



TIR EXECUTIVE BOARD (TIRExB)

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ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

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TIR Executive Board (TIRExB)

Fifty-first session

Geneva, 8 October 2012

Agenda item 4

Monitoring the functioning of the guarantee system

Note by the secretariat

A. Background and mandate

1. At its previous session, the Board conducted, inter alia, a first round of discussions on the issue of conformity of the use of additional guarantees with the provision of Article 4 of the TIR Convention. Some TIRExB members were of the view that the provision of Article 4 was clear in stipulating that “goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes at Customs offices en route”. In their view, the scope of Article 4 was not only to avoid any payment or deposit of import or export duties and taxes but also to exclude the requirement of any guarantee in addition to the guarantee provided by the TIR Carnet. Other Board members argued that, due to the absence in Article 4 of a specific reference to additional guarantees, a different legal interpretation could be maintained. At the same time, the Board noted that in individual cases the costs of an additional guarantee could be lower than the costs of, for example, an obligatory escort. The Board also noted the possible correlation between the reduction, over time, of the real value of the recommended guarantee amount and the requirement of additional guarantees and escorts.

2. The Board decided to pursue its discussions at the next session and requested the secretariat to prepare a document on the application of Article 4 of the Convention, for consideration at its next session (See TIRExB/REP/50draft with comments, paras. 13–15).

3. Further to the above request, the secretariat prepared Informal document No. 22 (2012) containing references to previous discussions on the issue, for consideration by the Board.

B. Historical overview of Article 4 of the TIR Convention

4. Article 4 (Goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes at Customs offices en route) has a long history, as the exact same wording is already present in Article 4 (a) of the 1959 TIR Convention. However, at various instances, the text of Article has been the subject of extensive discussions.

5. The first time was in 1975, when establishing the final text of the TIR Convention, 1975. 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 (predecessor of WP.30) 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, paragraph 9).

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

7. 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 exceeded the amount of US\$ 50,000 for normal consignments as recommended in the Convention or US\$ 200,000 for tobacco and alcohol.

8. 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.

9. 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).

10. The third round of discussions started in 2004, when the European Community pointed out that clarification was needed to establish the principle that the key issue in Customs transit is the duty and tax paid status of the goods at the time they enter the territory of the Contracting Party. According to the Community, Article 4 was misleading in that it stated that the restriction on the payment or deposit of import (or export) duties and taxes shall only apply to payments made at the Customs offices en route. The European Community believed that this narrow application was not intended and proposed to delete the text “at Customs offices en route” 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 (TRANS/WP.30/2004/14, Annex).

11. This idea was preliminary analyzed by the secretariat in document TRANS/WP.30/2004/25, which pointed out that Article 4, when applied 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. The secretariat also 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’. 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 the 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.

12. Both proposals by the European Community and the secretariat were considered by the Ad hoc Expert Group on Phase III of the TIR revision (Geneva, 30 and 31 August 2004) which felt that it was desirable to refine the text of the Article with a view to avoiding any misunderstanding of its purpose. In this context, it was agreed that the aim of the Article should be that while goods are under the TIR procedure, the payment or deposit of (a) import or export duties and taxes or (b) financial securities should be suspended.

13. At its one-hundred-and-eleventh session, the Working Party considered document TRANS/WP.30/2005/29, transmitted by the European Community, containing a revised proposal for amending Article 4 of the Convention. After due consideration of the issue, the following text was proposed with a view to further clarifying the meaning of the article: "As long as goods are carried under the TIR procedure the payment or security of import or export duties and taxes other than that mentioned in Article 3 (b) shall be suspended". One delegation requested more time to consider the proposal and therefore the Working Party decided to revert to considering the proposed text at its session in February 2006 with a view to possibly adopting it (TRANS/WP.30/222, para. 41).

14. In February 2006, at the one-hundred-and-twelfth session of the Working Party, the delegation of the Russian Federation was of the view that, in contrast to the current wording of Article 4, the proposed draft text was acceptable neither in substance, nor linguistically. The Working Party decided to consider the following text at its next session as a part of the entire package of amendments: "As long as goods are carried under the TIR procedure the payment of import and export duties and taxes shall be suspended and security other than that mentioned in Article 3 (b) shall not be required" (ECE/TRANS/WP.30/224, para. 41).

15. After various postponements, the Working Party at its one-hundred-and-eighteenth session (February 2008), decided not to amend Article 4, but at the same time requested the secretariat to prepare a draft comment which should clarify that Customs should not require any payment or deposit of import or export duties and taxes as long as the goods were en route (See document ECE/TRANS/WP.30/2008/14/Rev.1, paras 1-8).

16. At its one-hundred-and-twentieth session (October 2008), the Working Party approved the final wording of the comment, to read as follows:

"Relief from the payment or additional security of import or export duties and taxes

The basic principle of Customs transit is relief from the payment of import or export duties and taxes for goods in transit, provided that any security required has been furnished. As the goods carried under the TIR procedure are at any moment covered by the guarantee, as referred to in Article 3 (b), in the course of a TIR transport neither payment of import or export duties and taxes nor security in any other form shall be required in any Contracting Party involved in the TIR transport (ECE/TRANS/WP.30/240, paragraph 28)."

C. REVISED KYOTO CONVENTION

17. Standard 3 of Specific Annex E to the Revised Kyoto Convention stipulates that "goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that

any security required has been furnished". Article 4 of the TIR Convention seems to fully correspond to this provision.

18. Further explanation on the application of the above Standard is provided by the Guidelines to the Kyoto Convention:

"The basic principle of Customs transit is relief from import and export duties and taxes for goods in Customs transit passing through a Customs territory.

However, this provision does not prevent:

- The collection of export duties and taxes in the country of exportation when such duties and taxes remain due whether the goods are exported under Customs transit or under a national exportation procedure.
- The collection of import duties and taxes in the country of destination when the Customs transit operation is terminated and, for example, the goods are cleared for home use".

D. Considerations by the Board

20. Based on the above considerations of Article 4 of the TIR Convention, TIRExB may wish to establish how to conduct any future discussion on the issue.
