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**ADMINISTRATIVE COMMITTEE  
FOR THE TIR CONVENTION, 1975**

**TIR Executive Board (TIRExB)**

(Twenty-seventh session, 17-19 October 2005,  
agenda item 3)

**AMENDMENT PROPOSALS MADE IN THE FRAMEWORK  
OF THE TIR REVISION PROCESS**

**Article 40**

**Note by the TIR Secretary**

**A. BACKGROUND**

1. At its twenty-sixth session, the TIRExB discussed Informal document No. 8 (2005), containing an overview of the amendment proposals of a technical nature made in the framework of the TIR revision process. Having concluded its considerations concerning some proposals, the Board decided to continue its deliberations on Articles 28, 40 and 41 with a view to reporting back to WP.30 the full package of its findings (TIRExB/REP/2005/26draft, paras. 10-20). In particular, the TIRExB was not in a position to clarify the practical application of Article 40 and its relation to other provisions of the TIR Convention, such as Articles 19 and 39.2. Therefore, it requested the secretariat to draft a comment on the application of Article 40 and submit it to the Board for consideration at its next session.

**B. RELEVANT PROVISIONS OF THE TIR CONVENTION AND THEIR ANALYSIS**

2. The following provisions of the TIR Convention are relevant for the discussion:

## **Article 19**

**The goods and the road vehicle, the combination of vehicles or the container shall be produced with the TIR Carnet at the Customs office of departure. The Customs authorities of the country of departure shall take such measures as are necessary for satisfying themselves as to the accuracy of the goods manifest and either for affixing the Customs seals or for checking Customs seals affixed under the responsibility of the said Customs authorities by duly authorized persons.**

### **Explanatory Note to Article 19**

0.19 The requirement that the Customs office of departure should check the accuracy of the goods manifest implies the need to verify at least that the particulars in the goods manifest tally with those in the export documents and in the transport or other commercial documents relating to the goods; the Customs office of departure may also have to examine the goods. The Customs office of departure must also, before affixing seals, check the condition of the road vehicle or container and, in the case of sheeted vehicles or containers, the condition of the sheets and sheet fastenings, as this equipment is not included in the Certificate of Approval.

## **Article 39**

### **When TIR operations are accepted as being otherwise in order:**

1. ...
2. Likewise, discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual contents of a road vehicle, combination of vehicles or container shall not be considered as infringements of the Convention by the holder of the TIR Carnet when evidence is produced to the satisfaction of the competent authorities that these discrepancies were not due to mistakes committed knowingly or through negligence at the time when the goods were loaded or dispatched or when the manifest was made out.

### **Explanatory Note to Article 39**

0.39 The expression "mistakes committed through negligence" is to be taken to mean acts which, although not committed deliberately and in full knowledge of the facts, are due to a failure to take reasonable and necessary steps to ensure the accuracy of the facts in any particular case.

## Article 40

**The Customs administrations of the countries of departure and of destination shall not consider the holder of the TIR Carnet responsible for the discrepancies which may be discovered in those countries, when the discrepancies in fact relate to the Customs procedures which preceded or followed a TIR transport and in which the holder was not involved.**

3. All above provisions focus on discrepancies between the particulars on the goods manifest of the TIR Carnet, being a Customs transit declaration, and the actual content of the load compartment. Naturally, when the holder of the TIR Carnet signs boxes 13-15 of vouchers No.1 and No.2 of the TIR Carnet, he takes on the responsibility for the correctness of data on the goods manifest. As underlined in Article 39.2 and its Explanatory Note, the holder is supposed to take reasonable and necessary steps to ensure the accuracy of the facts in any particular case. However, there may be situations where the holder is not in a position to do so. For example, if the holder takes over a sealed non-TIR container at a seaport and starts a TIR transport, he is probably not able to check the goods and has to rely on accompanying documents (bill of lading, packing list, etc.) only. In case of discrepancies, according to Article 39.2, if the holder can prove to the competent authorities that these discrepancies were not due to mistakes committed knowingly or through negligence at the time when the manifest was made out, he should not be considered responsible.

4. The next player in ensuring the accuracy of the goods manifest is the Customs office of departure. In line with Article 19 and Explanatory Note therein, the Customs office of departure has at hand a vast range of measures for thorough checks of the load and TIR Carnet – from crosschecks of the TIR Carnet and export, transport and other commercial documents to physical examination of the goods. As stressed in the comment to Article 19 "Inspection at the office of departure", *for the TIR system to operate smoothly it is essential that the Customs inspection at the office of departure should be stringent and complete, since the functioning of the TIR procedure depends upon it.* One of the five pillars of the TIR regime, namely mutual recognition of Customs control measures, is substantially based on controls performed at the Customs office of departure. From this angle, it may be concluded that this office bears certain responsibility vis-à-vis other Customs authorities involved in the TIR transport.

5. Ideally, if the holder of the TIR Carnet and the Customs office of departure have fulfilled their tasks, there should be no discrepancies between the data on the goods manifest of the TIR Carnet and the actual content of the load compartment. Nevertheless, despite all their efforts, some mistakes may still slip into the TIR Carnet. In the event these flaws are discovered by another Customs office en route or of destination, instead of automatically considering this fact as an infringement by the holder, this Customs office has first to investigate the following issues:

- May the TIR transport be accepted as being otherwise in order? In particular, have the Customs seals remained intact?

- Have these discrepancies been due to mistakes committed by the holder knowingly or through negligence?
- Do these discrepancies relate to the Customs procedures which preceded the TIR transport and in which the holder was not involved?

6. For the sake of clarity, let us consider the applicability of Article 40 in several practical situations.

#### Situation 1

A TIR truck arrived at the Customs office of destination with intact Customs seals. The load was packed in carton boxes and described in the TIR Carnet as "men's overcoats made of textile materials"<sup>1</sup>. When inspecting the load, the Customs office discovered that, in fact, these were men's overcoats made of leather<sup>2</sup> with a higher level of taxation in the country of destination. The driver argued that, although present in the course of loading, he had not been in a position to check the content of the closed boxes and simply filled-in the TIR Carnet on the basis of a packing list and CMR consignment note. The Customs office of destination got in touch with the office of departure and found out that, actually, the goods were wrongly declared already by the exporter in the export cargo declaration. Obviously, in the underlying situation Article 40 should become applicable, and the holder should not be responsible for the discrepancy.

#### Situation 2

A TIR truck arrived at the Customs office of destination with no traces of tampering with Customs seals. The load was packed in carton boxes and correctly described on the goods manifest, but there were fewer boxes in the load compartment than indicated: 95 instead of 100. Apparently, this fact had been overlooked by the office of departure. The Customs office of destination was not satisfied with the driver's explanations and believed that he should have monitored the stuffing of his vehicle and should have counted the boxes. The Customs office considered this case as "a mistake committed through negligence" and imposed a small fine on the transport operator for non-authentic declaring. At the same time, as there were no evidences that 5 missing boxes had disappeared on the territory of the country of destination, the office of destination raised no claim for Customs duties and taxes and only made a reservation in the TIR Carnet about the missing boxes. It seems that in this situation Article 40 cannot apply.

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<sup>1</sup> HS code 6201

<sup>2</sup> HS code 4203

### Situation 3

A TIR truck arrived at the Customs office of destination with intact Customs seals. The load was packed in carton boxes and described as "computer accessories: cases"<sup>3</sup> in the TIR Carnet. The Customs office certified termination of the TIR operation and put the goods under temporary storage on a warehouse. Following that, the importer started clearance procedures, lodged an import cargo declaration and paid Customs duties and taxes. Before final clearance, the Customs office decided to proceed with examination of the goods and discovered that, in fact, these were not only computer cases, but complete personal computers<sup>4</sup> with a much higher level of taxation. The importer faced charges of non-authentic declaration and evasion of Customs payments. He argued that he based his import declaration on the goods manifest of the TIR Carnet and, therefore, that was the holder of the TIR Carnet who should be held liable for this infringement. However, in the underlying situation the holder had fulfilled its obligations and presented the sealed goods, vehicle and related documents at destination, although with the incorrect goods description. The infringement in the form of non-authentic declaration and evasion of Customs payments was essentially linked with the subsequent import procedure. Thus, in line with Article 40, the holder should not be considered responsible for the infringement.

## **C. PROPOSAL BY THE SECRETARIAT AND FURTHER CONSIDERATIONS**

7. On the basis of the above examples, the secretariat proposes to add a new comment to Article 40 to read as follows:

"Discrepancies relating to Customs procedures in which the TIR Carnet holder is not involved

Article 40 applies, in particular, to export (import) Customs clearance procedures where an export (import) cargo declaration is submitted by a person other than the TIR Carnet holder. It is not the holder, but the said person (declarant) who should be responsible for any discrepancy between the data from the export (import) cargo declaration and the actual content of the road vehicle or container."

6. Given the great variety of practical situations and the complexity of the subject, the above observations of the secretariat do not claim to be complete are subject to further discussions. In this regard, the TIRExB members may wish to inform the Board of their experiences and views on the matter.

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<sup>3</sup> HS code 847330

<sup>4</sup> HS code 847120