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Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975):

Revision of the Convention:

Amendment proposals to the Convention

Amendment proposals to the Convention

Note by the secretariat

I. Background and mandate

1. At its previous session, the Working Party had decided to revisit the proposals to amend Article 14, paragraph 1 and Article 15, paragraph 2; Article 20; Article 22, paragraphs 1 and 2; as well as various proposals to replace the phrase “conditions and requirements” by “minimum conditions and requirements” (see ECE/TRANS/WP.30/284, paras. 14 (b) to (f)). Further to this request, the secretariat prepared document ECE/TRANS/WP.30/2016/9 for consideration by the Working Party (ECE/TRANS/WP.30/284, para. 15).

II. Introduction to the terms reviewed

2. The majority of the terms reviewed for amendment in the present document concerns the use of:

- (a) Contracting Party (singular);
- (b) Contracting Parties (plural);
- (c) Country.

3. While each of these terms can be understood in various ways depending on context, syntax or grammar in various languages, an initial legal definition, purely in the context of international law and treaty practice, appears to be a valid starting point for the discussion.



4. In the first instance, a Contracting Party (whether in singular or in plural) to a Convention is a State or other entity with treaty-making capacity which has expressed consent to be bound by a treaty (see definitions in the United Nations Treaty Collection¹). A non-State entity with treaty making capacity is any intergovernmental entity which possesses international legal personality. Therefore, a Contracting Party to a Convention does not necessarily have to be a State. While a State is represented by a government, other entities that are Contracting Parties to a Convention are either represented by an institution of said entities, or by their member States.

5. In line with the above, the TIR Convention, in its Article 52, stipulates that all States members of the United Nations [...] as well as Customs or Economic Unions, under certain conditions, may become Contracting Parties to the TIR Convention.

6. Therefore, it can be contended that reference to either a “Contracting Party” or “Contracting Parties” generically refers to all those entities (States or other) that are bound by the terms of the TIR Convention.

7. When referring, in particular, to a Contracting Party that is a State, it is the State, i.e. the government of the State that is considered responsible for fulfilling the obligations of a Convention. From the perspective of international law, it is not relevant if the responsible branch of government is a particular ministry or a particular agency within the government; that concerns an internal delegation of tasks. It is the State, as a whole, as represented by the government, that is considered responsible for fulfilling the obligations set forth in the Convention. From this perspective, it has typically been the case in international Conventions that general obligations apply to Contracting Parties, while procedural or technical obligations could be agency-specific. However, agency-specific references are known to be avoided to the extent possible, precisely because of differences in the internal delegation of tasks.

8. The term “country” denotes a region of land defined by geographical features or political boundaries. In the international law context, the term “country” necessarily coincides with the meaning of the term “State”, it being a non-physical juridical entity that is represented by one centralized government that has sovereignty over a defined geographic area with a permanent population and which has the capacity to enter into relations with other sovereign States. It is also normally understood that a sovereign State is neither dependent on nor subjected to any other power or State. Therefore, references such as “country” or “State” can be restrictive and do not include other entities that may be Contracting Parties to a Convention, without being a State. However, such references may, in a particular context, be appropriate or necessary.

III. Article 14, paragraph 1 and Article 15, paragraph 2

9. Article 14, paragraph 1 reads:

“Each Contracting Party reserves the right to refuse to recognize the validity of the approval of road vehicles or containers which do not meet the conditions set forth in Articles 12 and 13 above. Nevertheless, Contracting Parties shall avoid delaying traffic when the defects found are of minor importance and do not involve any risk of smuggling”.

10. This provision refers to “Contracting Party” (singular) and to “Contracting Parties” (plural). This reference is not necessarily inconsistent, as it may be understood as follows:

¹ treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml

(a) Each Contracting Party individually reserves a right, which it may or may not choose to exercise at any given point in time;

(b) All Contracting Parties, at all times, should avoid delaying traffic to the extent possible and this is a general obligation regardless of the exceptional cases in which any individual Contracting Party may decide to exercise its reserved right.

11. Article 15, paragraph 2 reads:

“The provisions of paragraph 1 of this Article shall not prevent a Contracting Party from requiring the fulfilment at the Customs office of destination of the formalities laid down by its national regulations to ensure that, once the TIR operation has been completed, the road vehicle, the combination of vehicles or the container will be re-exported”.

12. In this case, the provision is not prescriptive, i.e. it does not create an obligation to act in a particular way, nor prohibitive, i.e. it does not aim to prevent any particular action, but, on the contrary, it establishes a right for Contracting Parties, to set forth (additional) requirements that are not in the Convention but, rather, are based in national law. For this reason, reference is made to Contracting Parties as entities (encompassing the entire government and whichever branch thereof competent to address this issue) rather than to a specific authority, as these national requirements may fall under various different ministries, agencies, etc.

IV. Article 20

13. Article 20 currently reads:

“For journeys in the territory of their country, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route”.

14. In this case, the use of the term “country” is observed. Article 20 refers to the task of customs authorities to fix a time-limit or prescribe a route. This is an agency-specific task, and the customs authorities of every Contracting State, only have the authority to operate within the limits of the State in which they are established. In this context, thus, the use of the term “country” is logical.

15. Amending the provision to refer to “Contracting Party” would only make a difference (if any) in the case of non-State Contracting Parties, if they have their own customs authorities, or if the customs authorities of their member States have the authority to prescribe routes and time limits going beyond the national territory of establishment and covering the entirety of the Customs Union.

16. However, if Contracting Parties would see a reason to amend this provision, it would be, perhaps, preferable to follow the wording of the Explanatory Note to Article 20 i.e. the article could read:

“For journeys in ~~the~~ their territory ~~of their country~~, the Customs authorities may fix a time-limit and require the road vehicle, the combination of vehicles or the container to follow a prescribed route”.

17. This implies that customs authorities can prescribe routes and fix time-limits throughout the geographical territory for which they are authorized.

V. Article 22

18. Article 22 reads:

“1. As a general rule and except when they examine the goods in accordance with Article 5, paragraph 2, the Customs authorities of the Customs offices en route of each of the Contracting Parties shall accept the Customs seals of other Contracting Parties, provided that they are intact. The said Customs authorities may, however, if control requirements make it necessary, add their own seals.

2. The Customs seals thus accepted by a Contracting Party shall have in the territory of that Contracting Party the benefit of the same legal protection as is accorded to the national seals.”

19. In paragraph 1, the provision prescribes an obligation for all Contracting Parties in general (i.e. to accept the seals of other Contracting Parties), and this obligation is to be executed, in particular, by the customs authorities of customs offices en route of each Contracting Party. The first paragraph also allows customs authorities to act autonomously, i.e. to add their own seals “if control requirements make it necessary”.

20. Paragraph 2 prescribes an obligation for all Contracting Parties. There is no specific reference to the executing agency or authority in this case. It is likely that a generic reference was chosen because the provision does not include an exception like in paragraph 1, where customs authorities may deviate from prescribed practice if certain conditions are met. Furthermore, it may be the case that the legal protection of customs seals in some countries extends beyond customs authorities and also applies to other law enforcement agencies. In such a case, it would be difficult to list all the manners of legal protection of seals that are afforded in various different national jurisdictions.

21. With the above understanding, there does not appear to be any particular reason to amend the wording.

VI. Annex 9, Part I, paragraph 7

22. Annex 9, Part I, paragraph 7 currently reads:

“The conditions and requirements laid down above are without prejudice to additional conditions and requirements Contracting Parties may wish to prescribe”.

23. Thus far, this provision has been understood to refer to the right of each Contracting Party generically. However, recently, concerns have been raised that in other languages (e.g. Russian), this formulation could be construed as a collective decision of Contracting Parties rather than an individual decision. Although this has not been the case in the English and French understanding, amending it in all languages to specifically refer to each Contracting Party does not have a material impact and could, therefore, be accepted. That is to say that the provision would then read as follows:

“The conditions and requirements laid down above are without prejudice to additional conditions and requirements that each Contracting Parties may wish to prescribe”.

VII. Considerations on the use of the term [minimum] conditions and requirements

24. The terms “conditions and requirements” and “minimum conditions and requirements” appear in various places in the Convention:

- (1) Article 6, para. 1: Each Contracting Party (...) as long as minimum conditions and requirements laid down in Annex 9, Part I (...) be revoked if the minimum conditions and requirements....
- (2) Article 6, para. 2 bis: An international organization (...) fulfils the conditions and requirements laid down in Annex 9, Part III. (...) if these conditions and requirements are no longer fulfilled.
- (3) Article 6, para. 4: Authorization (...) minimum conditions and requirements laid down in Annex 9, Part II of this Convention.
- (4) Annex 8, Article 10 (g): maintain a central record (...) the minimum conditions and requirements laid down in Annex 9.
- (5) Annex 9, Part I, subtitle: Conditions and requirements.
- (6) Annex 9, Part I, para. 1: The conditions and requirements...
- (7) Annex 9, Part I, para. 3 (iii): verify (...) of the minimum conditions and requirements...
- (8) Annex 9, Part I, para. 5: The Contracting Party (...) with these conditions and requirements...
- (9) Annex 9, Part I, para. 7: The conditions and requirements (...) additional conditions and requirements...
- (10) Annex 9, Part II, subtitle: Minimum conditions and requirements.
- (11) Annex 9, Part II, para. 1: The minimum conditions and requirements...
- (12) Annex 9, Part II, para. 1 (e) (iii): will (...) on the above minimum conditions and requirements.
- (13) Annex 9, Part II, para. 3: Contracting Parties (...) of the minimum conditions and requirements set forth in paragraphs 1 and 2.
- (14) Annex 9, Part II, para. 7: Authorization (...) under the minimum conditions and requirements...
- (15) Annex 9, Part III, subtitle: Conditions and requirements.
- (16) Annex 9, Part III, para. 1: The conditions and requirements...
- (17) Annex 9, Part III, para. 5: The Administrative Committee (...) above conditions and requirements...
- (18) Annex 10, first introductory para: By virtue of (...) fulfil the minimum conditions and requirements as laid down in Annex 9, Part II of the Convention.

25. Conditions and requirements for various actors in the TIR procedure are primarily laid down in the three parts of Annex 9, with corresponding references in the main body of the Convention, namely Article 6.

26. Annex 9 Part I prescribes the conditions and requirements (without “minimum”) to be fulfilled by national associations in order to be authorized to act as guarantors under the TIR procedure. Annex 9, Part I, paragraph 7 also allows each Contracting Party to set

additional conditions and requirements. The corresponding reference in the main body of the Convention can be found in Article 6, paragraph 1, which refers to “minimum conditions and requirements”. This is an inconsistent reference to Annex 9, Part I. Since Annex 9, Part I, paragraph 7 clearly safeguards the right of each Contracting Party to impose additional conditions and requirements, the implicit scope provided by the reference “minimum” is not necessary. Therefore, in this case it would be recommended to consider editorial alignment by amending Article 6, paragraph 1 as follows:

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.

27. Annex 9, Part I, paragraph 3 (iii) also makes reference to the “minimum conditions and requirements as laid down in Part II (of Annex 9)”. Annex 9, Part II refers to the minimum conditions and requirements to be fulfilled by TIR Carnet holders. Annex 9, Part II, paragraph 2 of also allows for “additional and more restrictive conditions and requirements” to be imposed. All references to “minimum conditions and requirements” of Annex 9, Part II are consistent throughout the Convention; therefore the word “minimum” can remain in all instances or, if preferred, deleted in all instances.

28. Annex 9, Part III refers to the conditions and requirements (without “minimum”) to be fulfilled by the international organization. In contrast to Annex 9, Parts I and II, there is no scope for Contracting Parties to individually (nationally) impose any additional conditions and requirements on the international organization. If any further conditions and requirements are to be added to Annex 9, Part III, this would require the agreement of all Contracting Parties and the adoption of an amendment to the Convention in accordance with Article 60. Therefore, the reference in Article 6, para 2 bis is editorially and materially consistent with the wording in Annex 9, Part III and there is no need to make any amendment.

VIII. Considerations by the Working Party

29. The Working Party is invited to consider the cases in which it would like to proceed with an amendment, in light of the information provided in the present document.
