

# **OHR Brcko clarifies misconceptions about petroleum product imports and the status of Brcko District**

There have been numerous incorrect and incomplete public statements and accusations made with respect to the Brcko District and its customs revenues and taxes. We provide the following clarification of several frequent misconceptions.

1. "What the RS Government does not want to accept is the fact that Brcko is imposed as the third entity, and that it has a right to create its own laws. The RS Government's opinion, which they intend to continue supporting, is that Brcko should either apply harmonized laws or decide which of entities' laws are more favorable and suitable for it to choose." (RS Prime Minister Ivanic on ATV, carried by Radio Brcko District, 3 December 2001)

The truth is: Brcko District is not a third entity. It was created as a single administrative unit under the exclusive sovereignty of Bosnia and Herzegovina. The Final Award and the Statute of the Brcko District determine its role. Under the Final Award, the Brcko District has the right and obligation to create its own new laws or to harmonize the Entities' laws. In situations where the Entities cannot agree on a particular law, such as is currently the case with education, the District must act on its own. The District, however, is automatically subject to BiH law.

2. "Because of lower excise, and tax rates, more and more businesses are registered in the Brcko District, and this significantly damages the budget of both entities." (Jutarnje Novine, 27 November 2001)

The truth is: The Brcko District applies the same excise rate as the RS and Federation and operates under the same BiH Customs Tariff. Brcko adopted the RS Excise and Sales Tax law in September 2000; so it is applying RS tax law, in effect. Because of differences in the tax base and subsequent RS changes in the law, the sales tax rate in Brcko is different from that in the RS which is different from that in the Federation. Brcko District has frequently stated it is ready to agree to comparable tax rates, once the Entities agree to harmonize their tax systems. Despite several meetings, the RS and Federation have been unable to reach agreement.

Businesses register in Brcko because it is a good place to do business, not just because of different taxes. Brcko District has established an independent judiciary, reformed public administration, established an efficient public expenditure control system, attacked official corruption, and drafted innovative project proposals for business development. In 2001, this has resulted in the registration of 500 more businesses than in 2000 and the creation of 1,885 more jobs.

3. "Brcko imports as much fuel as both of the entities together and that fuel does not stay in the District. Thus Brcko not only damages the development of BiH, but it also costs twice as much to tax payers in both entities since they have to provide for the District budget from the entity budgets." (Nezavisne Novine, 17 November 2001)

The truth is: This is not correct. The fuel imports

through Brcko in the period January/ November 2001 amount to a total of 115,406,751 liters for all types of fuel while the fuel imports in the same period for just the Federation amount to a total of 601,150,496 liters. There has been a significant increase in volume through the Brcko District International Border Crossing Point recently, and much of it has been fuel imports. It is entirely legal for importers to bring fuel and other products in through Brcko for sale throughout the rest of Bosnia. That is the concept of a single economic space, a central tenet of the Dayton Peace process recognized by the Peace Implementation Council and the Constitutional Court of BiH.

It is also not true that Entity budgets support the Brcko District budget, although they have this obligation. All of the revenues of the District's budget are collected in the Brcko District.

4. "RS importers are clearing through the Brcko Customs service and thus the revenues are unjustifiably and illegally remaining in the District budget." (Blic, 3 December 2001)

and

"Customs funds were transferred to the District's account since April last year, regardless to the final destination of goods, so in that way funds of RS and the Federation end up in the budget of Brcko District." (RS Finance Minister Vracar quoted in Glas Srpski, 3 December 2001)

The truth is: There is a single customs territory in BiH and an importer is entitled to enter and pay customs revenue wherever he wishes. For example, approximately half of all trucks entering Brcko choose to clear customs finally in the

RS. In such cases, the RS retains both customs revenue and excise taxes. Customs revenue collected by the Brcko Customs Service on consignments that an importer opts to clear in Brcko, regardless of the final destination of the goods, do not belong to either the RS or Federation. The RS Customs Administration entered into an Interim Agreement in February 2000 with the District and signed a contract with the District in August 2001. In both instances, the RS agreed all customs revenue freely collected in Brcko remains in Brcko. This is legislated in the BiH Customs Policy Law and the Brcko District Statute.

By keeping customs revenue collected within the District, Brcko is supporting itself and fulfilling the terms of its agreements with the RS.

5. "Brcko District of BiH made a financial strike on RS, in the amount of approximately 50 million KM, during the last year and a half. (Jutarnje Novine, 4 December 2001, quoting RS Finance Minister Vracar complaining about Brcko customs revenue remaining in the Brcko District budget since April 2000)

The truth is: On October 24, 2000, the Entities and the District signed an agreement that all public revenues collected within the District or on behalf of the District belong to the District. The RS and the Brcko District have further agreed in April 2000 and by contract in August 2001 that all customs revenue freely collected in Brcko remains in Brcko.

Brcko, therefore, does not take money away from the RS, and the Brcko District Government has never requested or received financial budgetary support from the Entities. The District's budget is developed in a transparent manner and is balanced entirely with revenues collected within the District. In fact, the District directly and indirectly supports the Entities financially:

1. By bearing health care costs itself, it relieves the Entities' health care systems of the burden of providing for more than 80,000 people in the District.
2. It contributes a minimum of 12 million KM per year to the Entities' pension funds.
3. It carries debts that RS institutions have not paid to the District, such as Krystal Bank which owes the District over 10 million KM.
4. By contracting with the RS Customs Administration to operate the Brcko Customs Service, it provides salaries and social contributions for 70 employees and pays 7% of Customs revenues collected in Brcko to the RS as an operational fee.
6. "Prices of fuel are lower in Brcko than in RS. **That has been caused by different application of the Law on excises, and different ways of Sales Taxes' calculation, namely, the excise is not included in the base for Sales Taxes' calculation, and in the Federation and RS it is included in the base for calculation.**" (RS Prime Minister Ivanic on ATV, carried by Radio Brcko District, 3 December 2001)

The truth is: In fact, fuel prices in the RS and Brcko District were comparable until recently. Prices in the RS have risen in large part because of RS decrees creating monopolies in the distribution of fuel oil and imposing double taxation of excise goods. Immediately after these decrees, wholesale prices on fuel rose above market rates in the RS.

Brcko does not apply the law on excises any differently from

the RS or Federation – except in applying it fairly and collecting excises honestly. It is true there are different bases used by the District and the RS for calculating the base for sales tax purposes – just like there are differences between the Federation and the RS. The District has agreed to calculate the tax base the same way as the rest of the country, but it is awaiting an agreement between the Federation and the RS on harmonizing sales and excise tax legislation.

The Brcko District Government and OHR/North have advocated lower sales taxes throughout BiH, as a stimulus to private business and to facilitate collection from all taxpayers.

7. “Brcko has attracted a certain number of RS importers through various methods, interpreting their own laws in order to create some specific laws and privileges, which couldn’t be met either by the RS nor by the Federation of BiH, because those were not in accordance to the law. Among other things, importers do not have to pay customs duties immediately, they can wait for 10 days.” (RS Prime Minister Ivanic on ATV, carried by Radio Brcko District, 3 December 2001)

The truth is: The Brcko District Customs Service operates at all times under BiH Customs Policy Law and is administered by the RS Customs Administration on a contract basis, monitored by OHR and CAFAO. The BiH Customs Policy Law allows importers under certain conditions to delay payment for up to 10 days. This is not a special privilege instituted by Brcko. It is BiH law, which the RS could use as well. This concession is a recognized and acceptable arrangement provided for the convenience of businesses and is used all over Europe.

What is different in Brcko is the presence of an efficient, professional and customer friendly Customs service, operating 24 hours a day, 7 days a week. Since the RS Customs Administration operates the Brcko District Customs Service, the RS could have this same competitive service if it wanted

to.

8. "Mr. Clarke should state how much heating oil has been imported through Brcko. He could see that those were huge quantities. Those quantities are incomprehensible, and it is obvious that it has not been used for anybody's heating, but it has been imported through Brcko as so-called heating oil, a subject to low duties, and afterwards, it has been sold on markets both of RS and the Federation. I am surprised that such a High Representative, a person that should implement order and law in that area, does not want to answer the question." (RS Prime Minister Ivanic on ATV, carried by Radio Brcko District, 3 December 2001)

and

"A great quantity of heating oil has been imported in Brcko, and later the same has been transported to RS through smuggling channels." (RS Finance Minister Vracar quoted in Glas Srpski, 3 December 2001)

The truth is: Heating oil imports through Brcko are no secret. From January 1 to November 30, 2001, 39,051,576 liters of heating oil came through Brcko. For the same period, a total of 119,308,721 liters of heating oil was imported through Federation border crossings. As long as the importer abides by the law, he is free to import as much as he wants through whichever border crossing point he wants. The customs and excise taxes are the same wherever he chooses. Under the concept of a single economic space, he should be able to sell his product anywhere in BiH he has a customer. There is nothing improper with the large volume of goods, including fuel, coming in through Brcko.

The import of heating fuel and its subsequent sale in the Entities as diesel has been a major problem in BiH

since 1996, long before the creation of the District. The problem is worsened by the lack of harmonization between the Entities as to how to regulate the import of heating oil and the lack of internal control on its end use by the Entities. For example, the Federation would like to increase the duty on heating oil to that of diesel fuel while the RS has banned the importation of heating oil except through one designated RS company. Brcko District welcomes a harmonized approach to the heating oil problem by the Entities, and has proposed a solution to the IMF.

9. "The RS has been forced to accept the obligation to solve the problem of a surplus of workers, so the RS Government will have to provide approximately 2 million KM for severance payments to workers of Serb nationality who have lost their jobs due to changes in Brcko." (RS Prime Minister Ivanic on ATV, carried by Radio Brcko District, 3 December 2001)

The truth is: Before the Final Award, two Entities, two cantons and three municipalities divided the area of Brcko. After the Final Award, there is only a single administrative unit – the Brcko District. In the resulting consolidation, every worker was given the opportunity to re-apply for his position. Inevitably, there were redundancies, in part because the previous municipalities were overstaffed. On October 24, 2000, the Entities formally agreed in writing to finance severance and health care payments and pension contributions for their former employees, regardless of nationality, who were left without employment due to the Brcko restructuring, for a six month period, beginning January 1, 2002. The RS has acknowledged its obligations under the October agreement in other public statements. The District is also providing severance payments to those workers who became redundant



through December 31, 2001.

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