



## **UPDATE: TURKEY - ENFORCEMENT FOR MISDECLARATION OF BUNKERS ON BOARD**

Following a number of incidents, the last couple of months, we wish to update you about an increasing trend in our area. More particularly, Turkish Customs have recently increased the unexpected inspections onboard vessels calling the Turkish ports for checking the quantities of bunkers onboard in comparison with the declared ones by the ships' command at the arrival at the port.

### **1. PRACTICAL IMPLICATIONS**

Vessels' command should make sure that they will avoid misdeclarations to the Customs and pay utmost attention not only to correctly measure the quantities of bunkers (including fuel oil/diesel oil/luboil) present in the stores just before the arrival to the port but also to declare the correct quantities to the Customs. The vessel command should be well advised to cross-check the quantities by manual measurement and calculation prior to vessel's arrival, and amend the records as required.

If the vessel is sailing between two Turkish ports, care must be taken that the declarations made between these two ports in Turkey are in conformity with each other by taking vessel's bunker consumption into account. Customs Offices in Turkey are able to follow the declared bunker quantities of a vessel sailing between Turkish ports through their own software and should there be any discrepancy between the amounts declared in two ports, the relevant Customs office will be alerted. In some cases, local agents are able to explain the discrepancy, which would involve agents submitting a brief letter explaining the cause of discrepancy along with supporting documents such as copies of vessel's deck logbook. If the explanation along with supporting documents is found in order, no investigation file will be opened but, in some cases, a modest administrative fine may be imposed due to breach of rules concerning misdeclaration. However, this practice is not widespread in Turkey, and the relevant Customs Office ultimately has discretion on whether or not the explanation provided by vessel command/agents is acceptable.

Once a bunker discrepancy is established by Customs, for the vessel to be permitted to sail, Authorities will order the confiscation of the excess quantity of the bunkers by physical removal from the vessel's tanks. Upon service of the confiscation order issued by judicial authorities to the Master and/or agents the physical removal of excess bunkers from vessel's tanks will be undertaken by the Authorities.

Considering the complexities of a physical removal of bunkers from the vessel in terms of delays/costs/operation, payment of excess bunkers' value to the Treasury is the common and preferred method for both vessel's interests and the authorities. The amount paid to the Treasury serves as 'collateral', so that the vessel may be allowed to sail by the Authorities. In most cases, the Authorities initially proceed with obtaining a confiscation order from the relevant criminal court, and upon submission of lawyers' pleading concerning deposition of collateral instead of confiscation, payment from vessel's interests is accepted. In practice, the Customs office issues a writ indicating the required fine/security amount to be paid to the designated account upon which payment can be made in order to release the vessel.

### **2. LEGAL ASPECTS AND CONSIDERATIONS**

The discrepancy in bunkers is treated as a criminal act and same is considered a crime under Article 3 of Anti-Smuggling Law No.5607 which is as follows:

## Smuggling Crimes

### Article 3 –

*(1) A person who brings the item to the country without subjecting the same to the customs procedures will be punished by a prison sentence between one and five years and a judicial fine for up to ten thousand days. If the item in question is brought to the country from outside the customs gates, the applicable penalty shall be increased by 1/3 to 1/2.*

*[...]*

*(10) If the item subject to the crime of smuggling is fuel, tobacco, tobacco products, macaron, cigarette papers, ethanol, methanol or alcoholic beverages, the aforementioned penalties shall be increased raised by a half or applied twofold, however, the penalty applied in connection with this paragraph cannot be less than three years.“*

Therefore, in addition to the practical measures such as confiscation of the bunkers onboard or payment of collateral, testimonies of Master and Chief Engineer are also taken by Customs officials in the presence of a sworn translator as part of criminal investigation. The crew should clearly state in their verbal and written statements that the excess quantity is not a result of a deliberate act but occurred due to a calculation error.

Testimonies along with a survey report, Minutes for Ship Search and Detection of Incident and Sampling are delivered to the Public Prosecutor in a form of forensic investigation file to open a file for smuggling against the ship's command. As P&I correspondents, in cases of bunker discrepancy we proceed with appointment of lawyers who are experienced in shipping law once it is certain that the testimonies of the crew will be taken by Customs authorities.

In the event that the Public Prosecutor decides not to issue an indictment after reviewing/collecting relevant evidence, the charges will be dropped. Otherwise, an indictment may be issued against the crew with charges concerning smuggling of bunkers. The indictment is then sent to criminal courts for review and if it is accepted, trial phase commences. During trial, the Court takes the crew's statements either by way of in person attendance to Turkish courts or through rogatory process in their residential addresses. In case the court decides to take testimonies of the crew members via in person attendance, the vessel interests should be timely informed in order to notify the Correspondents about Master and Chief Engineer's upcoming visit to Turkey at least a few days in advance so that necessary arrangements are made to arrange taking of testimonies without an interruption to vessel's schedule. For in person attendance, the Courts may issue warrants to facilitate the testimony taking process, however this is not necessary should the crew's testimonies be taken via judicial/diplomatic channels.

Once trial phase commences, the appointed lawyers will defend Master and C/E and try prove that no intentional act of smuggling actually occurred. In worst case scenario, minimum sentence would be reduced to 1.5 or 2 years, which would result in the prison sentence being cancelled and most likely converted into an administrative fine against the Master and the C/E personally. In any case, the criminal proceedings should be followed through lawyers and Correspondents promptly to avoid unreasonable/excessive actions and the legal proceedings may take up to 3-5 years to be finalized, including the appeals process.

In terms of criminal court procedure, the Court may ask the accused crew whether they want to avail of effective remorse provisions or accept a deferred judgment, both of which are contingent on the compensation of public loss in the amounts specified by the Court.

Within the scope of the effective remorse provisions, during trial the relevant Criminal Court may render

a decision indicating that, should the crew members deposit twice the bonded value of the surplus bunkers to the State Treasury until the judgment will be rendered, the penalty that may be imposed at the end of the criminal proceedings would be reduced by one-third. Taking the route of effective remorse is not recommended since there is a general tendency in Turkish Courts to consider the effective remorse payment as an implied admission of criminal responsibility.

As for accepting a deferred judgment, the Court may similarly render a decision indicating that, should the crew members deposit a certain amount of money to the State Treasury the Court will decide to defer the announcement of the verdict if they are found guilty at the end of the criminal proceedings. In order for the Court to decide for the deferral, (i) the accused must not have previously been convicted of a crime committed with intent, (ii) the Court must be convinced that the accused will not commit another crime, and (iii) the losses suffered by the state is compensated. If the prison sentence to be entered by the Court is 2 years or less the Judge can decide to defer the announcement of the prison sentence for a probation period of 5 years during which the accused's judicial records are held clear. If the accused does not commit a crime with malicious intent during this probation period, the prison sentence is deemed to have never been given.

Payments that are required for application of effective remorse/deferred judgment provisions, must be done personally by the accused crew members to take effect. However, progress of trial and likelihood of a conviction should be taken into account before considering payment for one or both options.

During trial, appointment of a private expert may also be considered which may be beneficial for the defense of the crew. Turkish criminal courts give substantial weight to the technical reports issued by Turkish experts, and obtaining a private report/opinion from a well-known, experienced Turkish marine engineer could be helpful in terms of proving the innocence of the accused. However, we would suggest consideration to be given to appointing a private expert after criminal investigation progresses further and the investigation proceeds with the issuance of the indictment.

The criminal investigation and trial phases does neither lead to any enforcement against the vessel's interest nor results in detention of the vessel. However, it may result in arrest of the vessel's command at their next entry to Turkish territories and consequent imprisonment should they be found guilty. Should the crew members be found guilty at the end of criminal proceedings, the 'collateral' paid in the initial phase to release the vessel will be retained in full by the Authorities. In cases where crew members are acquitted at the end of the proceedings, an application to request the return of the 'collateral' can be made to the Treasury with a brief pleading explaining the matter and the judgment where crew is acquitted would constitute concrete evidence in support of such a request. However, in practice the depreciation of value in Turkish Liras from the time of payment to the time of acquittal should be taken into account before considering to proceed with such a request.

On the basis of the above and in order to avoid any actions from Turkish Customs and/or criminal actions against crewmembers and/or subsequent delay to vessel's schedule, Members should be notified to pay particular attention to the declaration of bunkers when arriving a Turkish port to be in consistency with the actual bunkers onboard at the time of arrival.

Lastly, in case of any attendance or inspection onboard by Customs officials, we encourage the vessel command to immediately notify Members/Club/Correspondents to allow for timely attendance and smooth resolution as far as practically possible.

Should you have any queries relating to this alert or need detailed information, please contact Kalimbassieris Maritime Istanbul Office, email [istanbul@kalimbassieris.com](mailto:istanbul@kalimbassieris.com) or Tel: (+90) 2164575600.

Yours Sincerely,  
Kalimbassieris Maritime AS (Istanbul)