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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 Process

REPORT OF THE FOURTH SESSION

(3 October 2005)

ATTENDANCE

1. The Ad hoc Expert Group held its fourth session on 3 October 2005 in Geneva.
2. The session was attended by experts from the following Contracting Parties: Azerbaijan; Belgium; Bulgaria; Finland; Germany; Greece; Italy; the Netherlands; Russian Federation; Sweden; Turkey and the European Community (EC). Representatives of the International Road Transport Union (IRU) also participated.

ADOPTION OF THE AGENDA

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

3. The Ad hoc Expert Group adopted the provisional agenda, prepared by the secretariat, in line with the mandate provided by the Working Party at its one-hundred-and-tenth session (TRANS/WP.30/220, para. 35).

BACKGROUND AND MANDATE

Documentation: TRANS/WP.30/220

4. The Ad hoc Export Group took note of the mandate provided by the Working Party (TRANS/WP.30/220, paras. 33-39).

5. The Ad hoc Expert Group took note of information provided by Mrs. N. Rybkina, Chairperson of the TIRExB, concerning the status of discussions of issues of a technical nature, which had been referred to the TIRExB for elaboration. The TIRExB had already reached conclusions on a number of the issues, whereas other issues required additional considerations. The TIRExB intends to consider the remaining issues at its forthcoming session and subsequently to present all its considerations concerning the full package of amendment proposals to the Working Party at one of its forthcoming sessions.

CONSIDERATION OF AMENDMENT PROPOSALS OF A STRATEGIC NATURE

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

6. The Ad hoc Expert Group considered document TRANS/WP.30/GE.2/2005/2, transmitted by the Government of the Netherlands, containing proposals for Articles 6.2 bis, 8, 11 and Annex 9.

7. The Ad hoc Expert Group concluded as follows concerning the various amendment proposals:

- Article 6.2 bis: The Ad hoc Expert Group had an in-depth discussion about the proposal by the Government of the Netherlands to amend Article 6.2 bis, as contained in document TRANS/WP.30/GE.2/2005/2, page 2. The Group decided that the following proposal should be transmitted to the TIR Administrative Committee for consideration:

“An international organization shall be authorized by the Administrative Committee to take on responsibility for the [effective] organization and functioning of an international guarantee system and to print and distribute TIR Carnets. The authorization shall be granted as long as the organization fulfils the ~~minimum~~ conditions and requirements, laid down in Annex 9, Part III, to this Convention. The authorization shall be revoked if the fulfillment of these criteria is no longer ensured.”

The Group also considered that Explanatory Note 0.6.2 bis should remain and noted that it was expected that a new Explanatory Note to Article 6.2 bis would be adopted at the thirty-ninth session of the TIR Administrative Committee. The Group was of the view that both these Explanatory Notes are consistent with the proposed amendment to the article.

- Article 8.1: The Ad hoc Expert Group considered the proposal contained in document TRANS/WP.30/GE.2/2005/2 concerning Article 8.1. The Group did not reach a consensus concerning the final text of the proposed amendment. In particular, the group discussed at length whether the word “noted” should be replaced by “established”, as the latter terms seems to refer to the application of a legal procedure starting with a decision by the competent authority.
- Article 8.2 (existing text of the Convention): The Ad hoc Expert Group took note that the existing Article 8.2 had been deleted in the proposal of the Government of the Netherlands. The group also noted that, at least in one Contracting Party, this article has been cited in an ongoing court case. Therefore, at this moment, several delegations were not in a position to decide on the deletion of the article.
- Article 8.3 (Article 8.2. in the Dutch proposal): The Ad hoc Expert Group decided to transmit the following proposal for the consideration of the Working Party:

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

Explanatory Notes to Article 8, paragraph 2

0.8.2-1 Customs authorities 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. The following types of goods cannot be transported under cover of TIR Carnet, given the extraordinarily high risk of fraud involved:

- (1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher (HS code: 22.07.10)
- (2) Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% 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).

0.8.2-2.1.1 In accordance with Article 4 of the Convention, goods carried under the TIR procedure shall not be subjected to the payment or deposit of any import or export duties and taxes whatsoever, even if the duties and taxes at risk exceed the amount of US\$ 50,000 for consignments transported under the normal TIR Carnet 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.”

The text of the remaining provisions of Article 8 remains unchanged. However, Article 8.7 with the corresponding Explanatory Note should be moved to Article 11 in accordance with a previous decision by the Group.

- Article 11.1: The Ad hoc Expert Group considered at length the proposal concerning Article 11 contained in document TRANS/WP.30/GE.2/2005/2, transmitted by the Government of the Netherlands. The Group discussed various proposals for amendments. The Group decided to continue its considerations concerning the proposed amendments, based on the following text:

“Where a TIR operation has not been discharged, the competent authorities shall in accordance with the provisions of paragraph 2, have the right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association under the condition that the competent authorities:

- (a) have notified the holder of the TIR carnet in writing of the non-discharge, as soon as possible;**
- (b) have notified the guaranteeing association in writing of the non-discharge, [as soon as possible but] within a period of one year from the date of acceptance of the TIR Carnet by those authorities. The same provision shall apply where the certificate of termination of**

the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years;

Comment to Article 11, paragraph 1 (b)

Time limit for notifications

As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets, the date of receipt and not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable anymore.

(c) when payment of sums mentioned in Article 8, paragraph 1, becomes due have [transmitted a claim for payment to] / [required payment from] the person or persons directly liable before making a claim against the guaranteeing association.

Explanatory Note to Article 11, paragraph 1

[The competent authorities shall transmit the claim for payment at least to the TIR Carnet holder.]

or

[In case competent authorities have not identified any other persons as directly liable, at least transmission of the claim for payment to the TIR Carnet holder is required.]

Comment to Article 11, paragraph 1 (d)

Payment of duties and taxes

The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which irregularities have been committed.”

The Group considered if a best practice concerning the use of registered mail should be prepared in connection with the notification of the holder and the guaranteeing associations.

- Article 11.2: The Ad hoc Expert Group considered the proposal transmitted by the Government of The Netherlands. The group was not in a position to finalize its deliberations and decided to continue its considerations on the basis of the following text:

“The claim for payment of the sums referred to in Article 8, paragraph 1 [and 2], shall be made to the guaranteeing association at the earliest three months after the date on which the association has been notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.”

8. The Ad hoc Expert Group was of the view that further consideration was needed with a view to finalize the proposals concerning amendments to Articles 8 and 11 as well as Annex 9 of the Convention. In this context, the Group invited all Contracting Parties to transmit their proposals, in writing, to the secretariat before 18 October 2005 with a view to organize a fifth session of the Group at the end of November 2005.

OTHER MATTERS

9. The Working Party approved at its one-hundred-and-eleventh session that the Ad hoc Group could organize a fifth session to consider the outstanding amendment proposals (TRANS/WP.30/222) The secretariat has scheduled the fifth session of the Ad hoc Expert Group to take place on 10 and 11 November 2005 at the Palais des Nations in Geneva.
