



Economic and Social Council

Distr.: General
30 July 2014
English
Original: Russian

Economic Commission for Europe

Administrative Committee for the TIR Convention, 1975

Fifty-ninth session

Geneva, 8 October 2014

Item 7 of the provisional agenda

Revision of the Convention

Proposals transmitted by the Government of the Russian Federation

Transmitted by the Government of the Russian Federation*

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GE.14-09832 (E) 120914 160914



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List of proposals of the Russian Federation on improvement of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975)

1. Prevention of cases of use of TIR Carnets by persons who are not holders, including persons who are not authorized to have access to the TIR procedure.

The use of TIR Carnets by such persons significantly increases the risk of non-compliance with customs law and of harm to the budget of the Russian Federation.

Article 1, subparagraph (o):

“the term ‘holder’ of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made in the form of a TIR Carnet indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office en route and the Customs office of destination and for due observance of the other relevant provisions of the Convention; (ECE/TRANS/17/Amend.21; entered into force on 12 May 2002).”

We propose replacing “on whose behalf” with “by whom”.

Article 19

“The goods and the road vehicle, the combination of vehicles or the container shall be produced with the TIR Carnet at the Customs office of departure. The Customs authorities of the country of departure shall take such measures as are necessary for satisfying themselves as to the accuracy of the goods manifest and either for affixing the Customs seals or for checking Customs seals affixed under the responsibility of the said Customs authorities by duly authorized persons.”

We propose inserting the words “by the TIR Carnet holder” after “shall be produced”.

2. A more precise definition of the “frontier”, the crossing of which serves as the basis for application of the TIR Convention.

The lack of clarification as to which frontier (customs or State) when crossed serves as the condition for application of the Convention leads to differing interpretations and different practices in respect of the application of article 2 in defining the possibility of transporting loads under coverage of TIR Carnets in the territory of two or more Member States of the Customs Union.

Article 2

“This Convention shall apply to the transport of goods without intermediate reloading, in road vehicles, combinations of vehicles or in containers, across one or more frontiers between a Customs office of departure of one Contracting Party and a Customs office of destination of another or of the same Contracting Party, provided that some portion of the journey between the beginning and the end of the TIR transport is made by road. (ECE/TRANS/17/Amend.21; entered into force on 12 May 2002)”

We propose adding the word “customs” after “or more”.

3. Exemption of the Contracting Party from the obligation to set the maximum amount of customs duties for which payment may be claimed under a single TIR Carnet from the guaranteeing association, in order to recover from the guaranteeing association full payment of the customs duties.

There have recently been many cases in which the amount of customs duties payable on goods transported under a TIR Carnet has exceeded the maximum amount that could be claimed from the guaranteeing association under a TIR Carnet. Such situations result in additional customs operations on such goods, including those of customs convoy. Furthermore, if the goods are lost, there are then significant difficulties in collecting the full amount of customs duties payable, which is prejudicial to the budget of the Russian Federation.

If the Contracting Parties are allowed to decide themselves whether it is necessary to set a maximum amount of customs duties to be covered by the relevant guaranteeing association, the average duration of customs operations at the customs border of the Customs Union will decline, and the full amount of customs duties will be secured for the budget of the Russian Federation.

Article 8, paragraph 1:

“The guaranteeing association shall undertake to pay up to the maximum of the guaranteed amount of the import and export duties and taxes together with any default interest due under the Customs laws and regulations of the Contracting Party in which an irregularity leading up to a claim against the guaranteeing association has been established in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums. (ECE/TRANS/17/Amend.30; entered into force on 13 September 2012).”

We propose adding to article 8, paragraph 1, after “guaranteed amount”, the words “, and, if no such an amount has been set, the full amount,”.

Paragraph 3

“Each Contracting Party shall determine the maximum sum per TIR Carnet which may be claimed from the guaranteeing association on the basis of the provisions of paragraphs 1 and 2 above.”

We propose replacing the words “shall determine” by “shall be entitled to determine”.

4. Identification of ways for the guaranteeing association to cover its liabilities in respect of the competent authorities of the Contracting Party, taking account of the provisions of national legislation.

Annex 9, part I, paragraph 3 (v) defines insurance or financial guarantee contracts as ways of covering the liabilities of guaranteeing associations to the satisfaction of the competent authorities.

In the Russian Federation, insurance is not a way of guaranteeing fulfilment of obligations. The guarantees currently provided by the national guaranteeing association in the Russian Federation are actually suretyships, as confirmed by the Supreme Court of Arbitration. Under Russian customs law, suretyships may be accepted by customs authorities if the surety meets criteria set by the Russian Government or backs the obligation with a bank guarantee.

Given this, a provision should be added to the TIR Convention on the procedure for the ways in which the guaranteeing association may cover its liabilities vis-à-vis the competent authorities, in line with the national legislation of the Contracting Party.

Annex 9, part I, paragraph 3 (v)

“cover its liabilities to the satisfaction of the competent authorities of the Contracting Party in which it is established with an insurance company, pool of insurers or financial institution. The insurance or financial guarantee contract(s) shall cover the totality of its liabilities in connection with operations under cover of TIR Carnets issued by itself and by foreign associations affiliated to the same international organization as that to which it is itself affiliated.

The time to give notice for the termination of the insurance or financial guarantee contract(s) shall be not less than the time to give notice for the termination of the written agreement or any other legal instrument as referred to in paragraph 1 (d). A certified copy of the insurance or financial guarantee contract(s) as well as all subsequent modifications thereto shall be deposited with the TIR Executive Board, including a certified translation, if necessary, into English, French or Russian;”

We propose rewording Annex 9, part I, paragraph 3 (v) as follows:

“cover its liabilities to the satisfaction of the competent authorities of the Contracting Party in which it is established with an insurance company, pool of insurers or financial institution, in accordance with the procedure laid down in the national requirements of the Contracting Party.”

5. Realization of the right of the competent authorities of a Contracting Party, in the event of the guaranteeing association defaulting on its obligations, to take the customs payments due from the guaranteeing association by direct debit (unconditionally) from the guaranteeing association’s bank account as well as from liability coverage provided by the guaranteeing association to the competent authorities of the Contracting Party.

Under the Convention, the guaranteeing association is obliged to make the customs payments due on the request of the competent authority. If the guaranteeing association fails to do so, the competent authority shall recover the customs payments under national legislation.

Practice shows that the Russian guaranteeing association frequently does not pay the amount of customs payments claimed by the competent authority within the period set in the TIR Convention. However, in the Russian Federation, the customs authorities do not have any other way of recovering customs payments due from the guaranteeing association, except under a court order.

The Convention thus makes it possible for a guaranteeing association to default on its obligations under the Convention, which may be prejudicial to the budget of the Contracting Party and is not in the interests of the Russian Federation.

To avoid the risk of incurring losses to the budgets of the Contracting Parties, their competent authorities must be authorized, in the event of the guaranteeing association defaulting on its obligations, to take the customs payments due from the guaranteeing association by direct debit from its bank account and from the liability coverage.

Furthermore, the international insurance system, developed under the auspices of the IRU as an international guarantee system, provides that the ultimate beneficiaries in the framework of this system are the guaranteeing associations of the Contracting Parties.

However, if the guaranteeing association defaults on its obligations, the competent authorities of the Contracting Party cannot file a claim against the insurance company, pool of insurers or financial institution and receive the customs payments due.

Consequently, the competent authorities do not in fact have any way of recovering customs payments due from the liability coverage provided by the guaranteeing association

to the competent authorities of the Contracting Party, which is prejudicial to the interests of the Russian Federation.

Article 11, paragraph 3

“The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made against the guaranteeing association at the earliest three months after the date on which the association was notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been falsified or obtained in an improper or fraudulent manner and not more than two years after that date. However, in cases of TIR operations which, during the above-mentioned period of two years, become the subject of administrative or legal proceedings concerning the payment obligation of the person or persons referred to in paragraph 2 of this Article, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable. (ECE/TRANS/17/Amend.30; entered into force on 13 September 2012).”

The words “three months” should be replaced by “one month”.

Paragraph 4

“The guaranteeing association shall pay the amounts claimed within a period of three months from the date when a claim for payment is made against it. (ECE/TRANS/17/Amend.30; entered into force on 13 September 2012)”

Article 11, paragraph 4, should be reworded as follows:

“4. The guaranteeing association must pay the amounts claimed within a period of three months from the date when a claim for payment is made against it. If the guaranteeing association does not pay the amounts claimed within that period, the competent authority shall be entitled to recover the amount by direct debit from the bank account of the guaranteeing association, and from the liability coverage provided by the guaranteeing association to the satisfaction of the competent authorities of the Contracting Party in which it is established.”

6. Procedure for the recovery of customs payments due from guaranteeing associations in the event of their defaulting on claims from the customs authorities and impossibility of recovering such amounts from liability coverage.

The Convention does not set a time limit for recovery from the guaranteeing association of customs payments due in accordance with national regulations.

Civil legislation in the Russian Federation currently makes it possible to apply to the courts to recover customs payments due from the guaranteeing association within one year of the day on which the obligations of the TIR Carnet holder were fulfilled.

All the provisions of the Convention that set a minimum period for a claim to be made by the competent authority to the guaranteeing association and fulfilment by the guaranteeing association of such a claim in many cases mean that it is not possible to recover the customs payments due through the courts within the time limits established in Russian legislation.

Furthermore, the maximum period for notification of the guaranteeing association added to the maximum period for claiming payment of the customs payments due from the guaranteeing association exceeds the period allowed for the recovery of payments due through the courts.

In order to ensure that all Contracting Parties are able to enjoy the right to recover payments due in line with their national regulations within the period during which a claim by the competent authority may be met, the Convention must include specific mention of

the possibility of recovering payments due from the guaranteeing association through the courts within a period established in agreement with the national guaranteeing association.

The following text should be added as article 11, paragraph 4-bis:

“4-bis. If the guaranteeing association does not pay the amount mentioned in article 8, paragraphs 1 and 2, within the period of three months set in the Convention, the competent agencies may claim payment of such sums through the courts within a period established in agreement with the national guaranteeing association.”

7. Definition in article 38 of the criteria for serious offences against customs laws or entitlement of Contracting Parties to define the criteria to be used in deciding on exclusion from operation of the Convention.

The wording of the Convention does not allow an unequivocal definition of the serious offences against customs law on the basis of which a TIR Carnet holder may be excluded from operation of the Convention. Article 38 does not provide for the possibility of the Contracting Parties defining such criteria themselves. Russian legislation does not provide a definition of the criteria for a serious offence against Customs law for the purposes of the article.

Given this, any decision on exclusion from operation of the Convention under the provisions of article 38 may be questioned.

Moreover, pursuant to Annex 9, part II, paragraph 1 (d), and article 6, paragraph 4, authorization for access to the TIR procedure shall be granted only to persons who meet the minimum conditions and requirements, one of which is the absence of serious or repeated offences against customs or tax legislation. Such authorization is withdrawn if the criteria are not complied with.

To ensure that the criteria for which non-compliance forms a basis for exclusion from operation of the Convention for TIR Carnet holders not registered in the relevant Contracting Party are comparable with those applicable to TIR Carnet holders registered therein, the use of article 38 must be extended to cover cases of repeated offences against the customs laws or regulations applicable to the international transport of goods.

Article 38, paragraph 1

“Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious offence against the Customs laws or regulations applicable to the international transport of goods.”

Article 38, paragraph 1, should be reworded as follows:

“1. Each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious or repeated offence against the Customs laws or regulations applicable to the international transport of goods.

The conditions in which the offence against the Customs laws or regulations is considered to be serious shall be decided by the Contracting Party.”

8. Improvement of the Convention norms aimed at providing better security and eliminating the likelihood of inaccurate declarations and other offences, as well as raising the level of control by the customs authorities of the Contracting Parties in which the TIR Carnet is opened, with the aim of reducing the risk of offences against customs legislation in the use of customs transit procedure.

Article 19 (proposal 2)

“The Customs authorities of the country of departure shall take such measures as are necessary for satisfying themselves as to the accuracy of the goods manifest and either for affixing the Customs seals or for checking Customs seals affixed under the responsibility of the said Customs authorities by duly authorized persons.”

Re-word as follows:

“The Customs authorities of the country of departure shall verify that the particulars in the goods manifest tally with those in the transport or other commercial documents and in the export documents drawn up by the Customs authorities relating to the goods, inspect the goods and affix Customs seals.”

Explanatory note to article 19 (proposal 1)

“The requirement that the Customs office of departure should check the accuracy of the goods manifest implies the need to verify at least that the particulars in the goods manifest tally with those in the export documents and in the transport or other commercial documents relating to the goods; the Customs office of departure may also have to examine the goods.”

Delete.

9. Amendments to standardize terminology used in the Convention.

Article 21

“At each Customs office en route and at Customs offices of destination, the road vehicle, the combination of vehicles or the container shall be produced for purposes of control to the Customs authorities together with the load and the TIR Carnet relating thereto.”

Add “by the TIR Carnet holder” after “shall be produced”.

Taking this amendment into account, reword as follows:

“At each Customs office en route and at Customs offices of destination, the road vehicle, the combination of vehicles or the container shall be produced by the TIR Carnet holder for purposes of control to the Customs authorities together with the load and the TIR Carnet listing all the contents of the load.”
