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Working Party on Customs Questions Affecting Transport

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Item 8 (b) (iii) 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 for the Convention

Transmitted by the International Road Transport Union (IRU)

1. The Working Party at its one-hundred-and-seventeenth session invited the IRU to provide its impact estimate on the “financial stability” of the international guarantee chain in relation to certain amendment proposals transmitted by the European Union in document ECE/TRANS/WP.30/2007/18.
2. In responding to the Working Party’s invitation, the IRU notes that the European Union has in effect subsequently withdrawn its proposals in ECE/TRANS/WP.30/ 2007/18 and has submitted a new set of proposals which have been incorporated in document ECE/TRANS/WP.30/2008/1. Under the circumstances, the IRU assumes the WP.30’s invitation to comment on the EU’s proposals now applies to the proposals set out in document ECE/TRANS/WP.30/2008/1.

3. As a general observation, the Contracting Parties will certainly be aware that the impact assessment, in financial terms, of the consequences of changes in the basic conditions and principles governing the insurance/guarantees coverage is intrinsically dependent on the guarantor's exposure to risks and to the modification of those risks. Therefore, in responding to the Working Party's invitation, it is indispensable to make an assessment of the risk exposure for the International Guarantee Chain (that is the IRU, the national Associations, and the Financial Institutions involved) as a consequence of this proposal.

4. Proposed new Explanatory Note 0.10.2 and new Art. 11.1 and Art. 11.3: The proposed new Explanatory Note 0.10.2, introducing the phrase: "*or no termination has taken place includes the situations where the certificate of termination has been falsified*", when read in conjunction with the proposed new Art. 11.1 and Art. 11.3, introducing the additional text "*was falsified*", respectively "*has been falsified*", means that in all cases involving an irregularity the period for notifying the non-discharge of a TIR operation will be two years. Currently, the two year period for notification applies in those specific situations where the certificate of termination has been obtained but in an improper and fraudulent manner. In other words, for the two year period to apply, the termination must have taken place in a Customs office by a Customs officer with official stamps and signatures, but such termination has been obtained in a fraudulent manner. In all other cases the period for notifying non-discharge is one year.

5. The two year period is currently provided in recognition of the inherent difficulties the Customs authorities may have in identifying the situation where the certificate of termination has been obtained in an "improper or fraudulent" manner. This interpretation was considered and reaffirmed by WP.30 during its 88th session (TRANS/WP.30/176, paras 34-35). This proposal seems to set aside this earlier interpretation by WP.30 and to reinstate the essence of the proposals contained in the now withdrawn Informal document No. 4 (2006).

6. It is also to be noted that under EU legislation the period for notifying non discharge of Community transit operations is, in all cases, one year (Article 450c of the Customs Code Implementing Provisions). Thus through this proposal the EU appears to be seeking to impose conditions on the TIR international guarantee chain which are considerably less favorable for the guarantor as compared to the guarantee system used for its own transit procedure (NCTS).

7. Proposed second sentence in Article 11.3: Although the IRU now understands that the concept of "administrative proceedings" is intended to cover those situations where an appeal by the persons directly liable to pay the duties and taxes due is first considered by the competent authorities, it appears to the IRU that the term can apply to all situations involving the administrative action or indeed *inaction* by the competent authorities in connection with establishing and recovering the debt from the person or persons directly liable. The consequence of this would be that the time period for making a claim against the guarantee chain would effectively be without limit.

IMPACT ESTIMATE FOR THE INTERNATIONAL GUARANTEE CHAIN

8. One key factor to be taken into consideration by the guarantee chain is the length of time the guarantee chain is exposed to a particular risk. It is evident that the longer the period of

exposure, the greater the risk for the guarantee chain and Customs authorities. It is a given fact that the longer it takes to start recovery against the debtors, the less likely become the chances of success. An extension, or relaxation, of the time periods would create a situation which will certainly be used and abused by criminal organizations. Recent history shows that organized criminals are quick to exploit any weakness in Customs anti-fraud provisions, thus leaving the guarantors with an unquantifiable and therefore unacceptable exposure to risk.

9. This has been illustrated and proven in the early 1990s in the context of the EU's Community transit system where the full weight of the responsibility for paying the duties and taxes due was transferred from the debtor to the guarantors. As a consequence, the guarantor, instead of being a subsidiary guarantor, became a kind of "super debtor". Under such circumstances the consequences are well-known; each time the provisions of the Convention have been weakened, organized crime has taken the opportunity to abuse the system widely. The more time is given to authorities to act, the more time fraudsters have to abuse the system and disappear with the absolute guarantee of impunity. This consequence was observed by the EU Parliament who noted on that time that "Customs services are more concerned with collecting public revenue using guarantees as a form of insurance, rather than tackling the defects in the [Community transit] system as a means of facilitating trade".

CONCLUSIONS

10. Any impact assessment cannot be expressed in simple financial terms. Indeed this appears to be inherently recognized by the Working Party because the request for information has been framed in the context of the "financial stability" of the guarantee chain rather than in simple monetary terms of increased costs. The stability of the TIR international guarantee chain is conditional on the exposure to risk. Such an approach is not unique to the TIR guarantee system but is a feature of all comparable situations where an insurer or guarantor provides its services.

11. Today this period of exposure to risk is, under normal conditions, a maximum of three years (that is one year for the notification of non discharge plus two years for the claim). Under the EU proposals this period would routinely be increased to four years (two years for the notification plus two years for the claim). And when the EU proposal concerning the introduction of "administrative proceedings" is added to the equation, then the risk exposure period would potentially be unlimited.

12. Taken into account that the initial objective of this phase of the revision process was to clarify the current wording of the Convention without increasing or reducing the respective obligations of the partners involved, would the Commission agree not to introduce in Art. 11.1 and in Art. 11.3 "*was falsified or*", respectively "*has been falsified or*", the IRU could support the proposed wording. Furthermore, would it be accepted to give a non equivoque explanation of what "*administrative proceedings*" means, for example in an Explanatory Note to the relevant article, a consensus could be easily found.
