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Inland Transport Committee

Working Party on Customs Questions affecting Transport

150th session

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Item 3 (c) (ii) (b) of the provisional agenda

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

Application of the Convention:

Issues transmitted by the Administrative Committee

The use of subcontractors in the Convention

Note by the secretariat

I. Introduction and mandate

1. The Working Party, at its 149th session, continued its considerations on the use of subcontractors during TIR transports. It considered document ECE/TRANS/WP.30/2018/18 by the International Road Transport Union (IRU) which contained an extensive description of the contractual relationship in place in a number of countries between associations and TIR Carnet holders on the use of subcontractors. The Working Party also took note of the examples of transport operations that require the use of subcontractors, especially in the context of intermodal transport. The representatives of Turkey and the European Union underlined their support for concepts that facilitate trade and promote the use of intermodal transport. Further to a comment from the delegation of the Russian Federation on possible negative effects of this application on the enforcement of minimum conditions and requirements set in Annex 9, Part II of the Convention, the representatives of national associations pointed out the extensive screening mechanisms put in place to ensure that subcontractors fulfil the criteria as stipulated by Annex 9, Part II. IRU further reported that, so far, no incidents in the application had been noted, although the practice existed already for a number of years. IRU also clarified that the use of subcontractors leaves the liability of the TIR Carnet holder in accordance with Article 11 of the Convention fully untouched. Having noted the widespread implementation and the security measures taken by the guarantee chain, the Working Party decided to continue its work on the matter at the next session. The secretariat was requested to prepare a document,

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recapitulating amendment proposals that had been prepared so far (see ECE/TRANS/WP.30/298, para. 25).

II. Amendment proposals

2. The Working Party may wish to recall that the use of subcontractors was discussed for a long period of time by the TIR Executive Board (TIRExB) and the TIR Administrative Committee (AC.2). Two proposals reproduced below were submitted by the secretariat and the Republic of Belarus in the course of these discussions. Both proposals introduce a comment to Article 1 (o) of the Convention, where the term “holder” is defined.

A. Proposal by the secretariat

“Comment to Article 1 (o)

Use of a TIR Carnet by (an) other person(s) than the holder

Some Contracting Parties accept that, with the consent of the TIR Carnet holder, (an)other person(s) perform(s) a TIR transport or part of it by means of a TIR Carnet issued to the TIR Carnet holder. In those Contracting Parties, when the TIR Carnet is presented at the Customs office of departure by (an)other(s) than the TIR holder, the latter shall, as proof of his or her consent, indicate in Box 11 of the cover page of the TIR Carnet the following:

- (a) The name(s) of the person(s) performing the TIR transport or part of it;
- (b) The words “acting on behalf of” followed by;
- (c) The name of the TIR Carnet holder.

Box 12 of the cover page should bear the signature of the TIR Carnet holder.

Once the customs office of departure has accepted the duly filled in TIR Carnet, all other competent authorities en route and at the customs office of destination involved in that TIR transport are recommended to accept such TIR Carnet without further requirements” (see ECE/TRANS/WP.30/AC.2/2010/7, paras. 3 and 4).

B. Proposal by Belarus

“Comment to Article 1 (o)

Successive use of a TIR Carnet by several holders within one TIR transport:

It is allowed to successively use a TIR Carnet by several TIR Carnet holders within one transport. In such cases a guaranteeing association, issuing the TIR Carnet, indicates on the cover page of the TIR Carnet the following:

- (a) In Box 3: the name of the first TIR Carnet holder;
- (b) In Box 11: the name of the successive TIR Carnet holder. The information specified in Box 11 shall be certified in the manner provided for Box 4 of the cover page of the TIR Carnet;
- (c) In Box 12: signature of the first TIR Carnet holder.

When the need for the use of the successive holder(s) arises in the course of a TIR transport, the first holder of the TIR Carnet must provide the customs authorities en route with a written confirmation of the possibility of the successive holder(s), issued by the guaranteeing association of the Contracting Party on which territory the TIR transport will

be continued by the successive holder(s) and the customs authorities of which will open the corresponding TIR operation. Here, the first holder must fill in Boxes 3 and 11 of the cover page of the TIR Carnet in the manner specified in the first part of the comment and make changes in the relevant boxes of vouchers No. 1 and 2 of the TIR Carnet and certify the records by his or her signature. In this case, the above-mentioned written confirmation issued by the guaranteeing association (or its copy) must accompany the TIR Carnet.

Once the customs office of departure has accepted the duly filled in TIR Carnet, all other competent authorities en route and at the customs office of destination involved in that transport accept such TIR Carnet from persons specified as the TIR Carnet holders without further requirements.

In case of violation of the TIR procedure and the necessity of applying the provisions of the TIR Convention concerning the obligations to pay import or export customs duties and charges, including the application of Article 38 of the TIR Convention, the first and successive holder(s) bear the same responsibility as defined by the TIR Convention” (see Informal document WP.30/AC.2/ No. 5 (2012)).

III. Preliminary considerations by the secretariat

3. First of all, it should be noted that both proposals contain elements related to three basic questions that TIRExB raised at its thirtieth session (November 2006) about the use of subcontractors:

“(a) Does the subcontractor have to be authorized to use the TIR procedure, in line with Annex 9, Part II of the Convention or not?

(b) Will the subcontractor be considered as one of the persons directly liable, as referred to in Article 8, paragraph 7¹, thus necessitating the customs authorities, in case of an infringement, to claim payment from the subcontractor before making a claim against the national guaranteeing association?

(c) In practice, how do the customs authorities distinguish between the subcontractor and a third party to whom the holder must not transfer the TIR Carnet?” (see ECE/TRANS/WP.30/AC.2/2007/5, para. 11).

4. Whereas both proposals have a similar outline, there are considerable differences in the treatment of various elements of the concept. A table contained in annex to this document displays the differences between the two proposals. Without being exhaustive, two main differences may be noted as;

(a) Identification of the subcontractor: The proposal by Belarus provides for the use of a TIR Carnet by several TIR Carnet holders, which means that all persons involved in the TIR transport must comply with the “holder’ definition in Article 1 (o) of the Convention. However, the proposal by the secretariat refers to persons other than the holder, which means that the subcontractor will not necessarily have the TIR Carnet holder status.

(b) Portion of the TIR transport covered: The aim of the proposal by Belarus is to cover the successive use of a TIR Carnet when it is known that the transport will be conducted by several TIR Carnet holders. In addition, this proposal covers the situation when the need for other TIR Carnet holders occurs during transport (see Informal document WP.30/AC.2/ No. 5 (2012)). The proposal by the secretariat, in addition to facilitating that a

¹ Note by the secretariat: with the entry into force of Amendment 30, the provision of Article 8, paragraph 7 has been reworded to become Article 11, paragraph 2.

part of the TIR transport is subcontracted, provides for the possibility that the whole TIR transport be subcontracted to (an)other person(s) than the TIR Carnet holder.

5. The secretariat is of the view that the above mentioned elements in combination with the various differences contained in the annex to this document may contribute to aligning the positions and to producing a proposal that may respond to the different concerns.

IV. Considerations by the Working Party

6. The Working Party is invited to consider the preliminary observations and considerations by the secretariat and to discuss the above proposals.

Annex

	<i>Proposal by the secretariat</i>	<i>Proposal by Belarus</i>
Conditions	Refers to “some Contracting Parties”	Has a generic statement towards all contracting parties
	Use of a TIR Carnet by “(an)other person(s) than the holder”	Use of a TIR Carnet by a successive “TIR Carnet holder”
	May be applied in “a TIR transport or part of it”	May be applied in part of a TIR transport *according to the wording “successive use... within one TIR transport”
Declaration on subcontracting/ Processing the TIR Carnet	Regulates processing at customs office of departure	Regulates processing both at customs office of departure and en route
	Reflection only on the TIR Carnet	Reflections on the TIR Carnet and a written confirmation (en route)
	Indications on the TIR Carnet by the TIR Carnet holder	Indications on the TIR Carnet/written confirmation by the national/foreign guaranteeing association and TIR Carnet holder
	*No reference, but Box 3 already contains the name of the TIR Carnet holder	Box 3 of the cover page: The name of the first TIR Carnet holder
	Box 11 of the cover page: <ul style="list-style-type: none"> • The name of the subcontractor; • The words “acting on behalf of”; • The name of the TIR Carnet holder. 	Box 11 of the cover page: The name of the successive holder (certified by the guaranteeing association)
	Box 12 of the cover page: Signature of the TIR Carnet holder	Box 12 of the cover page: Signature of the first TIR Carnet holder
	*No reference to processing at customs office en route	When the need arises during the TIR transport (en route): <ul style="list-style-type: none"> • Written confirmation by the foreign guaranteeing association; • Indications on the cover page and vouchers No.1 and 2 of the TIR Carnet by the first TIR Carnet holder (certified by own

<i>Proposal by the secretariat</i>	<i>Proposal by Belarus</i>
Once the customs office of departure accepts, all other competent authorities are recommended to accept the TIR Carnet	signature). Once the customs office of departure accepts, all other competent authorities accept the TIR Carnet
Liabilities *No reference, but the issue of liability is covered by the wording “acting on behalf of” inserted in Box 11 of the cover page	The first and successive holder(s) bear the same responsibility in terms of payment of customs duties and taxes and the application of Article 38
