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Working Party on Customs Questions affecting Transport

(One-hundred-and-eleventh session, 4–7 October 2005,
(agenda item 7 (b) (ii))

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

Revision of the Convention

Preparation of Phase III of the TIR revision process

Note by the secretariat

A. BACKGROUND

1. At its one-hundred-and-eighth session, the Working Party considered a question raised by the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of the Computerization of the TIR Procedure (hereafter called: “the Expert Group”) at its fifth session, as to whether it should be considered to elaborate a new Convention, a so-called “eTIR” Convention, in connection with the introduction of the computerization of the TIR procedure with the aim of establishing a clear cut and tailor made legal instrument for a computerized transit procedure rather than embarking on amending the present Convention. The Working Party was of the view that it was premature to take any decisions concerning this question and that such work should be carefully considered before any decisions would be taken. However, the Working Party agreed

* The UNECE Transport Division has submitted the present document after the official documentation deadline due to planning oversight.

that it would be useful to explore the options in this respect at an early stage and requested the secretariat to prepare a document for its session in June 2005 describing the scenarios and the consequences either in the case that a new so-called “eTIR” Convention would be opted for or in the case that an amendment of the present TIR Convention would be opted for (TRANS/WP.30/216, paragraph 41).

2. At its one-hundred-and-tenth session, the Working Party reconsidered this question and requested the secretariat to prepare for its next session a working document, containing an overview of the possible scenarios in connection with the development of the eTIR project and the alignment of the legal basis in this context. The secretariat had not presented this document for the present session as the results of the eTIR questionnaire, in particular the views of Customs authorities concerning the elaboration of a new eTIR Convention had not been available in full before the present session (TRANS/WP.30/218, paragraph 31)

3. Underlying document aims at providing the requested scenarios and consequences.

B. THE TIR CONVENTION, 1959 AND 1975

4. The TIR Convention, 1959 was concluded on 15 February 1959 and entered into force on 7 January 1960. The Convention has only one remaining Contracting Party, Japan. The TIR Convention, 1975 was concluded on 15 November 1975 and entered into force on 20 March 1978. Upon its entry into force, the TIR Convention, 1975 replaced the TIR Convention, 1959 in relation to those Contracting Parties which have acceded to the TIR Convention, 1975 (Art. 56 of the TIR Convention, 1975). The TIR Convention, 1975 currently consists of 65 Contracting Parties.

C. AMENDMENT OF THE TIR CONVENTION, 1975

5. Article 59 of the Convention stipulates that any proposed amendment to the Convention shall be considered by the Administrative Committee composed of all Contracting Parties (...). Any such amendment considered or prepared during the meeting of the Administrative Committee and adopted by it by a two-thirds majority of the members present and voting shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance. (...) Any proposed amendment (...) shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party. If any objection to the proposed amendment has been communicated (...), the amendment shall be deemed not to have been accepted and shall have no

effect whatsoever. Article 60 contains a special, simplified, procedure for amending the annexes to the Convention.

6. Usually, proposals for amendment are submitted by one or more Contracting Parties and discussed extensively the WP.30 before being transferred to AC.2. Formally, proposals have to be put to the vote (Article 59, paragraph 2 and Annex 8, Article 5), but AC.2 has developed the practice to adopt proposals by consensus. By doing so, AC.2 tries to avoid that, later on, any Contracting Party, will raise objection to the amendment, thus preventing it from coming into force. However, this risk is always present, because not all Contracting Parties to the Convention attend the sessions of AC.2.

D. ORGANIZATION AND POSSIBLE OUTCOME OF A REVIEW CONFERENCE

7. According to the UN Treaty Handbook: “revision/review basically means amendment. However, some treaties provide for revisions/reviews separately from amendments. In that case, revision/review typically refers to an overriding adaptation of a treaty to changed circumstances, whereas the term amendment refers to changes to specific provisions.”

8. Article 62 stipulates the procedure to be followed in order to organize a review conference of the TIR Convention. Such review conference may be convened upon request by a Contracting Party or by the AC.2. The Secretary General of the United Nations will invite all Contracting Parties as well as all other States, members of the United Nations (see Art. 52, paragraph 1) to attend the conference and to submit proposals which they would like to be considered.

9. The outcome of a review conference leads to the adoption of a new convention. The final clauses of such convention can stipulate that the new convention supersedes the previous convention in the relation between the Contracting Parties to the new convention (as happened in the case of the TIR Convention 1975 (Article 56, paragraph 1)). However, the States taking part in the review conference can also decide that the new convention will have an independent status and will not bear any consequences with regard to the existence of any prior concluded convention. In respect of the TIR Convention, this would lead to the situation that the current TIR Convention continues to exist as before, whereas those States wishing/ready to apply the computerized TIR procedure will indicate this by ratifying the new convention, the so-called “eTIR-Convention”.

E. PROS AND CONS OF THE VARIOUS OPTIONS

10. Amending the current TIR Convention has the advantage that it requires a relatively simple procedure, where the adoption of any proposal (by vote or consensus) will lead to an amendment of the TIR Convention valid for all Contracting Parties. The downside is that any amendment proposal adopted by the AC.2 (by vote or consensus) runs the risk of objection by any Contracting Party (in particular by one of those countries not having taken part in the adoption by the AC.2), which would lead to the non-acceptance of the amendment proposal. An additional complication is that, in accordance with instructions provided by the UN Treaty Handbook, the amendment procedure should be limited to changes in specific provisions and should not be applied in case of an overriding adaptation due to changed circumstances.

11. A review conference leading to the adoption of the eTIR Convention has the advantage of having a clean slate on which to start drafting the text of a new convention, without having the complication of fitting new ideas or words into already existing concepts and provisions. It also has the advantage that, regardless whether such eTIR Convention would be a supplement to or replacing the current TIR Convention, States wishing to apply the new convention will have to indicate this intention unequivocally by signing the eTIR Convention or by submitting their instruments for accession. Disadvantage, however, is that the preparatory phase may require intensive and lengthy international negotiations, and that the outcome will only become binding for those States which explicitly commit themselves to it. Thus, the impact of the new eTIR Convention could be limited, in case only a small number of countries, not necessarily neighbouring each other, decide to accede to it. Finally, subject to the content of its entry-into-force clause, it may take considerable time (in case of the TIR Convention, 1975 it took almost three years) before a sufficient number of States, required for the eTIR Convention to become applicable, have deposited their instruments of accession.

F. PRELIMINARY OUTCOME OF THE eTIR-QUESTIONNAIRE

12. In view of the fact that the issue raised in the eTIR questionnaire does not refer to the introduction of a new eTIR Convention as such but addresses the more general issue of an eTransit Convention, the Working Party may deem it more appropriate to consider the relevant outcome to question 37 of the eTIR questionnaire within the context of a separate agenda-item, related to the initial brainstorming by the Working Party at this session, dedicated to the development of a global Customs transit procedure, covering all modes of transport.

G. CONSIDERATIONS BY THE WORKING PARTY

13. When discussing the repercussions of the computerization process on existing legal provisions and administrative procedures in 2001, the Ad hoc Expert Group on the Computerization of the TIR Procedure, acknowledged that, regardless of the finally selected approach, from a legal point of view, the amount of changes to be made to the TIR Convention could be limited and that it would basically be sufficient to amend the Convention with either a definition of the TIR Carnet, that would include the use of portable of portable electronic files or introduce one new article which would allow for the use of new technologies in general, including the acceptance of electronic signatures, leaving the existing text of the TIR Convention as it stands. Special provisions dealing with the legal and technical specification of the accepted new technologies could be inserted into a separate, newly to be created Annex (TRANS/WP.30/2001/13, paragraph 23).

14. In 2004, at its one-hundred-and-sixth session, the Working Party confirmed that the final objective of the computerization of the TIR procedure encompasses the computerization of the whole TIR Carnet life cycle from distribution issuance and via the TIR transport to return and repository and that it should, ultimately be aimed at replacing the current paper TIR Carnet (TRANS/WP.30/212, paragraph 26).

15. The Working Party may wish to take account of the above considerations, when discussing whether amendments to the current TIR Convention or the establishment of a separate eTIR Convention seem to be the most appropriate tool for the introduction of the computerized TIR procedure.
