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Facilitation of international road transport

The relationship between the origin of goods and transport operations

Facilitation of international road transport

Submitted by Poland

This document, prepared by the Ministry of Infrastructure and Development of the Republic of Poland, provides an update on Informal document No. 4 (2014) which had described the issue of control of bilateral transport operations of goods by authorities of some countries outside the EU that, in the opinion of the Polish delegation, incorrectly classify these transport operations as third-country transport.

Analysis of transport and border crossing issues related to the relationship between the origin of goods, frontier controls and road transport permits

I. The problem

1. Polish hauliers often carry goods from Poland to the territory of non-EU countries, where by

- these goods (the transported products) have been manufactured in a third country (which is the country of physical or commercial origin of the products) and shipped to Poland for logistics purposes, or manufactured in Poland but controlled by companies, established in third countries, for trade and logistics purposes

and

- Polish hauliers take these goods over in Poland to be transported by road to their destination in the non-UE country.

2. Polish operators intending to enter the territory of a non-UE country to deliver the transported goods to the place of their unloading are in possession of a bilateral (i.e. “universal”) transport permit covering a transport operation between Poland and a non-EU country, on the basis of a governmental agreement signed between the two countries.

3. Arriving at the border crossing point between the countries, a vehicle seeking to perform a simple bilateral transport operation on the basis of a bilateral transport permit is denied entry by the competent authorities even though the Polish haulier has taken the cargo over in Poland, as duly indicated in accompanying transport documents on board, such as the CMR Consignment Note and/or the TIR Carnet.

4. The authorities of some non-EU countries argue that the place of origin of the cargo or the country from which the logistics operation is controlled (i.e. the country of physical or commercial origin of transported products, as possibly shown in the accompanying commercial documents) is not Poland but a third country. Therefore, the presented bilateral transport permit is rejected, a penalty is imposed, the vehicle’s further movement is prohibited and entry/further movement into the territory of the given non-EU country is allowed only upon presenting a third-country transport permit.

II. Legal framework related to road transport versus globalisation

5. Today, transport and logistic solutions have developed in to a much more sophisticated form than it was in the past.

6. Both changes have followed the economic efficiency principle thus resulting in significant cost reductions and gains for producers, traders, logistics performers and consumers.

7. Taking the above into account, it is often the case that goods manufactured in a third country (i.e. neither in Poland nor in the country of final destination) are delivered to Poland, for example to a central logistic hub.

8. These goods are then transported from the logistic hub to a non-UE country according to an international distribution plan and related transport contracts concluded by

the manufacturer or trader concerned. In the CMR Consignment Note (and the TIR Carnet) accompanying the cargo Poland is correctly indicated as the place where the goods have been loaded, the country of physical origin of the transport operation concerned, while a non-EU country is correctly indicated as the place of unloading them, despite the fact that the manufacturer/sender of the goods in question is not necessarily a company based in Poland but in the third country.

9. However, it is also possible that the goods concerned are manufactured in Poland by a subsidiary of an international conglomerate but exported from Poland by a foreign company of the same conglomerate based in a third country. In this case, the place of loading the goods is still the same as correctly indicated in the CMR Consignment Note, namely "Poland", the country of the physical origin of the transport operation, while the place of unloading is again correctly indicated as the non-EU country, despite the fact that in commercial terms the sender may be a company based outside of Poland.

10. In these and similar cases commercial invoices for the products are often issued by the foreign (not Polish) trader of the goods.

11. It should be emphasised that the pure transport operation is exclusively the one between Poland and the non-EU country and such operation has nothing to do, either in legal or in physical sense, with the related commercial/financial processes carried out before loading the goods in Poland.

12. Taking into account the CMR considerations, it can be noted that the text of the CMR Convention does not mention the origin of the goods. Article 6.1 lists data that should be included in the CMR Consignment Note and the origin of the goods is not required. Moreover, in the CMR Consignment Note there is no section for the origin of the goods. Therefore, the place of loading the goods, as specified in the CMR Consignment Note, is sufficient evidence to correctly determine the kind of the transport operation.

13. In the TIR Convention, in definitions of the terms "TIR transport" or "TIR operation" no reference is made to the origin of the goods.

14. Taking into account the ECMT considerations, Article 4.2 of the ECMT Guide reads that "the country of loading of the vehicle may be different to the country of origin of the goods loaded".

15. Taking into account the customs considerations, it may be concluded that the main purpose of a certificate of origin is to obtain tariff preferences based on where the goods were produced or manufactured. Therefore, it can be assumed that the country of origin of the goods cannot be used for pure transport control purposes, but may be used for the application of tariff measures.

16. Interpreting bilateral transport as third country transport is not in line with the WTO's General Agreement on Tariffs and Trade (GATT) which concerns trade facilitation and makes no distinction based on the place of origin or on any circumstances related to the ownership of goods.

III. Bilateral agreements relating to the road transport

17. According to the provisions of bilateral agreements and according to international and bilateral transport standards, operations between the territories of the two contracting parties performed by hauliers from these countries constitute bilateral transport operations; transit means operations across the territories of the two contracting parties performed by hauliers of these parties; third-country traffic means operations between the territory of a

third country and the territory of one contracting party performed by operators of the other contracting party.

18. The requirement that in cases of bilateral transport operations, the haulier's place of registration should be the same as the place of origin of the goods is not in line with the provisions of bilateral agreements on road transport, since these agreements stipulate that a transport operation was undertaken on the basis of a road transport permit and not on the basis of the place of origin of the goods.

IV. Conclusions

19. Taking into account international legislation as well as practice regarding transport, it can be concluded that road freight transport from Poland to non-EU countries provided by a Polish haulier, whereby the cargo is taken over by the Polish haulier in Poland to be delivered to final destination in a non-UE country, should be regarded as a bilateral transport operation between the two countries.

20. Therefore, purely for the border control purposes, authorities competent for such operations should not require the haulier to present third-country permits.

21. In Poland's view, purely in terms of road transport operations carried out by road transport hauliers, the place of taking over the goods and the place of unloading the goods, as duly indicated in CMR Consignment Note, is the decisive factor to determine the kind of transport operations.

22. Efficiency is vital for the transport to be sustainable; therefore all stakeholders should implement instruments facilitating international road transport.

23. Building on international agreements and conventions aimed at facilitating freight road transport all stakeholders should promote development and facilitation of international road transport by harmonizing and simplifying the rules governing road transport.

24. Road transport haulier is only one of many professional actors across the whole transport chain.

25. As situation became very worrying UNECE members should look for compromise solutions.

26. It is obvious that national protectionism measures will not contribute to the mutual effort of supporting growth and development across the world.
