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Economic Commission for Europe**Inland Transport Committee****Working Party on Customs Questions affecting Transport****136th session**

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Item 8 (b) (iii) of the provisional agenda

Customs Convention on the International Transport of**Goods under Cover of TIR Carnets (TIR Convention, 1975):****Revision of the Convention – Amendment proposal to the TIR Convention:****Use of the TIR procedure in a Customs Union with a single****Customs territory or in a single country****Amendment proposal to the TIR Convention: Use of the TIR procedure in a single country****Note by the TIR secretariat****I. Mandate**

1. During the 135th session of the Working Party on Customs Questions affecting Transport (WP.30), the secretariat introduced document ECE/TRANS/WP.30/2013/9 which analysed the relevant provisions of the TIR Convention in the context of international law as concerns the application of the TIR procedure in customs unions with a single customs territory or in a single country. The document also included examples of how to amend article 2 of the TIR Convention as to allow scope for such use. WP.30 concluded, after discussion, that further analysis was required to reach a decision on whether or not this amendment should be adopted and thus requested the secretariat to prepare, for the present session, further analysis on the possibility to use the TIR procedure within a single country (see ECE/TRANS/WP.30/270 para. 39).

II. Background

2. At the 132nd and 133rd session of WP.30, the Eurasian Economic Commission (EurAsEC) informed WP.30 that the member States of the Customs Union of Belarus, Kazakhstan and the Russian Federation are working on an intergovernmental agreement on the functioning of the TIR procedure in the Customs Union, which inter alia provides for

the use of only one pair of vouchers No. 1/No. 2 of a TIR Carnet. The Customs Union is a single customs territory without customs controls at the internal borders (ECE/TRANS/WP.30/264 para. 34).

3. EurAsEC asked WP.30 to consider and to provide guidance on several issues related to the application of the TIR Convention in the Customs Union, raised in Informal document No. 17 (2012). WP.30 noted that a reply to these issues depends on the interpretation of the term “frontier” in Article 2 of the Convention. The Working Party noted that the current wording of Article 2 does not seem to allow for a clear-cut interpretation of this term in the case of customs unions.

4. The Working Party concluded that, to remove this ambiguity, it may be necessary to introduce an amendment or a new Explanatory Note to Article 2. The secretariat proposed such an example amendment in document ECE/TRANS/WP.30/2013/9. If adopted, this amendment proposal would allow the use of the TIR procedure in a single country, on the condition that the country finds this opportune and enacts the necessary national legislation for it. However, several delegations were of the opinion that the TIR Convention, being an international agreement, should not be used for such transport operations. The delegations of Ukraine and Uzbekistan supported the use of the TIR procedure in a single country for transports under customs control and pointed out its important facilitation aspect. The International Road Transport Union (IRU) reiterated that it is prepared to support such domestic operations, either within the framework of the TIR Convention or under a separate, yet similar, regime.

III. Scope of the TIR Convention

5. A “convention” is officially defined as a formal agreement between States. The generic term “convention” is thus synonymous with the generic term “treaty”. A “treaty” is an express agreement under international law entered into by actors in international law, namely sovereign states and international organizations. Under the Vienna Convention on the Law of Treaties, a treaty must be:

- (i) a binding instrument, which means that the Contracting Parties intended to create legal rights and duties;
- (ii) concluded by states or international organizations with treaty-making power;
- (iii) governed by international law; and
- (iv) in writing.

6. From the above definition, it follows that the TIR Convention aims to regulate relations between States in the area and subject-matter defined therein, namely customs transit. This is formally confirmed in article 2 and Explanatory Note 0.2-1 which provides that “a transport operation under cover of a TIR Carnet may begin and end in the same country on condition that part of the journey is performed in foreign territory”.

7. Consequently, the procedure that is set up under the Convention was not intended to cover interior transit from one inland Customs office to another in the same country without the crossing of a border. The national customs transit procedure is regulated and enforced under national law and as such there would be little merit to regulating a national matter at the international level.

IV. Use in a single country: some considerations

8. There are customs conventions which provide for use in a single customs territory:

(i) The Common Transit convention is the basis for the New Computerised Transit System (NCTS) procedure between the European Union (EU), European Free Trade Association (EFTA) and Turkey. NCTS is, however, also used for customs transit in the EU without the crossing of any customs border (community transit).

(ii) The Carnet de Passage en Douane (CPD carnet) and the temporary Admission Carnet (ATA carnet) can be used in a single contracting party.

9. Some UNECE international transport conventions have developed high quality safety standards which have been adopted also for national transport operations. Some of these are, among others, the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP) for the transport of perishable foodstuffs and the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) for the transport of dangerous goods. However, these conventions themselves neither create an obligation nor a right to use these standards domestically. Contracting Parties simply decided to require the same standards under national law and to enforce them under national law for domestic operations. At the same time, the same standards apply for international transport in accordance with the international agreement. That is to say that in practice an identical national TIR procedure could be set up by those countries that want it, but it does not have to be part of the TIR Convention nor does it require an amendment. It would be a domestic, national choice and a decision of the government to set up a parallel system, to legislate nationally and to cooperate with the organization that could provide national TIR Carnets and guarantee coverage under a suitable scheme.

10. On the other hand, this would mean that issues related to a potential national TIR procedure would not be part of the work of the Administrative Committee or the TIR Executive Board (TIRExB) or even WP.30. This is because these bodies deal with international cooperation, relations between Contracting Parties and the functioning of the TIR system at the international level.

V. Practical considerations

A. In case of a parallel, independent, national TIR system

11. From the practical perspective, there are several questions to be addressed, such as for example, the organization of the guarantee coverage for a national TIR system. More specifically:

(i) Is it envisaged that the international guarantee chain and the global insurer cover national liabilities in the case of an independent parallel national TIR system? Or would there be separate insurance coverage?

(ii) The TIR Convention currently clearly stipulates that the international organization (in this case the IRU) should be authorized by the Administrative Committee for the TIR Convention, 1975 (AC.2) to print and distribute TIR Carnets to the authorized issuing and guaranteeing associations. Would it not be reasonable to assume that in the case of an independent nationally designed TIR system, the authorization should be granted by the government separately? That is to say, that the international organization is authorized by AC.2, but this does not necessarily mean that the same organization would automatically be authorized for the same purpose domestically. It would be an identical set up, with the same logic, using a TIR carnet, but would function completely separately from the Convention, under national law.

(iii) Would the same national association handle the domestic claims?

B. In case of domestic use of the TIR procedure following amendment to the Convention

12. If the TIR Convention is amended to include domestic use of the procedure, then the single authorization by AC.2 would be sufficient. However, there are questions concerning:

(i) On a general note, it should be said that many provisions of the TIR Convention seem to lose their meaning or, at least 'relevance' if the TIR procedure could be applied for national transit transports. Without being exhaustive, reference is being made to various definitions in Article 1, Article 2, 3 (b), Article 4, Article 6, para. 2, Article 6, para. 2 bis, Article 8, para. 4, Article 21, Article 22, Article 34, Article 35, Article 42. Thus, the question could be posed if one can still speak of the TIR Convention, when only such limited part thereof is applicable to a national transit procedure.

(ii) Annex 8, Article 13, para. 1 of the Convention stipulates that the financing of the TIRExB and the TIR secretariat will be calculated as an amount per TIR Carnet distributed by the International Organization. If domestic TIR transports are part of the TIR Convention, then these TIR Carnets will be included in this calculation.

(iii) At the same time, since the national TIR system is a domestic matter, the TIR secretariat, the TIRExB and other intergovernmental bodies concerned with the TIR Convention will not have the mandate to intervene or make recommendations or take any decisions on issues exclusively within the purview of national sovereignty.

(iv) Would the international guarantee chain cover national liabilities? If so, the reigning principle of the international guarantee chain, being solidarity, would come under threat and, thus, it remains doubtful if associations from other countries would accept such change.

VI. Considerations for the Working Party

13. The Working Party is invited to take note of the above considerations and to discuss their views on whether there is sufficient information and identifiable benefits as to take a decision in favour of such an amendment.
