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ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975

(Thirty-sixth session, 5-6 February 2004,
agenda item 10 (c))

APPLICATION OF THE CONVENTION

Decree No. 1132 issued by the State Customs Committee of the Russian Federation

Note by the secretariat

A. BACKGROUND

1. In 2002, pursuant to the mandate provided for in Article 42 bis of the Convention, the TIRExB considered Order No. 1132 of 28.11.2001 of the State Customs Committee (SCC) of the Russian Federation which had introduced a number of procedures for Customs clearance of so-called sensitive goods (mainly electronics and domestic appliances) imported into the Russian Federation by road. Following extensive discussions, the TIRExB came to the conclusion that the above Order was not in line with Articles 4 and 28 of the TIR Convention (TRANS/WP.30/AC.2/2003/1, paras. 28 and 29).

2. The TIR Secretary brought this decision to the attention of SCC. In response, SCC informed the TIRExB that the opinion of the Board was taken into consideration. At the same time, SCC pointed out that the above Order does not touch upon the application of the TIR Convention and, thus, cannot be in contradiction to its provisions. The TIRExB regretted that SCC had failed to accept the decision taken by the Board in line with its mandate and felt this issue would need to be addressed by the TIR Administrative Committee (TRANS/WP.30/AC.2/2003/9, paras. 27 and 28).

3. The Administrative Committee, at its thirty-third session (October 2002), noted that the decisions taken by the TIRExB in line with its mandate did not always seem to be fully applied in all Contracting Parties. It was pointed out that this issue would need to be addressed by the Administrative Committee (TRANS/WP.30/AC.2/67, para.13).

4. At its thirty-fourth session (February 2003), the Administrative Committee took note of a request from the European Community to study in detail Order No. 1132 issued by the State Customs Committee of the Russian Federation. The Committee requested the secretariat to prepare a document on this issue for consideration (TRANS/WP.30/AC.2/69, para.66).

B. SUMMARY OF ORDER No. 1132

5. Order No. 1132 of 28.11.2001 by SCC came into force on 11 February 2002, introducing a number of procedures for Customs clearance of so-called sensitive goods (mainly electronics and domestic appliances) imported into the Russian Federation by road (including the TIR procedure) with the double objective to tighten Customs control over sensitive goods and, at the same time, to facilitate their clearance by means of a preliminary cargo declaration which the consignee (importer) can lodge at the Customs office of destination.

6. The preliminary cargo declaration should be submitted to Customs following the payment of all Customs duties and taxes due and before the goods enter the Russian territory. Once the declaration is accepted, the Customs office of destination should within 3 hours inform the Customs office of entry (en route) about this fact. The third page of the preliminary declaration (returned by the Customs to the consignee) or its copy should be handed over to the transport operator (or his driver) and be produced at the Customs office of entry (en route). Upon decision by the Head of the Customs office of entry (en route), fax copies of the preliminary declaration may also be taken into consideration.

7. According to SCC, the preliminary cargo declaration gives the following advantages to the transport operator and consignee:

- as a general rule, the sensitive goods are not subject to physical inspection at the border unless the Head of the Customs office of entry (en route) takes a special decision;

- no Customs escort is required;
- final clearance of the goods at the Customs office of destination can be completed within 3 hours following their arrival.

8. Although a preliminary Customs declaration for sensitive goods is not mandatory, the Russian Customs authorities advise to do so. Without such a declaration, the said goods are subject to the following control measures:

- full physical inspection at the border with recounting of all packages and weighing of the goods;
- obligatory Customs escort;
- obligatory placement of the goods to a Customs warehouse at the destination.

9. Irrespective of whether a preliminary cargo declaration is available or not, sensitive goods can only be produced and finally cleared at a limited number of approved Customs offices of destination and licensed Customs warehouses.

C. PRELIMINARY CONSIDERATIONS BY THE TIRExB AT ITS THIRTEENTH SESSION (10-12 APRIL 2002)

10. Some TIRExB members were of the view that Order No. 1132 did not directly affect the TIR procedure as it was aimed at the Customs clearance for importation at the request of trade. However, other members expressed their doubts whether or not the above Order was in line with the spirit and the provisions of the TIR Convention, in particular, Article 4. They argued that the prescribed procedure would link the TIR transit regime with following Customs procedures and, thus, should be abolished. They also pointed out that the requirements for Customs escorts and/or physical inspection for a large number of so-called sensitive goods (in this case household appliances and electronic goods) were not in line with the requirements of Articles 5 and 23 of the Convention stipulating that Customs escorts, physical inspections, etc. should only be applied in exceptional circumstances.

11. The TIRExB felt that the practical implementation of the Order and its repercussions on Customs transit operations were not clear. Therefore, the TIRExB decided to continue the discussion on the issue.

**D. DECISION BY THE TIRExB TAKEN AT ITS FOURTEENTH SESSION
(17-18 JUNE 2002)**

12. At its consecutive session, the TIRExB scrutinized the key provision of Order No. 1132, i.e. facilitation of Customs clearance of certain sensitive goods by means of a preliminary cargo declaration which the consignee (importer) could lodge at the Customs office of destination. The Board noted that, in general, pre-payment of duties and taxes should be made before such a declaration was accepted by Customs and before the goods entered the Russian Federation.

13. The TIRExB felt that such a declaration, if applied in respect of goods transported under the TIR procedure, would mean that the goods were effectively covered by two Customs procedures. It is a general principle of Customs law that goods can only be subject to one Customs procedure at a time. Although not explicitly stated in the Convention, this interpretation is supported by Article 28, paragraph 2. With regard to the advance payment of the duties and taxes, this is clearly contrary to the application of Article 4 of the Convention. Although Article 4 refers to the payment at the Customs office en route the key issue is the duty/tax status of the goods at the time they enter the Contracting Party. Irrespective of the physical place where the duties and taxes are paid, the fact remains that at the time the goods enter the Russian Federation those goods have been subject to the payment of duties and taxes. That being the case, the TIR operation in Russian territory should be started and terminated at the Russian border. As a result, the Board came to the conclusion that the above Order was not in line with Articles 4 and 28 of the TIR Convention.

F. COMMENTS BY THE RUSSIAN CUSTOMS AUTHORITIES

14. In recent years, electronics and domestic appliances have become main sensitive goods. These goods are not just in great demand on the domestic market, but are also highly taxable. That is why these goods were the object of frequent Customs infringements.

15. Order No. 1132 of 28.11.2002 was issued by SCC in reply to an initiative of major importers and sellers of electronics and domestic appliances regarding the legalization of the import of the above goods.

16. Importers have been granted the opportunity to lodge a preliminary Customs declaration and pay the sums due prior to the actual importation of the goods into the Russian Federation. This has speeded up, as much as possible, the procedures of Customs clearance, making them transparent at the same time. Goods, which have been declared with their exact description, can thus rapidly cross the border as there is no need for physical inspection or any additional information due to the fact that the transport operator is in the possession of the preliminary cargo declaration.

17. The Order allows for a timely identification of consignees of the goods in question, but does not touch upon the issue of obligations and responsibilities of transport operators vis-à-vis Customs when transporting goods under Customs surveillance, in particular, under cover of a TIR Carnet. The sums paid at the moment the preliminary cargo declaration is lodged are used to cover the liability of the consignee to pay the Customs duties and taxes in the course of the final clearance of the goods. These sums cannot substitute the obligation of the transport operator to present the goods at the Customs office of destination. Thus, if the transport operator fails to do so, he will be liable for payment of the Customs duties and taxes due.

18. Order No. 1132 does not contradict Article 4 of the TIR Convention as it does not relate to the issue of payment or deposit of import duties and taxes at Customs offices en route. Nor is it in contradiction with Article 28, paragraph 2 of the Convention as the lodging of a *preliminary* cargo declaration does not alter the status of the goods, and as they are not placed under another Customs procedure or under another system of Customs control.

19. Since 12 February 2002, the application of the Order has proved to be favourable to both Customs authorities and trade. As a result, the Russian Customs authorities are planning to extend the practice of preliminary cargo declarations.
