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Item 4 (b) (i) of the provisional agenda

**Customs Convention on the International Transport
of Goods under Cover of TIR Carnets (TIR Convention, 1975) –
Revision of the Convention:
Preparation of Phase III of the TIR revision process**

Legal aspects of computerizing the TIR procedure

Note by the secretariat

I. Background and Mandate

1. At its 137th session, the Working Party considered document ECE/TRANS/WP.30/2014/7, prepared by the secretariat at the request of the Working Party at its 136th session, and containing examples of the substantive legal framework that would enable the computerization of the TIR procedure (eTIR). These examples included draft amendments to the TIR Convention as well as, alternatively, a draft Protocol. Several delegations, including Azerbaijan, the European Union, Iran (Islamic Republic of), Turkey and Ukraine, were positively inclined towards further developing an additional legal framework to the TIR Convention. The European Union (EU) further added that as concerns, in particular, the administration of the eTIR international system, the EU and its member States are in favour of a United Nations or, in any case, an independent public body being in charge of administering the international system.

2. In order to progress in developing the content and structure of the eTIR legal framework, the Working Party requested the secretariat to prepare, for the current session, a further elaborated example of a Protocol, and invited interested Parties to send their views on and contributions to the envisaged Protocol to the secretariat, in order to facilitate the drafting of provisions that would meet a high level of acceptance (see ECE/TRANS/WP.30/274, para. 19). Further to this request, the secretariat prepared the present document ECE/TRANS/WP.30/2014/13, containing, in the Annex, an elaborated example of a Protocol.

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3. A Protocol to the TIR Convention would be a new legal instrument that would require signature, ratification and entry into force through the United Nations Depositary procedures. The main benefit of a Protocol is that accession to it is optional and thus only Contracting Parties that wish to become Parties to the Protocol will be bound by the obligations therein. As such, the agreement reached will be open for accession to all TIR Contracting Parties as and when they decide they are ready and willing to undertake such additional obligations as would be stipulated in the Protocol. It should be reiterated at this point that the paper-based TIR procedure as laid down in the TIR Convention will be simultaneously valid and operational and that the Protocol will be a separate albeit optional addition to the TIR Convention. Thus, paper TIR Carnets will continue to be accepted by the customs authorities of Contracting Parties which have ratified the Protocol. It should be further added that only Contracting Parties to the TIR Convention of 1975 would be able to become Parties to it.

4. The Working Party may wish to refer to documents ECE/TRANS/WP.30/2013/8 and ECE/TRANS/WP30/2014/7 for more information on the considerations by the secretariat and relevant analysis of options.

II. Considerations by the Working Party

5. The Working Party is invited to consider the draft Protocol as contained in the Annex and provide further guidance on the direction in which the legal framework of eTIR could be developed, on the basis of the draft Protocol.

Annex

Example of a Protocol

The Parties to this Protocol,

Being Contracting Parties to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, done in Geneva on 14 November 1975,

Desiring to further facilitate the international inland transport of goods,

Have agreed as follows:

Chapter I General

A. Application

Article 1

1. The provisions herein shall apply in the relations between Contracting Parties to the TIR Convention, 1975, that have ratified this Protocol.
2. The provisions herein shall apply without prejudice to applicable provisions as stipulated in the TIR Convention, 1975.
3. For the purposes of this Protocol, TIR transports shall be carried out in accordance with the eTIR procedure, as defined in this Protocol.

B. Definitions

Article 2

1. The term "eTIR procedure" shall mean the customs transit procedure carried out by a holder under cover of an electronic TIR guarantee and implemented by means of electronic data exchanged in accordance with the provisions of this Protocol.¹
2. The term "eTIR international system" shall mean the Information and Communication Technology (ICT) system devised to enable the exchange of electronic information between the actors involved in the eTIR procedure. It allows the management by Customs of data on guarantees and the secure exchange of data between national Customs systems related to the international transit of goods, vehicles and/or containers according to the provisions of the TIR Convention, 1975.
3. The term "advance cargo information" shall mean the information provided to the competent Customs authorities within the prescribed deadlines and in the prescribed form

¹ Or similar definition as agreed by Contracting Parties. It is assumed that an authorized TIR Carnet holder is automatically also authorized, under the same conditions (Annex 9, Part II), to use the eTIR procedure as long as the requirements for carrying out an eTIR procedure (as specified in the eTIR Reference Model) are met (e.g. ability to provide the required declaration data electronically).

and manner of the intention of the holder to place goods under the eTIR procedure or pursue a TIR transport.²

4. The term “declaration” shall mean the act whereby the holder, or his representative, indicates in the prescribed form and manner a wish to place goods under the eTIR procedure.³

Chapter II

Conceptual, functional and technical specifications of the eTIR procedure

Article 3

The conceptual, functional and technical specifications of the eTIR procedure are laid down in the eTIR Reference Model. The Parties to this Protocol shall apply the eTIR procedure in conformity with the specifications contained therein.

Article 4

The procedure for amending or endorsing the specifications contained in the eTIR Reference model shall be approved by the Parties to this Protocol.⁴

Chapter III

Administration of the eTIR international system

Article 5

1. The eTIR international system shall be hosted by UNECE. Under the responsibility of the Parties to this Protocol, the UNECE secretariat shall ensure that the eTIR international system is appropriately maintained and staffed.

2. UNECE shall also provide a helpdesk to assist countries in connecting their IT systems to the eTIR international system.

3. Pursuant to paragraphs 1 and 2 of this Article, unless the eTIR international system is financed by resources of the United Nations regular budget, the required resources shall be subject to the financial rules and regulations for extra-budgetary funds and projects of the United Nations. The financing mechanism and budget for the operation of the eTIR international system at the UNECE shall be decided and approved by the Parties to this Protocol.

² As defined in the eTIR Reference Model

³ As defined in the eTIR Reference Model

⁴ This provision needs to be further elaborated. The Working Party is invited to consider the formula under which amendments to the eTIR Reference Model could be adopted i.e. whether WP.30 would be the first platform of discussion or whether the Contracting Parties to the Protocol can directly proceed with amendments as it sees fit. Further to this, as the eTIR Reference Model is a very technical document, Contracting Parties to the Protocol may wish to allow for an expert body to be convened on request, to develop amendment proposals as required.

Article 6

1. Data pertaining to TIR transports carried out under the eTIR procedure for which a certificate of termination has been obtained without irregularities shall be stored in the eTIR international system for a period of 3 years.
2. Data pertaining to TIR transports carried out under the eTIR procedure for which the certificate of termination has been obtained in an improper or fraudulent manner or for which no termination has taken place, resulting in a claim for payment of import or export duties and taxes, shall be stored in the eTIR international system for a period of 5 years after the settlement of the claim has been notified to UNECE.

Article 7

1. All data stored in the eTIR international system may be used by UNECE on behalf of the competent bodies of this Protocol for the purpose of extracting aggregated statistics.
2. The actors involved in a TIR transport carried out under the eTIR procedure which becomes the subject of administrative or legal proceedings concerning the payment obligation of the person or persons directly liable or of the guarantee chain, may request UNECE to provide information stored in the eTIR international system pertaining to the claim in dispute for verification purposes. This information may be produced as evidence in national administrative or legal proceedings.
3. In cases other than those specified in paragraphs 1 and 2 of this Article, the dissemination or disclosure of information stored in the eTIR international system shall be prohibited.⁵

Chapter IV
Mutual recognition of authentication mechanisms**Article 8**

The Parties to this Protocol shall recognize the authentication of the holder performed by the competent authorities of the country to which the advance cargo information is submitted.

⁵ The eTIR international system is designed, in the eTIR Reference Model, to ensure secure exchange of the information necessary for carrying out TIR transports electronically. The eTIR reference Model also includes an elaborate fall back procedure. Seeing as these elements fall under the technical aspect of the eTIR international system, reference to security and fall back procedures in the Protocol are not considered a necessity. Furthermore, the purpose of the eTIR international system (including the security element), are mentioned in the definition of the eTIR international system in Article 2, para. 2 of the draft Protocol.

Chapter V

Miscellaneous provisions⁶

Article 9

1. Each Party shall publish the list of approved customs offices where TIR transports under the eTIR procedure can start, terminate or pass through.⁷
2. Each Party shall regularly update the list of customs offices, pursuant to paragraph 1 of this Article, in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.

Chapter VI

Final Clauses

Article 10

Signature, ratification and accession

1. This Protocol shall be open for signature by States that are Contracting Parties to the TIR Convention, 1975.
2. This Protocol shall be open for signature at Geneva from xx to xx (month) (year) inclusive and after this date, at United Nations Headquarters in New York until xx (month) (year) inclusive.
3. This Protocol shall be subject to ratification by signatories and open for accession by non-signatories, which are Parties to the TIR Convention.
4. Customs or Economic Unions may, together with their member States or at any time after all their member States have become Parties to this Protocol, also become Parties to this Protocol, in accordance with paragraphs 1, 2 and 3 of this Article. However, these Unions shall not have the right to vote.⁸
5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.
6. Any instrument of ratification or accession, deposited after the entry into force of an amendment to this Protocol adopted in accordance with the provisions of Article 16 hereafter, shall be deemed to apply to the Protocol as modified by the amendment.

Article 11

Entry into force

1. This Protocol shall enter into force on the ninetieth day after two of the Parties referred to in Article 10, paragraph 1, of this Protocol, have deposited their instruments of ratification or accession.

⁶ Under this Chapter, Contracting Parties are also invited to consider the relationship of the TIR intergovernmental bodies to the Protocol, such as, what functions, if any, could they have in relation to the Protocol, considering that, as a separate legal instrument, only Contracting Parties to it can, in accordance with international law, have decision making competence.

⁷ In this case the wording of article 48 has been selected. Alternatively we can also use the wording “[...] offices [...] that are capable of processing eTIR operations”. However in such a case, an eTIR operation may have to be defined in Article 2, unless assumed mutatis mutandis interpreted under the provisions of the TIR Convention, 1975.

⁸ Consistent with Article 52 para.3 of the TIR Convention, 1975.

2. For any Contracting Party to the TIR Convention, 1975, ratifying or acceding to this Protocol after five States have deposited their instruments of ratification or accession, this Protocol shall enter into force on the ninetieth day after the said Party has deposited its instrument of ratification or accession.

Article 12 Denunciation

1. Any Party may denounce this Protocol by so notifying the Secretary-General of the United Nations.
2. Denunciation shall take effect fifteen months after the date of receipt by the Secretary General of the notification of denunciation.
3. Any Party which denounces the TIR Convention shall on the same date of effect of the denunciation, cease to be Party to this Protocol.

Article 13 Termination

If, after the entry into force of this Protocol, the number of Parties is reduced, as a result of denunciations, to less than two, this Protocol shall cease to be in force from the date on which the last of such denunciations takes effect. It shall also cease to be in force from the date on which the TIR Convention ceases to be in force.

Article 14 Settlement of disputes

1. Any dispute between two or more Parties concerning the interpretation or application of this Protocol shall, so far as possible, be settled by negotiation between them or other means of settlement.⁹
2. Any dispute between two or more Parties concerning the interpretation or application of this Protocol which cannot be settled by the means indicated in paragraph 1 of this Article, shall be settled in accordance with Article 57, paragraphs 2 to 6 of the TIR Convention, 1975.

Article 15 Reservations

1. Any Party may, at the time of signing, ratifying, or acceding to this Protocol, declare by a notification addressed to the Secretary-General of the United Nations that it does not consider itself bound by Article 14 paragraph 2 of this Protocol. Other Parties shall not be bound by Article 14 paragraph 2 of this Protocol in respect of any Party which has entered such a reservation.
2. The declaration referred to in paragraph 1 of this article may be withdrawn at any time by a notification addressed to the Secretary-General of the United Nations.
3. Apart from the reservations provided for in paragraph 1 of this Article, no other reservation to this Protocol shall be permitted.

⁹ In accordance with Article 33 paragraph 1 of the United Nations Charter, the means of dispute settlement are negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 16

Procedure for amending this Protocol

1. Once this Protocol is in force, it may be amended according to the procedure defined in this Article.
2. Any Party may propose one or more amendments to this Protocol. The text of any proposed amendment shall be transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties.
3. Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if no Party expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General.
4. The Secretary-General shall notify as soon as possible all Parties whether an objection to the proposed amendment has been expressed, and if no such objection has been expressed, the amendment shall enter into force for all Parties three months after the expiration of the period of six months referred to in the preceding paragraph.

Article 17

Notifications

In addition to the notifications provided for in Article 16, the Secretary-General of the United Nations shall notify the States referred to in Article 10, paragraph 1, above, of:

- (a) Ratifications and accessions under Article 10;
- (b) The dates of entry into force of this Protocol in accordance with Article 11;
- (c) Denunciations under Article 12;
- (d) The termination of this Protocol in accordance with article 13;
- (e) Declarations and notifications received in accordance with Article 15, paragraphs 1 and 2.

Article 18

Authentic text

The original of this Protocol shall be deposited with the Secretary-General of the United Nations, who shall send certified true copies thereof to all the States referred to Article 10, paragraphs 1 and 3 of this Protocol.

Done at Geneva, this [DATE], in a single copy in the English, French and Russian languages, each text being equally authentic.

In Witness Whereof, the undersigned, being duly authorized thereto, have signed this Protocol.
