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Best practices

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About use of subcontractors under TIR procedure

Transmitted by the State Customs Committee of the Republic of Belarus*

1. The State Customs Committee of the Republic of Belarus presents its compliments to the TIR Secretariat and after consideration of the possibility to use the subcontractors for the TIR operations informs the following.
2. The Revised Kyoto Convention provides for, in standard 6.1 of its General Annex, that all goods including means of transport, which enter or leave the Customs territory shall be subject to Customs control. For the purpose of an integrated Customs control chain, however, the integrity of the consignment has to be ensured from the time the goods leave the place of origin until they arrive at the place of destination.
3. Another important element of an international transit regime is an international guarantee system. A guarantee system ensures that Customs duties and taxes during transit operations are covered at any moment until the goods are presented to Customs at the office of destination.
4. One of the examples of the above mentioned guarantee systems is the guarantee system applied to transport under cover of TIR Carnets.
5. Thus, the ability to transfer the TIR Carnet by the holder to another person (subcontractor) can create preconditions for infringement of safety of a supply chain and guarantee system.
6. Besides, there is a possibility that TIR Carnets could be transferred to persons who are not authorized for access to the TIR procedure. Presentation of a possibility for access

* As requested of the Administrative Committee, the present document reproduces the contribution by the State Customs Committee of the Republic of Belarus, previously submitted as Informal document No. 9 (2010).

to the TIR procedure to unauthorized persons (subcontractors) would contradict all efforts undertaken to maintain a long-term stability and safety of TIR system. It is also necessary to notice, that the Part II, Annex 9 of the TIR Convention contains the list of minimum conditions and requirements to be complied with by persons wishing to have access to the TIR procedure. Furthermore, additional and more restrictive measures may be introduced by the competent authorities of Contracting Parties and associations themselves.

7. It also should be noticed that the article 8.7 of the TIR Convention provides that the competent authorities shall so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association. According to the article 1 o) the term “holder” of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made in the form of TIR Carnet indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office en route and the Customs office of destination and for due observance of the other relevant provisions of the Convention. This fact, in our opinion, excludes possibility to use the subcontractor.

8. Possibility of filling in the box 11 of the cover of a TIR Carnet offered by the TIR secretariat with indication of the name of the subcontractor who is carrying out TIR transportation or its part, will not solve problems with fraudulent use of TIR Carnets. In this case a number of probable variants of fraud are possible:

(a) The subcontractor, whose name is specified in the box 11 of a cover of the TIR Carnet declares, that his name was specified by the holder without his permission for the purpose of division or full transfer of obligations on payment of the due customs duties, taxes in case of infringement of a TIR operation;

(b) The holder declares that a TIR Carnet has been lost or stolen, and other carrier has taken advantage to it. The given fraud is possible on preliminary arrangement to a fictitious carrier or because of use of a found (stolen) TIR Carnet by an unfair carrier.

9. The variant when both carriers: a holder and a subcontractor will deny their fault and refuse to pay due sums of customs duties, taxes, that considerably will complicate possibility of application of the article 8.7 of the TIR Convention.

10. It is also necessary to notice, that the comment to the article 1 o) offered by the TIR secretariat will not be obligatory for performance by all Contracting Parties that means two possible scenarios:

(a) Customs authorities of the country of departure suppose possibility of use of TIR Carnets by subcontractors, and Customs authorities of the adjacent country (transit/destination) do not suppose such possibility, therefore the subcontractor can have problems at Customs en route.

(b) Customs authorities of the country of departure do not suppose possibility of use of TIR Carnets by subcontractors, and Customs authorities of the adjacent country suppose such possibility. As a result – Customs authorities of the country of departure provide stability of the TIR system, and Customs authorities of the adjacent country (transit/destination) weaken the TIR system as a whole.

11. One more argument against the comment to the article 1 o) adoption is the possibility of abuse by holders to use the right of transfer of TIR Carnets to other persons by resale of TIR Carnets to other persons, disregarding their conscientiousness or reliability, and also admission presence (availability) to the TIR system.

12. Taking into account the above-stated the State Customs Committee of the Republic of Belarus believes, that the comment offered by the TIR Secretariat to the article 1 o) cannot be accepted in considered version.
