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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions
affecting Transport

Ad hoc Group of Experts
on Phase II of the TIR revision process
(Fourth session, 21-24 June 1999,
agenda item 4)

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

Phase II of the TIR revision process: Proposals for amendments to the Convention

Views and decisions taken by the Working Party at its 92nd session

Note by the secretariat

As requested, the secretariat reproduces and partly summarizes in this document the views and decisions taken by the Working Party as well as the proposals made by Estonia at its ninety-second session relating to phase II of the TIR revision process (TRANS/WP.30/184, para. 39).

I. Status and functions of the international organization(s)

Reference: TRANS/WP.30/184, para. 24.

“Add a new paragraph 2 bis, article 6 of the Convention to read as follows:

“2 bis. An international organization, as referred to in paragraph 2, shall [may] be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility.”

Use of the word “may” in this new paragraph would align it with the wording used in the existing paragraph 1, article 6.

The proposed explanatory note 0.6.2 bis was accepted to read as follows:

Add a new explanatory note 0.6.2 bis (to article 6.2 bis), annex 6 to the Convention to read as follows :

“0.6.2 bis. The relationship between an international organization and its member associations shall be defined in [written] agreements on the functioning of the international guarantee system.”“

II. Definition of termination and discharge procedures

Reference: TRANS/WP.30/184, paras. 25-27.

“25. Some delegations felt that it was premature to decide on amendment proposals to the Convention aiming at a clear distinction between (a) the termination of a TIR operation as an obligation of the TIR Carnet holder and (b) the discharge of a TIR operation as the recognition by Customs authorities that a TIR operation has been terminated correctly. They expressed their concern about the possible legal consequences of such a distinction. The majority of delegations was, however, of the view that such amendments which did not modify existing Customs procedures in the Contracting Parties to the Convention, would allow for a better understanding of the rights and obligations of Customs authorities, TIR Carnet holders and national associations during TIR operations, including a clear determination of the beginning and the ending of a TIR operation, would enhance transparency and harmonization of the relevant national Customs procedures and might facilitate adequate lodging and settlement of Customs claims. It was therefore proposed to continue work in this field.

26. The Working Party felt that an alternative wording for the proposed article 1, paragraph a bis as contained in document TRANS/WP.30/1999/1 might read as follows:

“(a bis) the term “termination of a TIR operation” shall mean that the holder of a TIR Carnet has presented the road vehicle, the combination of vehicles or the container for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto;”

27. It was noted that, as a consequence arising from the insertion of such definitions into the Convention, a number of other provisions had to be modified, particularly article 10 referring then only to discharge operations, the outcome of which determined the financial obligations of TIR Carnet holders and/or national guarantee associations, and article 28 providing for relevant termination procedures covering also Customs procedures following the termination of the TIR operation.”

The Working Party also noted in this context the concern expressed by the representative of Estonia who pointed out that the newly proposed paragraph 2 of article 28 as contained in document TRANS/WP.30/1999/1 would lead to an interruption of Customs surveillance without determining the requirements under which the transported goods are transferred to another Customs procedure. In his view, the expression “Upon ...” leaves a gap of time between the termination of the TIR operation and the transfer of the goods to another Customs procedure and another system of Customs control. This problem does not arise with the present text of article 28.

Taking account of article 48 of the Community Customs Code applicable on the territory of the European Community, the Estonian delegation thus proposes the following alternative wordings of a new paragraph 2 of article 28:

A. Article 28, new paragraph 2

“2. Termination of a TIR operation at the Customs office of destination shall take place without delay on condition that the goods covered by a TIR Carnet

- S have been placed under another Customs procedure
- S have been directly transferred across the border to a third country or to a free zone
- S have been transferred to a place approved by the Customs authorities where the goods can be stored until a Customs declaration is lodged in accordance with the legislation in force in the Contracting Party of destination.”

B. Article 28, new paragraph 2

“2. Termination of a TIR operation at the Customs office of destination shall take place without delay on condition that the goods covered by a TIR Carnet have been assigned a Customs approved treatment or use in accordance with the legislation in force in the Contracting Party of destination.”

III. Recommended termination, discharge and inquiry procedures

(a) Recommended procedures for the termination of a TIR operation

Reference: TRANS/WP.30/184, para. 28.

“28. The Working Party underlined the usefulness of such guidelines and invited the European Commission and the IRU to prepare relevant proposals.”

(b) Recommended procedures for the discharge of a TIR operation

Reference: TRANS/WP.30/184, para. 29.

“29. The Working Party approved the proposed procedures in principle which should be complemented by procedures, such as applied in the Russian Federation, as well as by special provisions applicable for sensitive goods. The Russian Federation was invited to prepare relevant provisions in line with national practice.”

(c) Recommended inquiry procedures

Reference: TRANS/WP.30/184, paras. 30 and 31.

“30. Taking account of proposals made by the IRU (TRANS/WP.30/1999/2), the Working Party approved in principle the recommended inquiry procedures proposed by the group of experts, including reference to the IRU “CUTE-WISE” procedure. The Russian Federation was invited to provide information on their national practices in this regard. The European Commission and the IRU were invited to prepare standard specimen forms for inquiry notices and reminders as well as special procedures to be applied for sensitive goods.

31. Some delegations stressed in this context that reference might need to be made in article 11, paragraph 1 of the Convention to the requirement by Customs authorities to notify not only the association, but to send a notification also to the TIR Carnet holder of any non-discharged TIR operation.”

IV. Reduction in the notification period for Customs claims

Reference: TRANS/WP.30/184, para. 32.

“32. The Working Party was of the view that, for the time being, a reduction in the legal notification periods for Customs claims (article 11, paragraph 1 of the Convention) could not be envisaged. The IRU stressed that such a reduction, in the order of 3 months, would be justified as it might allow for a more rapid identification of fraudulent activities under the TIR regime and for an easier detection of fraudsters.”

V. Alternative forms of evidence as proof for the termination of a TIR operation

Reference: TRANS/WP.30/184, para. 33.

“33. The Working Party was not in a position to arrive at a consensus on the usefulness of alternative forms of evidence as proof for the termination of a TIR operation. It felt, however, that use of the SAFETIR system, operated by the IRU, should not be recommended in this respect. Further considerations of this issue were required.”

VI. Definition of the holder of TIR Carnets

Reference: TRANS/WP.30/184, paras. 34-37.

“34. The Working Party had an exchange of views on the different interpretations given and different national legal bases determining the rights and obligations of the holder of a TIR Carnet as stipulated in article 39, paragraph 2 of the Convention and inscribed in the model of the TIR Carnet, but not defined in the Convention.

35. The Working Party realized that in some Contracting Parties it was provided that the TIR Carnet holder must be the transport operator actually accompanying or transporting the sealed load compartment or container in accordance with national Customs laws and regulations. This interpretation would seem to be in line with the provisions of the new annex 9, Part II of the TIR Convention stipulating minimum conditions and requirements for persons utilizing TIR Carnets. In other Contracting Parties, the holder of a TIR Carnet was considered to be the person to whom a TIR Carnet has been issued by a national association and with whom it is joint and severally liable *vis-à-vis* the national Customs authorities. In these Contracting Parties the holder was free to sub-contract transport operators in line with modern transport procedures and techniques (semi-trailers, containers, etc.). The Working Party also noted that the views of national associations on this matter were divided and not always in line with the views of the competent national authorities of the country in which they were established.

36. The Working Party stressed that the long-term objective was to arrive at a clear-cut definition of the holder of a TIR Carnet encompassing its rights and obligations in the framework of the Convention providing for flexibility of the transport industry in transporting goods, including sub-contracting and use of different modes of transport, without jeopardizing Customs control and the possible recovery of duties and taxes at risk.

37. The Working Party stressed that the difficulties for international transport stemming from these different interpretations had to be resolved during phase II of the TIR revision process, possibly based on (a) a generally accepted concept of liability of the TIR Carnet holder, (b) the mutual acceptance of different interpretations of what constituted a holder of a TIR Carnet in all Contracting Parties and (c) the authorization by Customs authorities of all transport operators in accordance with annex 9, part II of the Convention.”

VII. EDI control system for TIR Carnets: Implementation of the Recommendation of 20 October 1995

Reference: TRANS/WP.30/184, para. 38.

“38. The Working Party was of the view that further work on the legal basis of the EDI control system for TIR Carnets and on the related IRU SAFETIR system would be required in connection with work on the computerization of the TIR regime and on the revision of the TIR Carnet to be undertaken under Phase III of the TIR revision process.”

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INCLUSION OF ADDITIONAL INFORMATION INTO THE TIR CARNET

Reference: TRANS/WP.30/184, para. 40.

“40. The Working Party was also of the view that an analysis had to be made on the inclusion of additional information into the TIR Carnet. Such work could be carried out already during Phase II of the TIR revision process on the basis of a document to be prepared by the Russian Federation.”
