

RECOMMENDATIONS FOR TIR CARNET HOLDERS

REGARDING THE POTENTIAL IMPLEMENTATION OF THE DECISION OF THE FEDERAL CUSTOMS SERVICE OF THE RUSSIAN FEDERATION NO. 01-11/28474, DATED 4 JULY 2013 IMPOSING ADDITIONAL GUARANTEES FOR TIR OPERATIONS

1. Introduction

The Federal Customs Service of the Russian Federation ("FCS RF") has issued a letter addressed to the heads of the regional Customs departments (ref. no. **01-11/28474**) dated 4 July 2013.

The FCS RF's letter prescribes that *"the placing of goods under the Customs procedure of Customs transit under cover of TIR Carnets shall be exercised while ensuring compliance with Customs transit with application of the measures stipulated in paragraph 1 of Article 217 of the Customs Code of the Customs Union"*. This measure is currently foreseen to be introduced on 14 September 2013.

If this measure comes into force, transport operators should be guided by the follow recommendations.

2. Recommendations

2.1. Immediate action – register refusal of Customs to accept TIR Carnet

To be able to defend your rights and appeal the illegal Customs decision to refuse to open the TIR procedure on the territory of the Russian Federation, it is essential to obtain clear evidence of this refusal for subsequent legal actions.

After the arrival of the goods has been registered at the entry point in the Russian Federation, the Customs officer should normally accept to open the TIR procedure by executing the required formalities, notably by affixing the necessary Customs' stamps in the TIR Carnet, as well as in the shipping and commercial documents.

If the Russian Customs official refuses to open the TIR procedure, **it is essential to obtain a formal confirmation of this refusal** in the following form:

The Customs officer should note in the field "for official use" of the Volets No. 1 and No. 2 of the TIR Carnet *"Refused to release the goods as a result of _____"*. The Volets should then be crossed out and the TIR Carnet should be handed back to the driver.

If the Customs officer does not follow this standard procedure, he should imperatively be requested to do so, as this is fully in line with TIR procedures.

Only once your driver has received a refusal to accept the TIR Carnet in writing should your Company even consider providing any additional guarantees to Customs.

2.2. In case Customs officer refuses to enter note in writing on TIR Carnet

If the Customs officer fails or refuses to confirm his refusal in writing, it is recommended that the driver has the Customs officer sign a form confirming the rejection of the TIR procedure. See the form attached to the "Recommendations for Drivers".

If the Customs officer refuses to sign this form, the driver should sign it as documentary evidence. This procedure is further explained in "Recommendations for Drivers".

2.3. Follow-up actions

It is possible to appeal the illegal actions of Customs authorities to the higher Customs authority and to the competent court. Such actions can be taken either simultaneously or independently of each other.

To obtain a positive court decision, the most appropriate step is to appeal directly to the competent local court in order to request the invalidation of the actions of the Customs authority and to recover losses incurred.

The lawsuit may be submitted within three months from the date of refusal of the TIR Carnet as per Section 4, Article 198 of the Arbitration Procedure Code of the Russian Federation.

The defendant in such a lawsuit will be the Customs authority at the border, which refused the TIR Carnet.

If in doubt as to which Russian Customs authority or court your appeal should be made, please contact your national association or the IRU.

It is highly recommended that the FCS RF, which is located in Moscow, should be included in any lawsuit against a specific Customs office. This could allow the proceedings to be transferred to the Arbitration Court of Moscow, which can have many practical advantages for operators to better follow the case.

To submit a lawsuit to the competent courts, it is necessary to collect and prepare the following set of documents:

- a) A copy of the statutes of the transport company (articles of incorporation);
- b) A copy of the certificate of registration / establishment of the transport company;
- c) A copy of an official document confirming who can legally represent your company in Russia;
- d) The original power of attorney for the representative of the transport company allowed to represent it in court (this can be anybody, not necessarily a lawyer);
- e) The original of the TIR Carnet or its certified copy;
- f) Where applicable, the form providing evidence of the refusal of the Customs officer to accept the TIR Carnet as per the form attached to the "Recommendations to drivers".

The documents listed above, where provided by a foreign transport company, will require an Apostille Certificate, also known as the Hague Apostille. They should all be translated into Russian and certified by a Russian notary.

It is recommended to send any lawsuit to the court by registered post with a detailed list of enclosures.

RECOMMENDATIONS FOR DRIVERS

REGARDING THE POTENTIAL IMPLEMENTATION OF THE DECISION OF THE FEDERAL CUSTOMS SERVICE OF THE RUSSIAN FEDERATION NO. 01-11/28474, DATED 4 JULY 2013 IMPOSING ADDITIONAL GUARANTEES FOR TIR OPERATIONS

If Russian Customs refuse to open the TIR procedure at the entry points in the Russian Federation without the provision of additional guarantees (surety, bank guarantees, etc.), please follow instructions below:

- Obtain a formal confirmation of the Customs officer's refusal to open the TIR procedure without the provision of additional guarantees. This should be done even if the management of your company subsequently decides to provide additional guarantees.
- Insist that the Customs officer notes in the field "for official use" of the Volets No. 1 and No. 2 of the TIR Carnet "*Refused to release the goods as a result of _____*..." clearly indicating the reasons for the refusal.

The Customs officer should also cross out the Volets and hand back the TIR Carnet to you.

If the Customs officer refuses to comply with your request, tell him that:

"the Decision of the Commission of the Customs Union dated 17.08.2010 No.438 obliges you to give me such a written confirmation."

- If the Customs officer refuses to enter his written refusal on your TIR Carnet, you must complete and have him sign 2 copies of the attached declaration form. Please note that the Russian Customs officer should be given the declaration form in Russian.

It is also essential that the Customs officer stamps the declaration form to confirm receipt. One copy of this declaration form should be left with the Customs officer.

If the Customs officer refuses to accept a copy of the declaration form, you should go to the Customs office and give a copy to the officer in charge.

Enclosure to the Recommendations for Drivers

To the Head of Customs Post (Customs office)

(name of the Customs office)

(address of the Customs office)
FROM:

(Name of driver)

COMPANY OF DRIVER

(Name of a company – transport operator)

Ref. № _____ from _____

TRANSLATION OF THE DECLARATION FORM

Concerning refusal to open the TIR procedure and request to provide a reasoned written refusal

DRIVER, I, _____
(Surname, Name, , Middle Name)
citizen of _____,
_____(indicate citizenship),
Name of the Transport Company _____
(Name of the company – transport company)
date // ____ / time " ____ "
(day/month/year) ____ - _____

Arrived at customs office of

(name of the Customs office at the boarder-crossing point)

with the vehicle _____/
(registration numbers of the vehicle and of a trailer)

transporting the goods under CMR number

(indicate number of CMR)

and provided as a valid transit declaration a TIR Carnet:

(indicate number of TIR Carnet)

In violation of the TIR Convention and Customs legislation of the Customs Union, Customs official

(indicate surname, name, middle name of the Customs officer)

_____ on duty, verbally refused to accept the above valid TIR Carnet due to the absence of additional guarantees to cover Customs duties and taxes.

The above-mentioned Customs officer refused to provide me with a formal written confirmation of his refusal to accept my TIR Carnet. The actions of the above-mentioned Customs officer violate the Customs procedure relating to the filling in and registration of the transit declaration by the Customs authorities, which was approved by the Decision of the Commission of the Customs Union No. 438 dated 17 August 2010, as well as instructions on the actions of Customs officials, conducting Customs operations and Customs control over road transportation of the goods upon arrival (departure), placement of the goods under the Customs transit procedure as well as under the temporary storage procedure, approved by Order of the FCS RF of Russia from 26 May 2011, number 1067.

The refusal to accept the TIR Carnet as a transit declaration due to the absence of additional guarantees to cover Customs duties and taxes, violates the provisions of the TIR Convention, in particular, Articles 4, 23, 42-bis, and 48, as well as the norms of Article 217 of the Customs Union Code and Article 137, Paragraph 4 of the Federal Law № 311-ФЗ "on Customs Regulations in the Russian Federation".

In view of the above, I request you to duly notify, in writing, and without delay, the transport company cited above about the refusal to accept the TIR Carnet, indicating the reasons of the refusal and the registration number in the book of the registry of arrivals.

I kindly ask that a written notification be addressed to the above-mentioned transport company.

Date: _____

Signature: _____ / _____ /
Surname, Name, Middle Name

Confirmation of receipt / Customs stamp (on the second
copy of the declaration form which shall remain with
Driver)

Declaration form is received by:

(Surname, Name, Middle Name of the Customs officer)

(date)

(signature)

In case of refusal by the Customs official to confirm the
receipt of the declaration form, the respective record
shall be done by the Driver

Приложение к Рекомендации для водителей

Начальнику таможенного поста
(таможни)

(наименование таможенного
органа)

(адрес таможенного органа)
от:

_____(ФИО
водителя)

водителя компании

(наименование компании-перевозчика)

Bx. № _____ ОТ _____

ЗАЯВЛЕНИЕ

Об отказе в принятии книжки МДП, оформлении процедуры МДП и предоставлении мотивированного письменного отказа

Я, гражданин _____
(указать гражданство),

(фамилия, имя, отчество)

Водитель компании _____
(наименование компании - перевозчика)

"_____" сентября 2013 года в "_____" часов "_____" минут прибыл в таможенный орган

(наименование пункта таможенного оформления на границе)

на автомобиле /

(гос. номер автомобиля / гос. номер прицепа)

с товаром по международным товаротранспортным накладным:

(указать номера CMR)

и подал в качестве транзитной декларации книжку МДП:

(указать номер книжки МДП)

В нарушение действующего таможенного законодательства Таможенного союза, таможенный инспектор

(указать фамилию, имя, отчество, звание по возможности)

_____ смены устно отказал мне в принятии вышеуказанной книжки МДП в связи с непредставлением дополнительного обеспечения уплаты таможенных платежей.

Указанный таможенный инспектор отказался предоставить мне письменный отказ с указанием причины отказа и регистрационного номера записи о прибытии в соответствии с журналом регистрации сообщений о прибытии.

Действия указанного таможенного инспектора нарушают порядок совершения таможенными органами таможенных операций, связанных с подачей и регистрацией транзитной декларации, утв. решением Комиссии Таможенного союза № 438 от 17 августа 2010 г. ("**Решение**") а также Инструкции о действиях должностных лиц таможенных органов, совершающих таможенные операции и проводящие таможенный контроль при перевозке товаров автомобильным транспортом при их прибытии (убытии), помещении под таможенную процедуру таможенного транзита, а также временном хранении, утвержденной приказом ФТС России от 26 мая 2011 г. № 1067 ("**Инструкция**").

Отказ в принятии книжки МДП в качестве транзитной декларации в связи с непредставлением дополнительного обеспечения уплаты таможенных платежей нарушает положения Конвенции МДП, в частности, сформулированные в статьях 4, 23, 42-бис и 48, а также положения пункта 2 статьи 217 ТК ТС и пункта 4 статьи 137 Федерального Закона от 27 ноября 2010 г. № 311-ФЗ "О таможенном регулировании в Российской Федерации".

В связи с изложенным прошу незамедлительно уведомить транспортную компанию в письменном виде об отказе в принятии книжки МДП в качестве с указанием причины отказа по надлежащей форме и регистрационного номера записи о прибытии в журнале прибытий.

Письменное уведомление прошу направить на вышеуказанный адрес транспортной компании.

Дата: _____

Подпись: _____ / _____ /

ФИО полностью

Отметка о получении – штамп таможенного
поста (делается на втором экземпляре заявления
и остается у водителя)

Заявление получено

(фамилия, имя, отчество инспектора таможенного органа)

(дата)

(подпись)

В случае отказа в проставлении отметки о получении должностным
лицом таможенного органа соответствующая запись осуществляется
заявителем