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Working Party on Customs Questions Affecting Transport

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Item 8 (b) (iii) of the provisional agenda

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

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the European Community

BACKGROUND

1. At its one-hundred-and-fifteenth session, the Working Party on Customs Questions affecting Transport (WP.30) was informed by the representative of the European Commission that the European Community, for the time being, was not in a position to discuss document ECE/TRANS/WP.30/2007/5, which it had transmitted, as Community consultations were still going on. The European Community would submit new proposals for the forthcoming session of the Working Party. The European Commission representative speaking on behalf of the European Community also informed that the Community intended to forward proposals concerning the possibility to make electronic declarations and to transmit the data between Customs administrations in the framework of the Convention with a view to preparing for the computerization of the TIR system (ECE/TRANS/WP.30/230/paragraph 37).

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2. The annex to this document contains the Community proposal to amend the TIR Convention. It is pointed out that this draft incorporates, as much as possible, several requests made by the transport sector and that its implementation will allow TIR operations to be carried out and monitored in a faster and more secure manner, in line with the Community's objective to facilitate trade.

3. The proposed amendments aim to:

- clarify that Contracting Parties may ask for TIR Carnet Customs declarations to be lodged by means of a data processing technique even though the Community is of the view that the current text of the TIR Convention does not prevent Contracting Parties from providing for the use of electronic TIR declarations;
- align terminology;
- introduce a new order in Articles 8 and 11 to improve the logical sequence of the obligations of all parties involved or the time limits that have to be met;
- clarify the notification requirements in cases where a TIR operation has not been discharged;
- clarify the group of persons directly liable for the payment of the sums due under Article 8 of the Convention;
- clearly specify that not only in court cases but also in situations where administrative or legal appeal proceedings are involved the claim for payment shall be made to the guaranteeing association only after the date on which this decision of the competent authorities becomes enforceable;
- introduce a new Part III in Annex 9 explaining the conditions, requirements and functions of an international organization as referred to in proposed Article 1 (r) of the Convention.

4. To facilitate the understanding, the proposed amendments are presented in track changes as compared to the proposals by the European Community, contained in document ECE/TRANS/WP.30/2007/5.

AnnexExplanatory Note to Article 1 (o)

0.1 (o) A contracting Party may provide that TIR Carnet Customs declarations are lodged by means of a data processing techniques.

Article 8

1. 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 an irregularity has been established in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for the payment of such sums.

7. *Deleted¹*

Article 10

2. When the Customs authorities of a Contracting Party have discharged a TIR operation they can no longer claim from the guaranteeing association payment of the sums mentioned in Article 8, paragraphs 1 and 2, unless the discharge of the TIR operation was obtained in an improper or fraudulent manner.

Explanatory Note to Article 10

0.10. The discharge of the TIR operation shall be regarded as having been obtained in an improper or fraudulent manner when the TIR operation has been carried out by means of load compartments or containers adapted for fraudulent purposes, or when such malpractice as the use of false or inaccurate documents, the substitution of goods, tampering with Customs seals, etc., have been discovered, or when the discharge has been obtained by other illicit means.

Article 11

1. Where a TIR operation has not been discharged the competent authorities shall **as soon as possible:**

(a) **notify the TIR Carnet holder at his address indicated in the TIR Carnet** of the TIR Carnet in writing of the non-discharge and,

¹ Paragraph moved to Article 11 paragraph 2

(b) notify the guaranteeing association of the non-discharge. The notification of the guaranteeing association shall be made within a period of one year from the date of acceptance of the TIR Carnet or two years when the discharge of the TIR operation was obtained in an improper or fraudulent manner ~~the period of notification shall be two years.~~

Explanatory Notes to Article 11, paragraph 1

0.11-1 The method of notification is left to the competent authorities concerned. The notifications to the TIR Carnet holder and the guaranteeing association should be sent at the same time.

Comment to Article 11, paragraph 1

Notification to the national guaranteeing association *Time limit for notifications*

As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets the date of receipt but not the date of dispatch is the decisive one. However, the method of proof of notification is left to the competent authorities concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable any more.

Notification to the TIR Carnet holder

The requirement of notification to the TIR Carnet holder could be fulfilled by transmission of a registered letter or other means of notification.

2. Where the payment of the sums mentioned in Article 8, paragraphs 1 and 2 becomes due, the competent authorities shall, so far as possible, require payment from the person or persons ~~directly~~ liable for the payment of the sums before making a claim against the guaranteeing association.

Explanatory Note to Article 11, paragraph 2

0.11-2 The efforts to be made by the competent authorities to require payment from the person or persons directly liable shall include, at least, the notification ~~transmission~~ of the claim for payment to the TIR Carnet holder or the person(s) ~~directly~~ liable, if different.

Comment to Article 11 paragraph 2 ~~Explanatory Note 0.11-2~~

Identification of the person or persons ~~directly~~ liable

It should be assumed In the majority of cases it should be envisaged that the person ~~directly~~ liable for the payment of the sums due is ~~shall be~~ the TIR Carnet holder. However, ~~and~~ ~~without prejudice to~~ where provided for in national legislation, other parties may also be identified as being ~~directly~~ liable; these parties could include the person(s) who unlawfully

removed the goods from the sealed compartment of the road vehicle, who knowingly acquired or held the removed goods, or who participated in the removal.

3. Having complied with the requirements of paragraphs 1 ~~(a) and (b)~~ and 2, the competent authorities shall have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2 from the guaranteeing association.

4. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was notified that the operation had not been discharged or that the discharge certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of administrative or legal appeal proceedings, any claim for payment shall be made within one year of the date on which the decision of the competent authorities or courts becomes enforceable.

Explanatory Notes to Article 11, paragraph 4

0.11-4-1 In deciding whether or not to release the goods or vehicle, competent authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the person or persons liable holder of the Carnet.

0.11-4-2 The competent authorities can notify the guaranteeing association that administrative or legal appeal proceedings were initiated and, in any event, will make this notification for any proceedings that may be completed after the two year time limit.

Comment to Article 11, paragraph 4

Claim for payment of duties and taxes

Before notifying ~~making~~ a claim against the guaranteeing association the competent authorities might have the opportunity to make full use of the time scales offered ~~under~~ in paragraph 4 of this Article in order to identify the person or persons ~~directly~~ liable as referred to in the Comment to Article 11, paragraph 2.

The claim for payment should be supported by copies of the relevant documentation required to demonstrate the justification and validity of the claim. In cases where part of the goods has been subject to an irregularity, the competent authorities should apportion the claim for payment of the evaded duties and taxes referred to in Article 8, paragraphs 1 and 2 accordingly.

Without prejudice to any national provisions concerning the right of appeal, should the guaranteeing association obtain alternative proof of the termination of the TIR operation it should refer that proof to the competent authorities who notified the non-discharge of the TIR operation.

5. The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amount claimed within the period of three months from the date of its notification, or to contest the claim in accordance with the laws of the Contracting Party concerned.

Explanatory Note to Article 11, paragraph 5

0.11-5 If a guaranteeing association is asked, in accordance with the procedure set out in this Article, to pay the sums referred to in Article 8, paragraphs 1 **and 2**, and fails to do so within the time limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law. The three month time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6-2 **paragraph 2** over its position concerning the claim.

6. The sums paid shall be reimbursed to the guaranteeing association if, within a two year period following the date on which the claim for payment was made notified to it, it has been established to the satisfaction of the competent authorities that no irregularity was committed in connection with the TIR operation in question. The two year time limit may be extended in accordance with national legislation.

Explanatory Note to Article 11, paragraph 6

~~0.11-6 The two year limit prescribed in Article 11, paragraph 6 may be extended in accordance with national legislation or administrative practice.~~

Annex 9**Part III****AUTHORIZATION OF AN INTERNATIONAL ORGANIZATION, AS REFERRED TO
IN ARTICLE 1 (r) FOR THE ORGANIZATION AND FUNCTIONING OF AN
INTERNATIONAL GUARANTEE SYSTEM AND TO PRINT AND DISTRIBUTE TIR
CARNETS****Conditions and requirements**

1. The conditions and requirements to be complied with by the international organization authorized by the Administrative Committee to take on the responsibility for the organization and functioning of the international guarantee system and to centrally print and distribute TIR Carnets are:

- (a) Proven existence as an established organization representing the interests of the transport sector.
- (b) Proof of the sound financial standing of the international guarantee system.
- (c) Proven knowledge of its staff in the proper application of the TIR Convention.
- (d) Absence of serious or repeated offences against Customs or tax legislation.
- (e) Establishment of a written agreement [or any other legal instrument] between the organization and the Administrative Committee.

2. In order to be authorized by the Administrative Committee the international organization, in accordance with Article 6.2bis, accepts by signing the agreement referred to in paragraph 1 (e), to perform the following functions:

- (a) To provide the Contracting Parties of the TIR Convention via the national associations affiliated to the international organization with certified copies of the global guarantee contract and proof of guarantee coverage;
- (b) To provide the competent bodies of the TIR Convention with information on the rules and procedures set out for the issue of TIR Carnets by national associations;
- (c) To provide the competent bodies of the TIR Convention, on a yearly basis, with global data of claims lodged, paid and pending;

- (d) To provide the competent bodies of the TIR Convention with timely and well founded information on trends in the number of non-terminated TIR operations, claims lodged or pending that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its guarantee system;
- (e) To provide the competent bodies of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party;
- (f) To provide, at the request of the TIRExB, full and complete information on the functioning of the TIR system, provided such request does not infringe legislation concerning confidentiality, data protection, etc.; in case such information cannot be given, the international organization will specify the legal provisions or other reasons prohibiting the exchange of information;
- (g) To provide the TIRExB with details of the issuing price by the international organization of each type of TIR Carnet;
- (h) To take all reasonable steps to reduce the risk of counterfeiting TIR Carnets;
- (j) To take the appropriate corrective action in cases where faults or deficiencies with ~~the international Customs document,~~² the TIR Carnet, have been detected;
- (k) To fully participate in cases where the TIRExB is called upon to facilitate the settlement of disputes;
- (l) To ensure that any problem involving fraudulent activities or other difficulties, with regard to the application of the TIR Convention, is immediately brought to the attention of the TIRExB;
- (m) ~~[On the basis of the Recommendation adopted by the Administrative Committee on 20 October 1995]~~ [In accordance with Annex 10] ~~on [the introduction of]~~ a control system for TIR Carnets, to manage such a control system with national guaranteeing associations affiliated to the international organization and the Customs authorities and to inform the Contracting Parties and the competent body or bodies of the TIR Convention of significant problems encountered in the system;
- (n) To provide the competent bodies of the TIR Convention with statistics and data on the performances of Contracting Parties with regard to the control system;

² The secretariat proposes to delete this wording, in line with the decision by the AC.2 at its thirty-eighth session to delete these words from the current text of the UNECE/IRU agreement (ECE/TRANS/WP.30/AC.2/77, para. 39).

- (o) To seek continuously to enhance the control system in order to improve its efficiency as a risk management and anti-fraud tool;
- (p) To be available for meetings with the TIRExB, the TIR Secretary, the TIR secretariat and other key organizations, active in the field of TIR;
- (q) To offer its good offices and experiences to support the training of interested parties, e.g. national associations.

3. When a guaranteeing association is asked, in accordance with the procedures set out in Article 11, to pay the sums referred to in Article 8 paragraph 1 it shall, in accordance with the written agreements referred to in Explanatory Note 06.2**bis** of Annex 6, inform the international organization of the reception of the claim. The international organization shall, within a time period [of three months as prescribed in Article 11 paragraph 5, for the payment of the claim by the guaranteeing association] ~~[to be agreed between it and the guaranteeing association]~~ inform the guaranteeing association of its position concerning the claim

4. The Administrative Committee shall revoke the authorization in case of serious or repeated non compliance with these conditions and requirements. Should the Administrative Committee decide to revoke the authorization the decision will become effective at the earliest six (6) months after the date of revocation.

5. The authorization of an international organization under the terms set out above shall be without prejudice to that organization's responsibilities and liabilities under the Convention.
