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Working Party on Customs Questions affecting Transport

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agenda item 7 (b) (iii))

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

Revision of the Convention

Amendment proposals for the Convention: Article 4

Note by the secretariat

A. BACKGROUND

1. In document TRANS/WP.30/2004/14, the European Community raised the issue of the use of Article 4 of the TIR Convention. According to the Community “clarification is needed to establish that the key issue is the duty and tax paid status of the goods at the time they enter the territory of the Contracting Party. As currently drafted, the Article is misleading in that it states that the restriction on the payment or deposit of import (or export) duties and taxes shall only apply to payments made at Customs offices en route. The European Community believes that this narrow application is not intended and proposes to amend the article to make it clear that the goods shall not be subjected to the payment or deposit of duties and taxes regardless of where these payments are made.” Therefore, the Community proposed to delete the words “at Customs offices en route” from the text of Article 4.

2. In its document TRANS/WP.30/2004/25, containing a preliminary evaluation of various amendment proposals to the TIR Convention, the secretariat provided observations with regard to the application of Article 4. The secretariat pointed out that the provision, although in a slightly different wording, could already be found in the TIR Convention, 1959. Thus, the provision seemed to have importance both at the time of drafting the original TIR Convention as well as at the time of its revision in 1975. In addition, because of the fact that in the TIR Convention the facilitation of transport largely evolves around the simplification and harmonization of administrative procedures at frontiers, it seems logical that Article 4 aims at Customs offices en route only.

3. On the other hand, as the secretariat pointed out, Article 4, when read literally, does not prohibit the payment or deposit of duties and taxes, provided that this takes place at the Customs office of departure, destination or at any other Customs office not being a Customs office en route. A request to do so would be contrary to the principles of the TIR Convention and, thus, should not be allowed. In other words: as long as the goods are carried under the TIR procedure, they should not be subjected to the payment or deposit of import or export duties and taxes at any Customs office.

4. As a final point, the secretariat commented on the use of the wording ‘deposit’ in the current text of Article 4. In view of the fact that, apart from a deposit, other forms of security exist (bank guarantee, surety, etc), which equally should fall under the prohibition of Article 4, the secretariat, proposed to replace the word ‘deposit’ by ‘security’.

5. For these reasons, the secretariat supported the proposal by the European Commission to delete the words “Customs offices en route” from the text of Article 4, while at same time proposing the introduction of a new Explanatory Note to Article 4, stipulating that the provisions of Article 4 are applicable as long as the goods are carried under the TIR procedure. Before or after the TIR transport, the same goods may be subjected to the payment or security of duties and taxes, if appropriate (see document TRANS/WP.30/2004/25, paras. 3-7).

6. At its one-hundred-and-ninth session, the Working Party requested the secretariat to prepare a document for its next session clarifying the issue (TRANS/WP.30/218, para. 52). To that end, this document contains some further considerations by the secretariat.

B. FURTHER CONSIDERATIONS BY THE SECRETARIAT

7. Going back to 1975, the secretariat has come across only two other instances where the Working Party (or Group of Experts) has discussed Article 4 of the TIR Convention. The first time was in 1975, when the text of the article was discussed. At that time, the Czechoslovakian delegation proposed to insert the word “Customs” before the words “import and export duties and taxes”. The Group of Experts pointed out that not only Customs but also other import and export taxes were concerned. It was, therefore, agreed not to restrict the provisions of this article and leave the text unchanged (TRANS/GE.30/2, para. 9).

8. Extensive discussion took place in 1994 when the Working Party discussed a document on the application of Article 4, prepared by the secretariat (TRANS/WP.30/R.116). Based on the experience by some transport operators, the Working Party noted that in some transit countries (and at a few Customs offices in transit) additional guarantees or duties and taxes were requested for merchandise transported under the TIR regime.

9. At that time, the Working Party reiterated once more that goods carried under the TIR regime should not be subject to the payment or deposit of an additional guarantee, even if the duties and taxes at risk exceeded the amount of US\$ 50,000 for normal consignments as recommended in the Convention or US\$ 200,000 for tobacco and alcohol.

10. In such cases, i.e. if the duties and taxes at risk exceeded the amount of these guarantees, Customs authorities could, in exceptional cases and in conformity with Article 23 of the Convention, require road vehicles to be escorted at the carrier’s expense on the territory of their country. Furthermore, reduced time limits and precise itineraries for transit could also be prescribed.

11. In this context, the Working Party stressed that, in accordance with the provisions of Article 17 of the Convention, it was not allowed to require more than one single TIR Carnet in respect of each road vehicle or container, even if the sum of duties and taxes at risk exceeded the above-mentioned guarantees (TRANS/WP.30/155, paras. 20-24).

C. CONCLUSION

12. From the historical analysis, it has become clear that, so far, the provision of Article 4 of the Convention has not led to much debate. Over the years, the only issue discussed within the context of this Article, was the imposition of additional guarantees by Customs offices en route.

13. Bearing this in mind, the Working Party may wish to consider the proposal to amend the text of Article 4 by deleting the words “Customs offices en route” while at the same time introducing a new Explanatory Note, stipulating that the provisions of Article 4 are applicable as long as the goods are carried under the TIR procedure.

D. PROPOSAL

Modify Article 4 to read as follows:

“Goods carried under the TIR procedure shall not be subjected to the payment or security of import or export duties and taxes.”

Insert a new Explanatory Note to read as follows:

“0.4. Article 4 applies as long as the goods are carried under the TIR procedure. Before or after the TIR transport, the goods may be subjected to the payment or security of duties and taxes, if appropriate.”
