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

Application of the Convention

Procedures to be applied in case of suspension of a TIR operation

Transmitted by the European Community

Note: In accordance with the request made by the Working Party at its ninety-seventh session, the secretariat reproduces below proposals transmitted by the European Community (TRANS/WP.30/192, para. 53).

1. Document TRANS/WP.30/2000/7 sets out the views of the Hungarian Customs Service on the procedure to be applied in cases where a TIR operation starts or passes through The federal Republic of Yugoslavia. The document was discussed by WP.30 at its ninety-fourth session. The European Community advised that it had also been considering this and other situations concerning TIR operations that involve The federal Republic of Yugoslavia. It agreed to submit a document setting out its views on the subject (TRANS/WP.30/188, para. 58).

A. STATUS OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

2. Yugoslavia is a Contracting Party to the TIR Convention, but a TIR operation cannot be established on its territory (refer to TRANS/WP.30/AC.2/59, annex 1). All references in the following comments apply equally to other Contracting Parties on whose territory a TIR operation cannot be established.

I. TIR operation starting in Yugoslavia

3. A TIR operation cannot be established in Yugoslavia. It follows that a Carnet that is opened in Yugoslavia is not valid even if it has been presented to a Yugoslav office of departure and accepted by the Yugoslav Customs authorities. When such a Carnet is subsequently presented to a Customs office en route in a succeeding Contracting Party, it remains invalid and cannot be accepted by the Customs authorities. If the goods are to continue under the TIR procedure, a new TIR Carnet must be opened.

II. TIR operation ending in Yugoslavia

4. Because a TIR Carnet cannot be established in Yugoslav, a TIR Carnet may not show a Customs office in Yugoslav as the office of destination. If such a Carnet is presented to the Customs authorities at a Customs office of departure or office en route in another Contracting Party, the Carnet should not be accepted unless and until the Carnet holder or his representative amends it to show a valid office of destination.

III. TIR operation passing through Yugoslavia

5. A situation may arise where a TIR Carnet is correctly opened in a Contracting Party and, subsequently, the consignment passes through Yugoslavia and into a succeeding Contracting Party where a TIR operation can be established. Because a Carnet cannot be established in Yugoslavia, the TIR operation is suspended while the consignment is passing through Yugoslavia. The question then arises as to the procedure to be followed when the goods and Carnet are presented to the Customs authorities at the office of entry in the succeeding Contracting Party.

6. Article 26 of the Convention applies to cases where a TIR consignment passes through a territory where the TIR operation is suspended in a number of specific situations. But it does not cover the Yugoslav situation. Nevertheless, the situations mentioned in Article 26 are very close to it: a Contracting Party in which a TIR operation cannot be established is not very different from a State which is not a Contracting Party. It can therefore be argued that in the absence of an Article that directly covers the Yugoslav situation, Article 26 should be used to provide guidance on the procedure to be followed. In that case, the Customs authorities of the succeeding Contracting Party on whose territory the journey continues should accept the TIR Carnet for the resumption of the TIR operation provided that the Customs seals and/or identifying marks have remained intact. It follows that if the original Customs seals have not remained intact, the Customs authorities should not accept the TIR Carnet and a new one must be opened. This is the position adopted by Hungary in relation to TIR consignments arriving from Yugoslavia and it seems to be soundly based if Article 26 is taken into account.

7. To clarify the position, it is proposed that Article 26 should be amended so that it specifically applies to transport under cover of a TIR Carnet through a Contracting Party in which a Carnet cannot be established, subject to the following comments.

B. A NEW APPROACH

8. It does not seem reasonable to refuse to accept a Carnet in the succeeding Contracting Party because the Customs seals are not intact. Where seals are broken en route, Article 25 provides that the procedure laid down in Annex I shall be followed and the certified report in the TIR Carnet completed. The report clearly permits new seals to be affixed and the consignment to continue under the same Carnet although this is not mandatory and will depend on the circumstances. A similar approach should be taken where the Customs seals have been broken while the TIR operation has been suspended and it is proposed that Article 26 should be amended accordingly. The IRU has confirmed that the guarantee in the succeeding Contracting Party would remain valid.

I. Proposed amendments to the Convention

9. Modify the first sentence of Article 26 paragraph 1 to read as follows:

“When transport under cover of a TIR Carnet takes place in part of the territory of a Contracting Party in which a TIR operation cannot be established or the territory of a State which is not a Contracting Party to this Convention, the TIR operation shall be suspended during that part of the journey.”

10. Add a new sentence at the end of Article 26 paragraph 1 to read as follows:

“Where the Customs seals have not remained intact, the Customs authorities may accept the TIR Carnet for resumption of the TIR operation under the provisions of Article 25.”

II. Interim proposal

11. It will be a long time before the above amendments to the Convention could be adopted and come into force. It is understood, however, that there is an urgent need to apply the new procedure to TIR consignments passing through Yugoslavia. It is therefore proposed that the new procedure be allowed in such cases by a comment to Article 26 as follows. The Comment could not cover the other situations currently included in Article 26, as it would then be in conflict with Article 26.

Comment to Article 26

“Suspension of a TIR operation

Article 26 should be regarded as also applying to transport under cover of a TIR Carnet that takes place in part of the territory of a Contracting Party in which a TIR operation cannot be established, except that in cases where the Customs seals have not remained intact, the Customs authorities of the Contracting Party on whose territory the journey continues may accept the TIR Carnet for the resumption of the TIR operation under the provisions of Article 25.”

12. The proposed amendments to the Convention are necessary if the Convention is to provide clear rules about TIR consignments passing through Contracting Parties in which a Carnet cannot be established, and if Carnets are to be accepted in succeeding Contracting Parties in the cases currently barred by Article 26. However, the proposed comment will satisfy the need for an urgent change in the procedure for TIR consignments passing through Yugoslavia and it may be considered that the amendments to Article 26 could safely be deferred, at least until the other more important amendments arising from revision of the Convention have been dealt with.
