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agenda item 9 (b) (iii))

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

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the International Road Transport Union (IRU)*

At the one-hundred-and-twelfth session of the Working Party, on 31 January 2006, it was decided not to continue discussions of proposals for amendments of the TIR Convention in the Ad Hoc Expert Group established in 2004, but to deal with the proposals transmitted so far at the forthcoming one-hundred-and-thirteenth session of the Working Party. Delegations were encouraged to present proposals and considerations before 1 March 2006, on the basis of which the secretariat would publish a consolidated document containing all proposals to be discussed.

In the light of the proposals from the Russian Federation in document TRANS/WP.30/2005/19 and from the European Community in documents number TRANS/WP.30/2004/14 and TRANS/WP.30/2005/29, as well as the deliberations in the Ad Hoc Expert Group on the proposal presented by the Netherlands in document TRANS/WP.30/GE.2/2005/2 and the decision by the Administrative Committee on the proposal for a new explanatory note to article 6.2**bis** taken at the meeting 7 October 2005, the IRU wishes to

* The secretariat reproduces the document as received.

contribute to this important discussion by proposing the following complete texts for the revision of articles 8 and 11 including Explanatory Notes and Comments as well as a new Annex 9, part III:

ARTICLES 8 AND 11

A. JUSTIFICATION

The IRU proposals concerning articles 8 and 11 are based on the former proposals and views expressed by the Russian Federation (TRANS/WP.30/2005/19), the European Community (TRANS/WP.30/2004/14, TRANS/WP.30/2005/12, Informal document No. 1 (2005) presented to the Ad hoc Expert Group on Phase III of the TIR Revision Process), the Netherlands (TRANS/WP.30/GE.2/2005/2) and the TIR Secretariat (TRANS/WP.30/2004/25).

The IRU also took into account the fact that within the discussions held in the various UN and TIR Convention bodies concerning the definition of the guarantee in the TIR Convention, the dependent and subsidiary nature of the guarantee is not seriously contested anymore. Indeed the nature of the guarantee has been thoroughly analyzed by various experts of the University of Geneva (TRANS/WP.30/2005/6), the UNCITRAL (TRANS/WP.30/2005/15) and the legal services of the European Commission (Informal document No. 1 (2005) presented to the Ad hoc Expert Group on Phase III of the TIR Revision Process), and it has been recognized that the principles resulting from this dependent and subsidiary nature are reflected in most national Customs legislations. Moreover such principles have been confirmed in front of the highest judicial Courts (for instance in the European Union, the Russian Federation, Bulgaria, Turkey, etc.).

Bearing these principles in mind, the IRU proposes the following amendments to articles 8 and 11, in order to clarify the current wording without affecting the basic principles established by the TIR Convention, thus preserving its essence as far as the respective roles of the Customs authorities, the national guaranteeing associations, the TIR Carnet Holder and other identified responsible persons, and the IRU are concerned.

B. PROPOSAL

Article 8

1. The guaranteeing association shall undertake to pay the guaranteed amount of 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 leading to a payment obligation for the above mentioned duties and taxes has been established in connection with a TIR operation. It shall be liable for payment of such sums, jointly and severally with the persons from whom the sums mentioned above are due.

Comments to Article 8, paragraph 1

Administrative fines

The liability of the guaranteeing associations as provided for in Article 8, paragraph 1 does not include administrative fines or other pecuniary sanctions.

Collection of additional sums

Article 8, paragraph 1, allows Customs authorities to collect additional sums such as liquidated damages or other penalties from the holder of the Carnet should they deem that to be necessary.

2. Each Contracting Party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association on the basis of the provisions of paragraph 1 above.

Explanatory Note to Article 8, paragraph 2

0.8.2 Customs authorities are recommended to limit to a sum equal to \$US 50,000 per TIR Carnet the maximum amount which may be claimed from the guaranteeing association. The following type of goods cannot be transported under cover of TIR Carnet, given the extraordinarily high risk of fraud:

- (1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher (HS code: 22.07.10);
- (2) Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages (HS code: 22.08);
- (3) Cigars, cheroots and cigarillos, containing tobacco (HS code: 24.02.10);
- (4) Cigarettes containing tobacco (HS code: 24.02.20);
- (5) Smoking tobacco, whether or not containing tobacco substitutes in any proportion (HS code: 24.03.10).

Comment to Explanatory Note 0.8.2

Duties and taxes at risk

In accordance with article 4 of the Convention, goods carried under the TIR procedure shall not be subjected 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 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. The liability of the guaranteeing association to the authorities of the country where the Customs office of departure is situated shall commence at the time when the TIR Carnet is accepted by the Customs office. In the succeeding countries through which goods are transported under the TIR procedure, this liability shall commence at the time when the goods enter these countries or, where the TIR transport has been suspended under Article 26,

paragraphs 1 and 2, at the time when the TIR Carnet is accepted by the Customs office where the TIR transport is resumed.

4. The liability of the guaranteeing association shall cover not only the goods which are enumerated in the TIR Carnet but also any goods which, though not enumerated therein, may be contained in the sealed section of the road vehicle or in the sealed container. It shall not extend to any other goods.

Explanatory Note to Article 8, paragraph 4

0.8.4 If the guarantee is questioned for goods not listed in the TIR Carnet, the administration concerned should indicate the facts on which it based its opinion that the goods were contained in the sealed section of the road vehicle or the sealed container.

5. For the purpose of determining the duties and taxes mentioned in paragraph 1 of this Article, the particulars of the goods as entered in the TIR Carnet shall, in the absence of evidence to the contrary, be assumed to be correct.

Explanatory Note to Article 8, paragraph 5

0.8.5

1. In the absence in the TIR Carnet of particulars detailed enough to enable charges on the goods to be determined, the Parties concerned may produce evidence of their precise nature.
2. If no evidence is furnished, duties and taxes will be charged, not at a flat rate unrelated to the nature of the goods, but at the highest rate applicable to the kind of goods covered by the particulars in the TIR Carnet.

Article 11

1. Where a TIR operation has not been discharged and a payment obligation for import or export duties and taxes has arisen, the competent authorities shall:

- (a) notify the holder of the TIR carnet in writing of the non discharge, as soon as possible;**
- (b) notify the guaranteeing association in writing of the non-discharge, as soon as possible and not later than a period of one year from the date of acceptance of the TIR Carnet by those authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years;**

Explanatory Note to Article 11, paragraph 1(b)

0.11-1(b) Once the guaranteeing association has been notified of the non discharge it should make its own enquiries concerning the apparent irregularity and, if possible, obtain alternative proof of termination of the TIR operation. Any relevant information so obtained should be referred to the competent authorities who notified the non-discharge.

Comment to Article 11, paragraph 1(b)

Time limit for notification

As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets the date of receipt but not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable any more.

(c) make every effort to ensure that the payment is made by the identified person or persons directly liable before making a claim against the guaranteeing association for the payment of the sums mentioned in Article 8, paragraph 1.

Explanatory note to Article 11, paragraph 1(c)

0.11-1(c) In the majority of cases it should be envisaged that the person or persons directly liable shall be the TIR Carnet holder or his representative. However, and without prejudice to national legislation, other parties may also be identified as being directly liable for the payment of sums due. These other parties may include:

- the person/persons who unlawfully removed the goods from Customs supervision, or
- the person/persons who knowingly participated in the removal, or
- the person/persons who knowingly acquired or held the goods so removed.

(d) provided that the conditions mentioned under subparagraphs (a) to (c) above have been implemented, have the right to claim, in accordance with the provisions of paragraphs 2 and 3 of this Article, payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association.

Comment to Article 11, paragraph 1(d)

Payment of duties and taxes

The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which a payment obligation for import or export duties and taxes has arisen.

2. The claim for payment of the guaranteed amount referred to in Article 8, paragraph 1, shall be made to the guaranteeing association at the earliest three months after the date on which the association has been notified that the TIR operation had not been discharged or that the certificate of termination of the TIR operation 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.

Explanatory Note to Article 11, paragraph 2

0.11-2

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 the guaranteed amount of duties, taxes and default interest payable by the holder of the Carnet.

2. Before making a claim against the guaranteeing association the competent authorities should make full use of the time scales offered under the paragraph in order to identify the person or persons directly liable. Subject to and in accordance with national legislation, the guaranteeing association may have the right to contest the claim.

3. The guaranteeing association without delay informs the international organization referred to in Article 6, paragraph 2bis** of the reception of a claim for payment. The international organization shall have a period of one month to inform the guaranteeing association of its position concerning the claim for payment. The guaranteeing association shall have a period of three months, from the date when the claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. If the competent authorities consider the reasons of opposition as ungrounded, they have the right to start legal proceedings against the guaranteeing association according to the national legislation.**

Explanatory Note to Article 11, paragraph 3

0.11-3 If a guaranteeing association, in accordance with the procedure set out in Article 11, is asked to pay the sums referred to in Article 8, paragraph 1, and fails to do so within a period of three months prescribed by the Convention and the competent authorities do not receive a motivated opposition to the claim for payment, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under the national law.

4. 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 leading to a payment obligation of import or export taxes and duties was committed in connection with the transport operation in question.

Explanatory Note to Article 11, paragraph 4

0.11-4 The reimbursement of the sums paid shall also be granted in cases where the person or persons directly liable subsequently pays the sums mentioned in Article 8, paragraph 1.

ANNEX 9

Part III

A. JUSTIFICATION

At the fourth meeting of the Ad hoc group the idea of introducing a new part III of Annex 9 in the Convention stipulating the conditions for approval of the international organization in accordance with article 6.2**bis** and the obligations of the organization, based on the agreement between UNECE and IRU, was generally accepted. The IRU proposes the following text, leaving the obligations related to Annex 8, Article 13 to be contained in the Agreement mentioned in the new Explanatory Note to Article 6.2**bis** decided by the Administrative Committee on 6 October 2005.

B. PROPOSAL

Annex 9, part III

AUTHORIZATION TO TAKE ON RESPONSIBILITY FOR THE ORGANIZATION AND FUNCTIONING OF AN INTERNATIONAL GUARANTEE SYSTEM AND TO PRINT AND DISTRIBUTE TIR CARNETS

Article 1

In order to be authorized by the TIR Administrative Committee, in accordance with the Article 6.2bis, the international organization accepts by signing the agreement originating from the Article 6.2bis

1. to take on responsibility for the [effective] organization and functioning of an international guarantee system, and
2. to print and distribute TIR Carnets.

Article 2

Without prejudice to the provisions of the TIR Convention, and in particular to Article 6.2bis and whilst fully respecting the competencies of the Contracting Parties, the international organization accepts to perform the following functions:

1. to provide the Contracting Parties of the TIR Convention via the national associations affiliated to the international organization with certified copies of the global guarantee contract and proof of guarantee coverage;
2. to provide the competent body(ies) of the TIR Convention, being the TIR Administrative Committee, the TIRExB as well as the Working Party on Customs Questions affecting Transport (WP.30), with information on the rules and procedures set out for the issue of TIR Carnets by national associations;
3. to provide the competent body(ies) of the TIR Convention, on a yearly basis, with global data of claims lodged, paid and pending;
4. to provide the competent body(ies) of the TIR Convention with timely and well founded information on trends in the number of non-terminated TIR operations, claims lodged or pending that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its guarantee system;
5. to provide the competent body(ies) of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party;
6. to provide, at the request of the TIRExB, full and complete information on the functioning of the TIR system, provided such request does not infringe legislation concerning confidentiality, data protection, etc.; in case such information cannot be given, the international organization will specify the legal provisions or other reasons prohibiting the exchange of information;

7. to provide the TIRExB with details of the issuing price by the international organization of each type of TIR Carnet;
8. to take all reasonable steps to reduce the risk of counterfeiting TIR Carnets;
9. to take the appropriate corrective action in cases where faults or deficiencies with the TIR Carnet, have been detected;
10. to fully participate in cases where the TIRExB is called upon to facilitate the settlement of disputes;
11. to ensure that any problem involving fraudulent activities or other difficulties, with regard to the application of the TIR Convention, is immediately brought to the attention of the TIRExB;
12. on the basis of the Recommendation adopted by the TIR Administrative Committee on 20 October 1995 on the Introduction of a control system for TIR Carnets [Annex 10 of the TIR Convention], to manage the control system with national guaranteeing associations affiliated to the international organization and the Customs Administrations and to inform the Contracting Parties and the competent body(ies) of the TIR Convention of significant problems encountered in the system;
13. to provide the competent body(ies) of the TIR Convention with statistics and data on the performances of Contracting Parties with regard to the control system;
14. to seek continuously to enhance the control system in order to improve its efficiency as a risk management and anti-fraud tool;
15. to be available for meetings with the TIRExB, the TIR Secretary, the TIR secretariat and other key organizations, active in the field of TIR;
16. to offer its good offices and experiences to support the training of interested parties, e.g. national associations.

Article 3

1. The international organization shall meet the following conditions:
 - (a) Proven existence as an established organization representing the interests of the transport sector.
 - (b) c of the financial coverage of the international chain of guarantee by means of a certified and approved copy of the global guarantee contract referred to in Part I, Article 1(f)(v) of this Annex.
 - (c) Proven knowledge and experience of the international organization in the proper application of the Convention.
 - (d) Absence of serious or repeated offences against Customs or tax legislation in the country of establishment.
2. The international organization shall agree to implement faithfully all decisions adopted by the Administrative Committee and the TIR Executive Board.

3. **Authorization of an organization under the terms set out above shall be without prejudice to that organization's responsibilities and liabilities under the Convention.**

Article 4

In case the Administrative Committee decides to revoke the authorization in accordance with Article 6.2bis of the Convention, the decision will become effective at the earliest six (6) months after the date of the revocation.
