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Working Party on Customs Questions
affecting Transport

Ad hoc Group of Experts
on Phase II of the TIR revision process
(Fourth session, 21- 24 June 1999)

**REPORT OF AD HOC GROUP OF EXPERTS
ON ITS FOURTH SESSION**

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ATTENDANCE

1. The group of experts held its fourth session from 21 to 24 June 1999.
2. The session was attended by experts from the following countries: Austria, Belarus; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Italy; Iran (Islamic Republic of); Latvia; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; The former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Kingdom. Representatives of the European Community (EC) were also present.
3. The United Nations Conference on Trade and Development (UNCTAD) was represented.
4. The following non-governmental organization was also represented: International Road Transport Union (IRU).

ADOPTION OF THE AGENDA

5. The group of experts adopted the provisional agenda prepared by the secretariat (TRANS/WP.30/1999/4).

ELECTION OF A CHAIRMAN

6. Mr. J. Byrgesen (Denmark) was elected Chairman of the group of experts for its sessions in 1999.

MANDATE OF THE GROUP OF EXPERTS

Documentation: ECE/TRANS/127; TRANS/WP.30/184; TRANS/WP.30/1999/1 and Add.1.; TRANS/WP.30/1999/5; TRANS/WP.30/1999/6; ECE/TRANS/17/Amend.19.

7. The group of experts was informed that the Inland Transport Committee, at its sixty-first session (8-11 February 1999), had prolonged the mandate of the ad hoc group of experts for the year 1999 (ECE/TRANS/127).

8. Following this decision, the Working Party on Customs Questions affecting Transport, at its ninety-second session (22-26 February 1999), reviewed the activities of the group of experts during its three sessions held in 1998 (TRANS/WP.30/184, paras. 23-40). It considered the amendment proposals prepared by the group of experts as contained in the reports of its first (2-3 April 1998), second (24-26 June 1998) and third (19-20 October 1998) sessions on the basis of a document prepared by the secretariat compiling all amendment proposals in a consolidated manner (TRANS/WP.30/1999/1). The Working Party requested the group of experts to reconsider all amendment proposals in detail and to report back to the Working Party at its October 1999 session.

9. The secretariat was requested to establish an Addendum to document TRANS/WP.30/1999/1 incorporating the views and decisions taken by the Working Party as well as the proposals made by Estonia during the session as far as they related to Phase II of the TIR revision process. The Working Party was also of the view that an analysis had to be made on the inclusion of additional information into the TIR Carnet. Such work could be carried out already during Phase II of the TIR revision process on the basis of a document prepared by the Russian Federation.

10. In accordance with this mandate, the group of experts continued its consideration of the various elements and amendment proposals prepared so far on the basis of documents TRANS/WP.30/1999 and Add.1. In addition, the group of experts took account of documentation prepared by the Russian Federation (TRANS/WP.30/1999/5), the European Commission (TRANS/WP.30/1999/6) and the IRU (Informal documents No.1 and No.2).

11. The group of experts took also note of document ECE/TRANS/17/Amend.19 containing all amendments concerning phase I of the TIR revision process that had come into force on 17 February 1999.

12. The group of experts was also informed that the secretariat intended to issue a document for distribution to Contracting Parties informing them about the internal UN procedures required in order to allow for the operation of the TIR Executive Board and the TIR secretariat to be financed through the Regular Budget of the United Nations as of the year 2001 (as stipulated in Annex 6, Explanatory Note 8.13.1-1 of the Convention).

**PROPOSALS FOR AMENDMENTS TO THE TIR CONVENTION, 1975 -
PHASE II OF THE TIR REVISION PROCESS**

(a) Status and functions of the international organization(s)

Documentation: TRANS/WP.30/1999/1 and Add.1.

13. The group of experts took note that, having considered its earlier proposals (TRANS/WP.30/1999/1, paras. 7-11), the Working Party had decided in principle on the insertion into the Convention of a new paragraph 2 bis to Article 6 as well as of an explanatory note 0.6.2 bis thereto (TRANS/WP.30/1999/1 and Add.1).

14. The group of experts took the following decisions on the above proposals:

Add a new paragraph 2 bis to Article 6 of the Convention to read as follows:

“2 bis An international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility.”

The proposed explanatory note 0.6.2 bis was accepted to read as follows:

Add a new explanatory note 0.6.2 bis (to Article 6.2 bis), annex 6 to the Convention to read as follows :

“0.6.2 bis. The relationship between an international organization and its member associations shall be defined in written agreements on the functioning of the international guarantee system.”

(b) Definition of termination and discharge procedures

Documentation: TRANS/WP.30/1999/1 and Add.1; Informal document No.1 (IRU).

15. The group of experts confirmed the opinion which had been expressed by the Working Party that the Convention should provide for a clear distinction between (a) the termination of a TIR operation as an obligation of the TIR Carnet holder and (b) the discharge of a TIR operation as the recognition by Customs authorities that a TIR operation has been terminated correctly.

16. Taking also account of Informal Document No.1 prepared by the IRU containing alternative proposals for definitions on termination and discharge procedures, the group of experts decided on the following new paragraphs a bis and a ter to Article 1 of the Convention:

“(a bis) the term “termination of a TIR operation” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto;”

Alternatively and depending on the results of the discussion on a definition of the holder of TIR Carnets, the group of experts felt that the following definition as proposed earlier (TRANS/WP.30/1999/1/Add.1) could be retained:

“[(a bis) the term “termination of a TIR operation” shall mean that the holder of a TIR Carnet or his agent has presented the road vehicle, the combination of vehicles or the container for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto;]”

(a ter) the term “discharge of a TIR operation” shall mean the recognition by Customs authorities that the TIR operation has been terminated correctly in a Contracting Party. This is established by the Customs authorities on the basis of a comparison of the data or information available at the Customs office of destination or exit (en route) and that available at the Customs office of departure or entry (en route);”

17. The group of experts was of the view that discharge of a TIR operation might take place in different Customs offices as determined by national legislation of Contracting Parties. In order to clarify this notion, the following comment to Article 1, paragraph (a) ter of the Convention was accepted:

“Comment

Discharge of a TIR operation

Discharge of a TIR operation could be effected either in the Customs office of departure or entry (en route), in the Customs office of destination or exit (en route) or in one or several central Customs offices established by a Contracting Party for that purpose.”

18. The group of experts also considered whether it would be appropriate to define the term “start of a TIR operation”. Some experts felt that it might be useful to do so with a view to describing comprehensively the total TIR transit operation. Others were of the view that the Convention did not explicitly refer to the start of a TIR operation, no problems had arisen so far in this respect and thus there was no need to define this procedure.

19. Without taking a decision on the inclusion of such a definition into the Convention, the group of experts considered the following draft which was principally in line with the approach taken for the definition of “termination of a TIR operation”:

“[(a quater) the term “start of a TIR operation” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of departure or of entry (en route) together with the load and the TIR Carnet relating thereto and that the TIR Carnet has been accepted by the Customs office;]”

20. The group of experts felt that, for the time being, it did not seem to be necessary to define the term “termination of a TIR operation with reservation”. The term “partial/final termination” might need to be defined however to allow for the proper application of the recommendation adopted on 20 October 1995 on the EDI control system for TIR Carnets. The IRU declared its readiness to assist the secretariat in the preparation of such a definition.

21. The group of experts felt that, following a final decision on the inclusion of the above definitions, the various paragraphs of Article 1 of the Convention should be re-numbered sequentially.

22. Following its decision in principle to establish separate definitions on “termination” and “discharge” procedures into the Convention, the group of experts agreed to align the text of the provisions of the Convention with these definitions. To this end the revised Article 10 of the Convention would re-group all references to “discharge” procedures while the revised Article 28 would contain “termination” procedures (at a later stage this order could be reversed). In line with this logic, the group of experts proposed the following amendments to the Convention:

Comment to Article 8 (Information to guaranteeing associations)

(1995 TIR Handbook, page 41)

Replace the wording: “... when a TIR Carnet has not been discharged or has been discharged conditionally.” by: “... when a TIR operation has not been terminated or has been terminated with reservation.”

Article 10, paragraph 1 of the Convention

Delete paragraph 1.

Article 10, (old) paragraph 2 of the Convention

Paragraph No. 2 will become paragraph No. 1.

Replace in the new paragraph No. 1 the wording: “have discharged a TIR Carnet unconditionally” by: “have discharged a TIR operation”.

Replace in the new paragraph No. 1 the wording: “certificate of discharge” by: “certificate of termination (French: certificat de fin de l’opération TIR)”.

Article 10, new paragraph 2 of the Convention

Add a new paragraph No. 2 to read as follows:

“2. Discharge of a TIR operation has to take place without delay.”

Explanatory note 0.10 (to Article 10), annex 6 to the Convention

Replace the word: “certificate of discharge” by: “certificate of termination”.

The existing comments to Article 10 (1995 TIR Handbook, pages 44 and 45) will be placed following the revised Article 28 (see below).

Article 11, paragraph 1 of the Convention

Modify the beginning of the first sentence to read as follows:

“1. Where a TIR operation has not been discharged, the competent authorities ...”.

Delete at the end of the first sentence the wording: “or conditional discharge”.

Replace in the second sentence the word: “certificate of discharge” by: “certificate of termination”.

Article 11, paragraph 2 of the Convention

Modify the first sentence to read as follows:

“2. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the TIR operation had not been discharged or that the certificate of termination had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date.”

Article 17, paragraph 2 of the Convention

Replace the word “discharge” by: “termination of a TIR operation”.

Article 28 of the Convention

Replace the text of Article 28 by the following:

“Termination of a TIR operation shall be certified by Customs authorities without delay. A TIR operation may be terminated without or with reservation: where termination is with reservation this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.”

Explanatory note 0.28 (to Article 28), annex 6 to the Convention

Modify paragraph 1 of explanatory note 0.28 to read as follows:

“1. Article 28 provides that termination of a TIR operation at the Customs office of destination shall take place without delay, on condition that the goods are placed under another Customs procedure or another system of Customs control while waiting for a succeeding Customs procedure or treatment.”

Replace in the third sentence of paragraph 2 of explanatory note 0.28 the wording “... the office of destination must discharge the TIR Carnet ...” by: “... the Customs office of destination must terminate the TIR operation ...”.

Delete the third (unnumbered) paragraph of explanatory note 0.28.

Comment to Article 28

Add a new comment to Article 28

“Applicable procedures after termination of a TIR operation

After termination of a TIR operation the goods covered by a TIR Carnet may be placed under another Customs procedure (for example, clearance for home use), or directly transferred across the border to a third country or to a free zone, or transferred to a place approved by Customs authorities where the goods can be stored until a Customs declaration is lodged in accordance with the legislation in force in the Contracting Party of destination or placed under another system of Customs control.”

Comment to Article 28 (Return of TIR Carnets)

(1995 TIR Handbook, page 56)

Replace the wording “whether discharged conditionally or unconditionally” by: “whether the TIR operation has been terminated with or without reservation”.

The three existing comments to Article 10 (1995 TIR Handbook, pages 44 and 45) will be placed following the revised Article 28.

Comment to Article 10 (Discharge of TIR Carnets)

(1995 TIR Handbook, page 44)

Modify the existing comment which becomes a comment to Article 28, paragraph 1 to read as follows:

“Termination of a TIR operation

1. In cases where a TIR operation has been terminated without reservation, the Customs administration which declares such termination as having been obtained improperly or fraudulently should specify in its [notification of non-discharge and] request for payment its reasons for declaring this termination improper or fraudulent.

2. The Customs authorities should not terminate TIR operations subject to systematic unspecified reservations, without giving reasons, solely for the purposes of avoiding the requirements of Article 10, paragraph 1 and Article 11, paragraph 1.”

Comment to Article 10 (Indication of reservations)

(1995 TIR Handbook, page 44)

Modify the existing comment which becomes a comment to Article 28 to read as follows:

“Indication of reservations

Customs administrations should make any reservation about the termination of a TIR operation very clear and should indicate the existence of a reservation by filling-in box 27 on voucher No.2 and by placing an “R” under item 5 on the counterfoil No.2 of the TIR Carnet and also fill in the certified report, if appropriate.”

Comment to Article 10 (Alternative forms of evidence as proof for the discharge of TIR Carnets)

(1995 TIR Handbook, page 45)

Modify the existing comment which becomes a comment to Article 28 to read as follows:

“Alternative forms of evidence as proof for the termination of a TIR operation

With a view to establishing alternative evidence for the proper termination of a TIR operation, Customs authorities are recommended to use exceptionally the following information:

- any official certificate or confirmation of the termination for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use;
- the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in Article 6 of the Convention;
- the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance with the Recommendation of the TIR Administrative Committee of 20 October 1995 (in line with Article 42 bis of the Convention).”

Annex 1 to the Convention

Model of TIR Carnet, Version I and Version II

Replace in box 24 on voucher No.2 the words “Certificate of discharge” by: “Certificate of termination of a TIR operation”.

Modify in box 26 on voucher No.2 the words “Number of packages discharged” by: “Number of packages for which the TIR operation is terminated”.

Modify under item 3 on the counterfoil No. 2 the words “Discharged packages or articles (as specified in the manifest)” by: “Number of packages for which the TIR operation is terminated (as specified in the manifest)”.

Comment to annex 1 (Discharge of TIR Carnets)

(1995 TIR Handbook, page 73)

Modify the existing comment to read as follows:

“Termination of a TIR operation

In boxes 24 to 28 of voucher No. 2, in addition to the required inscriptions, only one Customs stamp and one signature are necessary and sufficient to terminate a TIR operation. [Other authorities than Customs are not entitled to stamp and sign the vouchers (and the front cover).]

The filling-in by competent authorities of the counterfoil to voucher No. 2, including one Customs stamp and one signature, confirm [indicate; note by the secretariat] for the TIR Carnet holder and the guaranteeing association the termination of the TIR operation, with or without reservation.”

Comment to annex 1 (Customs stamps on the counterfoil)

(1995 TIR Handbook, page 73)

Replace in the second sentence the wording: “discharge the TIR Carnet unconditionally” by: “terminate the TIR operation without reservation”.

Comment to annex 1 (Alternative forms of evidence as proof for the discharge of TIR Carnets)

(1995 TIR Handbook, page 74)

Modify the existing comment to read as follows:

“Alternative forms of evidence as proof for the termination of a TIR operation

With a view to establishing alternative evidence for the proper termination of a TIR operation, Customs authorities are recommended to use exceptionally the following information:

- any official certificate or confirmation of the termination for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use;
- the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in Article 6 of the Convention;
- the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance with the Recommendation of the TIR Administrative Committee of 20 October 1995 and Article 42 bis of the Convention.”

Comment to annex 1 (Indication of reservations)

(1995 TIR Handbook, page 74)

Modify the existing text as follows:

“Customs administrations should make any reservation about the termination of a TIR operation very clear and should indicate the existence of a reservation by filling in box 27 on voucher No. 2, by placing an “R” under item 5 on the counterfoil No. 2 of the TIR Carnet and, if appropriate, by filling-in the certified report.”

23. Some of the experts felt that the holder of a TIR Carnet and the national guaranteeing association should not be liable for infringements, if any, arising after a TIR operation has been terminated without reservation unless termination had taken place in a fraudulent manner. Such a provision might also be included into the Convention or into a comment thereto.

24. The group of experts invited the secretariat to prepare a short document explaining the newly proposed concepts “termination” and “discharge” of a TIR operation and its consequences for the application of the Convention.

(c) Recommended procedures for the termination of a TIR operation

Documentation: TRANS/WP.30/1999/1; TRANS/WP.30/1999/1/Add.1; TRANS/WP.30/1999/6; TRANS/WP.30/R.178; Informal document No. 1 (IRU).

25. The group of experts considered recommended procedures for the termination of a TIR operation, prepared by the European Commission (TRANS/WP.30/1999/6), with the view to establishing a catalogue of best practices and providing guidelines for all Contracting Parties in the application of the Convention.

26. Some experts expressed doubt about recommendations on the use of additional documentation, not provided for in the TIR Convention, to establish alternative evidence for the proper termination of a TIR operation.

27. It was noted that, in establishing such recommendation, the Working Party should also take into consideration proposals on improved procedures of using TIR Carnets by transport operators that had been prepared already earlier by the secretariat (TRANS/WP.30/R.178).

28. The secretariat was requested to prepare a set of recommendations on the termination of a TIR operation on the basis of the proposals discussed for consideration at the forthcoming session of the Working Party in October 1999. The IRU offered its assistance in drawing up such recommendations.

(d) Recommended procedures for the discharge of a TIR operation

Documentation: TRANS/WP.30/1999/1; TRANS/WP.30/1999/1/Add.1; TRANS/WP.30/1999/5; Informal document No. 1 (IRU).

29. Recalling the set of procedures prepared already at its first session (TRANS/WP.30/1999/1, para. 22), the group of experts considered further procedures for the discharge of a TIR operation prepared by the Russian Federation taking account of electronic data interchange (EDI) systems applicable in some Contracting Parties (TRANS/WP.30/1999/5).

30. The group of experts was of the view that the use of such EDI system would require special security measures to protect the Customs data bases from unauthorized access.

31. The secretariat was requested to prepare consolidated recommendations on procedures for the discharge of a TIR operation for consideration by the Working Party at its forthcoming session in October 1999.

(e) **Recommended inquiry procedures**

Documentation: TRANS/WP.30/1999/1; TRANS/WP.30/1999/1/Add.1; TRANS/WP.30/1999/5; TRANS/WP.30/1999/6; Informal document No. 2 (IRU).

32. Recalling its earlier proposals on recommended inquiry procedures (TRANS/WP.30/1999/1, para. 25), the group of experts considered complementary proposals prepared by the Russian Federation, the European Community and the IRU.

33. The IRU pointed out that the recommended inquiry procedures should also include a notification of the TIR Carnet holder on the non-discharge of a TIR operation and should also refer to the facilities provided by the CUTEWISE system administered by the IRU.

34. Following a proposal made by the representative of Italy, the group of experts stressed that notification of non-discharge of a TIR operation, in accordance with Article 11, paragraph 1 of the Convention, should not only be addressed to the guaranteeing association, but also to the person directly liable as referred to in Article 8, paragraph 7 of the Convention. The Working Party was invited to decide how and where this element could be included into the Convention.

35. It was also noted that it would be useful to establish a list of recommended documents that should be presented by the competent authorities to the national guaranteeing associations together with a claim for payment (as proposed already earlier by Belarus in document TRANS/WP.30/1998/16).

36. The secretariat was requested to prepare consolidated recommendations on procedures for the discharge of a TIR operation for consideration by the Working Party at its forthcoming session in October 1999.

(f) Alternative forms of evidence

Documentation: TRANS/WP.30/1999/1 and Add.1.

37. The group of experts stressed that the alternative forms of evidence as proposed earlier in the above-mentioned documents are of no legal value to be used as proof for the proper termination of a TIR operation. Such alternative forms of evidence should be used only as auxiliary information during the inquiry procedure to establish such proof.

38. In view of these considerations, the group of experts decided to modify the comment to Article 28 as given above in the report (refer to paragraph 22).

(g) Definition of the holder of TIR Carnets

Documentation: TRANS/WP.30/1999/1 and Add.1; Informal document (EC).

39. The group of experts had an exchange of views on the different interpretations given and different national legal bases determining the rights and obligations of the holder of TIR Carnets as stipulated in Article 39, paragraph 2 of the Convention and inscribed in the model of the TIR Carnet, but not defined in the Convention. Recalling the request made by the Working Party to resolve during phase II of the TIR revision process the difficulties for international transport stemming from these different interpretations, the group of experts considered a proposal for a generally accepted concept of responsibility and liability of the TIR Carnet holder made by the European Community (paragraph 1 of their proposal). Some experts felt that this proposal seemed to be a good basis for a definition on the liability of the TIR Carnet holder to be included into the Convention.

40. In this context, several experts felt 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.

41. With regard to the question whether the TIR Carnet holder had to be the actual TIR transport operator, the group of experts was informed that, out of 32 countries surveyed by the TIR secretariat, 10 Contracting Parties seemed to allow for the holder of a TIR Carnet to sub-contract TIR transport operations while 22 Contracting Parties seemed to require the TIR Carnet holder to be the actual TIR transport operator.

42. Recognizing the needs of the transport industry, providing increasingly complex transport chains often requiring sub-contracting of specific services, the group of experts invited the Working Party to continue its consideration of this matter which needed to be resolved urgently.

(h) Inclusion of additional information into the TIR Carnet

Documentation: Informal document No. 1 (IRU); TRANS/WP.30/1999/5;
TRANS/WP.30/1999/1/Add.1.

43. The group of experts recalled that the Working Party had been of the view that an analysis had to be made on the inclusion of additional information into the TIR Carnet. On the basis of a document prepared by the Russian Federation and an informal document transmitted by the IRU, the group of experts considered the inclusion of the following items into a revised TIR Carnet:

- Unique identification number of the TIR Carnet holder as available in the International TIR Data Bank (ITDB) administered by the TIR secretariat;
- HS Commodity Code (possibly with a 6 digit break-down);
- Commercial value of the goods;
- Allowance of up to 6 Customs offices of departure and destination.

44. While the inclusion of the identity number was generally advocated by the group of experts as a useful tool to reduce misuse of the TIR Carnet and the TIR operation, the other proposals would need to be studied in more detail at a later stage.

PHASE III OF THE TIR REVISION PROCESS

45. This agenda item was not considered due to lack of time.

OTHER BUSINESS**(a) Example of a TIR Carnet duly filled-in**

45. The group of experts, noting that a revised version of the TIR Handbook would be issued in October 1999, requested the secretariat to prepare, in cooperation with the Customs authorities of Austria, Hungary, the Russian Federation and Ukraine, a new example of a duly-filled in TIR Carnet. This new example should serve as a model for transport operators and Customs authorities for the correct filling-in and stamping of the TIR Carnet and its vouchers.

(b) Transfer of TIR activities in Austria

47. The group of experts was informed by the IRU that, as of 1 July 1999, the issuance of and guarantee for TIR Carnets has been transferred from the ÖAMTC to the “Arbeitsgemeinschaft Internationaler Strassenverkehrsunternehmer “Osterreichs (AISO)”“.

(c) Date of next session of the Working Party (WP.30)

48. The group of experts took note that the forthcoming ninety-third session of the Working Party on Customs Questions affecting Transport (WP.30) will be held from 18 to 22 October 1999 in conjunction with the twenty-seventh session of the TIR Administrative Committee (21 and 22 October 1999).

ADOPTION OF THE REPORT

49. The group of experts adopted the report of its fourth session on the basis of a draft prepared by the secretariat for transmission to the forthcoming session of the Working Party on Customs Questions affecting Transport (WP.30).
