



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/2003/2
26 November 2002

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions

affecting Transport

(One-hundred-and-third session, 4-7 February 2003,
agenda item 5 (b))

**CUSTOMS CONVENTIONS ON TEMPORARY IMPORTATION OF
PRIVATE ROAD VEHICLES (1954) AND COMMERCIAL ROAD VEHICLES (1956)**

Application of the Conventions

Difficulties in the application

**Transmitted by the International Touring Alliance/
International Automobile Federation
(AIT/FIA)**

Note: The secretariat reproduces below a communication transmitted by the International Touring Alliance/International Automobile Federation (AIT/FIA).

A. INTRODUCTION

1. The views of the Working Party are requested by the AIT/FIA on the following questions. The opinion of this Working Party is crucial to the successful negotiation and resolution of these matters.

B. DIFFICULTIES ENCOUNTERED

I. Customs litigation in India, two outstanding claims

CASE 1: CPD no. D 634658, issued by TAC Iran in 1969 to Mr. P. Jauhar.

2. The case may be summarized as follows: The AIT/FIA received a file from the Indian guaranteeing association of over 100 pages of correspondence related to this case. The vehicle was not re-exported from India by the deadline of June 1970. The vehicle was seized by Customs authorities in 1973. The case was adjudicated by Indian Customs authorities in 1976 and seizure and auction sale were confirmed. The Indian Ministry of Finance had declared in 1972 that duties would not be payable on confiscated vehicles. The guarantor association believed that the case was closed. The guarantor association was requested to pay the duty difference in 1988 – twelve years following the official customs adjudication order (1976). In subsequent letters, the Indian Customs authorities announced (1990) the cancellation of the auction deduction, announced (1992) the cancellation of the Ministry of Finance's declaration of 1972, reinstated (1993) the auction deduction. A brief case history is attached.

3. The AIT/FIA Customs Secretariat would urge the Indian Customs authorities to withdraw this claim, now 32 years old, in view of the unexplained lapse of 12 years in which no action was taken by the Customs authorities to recover the duties. The UN Convention of 1954 does not provide time deadlines for such circumstances. However, Governments are expected to respect the spirit of the international conventions, which provide reasonable time frames for the settlement of temporary importation infringements. The opinion of the Working Party is solicited on this case.

CASE 2: CPD no. 418711 Ud, issued by TTOK to Mr. Celal Koyuncu, valid until 5.6.90.

4. The case may be summarized as follows: The AIT/FIA received a file from the Indian guaranteeing association of over 100 pages of correspondence related to this case. The vehicle was seized by Indian Custom authorities in 1990 and the two drivers arrested for smuggling gold and silver. A Customs claim was lodged in 1990 as the vehicle had not been re-exported. Confirmation of seizure was requested repeatedly during five years by the guarantor association. Seizure of the vehicle was officially acknowledged by the Indian Customs authorities in 1995 and the full amount of duties was claimed. No details have been communicated to date to the guarantor association concerning the resale, auction, or disposal of the vehicle.

5. The AIT/FIA Customs Secretariat would urge the Indian Customs authorities to withdraw this claim, now 12 years old, in view of the fact that evidence of seizure was communicated to the guarantor association only 5 years after confiscation, in contradiction to the terms of Article 13, paragraphs 2 and 3. Furthermore, re-exportation or official surrender was rendered impossible since no clear information was provided by the Indian Customs authorities in the last 12 years about what happened to the vehicle. A brief case history is attached. The opinion of WP.30 is solicited on this case.

II. Customs procedures in Turkey

6. The AIT/FIA have asked the Turkish Customs authorities for clarification regarding changes in Turkish customs regulations. Several CPD issuing associations reported to the AIT/FIA in August 2002 that drivers of commercial vehicles were encountering problems at the Turkish borders. Reports included the following: CPDs were refused; CPDs were stamped upon entry, but exit discharges were refused; a special “import-export” document (in Turkish and English) was required in the place of CPDs; fees of different levels were charged for this new Turkish document; requests for receipts of fees paid were refused; border formalities differed from one customs post to another. The new Turkish document appears to hinder rather than facilitate border formalities in Turkey. The AIT/FIA as well as our CPD issuing associations urgently await news on the current customs situation in Turkey.

7. The AIT/FIA has now been informed that our issuing associations have received in recent months an avalanche of Turkish customs claims, some 80% of which have been raised unjustly against correctly discharged CPDs. This would appear to indicate an absence of centralized verification of entry and exit data on vehicles. Providing the required proof of re-exportation for these claims places an undue burden on the issuing associations as well as on the Turkish guarantor.

8. The AIT/FIA are concerned that border crossing facilitation in Turkey is being hindered by the imposition of new formalities, that vehicle exits are not being correctly recorded leading to a high number of unjustified claims, and that unannounced changes in document requirements are creating havoc with international transport companies and drivers.

9. The AIT/FIA would urge the Turkish Customs authorities to respect the principle of border crossing facilitation as provided for in the international conventions, to ensure that customs office procedures are efficient so that unjustified claims can be eliminated, and to give official advance notice to the international organizations via the Turkish guarantor association of any changes in customs procedures that directly affect the use of customs documents administered by those international organizations. The opinion of WP.30 is requested on this matter.

III. Customs litigation in Egypt, convention deadlines

10. The AIT/FIA have been working with the guarantor association in Egypt on the resolution of outstanding customs claims, some of which have remained open for many years due to misunderstandings with regard to the terms of the 1954 UN Convention. The guarantor association has the task of gaining the cooperation and comprehension of the Egyptian Customs authorities who have been asked to rectify errors of the past and to withdraw a large number of unjustified claims.

11. The bulk of the claims the AIT/FIA deem unjustified are due to the following reasons: the claim was not submitted within one year of the CPD expiry (article 26); Customs did not submit the duty calculation breakdown within one year of the claim notification (article 26); Customs did not respect the deadline of one year in which to contest the proof provided (article 27); Customs did not accept the impossibility of re-exportation due to force majeure (article 25 bis); Customs did not accept as proof of re-exportation stamps of countries subsequently visited or other valid documentary evidence (article 24); vehicle seizure, auction sales and court cases were not communicated in good time to the guarantor association (article 13). Other customs claims are difficult to resolve rapidly due to the imposition of heavy fines and fees not covered by the terms of the international conventions.

12. The AIT and FIA would urge the Egyptian Customs authorities to pay strict attention to the deadlines and other provisions set down clearly in the 1954 Convention. With respect to vehicles seized or other cases resulting in court action, the Egyptian Customs authorities are asked to communicate all relevant details immediately to the guarantor association. With respect to fines, fees and penalties in connection with criminal activity, the Customs are urged to take proceedings against the persons who have committed the infringements, in accordance with Article 28. The Egyptian Customs authorities are asked to respect the terms of agreements concluded in the past with the AIT/FIA with regard to respecting the provisions of the international conventions and resolving long-outstanding customs claims. The opinion of WP.30 is requested on this matter.

IV. Vehicle smuggling into Iran (Islamic Republic)

13. The AIT/FIA reported to WP.30 in February 2002 that a number of vehicles had been illegally imported into Iran (Islamic Republic) from Turkey under cover of CPDs, giving rise to customs claims. The vehicles, some stolen, were brought into Iran for the purpose of resale. The Turkish police had arrested a number of Turkish individuals involved in the smuggling and trafficking operation and the names and addresses of the Iranian collaborators were transmitted to Interpol. The AIT/FIA had received word from the guarantor association in Iran that the police, Interpol and Iranian Customs authorities had located a number of these vehicles.

14. The AIT/FIA would request the Iranian Customs authorities to withdraw the customs claims for which criminal activity was documented through official channels (police, Interpol, Customs authorities, judicial authorities). The Iranian authorities are urged to take proceedings against the persons who have committed the violations, in accordance with Article 28 of the 1954 Convention. The opinion of WP.30 is requested on this matter.

Annex

INDIA - CASE 1

CPD no. D 634658, issued by TAC Iran in 1969 to Mr. P. Jauhar

Case history

9.7.69 – Vehicle entered India through Hussainiwala check post

26.3.70 – Customs duty notification for amount of Rs 26541

3.6.70 – Extension date by which vehicle was to be re-exported. Vehicle was not re-exported.

26.6.72 – Notification addressed to FIAA (guarantor) by Indian Ministry of Finance/Customs, Under Secretary to the Government of India, states, *“It has been decided that when a motor vehicle imported under carnet is confiscated for any infringement of the triptyque rules, the liability to pay customs duty will cease.”*

19.4.73 – Vehicle seized by Customs, and then sold in auction for Rs 8100.

14.5.76 – Adjudication Order of Customs, New Delhi, confirming absolute confiscation of vehicle and auction sale proceeds of Rs 8100.

24.3.88 – Note from the Indian Ministry of Law & Justice, Department of Legal Affairs, concerning an Agreement made on 27.4.77 between the FIAA and the Government concerning confiscation of vehicles and auction proceeds, states that duty obligation does not end with confiscation. The FIAA is liable for the payment of duty “but for the exemption” (auction sale proceeds).

30.9.88 & 16.11.88 – Indian Customs confirm seizure of vehicle and auction sale, and request payment from FIAA of duty difference – Rs 18441.

13.4.89 – FIAA reminded Indian Customs of Ministry of Finance decision of 1972. The FIAA had considered the case closed – no request for additional payment had been received in the previous twelve (12) years. FIAA cited the Ministry of Finance decision of 26.6.72 – according to this decision, WIAA liability for duties had ceased.

22.6.90 – Customs announce refusal to accept deduction of auction proceeds and claim full amount of Rs 26541.

Subsequent letters from Customs continue to insist on payment, FIAA letters continue to insist on withdrawal. AIT/FIA opinion on case supports the FIAA and calls for withdrawal.

3.6.92 – Customs office, Amritsar, informed the FIAA that the Ministry of Finance decision of 1972 had been “withdrawn and superseded by the Justice Ministry’s “note” of 24.3.88.

23.4.93 – Customs order payment of claim – Rs 18441 (auction proceeds deducted).

26.7.93 – FIAA appeals to Customs, reiterating statement of facts and grounds of appeal, underlining in particular 12 years delay in claiming additional duty sum.

10.9.93 – Customs rejects the FIAA appeal on grounds that duty can still be demanded on confiscated goods as per the Justice Ministry’s note of 24.3.88.

Subsequent letters from Customs continue to insist on payment, FIAA letters continue to insist on withdrawal. FIAA legal costs continue to rise. AIT/FIA opinion on case supports the FIAA and calls for withdrawal.

7.6.02 – Latest duty demand for Rs 18441 plus interest (approx. US\$ 654 with interest).

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INDIA - CASE 2

CPD no. 418711 Ud, issued by TTOK Turkey to Mr. C. Koyuncu, valid until 5.6.90

Case history

21.2.90 – Vehicle entered India at Attari Road Customs Station, visit permitted up to 4.6.90.

31.8.90 – Customs claim notification sent to FIAA (guarantor).

12.12.90 – Letter from Mr. Koyuncu to TTOK stating Ankara police informed him that his vehicle had been seized for gold smuggling and kept by the New Delhi Customs. The 2 drivers were imprisoned.

14.2.91 – TTOK reported to FIAA that vehicle confiscated by Customs and probably held in New Delhi customs compound. TTOK would ask Turkish Embassy for confirmation.

10.6.91 – Duty calculation notification in amount of Rs. 1064537

29.6.91 – FIAA asked customs for confirmation that vehicle is in New Delhi customs compound.

4.12.91 – Customs reported that vehicle was neither deposited with nor confiscated by New Delhi customs, duty payment requested again.

24.3.92 – Mr. Koyuncu wrote to TTOK giving names of drivers involved and names, addresses and contact numbers of their attorney in New Delhi.

3.12.92 – TTOK asked FIAA to contact attorney in New Delhi, the prison in New Delhi and the Customs to obtain information on the vehicle.

23.4.93 – Customs reviewed facts of case (no mention of Mr. Koyuncu's letters) and reiterate demand for duty payment on grounds that no evidence of seizure or surrender could be provided.

11.7.95 – Customs addressed letter to FIAA mentioning the arrest of the driver F. Bayder for smuggling and the seizure of the vehicle. Since the vehicle was neither re-exported nor surrendered to Customs, the duty is claimed. *This is the first time seizure is acknowledged.*

23.5.97 – TTOK replied to FIAA letter of 7.4.97 and refuses to pay claim on grounds that the Customs acknowledged the vehicle was seized and the driver imprisoned.

31.8.98 – Customs informed FIAA that, in accordance with the Justice Ministry's note of 24.3.88, duty obligation does not end with confiscation.

29.1.99 – AIT/FIA wrote to FIAA, citing Article 13 of the 1954 Convention which states that the requirement of re-exportation is suspended for the duration of a seizure and that the government authorities should notify the guarantor of what they intend to do with a seized vehicle. FIAA is asked to urge Indian authorities to respect the terms of the conventions.

3.5.99 – FIAA wrote to Customs, citing Article 13 of the 1954 Convention and stating that they were never informed about the seizure, or what happened to the vehicle, or if it was sold in auction. They asked Customs for all pertinent information.

2000 & 2001 – Customs continued to press for full payment of claim, Rs. 1064537.

17.5.01 – FIAA reminded Customs of terms of conventions whereby no claim is payable on vehicles which cannot be re-exported due to Customs seizure.

8.3.02 – Customs reminded FIAA that payment remains due despite the seizure of the vehicle.

15.3.02 – FIAA informed TTOK that payment is still due, interest of 20% will be charged on late payment.
