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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

Note by the secretariat

I. Mandate

1. At its 144th session, the Working Party considered document ECE/TRANS/WP.30/2016/15, which outlined two options to amend Article 20. After discussions, the Working Party agreed that the alternative proposal for Article 20 seemed the most appropriate for implementation in Customs Unions, but needed further consideration on its drafting, to avoid ambiguous interpretation. To this end, the Working Party requested the secretariat to prepare a revised proposal on Article 20, based on the comments provided during the session.

2. At its 145th session, the Working Party considered document ECE/TRANS/WP.30/2017/2. Several delegations noted that the formulation as elaborated in the document, continued to present difficulties with the implementation of this provision in Customs Unions (see ECE/TRANS/WP.30/290, para. 18). The delegations of Belarus and of the Russian Federation provided oral proposals for alternative formulations. In view of the new material, the Working Party requested the secretariat to prepare a new document for the next session, which would provide in writing all the available proposals for Article 20 for further consideration and possible decision. Delegations were also invited to provide their proposals in writing, for inclusion in this document, no later than by 20 March 2017.

3. In line with this request, the secretariat lists, in chronological order, in the present document, the various proposals for the wording of Article 20, together with their background and preliminary considerations by the secretariat.

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II. General considerations by the secretariat

4. Article 20 refers to the right of customs authorities to fix a time-limit or prescribe a route on the territory of their country. It appears that the reference to “country” stems from the equivalent provision of the 1959 TIR Convention which did not provide for the possibility for Customs or Economic Unions to become Contracting Parties. This became a possibility only under the 1975 Convention. However, the 1959 TIR Convention provided, in its Article 38, the possibility for Contracting Parties that form a Customs or Economic Union to enact special provisions for transport operations commencing or terminating or passing through their territory. This provision, currently reflected in Article 48 of the 1975 TIR Convention, has provided the basis for the evolution of practices in the implementation of the TIR Convention in Customs Unions.¹

5. At present, the European Union (EU) is both a Customs Union and a non-State Contracting Party to the TIR Convention. The Eurasian Economic Union (EEU), on the other hand, is a Customs Union whose member States are individually Contracting Parties to the TIR Convention, but the EEU itself has not acceded to the Convention. Therefore, the EEU would seem to have to rely on Article 48 for any special conditions or legislative measures applicable on its single customs territory, including for the prescription of routes and time-limits as per Article 20. The proposals for Article 20 aim to replace the word “country”, with a word or phrase that would be, on the one hand, editorially consistent with the rest of the Convention and, on the other hand, more suitable for the purposes of Customs Unions regardless of whether or not said Customs Unions are also Contracting Parties.

6. Against this background, it could be contended that Article 48 provides the necessary scope for Customs Unions to prescribe routes and time-limits across the entirety of their common customs territory. As such Article 20, even in its current wording would not appear to place any significant restriction on Customs Unions as it could be applied *mutatis mutandis*² under the scope of Article 48. However, in light of the discussions on amendments of an editorial nature, the Working Party has been considering the possible ways to replace the word “country”.

III. Proposals for amending Article 20

7. Article 20 currently reads:

“For journeys in the territory of their country, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route”.

8. Article 48 currently reads:

“Nothing in this Convention shall prevent Contracting Parties which form a Customs or Economic Union from enacting special provisions in respect of transport operations commencing or terminating, or passing through, their territories, provided that such provisions do not attenuate the facilities provided for by this Convention”.

9. For the amendment proposals listed below, deletions are marked in ~~strike through~~ and additions are marked in ***bold italics***:

¹ The practices in implementing the TIR Convention in the context of a Customs Union were discussed in 2013, see ECE/TRANS/WP.30/270.

² Meaning: making necessary alterations while not affecting the main point at issue.

A. Proposal by the European Union

10. “For journeys in the territory of their ~~country~~ *Contracting Party*, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route”.

1. Background of this proposal

11. This proposal was submitted by the delegation of the European Union at the 142nd session of the Working Party, in the context of discussing amendment proposals of an editorial nature (see ECE/TRANS/WP.30/284, paras. 12-15).

2. Considerations by the secretariat

12. It would appear, in principle, that replacing the word “country” would be warranted considering that, under the 1975 TIR Convention, non-State actors (Customs or Economic Unions, see Article 52, para. 3) can become Contracting Parties. Within the current geographical scope of the TIR Convention, there are two Customs Unions, only one of which has acceded to the Convention. Therefore, it could be contended that use of the term “Contracting Party” may appear restrictive for Customs Unions that are not, at the same time, a Contracting Party to the TIR Convention. However, Article 48 of the Convention allows Contracting Parties that form a Customs or Economic Union to enact special provisions in respect of transport operations commencing, terminating or passing through their territory. As such, it may well be the case that Customs Unions that are not Contracting Parties may rely on this provision for the purposes of prescribing routes and fixing time-limits across their customs territory and that replacing “country” with “Contracting Party” would have editorial and not material value (see paras. 4-6 above).

B. Proposal by the secretariat

13. “~~For journeys in the territory of their country, the~~ Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route *from a customs office of departure or entry (en route) to a customs office of destination or exit (en route)*”.

1. Background of this proposal

14. This wording was elaborated by the secretariat for discussion the 144th session of the Working Party (see ECE/TRANS/WP.30/2016/15), against the background of addressing the needs of Customs Unions that are not Contracting Parties to the Convention. For this reason, the wording selected was based on terms well known within the TIR Convention, but attempted to leave enough scope of interpretation as to not be restrictive for Customs Unions. At the 144th session, the Working Party agreed that this proposal for Article 20 seemed to best fit its implementation in Customs Unions. At the same time the Working Party was of the view that it needed further consideration on its drafting, to avoid ambiguous interpretation (see ECE/TRANS/WP.30/288, para. 13).

2. Considerations by the secretariat

15. This wording refers to a customs office of departure or entry (en route) to a customs office of destination or exit (en route) without specifying if these offices are within a single country that is a Contracting Party, or a Customs Union that is a Contracting Party or within a Customs Union that is not a Contracting Party. In the latter case, the routes and time-limits would be prescribed on a single customs territory in line with the relevant

Customs Code of the Customs Union concerned. In lack of any restriction in Article 20, this wording would appear to address all scenarios in combination with Article 48. However, ambiguity was identified by delegations in this wording, possibly due to the similarity of the wording to the definition of a TIR operation in Article 1, para. b.

C. Proposal discussed at the 145th session

16. ~~“For journeys in the territory of their country, the~~ *For TIR operations*, customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route.

1. Background of this proposal

17. This re-wording was presented for discussion at the 145th session of the Working Party (see ECE/TRANS/WP.30/2017/2) and was based on the oral proposal by the Russian Federation during the 144th session to look into the possibility of referring to the term “TIR operation”. The Working Party noted that this wording continued to present difficulties with the implementation of this provision in Customs Unions.

2. Considerations by the secretariat

18. The definition of a TIR operation in Article 1, para. (b) refers to the portion of the TIR transport within a “Contracting Party” and thus reference to a TIR operation in Article 20 would appear to be restrictive for Customs Unions that are not (yet) Contracting Parties to the TIR Convention. However, Article 48 still provides the necessary flexibility if the Working Party wishes to proceed with this option. Finally, the overall value added of inserting the term “TIR operation” in the context of Article 20 seems doubtful. Article 20 has never been amended, which would appear to imply that its meaning and application has not presented any difficulties.

D. Proposal by Belarus (transmitted in writing in March 2017)

19. For current text read:

"Customs authorities, within the framework of a TIR operation, may fix for journeys in the territory of their country or in several countries, if required by the legislation of the Contracting Party, a time-limit and require the road vehicle, the combination of vehicles or the container to follow the prescribed route".

1. Background of this proposal

20. At the 145th session, delegations were invited to provide their further proposals in writing, for inclusion in this document, no later than by 20 March 2017 (see ECE/TRANS/WP.30/290, para. 18). The proposal was transmitted to the secretariat in the Russian language.

2. Considerations by the secretariat

21. The same rationale as above (see para. 18) applies to this proposal namely that Article 48 already provides the required flexibility and that inserting the term “TIR operation” in Article 20 may be superfluous considering the consistent clarity in the application of Article 20 over the years. Furthermore, inserting such specific reference may carry the risk that such references will be requested to be added in several articles.

E. Proposal by the Russian Federation (submitted orally during 145th session)

22. ~~“For journeys in the territory of their country, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route from a customs office of departure or entry (en route) to a customs office of destination or exit (en route), respecting such a time-limit and/or prescribed route, if it is fixed”.~~

1. Background of this proposal

23. This proposal was submitted orally by the delegation of the Russian Federation, during the discussions at the 145th session. Considering this was provided orally during the session, the Working Party was of the view that more time would be needed to consider this wording and requested the secretariat to include it in the list of possible wording for amending Article 20 for the current session (see ECE/TRANS/WP.30/290, para. 18).

2. Considerations by the secretariat

24. This proposal is identical to the one provided under heading (B) of the present document, with the addition of the phrase *“respecting such a time limit [...], if it is fixed”*. At the 145th session, the Working Party requested clarification from the Russian Federation on the envisaged value-added of the last phrase.

E. Proposal by the Eurasian Economic Commission (transmitted in writing in March 2017)

25. *For current text read:*

"The Customs authority in which the TIR operation begins may fix [for such a TIR operation], including, if such an operation is carried out in the territory of the Contracting Parties forming a customs or economic union, and this is stipulated by the legislation of such customs or economic union, a time-limit and require the road vehicle, the combination of vehicles or the container to follow the prescribed route."

26. In conjunction with the above, the Eurasian Economic Commission proposes an amendment to Article 1, paragraph b on the definition of a TIR operation:

~~“The term “TIR operation” shall mean the part of a TIR transport that is carried out in a Contracting Party~~ *in the territory of the Contracting Party or of the Contracting Parties forming a customs or economic union* from a Customs office of departure or entry (en route) to a Customs office of destination or exit (en route)”.

1. Background of this proposal

27. At the 145th session, delegations were invited to provide their further proposals in writing, for inclusion in this document, no later than by 20 March 2017 (see ECE/TRANS/WP.30/290, para. 18). The proposal was transmitted to the secretariat in the Russian language.

2. Considerations by the secretariat

28. The essence of the proposal transmitted by the Eurasian Economic Commission appears to be to include explicit reference to Customs Unions, not only in Article 20, but also in the definition of a TIR operation. The formulation for Article 20, at least in the English language, appears to be very descriptive and add a degree of complexity to the

understanding of the proposed text, and thus may warrant linguistic simplification prior to further consideration.

29. The proposal to amend Article 1, para. (b) may not be necessary considering that Article 48 already gives scope for Customs Unions to enact special legislation for operations commencing, terminating or passing through their territories.

III. Considerations by the Working Party

30. The Working Party is invited to consider the above proposals for amending Article 20, taking into account the scope of Article 48.
