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Working Party on Customs Questions affecting Transport

(One-hundred-and-tenth session, 14 – 17 June 2005,
agenda item 7 (b) (iii))

**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: Explanatory Note to Article 8, paragraph 3

Note by the secretariat

A. BACKGROUND

1. At its one-hundred-and-ninth session, the Working Party, based on the recommendation of the Ad hoc Expert Group (TRANS/WP.30/2004/38, paras. 13-16), requested the secretariat to prepare a document for its forthcoming session containing an amendment proposal to (the Explanatory Note to) Article 8.3. of the TIR Convention with a view to clarifying the actual situation that certain tobacco and alcohol products cannot be transported under cover of the TIR Carnet due to the high risk of fraud involved. Subsequently, the Working Party also recommended including the relevant parts of the Comment to Explanatory Note 0.8.3. in the Explanatory Note itself and deleting Annex 1, Version 2 of the model of the TIR Carnet (TRANS/WP.30/218, para. 54).

2. In line with this request, this document contains a proposal to amend the Explanatory Note to Article 8.3 of the TIR Convention and to introduce other, related, amendments.

3. The Ad hoc Expert Group also recommended that the Working Party consider if the Explanatory Note should be placed under another Article of the Convention, possibly Article 2 or 3 (TRANS/WP.30/2004/38, para. 15). Considerations to that extent are contained in part C of this document. For reasons of clarity, however, the secretariat proposes, for the time being, to deal with this issue as a separate matter.

B. PROPOSAL

Annex 1 Model of the TIR Carnet

Delete the header “VERSION 1”

Delete the header “VERSION 2” and delete paragraph 3

Delete the model of the TIR Carnet, VERSION 2

Annex 6, Explanatory Note 0.8.3

Replace the current number of the Explanatory Note by:

“0.8.3-1”

Replace the second sentence of the Explanatory Note by the following:

“The following types of goods cannot be transported under cover of a TIR Carnet, given the extraordinarily high risk of fraud involved:”

Delete the final part of the Explanatory Note (starting with: “The maximum amount” until “the TIR Carnet”).

Insert a new Explanatory Note to read as follows:

“0.8.3-2 In accordance with Article 4 of the Convention, goods carried under the TIR procedure shall not be subjected to the payment or deposit^{1/} of any import or export duties whatsoever, even if the duties and taxes at risk exceed the amount of US\$ 50,000 or a similar sum fixed by the national Customs authorities. In such cases Customs authorities in transit countries could however, in conformity with Article 23 of the Convention, require road vehicles to be escorted at the carriers’ expense on the territory of their country.”

C. FURTHER CONSIDERATIONS

4. As stated in the introduction, the Ad hoc Expert Group also recommended that the Working Party consider if the Explanatory Note should be placed under another article of the Convention, possibly Article 2 or 3 (TRANS/WP.30/2004/38, para. 15).

5. Within the context of this recommendation, the Working Party may wish to take into account some further considerations by the secretariat.

6. Article 8, paragraph 3 addresses the issue of the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association. The first part of the new Explanatory Note 0.8.3-1 also covers this issue and, thus, can be assumed to be at the right place.

7. The second part of the new Explanatory Note 0.8.3-1 deals with those goods, which cannot be transported under cover of a TIR Carnet. Although there exists a link between the exclusion of certain goods from the TIR system and the corresponding absence of any amount which may be claimed from the guaranteeing association, the question arises whether or not it would be more appropriate to deal with this issue in relation to another Article of the Convention, such as Article 2 or 3.

8. Article 2 stipulates that the Convention shall apply to the transport of goods, without making any kind of further specification. In view of this provision, it could be assumed that, as a general rule, the Convention applies to all types of goods without any distinction. As a consequence, it would seem appropriate to link any kind of limitation of this general rule to the provision of Article 2.

^{1/} If appropriate, the word “deposit” could be replaced by “security”, in case the Working Party decides to adopt the proposal contained in document TRANS/WP.30/2005/16.

9. Having assessed this, it is, however, doubtful whether in such case the moving of the second part of new Explanatory Note 0.8.3-1 would be sufficient. Considering the fact that Explanatory Notes do not modify the provisions of the Convention or of its Annexes but merely make their content, meaning and scope more precise, it seems that any limitation of the provision of Article 2 could only be achieved by way of another provision. Thus, in case the Working Party feels that the content of the second part of the new Explanatory Note 0.8.3-1 belongs to Article 2, an amendment of the provision itself may have to be considered.

10. As an alternative, it has been proposed to link the exclusion of certain goods to Article 3 of the Convention. Although this article contains a reference to goods, it mainly deals with the means of transport, with which the transport of goods may be performed. From this, it does not seem to provide more clarity to move the text of the second part of new Explanatory Note 0.8.3-1 to Article 3.

11. Furthermore, with regard to new Explanatory Note 0.8.3-2, the Working Party may wish to consider if, in view of its content and taking account of the discussion on the application of Article 4 (see document TRANS/WP.30/2005/16), it would be more appropriate to place new Explanatory Note 0.8.3-2 with Article 4 (and possible also Article 23).

12. Finally, the Working Party may wish to be reminded that, as a consequence of underlying changes, once adopted, the TIR Handbook will have to be updated accordingly (deletion of the comment to Articles 8, paragraph 3, amendment of the comment to Article 23 (deleting the words “for consignments transported under the normal TIR Carnet and US\$ 200,000 for consignments transported under the “Tobacco/Alcohol TIR Carnet”), deletion of references in Annex 1 and deletion of paragraph 5 of the Example Agreement, contained in Chapter 6.2. of the TIR Handbook).
