

Undeclared/Excess Bunker Cases at Turkish Ports and Recommendations

We have felt the necessity to prepare this circular regarding undeclared/excess bunker cases at Turkish Ports as this matter has started to come to our attention more frequently in the past few years.

Undeclared/excess bunker issues are brought forward by Customs Officials when there is *difference between the bunker quantity declared in vessel's tanks upon arrival at a port and the quantity calculated by Customs Officials as a result of their bunker survey on board*. The exact quantity of bunker in vessel's tanks is then ascertained by an independent surveyor authorized by Customs Officials and revealed figures are used in Customs' indictment.

In the event of undeclared/excess bunker, the excess quantity is then confiscated by an order of the Court and statements of the Master and Chief Engineer are taken. This is standard procedure followed by Customs Officials and such cases develop as detailed below;

A. COURSE OF EVENTS

- Upon her arrival at a Turkish Port, Customs Officials board vessels with the aim to search for illegal and prohibited goods. Bunker on board is also within the scope of this search and commonly, the bunker survey is carried out by Customs Officials in the presence of the Chief Engineer to check the accuracy of the declared bunker.
- In the event that the figures revealed as a result of the bunker survey performed by Customs Officials differ from the figures declared by the vessel indicating the possibility of excess (undeclared) bunker in vessel's tanks, then the Customs Officials proceed to arrange an independent bunker survey for ascertaining the exact quantity of bunker on board. In such a case, vessel interests are informed of the case through the local agent and their participation is summoned.
- Hereupon, the result of the independent survey and related bunker quantity are taken into account by the Customs Officials and any excess quantity is confiscated by an order of the Court and delivered to General Directorate of National Real Estate of the province.
- Separate than the confiscation of the excess bunker quantity stated above, an administrative fine may also be imposed against the vessel by the public authorities. This being said, it is not possible to make an estimation regarding the administrative fine amount as the mentioned fines are issued at the discretion of the public authority examining the case.
- In the interim, statements of the Master and the Chief Engineer are taken by Customs Officials, which are then reviewed by Public Prosecutor to consider whether there is any act to attempt importing goods in violation of Custom's procedures.

- At this stage, it is recommended to appoint a lawyer and have a PoA issued by the Master and the Chief Engineer so that they could be represented legally before relevant authorities in case the Public Prosecutor issues a bill of indictment considering that mentioned crew members (severally or jointly) committed a crime. In such a case, the bill of indictment issued by the Public Prosecutor is submitted to the Criminal Court and if it is accepted, then criminal lawsuit is initiated against the suspect(s).
- Notarization is required in order for the PoA to be accepted by the authorities. Additionally, if the PoA is issued in any country other than Turkey, after notarization, the PoA would need to be apostilled (if the country is a party to the Apostille Convention) or certified by the Turkish Consulate (if the country is not a party to the Apostille Convention).

B. INVESTIGATION CARRIED OUT BY PUBLIC PROSECUTOR AND RELATED CRIMINAL PROCEEDINGS

In addition to the course of events mentioned above, following completion of the investigation process, Public Prosecutor could *either provide a decision on non-prosecution or issue an indictment accusing the Master and/or the Chief Engineer of committing a crime defined under Article 3/1, 3/10 and 13 of Anti-Smuggling Code, which reads as in the following and submit the same to the Criminal Court.*

- Article 3/1 of the Law on Anti-Smuggling Numbered 5607 provides that individuals smuggling goods into Turkey without required Customs formalities shall be sentenced to imprisonment between 1-5 years and also sentenced to a monetary fine up to an equivalent of 10,000 days (amount of monetary fine per day is determined by the judge at the time of issuing a sentence)
- Article 3/10 of the Law on Anti-Smuggling Numbered 5607 also provides that in case of bunkers, cigarettes and alcoholic drinks, the above summarized sentences shall be increased between 1/2 – 2 times where the minimum sentence shall be 3 years.
- Article 13 of the Law on Anti-Smuggling Numbered 5607 provides that the vehicle used in the smuggling shall be seized provided that one of the conditions below is present:
 - In case smuggled goods are stored or transported in a specially prepared hidden compartment enabling ease of commitment of crime or finding out of the crime.
 - In case smuggled goods consist whole or significant amount of quantity and volume of the cargo or in case such smuggling requires use of the vehicle in question.
 - In case the smuggled goods are banned from entering and exiting into Turkey or consist of hazardous substances for individuals and environment.

- The fines mentioned in Articles 3/1, 3/10 are criminal in nature and would be issued against the Master/the Chief Engineer. However, Article 13 of 'Law on Prevention of Smuggling Numbered 5607' is directly related to the vessel/Owner since the vessel can be seized in case one of the subject conditions is met.

In each case, facts of the alleged crime is evaluated by the criminal courts and if found guilty, sentencing is decided at the discretion of the judge handling the case. Therefore, it is not possible to make an estimation regarding the fine amount that will be imposed, if this is the case.

On the other hand, as a matter of Turkish law, an attempt to commit the crime of smuggling is also punishable with the same sanctions as if the crime has been fully committed.

- If the indictment submitted by Public Prosecutor is accepted by the Criminal Court, then criminal lawsuit is initiated and in such a case, Criminal Court requires that official statements of the crew members are obtained by Turkish authorities, in which case arrest warrants are issued against the crew members, who are likely to be detained by the police and brought to the nearest courthouse for obtaining their statements (usual practice is that the statement of the crew member is obtained by a criminal judge on duty and following such testimony the arrest warrant is regarded as executed and the crew member is released by the police). As an alternative, subject to the order of the Court, obtaining such statements of the crew members may be performed through diplomatic channels.
- In case it can be demonstrated before the Criminal Court that the difference between the declared and observed quantity of the bunkers were caused by faulty figures/human error/trim of the vessel, it is likely that the crew members shall be acquitted from the charges.
- This being said, such evaluation of the case will depend on the experts' reports to be obtained during the litigation and the judge's review of the case.

C. HOW TO AVOID UNDECLARED BUNKER CASES

- We would recommend the vessel interests/crew members to take the following actions in order to avoid undeclared bunker cases when calling Turkish Ports;
 - During a call to Turkish Ports, crew members should be made well aware of the undeclared bunker issues with the Customs and their consequences.
 - Related records should be kept properly on daily basis.
 - Crew members should make sure to carry out correct calculations for determining the quantity of bunker on board and double check the figures before declaring the same to the Customs.

Kish P&I Club