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Item 5 of the provisional agenda

Comments endorsed by the Working Party on Customs Questions affecting Transport and the TIR Executive Board

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Note by the secretariat

I. Mandate

1. At its sixty-first session, the TIR Executive Board (TIRExB) considered a new comment to Explanatory Note 0.23, recommending customs authorities to consider the use of modern facilities, such as Global Positioning System tracking devices or the use of e-seals before prescribing escort. The Board agreed on the text of the proposal and requested the secretariat to transmit the draft comment to Article 23 to the TIR Administrative Committee for further consideration. Further to this request, the secretariat issued document ECE/TRANS/WP30/AC2/2015/13 containing the background of the existing Comment as well as the text of the new comment as drafted by TIRExB.

II. Background

2. For many years, until 2009, the comment to Article 23 (as well as to Article 4 and Annex 6, Explanatory Note 0.8.3) read as follows:

"In accordance with Article 4 of the Convention, goods carried under the TIR procedure shall not be subject to the payment or deposit of any import or export duties and taxes whatsoever, even if the duties and taxes at risk exceed the amount of \$US 50,000 for consignments transported under the normal TIR Carnet and \$US 200,000 for consignments transported under the "Tobacco/Alcohol" TIR Carnet or a similar sum fixed by the national customs authorities. In such cases, customs authorities in transit countries could however, in conformity with Article 23 of the

Convention, require road vehicles to be escorted at the carriers' expense on the territory of their country."

3. In 2009, further to extensive discussions on the systematic use of customs escorts in some countries in case the amount of customs duties and taxes at risk exceeded the guaranteed amount of 50,000 United States dollars the Working Party, at its 120th session (October 2008) adopted and the Administrative Committee, at its forty-seventh session (February 2009), endorsed the current wording of the comment to Article 23:

"Article 23 implies that escort may be prescribed under exceptional circumstances only when compliance with Customs law cannot be ensured by other means. A decision regarding escort should be based on risk analysis. In particular, Customs authorities should analyze the risk that the transport operator will not present the road vehicle(s) together with the goods to the Customs office of destination or exit (en route) and that the goods may illegally be put into free circulation. When doing so, Customs authorities are recommended to assess, among others, the following factors (in no particular order):

- information on Customs infringements committed by the TIR Carnet holder as well as on his previous withdrawals or exclusions from the TIR procedure;
- information on the reputation of the transport operator;
- the amount of import or export duties and taxes at risk;
- the origin of the goods and their itinerary.

In the case of escorts and in particular if no other written proof is provided to the carrier, Customs authorities are recommended, at the request of the carrier, to insert into the counterfoil No. 1 of the TIR Carnet under item 5 "Miscellaneous" the word "Escort", followed by a short indication of the reasons which have led to the requirement for the escort.

According to Explanatory Note 0.1 (f), escort fees should be limited in amount to the approximate cost of the services rendered and should not represent an indirect protection to domestic products or a tax on imports or exports for fiscal purposes."

III. Proposal for a new comment to Explanatory Note 0.23

4. It is proposed to either adopt a new comment to Explanatory Note 0.23, or to add a new paragraph to the existing comment, to read as follows:

"Prior to prescribing escort, customs authorities are recommended to consider the use of modern technologies that facilitate customs transit, such as Global Positioning System (GPS) tracking devices or the use of e-seals, in order to enhance security of goods transported under the TIR procedure."

IV. Considerations by the Committee

5. The Committee is invited to endorse the above proposal and to request the secretariat to include it in the next revised edition of the TIR Handbook.