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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision
(3 October 2005)

PROVISIONAL AGENDA FOR THE FOURTH SESSION

**to be held at the Palais des Nations, Geneva*
starting at 10.00 hours on Monday, 3 October 2005**

1. Adoption of the agenda
TRANS/WP.30/GE.2/2005/1
2. Background and mandate
3. Consideration of amendment proposals
4. Other matters

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1. ADOPTION OF THE AGENDA

Documentation: TRANS/WP.30/GE.2/2005/1.

In accordance with the Commission's rules of procedure, the first item to be considered is the adoption of the agenda prepared by the secretariat (TRANS/WP.30/GE.2/2005/1).

2. BACKGROUND AND MANDATE

Documentation: TRANS/WP.30/220; TRANS/WP.30/218; TRANS/WP.30/216; TRANS/WP.30/214; TRANS/WP.30/2005/24; TRANS/WP.30/2004/38; TRANS/WP.30/2004/32.

At its one hundred-and-seventh session, the UNECE Working Party on Customs Questions affecting Transport (WP.30) mandated the secretariat to convene an Ad hoc Expert Group with a view to dealing with amendment proposals that had been transmitted by Contracting Parties (TRANS/WP.30/214, paras. 40-43). As a first priority, the Ad hoc Expert Group should consider the amendment proposals before it with a view to separating these into (a) questions of a more technical nature, which the Working Party or the TIR Executive Board (TIRExB) could deal with and (b) questions of a more strategic nature, which the Ad hoc Expert Group should consider how best to deal with.

The Ad hoc Expert Group, at its first meeting, undertook a discussion of the vision for the future of the TIR procedure and the guiding principles and overarching ideas of the Convention. The Ad hoc Expert Group agreed on the following (TRANS/WP.30/2004/32, paras. 5-14):

- The revision should ensure the well-functioning and sustainability of the TIR Convention;
- The revision should, as a first step, address problems raised in the present text of the Convention, and as a second step, address other issues not yet addressed by the Convention;
- The core of a sustainable TIR system is a well-functioning guarantee system;
- The TIR procedure should be computerized as soon as possible, with the aim of serving Customs purposes and it should be controlled by Customs authorities;
- The TIR computerization should foresee the inclusion of supply chain security elements.

The Ad hoc Expert Group decided to recommend to the Working Party to consider a number of the amendment proposals as being of a technical nature, which could be discussed either by the Working Party or the TIRExB. These include the proposals concerning the following

issues: Definition of the term “TIR Procedure”, Title to Chapter II; Article 28; Article 40; Article 41; Article 42 bis.

Furthermore, the Ad hoc Expert Group decided to recommend to the Working Party that the following questions are of a strategic nature (TRANS/WP.30/2004/32, paras. 15-41):

- Article 4; proposal transmitted by the European Community;
- Article 6.2 bis; proposals by the Chairman of WP.30, the European Community and the Russian Federation;
- Article 8.5 (and 31); proposal by the European Community;
- Article 8.7; proposals by the Chairman of WP.30 and by the European Community;
- Article 11; proposals by the European Community and the Russian Federation;
- Article 42 bis; proposal by the European Community;
- Annex 8, Article 13; proposal by Turkey.

The Working Party, at its one-hundred-and-eighth session, expressed its general agreement with the recommendations of the Ad hoc Expert Group and decided to convene the second session of the Ad hoc Expert Group with a view to discussing the issues of a strategic nature, as defined above (TRANS/WP.30/216, paras. 50-56).

The Ad hoc Expert Group, at its second session, considered the following issues (TRANS/WP.30/2004/38, paras. 5-24):

- Article 6.2 bis; the Ad hoc Expert Group recommended to the Working Party to adopt a new Explanatory Note to Article 6.2 bis concerning the establishment of a written agreement between the UNECE and the International Organization reflecting the authorization of the International Organization in accordance with the article. In addition, the Ad hoc Expert Group recommended that a new Explanatory Note to Annex 8, Article 10 be adopted;
- Article 8.1; the Ad hoc Expert Group recommended to the Working Party that a number of concepts relevant to the proper functioning of the Convention should be defined;
- Article 8.2; the Ad hoc Expert Group requested the secretariat to study the background for this paragraph and report its findings to the Working Party;
- Article 8.3; the Ad hoc Expert Group recommended to the Working Party that the paragraph be amended to prohibit the transport of tobacco and alcohol from the TIR procedure and that the reference to the TIR Carnet Tobacco/Alcohol be deleted;

- Article 8.7; the Ad hoc Expert Group recommended to the Working Party to postpone the discussion of this paragraph until clarification had been provided by the IRU and the European Commission concerning the issue of the guarantee. Nevertheless, the Ad hoc Expert Group recommended that the provisions be moved to Article 11;
- Article 11; the Ad hoc Expert Group recommended to the Working Party to consider this question in conjunction with the provisions of Article 8;
- Article 42 bis; the Ad hoc Expert Group recommended to the Working Party that the TIRExB be invited to study the issue in further detail;
- Annex 8 and Article 12; the Ad hoc Expert Group recommended to the Working Party that this question be deferred until such time that new information would be available.

The Working Party, at its one-hundred-and-ninth session, endorsed the reports of the first and second sessions of the Ad hoc Expert Group (TRANS/WP.30/218, para. 46).

The Working Party requested the secretariat to prepare a document for one of its forthcoming sessions clarifying the issue of suspension of duties, taxes and securities contained in Article 4 of the Convention (TRANS/WP.30/218, para. 52).

The Working Party adopted the proposed texts for new Explanatory Notes to Articles 6.2 bis and Annex 8, Article 10 (b) (TRANS/WP.30/218, para. 53).

The Working Party decided to follow the recommendations of the Ad hoc Expert Group regarding Articles 8.2; 8.3, 42 bis and Annex 8 as mentioned above (TRANS/WP.30/218, para. 54).

Concerning Article 11, the Working Party requested the secretariat, together with the Russian Federation, to prepare a revised version of the proposal originally transmitted by the Russian Federation and to transit the proposal for consideration at the one-hundred-and-tenth session of the Working Party in June 2005 (TRANS/WP.30/218, para. 54).

Concerning the remaining outstanding questions in relation to Article 8, in particular paragraphs 8.1 and 8.7, the Working Party mandated the Ad hoc Expert Group to convene a further session with a view to drafting specific amendment proposals to the issues still outstanding (TRANS/WP.30/218, para. 54).

At its third session (Geneva, 19 and 20 May 2005), the Ad hoc Expert Group considered the following issues (TRANS/WP.30/2005/24, paras 7-16):

- The general approach to amending the Convention: on the assumption that the future system should continue to be based on the five pillars of the TIR system, the Group agreed that further definitions and clarification were needed in relation to a number of actors and procedures described in the Convention and that further clarification was needed in relation to the description of the functioning of the guarantee provisions of the Convention, in particular the responsibilities of the various actors described in the Convention;
- The IRU presentation on the management of the guarantee system: as it had been identified that the practice concerning the guarantee system is different to that described in the Convention, amendments to the Convention should clarify this issue, thereby bringing practice in line with the text of the Convention;
- Proposals to amend Article 8 of the Convention: within the context of the various documents submitted on the issue, in particular document TRANS/WP.30/2005/6, transmitted by the IRU, document TRANS/WP.30/2005/15, containing the views of UNCITRAL and Informal document No. 1 (2005) transmitted by the European Commission, the Group discussed the following terms related to the guarantor: dependent or independent guarantee, primary or subsidiary character of the guarantee, joint and several liability as well as the use of the terms “surety” and/or “guarantee”. A majority of delegations seemed to be of the opinion that the guarantee in the TIR system is of (a) a dependent nature, meaning that a liability of the guarantor only exists if the debt of the person(s) directly liable has been established, that the debt cannot go beyond the secured debt of the main debtor, that the end of the debt of the main debtor also means the end of the debt for the guarantor, and (b) a subsidiary nature, meaning that the guarantor cannot be called upon before efforts have been taken to obtain payment from the person(s) directly liable and that the Convention should be amended accordingly, defining exactly how the terms should be understood in the context of the TIR Convention. In the view of a minority, however, their national legislation stipulated that the joint and several character of the guarantee coincided with its primary character. A majority of the Group also felt that the English text of the Convention could benefit from a revision/alignment of the terms “jointly and severally” and “surety”/“guarantee”. Finally, the Group accepted an offer by the Netherlands to prepare a proposal for the incorporation of Article 8.7 into Article 11;

- Proposal to amend Article 11 of the Convention, submitted by the Russian Federation, contained in document TRANS/WP.30/2005/19: the Group had a preliminary discussion of the proposal, which would be considered by the Working Party in June 2005, and generally felt that the existing triangular approach (national competent authorities, the national guaranteeing association and the TIR Carnet holder) should continue as the basic concept to be included in the Convention, but that the relations between these actors should be clarified, in particular in view of the fact that in many situations one angle of the triangle (the TIR Carnet holder) is established outside the territory of the national competent authorities and the national guaranteeing association;
- New definitions: the Group discussed draft proposals for definitions of the terms “association” and “international organization” which were referred to the Working Party for further discussion.

Definition of the term “association” (Article 1 (q) of the TIR Convention):

Alternative I: “the term “association” shall mean a national association, authorized by the Customs [competent] authorities of a Contracting Party to issue TIR Carnets, [either directly or through corresponding associations,] and, having undertaken in writing to pay jointly and severally with the person(s) directly liable the import and export duties and taxes due, as laid down in this Convention, to act as guarantor [surety] for persons using the TIR procedure.”

Alternative II: “the term “guaranteeing association” shall mean an association, authorized by the Customs [competent] authorities of a Contracting Party to issue TIR Carnets, and to act as guarantor [surety] for persons using the TIR procedure, having undertaken in writing to pay jointly and severally with the person(s) directly liable the sums due, as laid down in this Convention.”

Definition of the term international organization” (new Article 1 (r) of the TIR Convention):

“the term shall mean an organization authorized by the TIR Administrative Committee to take on responsibility for the [effective] organization and functioning of the international guarantee system and to centrally print and distribute TIR Carnets.”

- Annex 9, Part III: the Group accepted an offer by the Dutch delegation to draft a proposal for the introduction of a new Annex 9, Part III, containing minimum conditions and requirements for authorized international organizations.

The Working Party, at its one-hundred-and-tenth session (Geneva, 14-17 June 2005) did not consider the report of the Ad hoc Expert Group and the proposals for amendment contained therein, since the report, at that time, was only available in English and decided to revert to it at its next session. Within the context of the work of the Ad hoc Expert Group, the Working Party further considered document TRANS/WP.30/2005/19, which had also been preliminarily discussed by the Group. Some delegations expressed general support of the principles expressed in the proposal of the Russian Federation to amend Article 11 of the Convention, but considered that the issues addressed were of a nature that were better addressed as a comment or as an Explanatory Note to the Convention or in a new Annex 9, Part III of the Convention, in particular the issue of the relations between the national guaranteeing association and the international organization as well as the issue of prescribing an appeal procedure. The IRU expressed its support for the proposal. The Working Party, bearing in mind that the Ad hoc Expert Group on revision of the Convention will continue to consider the formulations of Article 8 and 11 of the Convention, was of the view that the proposal of the Russian Federation and the comments provided to the proposals should be submitted for the discussion of the Expert Group and subsequently for consideration by the Working Party (TRANS/WP.30/220, paras. 35-39).

The Ad hoc Expert Group may wish to take into account the above.

3. CONSIDERATION OF AMENDMENT PROPOSALS TO ARTICLES 8 AND 11

Documentation: TRANS/WP.30/GE.2/2005/2; TRANS/WP.30/2005/19;
TRANS/WP.30/2005/15; TRANS/WP.30/2005/12; TRANS/WP.30/2005/6;
TRANS/WP.30/AC.2/2005/4; TRANS/WP.30/2004/38; TRANS/WP.30/2004/37;
TRANS/WP.30/2004/32; TRANS/WP.30/2004/25; TRANS/WP.30/2004/24;
TRANS/WP.30/2004/14; TRANS/WP.30/2004/11; TRANS/WP.30/2003/11;
TRANS/WP.30/218; TRANS/WP.30/216; TRANS/WP.30/214; TRANS/WP.30/210;
ExG/COMP/2003/1, Version 1.4a.

The Group may wish to discuss document TRANS/WP.30/GE.2/2005/2 submitted by the Netherlands, containing a draft proposal to amend Articles, 8 and 11 of the Convention as well as a proposal for a new Annex 9, Part III, containing conditions and requirements with regard to the authorization for the international organization, as referred to in Article 6.2**bis** of the Convention. As requested by the Group and by the Working Party, due efforts have been undertaken to incorporate, as much as possible, all other proposals on the issues at stake, in particular those contained in documents TRANS/WP.30/2005/19, TRANS/WP.30/2004, TRANS/WP.30/2004/14, TRANS/WP.30/2004/11 and TRANS/WP.30/2003/11.

4. OTHER MATTERS

The Ad hoc Expert Group may wish to consider any other matters of interest.

In line with the mandate provided by the Working Party and taking into account the progress of the various issues raised in the context of the revision process, the Ad hoc Expert Group may wish to finalize the various amendment proposals for submission to the Working Party for further consideration at its one-hundred-and-twelfth session in February 2006.

The Ad hoc Expert Group may wish to consider possible dates of further meetings, if required.

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