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Working Party on Customs Questions Affecting Transport

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Item 8 (b) (iii) of the provisional agenda

**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

Note by the secretariat

I. BACKGROUND AND MANDATE

1. At the 118th session of the Working Party, some delegations drew particular attention to 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 fifty thousand United States dollars. Within the context of this discussion, the Working Party took note of document ECE/TRANS/WP.30/2008/6, submitted by the International Road Transport Union (IRU) and containing its assessment of the application of Article 23 of the Convention. As a result, the Working Party requested the secretariat to prepare proposals to introduce an amendment to Article 23 or an Explanatory Note or comment thereto, which would make it clear that Customs authorities should only impose escorts based on risk assessment procedures (ECE/TRANS/WP.30/236, paras. 24 and 25).

2. At its 119th session, the Working Party considered in depth document ECE/TRANS/WP.30/2008/10, prepared by the secretariat and containing a proposal to amend the comment to Article 23. Having generally supported the proposal, the Working Party delivered a

number of remarks, both of substantial and linguistic nature, regarding the list of factors that should be taken into account by Customs when performing the risk assessment. Some delegations felt that this list is not necessary and that a general reference to the principles of risk management would be sufficient. However, other delegations argued that such a list could provide guidance to Contracting Parties where risk management techniques had not yet been developed. It was also pointed out that the comment to Explanatory Note 0.8.3 "Duties and taxes at risk" should be modified accordingly. The Working Party invited all delegations to transmit, prior to 15 July 2008, their written comments on the proposed draft and, on that basis, requested the secretariat to revise the proposal (ECE/TRANS/WP.30/238, para. 31). In the absence of such comments, the secretariat has taken the liberty to introduce some changes into the document, in line with the discussions at the 119th session of the Working Party.

II. TIR CONVENTION AND REVISED KYOTO CONVENTION

3. According to Article 23 of the TIR Convention, "the Customs authorities shall not require road vehicles, combinations of vehicles or containers to be escorted at the carriers' expense on the territory of their country ... except in special cases". This Article corresponds to Standard 15 of Specific Annex E to the Revised Kyoto Convention: "Only when they consider such a measure to be indispensable shall the Customs ... require goods to be transported under Customs escort".

4. Both TIR and Kyoto Convention stress the principle that Customs escorts should be applied under exceptional circumstances only. At the same time, the TIR Convention and comments thereto mention only one example of such situations, namely if the duties and taxes at risk exceed the established amount of the TIR guarantee (comments to Explanatory Note 0.8.3 "Duties and taxes at risk" and to Article 23 "Escort of road vehicles"). This could lead to incorrect assumptions such as:

- Customs may apply escort only when the guarantee limit is exceeded;
- As soon as the guarantee limit is exceeded, the Customs shall apply escort;
- Under any circumstance, as long as the guarantee limit is not exceeded, Customs shall not apply escorts.

5. The Guidelines to Specific Annex E to the Kyoto Convention further stipulate that Customs escorts may be prescribed if the risks to compliance with Customs law so require. Moreover, escorts, being a Customs control measure, are subject to the Standards laid down in Chapter 6 "Customs control" of the General Annex, in particular:

- Customs control shall be limited to that necessary to ensure compliance with Customs law;
- In the application of Customs control, Customs shall use risk management;
- Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.

III. PROPOSAL BY THE SECRETARIAT

6. As pointed out in para. 2 above, the provisions of Article 23 of the TIR Convention are clear and, as such, do not need any amendment. However, the comment "Escort of road vehicles" to this

Article seems to be misleading and could be clarified further. With this in mind, the secretariat proposes to modify the comment to read as follows:^{1/}

"Escort of road vehicles

*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, the Customs authorities are recommended to assess, **among others** ~~inter-alia~~, 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 **level of demand for** ~~facility with which the goods can be sold~~ on the domestic market;*
- *the amount of import or export duties and taxes at risk;*
- ***the maximum guarantee level per TIR Carnet;***
- *the subjection of the goods to specific restrictions imposed on the basis of national law or international agreements (please also refer to Article 47 and comments thereto);*
- *mistakes, inaccuracies, **omissions** or inconsistencies in the TIR Carnet or accompanying documentation;*
- *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."

7. The Working Party may wish to consider the modified proposal by the secretariat.

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^{1/} Additions to the original proposal from document ECE/TRANS/WP.30/2008/14 are in **bold** and deletions are in ~~strikethrough~~.