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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport
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**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT
OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION 1975)**

Revision of the Convention

Background of Article 8, paragraph 2

Note by the secretariat

A. MANDATE AND BACKGROUND

1. At its one-hundred-and-ninth session, the Working Party agreed with the recommendation by the Ad hoc Expert Group (TRANS/WP.30/2004/38, para. 12) to request the secretariat to study the background for Article 8, paragraph 2 and to report its findings to the Working Party at one of its future meetings. If the study of the secretariat would not provide any justification for keeping the Article, it should be considered to delete it (TRANS/WP.30/218, para. 54).

2. In accordance with the above request, the secretariat has undertaken a study on the origin of Article 8.2. The study is based on the following documents: TRANS/WP.30/2004/38, TRANS/WP.30/120, TRANS/WP.30/122, TRANS/GE.30/AC.2/R.9, TRANS/GE.30/AC.2/R.11.

B. ORIGIN OF ARTICLE 8, PARAGRAPH 2

3. The application of Article 8, paragraph 2, is closely linked to the application of paragraph 1 of that Article. In line with Article 8, paragraph 1, the liability of the guaranteeing association covers exclusively the 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 has been noted in connection with a TIR operation. Thus, according to the 1975 TIR Convention, the scope of the guaranteeing association's obligations does not include "penalties".

4. Paragraph 2 of Article 8 introduces an exception to this rule in cases "where the laws and regulations of a Contracting Party do not provide for payment of import or export duties and taxes as provided for in paragraph 1 above". Under these circumstances, the guaranteeing association is required to pay, under the same conditions, a sum equal to the amount of the import or export duties and taxes and any default interest.

5. Paragraphs 1 and 2 of Article 8 of the 1975 TIR Convention are fundamentally different from the 1959 TIR Convention, which included "penalties" among the liabilities of the guaranteeing associations and which had no provision corresponding to Article 8, paragraph 2 of the 1975 Convention.

6. In the course of the revision of the 1959 TIR Convention, the liability of the guaranteeing association for pecuniary penalties incurred by the holder of the TIR Carnet was discussed in detail. A questionnaire was circulated requesting countries to transmit information on the national laws and regulations concerning offences committed in connection with the transport of goods under cover of a TIR Carnet and the practice of holding liable the guaranteeing association in case that pecuniary penalties were imposed on the holder of the TIR carnet.

7. The result of the inquiry showed that some countries did not have the legal means to claim duties and taxes as such, but could only impose penalties in cases where, for instance, the goods had disappeared. It was pointed out that the exclusion of the liability for pecuniary penalties would create an imbalance in applying the guarantee system due to the different interpretation by national legislation of the terms "taxes" and "duties", on the one hand, and "penalties", on the other. It was mentioned that what could be considered as duties in one country might be called penalties in another one.

8. In spite of this fact, the Group of Experts decided to exclude the liability for pecuniary penalties. Through this exclusion, it became necessary to introduce the exception of Article 8, paragraph 2, in order to avoid the expected imbalance mentioned above.

9. Reference was also made to Article 10, paragraph 3, of the Customs Convention on the International Transit of Goods (ITI Convention), elaborated by the Customs Cooperation Council (CCC), which excludes explicitly pecuniary penalties from the liability of the guaranteeing association.

10. Article 10, paragraph 4 of the ITI Convention corresponds to Article 8, paragraph 2 of the TIR Convention 1975. The following comment by the secretariat of the CCC on this Article of the ITI Convention gives the reason for its introduction:

"... This provision is included to cover cases where national laws and regulations describe the sum due as, for example, "penalties". It is specifically provided, however, that guaranteeing associations are not liable for the payment of pecuniary penalties as such. This limitation does not affect the liability of the declarant. (ITI Convention, Text and Commentary, CCC document 18.000 E (71), page 31)."

C. FURTHER CONSIDERATIONS

11. The reason for the introduction of paragraph 2 into Article 8 of the TIR Convention was the fact that, in 1975, there were some countries whose national laws and regulations did not provide for payment of import or export duties and taxes when an irregularity had been noted in connection with a TIR operation. In such cases, those countries could only impose penalties.

12. The secretariat is not aware if the above-mentioned situation is still actual among the Contracting Parties. Therefore, before taking a decision regarding the possible deletion of the provisions of Article 8.2 and Explanatory Note 0.8.2, a special survey of the Contracting Parties should be undertaken.
