

# TIR CRISIS IN RUSSIA:

# THE REAL FACTS

## **The FCS RF's decision dated 4 July 2013 and its subsequent actions are in violation of the UN TIR Convention**

Since the announcement of the Federal Customs Service of the Russian Federation (FCS RF)'s decision, numerous governments from various countries, as well as the European Commission and the United Nations, have directly addressed the Russian Government stating that this decision was in breach of the UN TIR Convention and calling for its definitive withdrawal.

### United Nations TIR Executive Board

- » On 27 August 2013, the supervising body of the UN TIR Convention – the TIR Executive Board – held an extraordinary emergency session and concluded, unequivocally, that the FCS RF's decision was at least on five counts in violation of the UN TIR Convention and thus called for its withdrawal.
- » On 4 December 2013, the TIR Executive Board reconfirmed that the FCS RF is implementing measures which contradict the provisions of the TIR Convention, and reiterated its call for their immediate withdrawal, also calling on the Russian Government to oblige the FCS RF to respect international law.

### United Nations Administrative Committee for the TIR Convention (AC.2)

- » On 3 October 2013, the Administrative Committee for the TIR Convention confirmed at its 56<sup>th</sup> session held at the United Nations Economic Commission for Europe (UNECE) that the steps taken by the FCS RF are in breach of the TIR Convention and are contrary to the commitments of Russia under international law. The Russian Federation was formally requested to abandon its restrictive measures.

"In this regard, the Committee (...) considered that these steps by the FCS RF are in breach of the TIR Convention and are contrary to the

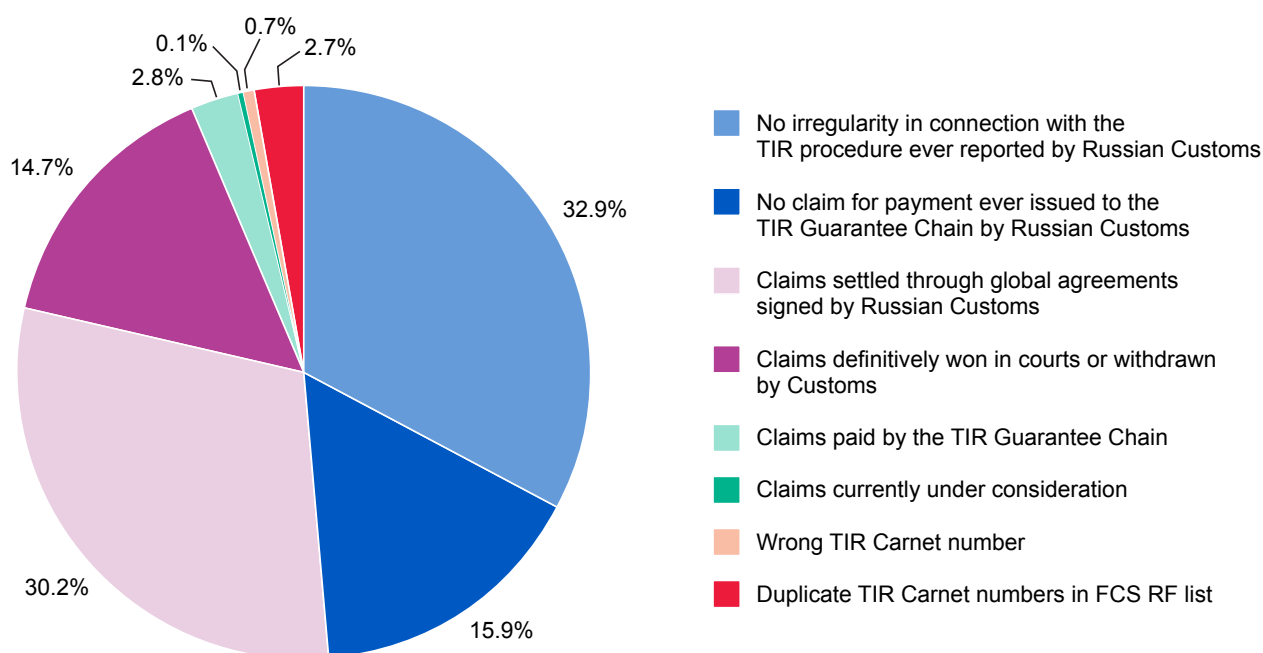
commitments of the Russian Federation under the TIR Convention (...) The EU delegation expressed its concern about the economic impact which had already been recognised by several EU economic operators. The EU delegation also stated that the current situation is a clear breach of the TIR Convention and that the EU will continue to analyse transit provisions stipulated in the General Agreement on Tariffs and Trade and WTO" (ECE/TRANS/WP.30/AC.2/115, para.21 and para.24).

- » On 6 February 2014, the Administrative Committee for the TIR Convention reiterated the same call at its 57<sup>th</sup> session, to no avail thus far:  
  
"In conclusion, the delegations present at the meeting reiterated that the steps undertaken by the FCS RF are in breach of the TIR Convention and are contrary to the commitments of the Russian Federation under the TIR Convention. The Committee requested that the Russian Federation abandon the measures put in place since 14 September 2013 and ensure the uninterrupted TIR guarantee coverage until and after 1 July 2014" (ECE/TRANS/WP.30/AC.2/117, para. 55).

## **The FCS RF's justification of an alleged ASMAP debt of RUB 20 billion is a complete defamatory fabrication as ALL old TIR claims have been fully settled through global agreements**

- » The figure of RUB 20 billion in no way corresponds to actual figures notified to the TIR guarantee chain by the FCS RF as effectively recorded in IRU statistics, which are verified by independent international auditors and duly reported every year to the United Nations, without any contestations by the Russian Federation.
- » Despite numerous requests from ASMAP, the IRU and the UN TIR Executive Board to substantiate the FCS RF's decision of 4 July 2013,

**IRU analysis of the information provided by the Federal Customs Service of the Russian Federation (FCS RF) regarding alleged Customs debt incurred on Russian territory**



the FCS RF only responded in November 2013 with a list of more than 4,000 alleged cases, some dating as far back as 1993.

- » On 13 February 2014, the Russian Arbitration Court in Moscow confirmed the inconsistency and defamatory nature of the FCS RF's allegations against the TIR System, confirming the absence of any alleged old TIR debts of the Russian TIR issuing and guaranteeing Association ASMAP and TIR guarantee chain (case number A40-134939/13).
- » On 3 March 2014, the IRU publicly released a whole set of documented evidence disproving once and for all the FCS RF's allegations of any old TIR debts, pursuant to a detailed objective analysis conducted by a team of 20 claims experts, who looked at each and every one of the more than 4,000 alleged cases reported by the FCS RF to determine their exact status. Out of the more than 4,000 cases, only three recent cases are still pending a decision, which represents less than 0.1% of all cases reported to the IRU by the FCS RF.
- » 30.2% of alleged cases have been settled to the satisfaction of all parties, through legally-binding settlement agreements concluded between

1998 and 2003, duly signed by the Head of the Russian State Customs Committee, the IRU and ASMAP. These global agreements were also endorsed by the Russian Government, as was confirmed by the Russian Ministry of Transport – the competent authority for the TIR Convention in Russia – in its official communication to the UNECE in April 2003<sup>1</sup>.

- » Since the signature of these global agreements, no Russian authority has contested their validity, despite having had since then over 40 occasions to do so during UN meetings dedicated to addressing any problems in the TIR System.

**The FCS RF's justification that there is an increase in claims is unfounded as actual figures show the exact opposite trend**

- » Since the signature of the global agreements, the number of TIR irregularities in Russia has decreased dramatically since 2004, thanks in great part to the implementation of TIR-IT risk management tools by Russian Customs in partnership with the IRU, to such a point that

<sup>1</sup> UNECE document TRANS/WP.30/2003/11 dated 15 April 2003

Russian Customs has become an example for other countries on how to manage the TIR System most effectively and securely.

- » TIR statistics show that the number of TIR irregularities is now negligible and that the international TIR guarantee chain has been fulfilling all of its obligations in full compliance with the provisions of the TIR Convention and applicable Russian legislation.
- » In 2012, only 33 claims were addressed by the FCS RF to ASMAP, of which 30 were duly paid. Taking into account that 1.5 million TIR operations are terminated every year in Russia, these 3 remaining cases represent only 1 in 500,000 operations on Russian territory.
- » If there are cases unknown to the IRU and ASMAP where amounts still need to be paid to the FCS RF in line with the TIR Convention and applicable Russian law, the TIR guarantee chain is of course ready to proceed immediately with such payments in full respect of all its legal and financial obligations within the TIR System. This commitment was officially confirmed by the IRU to Prime Minister Medvedev in a letter dated 2 August 2013<sup>2</sup>.
- » To decrease even further the already negligible number of contested claims, the IRU and ASMAP have presented to the FCS RF very concrete constructive proposals which could be included in an updated ASMAP-FCS RF TIR guarantee agreement, notably:
  - definition of a standard set of documents to be provided by the FCS RF to ASMAP, to ensure immediate payment of all valid Customs claims;
  - clarification of deadlines within which Russian Customs may appeal to Russian courts, in case of any disagreement between the parties regarding the legitimacy of a Customs claim;
  - increase the TIR guarantee level in specific cases of transport of high-value goods.

The IRU is hopeful that the FCS RF will accept to implement these constructive proposals as soon as possible.

**The FCS RF's justification that the TIR guarantee agreement between FCS RF and ASMAP is not in line with national or Customs Union legislation is unfounded and ignores the supremacy of international law.**

- » The existing TIR guarantee agreement between ASMAP and the FCS RF is similar to other TIR guarantee contracts signed in 58 operational TIR countries, and is in full conformity with the provisions of the UN TIR Convention which are quoted in the agreement<sup>3</sup>.
- » Since the entry into force of the Customs code of the Customs Union on 1 July 2010 no allegation has ever been made by any authority from the Customs Union about a non-compliance of the ASMAP TIR guarantee contract with applicable legislation.
- » The TIR guarantee contract is in fact fully in line with the Customs code of the Customs Union, which foresees that “the Customs authorities of the Customs Union shall not require any additional guarantees if that is established by the international treaty<sup>4</sup>.”
- » The TIR guarantee contract directly results from the TIR Convention, which is an international treaty that has supremacy over any national or regional legislation. This fundamental legal principle is clearly recognised by the Constitution of the Russian Federation which clearly stipulates that “The commonly recognised principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply<sup>5</sup>.”

**Contrary to the FCS RF's defamatory statements, ASMAP is an exemplary TIR issuing and guaranteeing association**

- » ASMAP has been an IRU Member Association and the authorised TIR association in Russia for almost 40 years. ASMAP has fulfilled all of the TIR-related requirements and obligations.

<sup>2</sup> [http://www.iru.org/cms-filesystem-action/webnews2013/letter\\_from\\_mr\\_de\\_pretto\\_to\\_mr\\_medvedev.pdf](http://www.iru.org/cms-filesystem-action/webnews2013/letter_from_mr_de_pretto_to_mr_medvedev.pdf)

<sup>3</sup> TIR guarantee contract signed on 7 June 2004 between FCS RF and ASMAP refers to article 8 and Annex 9 of the TIR Convention

<sup>4</sup> Article 217.2.3 of the Customs code of the Customs Union

<sup>5</sup> Article 15.4 of the Constitution of the Russian Federation

ASMAP's professionalism in its TIR activities has contributed significantly to the development of the Russian road transport industry and, moreover, to Russian trade and its economy.

- » ASMAP has 1,689 active TIR Carnet holders and, through its 13 TIR issuing offices, ASMAP currently issues, in full security, more than 600,000 TIR Carnets per year and acts as a guarantor for more than 1.5 million TIR operations on Russian territory. This represents an amount of EUR 90 billion (almost RUB 4 trillion) annually in financial guarantees which are provided directly to Russian Customs authorities.
- » Neither the IRU nor the UNECE TIR bodies have ever been informed about any complaint regarding the work of ASMAP in its effective management of the TIR System.
- » The IRU carries out regular operational TIR Audits of its associations in order to ensure their full compliance with the TIR Convention, as well as with the IRU Rules and Regulations in the management of TIR Carnets.

The most recent audit of ASMAP was carried out by the IRU Audit Commission in November 2012 at both its headquarters in Moscow and its St. Petersburg branch office. The IRU audit concluded that the UN TIR Convention and all IRU Rules and Regulations are being fully respected by ASMAP to the total satisfaction of the IRU.

**Conclusion: all the justifications put forward by the FCS RF for the planned implementation of additional security measures for all TIR transports, as well as the termination of the TIR guarantee agreement with ASMAP, are completely unfounded.**

**Therefore, in the interest of the Russian economy and international trade between Russia and its partners, the FCS RF's illegal and unfounded decision to place restrictions on the TIR System should be withdrawn immediately.**