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Working Party on Customs Questions
affecting Transport

(Ninety-third session, 18-22 October 1999,
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**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS
UNDER COVER OF TIR CARNETS (TIR CONVENTION, 1975)**

Revision of the Convention: Phase II of the TIR revision process

**Consolidated document on amendment proposals relating to new definitions
of “termination” and “discharge” of a TIR operation**

Note by the secretariat

A. INTRODUCTION

1. This document has been prepared following the mandate given to the secretariat by the Ad Hoc Group of Experts on Phase II of the the TIR revision process at its fourth session (21-24 June 1999) in order to consolidate its amendment proposals to the TIR Convention. The document is composed of two sections: the first contains explanations on the reason for undertaking this work, the second contains all the amendment proposals made by the Ad Hoc Group of Experts and by the secretariat in a consolidated form.

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B. BACKGROUND

2. The TIR Convention has been designed to allow for a certain amount of flexibility in its application at the national level to ensure its proper functioning in a large number of countries. As a consequence, discharge operations for TIR Carnets as well as the necessary national administrative procedures for its control are only implicitly contained in Article 28 and Annex 1 of the Convention providing the model of the TIR Carnet as an international Customs document. Reference to the discharge procedure is made in various provisions in the Convention and in various comments adopted by the Working Party and the TIR Administrative Committee.

3. Relevant background material on the issues is contained in the following documents: TRANS/WP.30/1997/1; TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1998/11; TRANS/WP.30/1998/15; TRANS/WP.30/1998/17; TRANS/WP.30/1999/1; TRANS/WP.30/1999/1/Add.1; TRANS/WP.30/1999/7.

4. With the objective of arriving at a harmonized interpretation of the Convention in order to minimize the number of litigations and contested payment claims, the Ad Hoc Group of Experts on Phase II of the TIR revision process agreed at its first session, held on 2 and 3 April 1998, that the term “discharge of the TIR procedure” (French: “apurement”; Russian: “çàâðø áí èà”) had to be clearly separated from the term “termination of the TIR procedure” (French: “décharge”; Russian: “ï ðàêðàè àí èà”), the latter referring to the physical presentation of the goods at the Customs office of destination or exit and to their export or their transfer to another system of Customs control. This seemed to be necessary as the Convention did not separate clearly between these two terms, which led to notifications of non-discharge by Customs authorities that were sometimes not accepted by the international insurers and had to be settled in national courts (TRANS/WP.30/1998/5 and Corr.1).

5. It was therefore proposed that the following terms should be used replacing the existing term “discharge”:

(a) “termination of a TIR operation” (French: “fin de l’opération TIR”; Russian: “ï ðàêðàè àí èà ì ï àðàèè Ì ÄÏ ”) referring to the obligation of the TIR Carnet holder under the Convention (the term “holder” still needs to be defined);

(b) “discharge of a TIR operation” (French: “apurement de l’opération TIR”; Russian: “çàâðø áí èà ì ï àðàèè Ì ÄÏ ”) as the material and legal act by the competent Customs authorities certifying the correct termination of the TIR operation in a country or Customs Union and inter alia liberating the guarantee (TRANS/WP.30/1998/15).

6. On the basis of these considerations, the Ad Hoc Group of Experts on Phase II of the TIR Revision process, considered a large number of amendment proposals to the Convention which are reflected in the report of the Ad Hoc Group of Experts at its fourth session (TRANS/WP.30/1999/7, paras. 15-24).

7. In order to facilitate the considerations of the Working Party on this complex matter, the secretariat has inserted these amendment proposals into the existing provisions of the Convention. For a better understanding of the amended provision of the Convention, as reproduced below, the following fonts are used:

Normal:	Unchanged provisions of the Convention
Bold:	Amendments proposed by the Ad Hoc Group of Experts
Strikeout:	Deletions proposed by the Ad Hoc Group of Experts
<i>Italics:</i>	Explanations to the modifications provided by the secretariat
<i>Bold and italics:</i>	Amendments proposed by the secretariat.

**C. AMENDMENT PROPOSALS RELATING TO THE DEFINITION OF THE TERMS
“TERMINATION” AND “DISCHARGE” OF A TIR OPERATION**

Article 1

For the purposes of this Convention:

(a) The term "TIR operation" shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the "TIR procedure", laid down in this Convention;

(a **bis**) the term “**termination of a TIR operation**” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto;

Alternatively:

(a **bis**) the term “**termination of a TIR operation**” shall mean that the holder of a TIR Carnet or his agent has presented the road vehicle, the combination of vehicles or the container for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto;

In order to define the term “partial/final termination” the secretariat proposes to distinguish between:

(i) *Termination without unloading*

The term “termination without unloading” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of exit (en route) together with the load and the TIR Carnet relating thereto.

(ii) *Termination with partial unloading*

The term “termination with partial unloading” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination together with the load and the TIR Carnet relating thereto followed by the unloading of one part of the load;

(iii) *Termination with final unloading*

the term “termination with final unloading” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination together with the remaining load and the TIR Carnet relating thereto, followed by the unloading of the total load.

(a ter) the term “discharge of a TIR operation” shall mean the recognition by Customs authorities that the TIR operation has been terminated correctly in a Contracting Party. This is established by the Customs authorities on the basis of a comparison of the data or information available at the Customs office of destination or exit (en route) and that available at the Customs office of departure or entry (en route);

Comment

Discharge of a TIR operation

Discharge of a TIR operation could be effected either in the Customs office of departure or entry (en route), in the Customs office of destination or exit (en route) or in one or several central Customs offices established by a Contracting Party for that purpose.

(a quater) the term “start of a TIR operation” shall mean that the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of departure or of entry (en route) together with the load and the TIR Carnet relating thereto and that the TIR Carnet has been accepted by the Customs office;

(b) the term "import or export duties and taxes" shall mean Customs duties and all other duties, taxes, fees and other charges which are collected on, or in connection with, the import or export of goods, but not including fees and charges limited in amount to the approximate cost of services rendered;

(c)

1. Each Contracting Party may authorize associations to issue TIR Carnets, either directly or through corresponding associations, and to act as guarantors, as long as the minimum conditions and requirements, as laid down in Annex 9, Part I, are complied with. The authorization shall be revoked if the minimum conditions and requirements contained in Annex 9, Part I are no longer fulfilled.

{ECE/TRANS/17/Amend.19; entered into force on 17 February 1999}

2. An association shall not be approved in any country unless its guarantee also covers the liabilities incurred in that country in connection with operations under cover of TIR Carnets issued by foreign associations affiliated to the same international organization as that to which it is itself affiliated.

2 bis. An international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility.

3. An association shall issue TIR Carnets only to persons, whose access to the TIR procedure has not been refused by the competent authorities of Contracting Parties in which the person is resident or established.

4. Authorization for access to the TIR procedure shall be granted only to persons who fulfil the minimum conditions and requirements laid down in Annex 9, Part II to this Convention. Without prejudice to article 83, the authorization shall be revoked if the fulfilment of these criteria is no longer ensured.

5. Authorization for access to the TIR procedure shall be granted according to the procedure laid down in Annex 9, Part II to this Convention. {ECE/TRANS/17/Amend.19; entered into force on 17 February 1999}

Explanatory Note

0.6.2 Under the provisions of this paragraph, the Customs authorities of a country may approve more than one association, each of which may incur liability arising from the operations undertaken under cover of the Carnets issued by it or by its corresponding associations.

0.6.2 bis The relationship between an international organization and its member associations shall be defined in written agreements on the functioning of the international guarantee system.

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1. The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the Customs laws and regulations of the country in which an irregularity has been noted in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

....

7. When payment of sums mentioned in paragraphs 1 and 2 of this Article becomes due, the competent authorities shall so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association.

Comment

Information to guaranteeing associations

Customs administrations should notify national guaranteeing associations as soon as possible of cases covered by Article 11, paragraph 1, that is **when a TIR operation has not been terminated or has been terminated with reservation.**

{TRANS/GE.30/AC.2/14, paragraph 31; TRANS/GE.30/39, paragraph 38}

Explanatory Note to Article 8

0.8.1. The provisions of this paragraph shall not be applicable if some irregularities arise after a TIR operation has been terminated without reservation unless the certificate of termination has been obtained in an improper or fraudulent manner.

0.8.2 The provisions of this paragraph shall be applicable where, in case of irregularities of the type covered in Article 8, paragraph 1, the laws and regulations of a Contracting Party provide for the payment of sums other than import or export duties and taxes, such as administrative fines or other pecuniary sanctions. However, the sum to be paid shall not exceed the amount of import or export duties and taxes which would have been due if the goods had been imported or exported in accordance with the relevant Customs provisions, this amount being increased by any default interests. {ECE/TRANS/17/Amend.8; entered into force on 1 August 1987}

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Article 10

~~1. The TIR Carnet may be discharged unconditionally or conditionally; where discharge is conditional this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.~~

1. When the Customs authorities of a country **have discharged a TIR operation** they can no longer claim from the guaranteeing association payment of the sums mentioned in Article 8, paragraphs 1 and 2, unless the **certificate of termination** was obtained in an improper or fraudulent manner.

2. **Discharge of a TIR operation has to take place without delay.**

Explanatory Note

0.10 The **certificate of termination** of the TIR Carnet shall be regarded as having been obtained in an improper or fraudulent manner when the TIR operation has been carried out by means of load compartments or containers adapted for fraudulent purposes, or when such malpractice as the use of false or inaccurate documents, the substitution of goods, tampering with Customs seals, etc., have been discovered, or when the certificate has been obtained by other illicit means.

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Comment

The existing comments to Article 10 (1995 TIR Handbook, pages 44 and 45) will be placed following the revised Article 28 (see below).

Article 11

1. Where a TIR **operation** has not been discharged ~~or has been discharged conditionally~~, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8, paragraphs 1 and 2, from the guaranteeing association unless, within a period of one year from the date of acceptance of the TIR Carnet by those authorities, they have notified the association in writing of the non-discharge ~~or conditional discharge~~. The same provision shall apply where the **certificate of termination** was obtained in an improper or fraudulent manner, save that the period shall be two years.

2. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2, shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the **TIR operation** had not been discharged ~~or had been discharged conditionally~~ or that

the **certificate of termination** had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.

3. The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amounts claimed. The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.

Explanatory Notes

0.11-1 In deciding whether or not to release the goods or vehicle, Customs authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.

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Article 17

1. A single TIR Carnet shall be made out in respect of each road vehicle or container. However, a single TIR Carnet may be made out in respect of a combination of vehicles or for several containers loaded on to a single road vehicle or on to a combination of vehicles. In that case the TIR manifest of the goods covered by the TIR Carnet shall list separately the contents of each vehicle in the combination of vehicles or of each container.

2. The TIR Carnet shall be valid for one journey only. It shall contain at least the number of detachable vouchers for Customs acceptance and for **termination of a TIR operation** which are necessary for the transport operation in question.

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Article 18

A TIR operation may involve several Customs offices of departure and destination, but the total number of Customs offices of departure and destination shall not exceed four. The TIR Carnet may only be presented to Customs offices of destination if all Customs offices of departure have accepted the TIR Carnet. {ECE/TRANS/17/Amend.10; entered into force on 23 May 1989}

Explanatory Notes

0.18-1 It is essential for the smooth operation of the TIR procedure that the Customs authorities of one country should refuse to designate a Customs office of exit as a Customs office of destination for a transport operation which is going on to a neighbouring country when that country is also a Contracting Party to this Convention, unless there are some special circumstances to justify the request.

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The Working Party on its ninety-second session (22-26 February 1999) noted that in some Contracting Parties only one voucher of the TIR Carnet was used by Customs authorities to document cases of partial termination instead of the two vouchers No.1 and No. 2 foreseen in the Convention (TRANS/WP.30/184, para. 57). Following the request of the Working Party (TRANS/WP.30/184, para. 58), the secretariat proposes to modify the present comment to article 18 to read as follows:

Comment

Several Customs offices of departure or destination

A TIR operation may involve more than one Customs office of departure *or destination* in one or in several countries, provided the total number of Customs offices of departure and destination does not exceed four. ***Each Customs office of departure/destination should have only one loading/unloading point. In accordance with Rule 6 of the Rules regarding the use of the TIR Carnet (Annex 1 to the Convention, Model of the TIR Carnet: Version 1 and Version 2, page 3 of the cover), for each additional Customs office of departure or destination two extra sheets are required.*** The filling in of the TIR Carnet whenever several Customs offices of departure/*destination* are involved should be done in such a way that goods loaded/***unloaded*** subsequently at different offices should be added in/***crossed out from*** the goods manifest and the offices of departure/*destination* should endorse the goods loaded/***unloaded*** subsequently under item 16.

{TRANS/GE.30/55, paragraph 22; TRANS/WP30/141, paragraphs 39-41; TRANS/WP30/AC.2/31, Annex 3}

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Article 28

~~On arrival of the load at the Customs office of destination, and provided that the goods are then placed under another system of Customs control or are cleared for home use, discharge of the TIR Carnet shall take place without delay.~~

Termination of a TIR operation shall be certified by Customs authorities without delay. A TIR operation may be terminated without or with reservation: where termination is with reservation this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.

Explanatory Notes

0.28 1. Article 28 provides that **termination of a TIR operation** at the **Customs** office of destination shall take place without delay, on condition that the goods are placed under another Customs procedure or **another system of Customs control while waiting for a succeeding Customs procedure or treatment.**

2. The use of the TIR Carnet must be restricted to the function which it was intended to cover, namely the transit operation. The TIR Carnet must not, for example be used to cover the storage of goods under Customs control at destination. Where no irregularity has taken place, the **Customs** office of destination must **terminate the TIR operation** as soon as the goods covered by the Carnet have come under another Customs procedure or have been cleared for home use.

~~In practice discharge must be given as soon as the goods have been directly re-exported (as, for example, when they are shipped on arrival at a port), or as soon as a declaration for Customs purposes has been made at the place of destination, or as soon as the goods have been received into a place approved for storage while awaiting a declaration for Customs purposes (for example, a transit shed), in accordance with the regulations in force in the country of destination.~~

Comments

Return of TIR Carnets

It must be stressed that the immediate return of the TIR Carnet, **whether the TIR operation has been terminated with or without reservation**, is an essential duty of the

Customs office of destination. This not only facilitates checking by the IRU, but also enables the IRU, on return of the Carnet, to issue a new Carnet to the carrier; the number of Carnets in use at any one time is limited. {TRANS/GE.30/AC.2/12, paragraph 33; TRANS/GE.30/GRCC/11, paragraphs 24 and 25}

Possibility of using two TIR Carnets for a single transport operation

Occasionally, the number of sheets in the TIR Carnet are not sufficient to carry out a total transport operation in Europe. In these cases the first TIR operation has to be completed in accordance with Articles 27 and 28 of the Convention and a new Carnet has to be used for the remainder of the journey and to be presented to the Customs office of destination. {TRANS/WP30/AC.2/23, paragraph 21}

Applicable procedures after termination of a TIR operation

After termination of a TIR operation the goods covered by a TIR Carnet may be placed under another Customs procedure (for example, clearance for home use), or directly transferred across the border to a third country or to a free zone, or transferred to a place approved by Customs authorities where the goods can be stored until a Customs declaration is lodged in accordance with the legislation in force in the Contracting Party of destination or placed under another system of Customs control.

The following three comments will be replaced from Article 10 (1995 TIR Handbook, pages 44 and 45) to the revised Article 28.

Termination of a TIR operation

1. In cases where the TIR **operation** has been **terminated without reservation**, the Customs administration which declares such **termination** as having been obtained improperly or fraudulently should specify in its **[notification of non-discharge and]** request for payment its reasons for declaring this **termination** improper or fraudulent. {TRANS/GE.30/AC.2/12, paragraph 25; TRANS/GE.30/GRCC/11, paragraph 12}

2. The Customs authorities should not **terminate TIR operations** subject to systematic unspecified reservations, without giving reasons, solely for the purpose of avoiding the requirements of Article 10, ~~paragraph 2~~ and Article 11, paragraph 1.

{TRANS/GE.30/AC.2/12, paragraph 26; TRANS/GE.30/AC.2/14, paragraphs 9-11; TRANS/GE.30/GRCC/11, paragraph 13}

Indication of reservations

Customs administrations should make any **reservation about the termination of a TIR operation** very clear and should indicate the existence of a reservation **by filling-in box 27 on voucher No.2 and by placing an "R" by item No. 5 on the counterfoil No. 2 of the TIR Carnet and also fill in the certified report, if appropriate.** {TRANS/GE.30/8, paragraph 12}

Alternative forms of evidence as proof for **termination** of the TIR operation

With a view to establishing alternative evidence for the proper termination of a TIR operation, Customs authorities are recommended to **use exceptionally the following information:**

- **any official certificate or confirmation of the termination for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use;**
- **the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in Article 6 of the Convention;**
- **the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance with the Recommendation of the TIR Administrative Committee of 20 October 1995 (in line with Article 42 bis of the Convention).**

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Annex 1

MODEL OF TIR CARNET

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Replace in box 24 on voucher No.2 the words:

*“Certificate of discharge” by: “**Certificate of termination of a TIR operation**”.*

Modify in box 26 on voucher No.2 the words:

*“Number of packages discharged” by: “**Number of packages for which the TIR operation is terminated**”.*

Modify under item 3 on the counterfoil No. 2 the words:

*“Discharged packages or articles (as specified in the manifest)” by: “**Number of packages for which the TIR operation is terminated (as specified in the manifest)**”.*

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Comments to the model of the TIR Carnet

Method of affixing additional documents

If, in line with rule 10 (c) or rule 11 regarding the use of the TIR Carnet, additional documents need to be attached to the vouchers or the cover of the TIR Carnet, the Customs authorities should attach them to the TIR Carnet by means of staples or other devices and by stamping them in such a way that their removal would leave obvious traces on the Carnet. {TRANS/WP30/139, paragraph 43; TRANS/WP30/AC.2/29, Annex 3}

Goods description in the Goods Manifest

Customs administrations and TIR Carnet holders should strictly observe the Rules regarding the Use of the TIR Carnet. If necessary the goods should be described in attached documents which are to be stamped by Customs and reference to which is to be made in box 8 of the vouchers. At least the usual commercial description of goods is necessary allowing for their clear identification without ambiguity for Customs purposes. {TRANS/GE.30/45, paragraphs 12-15}

Declaration of the goods value

The fact that there is no declaration of the value of goods on the TIR Carnet gives no ground for detention of the goods by Customs administrations. {TRANS/GE.30/17, paragraph 44}

Termination of a TIR operation

In box **24 to 28 of voucher No. 2, in addition to the required inscriptions**, only one Customs stamp and one signature **are necessary and sufficient to terminate a TIR operation**. [Other authorities than Customs are not entitled to stamp and sign the **vouchers (and the front cover)**.] {TRANS/GE.30/45, paragraphs 33 and 34}
The filling-in by competent authorities of the counterfoil to voucher No. 2, including one Customs stamp and one signature, indicate [confirm] for the TIR Carnet holder and the guaranteeing association the termination of the TIR operation, with or without reservation.

Customs stamps on the counterfoil

Sometimes, Customs authorities in transit countries do not stamp the counterfoils in TIR Carnets as stipulated in the Convention. Such occurrences, though not permissible, do not jeopardize the validity of the TIR transport operation as long as the offices of destination **terminate the TIR operation without reservation**. {TRANS/WP30/135, paragraph 57}

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Alternative forms of evidence as proof for the **termination of a TIR operation**

With a view to establishing alternative evidence for the proper termination of a TIR operation, Customs authorities are recommended to **use** exceptionally, **the following information**:

- **any official certificate or confirmation of the termination for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use;**
- **the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in Article 6 of the Convention;**
- **the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance**

with the Recommendation of the TIR Administrative Committee of 20 October 1995 and Article 42 bis of the Convention.

Indication of reservations

Customs administrations should make any reservation **about the termination of a TIR operation** very clear and should indicate the existence of a reservation **by filling in box 27 on voucher No. 2**, by placing an "R" **under** item No. 5 **on the** counterfoil No. 2 **of the TIR Carnet and, if appropriate, by filling-in the certified report.** {TRANS/GE.30/8, paragraph 12}

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