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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

Note by the secretariat

I. Mandate

1. At its 146th session, the Working Party on Customs Questions affecting Transport (WP.30) considered document ECE/TRANS/WP.30/2017/8 which contained various proposals to amend Article 20. Further to substantive discussions, the Working Party did not come to a common understanding on which proposals could be further considered and which ones could be set aside. In conclusion, WP.30 was of the view that, as a first step, the issues to be addressed with this amendment proposal, as well as the understanding of Article 20 should be clarified, in order to determine the objective of the amendment and, as a last step, the appropriate wording could then be found. To this end, WP.30 requested the secretariat to prepare a new document for consideration at the next session (see ECE/TRANS/WP.30/292, paras. 10 and 11).

2. In line with this request, the secretariat has prepared the present document. The various proposals, including the oral proposal submitted by the International Road Transport Union (IRU) at the previous session, are listed in Annex, for ease of reference.

II. Background and implementation of Article 20

3. As a general observation, it is commonly stipulated in national Customs Codes or relevant legislation, that customs authorities can fix time-limits and prescribe itineraries in various cases or for various procedures including, quite typically, transit. The right of customs authorities to fix a time-limit or prescribe a route for TIR operations in particular

has also always been reflected in the TIR Convention, i.e. in the 1959 TIR Convention (Article 10) and in the 1975 TIR Convention (Article 20).

4. This understanding of the provision is further clarified when reading the comment, adopted by the Administrative Committee in 1998 (TRANS/GE.30/AC.2/14, para. 29; and TRANS/GE.30/39, para. 30), whereby holders that are found to have not complied with the time-limit or route prescribed by customs are personally liable for any pecuniary penalties that may become due under national legislation. These pecuniary penalties are not covered by the guarantee. Therefore, it seems clear that customs authorities have the right to prescribe time-limits and routes, as well as to enforce them or impose penalties for infringement.

5. Article 20 specifies that customs authorities can prescribe time-limits and routes “for journeys on the territory of their country”. This reference is consistent with the fact that customs authorities, being a public authority of a sovereign State, would not have jurisdiction to enforce any measures outside of that country. However, the drafters of the 1959 TIR Convention recognized the special case of Customs Unions, namely that in the absence of internal borders and related customs controls, a common Customs Code may allow the customs authorities of one country of the Customs Union to prescribe conditions or enforce legislation for a journey across the entire Customs Union territory. With this in mind, Article 38 was elaborated, specifying that Contracting Parties forming a Customs Union may enact special legislation in relation to TIR transports commencing in, passing through or terminating on their common territory. This provision, currently reflected in Article 48 of the 1975 TIR Convention, has provided the basis for the evolution of practices in the implementation of the TIR Convention in Customs Unions.¹

6. The 1959 TIR Convention did not provide for the possibility for Customs Unions to become Contracting Parties. This became a possibility only under the 1975 Convention and is qualified by certain conditions such as that Customs Unions do not have the right to vote. However, this development does not appear to have made any difference to the application of Article 20, as Article 48 provides the necessary scope for customs authorities in one Contracting Party to prescribe routes and time-limits across the entirety of a common customs territory if the customs union legislation requires it. As such, Article 20, even in its current wording, would not appear to place any significant restriction on Customs Unions as it is applied *mutatis mutandis*² under the scope of Article 48.

III. Objective of the amendment

7. The proposal to replace the word “country” in Article 20 originated while discussing a list of editorial alignments to the TIR Convention. Specifically, it was considered more fitting to use the phrase “Contracting Party”, which is the dominant term used in the TIR Convention. In as far as can be discerned from the reports on the discussion on editorial amendments, it was not intended to make any substantive alteration to the understanding or application of Article 20 as has been established over the course of several decades. On this point it is worth noting that Article 20 has never been amended.

8. As regards the word “country”, it appears several times across the legal text in various articles and in various contexts (see for example Article 6, para. 2, Article 8, para. 4, Article 23, 24 and 34 among others). Therefore the term “country” that appears in Article

¹ The practices in implementing the TIR Convention in the context of a Customs Union were discussed in 2013, see ECE/TRANS/WP.30/270.

² Meaning: making necessary alterations while not affecting the main point at issue.

20 is also used quite broadly elsewhere in the Convention already. As a result, it is editorially consistent with the terminology used in the TIR Convention. At the same time, it should be noted that, if the preferred term for Article 20 is “Contracting Party”, this would have only editorial and not material value.

9. In the course of its previous sessions (142nd, 143rd, 144th, 145th, 146th) a number of delegations expressed the view that, since the Eurasian Economic Union (EEU), whose member States are all Contracting Parties to the TIR Convention, is not itself a Contracting Party, either the reference to “country” or to “Contracting Party” would be equally restrictive in the practice of prescribing time-limits and routes across the EEU customs territory. Against this background, a number of proposals were submitted by Contracting Parties, affecting - also - the definition of a TIR operation (Article 1 para. b). Some of the proposals made would, likely, trigger a series of other necessary amendments to articles that would be affected by this change.³ The commentary on each proposal considered thus far by the Working Party can be found in document ECE/TRANS/WP.30/2017/8, discussed at the previous session.

IV. Considerations by the Working Party

10. The Working Party may wish to continue its considerations on amending Article 20, taking into account the understanding of Article 20, the objective of the amendment, as well as the various proposals as contained in Annex. The Working Party may wish to assess the possibility of an amendment to Article 20 not being necessary, in light of Article 48.

³ Details on the discussions on amending Article 20 can be found in ECE/TRANS/WP.30/284, ECE/TRANS/WP.30/286, ECE/TRANS/WP.30/288, ECE/TRANS/WP.30/290, ECE/TRANS/WP.30/292.

Annex

Proposals for amending Article 20

1. For the amendment proposals listed below, in the chronological order in which they were submitted for consideration. Deletions are marked in ~~strike through~~ and additions are marked in ***bold italics***:

I. Proposal by the European Union

2. “For journeys in the territory of their ~~country~~ ***Contracting Party***, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route”.

II. Proposal by the secretariat

3. “~~For journeys in the territory of their country, the~~ Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route ***from a customs office of departure or entry (en route) to a customs office of destination or exit (en route)***”.

III. Proposal by Belarus (transmitted in writing in March 2017)

4. For current text read:

"Customs authorities, within the framework of a TIR operation, may fix for journeys in the territory of their country or in several countries, if required by the legislation of the Contracting Party, a time-limit and require the road vehicle, the combination of vehicles or the container to follow the prescribed route."

IV. Proposal by the Russian Federation (submitted in writing in March 2017)

5. *For current text read:*

“Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route for a TIR operation from a customs office of departure or entry (en route) to a customs office of destination or exit (en route) and require that the time-limit or prescribed route be adhered to, if fixed”.

6. In conjunction with the above, the delegation of the Russian Federation proposes an amendment to Article 1, paragraph b on the definition of a TIR operation:

“The term TIR operation shall mean the part of a TIR transport that is carried out in a Contracting Party **or in several Contracting Parties forming a single customs territory** from a customs office of departure or entry (en route) to a customs office of destination or exit (en route)”.

**V. Proposal by the Eurasian Economic Commission
(transmitted in writing in March 2017)**

7. *For current text read:*

"The Customs authority in which the TIR operation begins may fix [for such a TIR operation], including, if such an operation is carried out in the territory of the Contracting Parties forming a customs or economic union, and this is stipulated by the legislation of such customs or economic union, a time-limit and require the road vehicle, the combination of vehicles or the container to follow the prescribed route."

8. In conjunction with the above, the Eurasian Economic Commission proposes an amendment to Article 1, paragraph b on the definition of a TIR operation:

"The term "TIR operation" shall mean the part of a TIR transport that is carried out ~~in a Contracting Party~~ *in the territory of the Contracting Party or of the Contracting Parties forming a customs or economic union* from a Customs office of departure or entry (en route) to a Customs office of destination or exit (en route)".

**VI. Proposal by the International Road Transport Union
(submitted orally at the 146th session)**

9. *For current text read:*

"For journeys in the territory of their country *or in several countries in the case of customs unions, if so required by the legislation of a Contracting Party*, customs authorities may fix a time limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route *from a customs office of departure or entry (en route) to a customs office of destination or exit (en route)*".
