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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport
Ad hoc Expert Group on Phase III of the TIR Revision
(19 and 20 May 2005)

PROVISIONAL AGENDA FOR THE THIRD SESSION

to be held at the Palais des Nations, Geneva*
starting at 10.00 hours on Thursday, 19 May 2005

1. Adoption of the agenda TRANS/WP.30/2005/23
2. Election of a Chairperson
3. Background and mandate
4. Consideration of amendment proposals
5. Other matters

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* New accreditation procedures have been introduced for all delegates attending meetings held at the Palais des Nations. Delegates are therefore requested to complete the attached registration form also available from the Internet Web site of the UNECE Transport Division (<http://www.unece.org/trans/welcome.html>) and to transmit it to the UNECE secretariat, at the latest two weeks prior to the session, either by fax (+41-22-917-0039) or by e-mail (Poul.Hansen@unece.org). Prior to the session, delegates are requested to present themselves at the Pass and Identification Unit of the UNOG Security and Safety Section, located at the Villa Les Feuillantines, 13, Avenue de la Paix (a map is attached) for the issuance of an identification badge. In case of difficulty, please contact by telephone the UNECE secretariat (internal extension 74030).

1. ADOPTION OF THE AGENDA

Documentation: TRANS/WP.30/2005/23.

In accordance with the Commission's rules of procedure, the first item to be considered is the adoption of the agenda prepared by the secretariat (TRANS/WP.30/2005/23).

2. ELECTION OF A CHAIRPERSON

In accordance with the Commission's rules of procedure and established practice, the Ad hoc Expert Group should elect a Chairperson for its sessions in 2005.

3. BACKGROUND AND MANDATE

Documentation: TRANS/WP.30/218; TRANS/WP.30/216; TRANS/WP.30/214; TRANS/WP.30/2004/38; TRANS/WP.30/2004/32.

At its one hundred-and-seventh session, the UNECE Working Party on Customs Questions affecting Transport (WP.30) mandated the secretariat to convene an Ad hoc Expert Group with a view to dealing with amendment proposals that had been transmitted by Contracting Parties (TRANS/WP.30/214, paras. 40-43). As a first priority, the Ad hoc Expert Group should consider the amendment proposals before it with a view to separating these into (a) questions of a more technical nature, which the Working Party or the TIR Executive Board (TIRExB) could deal with and (b) questions of a more strategic nature, which the Ad hoc Expert Group should consider how best to deal with.

The Ad hoc Expert Group, at its first meeting undertook a discussion of the vision for the future of the TIR procedure and the guiding principles and overarching ideas of the Convention. The Ad hoc Expert Group agreed on the following (TRANS/WP.30/2004/32, paras. 5-14):

- The revision should ensure the well-functioning and sustainability of the TIR Convention;
- The revision should, as a first step, address problems raised in the present text of the Convention, and as a second step, address other issues not yet addressed by the Convention;
- The core of a sustainable TIR system is a well-functioning guarantee system;
- The TIR procedure should be computerized as soon as possible, with the aim of serving Customs purposes and it should be controlled by Customs authorities;
- The TIR computerization should foresee the inclusion of supply chain security elements.

The Ad hoc Expert Group decided to recommend to the Working Party to consider a number of the amendment proposals as being of a technical nature, which could be discussed either by the Working Party or the TIRExB. These include the proposals concerning the following issues: Definition of the term “TIR Procedure”, Title to Chapter II; Article 28; Article 40; Article 41; Article 42 bis.

Furthermore, the Ad hoc Expert Group decided to recommend to the Working Party that the following questions are of a strategic nature (TRANS/WP.30/2004/32, paras. 15-41):

- Article 4; proposal transmitted by the European Community;
- Article 6.2 bis; proposals by the Chairman of WP.30, the European Community and the Russian Federation;
- Article 8.5 (and 31); proposal by the European Community;
- Article 8.7; proposals by the Chairman of WP.30 and by the European Community;
- Article 11; proposals by the European Community and the Russian Federation;
- Article 42 bis; proposal by the European Community;
- Annex 8, Article 13; proposal by Turkey.

The Working Party, at its one-hundred-and-eighth session, expressed its general agreement with the recommendations of the Ad hoc Expert Group and decided to convene the second session of the Ad hoc Expert Group with a view to discussing the issues of a strategic nature, as defined above (TRANS/WP.30/216, paras. 50-56).

The Ad hoc Expert Group, at its second session, considered the following issues (TRANS/WP.30/2004/38, paras. 5-24):

- Article 6.2 bis; the Ad hoc Expert Group recommended to the Working Party to adopt a new Explanatory Note to Article 6.2 bis concerning the establishment of a written agreement between the UNECE and the International Organization reflecting the authorization of the International Organization in accordance with the article. In addition the Ad hoc Expert Group recommended that a new Explanatory Note to Annex 8, Article 10 be adopted;
- Article 8.1; the Ad hoc Expert Group recommended to the Working Party that a number of concepts relevant to the proper functioning of the Convention should be defined;
- Article 8.2; the Ad hoc Expert Group requested the secretariat to study the background for this paragraph and report its findings to the Working Party;

- Article 8.3; the Ad hoc Expert Group recommended to the Working Party that the paragraph be amended to prohibit the transport of tobacco and alcohol from the TIR procedure and that the reference to the TIR Carnet Tobacco/Alcohol be deleted;
- Article 8.7; the Ad hoc Expert Group recommended to the Working Party to postpone the discussion of this paragraph until clarification had been provided by the IRU and the European Commission concerning the issue of the guarantee. Nevertheless, the Ad hoc Expert Group recommended that the provisions be moved to Article 11;
- Article 11; the Ad hoc Expert Group recommended to the Working Party to consider this question in conjunction with the provisions of Article 8;
- Article 42 bis; the Ad hoc Expert Group recommended to the Working Party that the TIRExB be invited to study the issue in further detail;
- Annex 8 and Article 12; the Ad hoc Expert Group recommended to the Working Party that this question be deferred until such time that new information would be available.

The Working Party, at its one-hundred-and-ninth session, endorsed the reports of the first and second sessions of the Ad hoc Expert Group (TRANS/WP.30/218, para. 46).

The Working Party requested the secretariat to prepare a document for one of its forthcoming sessions clarifying the issue of suspension of duties, taxes and securities contained in Article 4 of the Convention (TRANS/WP.30/218, para. 52).

The Working Party adopted the proposed texts for new Explanatory Notes to Articles 6.2 bis and Annex 8, Article 10 (b) (TRANS/WP.30/218, para. 53).

The Working Party decided to follow the recommendations of the Ad hoc Expert Group regarding Articles 8.2; 8.3, 42 bis and Annex 8 as mentioned above (TRANS/WP.30/218, para. 54).

Concerning Article 11, the Working Party requested the secretariat, together with the Russian Federation, to prepare a revised version of the proposal originally transmitted by the Russian Federation and to transit the proposal for consideration at the one-hundred-and-tenth session of the Working Party in June 2005 (TRANS/WP.30/218, para. 54).

Concerning the remaining outstanding questions in relation to Article 8, in particular paragraphs 8.1 and 8.7, the Working Party mandated the Ad hoc Expert Group to convene the present session with a view to drafting specific amendment proposals to the issues still outstanding (TRANS/WP.30/218, para. 54).

The Ad hoc Expert Group may wish to take into account the above.

4. CONSIDERATION OF AMENDMENT PROPOSALS TO ARTICLES 8 AND 11

Documentation: TRANS/WP.30/2005/15; TRANS/WP.30/2005/12; TRANS/WP.30/2005/6; TRANS/WP.30/AC.2/2005/4; TRANS/WP.30/2004/38; TRANS/WP.30/2004/37; TRANS/WP.30/2004/32; TRANS/WP.30/2004/25; TRANS/WP.30/2004/24; TRANS/WP.30/2004/14; TRANS/WP.30/2004/11; TRANS/WP.30/2003/11; TRANS/WP.30/218; TRANS/WP.30/216; TRANS/WP.30/214; TRANS/WP.30/210; ExG/COMP/2003/1, Version 1.4a.

As mandated by the Working Party, the Ad hoc Expert Group may wish to consider the outstanding questions concerning Article 8 of the Convention and draft specific amendment proposals to the relevant articles.

With a view to facilitating the progress of the discussion, the Ad hoc Expert Group may wish to structure the sequence according to which remaining issues of a strategic nature should be discussed. The Ad hoc Expert Group may wish to follow the structure proposed below by the secretariat.

(a) Article 8.1

The Ad hoc Expert Group may wish to recall that, at its second session, it had recommended to the Working Party that, with a view to ensuring the proper functioning of the Convention, a number of relevant concepts would need to be defined and that as a consequence, the Convention needed to be amended in a consistent manner. The Ad hoc Expert Group, in particular, pointed to the following terms and concepts:

- Issuing association/guaranteeing association
- International organization
- Guarantee/surety.

The list of issues is not exhaustive and the Ad hoc Expert Group may wish to consider if any other concepts used in the context of the TIR Convention would benefit from being defined.

Issuing association/guaranteeing association:

With a view to considering possible definitions of issuing associations and guaranteeing associations, the Ad hoc Expert Group may wish to review Article 6 of the Convention.

The Ad hoc Expert Group may also wish to consider the definitions concerning issuing and guaranteeing associations that have been prepared by the Informal ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (ExG/COMP/2003/1, Version 1.4a, Annex 2):

- Issuing Association: An association approved by the Customs authorities of a Contracting Party to issue TIR Carnets;
- Guaranteeing Association: An association approved by the Customs authorities of a Contracting Party to act as surety for persons using the TIR procedure;
- National Association: An association approved by the Customs authorities of a Contracting Party to issue TIR Carnets and to act as surety for persons using the TIR procedure.

Furthermore, the Ad hoc Expert Group may wish to consider the definitions used in other international Conventions where the concepts of issuing and guaranteeing associations are used

The UN Conventions on Temporary Importations of Private and Commercial Road Vehicles contain the following definitions in Article 1:

- (f) The term "issuing association" shall mean an association authorized to issue temporary importation papers;
- (g) The term "guaranteeing association" shall mean an association approved by the Customs authorities of a Contracting Party to act as surety for persons using temporary importation papers.

In the context of the Customs Convention on the A.T.A. Carnet for the temporary admission of goods (A.T.A. Convention), the following definitions are used in Article 1:

- (e) the term "issuing association" means an association approved by the Customs authorities of a Contracting Party for the issue of A.T.A. carnets in the territory of that Contracting Party;

- (f) the term “guaranteeing association” means an association approved by the Customs authorities of a Contracting Party to guarantee the sums referred to in Article 6 of the present Convention, in the territory of that Contracting Party.

The Ad hoc Expert Group may wish to consider the above definitions and draft specific definitions in the context of the TIR Convention.

International organization:

With a view to considering possible definitions of the international organization, the Ad hoc Expert Group may wish to review Article 6.2 bis of the Convention.

The Ad hoc Expert Group may also wish to consider the definitions concerning issuing and guaranteeing associations that have been prepared by the Informal ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (ExG/COMP/2003/1, Version 1.4a, annex 2):

- International Organization: International organization, which is authorized by the TIR Administrative Committee, as referred to in Annex 8, Article 10 (b) to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility, as referred to in Article 6, paragraph 2.

Furthermore, the Ad hoc Expert Group may also wish to consider the definitions used in other international Conventions where the concepts of issuing and guaranteeing associations are used.

The UN Conventions on Temporary Importations of Private and Commercial Road Vehicles contain the following definitions in Article 1:

- (h) The term "international organization" shall mean an organization to which national associations are affiliated which are entitled to issue and to guarantee temporary importation papers.

The Ad hoc Expert Group may also wish to recall that the Working Party, at its one-hundred-and-ninth session, had pointed out that it should be considered to establish specific authorization criteria for the international organization parallel to the authorization criteria contained in Annex 9 of the Convention for national guaranteeing associations and that it should be considered to include the definition of roles and responsibilities of the international organization in an Annex to the Convention. At present, the roles and responsibilities of the authorized international organization, the IRU, are contained in the UNECE-IRU Agreement.

The Ad hoc Expert Group may wish to consider and possibly draft provisions for inclusion in the Convention.

Finally, the Ad hoc Expert Group may wish to take into account document TRANS/WP.30/AC.2/2005/4 containing the revised UNECE-IRU Agreement, which was approved by the TIR Administrative Committee at its thirty-eighth session (TRANS/WP.30/AC.2/77, paras. 38-40) and consider the roles and responsibilities of the IRU contained therein with a view to considering to include these in an annex to the Convention.

Guarantee/surety:

With regard to the issue of guarantee/surety, the Ad hoc Expert Group may wish to recall that, at its second session, it had considered the following questions in relation to Article 8.1:

- What is the relationship between Article 1(q); Article 6.1 and Article 8.1 of the Convention?
- Is Article 8.1 clear in describing the liability?

In this context, the Ad hoc Expert Group may also wish to consider the presentation made by the IRU at the one-hundred-and-eighth session of the Working Party (available on the UNECE web site: <http://www.unece.org/trans/bcf/wp30/wp30-reports.htm>), document TRANS/WP.30/2005/6, transmitted by the IRU, containing a legal analysis of the concepts guarantee/surety and document TRANS/WP.30/2005/15 containing the views of the Office of Legal Affairs of the United Nations, Trade Law Branch (UNCITRAL), inter alia, on the concepts of guarantee/surety.

The Ad hoc Expert Group may wish to consider the various contributions. In this context, the Ad hoc Expert Group may also wish to recall that, at its second session, it had also considered the proper sequence, allocation and contents of various provisions of Articles 8 and 11 with a view to defining the elements that should be included in the articles concerning establishment of the liability and recovery of a Customs debt, taking into due consideration the provisions of the present articles of the Convention.

The Ad hoc Expert Group may wish to continue its considerations on this issue with a view to preparing concrete amendment proposals for the consideration of the Working Party.

(b) Article 8.7

The Ad hoc Expert Group may wish to recall the questions that had been considered in the context of this Article during its second session, in particular

- Is the provision sufficiently clear to be used as a basis for identification of the person(s) directly liable?
- Is the provision not more related to the recovery when a liability has been established and, therefore, should the provisions be placed under Article 11?

In relation to the first question, the Ad hoc Expert Group may wish to consider document TRANS/WP.30/2005/12, transmitted by the European Community and the views expressed by the IRU, contained in document TRANS/WP.30/2005/6, as well the preliminary considerations by the secretariat contained in document TRANS/WP.30/2004/25. The Ad hoc Expert Group may also wish to be informed about the views expressed by the United Nations Office of Legal Affairs, in particular in relation to the term “so far as possible” which is used in the Article.

In relation to the second question, the Ad hoc Expert Group, during its second session, recommended that the provisions of Article 8.7 be integrated in Article 11. The Ad hoc Expert Group may wish to consider and recommend specific amendment proposals in this context.

5. OTHER MATTERS

The Ad hoc Expert Group may wish to consider any other matters of interest.

Taking into account the progress of the various issues raised in the context of the revision process, in particular, and also the fact that various amendment proposals, at present, are being considered by various competent bodies, the Ad hoc Expert Group may wish to decide on how to consolidate the full package of amendment proposals with a view to evaluating and aligning the proposals in their totality.


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