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Administrative Committee for the TIR Convention, 1975

(Thirty-fourth session, 6 and 7 February 2003,
agenda item 9 (a))

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

Revision of the Convention

Draft amendments on the introduction of a control system for TIR Carnets

Transmitted by the Government of Latvia

Note: The secretariat reproduces below a communication transmitted by the Government of Latvia.

The secretariat has prepared the draft amendments taking into account the amendment adopted by the Administrative Committee for the TIR Convention at its thirty-third session of the Recommendation adopted by the Committee on 20 October 1995.

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A. BACKGROUND

I. Introduction

1. SafeTIR is a vital tool for the control of the TIR system and the prevention of fraud. It permits better monitoring and control of individual TIR operations by Customs, the Guaranteeing Associations, and IRU and thus helps them to identify and quickly deal with fraud. SafeTIR also permits the Guaranteeing Associations and the IRU to monitor the reliability and compliance of Carnet holders and, consequently, helps them to prevent fraud and reduce risk when they issue Carnets. This benefits the national Guaranteeing Associations and the central insurance company but it also benefits the Customs authorities who also seek to prevent fraud and who need a secure guarantee system to support TIR in their countries.

2. All Contracting Parties have supported SafeTIR. They agreed to the adoption of the Recommendation of 1995 by the TIR Administrative Committee and they have all taken action towards its implementation by transmitting data to SafeTIR about the termination of TIR operations and by responding to requests from the Associations and the IRU for the reconciliation of this data.

3. However, SafeTIR will only be really effective if Customs authorities transmit all termination data to SafeTIR very quickly after termination and deal promptly with reconciliation requests. But Customs have a difficult task in fighting fraud and in ensuring that they have the necessary resources to fulfil their functions. The objective of this paper is to give Customs authorities a stronger incentive to fully implement the Recommendation by making it a legal obligation under the TIR Convention. This would also help the Associations to fulfil their legal obligations under the Convention.

4. The objective is, however, not to modify the legal value of the transmitted information which will remain, as far as Customs are concerned, an information, for example, to facilitate, if need be, the proper termination of a particular TIR operation.

5. In addition it is recalled that, following the entry into force of Phase II of the TIR Convention on 12 May 2002, the text of the existing Recommendation will need to be modified too. The proposals by the TIR secretariat are just of a linguistic nature, and still refer to the situation prevailing in 1995.

II. Approach taken

6. The Administrative Committee will only adopt a legal provision that strengthens the Recommendation if it is first convinced that SafeTIR is sufficiently important to Contracting Parties and the TIR system that Customs should be obliged to fully implement it. The actual instrument for the obligation is of secondary importance.

7. It is proposed, therefore, to focus first on the legal and practical arguments that justify an obligation on Customs to fully implement the Recommendation of 1995. The arguments arise in three areas:

- (a) The actual and existing legal obligations of the Associations.
- (b) The obligations of the International Organization following the entry into force of the new Article 6 (2) bis of the Convention.
- (c) The need for a tool for the early detection of fraud by Customs and the Associations.

8. It can then be considered how the Recommendation can be given legal teeth under the TIR Convention.

III. Justification of SafeTIR

(a) Justification via the existing legal obligations of the Associations

9. A key provision of Phase I of the revision of the TIR Convention was the introduction of the authorization of the Carnet holder by Customs. It was recognized that much of the TIR fraud that had been taking place was the fault, at least in part, of the Carnet holder. Either he was directly involved in the fraud or his negligence permitted others to carry out the fraud. It was therefore concluded that transport operators should be allowed to use TIR Carnets only if they were authorized to do so. Authorization is granted only if the operator meets conditions of reliability in relation to TIR operations. The relevant minimum provisions of the Convention are contained in Article 6 and Annex 9, Parts I and II.

10. It is very evident from these provisions that the authorization and subsequent monitoring of operators is carried out by Customs and the Associations working in partnership. The Associations may issue TIR Carnets only to authorized persons who fulfil the minimum conditions and requirements laid down in Annex 9, Part II. Authorization is granted by Customs but the Associations are responsible for verifying that persons requesting authorization fulfil the minimum conditions and requirements (Annex 9, Part I, and paragraph 1(iii)). But the crucial

requirement is that the Associations must carry out this verification continuously. This is sensible. It cannot be guaranteed that an operator who is known to be reliable at one point in time will continue to be reliable forever. The circumstances of an operator and the people who work for it are constantly changing and so, therefore, must its reliability rating. Recent examples in the Russian Federation and some of its neighbours provide evidence of this. Therefore, the reliability of an operator must be verified not just before authorization, or just periodically, but continuously. The fight against fraud requires constant vigilance.

11. Among the matters to be verified continuously, the Associations must verify that authorized persons have an absence of serious or repeated offences against Customs or tax legislation and that they have complied with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination (Annex 9, Part II, paragraph 1(d) and (e)). Again, these are sensible requirements. Any form of TIR fraud involves non-compliance with Customs formalities and/or Customs legislation; those responsible for the control of TIR operations need to know as soon as possible of any non-compliance by an operator so that they can take action to prevent further non-compliance.

12. The critical test of compliance with Customs formalities is whether TIR operations have been correctly terminated at the offices of destination. In the past, the Associations and the IRU could rely on the “souches” stamped by Customs, but fraudsters developed ways of applying false Customs stamps and signatures to the “souches”. Now, the Customs authorities are the only reliable source of termination information. The Associations and the IRU therefore established SafeTIR to collect this information from Customs. The Associations use it to check that TIR Carnets have been properly terminated at the office of destination before they issue new Carnets to the operators concerned. In addition, they notify Customs authorities by means of a Reconciliation Request when there are discrepancies, indicating a possible irregularity, between Carnets returned to them and the termination data transmitted by Customs. Thus SafeTIR enables Customs, the Associations and the IRU to work together, using the system to exchange information that will help them detect and prevent fraud.

13. The Associations can fulfil their obligation to continuously verify that operators are complying with Customs formalities and legislation and SafeTIR can operate effectively as described above only if Customs provide all termination data to SafeTIR very quickly after termination has taken place and if reconciliation requests are answered very quickly too. Although the Convention clearly states the legal obligation on the Associations, it does not include a reciprocal obligation on Customs to provide the necessary information. It could be argued that, legally, the one obligation automatically leads to the other, but this needs to be much more clearly and specifically set out in legal terms by an appropriate amendment of the Convention.

(b) Justification via the legal obligations of the international organization

14. Phase II of the revision of the TIR Convention has introduced a new Article 6 (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.”

15. Until the IRU has been authorized under this article, we cannot be sure of the position that the Administrative Committee will take on how the IRU is to fulfil its responsibility. Clearly, an essential requirement would be to establish a TIR guarantee chain underwritten by appropriate insurance – which the IRU has already done. However, the international organization must also be able to demonstrate its competence to manage the guarantee system and ensure that it will continue to function effectively. This includes the monitoring and control of risk, the development of responses to new challenges (more sophisticated fraud, changes in international trade), and the use of new technologies.

16. SafeTIR is a very good example of the way in which the IRU has responded effectively to these requirements. In this modern world, any international organization would need to have some such system in place if it was to ensure the effective organization and functioning of an international guarantee system. But a system such as SafeTIR can only be fully effective and the guarantee system secure if Customs authorities cooperate by providing it with any necessary data or other assistance. Thus, the Administrative Committee should accept that the authorization of any organization under the new Article 6 (2) bis would carry a consequential obligation on Customs to co-operate as necessary in the operation of a control system. In the case of the IRU, this involves the full implementation of SafeTIR. Such an obligation on Customs is not stated in the Convention but, again, there is a good case for amending the Convention to correct this imbalance in responsibilities.

(c) Justification of SafeTIR as an anti-fraud tool

17. The foregoing paragraphs argue that Contracting Parties should be obliged to fully implement SafeTIR in consequence of other obligations that the TIR Convention already imposes on the Associations and the international organization. An alternative approach is that the full implementation of SafeTIR should be made obligatory on the simple grounds that it would clearly be worthwhile for all concerned.

18. This is based on all the uses and benefits of SafeTIR, particularly to Customs, in the fight against fraud and the control of TIR Carnets. These include:

- Verification by the Associations of the termination of TIR operations in order to monitor the reliability of TIR Carnet holders (as required by Annex 9, Part I and already mentioned above).
- On-line monitoring by Customs investigation services of individual TIR operations involving sensitive goods.
- On-line enquiries by Customs about the non-return of Voucher No 2 to offices of departure/entry.
- Verification by Customs offices of departure of the validity of Voucher No 2 returned to them.
- Through the reconciliation request received from either the Association or the International Organization, customs are informed almost instantly by the guarantee chain directly of a possible irregularity under a specific TIR operation.

19. If SafeTIR is to operate effectively for these purposes, it is essential that Customs quickly transmit all termination data to it. The TIR Administrative Committee might take the view that the benefits of SafeTIR are sufficiently great that the TIR Convention should be amended to create a new legal obligation on Customs to fully implement it.

IV. Creating a legal obligation on Customs authorities too fully implement SafeTIR

(a) Annex

20. SafeTIR can only be fully effective if the detailed provisions of the Recommendation of 1995 are implemented. It is, therefore, essential that any legal obligation sets out the precise requirements of the Recommendation. However, these apply only to the SafeTIR system and might not apply to another control system developed by another guarantee chain. It would therefore be inappropriate to include them in the body of the Convention i.e. in the Articles of the Convention. Instead, it is proposed that the particular requirements of SafeTIR should be set out in an Annex that would replace the Recommendation of 1995.

21. A draft Annex 10 is attached. As explained above, it covers only SafeTIR. If other control systems were to be developed by other guarantee chains and/or international organizations, they would be covered by additional annexes or by additional sections of Annex 10.

(b) Amendment of the Articles of the Convention

22. All annexes to the TIR Convention are introduced by an article in the main body of the Convention. An introductory article would therefore be required for the proposed Annex 10. The article would lay down the principle of an obligation on Customs to provide information to associations and/or the international organization, and add that details in particular cases were set out in Annex 10. There are a number of options for the article. By omitting the reference to Annex 10, they could be used to support an Explanatory Note if that was preferred.

(i) A reciprocal obligation to the Associations (paragraph (III)(a) above)

23. The obligation of the Associations arises, firstly, from the basic provision in Article 6 (1) that:

“Contracting Parties may authorize associations to issue TIR Carnets...as long as the minimum conditions and requirements, as laid down in Annex 9, Part I are complied with.”

24. The principle that Contracting Parties have a reciprocal obligation to help the Associations could be recognized by an additional sub-paragraph in Article 6 (1) on the lines of:

“Contracting Parties shall, as appropriate, provide authorized associations with information and other assistance that they may require to comply with such minimum conditions and requirements.”

25. The obligation on the Associations is more specifically described in Annex 9, Part I, paragraph 1(f)(iii). The corresponding obligation on Contracting Parties needs to be similarly described in more detail. This could be by a new paragraph 2 in Annex 9, Part I (existing paragraphs being renumbered 3, 4, 5):

*“Contracting Parties shall, as appropriate, provide authorized associations with information that they may require to fulfil the undertaking given in accordance with paragraph 1(f)(iii).
Annex 10 sets out the information to be provided in particular cases.”*

(ii) A reciprocal obligation to the international organization (paragraph III (b) above)

26. Article 6 (2) bis imposes a clear legal responsibility on the international organization for the effective organization and functioning of an international guarantee system. The principle of the reciprocal responsibility of the Contracting parties could be set out in a new sub-paragraph to Article 6 (2) bis:

“Contracting Parties shall, as appropriate, provide an authorized international organization with any information and other assistance that it may require to fulfil its responsibility.”

(iii) Combining the reciprocal obligations to the associations and the international organization

27. The proposals at (i) and (ii) are based upon similar arguments. In both cases it is said that the Associations/international organization have established SafeTIR to fulfil their legal obligations. In practice, both are true. The Associations and the IRU are part of the same organization and have shared responsibility for establishing SafeTIR. It is thus possible to use either option. If a choice has to be made and there are no other factors to consider, the proposal concerning the Associations has a clearer and stronger legal justification and is therefore preferred.

28. However, if there were agreement that the obligations of the Contracting Parties to the Associations and the international organization should both be stated in the Convention, those obligations could be combined. In that case, this could be achieved by a new paragraph 6 (6):

“Contracting Parties shall, as appropriate, provide information and other assistance to:

- (a) authorized associations to enable them to comply with the minimum conditions and requirements under Annex 9, Part I, and/or*
- (b) an authorized organization to enable it to fulfil its responsibilities under paragraph 2 bis.*

Annex 10 sets out information and assistance to be provided in particular cases.”

29. This third possibility is, however, more in line with the current system where Administrations sometimes do provide this information directly to the International organization (IRU) and sometimes directly to the guaranteeing association.

(iv) SafeTIR as an anti-fraud tool

30. If Customs are to be obliged to implement SafeTIR in order to detect and prevent fraud, the best available option seems to be for SafeTIR to be made the subject of an international measure adopted by the Administrative Committee under Article 42 bis which provides that:

The competent authorities, in close cooperation with the associations, shall take all necessary measures to ensure the proper use of TIR Carnets. To this effect they may take appropriate national and international control measures. National control measures taken in this context by the competent authorities shall be communicated immediately to the TIR Executive Board which will examine their conformity with the provisions of the Convention. International control measures shall be adopted by the Administrative Committee.

31. The essence of the article is contained in its first sentence and seems very appropriate to SafeTIR. The terms of a measure covering SafeTIR would be straightforward. It would explain the purpose of SafeTIR as a tool for the control of TIR Carnets by both Customs and the Associations and set out the requirements currently shown in the Recommendation of 1995.

32. However, there are doubts about this solution. The status of a measure adopted by the Administrative Committee under Article 42 bis is not explained in the Convention and must be a little uncertain. If it were set out in the form of an Explanatory Note, it might be regarded as a recommended practice (see Article 43). It could certainly be drafted in better terms than the Recommendation of 1995 but might still not be binding on Contracting Parties. The status of a measure under Article 42 bis therefore requires clarification before this solution can be considered as a serious option.

33. Another solution would be to amend Article 42 bis or add a new article to make it obligatory on Contracting Parties to implement international measures. Details of the measures would be set out in an annex (similar to the proposed Annex 10 in the case of SafeTIR). This, however, represents a major amendment of the Convention and is unlikely to be accepted for the purposes of SafeTIR.

B. PROPOSAL

34. It is recalled that,

- for the customs Administrations, the information exchanged will not have a different value than the copy of stamped "souche" of a TIR Carnet
- once this control system such as SafeTIR will form part of an annex to the TIR Convention, the Administrative Committee, in partnership with IRU and all guaranteeing Associations, may in the future decide to amend the proposed Annex 10 to eventually cover the exchange of other information.

35. On this basis, the Latvian National Customs Board is proposing the following Amendments to the TIR Convention:

I. The new Article 6(6) to read as follows:

“Contracting Parties shall, as appropriate, provide information and other assistance to:

(a) authorized associations to enable them to comply with the minimum conditions and requirements under Annex 9, Part I, and/or

(b) an authorized organization to enable it to fulfil its responsibilities under paragraph 2 bis.

Annex 10 sets out information and assistance to be provided in particular cases.”

II. The new wording of the Heading of the Article 60 to read as follows:

“Special procedure for amending Annexes 1,2,3,4,5,6,7,8,9 and 10”

III. The new wording of the Part I of the Article 60 in new wording to read as follows:

“Any proposed amendment to Annexes 1,2,3,4,5,6,7,8,9 and 10 considered in accordance with paragraphs 1 and 2 of Article 59 shall come into force on a date to be determined by the Administrative Committee at the time of its adoption, unless by a prior date determined by the Administrative Committee at the same time, one-fifth or five of the States which are Contracting Parties, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment. Determination by

the Administrative Committee of the dates referred to in this paragraph shall be by a two-thirds majority of those present and voting.”

IV. Adoption of a new Annex 10 to read as follows:

“Information to be provided by Contracting Parties to authorized associations and international organizations under article 6(6)

Information to be provided in the case of the international guarantee system organized by the IRU

By virtue of Article 6(1) and Annex 9, Part I, paragraph 1(f)(iii) of this Convention, authorized associations are required to give an undertaking that they shall verify continuously that persons authorized to have access to the TIR procedure have complied with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination.

On behalf of its member associations and in fulfilment of its responsibilities as an international organization authorized under Article 6 (2) bis, the IRU has established the SafeTIR system to hold data, transmitted by Customs authorities and accessible by the associations and Customs administrations, about the termination of TIR operations at offices of destination. To enable the associations to fulfil their undertaking effectively, Contracting Parties shall provide information to the SafeTIR system in accordance with the following procedure:

- (1) Customs authorities shall transmit to the IRU or to the national guaranteeing associations, if possible via central or regional offices, by the fastest available means of communication (fax, electronic mail, etc.) and if possible on a daily basis, at least the following information in a standard format in respect of all TIR Carnets presented at Customs offices of destination, as defined in article 1 (l) of the Convention:*
 - (a) TIR Carnet reference number;*
 - (b) Date and record number in the Customs ledger;*
 - (c) Name or number of Customs office of destination;*
 - (d) Date and reference number indicated in the certificate of termination of the TIR operation (boxes 24-28 of voucher No. 2) at the Customs office of destination (if different from (b));*
 - (e) Partial or final termination;*

- (f) Termination of the TIR operation certified with or without reservation at the Customs office of destination without prejudice to Articles 8 and 11 of the Convention;*
 - (g) Other information or documents (optional);*
 - (h) Page number.*
 - (2) The annexed Model Reconciliation Form (MRF) may be addressed to Customs authorities by national associations or by the IRU*
 - (a) in case of discrepancies between the data transmitted and those on the counterfoils in the used TIR Carnet; or*
 - (b) in case no data have been transmitted whereas the used TIR Carnet has been returned to the national association.*
- Customs authorities shall reply to the reconciliation requests if possible by returning the duly filled-in MRF as soon as possible.*
- (3) Customs authorities and national guaranteeing associations shall conclude an agreement, in line with national law, covering the above data exchange.*
 - (4) The IRU shall give Customs authorities access to the database of terminated TIR Carnets and to the database of invalidated TIR Carnets.”*

Annex

Model Reconciliation Form (MRF)							
<i>To be filled-in by the initiator of the request for reconciliation</i>							
Destination:							
Regional Customs office (optional):				Customs office of destination:			
Name:				Name:			
Received on:				Received on:			
Date:				Date:			
Stamp				Stamp			
Data to be confirmed							
Data source: <input type="checkbox"/> TIR Carnet <input type="checkbox"/> SafeTIR data							
TIR Carnet Reference Number	Name or number of Customs office of destination*	Reference number indicated in the certificate of termination of the TIR operation (boxes 24-28 of voucher No. 2) at the Customs office of destination*	Date indicated in the certificate of termination of the TIR operation at the Customs office of destination*	Page number	Partial / final termination	Termination of the TIR operation certified with or without reservation at the Customs office of destination	Number of packages (optional)
Attachments: <input type="checkbox"/> Copy of TIR Carnet counterfoils <input type="checkbox"/> Other: _____							
Response from Customs office of destination							
<input type="checkbox"/> Confirmation <input type="checkbox"/> Correction (please insert the corrections below) <input type="checkbox"/> No reference found on the termination of the TIR operation							
TIR Carnet Reference Number	Name or number of Customs office of destination*	Reference number indicated in the certificate of termination of the TIR operation (boxes 24-28 of voucher No. 2) at the Customs office of destination*	Date indicated in the certificate of termination of the TIR operation at the Customs office of destination*	Page number	Partial / final termination	Termination of the TIR operation certified with or without reservation at the Customs office of destination	Number of packages (optional)
Comments:							
Date:				Stamp and signature of Customs office of destination:			
<i>Central Customs office (optional)</i>							
Comments:							
Date:				Stamp and/or signature			

* Please note that these data refer to the Customs office of Destination where the TIR movement terminated.