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Item 3 (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:

Amendment proposals to the Convention

Amendment proposals to the Convention

Note by the secretariat

I. Background and mandate

1. At its 142nd session, the Working Party decided to revisit, at its next session, Article 8, paragraph 3 and Explanatory Note 0.8.3.: (a) a proposal to replace the words “shall determine” by “shall be entitled to determine” in Article 8, para. 3 (see ECE/TRANS/WP.30/AC.2/2014/14, under point 3) as well as (b) a full review of the text of Explanatory Note 0.8.3, in particular against the background of the increase by IRU as of 1 July 2016 of the guarantee amount per TIR Carnet to 100,000 €; and requested the secretariat to prepare a document outlining the aforementioned proposals (see ECE/TRANS/WP.30/284, paras. 14 (a) and 15).

II. Current text of Article 8, paragraph 3

“Each Contracting Party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association on the basis of the provisions of paragraphs 1 and 2 above.”

III. Russian proposal

2. In document ECE/TRANS/WP.30/AC.2/2014/14, the Government of the Russian Federation proposes to replace the current text of Article 8, paragraph 3 by the following



wording “Each Contracting Party shall **be entitled to** determine the maximum sum per TIR Carnet which may be claimed from the guaranteeing association on the basis of the provisions of paragraphs 1 and 2 above.”

3. The purpose of the proposal is not to oblige Contracting Parties to determine a maximum sum per TIR Carnet, but to allow the flexibility of claiming, from the national association, the full amount of customs duties and taxes due.

4. When considering this proposal, Contracting Parties should also take into account the following provisions of the Convention:

- (a) Article 6, paragraph 2;
- (b) Article 8, paragraph 1;
- (c) Annex 6, Explanatory Note 0.8.3 (and comment thereto);
- (d) Annex 9, Part I, paragraph 3 (ii).

5. With regard to the possible positive and negative implications of such amendment, reference is made to document ECE/TRANS/WP.30/AC.2/2016/7, Annex, in which TIRExB identified advantages and disadvantages of this proposal.

Advantages:

(a) It is the most straightforward solution for customs authorities to ensure that no infringement will lead to a loss for the state budget;

(b) For customs, there would be no reason to limit the types of goods that can be carried under the TIR procedure;

(c) National guaranteeing associations could tailor the price of TIR Carnets to the amount of duties and taxes required for the goods to be transported and the itinerary to be followed;

(d) It would reduce or eliminate the need to resort to escorts, additional guarantees/vouchers or reverting to national transit procedures.

Disadvantages:

(a) It requires significant amendments to the TIR Convention;

(b) It could reduce the impact of the requirement for customs to seek out the person(s) directly liable before addressing the guaranteeing association;

(c) TIR Carnet holders might have to be selected on the basis of stricter criteria, imposed by the guaranteeing associations, or required to deposit large amounts as security, thus potentially further restricting access to the TIR procedure;

(d) The guarantee chain could exclude goods with high duties and taxes from its guarantee coverage if risks are too high, as is currently the case for the transport of tobacco and alcohol;

(e) Absence of a guarantee limit might result in higher risks for the guarantee chain, which could not only be reflected in the TIR Carnet price, but also in the bank guarantee required from operators by national guaranteeing associations. This could potentially negatively impact small and medium enterprises;

(f) It could negatively impact the general concept of TIR as a global transit system;

(g) The absence of a guarantee limit might make it more complex for the guarantee chain to find financial backing from an insurance company or financial institution;

(h) Full guarantee coverage would deviate from other legal instruments dealing with transit, such as the Revised Kyoto Convention or the World Trade Organization Trade Facilitation Agreement.

IV. Current text of Explanatory Note 0.8.3

“Explanatory Note to Article 8, paragraph 3

0.8.3 Contracting Parties are recommended to limit to a sum equal to \$US 50,000 per TIR Carnet the maximum amount which may be claimed from the guaranteeing association. In the case of transport of alcohol and tobacco, details of which are given below, and which exceed the threshold levels provided further below, Customs authorities are recommended to increase the maximum amount which may be claimed from the guaranteeing associations to a sum equal to \$US 200,000:

- (1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent vol or higher (HS code: 22.07.10)
- (2) Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent vol; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages (HS code 22.08)
- (3) Cigars, cheroots and cigarillos, containing tobacco (HS code 24.02.10)
- (4) Cigarettes containing tobacco (HS code: 24.02.20)
- (5) Smoking tobacco, whether or not containing tobacco substitutes in any proportion (HS code: 24.03.10).

The maximum amount which may be claimed from guaranteeing associations is recommended to be limited to a sum equal to \$US 50,000, if the following quantities are not exceeded for the above tobacco and alcohol categories:

- (1) 300 litres
- (2) 500 litres
- (3) 40,000 pieces
- (4) 70,000 pieces
- (5) 100 kilograms.

The exact quantities (litres, pieces, kilograms) of the above categories of tobacco and alcohol must be inscribed into the goods manifest of the TIR Carnet. {ECE/TRANS/17/Amend.17; entered into force on 1 October 1994; ECE/TRANS/17/Amend.18; entered into force on 1 August 1995; ECE/TRANS/17/Amend.30; entered into force on 13 September 2012}”

V. Considerations by the secretariat

6. Judging from the insurance certificates that the secretariat receives annually, the insurers currently exclude the transport of the abovementioned alcohol and tobacco products regardless their quantity. And it appears from certificates, which the secretariat already received for the period of 1 July–31 December 2016 with the amount of 100,000

euros that this practice will not change in the future. Thus, it might be argued that, except for the first phrase of the Explanatory Note, the rest of the text could be deleted. Consequently, all references to the so-called “Tobacco-Alcohol” TIR Carnet should be deleted in Annex 1, Model of the TIR Carnet, Version 2 as well as in the comment to Explanatory Note 0.8.3.

7. In case Contracting Parties decide, in line with the Russian proposal, that countries are free to set a limit or not, the text of the Explanatory Note could be deleted all together.

VI. Announced increase in the guarantee amount by IRU

8. Following the announcement by IRU that, pursuant to deliberations with the relevant financial institutions, the guarantee chain will be able to increase the guarantee per TIR Carnet to 100,000 euros as of 1 July 2016, several issues for consideration have arisen such as:

(a) The requirement to appropriately reflect this change in the text of the TIR Convention and, specifically, in Explanatory Note 0.8.3;

(b) The requirement for this change to be reflected, in the appropriate legal or other format in:

(i) The guarantee certificate of national associations; and

(ii) In the guarantee agreement between national associations and national customs authorities, possibly in the form of an addendum to the existing guarantee agreement (see also Annex 9, Part I, paragraphs 2 and 3 (v)).

9. All of the above elements would need to be fulfilled in order for this increase to formally and legally take effect. While the amendment of E.N. 0.8.3 may be provisionally applied prior to its entry into force, as is well established international legal practice with several Conventions, the necessary adjustments to the guarantee agreement and the insurance certificates would need to take place as soon as possible, to ensure national legal enforceability, as well as legal certainty for operators and customs authorities.

VII. Considerations by the Working Party

10. The Working Party is invited to consider the Russian proposal, as outlined in Part III of this document and decide if such proposal seems warranted, in particular taking into account the inventory of advantages and disadvantages, highlighted by TIRExB. On the basis of the outcome of this discussion, the Working Party is invited to consider to either delete the text of the Explanatory Note 0.8.3 altogether or to keep only the first phrase in an amended version, referring to the amount of 100,000 euros, as well as to urge all Contracting Parties to ensure that the relevant documentation is appropriately amended and deposited with TIRExB.