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Economic Commission for Europe**Administrative Committee for the TIR Convention, 1975****Fiftieth session**

Geneva, 30 September 2010

Item 8 of the provisional agenda

Best practices**Best practices****Note by the TIR secretariat***Summary*

At its forty-ninth session, the TIR Administrative Committee (AC.2) requested the secretariat to reproduce Informal document No. 4 (2009) from its forty-seventh session, containing the summary outcome of a TIR Executive Board (TIRExB) survey on the use of subcontractors at the national level, as an official document for consideration at this session

In general, many Customs authorities and national associations permit the use of subcontractors. In case of infringement, the TIR Carnet holder will be held liable, often together with the subcontractor. Main impediments for the general acceptance of subcontractors seem to be Article 1 (o) and Annex 9, Part II of the Convention.

I. Background

1. The TIRExB, at its thirty-eighth session (3 and 4 December 2008), considered the outcome of the questionnaire on the use of subcontractors, as conducted by the TIRExB over the summer of 2008. The TIRExB noted with satisfaction that, besides a consolidated reply on behalf of the European Community, 27 Customs administrations and 34 national associations had replied to the questionnaire. The TIRExB agreed that the replies make it clear that, whereas a majority of countries and national associations permit the use of subcontractors, a number of countries do not, mainly for legal reasons and that countries seem to be more strict in permitting subcontractors, when the TIR Carnet holder is registered in their own country, than with foreign subcontractors arriving at their external border. In general, in case of infringements, the TIR Carnet holder will be held liable, often together with the subcontractor.

2. At the request of the TIRExB, the secretariat reproduces, in Annex, the executive summary of the outcome of the questionnaire, for information of the TIR Administrative Committee.

Annex

I. Response rate

The secretariat received responses from 27 Customs administrations, as well as a consolidated reply on behalf of the European Community (EC) and from 34 national associations.

II. Reply per question from Customs

Question 1: A truck arrives at a Customs office of entry en route to your country. You establish that the foreign operator producing the TIR Carnet is not the TIR Carnet holder, but a subcontractor. What will you do?

Replies: Half of Customs authorities accept the TIR Carnet without conditions; others either accept the TIR Carnet subject to conditions or refuse the TIR Carnet.

Consolidated EC reply: Generally, the TIR Carnet is accepted without any condition, on the understanding that the TIR Carnet holder is at any time responsible for the due observance of the provisions of the TIR Convention. However, there are member States that accept the TIR Carnet subject to a number of conditions. There are also member States which refuse such TIR Carnets.

Question 2: In case you refuse the TIR Carnet, please specify the legal provisions on which you base such refusal.

Replies: Article 1 (o), Article 6.4 and Annex 9, Part II are most mentioned as legal impediment, including by the EC.

Question 3: In case you accept the TIR Carnet subject to condition, please specify?

Replies: Generally, the TIR Carnet is accepted in case the subcontractor provides written proof of the contractual relationship. The consolidated EU reply also indicates the condition that holder and subcontractor should be from the same country.

Question 4: A truck arrives at a Customs office of departure in your country. You establish that the domestic transport operator producing the TIR Carnet is not the TIR Carnet holder, but a subcontractor. What will you do?

Replies: Customs authorities either refuse the TIR Carnet, or accept it without conditions.

Consolidated EC reply: Generally, the TIR Carnet is accepted without any condition, on the understanding that the TIR Carnet holder is at any time responsible for the due observance of the provisions of the TIR Convention. However, there are member States that accept the TIR Carnet subject to a number of conditions. There are also member States which refuse such TIR Carnets.

Question 5: In case you refuse the TIR Carnet, please specify the legal provisions on which you base such refusal.

Replies: Article 1 (o), Article 6.4 and Annex 9, Part II are most mentioned as legal impediment, including by the EC.

Question 6: In case you accept the TIR Carnet subject to condition, please specify?

Replies: Generally, the TIR Carnet is accepted in case the subcontractor provides written proof of the contractual relationship. The consolidated EU reply also indicates the condition that holder and subcontractor should be from the same country.

Question 7: In case of an infringement in the territory of your country during subcontracting, who do you hold responsible?

Replies: countries either hold only the TIR Carnet holder or the TIR Carnet holder together with the subcontractor liable. In addition, in particular in the EU, also other persons may be held liable.

Question 8: additional comments:

General comment: Customs treat national and foreign subcontractors equal. In case of an infringement, Customs will hold the TIR Carnet holder responsible, often together with the subcontractor and any other liable person. Main impediment for the general acceptance of subcontractors seems to lie in Article 1 (o) and Annex 9, Part II.

III. Reply per question from national associations

Question 1: Does your association permit authorized TIR Carnet holders registered in your country to pass on TIR Carnets issued in their name to subcontractors?

Replies: two third replies yes, whereas one third replies no.

Question 2: In case your association permits the use of subcontractors, does it make a difference whether the subcontractor is registered in your country or in another country.

Replies: two third replies no, whereas one third replies yes.

Question 3: In case your association permits the use of subcontractors, do you require that subcontractors are authorized in line with Annex 9, Part II of the TIR Convention

Replies: All but one association answer this question affirmative.

Question 4: Do you impose other conditions on the use of subcontractors?

Replies: The general answer is no, but reference is made to Addendum I of the IRU Declaration of Engagement.

Question 5: Please describe the procedure to follow in case your association receives a notification of a claim related to a TIR Carnet issued to an authorized TIR Carnet holder but used by a subcontractor?

Replies: All answers indicate that only the TIR Carnet holder is held responsible.

Question 6: In case your association does not permit the use of subcontractors, what, in your view, are the legal or practical obstacles?

Replies: Article 1 (o), Article 8 and 11 and Annex 9, Part II are mentioned.

General comment: Most national associations permit subcontractors, provided they are authorized in line with Annex 9, Part II. In case of an infringement, only the TIR Carnet holder will be held liable. In case subcontractors are not permitted, the main obstacles seem to be Article 1 (o) and Annex 9, Part II.