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Working Party on Customs Questions affecting Transport

(One-hundred-and-tenth session, 14 – 17 June 2005,
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 Article 11 of the Convention

Transmitted by the Government of the Russian Federation

1. At the February 2005 session of the WP. 30, the Russian delegation was invited, in co-operation with the secretariat, to improve the text of its proposals on Article 11 of the TIR Convention, as contained in document TRANS/WP.30/2003/11.
2. Having further analyzed our initial proposals concerning the introduction of a new paragraph 2bis in Article 11, elaborated in 2003, and also taking into account the remarks by other delegations during the WP.30 discussions, the Russian delegation is of the view that it would be more logical not to amend paragraph 2, but paragraph 3 of that Article, because indeed paragraph 3 deals with the payment of a claim due to an infringement of the TIR procedure. In addition, it is proposed to amend Article 11 with a new paragraph 4.

* The present document has been submitted after the official documentation deadline by the Transport Division due to resource constraints.

3. The Russian delegation also feels that the time limits set out in Article 11 should further be specified. Without changing the three month deadline foreseen by the current wording of Article 11, paragraph 3, it seems necessary to set up a deadline for the guarantee chain to consider the claim for payment. The association needs this time in order to co-ordinate its position on the claim with the international organization, because the association is not in a position to effect payment without the participation of the international organization. Of course, this time limit should be sufficient to allow the international organization and other participants of the guarantee chain to analyze the claim, but, at the same time, it should not exceed a three month period foreseen by the Article 11, paragraph 3 of the TIR Convention.

4. Our new proposals also specify that, in case of any dispute concerning the payment of the claim, only the guaranteeing association can be a party in the competent national court vis-à-vis the national competent authorities.

5. The right of the guaranteeing association to oppose the claim should also be included in Article 11, paragraph 3, but this opposition should be based on proper arguments, i.e. be motivated. This provision should also be reflected in Explanatory Note 0.11-3.

6. In view of the above, the Russian delegation proposes to replace its original proposal, as contained in document TRANS/WP.30/2003/11, with the following draft amendments:

(i) Modify paragraph 3 to read as follows:

"3. The guaranteeing association without delay informs the international organization referred to in Article 6, paragraph 2bis of the reception of a claim for payment. The international organization shall have a period of one month to inform the guaranteeing association of its position concerning the claim for payment. The guaranteeing association shall have a period of three months, from the date when the claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. If the competent authorities consider the reasons of the opposition as ungrounded, they have the right to start legal proceedings against the guaranteeing association according to the national legislation."

(ii) Move the second sentence of the current paragraph 3 of Article 11 into a new paragraph 4 to read as follows:

"4. The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question."

(iii) Modify Explanatory Note to Article 11, paragraph 3 to read as follows:

"0.11-3 If a guaranteeing association, in accordance with the procedure set out in Article 11, is asked to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the period of three months prescribed by the Convention and the competent authorities do not receive a motivated opposition to the claim for payment, 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 the national law."

7. The above proposals are intended to take into account the interests of all Contracting Parties to the Convention. The Russian delegation is looking forward to views by other WP.30 delegations.
