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Working Party on Customs Questions affecting Transport

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Item 3 (b) (i) 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 proposals to the Convention**

Proposal to amend Annex 9, Part I, paragraph 5

Note by the secretariat

I. Background and mandate

1. At its previous session, the Working Party considered document ECE/TRANS/WP.30/2014/17, transmitted by the Government of the Russian Federation and containing various proposals to amend the TIR Convention, in combination with document ECE/TRANS/WP.30/2015/1 and Add.1, consolidating comments by various Contracting Parties on the proposals made by the Russian Federation in documents ECE/TRANS/WP.30/2014/17 and ECE/TRANS/WP.30/2014/14. The Working Party decided to consider each amendment proposal, as contained in the above-mentioned documents, individually.

2. In its consideration of the proposal to amend Annex 9, Part I, para. 5, first sentence, the Working Party was in agreement with the proposal in principle, subject to a modified formulation, to be prepared by the secretariat for consideration at its current session.

II. Annex 9, Part I, paragraph 5

3. Annex 9, Part I, paragraph 5 currently reads:

“The Contracting Party in which the association is established shall revoke the authorization to issue TIR Carnets and to act as guarantor in case of non-compliance with these conditions and requirements. Should a Contracting Party decide to revoke

the authorization, the decision shall become effective at the earliest three (3) months after the date of revocation.”

4. The current text of this paragraph was adopted by the TIR Administrative Committee in February 2011 (ECE/TRANS/17/Amend.29) and entered into force on 1 January 2012. The previous version of this provision was, firstly, numbered differently and more substantively, lacked the specification of the earliest date of effect of the revocation of authorization. According to discussions at the time of adoption, AC.2 was of the view that:

“For the sake of clarity it seems appropriate to include in the legal text of the Convention a minimum period of three months for the revocation of the authorization to become effective”.

(ECE/TRANS/WP.30/AC.2/2010/4/Rev.1, Annex I, para. (9))

5. The same package of amendments effected the deletion of the word “minimum” as qualifying the “conditions and requirements” for associations to be authorized, as well as introduced the unequivocal responsibility of associations to accept, in writing, the duties as set out in Annex 9, Part I, paragraph 3. In this regard, AC.2 found that “It is important that the national association clearly states in writing that it accepts its duties” (ECE/TRANS/WP.30/AC.2/2010/4/Rev.1, Annex I, para. (5)).

6. From the above it can be contended that the amendments that entered into force in 2012 aimed at ensuring that the guarantee agreement, which is a contract enforceable in national law, clearly binds the association to its duties. Furthermore, it appears that the duties enumerated in Annex 9, Part I, paragraph 3 form part of the conditions and requirements to be fulfilled by the association. Hence, any lack of compliance with or breach of these duties may lead to grounds for the termination of the agreement and consequently, to grounds for revocation of the authorization in accordance with Annex 9, Part I, paragraph 5.

III. Proposal by the Russian Federation

7. The Russian Federation has proposed to amend the text as follows¹:

“The Contracting Party in which the association is established shall revoke the authorization to issue TIR Carnets and to act as guarantor in case of non-compliance with these conditions and requirements **or with the duties of the association as set forth in paragraph 3**. Should a Contracting Party decide to revoke the authorization, the decision shall become effective at the earliest three (3) months after the date of revocation.”

8. The Russian Federation clarified, at the 139th session of the Working Party, that the inclusion of this phrase would make the grounds for revocation clearer to the competent authorities of the Russian Federation.

9. Notwithstanding that the amendment could potentially facilitate the legal understanding and implementation of the provisions in the case of the Russian Federation, it should be noted that the conditions and requirements of Annex 9, Part I, as explained in paragraph 6 of the present document, include the duties of the association as enumerated in paragraph 3.

¹ New text marked in **bold**

IV. Proposal by the secretariat

10. Having taken into due account the concerns of the Russian Federation, and upon the request of the Working Party, the secretariat has drafted a slightly modified formulation of the amendment proposal by the Russian Federation:

“The Contracting Party in which the association is established shall revoke the authorization to issue TIR Carnets and to act as guarantor in case of non-compliance with ~~these~~ **any** condition and requirement **as laid down Part I of this annex**. Should a Contracting Party decide to revoke the authorization, the decision shall become effective at the earliest three (3) months after the date of revocation.”

11. In the view of the secretariat, such a formulation leaves no room for misunderstanding as to the conditions under which a Contracting Party can revoke its authorization to a national association. All conditions and requirements of Annex 9, Part I inevitably include the duties of the association listed in Annex 9, Part I, paragraph 3.

V. Considerations by the Working Party

12. The Working Party is invited to consider the proposal of the Russian Federation to amend Annex 9, Part I, paragraph 5, as well as the alternative proposal by the secretariat, in light of the background information provided in the present document and to decide on the preferable option.
