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Working Party on Customs Questions affecting Transport

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

Application of the Convention

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

The CPD system, operating under the terms of the above-mentioned vehicles Conventions, is at times confronted with cases of seizure, fraud or criminal activity. As the terms of the Conventions are not specific in such matters, the opinion of WP.30 is solicited in order to help the AIT and FIA work towards the successful resolution of a number of outstanding customs claims.

Articles 13 (14 in the 1956 Convention), 28 and 31 appear to be open to interpretation in different manners by different Customs administrations. The views of this Working Party are requested in order to provide the Contracting Parties with a consensus of opinion on the application of certain provisions. The articles in question are reproduced in the Annex to this document to facilitate reference.

Article 13 (1954 Convention, Article 14 in the 1956 Convention) covers cases of authenticated accidents in which vehicles are badly damaged. The article states that re-exportation shall not be required, provided that (a) duties are paid; or (b) the vehicle is officially surrendered; or (c) the vehicle is destroyed under supervision.

At the end of Article 13 (14), paragraph 1 (c), are the words “as the Customs authorities may require”. Do these words apply to (c) only, or do Customs have the choice of (a), (b) or (c)? **For example, if a vehicle is destroyed in an accident and the accident is duly authenticated by the police, do the Customs authorities have the right to refuse official surrender under (b) and insist on the payment of duties under (a)?**

In duly authenticated accidents, it is often the case that the vehicle is taken into the custody of the police. **If the vehicle is retained by the police, i.e., not turned over to Customs, and therefore no option is available to request official surrender or supervised destruction, can the guaranteeing association still be held liable for the payment of a customs claim?**

Article 13.2 (14.2) states that when vehicles cannot be re-exported due to seizure, then the requirement for re-exportation is suspended for the duration of the seizure. The Convention stipulates that a customs claim must be notified within one year of the expiry of the customs document; however, this one-year deadline cannot apply to vehicles seized for lengthy periods. **In such cases, at what point can a customs claim be notified? How is the termination of “seizure” defined?**

Article 13.3 (14.3) states that the Customs authorities are expected to notify the guaranteeing association of vehicles seized and advise it of the measures they intend to take. However the wording “so far as possible” weakens the obligation implied in “shall notify”. **Under what circumstances would it be acceptable for the authorities not to notify the guaranteeing association of a vehicle seized and measures they intend to take?**

The guaranteeing associations of the AIT and FIA are at times confronted with cases of fraud and criminal activity, where the driver or CPD holder is arrested and the vehicle confiscated. Article 28 covers fraud, contravention and abuse where proceedings can be taken and penalties imposed on the offending person. **In the event of detention or imprisonment of a driver, along with the seizure or confiscation of his vehicle, can the guaranteeing association be held liable for the payment of a customs claim, even though re-exportation of the vehicle in question is impossible?**

Article 31 refers to any breach of the provisions of the Convention, or substitution or false declaration or act that enables a person to improperly benefit from temporary importation. This article stipulates that the offender may be held liable to penalties prescribed by the laws of the country where the offence was committed. **Can the guaranteeing association be held liable for the payment of such penalties?**

Is there a statute of limitations, either implied in the vehicles Conventions or written into international law, on the resolution of customs claims? For example, if a customs claim is not resolved within the period of time stipulated in the Conventions and the Customs authorities make no attempt, through correspondence with the guaranteeing association, to follow-up this case over the next few years, **after what period of time can the claim be considered null and void?**

Could the term force majeure be applied when customs claims cannot be resolved in the normal manner (i.e., within the deadlines prescribed in the Conventions) due to a break in diplomatic relations between two countries? For example, two countries sever diplomatic relations in 1990, then restore relations in 1995. Can customs claims outstanding in 1990 be considered invalid in 1995 due to force majeure?

The opinion of this Working Party with regard to the above will help the AIT and FIA to finalize a number of outstanding questions with respect to the application of the provisions of the vehicles conventions.

Annex

Excerpts from the

Customs Convention on the Temporary Importation of Private Road Vehicles (1954)
Customs Convention on the Temporary Importation of Commercial Road Vehicles (1956)

Article 13 (1954 Convention) /

Article 14 (1956 Convention)

1. Notwithstanding the requirement of re-exportation laid down in article 12 [1954 Convention, Article 13 of the 1956 Convention], the re-exportation of badly damaged vehicles shall not be required, in the case of duly authenticated accidents, provided that the vehicles:
 - (a) are subjected to the import duties and import taxes to which they are liable; or
 - (b) are abandoned free of all expenses to the Exchequer of the country into which they were imported temporarily in which case the holder of the temporary importation papers shall be exempt from import duties and import taxes; or
 - (c) are destroyed, under official supervision, at the expense of the Parties concerned, any salvaged parts and materials being subjected to the import duties and import taxes to which they are liable as the Customs authorities may require.
2. When a vehicle temporarily admitted cannot be re-exported as a result of a seizure, other than a seizure made at the suit of private persons, the requirement of re-exportation within the period of validity of the temporary importation papers shall be suspended for the duration of the seizure.
3. The Customs authorities shall notify, so far as possible, to the guaranteeing association, seizures made by or on behalf of these Customs authorities of vehicles admitted under cover of temporary importation papers guaranteed by that association and shall advise it of the measures they intend to take.
4. When the vehicle or the object listed in the papers are either lost or stolen during the course of seizure only during the period when the public authority possesses the vehicle or the object other than a seizure made at the suite of private persons, no import duties or import taxes can be levied against the holder of the temporary importation papers, who should submit evidence of seizure to the Customs Authorities.

Article 28 (1954 Convention)

In the event of fraud, contravention or abuse the Contracting Parties shall, notwithstanding the provisions of this Convention, be free to take proceedings, against persons using temporary importation papers, for the recovery of the import duties and import taxes and also for the imposition of any penalties to which such persons have rendered themselves liable. In such cases, the guaranteeing associations shall lend their assistance to the Customs authorities.

Article 28 (1956 Convention)

The provisions of this Convention do not affect the right of the Contracting Parties, in the event of fraud, contravention or abuse, to take proceedings against holders of, or persons using, temporary importation papers, for the recovery of the import duties and import taxes and also to impose any penalties to which such persons have rendered themselves liable. In such cases, the guaranteeing associations shall lend their assistance to the Customs authorities.

Article 31 (1954 and 1956 Conventions)

Any breach of the provisions of this Convention, any substitution, false declaration or act having the effect of causing a person or an article improperly to benefit from the system of importation laid down in this Convention, may render the offender liable in the country where the offence was committed to the penalties prescribed by the laws of that country.
