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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting  
Transport

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agenda item 8 (d) (iv))

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

**Application of the Convention**

**Transport of containers, semi-trailers or trailers without tractor units**

**Note by the secretariat**

1. On the request made by the International Road Transport Union (IRU), the Working Party, at its ninety-sixth session, considered a draft comment to Article 3 of the Convention (TRANS/WP.30/191):

“Comment

Validity of a TIR Carnet for transport of containers, semi-trailers and trailers without tractor units

Sometimes containers, semi-trailers and trailers are being transported under cover of TIR Carnets without the tractor unit. In such cases, Customs authorities of the countries in which the TIR transport is continued by road shall not request the opening of a second TIR Carnet.”

2. With a view to making progress in this matter, the Working Party requested the secretariat to prepare a document as a basis for discussion at its next session indicating the relevant legal provisions in the Convention and reflecting the views expressed and opinions provided during the sessions of the Working Party (TRANS/WP.30/192, paras. 57 and 58). Following this request, the secretariat has prepared the present document.

3. The problem tackled by the above draft comment seems to be clear. As noted by the Working Party, Customs authorities in some Contracting Parties request the opening of a second TIR Carnet for a single TIR transport in cases when a TIR transport operation of a container, semi-trailer or trailer was continued by road following transport by sea (ferry boat, etc.). In such cases, the container, semi-trailer or trailer is often not accompanied by a tractor unit nor by the holder of a TIR Carnet or a successive road transport operator (TRANS/WP.30/192, para. 55).

4. On the other hand, the underlying reasons for the issue are not so obvious and require further analyses. The secretariat feels that the heart of the matter is two different approaches to the TIR Carnet existing in various Contracting Parties to the Convention. Some countries are of the view that the TIR Carnet is attributed to the load only (containers, semi-trailers or trailers) no matter whose tractor unit actually carries out a TIR transport and that Customs authorities do not need to put any attention to the persons involved other than the holder. Other Contracting Parties feel that the TIR Carnet is attributed not only to the load, but also to the specific holder who may not transfer his TIR Carnet and related obligations and responsibilities to other persons at his discretion. From this point of view, the proposed wording does not disclose the origin of the problem.

5. The most important question which should be answered in this respect is whether any transport operator has the right to continue the TIR transport under cover of the first TIR Carnet without additional requirements or whether he must comply with special conditions to do so.

6. It is evident that the holder of the first TIR Carnet may freely take over his load and continue the TIR transport under cover of the own Carnet. However, this situation does not seem to occur very often as usually another transport operator continues (or wishes to continue) the transport operation under the same TIR Carnet. That is why the Working Party felt that the problem considered was closely related to multi-user TIR operations and recalled in this context its considerations and those of the TIR Administrative Committee on

the validity of multi-user TIR operations at its ninety-fifth and twenty-seventh sessions respectively (TRANS/WP.30/190, paras. 33-36; TRANS/WP.30/AC.2/55, paras. 9-12; TRANS/WP.30/2000/1). As no common opinion on this subject emerged, the Working Party decided not to continue consideration of this issue until new elements emerged permitting the resolution of this issue at the international level.

7. As shown by a survey carried out in 1999 by the secretariat (TRANS/WP.30/1999/7, para.41, Informal Document No.5 (1999) for the TIR Administrative Committee and TRANS/WP.30/AC.2/1999/3), many Contracting Parties to the TIR Convention seem to be opposed to a TIR operation carried out by persons other than the TIR Carnet holder, even by his sub-contractors, considering such an operation as being not in line with the provisions of the TIR Convention. As noted by the TIR Executive Board at its first session (Geneva, 25 and 26 March 1999), this situation is due to differences in national Customs legislation in various Contracting Parties and diverse interpretations of the TIR Convention rather than due to lack of relevant provisions in the Convention.

8. It is interesting to see which arguments and which provisions of the TIR Convention have been used at different times by some countries to justify their ban on multi-user TIR operations:

- the international TIR guarantee chain does not cover the activities of subsequent transport operators (Estonia and Lithuania, Informal Document No.4 (2000) for the Working Party). It should be mentioned in this context that the IRU repeatedly pointed out that in case of such TIR transports, irrespective of the modes of transport used, full coverage by the international guarantee system was applicable in line with the relevant provisions of the Convention (for instance, see TRANS/WP.30/192, para. 59);
- in accordance with Article 6, paragraph 1 and Annex 9, Part I of the TIR Convention the right to issue TIR Carnets is laid with national guaranteeing associations only. The transfer of TIR Carnets from the holder to other transport operators is interpreted as the “secondary” issuance (re-distribution) of TIR Carnets. That is considered to be illegal because the authorization to issue TIR Carnets should not be delegated to anybody other than the national guaranteeing association (Estonia, Informal Document No.4 (2000) for the Working Party);
- competent authorities are incapable of checking up whether sub-contractors have fulfilled the minimum conditions and requirements laid down in Annex 9, Part II to the Convention and have been authorized to use TIR Carnets (Lithuania, Informal Document No.4 (2000) for the Working Party);
- if a TIR operation is not performed by the holder of the TIR Carnet, there might be mutual contradictions between various provisions of the Convention (Article 8, paragraphs 1 and 8, Article 36, Article 39, paragraph 2 and Explanatory Notes 0.11-1 and 0.17-1) where the terms “TIR Carnet holder” and “transport operator” (or “carrier”) are alternately employed (Russian Federation, TRANS/WP.30/1999/1, annex, part A).

9. In general, a number of Customs authorities are concerned that multi-user TIR operations, if allowed without additional requirements, would involve higher risk for state revenues than “normal” ones. Consequently, these Customs administrations are reluctant to permit the TIR Carnet holder to transfer TIR Carnets to any other person acting on his behalf, even upon assumption that the holder bears the whole responsibility for the due termination of a TIR transport.

10. In this context, the opinion was raised at the fourth session of the Ad Hoc Group of Experts on Phase II of the TIR Revision Process (21-24 June 1999) that the authorization by Customs authorities of all transport operators in accordance with Annex 9, Part II of the Convention, irrespective of whether they were TIR Carnet holders or sub-contractors as allowed in a number of countries (see below), would enhance Customs control over the TIR regime and would ensure a better application and monitoring of the exclusions made by Customs authorities under Article 38 of the Convention (TRANS/WP.30/1999/7 and Add.1, para.40). Other experts were of the view that transmission of TIR Carnets to a person who is not authorized for the TIR regime or has been excluded from it in accordance with article 38 of the Convention should not be allowed. A procedure of transmission of TIR Carnets to other persons, even authorized for the TIR regime, should be strictly defined and include issues of responsibility in case of infringements of the TIR regime (see *ibid.*, para. 40 bis).

11. Given the diverse opinions on the issue, the authorization by Customs authorities of all transport operators in accordance with Annex 9, Part II to the Convention, irrespective of whether they are TIR Carnet holders or sub-contractors, seems to be a reasonable compromise which could eventually allow only one TIR Carnet to be used for the whole transport operation from the country of departure to the country of destination.

12. As a legal basis for such a requirement, the following provisions of the Convention could be used. According to Annex 9, Part II, in order to be authorized to use (not to obtain) TIR Carnets a person shall inter alia:

- have proven experience or, at least, capability to engage in regular international transport (holder of a licence for carrying out international transport, etc.);
- give an undertaking in a written declaration of commitment to comply with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination.

The above provisions imply that TIR operations should be actually carried out only by persons who have been authorized to use the TIR procedure, irrespective of whether they are TIR Carnet holders or sub-contractors.

13. If the above approach is generally advocated by the Working Party, further requirements for multi-user TIR operations could be proposed, in particular with regard to how Customs authorities are able to check the authorization of sub-contractors to utilize TIR Carnets. In this context the draft recommendation on the validity of multi-user TIR operations (TRANS/WP.30/2000/1) seems to be relevant.

14. The secretariat has also considered the request of the Working Party, at its ninety-sixth session, to prepare a draft comment to Article 3 on the validity of TIR Carnets for transport of containers, semi-trailers and trailers without tractor units in cases where the TIR transport was undertaken by one and the same TIR Carnet holder (TRANS/WP.30/192, para. 58). Due to the reasons mentioned in paragraph 6 of the present document, the secretariat felt that such a comment would be of minor practical importance and even counter-productive, because it could be indirectly interpreted in such a way that the TIR Carnet holder would be the only person being allowed to perform the TIR transport.

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