



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/2005/12
14 December 2004

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

(One-hundred-and-ninth session, 31 January - 4 February 2005,
agenda item 7 (b) (iii))

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

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the European Community (EC)

A. BACKGROUND

1. During the recently held second meeting of the Ad hoc group of experts on Phase III of the TIR revision, the European Community was invited to prepare a document describing the Community's system concerning the treatment of the customs debt. Please find below an overview of the Community's system which should be self-explanatory.

2. Unless stated to the contrary, the legal references relate to the Community Customs Code (Regulation (EEC) No 2913/1992) which, as should be pointed out, is currently in the process of

* The present document has been submitted after the official documentation deadline by the Transport Division due to resource constraints.

being revised and modernized and, therefore, this overview is subject to possible change in the future.

B. WHAT IS TO BE SECURED?

3. The security covers the "customs debt" which is defined as the amount of import (or export) duties which are Customs duties and charges having an effect equivalent to Customs duties. In addition, Article 91 defines the TIR procedure as an "external transit procedure" which enables the suspension of the payment of import duties and "other charges". In this context, "other charges" refer to excise duties and Value Added Tax due on importation. In accordance with Article 456 of the Customs Code implementing provisions (Regulation (EEC) 2454/1993), when an irregularity in respect of the TIR procedure gives rise to a Customs debt, the "other charges" referred to in Article 91 are also payable, where appropriate. Thus, the amount to be secured covers import (or export) duties, VAT and, where appropriate, excise duties.

C. WHO IS TO PROVIDE SECURITY?

4. In accordance with Article 189, the security shall be provided by the person who is liable or who may become liable for payment of the debt. However, the Customs authorities may authorize the security to be provided by a person other than the person from whom it is required.

D. THE AMOUNT OF THE SECURITY

5. In accordance with Article 192, the amount of the security is equal to the precise amount of the debt or, where this is not known, an estimate of the maximum amount of the debt. This article, however, foresees special provisions being established in respect of the transit procedure. In line with this derogation, Article 457 (1) of Regulation 2454/1993 states that the secured amount of the security for TIR operations shall be limited to 60,000 EURO (or the national currency equivalent).

E. TYPES OF SECURITY

6. In accordance with Article 193, the security can be provided either by means of a cash deposit or by a guarantor. Article 197 foresees that other forms of security can also be accepted.

F. STATUS OF GUARANTOR

7. In accordance with Article 195, the guarantor must be a third person established within the Community and approved by the customs authorities.

G. LIABILITY OF THE GUARANTOR

8. In accordance with Article 195, the guarantor shall undertake, in writing, to pay jointly and severally with the debtor, the secured amount of the Customs debt (and other charges) which falls to be paid. A recent European Court of Justice Decision¹ described the undertaking as a triangular arrangement whereby the *guarantor* gives an undertaking to the *creditor* that he will fulfil the obligations assumed by the *debtor* in cases where the debtor fails to fulfil his own obligations. Specifically, the Court held that where there is an irregularity in the TIR procedure, particularly where the TIR Carnet has not been discharged, duties become payable. The payment of these duties is due directly from the TIR Carnet holder. Where he does not pay the sums owed, then the guarantor (the national guaranteeing association) is jointly and severally liable for payment.

9. The Court also stated that the guarantor does not take the place of the debtor but guarantees only to pay his debt. The creditor cannot bring proceedings against the guarantor unless the debt covered by the guarantor is payable. In addition, it follows that the obligation assumed by the guarantor cannot exceed that of the debtor.

H. INCURRENCE OF CUSTOMS DEBT IN TIR – IDENTIFICATION OF THE CUSTOMS DEBTOR

10. In addition to the declarant requesting release of the goods to free circulation (Article 201), Community legislation foresees three Customs debtors:

- Article 202: the person(s) who unlawfully introduced the goods into the Customs territory of the Community;
- Article 203: the person(s) who unlawfully removed the goods from Customs supervision; and
- Article 204: the person(s) who failed to fulfil the obligations of the Customs procedure in question. Normally, this person is the TIR Carnet holder.

11. Articles 455 and 455a of Regulation 2454/1993 (the Customs Code Implementing Provisions) prescribes time limits for informing the guaranteeing association and the TIR Carnet holder about the non-termination of TIR operations (the so called "pre-notifications") and for the inquiry procedure. These time limits and actions are without prejudice to the requirements of Article 11.1 of the TIR Convention.

J. RECOVERY OF THE AMOUNT OF THE CUSTOMS DEBT

¹ ECJ Case C-266/01.

12. Article 215 provides rules to determine which Member State is responsible to recover the debt, and in general this will be the Member State where the debt arose. In case this cannot be determined within a period of 10 months from the date of the acceptance of the TIR Carnet, the Member State responsible for recovery will be either the Member State of departure or entry, as appropriate.

13. In accordance with Article 217, the amount of the Customs debt is to be entered in the accounts. This is an important administrative act that creates obligations on both the Customs authorities and the debtor/guarantor. Articles 218 and 219 sets the time limits for the entry in the accounts which in all the cases, including TIR irregularities giving rise to the payment of the Customs debt, shall not exceed 14 days from the date when the debt has been calculated and the debtor determined.

14. In accordance with Article 221, as soon as the amount of the debt has been entered in the accounts the amount of the debt shall be communicated to the debtor. As a general rule, the debt has to be communicated to the debtor within 3 years of the date when the debt was incurred. However, this period can be extended in cases involving criminal court proceedings.

15. In accordance with Article 222, the prescribed period for the payment of the debt shall not exceed ten days following the communication to the debtor of the amount of duty owed. This deadline can be extended where the debtor received the communication too late to enable him to pay within the prescribed period. Such an extension shall not exceed the amount of time necessary for the debtor to take the appropriate steps to pay.

16. In accordance with Article 232, if the debtor does not pay the amount due within the prescribed period, the Customs authorities shall take the appropriate action to enforce recovery of the amount due. Special provisions in the Customs Code Implementing Provisions apply in respect of guarantors within the framework of transit/TIR when they become liable to pay the secured amount for the debt.

K. EXTINCTION OF CUSTOMS DEBT

17. Article 233 describes the methods by which the Customs debt may be extinguished; this includes the payment of the amount of the duty.

18. It is understood that the Ad hoc group noted that, together with the European Community, up to 30 Contracting Parties to the TIR Convention have a common legal base and so apply either the same or a very similar system of securing the debt. With this in mind, it would seem

appropriate that the opportunity should now be taken to revise the Convention in order to reflect the general principles set out above.
