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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Customs Questions affecting Transport

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Item 3 (b) (i) of the provisional agenda

#### **Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975):**

##### **Revision of the Convention:**

##### **Amendment proposals to the Convention**

### **Amendment proposals to the Convention**

#### **Tobacco/Alcohol TIR Carnet**

##### **Note by the secretariat**

## **I. Background and mandate**

1. At its 143rd session, the Working Party took note of the information on the preliminary considerations by the International Road Transport Union (IRU) to reintroduce the Tobacco/Alcohol TIR Carnet for certain alcohol products on a pilot basis, but expressed reluctance on its legal basis as well as on the practical risks of implementing the pilot. IRU was requested to further elaborate its proposals, including the possible level of the guarantee amount for such transports and report back to the Working Party at its next session. The Russian Federation requested the secretariat to provide its considerations on the decision of IRU in 1994 to stop the printing and distribution of Tobacco/Alcohol TIR Carnets. The secretariat was also requested to provide its considerations if the current wording of Article 8, paragraph 3 already accords Contracting Parties the possibility to not set a maximum for the recommended guarantee amount. Finally, in reply to a question from the delegation of Iran (Islamic Republic of), the Working Party confirmed that, in the absence of the availability of Tobacco/Alcohol TIR Carnets, it was not possible to transport tobacco or alcohol products under cover of a TIR Carnet (see ECE/TRANS/WP.30/286, para. 23).

2. In this document, the secretariat summarizes the discussions about the transport of tobacco and alcohol products throughout the history of the TIR Convention up and until the decision of IRU in 1994 to stop the printing and distribution of Tobacco/Alcohol products

as well as on the establishment of Explanatory Note 0.8.3. Furthermore, the secretariat provides its assessment of the questions raised by the Russian Federation.

## **II. Brief history of the transport of tobacco and alcohol products under cover of TIR Carnets**

3. A first reference to the transport of tobacco and alcohol products under the TIR Convention dates from the twenty-fifth session of the Working Party (December 1967), when the representative of IRU observed that smuggling offences mainly involved certain goods, in particular cigarettes. He asked himself whether in these conditions it would not be possible to exclude cigarettes from transport under cover of TIR Carnets. The Working Party thought that that question was of great importance and requested IRU to submit a note for consideration at a future session (see TRANS/WP30/107, para. 107).

4. At its twenty-sixth session (May 1968), the Working Party considered the note by IRU and was presented with specimens of the model of the TIR Carnet with the word “Tabac” (Tobacco) overprinted diagonally across each voucher. IRU stated that it did not intend to propose that customs authorities should modify the form of guarantee now required. For the present, it was merely asking that TIR Carnets overprinted “Tabac” should be accepted by customs authorities and that consignments comprising tobacco which were not covered by a TIR Carnet bearing an overprint should be examined with particular care. After discussion, the Working Party expressed the view that:

(a) TIR Carnets which otherwise conform to the model prescribed in Annex 1 to the Convention will be deemed to conform to the said model, provided the sole difference is the word “Tabac” overprinted on them;

(b) Consignments of tobacco carried under cover of TIR Carnets which are not so overprinted, should be accepted by customs authorities;

(c) Consignments of tobacco might be regarded a consignments under Article 13 of the TIR Convention, 1959 [Article 23 in the TIR Convention, 1975], which provides for the adoption of certain special measures of customs control (see TRANS/WP30/110, paras. 35–43).

5. At its seventy-third session (July 1992), the Working Party noted that “Tabac” TIR Carnets which had originally been established under the TIR Convention of 1959 were still used occasionally in some countries for the transport of cigarettes and alcohol. For customs purposes, these TIR Carnets fulfilled the same requirements as other TIR Carnets. For national guaranteeing associations, these TIR Carnets provided, however, additional securities due to the special contractual obligations requested from transport operators using such TIR Carnets (see TRANS/WP30/145, para. 27).

6. At the seventy-fourth session of the Working Party (October 1992), IRU presented a high guarantee TIR Carnet covering up to 200,000 US dollar of duties and taxes at risk. This new high guarantee TIR Carnet, which was not replacing but complementing the existing TIR Carnet, was covering only a limited number of goods and, in view of the additional insurance risk, would be made available only to a restricted number of reliable transport undertakings, providing all the necessary guarantees to receive such TIR Carnets. The Working Party, welcoming the initiative of IRU, considered whether, apart from the introduction of an additional TIR Carnet, the guarantee limit of 50,000 US dollar for all TIR Carnets as recommended in Explanatory Note 0.8.3 should not be increased. It was also felt that the list of goods proposed by IRU for which the new TIR Carnet would be established, should be extended to cover high risk goods such as beer, electronic equipment, meat and live animals (see TRANS/WP30/147, paras. 36–39).

7. At its seventy-fifth session (March 1993), the Working Party continued its consideration of the possible introduction of a new high-value TIR Carnet. While noting the argument put forward by IRU that insurance coverage for an enlarged group of high-risk goods (such as beer, electronic equipment, meat and live animals) could disturb the transport market by excluding a significant number of small- and medium-sized firms from such transport and, in addition, would be difficult to establish and expensive to obtain, the Working Party feared that the exclusion of goods other than alcohol and tobacco might lead to a situation where certain transport operators would opt to make more use of the TIR transit system, rather than, for instance, exercise the option to use the Community transit system, just in order to reduce the guarantee.

8. In any case, the Working Party was of the view that all categories of goods covered by the high-value TIR Carnet needed to be unequivocally defined and the weight and/or value for which the use of such a high-value TIR Carnet was required needed to be clearly established in an internationally harmonized way. The Working Party was aware that the necessary amendments to the TIR Convention to this effect would require considerable time. Given the urgency to introduce higher guarantee limits, the Working Party decided on a two track approach.

(a) As a first immediate measure (fast track) the Working Party intended to adopt, at its forthcoming session (June 1993), a comment to Annex 6, Explanatory Note 0.8.3, raising the recommended required guarantee limit to \$US 200,000 for certain high-risk goods.

(b) At the same session the Working Party planned to consider a draft amendment to Annex 6, Explanatory Note 0.8.3 and, possibly, to Annex 1 of the Convention with a view to transmitting it (them) for adoption to the sixteenth session of the Administrative Committee for the TIR Convention (AC.2) (October 1993) (see ECE/TRANS/WP.30/149, paras. 15–22).

9. At its seventy-sixth session (June 1993), the Working Party took note that, following a decision by the International Insurance Pool, IRU had temporarily withdrawn, as of 4 June 1993, midnight, the guarantee for TIR Carnets whenever the amount of alcohol or tobacco exceeded 500 kg per TIR Carnet. According to IRU, this measure had to be taken in view of the increasing number of customs fraud under the TIR transit regime linked to such merchandise and in order to safeguard the functioning of the international guarantee chain. Against this background, the Working Party continued its consideration on the possible introduction of a new high-guarantee TIR Carnet. The Working Party agreed to the introduction of an additional high-guarantee TIR Carnet and decided on an amendment proposal to the Convention. In order to introduce the high-guarantee TIR Carnet as soon as possible, the Working Party also adopted a resolution by which all Governments represented in the Working Party recommend unanimously the introduction of the high-guarantee TIR Carnet as of 1 September 1993. Resolution No. 47 was intended to provide the basis for the introduction of the high-guarantee TIR Carnet before the amendment proposal would come into force (see TRANS/WP.30/151, paras. 23–29).

10. At its seventy-seventh session (October 1993), the Working Party noted that only 17 countries utilizing the TIR transit regime had accepted the "Tobacco/Alcohol" TIR Carnet, introduced through Resolution No. 47. The Working Party stressed that it was of the utmost importance for the immediate introduction and smooth functioning of the new "Tobacco/Alcohol" TIR Carnet that all countries and economic integration organizations utilizing the TIR transit regime should accept the new TIR Carnet as soon as possible. All countries concerned and the European Community were urged to inform the Executive Secretary of the UNECE of such acceptance without delay. The Working Party had an exchange of views on the practical implementation of Resolution No. 47 and stressed that, under the provisions of the resolution all cargoes containing tobacco and alcohol,

irrespective of its volume and value, would require the use of the new "Tobacco/Alcohol" TIR Carnet. The Working Party decided not to establish a new Annex 1 *bis* to the Convention, but to insert the provisions concerning the new "Tobacco/Alcohol" TIR Carnet into the existing Annex 1 of the Convention, as this procedure would avoid a modification of Article 3 of the Convention (see TRANS/WP.30/153, paras. 15–24).

11. At its sixteenth session (October 1993), AC.2 adopted the proposals to amend Annex 1 and Annex 6, Explanatory Note 0.8.3 (see TRANS/WP.30/AC.2/33, paras. 10–14). Amendment 17 entered into force on 1 October 1994.

12. At its seventy-eighth session (February 1994), the Working Party had an exchange of views on the implementation of Resolution No. 47, particularly with regard to experience with the actual use of the new "Tobacco/Alcohol" TIR Carnet. Taking into account the view of transport operators, the Working Party acknowledged that the strict application of Resolution No. 47 could possibly result in difficulties for some transport operators, particularly those carrying mixed cargoes containing also small quantities of tobacco and alcohol. These difficulties stemmed from the fact that only a very limited number of transport operators received the new "Tobacco/Alcohol" TIR Carnets from IRU, that the expenses as regards the application of these TIR Carnets were quite substantial and that all cargoes containing tobacco and alcohol, irrespective of volume and value, required its use (see TRANS/WP.30/155, paras. 14–19).

13. At its eightieth session (October 1994), the Working Party, noting that as of 1 October 1994 the new "Tobacco/Alcohol" TIR Carnet was an integral part of the Convention, expressed its deep concern about the ever increasing number of cases of customs fraud, particularly concerning tobacco and alcohol products. The introduction of a guarantee of 200,000 US dollars for the transport of tobacco and alcohol under the TIR regime had not shown the expected results in combatting fraud. There was now a very serious risk that, given the large number of irregular "Tobacco/Alcohol" TIR Carnets, which were only now emerging, the guaranteeing chain would no longer be able to meet its obligations and customs authorities could no longer tolerate the loss of customs duties and taxes under the TIR regime. Against this background, the Working Party considered a number of emergency measures to safeguard the TIR system and urged the IRU to take all appropriate measures to secure the smooth functioning of the TIR system (see TRANS/WP.30/159, paras 12–25).

14. At its seventeenth session (October 1994), AC.2 adopted an amendment to allow the transport of small quantities of alcohol and tobacco under the normal TIR Carnet (see TRANS/WP.30/AC.2/35, paras. 16–19). Amendment 18 entered into force on 1 August 1995.

15. At its eighty-first session (February 1995), the Working Party noted that the international pool of insurers for the TIR system had suspended the insurance cover for "Tobacco/Alcohol" TIR Carnets with effect from 30 November 1994 at 24.00 hours GMT. IRU and national Carnet issuing associations, therefore, suspended, as of that date, the delivery of "Tobacco/Alcohol" TIR Carnets. A few weeks later, the international pool of insurers denounced its coverage for the ordinary TIR Carnets. Fortunately and thanks to the great efforts made by IRU, a new insurance coverage had been obtained, thus avoiding a total collapse of the TIR transit system. This new insurance contract, however, does not cover "Tobacco/Alcohol" TIR Carnet and these Carnets therefore cannot be issued. The representative of IRU pointed out that it was unlikely that such insurance coverage could be obtained in the near future given the present situation in the TIR transit system. The Working Party stressed the importance of the need to re-establish the "Tobacco/Alcohol" TIR Carnet. Towards this end, many delegations felt that a guarantee of 100 per cent of customs duties and taxes would need to be provided for the transport of tobacco and

alcohol. In return, customs authorities would be prepared to introduce accelerated procedures for the discharge of such TIR Carnets (see TRANS/WP.30/162, paras.15–26).

### **III. The establishment of the recommended maximum guarantee amount**

16. At its thirty-first session (October 1972), the Working Party discussed a proposal to introduce a maximum amount of 50,000 US dollars, claimable from the guaranteeing association. It also discussed the possibility of issuing special TIR Carnets for the transport of high-value goods as previously proposed by IRU with respect to the transport of tobacco. It felt, however, that such a system should not be introduced. The Working Party agreed, in principle to the proposed maximum amount of 50,000 US dollars and requested further study of whether that amount should be indicated in the Convention itself as a mandatory provision, or be merely recommended in an Explanatory Note (see TRANS/WP30/120, paras. 31–34). The proposal to mention the maximum amount of 50,000 US dollars in an Explanatory Note was adopted at the thirty-second session of the Working Party in October 1973 (TRANS/WP30/122, para. 23).

17. At its thirty-third session (May 1974), the Working Party revisited the text of the Explanatory Note. Although some representatives were in favour of not suggesting a specified limit, the majority held the view that the limit was only a recommendation and the Working Party, therefore, decided to maintain the text unchanged. The representative of France suggested removing the recommendation from the Explanatory Note and, in order to stress its importance, making it the subject of a separate resolution. This would also make it easier to know which countries applied the recommended limit (see TRANS/GE.30/2, paras. 10–11).

18. At the thirty-seventh session of the Working Party (March 1977), the representative of Spain drew the attention to the fact that increased guarantee limits might be involved when a combination of vehicles or several containers loaded on a single road vehicle or on to a combination of vehicles were used in a TIR operation. The Working Party recognized that variable levels of guarantee were indeed possible under the Convention, particularly in view of the fact that the limit contained in the Explanatory Note to Article 8, paragraph 3, was merely a recommendation. However, the Working Party felt that it would be desirable if a unification in the level of guarantees could be achieved. Expansion of the TIR system made such a unification increasingly desirable (see TRANS/GE.30/10, paras. 28–29).

19. At the thirty-eighth session of the Working Party (October 1977), the representative of Belgium (on behalf of the member countries of the European Economic Community), Canada, Hungary, Poland and the United States of America indicated that the 50,000 US dollar limit was acceptable. The representative of Switzerland indicated that while it was substantially below the existing limit, he was hopeful that it might be acceptable in the future. The representative of Turkey indicated that it would be difficult for his Government to accept the recommendation. Notwithstanding the apparent trend towards acceptance of the 50,000 US dollar limit, the Working Party recognized that uniform application of that limit might not be possible, particularly in certain developing countries where higher limits were demanded. The Working Party noted that the application of both Conventions in a country might require that there be two separate contracts with the guaranteeing association containing different levels. However, it was further noted that as there was no ceiling contained in the 1959 Convention, countries were free to apply the limit recommended in the new Convention to operations carried out under both Conventions (see TRANS/GE.30/12, paras. 32–35).

20. At the seventy-third session of the Working Party (July 1992), the representative of the Russian Federation informed about the ever-increasing number of TIR transport operations for which the duties and taxes at risk exceeded 50,000 US dollar. The representatives of France and Germany, confirming that trend, stressed that a mechanism needs to be found allowing a higher guarantee for special high-value and high risk goods. IRU informed the Working Party that his organization was currently studying the possibility to introduce for such high value goods and for certain reliable transport operators a special TIR Carnet with a high guarantee (see TRANS/WP30/145, paras. 31–33).

21. At its seventy-fifth session (March 1993), the Working Party considered whether Explanatory Note 0.8.3 should be amended with a view to considerably increase the present recommended limit of 50,000 US dollars per TIR Carnet. The Working Party agreed, in principle, that a substantial increase of this recommended limit might be justified in order to re-establish, in real terms, the sum of 50,000 US dollars decided upon in 1975. Noting, on the other hand, that an increase in the recommended limit, say up to 100,000 US dollars, might lead to an increase in insurance premiums and, thus, to higher costs for TIR Carnets, the Working Party requested all delegations concerned to consult with guaranteeing associations in their respective countries on the consequences of a higher guarantee limit. In view of the fact that most irregularities occurred with the transport alcohol and tobacco, some delegations pointed out that, as a first step, it might be sufficient to increase the recommended guarantee limit per TIR Carnet only for such products (see TRANS/WP.30/149, paras. 12–14).

22. At its seventy-sixth session (June 1993), the Working Party took note that some national guaranteeing associations did not object to a substantial increase in the guarantee level, others did not favour such a move. Many Governments favoured a general increase in order to cover a whole range of goods which were considered sensitive from a customs point of view and would not be covered by the proposed high-guarantee TIR Carnet covering tobacco and alcohol. In view of the fact that most irregularities occurred with the transport of alcohol and tobacco, the Working Party agreed, however, that, as a first step, it would be acceptable to increase the recommended guarantee limit per TIR Carnet only for such products and to introduce an additional high-guarantee TIR Carnet to this effect (see TRANS/WP.30/151, paras. 16–19).

#### **IV. The decision of IRU in 1994 to stop the printing and distribution of Tobacco/Alcohol TIR Carnets**

23. As elaborated in Part II of this document, the decision of IRU to stop printing and distributing “Tobacco/Alcohol” TIR Carnets was the consequence of the withdrawal by the international insurers of coverage for such TIR Carnets, followed by a complete denunciation of insurance coverage for the TIR system. The new insurance pool (Zürich) never accepted coverage for “Tobacco/Alcohol” TIR Carnets. Although the Working Party, at its eighty-first session (February 1995), “stressed the importance of the need to re-establish the “Tobacco/Alcohol” TIR Carnet”, this issue was not pursued, due to the crisis in the TIR system, leading up to the a revision of the TIR Convention.

#### **V. The current wording of Article 8, paragraph 3**

24. As outlined in Part III, the TIR Convention 1959 (Article 6) did not contain a reference to “maximum” or “guaranteed amount”. On the contrary, Article 6 of the 1959 TIR Convention stipulated “The guaranteeing association shall undertake to pay the import

or export duties and taxes, due, any other charges, and any pecuniary penalties incurred by the holder of the TIR Carnet and the persons participating in the performance of the transport under the customs laws and regulations of the country in which an offence has been committed". An Explanatory Note on a recommended maximum amount was introduced in the course of the seventies.

25. In 1975, when establishing the text of the new TIR Convention, new Article 8, para. 1 was fairly similar to the text of Article 6 of the 1959 Convention in stipulating "The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the customs laws and regulations of the country in which the irregularity has been noted in connexion with a TIR operation"<sup>1</sup>. New, however, was the introduction of Article 8, para. 3, stipulating "Each Contracting Party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association on the basis of the provisions of paras. 1 and 2 above". This new paragraph should, most likely, be understood as a codification of the Explanatory Note introduced in the seventies.

26. The text of Article 8, para. 1 remained unchanged until, in 2007, the European Community (EC) submitted proposals to amend, *inter alia*, its text (see ECE/TRANS/WP.30/2007/18, Annex). The current wording can be found for the first time in an amended proposal by the EC, as contained in document ECE/TRANS/WP.30/2008/1. At its 118th session (February 2008), WP.30 adopted the new text of the proposal, subject to a slightly amended wording as proposed by IRU (see ECE/TRANS/WP.30/236, para. 26 (h)). This wording was included into the final package adopted by AC.2 in February 2011 and contained in Amendment 30 to the TIR Convention as of 13 September 2012.

27. Reading Article 8, paras. 1 and 3 in the context of the above, it seems fair to assume that, under the current wording each Contracting Party is obliged to determine a maximum guaranteed amount. The provisions do not stipulate what such maximum could be, other than that Explanatory Note 0.8.3 recommends Contracting Parties to limit the maximum amount to a sum equal to 50,000 US dollars per TIR Carnet. At the same time, Contracting Parties are free to set different amounts, as has been the case in some Contracting Parties, under the proviso that a specific amount be established. Thus, it could be contented that any maximum is acceptable, even if it be 99 trillion US dollars per TIR Carnet or more, as long as such maximum has been established.

28. At the same time, however, reference should be made to Annex 9, Part I and in particular its paragraph 1 (d) and 3 (ii). In order to substantiate the authorization, granted by the national competent authorities to a national guaranteeing association, in accordance with Article 6, para. 1, competent authorities and national guaranteeing associations shall conclude a written agreement or any other legal instrument. As part of this agreement, the national association "shall accept the maximum sum per TIR Carnet determined by the Contracting Party...in accordance with Article 8, para. 3 of the Convention." Although it could be argued that the determination of the maximum amount is a unilateral act by competent authorities, it should be borne in mind that the conclusion of the agreement is a bilateral act, requiring consent from both parties. Therefore, it seems fair to assume that, although the competent authorities are free to set any maximum amount (as long as they set such maximum), this amount needs to be determined in consultation and with the agreement of the concerned national association. Setting an unrealistic maximum amount by the competent authorities might, in addition, lead to the situation where the national association cannot provide its guarantees (see Annex 9, Part 1, para. 3 (iv)) or cover their

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<sup>1</sup> It is, however, interesting to note that liability for pecuniary penalties was dropped from the text, as later confirmed by the TIR Administrative Committee in a comment of October 1991.

liabilities with an insurance company or financial institution (see Annex 9, Part I, para. 3 (v)), thus leading to the impossibility to conclude the legally required agreement. Such situation does not seem to be in favour of national competent authorities either, as it would lead to the situation where TIR transports in its territory are no longer possible. Thus, in conclusion, it seems that the current wording of Article 8, para. 3 does not allow Contracting Parties not to set a maximum guaranteed amount.

## **VI. Considerations by the Working Party**

29. The Working Party is invited to take note of the considerations by the secretariat.

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