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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting

Transport

(Ninety-eighth session, 19-22 June 2001,
agenda item 5 (c) (iv))

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

Application of the Convention

Transport of illegal immigrants

Note by the UN/ECE secretariat

A. INTRODUCTION

1. At its ninety-sixth session, the Working Party on Customs Questions affecting Transport has briefly considered a comment to articles 21 and 36 proposed by the International Road Transport Union (IRU) addressing the issue of illegal immigrants in connection with the transport of goods under cover of a TIR Carnet (TRANS/WP.30/2000/20). The Working Party had noted that very often Customs authorities were not competent or had no exclusive competence for investigations in this field. Thus, this problem had to be addressed in co-operation with the competent police and/or border guard authorities. The Working Party had decided to revert to this issue at its next session on the basis of

revised draft comments to be prepared by the secretariat in co-operation with the IRU (TRANS/WP.30/192, para. 63).

2. During the discussion of the draft comments prepared by the secretariat in co-operation with the IRU (TRANS/WP.30/2001/4) at the ninety-seventh meeting of the WP.30, the representative of the European Community observed that the suggested comment to article 5 would not improve the existing situation, knowing that it only referred to Customs offices en route. The problem with regard to illegal immigrants, however, arose particularly at internal EU borders (Greece/Italy and France/United Kingdom) where customs offices en route as defined in Article 1, (g) of the TIR Convention no longer existed.

3. The secretariat, in co-operation with the IRU, has drawn up a new working document which takes note of the remark made by the representative of the European Community not to limit the extent of the comment to Customs offices en route. In addition, titles were added to the various comments.

4. The Working Party may wish to continue its considerations on the basis of this revised document.

B. PROBLEM

5. Unfortunately, it happens these days more and more often that transport operators have reason to suspect that goods or human beings are stowed away illegally in the load compartment of their sealed vehicle. Sometimes this suspicion already arises before the load compartment of the vehicle is sealed. If, after sealing, their suspicion turns out to be justified transport operators may find themselves in a complicated situation because usually only Customs Authorities are entitled to break the seals of the load compartments of road vehicles travelling under cover of TIR Carnets (unless article 25 of the Convention applies).

6. In addition, the goods in the compartment may be damaged as a consequence of the arising of an irregularity, for example in the case where illegal immigrants introduce themselves in the load compartment of a sealed vehicle travelling under cover of a TIR Carnet. Thus, the irregularity may lead to consequences regarding the liability of the holder of the TIR Carnet under the criteria of the TIR Convention.

7. With regard to the subject of examination of the load compartment, Articles 5, 19, 21, 22, 24, 25, 34 and 35 of the TIR Convention may be considered.

8. Apart from article 25, these articles all deal with the situation of a Customs examination involving the breaking of seals, always implying that the examination is provoked by some kind of suspicion on the part of the Customs authorities.

On the other hand, the Convention nowhere forbids Customs authorities to break the seal and examine the load department upon request of the transport operator either. However, according to information provided by national associations to the IRU, such a request is often refused by the Customs authorities because there is no specific provision in the Convention governing this subject and because such an examination is time- and resource-consuming.

9. With a view to clarifying this situation and to avoiding that irregularities such as illegal immigration continue, it seems to be necessary that the Working Party and the Administrative Committee provide guidance to the TIR Carnet holder and to the Customs authorities on what should be done if such occurrences happen during a TIR transport.

10. Therefore the secretariat, in co-operation with the IRU, proposes to add the following comment to Articles 5 and 46.

11. Although Article 5 only refers to Customs offices en route, explanatory note 0.5. to this article makes clear that the aforesaid examinations mentioned should not be limited to offices en route, but should also include spot checks. Thus, the scope of article 5 already covers the situations where Customs offices en route no longer exist, as addressed by the representative of the European Community. However, in order to prevent any type of ambiguity the text of the comment has been amended to comprise examinations at Customs offices en route as well as examinations in the course of the journey.

12. For the time being the last part of the first paragraph of the comment to Article 5 is put in square brackets. The Working Party is requested to express its opinion whether or not it thinks it is necessary to include in the comment a phrase which gives Customs the discretionary power not to grant the request for an examination for the reason that it does not find any justification for such a request.

Comment to article 5, paragraph 2

Checks at offices en route or spot checks on particular request from transport operators

The exceptional cases, mentioned in this paragraph, include those where Customs authorities perform examinations either at Customs offices en route or in the course of the journey on particular request from transport operators, who have suspicion that any irregularity has occurred in the course of the TIR transport. In such a situation Customs authorities should not refuse to effectuate the examination [unless they deem the request not to be justified].

In cases where the Customs authorities effectuate an examination on request from the transport operator, the costs involved will be borne by the latter, in accordance with the provisions of

Article 46, paragraph 1 and its comment.

Comment to article 46, paragraph 1

Charges for customs checks on request from the transport operator.

Any charges related to Customs attendance on request from the transport operator, as laid down in the comment to Article 5 of the TIR Convention, shall be borne by him.
