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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

Transmitted by the European Community (EC)

1. The European Community announced during the one-hundred-and-sixth session of the WP.30 that it would be submitting proposals to amend the TIR Convention.
2. The European Community's proposals are annexed to the present document. Each proposal is accompanied by a brief explanation and, where appropriate, the proposed text which is shown in italics to help identification.
3. It should be noted that, in some cases, the European Community has not proposed a definite amendment but rather has suggested some options for consideration by the WP.30. In some other cases the proposals are provisional in the sense that they are subject to the views of the WP.30 and the secretariat.
4. The annexed proposals also include the European Community's reaction to the proposals already submitted by the Chairman of WP.30 and by the Russian Federation.
5. It should be pointed out that the main object in submitting these proposals is to contribute to the current review of the TIR Convention by proposing some ideas which may in turn stimulate a wider discussion of the issues raised. It is possible that the cumulative effect of these proposals and the outcome of these discussions may lead to the need to establish a new TIR Convention.

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Annex

PROPOSED AMENDMENTS TO THE TIR CONVENTION, 1975

Article 4

Explanation

Clarification is needed to establish the principle that the key issue is the duty and tax paid status of the goods at the time they enter the territory of the Contracting Party. As currently drafted the Article is misleading in that it states that the restriction on the payment or deposit of import (or export) duties and taxes shall only apply to payments made at the Customs offices en route. The European Community believes that this narrow application is not intended and proposes to amend the Article to make it clear that the goods shall not be subjected to the payment or deposit of duties and taxes regardless of where these payments are made.

Proposal

Amend the Article to delete the text "at Customs offices en route".

Chapter II

Explanation

This Chapter has two subheadings "Issue of TIR carnets" and "Liability of guaranteeing associations". The second subheading is potentially misleading because the Chapter also includes the responsibility of the International Organization (Article 6.2 bis) and the liability of the person(s) directly liable (Article 8.7). For legal certainty the European Community believes the Chapter headings should relate to the subject matter contained therein.

Options for consideration

A. Reorder the Chapter into its distinct parts and rename the subheadings accordingly. For example:

"Responsibilities of the International Organization"

"Liability of Guaranteeing Associations"

"Issue of TIR Carnets"

"Payment of duties and taxes"

B. Alternatively delete the second heading "Liability of guaranteeing associations" thus leaving the title to read "Issue of TIR carnets" which, arguably, is sufficiently generic to cover the subject matter of the Chapter.

Article 6.2 bis

Explanation

Both the Chairman of WP.30 (in document TRANS/WP.30/2003/22) and the Russian Federation (in document TRANS/WP.30/2003/11) have made separate proposals concerning this Article. The European Community considers that both of these proposals are principally concerned with the international organization's compliance with the terms of its authorization. The European Community, therefore, does not believe that it is appropriate to amend Article 6.2 bis. However, the European Community considers that it would be helpful to incorporate the essence of these proposals as a new Explanatory Note to Article 6.2bis.

Proposal

Introduce a new Explanatory Note to read:

"2. The authorization shall stipulate that the International Organization shall respect the competences of the Contracting Parties to the Convention and shall comply with the decisions of the TIR Administrative Committee and the TIR Executive Board. By signing the authorization the International Organization indicates its acceptance of its responsibilities as set out in the authorization."

Article 8.5 (and 31)

Explanation

By virtue of Article 1(o) the TIR carnet holder is responsible for "the presentation of... the load and the TIR Carnet relating thereto". Yet Article 8 paragraph 5 (and the equivalent Article 31 concerning Heavy and Bulky Goods) extends the liability of the guaranteeing association to include goods which are not enumerated on the goods manifest of the TIR carnet.

Given the fundamental difference between the guaranteeing association (who is likely to have had no physical control over the loading of the vehicle) and the holder (who may have some involvement/knowledge of the goods actually loaded on to the vehicle), it would seem to be anomalous that the holder's responsibility for undeclared goods should be different to that of the guaranteeing association. The European Community is not aware of any reason why this apparent anomaly exists and would appreciate the WP.30's and secretariat's views on the matter.

Another issue for consideration is that, apart from Article 1(o), the holder's responsibilities are not set out in the Convention and the European Community wonders whether this should be remedied.

Options for consideration (provisional)

A. Amend Article 8.5 to read "The liability of the guaranteeing association *and the responsibility of the holder* 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."

However, given the fact that Article 8.5 falls in Chapter II ("Liability of the Guaranteeing Association"), it could be argued that it is inappropriate to amend Article 8.5 to include a specific reference to the holder's responsibility. However, this presentational concern would be overcome if it was agreed to amend the title of Chapter II (see earlier proposal).

B. Alternatively, the second sentence of Article 1(o) could be amended to read "He shall be responsible for the presentation of the road vehicle, the combination of vehicles or the container together with the *goods loaded in the sealed section of the road vehicle or in the sealed container* and the TIR Carnet relating thereto at the Customs office of departure, the Customs office en route and the Customs office of destination and for due observance of the other relevant provisions of the Convention."

C. In addition, consideration should be given to establish a new provision devoted to the responsibilities of the holder. Structurally, it might be preferable for Annex 9, Part II to be amended to include a section on the "Responsibility of the TIR Carnet Holder".

Article 8.7

Explanation

The Chairman of WP.30 (in document TRANS/WP.30/2003/22) proposed to reorder paragraph 7 as paragraph 1 in order to emphasize the expectation that action should, in the first instance, be taken to recover the payment of any duties and taxes from the person(s) directly liable. In addition, the European Community notes that this Article gives no guidance regarding the identification of the person(s) directly liable for the payment of the charges, etc.

Proposals

A. The European Community supports the reasoning behind the Chairman of WP.30's proposal, but believes that it would be preferable to reposition paragraph 7 as paragraph 3. It should be noted that the current Articles 8.1 and 8.2 primarily concern the guaranteeing associations' undertaking to pay the duties and taxes that might become due. This is a fundamental requirement of TIR and it would seem appropriate to maintain these 2 paragraphs in their current hierarchical position within the Article.

B. In addition, steps should be taken to strengthen Article 8.7 in order to emphasize that the competent authorities are expected to identify and seek payment from those directly responsible. The Article should be amended to read: *“Before making a claim against the guaranteeing association for the payment of the sums mentioned in paragraphs 1 and 2 of this Article, the competent authority shall make every effort to ensure that the payment is made by the person or persons directly liable.”*

C. With regard to the identification of those directly liable, the European Community considers that it would be appropriate to introduce a new Explanatory Note to Article 8.1 and (the new) Article 8.3 to read as follows:

“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 the sums due. These other parties may include:

- the person/persons who unlawfully removed the goods from the road vehicle, or*
- the person/persons who knowingly participated in the removal, or*
- the person/persons who knowingly acquired or held the goods so removed.”*

Article 11

Explanation

The Russian Federation (in document TRANS/WP.30/2003/11) proposed an amendment to introduce a new Article 11.2 bis to enable the national guaranteeing association to consider the claim in conjunction with the international organization. In the event that the claim is not paid by the guaranteeing association, the effect of this proposed amendment would be to enable a Contracting Party to take action, through its national courts, against the international organization and/or the central insurer. In other words, the proposed amendment will, in effect, extend the provisions of Explanatory Note 0.11-3 to the international organization and the central insurer.

Although it can be argued that this proposed amendment essentially reflects the de facto situation, the implication of this proposed amendment is potentially significant and far reaching. For example, the proposal could be developed further and result in, say, the creation of a new Part in Annex 9 which concerns the international organization's obligations and responsibilities. The proposed amendment may also result in a review of the functioning of the current centralized international guarantee system. For these reasons, the European Community proposes that the Russian Federation's proposed amendment is referred to the special group of experts for a full evaluation of the implications of the proposal.

However, the European Community considers that this Article does need to be clarified in a number of respects in order to achieve the necessary balance between the guaranteeing association's rights and its obligations. But as these deficiencies concern the interpretation of the current Article, the European Community considers that the clarification could be best achieved by means of new Explanatory Notes.

Proposals

Create a new Explanatory Note to Article 11.1 to read as follows: *"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 the termination. Any relevant information so obtained should be referred to the competent authorities who notified the non-discharge."*

Create a new Explanatory Note to Article 11.2 to read as follows: *"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."*

Create a new Explanatory Note to Article 11.3 to read as follows: *"The reimbursement of the sums paid shall also be possible in cases where the person or persons directly liable subsequently pays the sums mentioned in Article 8 paragraphs 1 and 2."*

Article 28

Explanation

The European Community believes that this Article should be strengthened with regard to two aspects. Firstly, Article 28, paragraph 1 should incorporate the wording currently in the Comment concerning the placing of the goods under another customs procedure or system of control. Secondly, following on from this Article 28, paragraph 2 should be clarified to the effect that any irregularities arising under a following customs procedure are not to be attributed to the guaranteeing association; in other words, give the guaranteeing association the same rights as the TIR carnet holder.

Proposals

Amend Article 28 as follows:

Paragraph 1 – insert a new opening sentence to read as follows:

"Termination of a TIR operation shall be subject to the goods specified on the manifest of a TIR Carnet being placed under another Customs procedure or another system of Customs control."

Paragraph 2 to read as follows:

“Any irregularities committed under another Customs procedure or another system of Customs control mentioned in paragraph 1 shall not be attributed to the *guaranteeing association* or the TIR carnet holder as such or any person acting on his behalf.”

In addition, convert the existing Comment entitled "Applicable procedures after termination of a TIR operation" to an Explanatory Note to read as follows:

“This Article provides that the termination of a TIR operation shall be subject to the goods being placed under another Customs procedure or another system of Customs control. This includes clearing the goods to home use (either in full or conditionally), the transfer across the border to a third country (export) or to a free zone, or the storage of the goods in a place approved by the Customs authorities while awaiting the declaration for another Customs procedure.”

Article 40

Explanation

This Article explicitly excuses the TIR carnet holder from being held responsible for any discrepancies which relate to the preceding or following customs procedures. On the face of it, it is not clear why guaranteeing associations do not benefit also from this dispensation. Indeed, it could be argued that of all the parties involved, the guaranteeing association has the least control over the preceding and following Customs procedures. The European Community is not aware of any reason why this apparent anomaly exists and would appreciate the WP.30's and secretariat's views on the matter.

Option to be considered (provisional)

Amend Article 40 to read as follows: "The Customs administration of the country of departure shall not consider the *guaranteeing association nor the* holder of the TIR carnet responsible for any discrepancies which may be discovered, when the discrepancies in fact relate to a customs procedure which preceded the TIR transport and in which the *guaranteeing association* or the holder of the *TIR carnet*, including any person acting on his behalf, *were* not involved."

Article 41

Explanation

The natural wastage aspect of this Article only extends to the goods being “short” which arguably does not apply to goods that are irretrievably *lost* by natural wastage. In any event, the word “short” is capable of being misinterpreted. To avoid any misunderstanding, the European Community proposes an amendment to this Article.

Proposal

Article 41 to be amended to read as follows: "When it is established to the satisfaction of the *competent* authorities that goods specified on the manifest of the TIR Carnet have been destroyed or have been irrecoverably lost by accident or force majeure or that they are *irretrievably lost or missing* by reason of their nature, payment of the duties and taxes normally due shall be waived."

Article 42 bis

Explanation

This Article specifically obliges the competent authorities to take all necessary measures to ensure the proper use of "TIR Carnets". The European Community questions whether this is enough? Surely the competent authorities should ensure the "proper application of the provisions of the Convention". It could be envisaged that this would imply the need to set out in the Convention what is meant by "proper application", which could take the form of setting out the roles and responsibilities of the Contracting Parties. However, this would be a potentially controversial and far reaching proposal in that it would also require the creation of a mechanism to deal with Contracting Parties that fail to respect or comply with the Convention. In view of this, the European Community proposes that this proposed amendment be referred to the special group of experts for a full evaluation of the implications of the proposal.

Proposals (provisional)

A. Amend the first sentence of Article 42 bis to read: "The competent authorities, in close cooperation with the *guaranteeing* associations, shall take all necessary measures to ensure the *proper application of the Convention*."

B. A new Explanatory Note to read as follows: "Where, in duly justified circumstances, information is received that the provisions of the Convention are not being applied properly, the Administrative Committee shall investigate and take the appropriate steps to regularize the situation."
