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Working Party on Customs Questions Affecting Transport

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Item 9 (c) of the provisional agenda

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

Application of the Convention

Transmitted by the International Road Transport Union (IRU)

I. INTRODUCTION

1. A major concern facing the road transport industry today is the severe waiting times at borders, which at certain locations are reported to exceed 10 days. These delays, which predominantly arise at the European Union's external border with the CIS countries, have a severely damaging impact on international trade and transport. Drivers all too frequently find themselves stranded in a long queue of trucks without access to basic sanitation facilities. In addition both the drivers and the goods they carry are exposed to criminal activity.

2. There are number of causes for the delays at border crossing points and not of all of these causes fall under the ambit of the WP.30. However it is hoped that the implementation of the requirements of the anticipated Annex 8 of the Convention on Harmonization of Frontier Control of Goods 1982 will eventually assist in eradicating some of the causes. However one significant cause for these delays which does concern this Working Party is the fact that some Contracting Parties are deviating from the principles of the TIR Convention and are systematically imposing the use of escorts for TIR transport operations on their territory.

3. The IRU considers the increasing and systematic use of escorts results from a fundamental misapplication of the provisions of Article 23 of the TIR Convention. The IRU calls on the WP.30 to urgently address this matter and to recall the correct application of Article 23. In the short to medium term the IRU proposes that the WP.30 should augment this clarification and publish an example of best practice on the matter. That is why the IRU believes it is appropriate for the WP.30 to consider this matter under agenda item 9 (b) (i) of its present session.

II. APPLICATION OF ARTICLE 23

4. Article 23 of the TIR Convention states:

“The Customs office shall not:

- require road vehicles, combinations of vehicles or containers to be escorted at the carriers' expense on the territory of their country,

- ...

except in special cases.”

5. Article 23 is very clear – the use of escorts is only permitted in exceptional/special cases. The Comment to Article 23, which of course is not legally binding, provides one example of where the use of escorts might be considered appropriate: that is in those cases where the duties and taxes at risk exceed the maximum level of the TIR guarantee. However, this Comment is used by a number of Contracting Parties to interpret Article 23 in such a way that the imposition of escorts becomes legitimized through the creation of an artificial link between the guarantee level and the use of escorts. Indeed the Belarus government in document ECE/TRANS/WP.30/2007/19 concerning its proposal to increase the maximum level of guarantee from USD 50,000 to EURO 60,000 states that the increase would “liberalize the conditions of Article 23 of the TIR Convention with regard to the escorting of road vehicles”.

6. With all due respect to the governments of the Contracting Parties that have voiced similar views, this statement reveals a fundamental misinterpretation of not only the nature of the TIR guarantee but also the application of Article 23. It has been a long established and agreed legal principle that in the event of an irregularity the TIR guarantor does not replace the person directly liable who, as the debtor, always remains liable to pay the full amount of the duties and taxes due. In the event of a claim against the TIR guarantee the guarantor would be liable to an amount up to the maximum of the fixed level of the guarantee. The TIR Convention is clear, the TIR guarantee is not meant to cover the full amount of the duties and taxes involved in any given TIR transport operation.

7. The IRU is in possession of substantial documentary and anecdotal evidence which shows that the use of escorts has, over recent years, been systematically imposed by the Customs authorities of certain Contracting Parties in direct contravention of the requirements of Article 23. Apart from the additional business and operational costs, burdens and bureaucracy caused by the use of escorts, the carrier also experiences delays at the border simply because there are insufficient escorts available. Hence the IRU believes that the proper and regular application of Article 23 will have an immediate and significant effect on reducing some of the artificial, yet damaging, delays currently experienced at the borders.

III. USE OF RISK MANAGEMENT TECHNIQUES

8. The Comment to Article 23 does not provide the only, definitive example of the special case where the use of escorts should be considered. The IRU believes that in determining what constitutes a “special case” the Customs authorities should take into consideration a range of factors, and not just the simplistic factor concerning the amount of duties and taxes involved. Indeed the Comment to Article 23 refers specifically to the duties and taxes “*at risk*” and this is the key phrase. This implies the Customs authorities should apply a risk analysis based on the TIR operation as a whole and not just base its decision to impose escorts on the amount of duties and taxes involved.

9. Indeed if the amount of duties and taxes involved was the only factor to be taken into consideration in assessing the risk then this would lead to the conclusion that there is no risk where the duties and taxes are less than the maximum guarantee level. Such an interpretation would be perverse for the profile of claims, as recently confirmed by the survey carried out by the TIRExB, consistently shows that the vast majority are below the USD 50,000 maximum level of the guarantee recommended in the TIR Convention.

10. The application of comprehensive risk analysis techniques is now widespread and now forms part of the daily work practice of many Customs administrations. The World Customs Organization has produced a Risk Management Guide which together with its Manual of Risk Assessment, Profiling and Targeting provides the Customs authorities with guidance to help them develop a more effective approach to risk management. In these guidelines, the amount of taxes and duties involved in the Customs procedure is just one of the many factors that should be taken into account in assessing the risk.

11. The IRU cannot understand why the use of risk analysis as recommended by WCO and applied by many Customs administrations throughout the world can be seen as a valuable tool for a range of Customs procedures but not for the TIR procedure. The IRU believes that the use of risk analysis should also apply to the TIR procedure and that is why it has proposed to amend the Comment to Article 23 to include a reference to the WCO’s initiatives in this field (document ECE/TRANS/WP.30/2008/1 refers).

IV. PROPOSAL

12. Given the growing scale of the problem and with the onset of winter which will make the conditions experienced by drivers even more intolerable, the IRU calls on the WP.30 at its 118th session to unequivocally confirm that, as a matter of principle, the use of escorts as foreseen in accordance with Article 23 of the TIR Convention shall only be used in exceptional/special cases. Moreover the WP.30 should also make it clear that the amount of duties and taxes involved in the TIR operation should not be the only factor taken into consideration by the Customs authorities when deciding whether to impose the use of an escort.

13. The WP.30 is requested to unequivocally confirm that, in order to determine if a particular case is exceptional or special in the sense of Article 23, the use of risk analysis techniques as developed by the World Customs Organization must be applied . Furthermore the WP.30 should encourage the Contracting Parties to apply the WCO risk analysis techniques immediately and so stop the systematic imposition of escorts.

14. In the short to medium term the WP.30 should undertake to develop some best practice guidance on the matter which would include a clarification of the application of Article 23. This best practice should also consider Article 20 of the TIR Convention which provides the competent authorities with several other means to secure TIR transports such as the setting of an itinerary and imposing deadlines for the transit.

15. Finally, with regard to the scope and coverage of the TIR guarantee the WP.30 should also confirm that the TIR guarantee is, by its nature, a maximum fixed rate guarantee and that in the event of an irregularity which gives rise to the payment of the duties and taxes due, the person direct liable for the irregularity always and without exception remains the debtor.

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