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

Application of the Convention

Application of the TIR Convention in a Customs union with a single Customs territory

Note by the secretariat

I. MANDATE AND BACKGROUND

1. At its 121st session, the Working Party decided, as part of its Programme of Work for 2009-2013, to review the United Nations Economic Commission for Europe (UNECE) Conventions on border crossing facilitation in order to ensure their relevance and implementation as well as coherence with other international or regional treaties (ECE/TRANS/WP.30/242, para. 40 and ECE/TRANS/WP.30/2009/7).

2. In terms of their impact on the implementation of the UNECE Conventions, in particular the TIR Convention, the most important regional treaties are those establishing Customs unions with a single Customs territory. For a long time, the European Union has remained the only example of such a Customs union. However, in November 2009, a new Customs union between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation was established.

The constituent agreement provides for the creation of a single Customs territory with no internal borders between the three countries in 2010-2011. With a view to ensuring a smooth application of the TIR Convention in the newly created Customs union, the Customs administration of the Republic of Belarus has expressed the wish to learn from an exchange of experiences and best practices concerning the implementation of the TIR procedure in Customs unions, in particular, in the European Community. In line with this request, the secretariat, in cooperation with the European Commission, has prepared the present document.

II. IMPLICATIONS OF A CUSTOMS UNION WITH A SINGLE CUSTOMS TERRITORY FOR THE IMPLEMENTATION OF THE TIR CONVENTION

3. To further their economic integration, countries taking part in a Customs union may decide, at a certain point in time, to establish of a single Customs territory without internal Customs borders. In general, the removal of Customs controls at the internal borders of a Customs union further facilitates international transport and trade with the Customs union. At the same time, the absence of Customs at the internal borders may impede the application of a number of provisions of the TIR Convention, for example Articles 8, 10 and 11, unless special measures are put in place. It should also be pointed out that, in view of the provisions of Article 2, the TIR procedure can only be used for a transit movement which begins or ends outside the single Customs territory, or is effected between two points in the Customs territory through the territory of a third country.

4. According to Article 48 of the TIR Convention, Contracting Parties which form a Customs or economic union may enact 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. Under the condition of a single Customs territory, special arrangements should be made with particular focus on, but not necessarily limited to, issues such as:

- (a) Liability of the national association(s) and recovery of a Customs debt;
- (b) Establishing a common guarantee level, also for the newly acceding countries;
- (c) Application of Articles 6.4 and 38;
- (d) Treatment of TIR Carnet vouchers inside a Customs union.

A. Liability of the national association(s) and recovery of a Customs debt

5. According to Articles 6.1, 8.1 and 8.4, the liability of a national association is restricted to the Customs territory of the country where it is established and authorized. If the national Customs territories of Contracting Parties form a single Customs territory, this would require the establishment of a mechanism to adapt the implementation of the above Articles under the new conditions. Here, two possible solutions may be envisaged: (i) establishment and authorization of a single guaranteeing association whose liability would cover the whole territory of the Customs union or (ii) introduction of special arrangements which would define a division of the liabilities between the already existing national associations, depending on the place where an irregularity has been committed. Under option (ii), the member State of a Customs union which is responsible for the recovery of a Customs debt should also be determined. The competent

authorities of this country will have to claim payment from the person(s) directly liable and, eventually, from their national guaranteeing association in line with Articles 8.7 and 11 of the Convention.

Implementation in the European Union

6. In the absence of a regional guaranteeing association covering the whole European Union (EU) each member State has to have at least one authorized national guaranteeing association. In order to simplify the application of Article 11 of the TIR Convention, Article 457(3) of the Customs Code Implementing Provisions provides that a valid notification of non-discharge given by the relevant Customs authority to its guaranteeing association in accordance with the TIR Convention shall have the same legal effect as if the notification had been given to guaranteeing association in another member State by its own Customs authority.

7. In order to establish which member State is responsible for the recovery of the Customs debt, it is essential to establish the place where this Customs debt was incurred. According to Article 215 of the Community Customs Code, three alternative scenarios are foreseen:

- (a) the place where the events from which the Customs debt arises occur, or
- (b) the place where the Customs authorities conclude that the goods are in a situation in which a Customs debt is incurred, or
- (c) the place where the goods were either placed under the procedure concerned or were introduced into the EU Customs territory.

B. Establishing a common guarantee level, also for the newly acceding countries

8. Customs tariff rates are normally harmonized throughout all member States of a Customs union. Therefore, the introduction of a common TIR guarantee level for all member States should also be established, for example, on the basis of Customs union legislation. Whenever a new country joins a Customs union and lifts its Customs borders with other member States, this country should also apply the common TIR guarantee level as of that date.

Implementation in the European Union

9. As the monetary limit of the guarantee per TIR carnet is to be determined by each Contracting Party, the EU has adopted 60,000 EUR as the maximum amount. This amount is stipulated in Article 457(1) of the Customs Code Implementing Provisions and is applicable for all member States.

10. For those member States that have not adopted the EUR as the single currency, the maximum amount payable per TIR Carnet is equivalent to the exchange value in the national currency of 60,000 EUR. The rates to be used for this conversion are fixed once a year and are published in the Official Journal of the European Union on the first working day of October and come into effect on the following 1 January.

11. In the event of a claim against the guarantee chain, the rate of exchange to be used is that in force on the day of the acceptance of the TIR carnet at the Customs office of departure or

entry. These rates are fixed once a month and are published in the Official Journal of the European Union on the penultimate working day of the month.

C. Application of Articles 6.4 and 38 of the TIR Convention

12. According to Article 6.4 and Annex 9, part II, all decisions regarding the authorization of natural and legal persons to use the TIR procedure and revocation of such authorization are taken at the national level. The same is true for the exclusions of transport operators based on the provisions of Article 38. In a Customs union, the effective enforcement of revocations or exclusions can only be ensured if these decisions are followed by all other member countries. For this purpose, a common database and a mechanism for communication among the competent authorities should be established.

Implementation in the European Union

13. If one member State decides to exclude an operator from the TIR system or to revoke his/her access to this system, this exclusion or revocation is applicable within the whole EU. According to Article 457a of the Customs Code Implementing Provisions, all exclusions made under Article 38 and revocations made under Article 6.4 of the TIR Convention are to be notified to the European Commission and to the other member States. These notifications should comprise the same information that is sent to the TIRExB and includes the TIR Carnet Holder's ID reference number. The European Commission communicates this information in the form of the list of traders denied access to the TIR system via a restricted website to which national administrations have access.

D. Treatment of TIR Carnet vouchers inside a Customs union

14. Normally, one couple of vouchers is required for each country involved in a given TIR transport. However, if a TIR transport passes through several countries which are member States of the same Customs union with a single Customs territory, vouchers of the TIR Carnet cannot be treated at the internal borders between these countries. Thus, only one pair of vouchers should be used for a TIR operation inside the Customs union. As far as the discharge procedure is concerned, the exchange of information between the office of departure/entry and exit/destination should be extended from the national level to the level of the Customs union. In this context, the use of electronic data interchange (EDI) systems can be instrumental in order to minimize the administrative costs involved and to ensure the reliability of information exchange.

Implementation in the European Union

15. The Customs office of departure fulfils distinct and vital functions: this office accepts the TIR carnet, ensures the physical security of the road vehicle/container, and applies Customs controls. The other, equally important, function concerns the discharge of the TIR operation and, where necessary, the recovery of the duties and taxes due. Given the fact that the EU is, for the purposes of the rules governing the use of the TIR carnet, considered to form a single territory the role and responsibility of the EU's Customs office of departure is particularly significant.

16. Only one pair of vouchers is required within the EU: voucher No. 1 is used for the Customs office of departure or entry and voucher No. 2 is used for the Customs office of destination or exit.

17. Since 1 January 2009, the termination/discharge of the TIR operation between the Customs offices of departure or entry and the Customs offices of destination or exit is done on the basis of electronic messages (voucher No. 2 is retained at the Customs office of destination/exit). In fallback situations terminations and discharges are done on the basis of vouchers No. 2 that are to be sent back to the Customs office of departure/entry.

III. FINAL CONSIDERATIONS

18. In this document, the secretariat has attempted to highlight some key issues in the implementation of the TIR procedure which should be addressed in a Customs union, as well as possible solutions to these issues. It goes without saying that the member States of a Customs union are free to choose these or other solutions, if they better fit the local or regional conditions. What is important, however, is that the member States realize their collective responsibility to ensure the smooth functioning of the TIR procedure in a Customs union, so that its establishment leads to further facilitation of international transport and trade.
