



**Economic and Social  
Council**

Distr.  
GENERAL

TRANS/WP.30/1998/2  
12 December 1997

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions  
affecting Transport

(Ninetieth session, 24 to 27 February 1998,  
agenda item 5 (c)(v))

**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT  
OF GOODS UNDER COVER OF TIR CARNETS  
(TIR CONVENTION, 1975)**

Application of the Convention

Interpretation of article 8, paragraph 7 of the Convention

Transmitted by the Government of Turkey

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**PROBLEM ARISING FROM THE IMPLEMENTATION OF THE TIR CONVENTION  
BETWEEN TURKEY AND THE NATIONAL GUARANTEEING ASSOCIATION**

1. During controls carried out in accordance with the TIR Convention and notification procedures towards the national guaranteeing association, the association objects to payment claims and refers to article 8, paragraph 7 of the Convention. This provision of the Convention states that, initially, claims should be made to the operators. Judicial authorities tend to agree with this interpretation.
2. Domestic operators involved in smuggling cannot be contacted during claim procedures. The procedures advocated by the association are time consuming and sometimes lead to prescription.
3. In Turkey, the guaranteeing association issues TIR Carnets to operators and carries out approval procedures. In issuing the Carnets, a guarantee and an insurance relationship is established, whereas there is no such relation between the Turkish Customs Administration and the operators.
4. Certain operators, in response to Customs claims, state that within the guaranteeing association they have sufficient deposits to cover such claims. Therefore, claims should be made against these deposits. The guaranteeing association collects this deposit from operators to whom the Carnets are issued in accordance with the instructions of the IRU. An objection of the guaranteeing association to use these deposits for the payment of Customs claims is in fact questioning the very reason for such a deposit.
5. In fact, 25 legitimate payment claims for duties and taxes of substantial amounts have been refused by the guaranteeing association by the end of 1995. This refusal to pay has been continued by the guaranteeing association during 1996 and 1997.
6. The most essential provision in article 8, paragraph 1 of the Convention relates to joint and several guarantees. The phrase "so far as possible" in article 8, paragraph 7 tends to create a preference. However, this cannot be interpreted to question the existence of the guarantee chain. The Customs administration relies on article 8, paragraph 1 to decide how to proceed and how to issue a notification. The guaranteeing association has the possibility of recovering the payment from the insurance and the deposit collected from the operators. The Customs administration has no such possibility.
7. Additionally, the guaranteeing association may refuse to issue TIR Carnets to operators who refuse to pay, or fail to pay and are, therefore, more effective in collecting duties and taxes due.

**Proposal:**

8. In line with the spirit of the TIR Convention, article 8, paragraph 7 should be applied without prejudice to the provision "joint and several guarantees" in article 8, paragraph 1. To this end, a recommendation or comment could be prepared to enable the Contracting Parties to interpret the term "so far as possible" in such a way as to allow effective collection of duties and taxes due from national guaranteeing associations.
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