
- 1 case regarding photocopy machine smuggling

6. In 2010 Turkish Customs determined several cases in connection with counterfeiting of tobacco products which is an important agenda item for the Customs worldwide and decided temporary exclusion of some Bulgarian hauliers from the TIR System. This issue was on the agenda of the meeting held with the participation of the Turkish and Bulgarian Customs authorities in Edirne on January 11th, 2011. Both sides have underlined that the

cigarette and filter-capped cigarette paper smuggling constitute a major problem and that they are ready for any cooperation to resolve the matter. From the stand point of the prevention of the cigarette paper and filter-capped cigarette paper smuggling, the subject matter has been accordingly notified not only to the Bulgarian Customs but also to such organizations as SECI and Balkan INFO to which Turkey is a member. Therefore, necessary steps have been taken with a view to reinforce the capacity of the anti-smuggling units of the relevant countries to intensify their existing measures and controls.

7. In line with the idea of considering Article 38 “as a **tool to protect and prevent the TIR procedure from abuses**” Turkey applied temporary exclusion from the TIR System, in each case for 60 days, to several Bulgarian firms especially in the second half of 2010. We consider that Article 38 has been used effectively against the abuses and the principle of proportionality has been fully followed during decision-making. Investigations up to today indicate that only one irregularity of a Bulgarian company was found out in 2011.

C. CASES SUBMITTED BY AEBTRI

“First of all, It is already too late when the Bulgarian hauliers are receiving from the guaranteeing association AEBTRI the notification for their exclusion according to Art. 38...”

8. The method of notification to the TIR Carnet holder about its exclusion, **as mentioned in Article 38 and also in “Example of Best Practice” and as practiced by Turkish Customs**, is not through the guaranteeing association, that could be the last possible option. Turkish Customs is fully committed to the principle set by the TIR Convention on informing the TIR Carnet holder **as early as possible** about such decision. Accordingly, in each case TIR Carnet Box.5 and International TIR Data Bank (ITDB) are checked for the fax or email of the haulier, and with their dedication to the best possible implementation of TIR Convention, going beyond these resources Turkish Customs personnel search for contact information about the haulier on the web. Finally, whenever **fax or email of the haulier is available**, Turkish Customs sends the notification to the TIR Carnet holder via this means, and **in any case by registered mail**. Furthermore, as may be seen in attached letters, in all cases letters of notifications are written **prior to the start of exclusion at the date of decision**. Hence, **depending on the availability of the contact information**, TIR Carnet holder is informed about the exclusion by Turkish customs without delay, before the start of exclusion and with time period allowing appeals.

*“ You can easily see that in most cases the notification for the exclusion has been received in the **guaranteeing association after the entry into force of the exclusion** according to Art. 38 of the TIR Convention”*

9. Turkish Customs sends the notification to “the association(s) in the country where the offence has been committed” (TOBB in this case) according to Article 38 **in the same day with the notification to other actors** (TIR Carnet Holder, Bulgarian Customs Authority, TIRExB) **prior to the start of exclusion, at the date of decision**. It is also known that the official letters on such decisions are conveyed by the Turkish guaranteeing association (TOBB) to counterpart guaranteeing association and IRU via **fax** within one week the latest. Although the dates of letters by TOBB (submitted by AEBTRI as enclosure) are not identical with the dates indicated on the table in AEBTRI’s letter, and whereas they reveal that in most cases notification was sent prior to start of exclusion, it is concluded that there needs an improvement of cooperation within the guarantee chain on notification issues, and Turkish Customs will inform the national guaranteeing association accordingly.

“The examples of best practices recommend that the notification for such exclusion contain also information on possible appeal procedures- deadline and appeal bodies, possible suspension of the exclusion in case of appeal...”

10. 7th paragraph of “Example of Best Practice” mentions: “If a decision is taken to implement Article 38.1, **the person being excluded should be informed** without delay. **Such information should** preferably be made in any of the three official languages of the

TIR Convention (English, French or Russian) and should **contain at least the following particulars:**”

11. As may be seen in attached letters, in line with the “Example of Best Practice” all notifications to the TIR Carnet holders include the information on appeal procedures in English. Accordingly, as may be seen in the attached court decision and the relevant letter, the haulier named PIMK OOD, to whom the notification letter could be sent by fax before the start of exclusion, was able to put a case against the decision at the court.

“In one of the cases the haulier has been excluded from the TIR regime for an infraction, occurred during a transport, which has not been effectuated under the cover of TIR Carnet... I kindly ask for your position concerning the exclusion of the haulier with ID number BGR/046/825030653 having in mind that the infraction established by the Turkish Customs administration does not affect a transport under the cover of a TIR carnet.”

12. Article 38 of the TIR Convention states:

“1. Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a **serious offence against the Customs laws or regulations applicable to the international transport of goods.**”

13. Furthermore, 6th paragraph of “Example of Best Practice” affirms this point and in the 7th paragraph TIR Carnet reference number is listed as **“if applicable”**.

14. In that regards, we are of the view that both the words of the Convention on this issue in Article 38 is clear and also there is common understanding of it as indicated in “Example of Best Practice”. Hence, the offence does **not need to be committed during a transport under cover of a TIR Carnet**. We consider that such common understanding of the provisions of the Convention among all actors of the TIR System is of utmost importance in order to fulfill the 12th paragraph of “Example of Best Practice” which states: “12. Irrespective of the possible decision on withdrawal of authorization by the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, **the issuing association should assess the reliability of the holder and may impose on him some sanctions in compliance with the association's internal rules**, for example, suspend the issuance of TIR Carnets.”

15. On the other hand, if to give further details about the case referred by AEBTRI:

16. The offence by the TIR Vehicle no. PB8792BX/PB3128EH, property of the firm Komeksmash-Vasil Pironkov Eood (BGR/046/825030653) was determined in the end of cooperation between Turkish and Bulgarian customs and police authorities. Turkish authorities were informed that the mentioned vehicle left Bulgaria loaded with filter-tipped cigarette paper. The vehicle entered Turkish territory from Bulgaria on 26.07.2010. It has further been established that though the vehicle entered into Turkey through the Customs Office of Hamzabeyli on 26.07.2011 at 10.31 p.m., a weighbridge receipt no. 66627 (14800 kg- which indicates an “empty” entrance) belonging to a vehicle bearing license plate number of PB8729BX-PB3128EH and issued on 26.07.2011 at 9.58 p.m. at a time when the vehicle had not entered and the TIR Carnet no. YX63608420 were lodged by the driver. Thus, the impression tried to be given was that an empty vehicle was travelling for taking goods to carry under TIR operation. When the vehicle was sent to the weighbridge it was observed that the vehicle was laden with 54.290 packs of filter-capped cigarette papers inside 1201 packages with a weight of 20350 kg. According to the examination on Cute-Wise Program, it is registered that the TIR Carnet YX63608420 was given to Komeksmash-Vasil Pironkov Eood by the Bulgarian guaranteeing association AEBTRI.

17. While the case indicates different methods used by the hauliers in abuses, hereby we would like to renew our opinion that in deciding the application of Article 38 the offence does **not need to be committed during a transport under cover of a TIR Carnet**.

“Another example for the difficulties endured by the Bulgarian hauliers is the exclusion for 60 days starting from January 3rd 2011 of the haulier “PIMK” Ltd with ID number BGR/046/115536179. The infringement established by the Customs authorities has been

committed by the driver during a transport with TIR Carnet JX64707861, but without the knowledge of the transport company. According to the decision of the Turkish court, a copy of which you will find enclosed, the transport company is considered as “a third well-intentioned person” to this case”

18. It has been stated in the letter of AEBTRI that though the court has decided that the haulier “PIMK” will be considered as “a third well-intentioned person” in respect of the infringement committed by the driver as regards the TIR carnet no. JX64707861 without the knowledge of the transport firm; the haulier was temporarily excluded. As you are well concerned, in the Explanatory Note No. 38.1 it was stated that a business enterprise should not be excluded from the TIR system because of offences committed by one of its drivers without the knowledge of the management. However, as you might be concerned, this item has been deleted from the Convention on 07.11.2003. On the other hand, under the “Letter of Undertaking of the Haulier for the Acceptance of the TIR Customs Procedure and Authorization for the Use of Normal TIR Carnets”, the firm authorized to conduct transportation within the TIR system defined by the TIR Convention, has committed to the guaranteeing association and to the Customs administrations that it will abide by the international rules and domestic laws during the transportation procedures and will fulfill its relevant responsibilities. Item 10 of this Letter of Undertaking contains a provision as “being responsible for the acts and faults of the staff, representatives and officers as though such acts and faults were directly committed by it”. Furthermore, when the quantity of the goods is considered (2.000.000 pieces of rolled cigarette filters in 200 packages and 6.000 pieces of prescription glasses in 4 packages), it is concluded that the transportation of such goods without the knowledge of the transport firm is not possible. In that regards, from a Customs point of view, the claim that “the infringement has been committed by the driver without the knowledge of the transport company” do not annul the risk constituted by this firm on the TIR system.

19. In that regards, Turkish Customs excluded this firm temporarily from the TIR system. On the other hand, as a result of the appeal case put by the firm at the 13th Administrative Tribunal in Ankara; the tribunal granted a stay of execution on 05.01.2011, on the ground that the application of the decision for exclusion may incur irreparable losses. Thus, the decision for temporary exclusion will not be applied until the tribunal decides on the merits of the case.

“On January 2nd 2011 the Turkish Customs authorities detained at the border crossing point of Ipsala, between Turkey and Greece, 9 loaded vehicles, property of PIMK Ltd, which have been hired out to IP Trans AD...”

20. It has been noted in the letter of AEBTRI that the 9 vehicles, property of “PIMK OOD” with ID number BGR/046/115536179 (temporarily excluded from the TIR regime) and hired out to IP Trans AD have been detained by the Customs Office of Ipsala on January 2nd, 2011, one day prior to the entry of the decision of exclusion into effect (January 3rd, 2011). It is also added in this letter that though IP Trans AD has presented the valid documents for hiring the vehicles, eventually nothing has changed.

21. Our records reveal that the mentioned vehicles applied to the Customs Office of Ipsala on January 3rd, 2011 to enter Turkey.

22. Legal Service of Turkish Customs have concluded that the provisions of Article 38 should cover the application of the fines to the vehicles which are the property of such company as well and that otherwise the imposed penalty may not be applicable. We are of the view that conducting transportation by means of subjecting the vehicles of a company to the TIR Carnet of another company (i.e. by utilizing from the TIR carnet of a different company) in the aftermath of exclusion from the TIR system infringes the TIR Convention as it will mean bypassing the sanction imposed under the TIR Convention. Thus, the TIR operation by subjecting the vehicles of a company to the cover of the TIR carnet of another company is unacceptable. It is obvious that in such case the method companies will use in line with their purpose is signing a contract for hiring the vehicles. Therefore, the vehicles carrying goods under cover of TIR Carnet by IP Trans AD were not allowed to enter Turkey whereas after the suspension decision by the court at the case put by PIMK OOD

(appeal against decision of exclusion) vehicles were have to be allowed continuing TIR operation.

D. CONCLUSION

23. International TIR System is a system composed of Customs administrations, guaranteeing associations, international guaranteeing association and TIR Carnet hauliers. In order for such system to function soundly, it is essential that all stakeholders accurately fulfill their obligations. The Customs administrations are accordingly liable to take any effective precautions against smuggling and abuse of the TIR System.

24. Based on above mentioned information, it is clear that both the application and the notification procedures conducted by the Turkish Customs Administration are fully in compliant with Article 38 of the TIR Convention and the “Example of Best Practices” adopted by the Administrative Committee. All our applications are guided by the purpose of ensuring the proper functioning of the TIR system and avoiding any abuse of the system, taking into account the principles set in TIR Convention for the proper application of Article 38.

25. Turkish and Bulgarian Customs Authorities maintain their efforts against counterfeiting and smuggling. Cooperation in the field of Customs enforcement covering these items is on the agenda of Bilateral Meeting Between The Turkish And Bulgarian Customs Administrations to be held in Sofia/Bulgaria on 3 June 2011. Concurrently, on 2-3 June 2011 a Conference on “Countering Cigarette Smuggling on the Balkans” jointly organized by Bulgarian Customs Authority and Center for Study of Democracy will be held in Sofia and will be attended by Turkish Customs at the highest level.
