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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

Amendment proposal to Article 1 (q) of the Convention

Note by the secretariat

I. Background and mandate

1. At its previous session, the Working Party considered document ECE/TRANS/WP.30/2014/17, transmitted by the Government of the Russian Federation and containing various proposals to amend the TIR Convention, in combination with document ECE/TRANS/WP.30/2015/1 and Add.1, consolidating comments by various Contracting Parties on the proposals made by the Russian Federation in documents ECE/TRANS/WP.30/2014/17 and ECE/TRANS/WP.30/2014/14. The Working Party decided to consider each amendment proposal, as contained in the above-mentioned documents, individually.

2. The Working Party, in its consideration of the proposal to amend Article 1 (q), lines 1–2, took note of the clarifications provided by the Russian Federation, namely that due to peculiarities relating to mandates and structure at the governmental level, it is possible that the authority, competent to authorize a guaranteeing association, may not always necessarily be the customs administration. Furthermore the delegation of the Russian Federation highlighted that the purpose of its proposal was to align the language with that of Article 6. Thus, the Russian Federation proposed to broaden the scope of the provision to provide the flexibility deemed necessary, given the different administrative arrangements that exist in various Contracting Parties. Several delegations expressed their concerns as to the possible legislative complications this amendment could have at the national level. Some delegations proposed that the term “customs authorities” remains unchanged and that it should be supplemented by an additional phrase such as “or other competent authorities”.

3. The Working Party decided, after thorough discussion, to revert to this issue at its current session and requested the secretariat to prepare a draft proposal with background information on other provisions of the Convention that also may be affected or that may need to be amended (see ECE/TRANS/WP.30/278, para. 10). In line with this request, the secretariat has prepared the present document ECE/TRANS/WP.30/2015/8.

II. Article 1 (q)

A. Current text and implementation

4. Article 1 (q) of the TIR Convention currently defines the term “guaranteeing association” as an association authorized by the Customs authorities [of a Contracting Party] to act as guarantor [...]. This definition is to be read in conjunction with other relevant provisions of the Convention where the conditions and particulars of the TIR procedure are laid down. Such provisions are, for example, Article 3 (b) and Article 6.

5. As a starting point, there is a distinction between the cases where customs have been granted the delegated authority to select and authorize a guaranteeing association, and the cases where the authorization is a separate act by a prime minister, responsible minister, presidential decree or act of parliament. In the first case, the guarantee agreement, concluded in accordance with Annex 9, Part I, paragraph 1 (d) of the TIR Convention, includes in its preamble that the customs authorities also provide the authorization. In the latter case, the guarantee agreement only frames the relations between customs and the association, while the authorization is given and can be revoked by a different branch of government or State authority. This conclusion is drawn by the careful consideration of the various guarantee agreements deposited to the TIRExB and kept at the TIR secretariat.

6. This practice has evolved, for those Contracting Parties whose internal administrative structures warrant it, under the current wording of Article 1 (q) and other related provisions, without any apparent complications. On the other hand, it should also be reasonably assumed that, even where the authorization is a separate act, customs authorities are in some way a priori involved in the choice of association, via internal consultations between the competent authorities.

B. Historical evolution of the text of Article 1 (q)

7. It is worth noting that the substantive content of Article 1 (q) has existed in the Convention since 1978. In 1978, the provision was numbered Article 1(l) and referred to the approval of the association by the customs authorities of a Contracting Party. The provision remained unchanged until 2012, although it was re-numbered in 2002 with the introduction of additional definitions in Article 1.

8. With amendment No.30, which entered into force on 13 September 2012, the term “approval” was replaced with “authorization”¹, while no other change was effected on the provision. However, it is notable that both the Working Party and the TIR Administrative Committee had discussed and indeed considered the replacement of the term “Customs authorities” with either “competent authorities” or “Contracting Parties” not only in Article

¹ The use of the terms “approval” and “authorization” is discussed in document ECE/TRANS/WP.30/2015/9.

1 (q), but throughout the Convention for reasons of linguistic consistency, between 2008 and 2010.²

9. More specifically, the TIR Administrative Committee decided, at its fiftieth session on 30 September 2010 that:

“For reasons of consistency and clarity, the term “Customs authorities” needs to be replaced by either “competent authorities” or “Contracting Parties”, the term “surety” by “guarantee” and the term “country” by “Contracting Party”.
(ECE/TRANS/WP.30/AC2/2010/3/Rev.1, Annex I, para. (1))

10. Interestingly, the package of amendments that was adopted and transmitted to the depositary did not reflect this decision, namely, in ECE/TRANS/17/Amend.30 it is only mentioned:

Article 1 (q), line 1

For approved read authorized

11. Thorough examination of the preceding discussions as reflected in the various reports does not indicate a reason for this change in direction. It is possible that it was either accidentally left out, or that there was a last minute decision to exclude the amendment which was then not reflected in the report. Either way, the Working Party is now invited to re-consider this amendment proposal, in light of the proposal by the Russian Federation.

III. Amendment proposal by the Russian Federation

12. The Russian Federation has proposed the deletion of the phrase “Customs authorities”, thereby leaving the definition to read:

“The term ‘guaranteeing association’ shall mean an association authorized by a Contracting Party to act as guarantor for persons using the TIR procedure.”

13. The reference to a “Contracting Party” would implicitly allow any competent authority of a State to grant such authorization, may it be a customs administration, ministry, presidential decree or any other branch of government, as determined by the national laws of the Contracting Party concerned.

14. Such an amendment would not in any way affect the responsibility under Annex 9, Part I, paragraph 1 (d) for a written agreement to be concluded between the authorized association and the customs authorities. Furthermore, the conclusion of this agreement rests entirely with the parties to it. Regardless of the source of the act of the authorization, the agreement aims to frame the relationship between the association and the customs authorities alone and the association cannot carry out its functions without a valid guarantee agreement in place.

15. The proposal by the Russian Federation appears to be consistent with the ordinary understanding of Article 6, paragraph 1 whereby the more generic phrase “Contracting Party” is used: “Each Contracting Party shall authorize [...]” and seems to be understood as referring to the competent authority as determined by national law. It is also in line with previous discussions of the TIR Contracting Parties, both in the Working Party and in the

² See documents: ECE/TRANS/WP.30/2008/1, ECE/TRANS/WP.30/236 (2008), ECE/TRANS/WP.30/AC.2/101 (2009), ECE/TRANS/WP.30/AC.2/2010/Rev.1, ECE/TRANS/WP.30/AC.2/105 (2010)

Administrative Committee, on the necessity to consistently use the term “Contracting Party” or “competent authorities”.

16. From the above, it may be contended that, as far as the TIR Convention is concerned, it does not appear that any provisions would be affected by the amendment. It is beyond the scope of the secretariat’s expertise to assess any implications that the amendment may have within the national legal systems of individual Contracting Parties.

IV. Proposal by the secretariat

17. Having taken stock of the concerns raised by various delegations on the potential complications they may face at the national level should the phrase “customs authorities” be deleted from Article 1 (q), the secretariat has prepared an alternative amendment proposal, aiming to compromise the needs of all Contracting Parties³:

Article 1 (q)

The term “guaranteeing association” shall mean an association authorized by the ~~Customs authorities~~ **competent authorities as determined by applicable national law** of a Contracting Party, to act as guarantor for persons using the TIR procedure.

18. In the view of the secretariat, such an addition to the current wording would, on the one hand, make the sentence lengthier and, perhaps, more complex, but on the other hand, it would also offer sufficient scope to clearly and unequivocally recognize the duality that may exist within some national jurisdictions, as described in paragraph 5 of the present document.

V. Considerations by the Working Party

19. The Working Party is invited to consider the amendment proposal by the Russian Federation in light of the background information provided in the present document, together with the alternative proposal by the secretariat and to assess which of the two options would be preferable.

³ Additions are marked in bold, deletions are marked with strikethrough.