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Working Party on Customs Questions Affecting Transport

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**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER
COVER OF TIR CARNETS (TIR CONVENTION, 1975)**

Revision of the Convention

Preparation of Phase III of the TIR revision process

Note by the secretariat*

BACKGROUND

1. At its one-hundred-and-fourteenth session, the Working Party took note of a number of questions put forward by the IRU in relation to the proposals contained in documents ECE/TRANS/WP.30/2006/8 and ECE/TRANS/WP.30/GE.1/2006/9. The Working Party considered the questions but felt that it would be appropriate to ask those delegations and the secretariat, which have been involved in the preparation of the above-mentioned documents, to transmit a written reply for consideration at its next session. However, the Working Party considered that the proposals contained in document ECE/TRANS/WP.30/2006/8 are still

* The UNECE Transport Division has submitted the present document after the official documentation deadline.

subject to further political, strategic and legal considerations by the Contracting Parties to the Convention (ECE/TRANS/WP.30/228, paragraph 31).

2. This document contains consolidated responses to the questions drafted by the secretariat in cooperation with the main Contracting Parties involved in the elaboration of documents ECE/TRANS/WP.30/2006/8 and ECE/TRANS/WP.30/GE.1/2006/9. The answers take into account the discussions held at the tenth session of the Informal ad hoc Expert Group on Conceptual and Technical aspects of Computerization of the TIR Procedure (Geneva, 25-26 September 2006). The questions are based on a typical transport from Azerbaijan to Germany.

3. The answers should be read and understood against the background of the guidelines endorsed by the AC.2 at its forty-second session:

- Maintenance of the basic philosophy and structure of the TIR procedure, safeguarding and, possibly, strengthening the provisions of the TIR Convention, particularly those prepared under Phases I and II of the TIR revision process (TRANS/WP.30/194, para. 36);
- Computerization of the whole TIR Carnet life cycle from distribution, issuance and via the TIR transport to return and repository, aimed at, ultimately, replacing the current paper TIR Carnet (TRANS/WP.30/212, para. 26);
- The establishment of an international, centralized database, the aim of which should be to facilitate the secure exchange of data between national Customs systems (TRANS/WP.30/212, para. 26);
- The management by Customs of data on guarantees, once the guarantor has issued a guarantee to an operator (ECE/TRANS/WP.30/226, para. 41);
- The development of the eTIR system, which connects existing and future Customs IT systems, should be realized with an appropriate level of connectivity with the existing TIR related IT systems (ECE/TRANS/WP.30/AC.2/85, para. 38).

4. Finally, within the context of the issues raised, it should be stressed that the term "guarantor" as described so far in documents on the eTIR project, should be understood as meaning a guarantee chain, composed of an international organization, authorized by AC.2 to take on responsibility for the effective organization and functioning of an international guarantee system in accordance with the provisions of Article 6.2**bis** and national associations (affiliates) approved by Contracting Parties in accordance with the provisions of Article 6 and Annex 9, Part II of the Convention.

QUESTION 1

Authorization of the guarantor. Could the authors give a clear answer – yes or no – to the simple question: Can a bank in Azerbaijan, who is approved by the Azerbaijan Customs authorities and who has legal representatives in the Russian Federation, Belarus, Poland and Germany be approved as guarantor and be the guarantor registered in the eTIR system?

ANSWER 1

Documents ECE/TRANS/WP.30/2006/8 and ECE/TRANS/WP.30/GE.1/2006/9 contain high level descriptions of an electronic system, aimed at computerizing the TIR procedure on the basis of the principles contained in the current text of the TIR Convention. They do not deal with the actual way in which the guarantor is structured at the international or at the national level. However, as clearly described in Chapter 2.2. of document ECE/TRANS/WP.30/2006/8, “the guarantor, or the guarantee chain, is composed of national affiliates authorized by Customs administrations, and of an international organization authorized by the AC.2 to manage the guarantee chain.”

Based on this description, it seems unlikely that a bank could either fulfil the conditions of Article 6.2bis to become authorized as international organization responsible for the organization of the guarantee system or the provisions of Article 6 and Annex 9, Part I to become approved as national association, acting as guarantor in the territory of Azerbaijan.

QUESTION 2

Guarantor: This Azerbaijan bank is then the guarantor in the country, where the transport Azerbaijan-Germany starts. If the German Customs want to make a reservation, let us say that 20 colli goods are missing at the arrival at the Customs office of destination, who is then the guarantor in Germany?

ANSWER 2

Taking account of the above, the Azerbaijan bank as such does not qualify as guarantor, but could only serve as its national representative in Azerbaijan, assuming it has also been approved as association under Article 6 and Annex 9, Part I of the Convention. The authorized international organization needs to dispose of approved affiliates in Germany as well as in all transiting countries in order to provide a guarantee for a transport between the two countries. Thus, the approved affiliate of the guarantor in Germany will act as guarantor vis-à-vis the German Customs authorities.

QUESTION 3

International organization: So, in this case there is no international organization – just as we know it from NCTS, which we understand is the background for the proposals? And there is no longer the word “association” in Article 6 of the Convention. Which means that the word solidarity we know today, where the German association guarantees in Germany, not only for his own Carnets but also for all Carnets issued by the association in Azerbaijan is removed?

ANSWER 3

As explained above, the concept of “guarantor” in the eTIR Project entails both an international organization, authorized by AC.2 to take on responsibility for the effective organization and functioning of an international guarantee system in accordance with the provisions of Article 6.2**bis** and national associations (affiliates) approved by Contracting Parties in accordance with the provisions of Article 6 and Annex 9, Part I of the Convention. Thus, the assumption that “there is no international organization, as we know it from NCTS” is incorrect. Furthermore, it should be stressed that NCTS does not constitute “the background” for the proposals. As explained in Answer 1, the eTIR Project is based on the principles contained in the current text of the TIR Convention. At the same time, compatibility, interoperability and interfacing with other systems (such as NCTS, national Customs systems and SafeTIR/Cutewise has been formulated as one of the constraints of the eTIR Project (See Chapter 1.1.7. of the Reference Model).

The fact that the word association has been replaced in the high level description of ECE/TRANS/WP.30/2006/8 by affiliate has no other objective than to underline the level of abstraction used in the description. Absence of the term does not justify the conclusion that the concept of solidarity would no longer exist. In accordance with the provisions of Article 6, paragraph 2, an association shall not be approved by any country unless its guarantee also covers the liabilities incurred in that country in connection with operations under cover of TIR Carnets issued by foreign associations affiliated to the same international organization to which it is itself affiliated.

QUESTION 4

Let us assume that our member association in Azerbaijan continues to be the guarantor for all Carnets he issues, he must send the information about the issuing – or the GRN as the Carnet is now called – DIRECTLY to the eTIR system. Are the authors aware that an electronic system is already in place for this communication to the IRU – financed by the road transport industry. Must ABADA develop this transmission system again – this time adjusted to the specifications of the eTIR system?

ANSWER 4

It is not likely that ABADA (the IRU member association in Azerbaijan), on its own, will act as guarantor in the general sense of the term. Thus, it seems more appropriate to assume that ABADA, as approved association, will act as national affiliate of an international organization (currently: the IRU), authorized by the AC.2 to manage an international guarantee chain. Bearing this in mind, there is no reason to assume that it could not continue to use the electronic system already in place to communicate with the IRU. Additionally, it should be clarified that the GRN, as referred to in the proposals, only constitutes the reference, given by the guarantor to a guarantee issued to an operator for a specific transport, and does not, as such, replace the complete TIR Carnet as assumed in the question above.

In the eTIR system it will be the task of the international organization to forward the data to the eTIR centralized database. This approach is supported by the description of the eTIR system in document ECE/TRANS/WP.30/GE.1/2006/9, which provides for the guarantor (in the general sense of the term) to interact with the eTIR international system at various occasions, such as informing the eTIR international system of the registration of the guarantee or notifying it of the cancellation of a guarantee. This description is based on the assumption that each guarantor disposes of a central point to transmit, receive and store information and, therefore, takes full advantage of the systems already put in place by the IRU and its affiliated national associations.

QUESTION 5

I come back to my first question. I asked if it is possible for a guarantor to choose in which countries he wants to give his guarantee. I read in document ECE/TRANS/WP.30/2006/8 point 1.4. that it is only the countries involved, and from the use cases presented Monday and Tuesday about the acceptance of the guarantee I understand that the eTIR system is only checking the validity for the countries involved. A guarantor can choose to exclude some Contracting Parties?

ANSWER 5

In full recognition of the IRU's continuous efforts to provide global coverage for the TIR Carnet guarantee system, it has to be acknowledged that the TIR Convention already now provides for the existence of regional guarantee chains (See Rule 2 regarding the use of the TIR Carnet). This should not be different in the future. Thus, theoretically, it might be possible that the AC.2 authorizes as guarantor an international organization with affiliates (approved associations) only in a specific region or in a limited number of countries. On the other hand, considering that the aim of the TIR system is to provide for a global transit system and in view of possible practical complications linked to the existence of various types of guarantees with different areas of coverage, AC.2 may be reluctant in authorizing international organizations which do not provide for guarantee coverage for all TIR Contracting Parties.

QUESTION 6

Maximum number of operations. I have asked this question before. I have been explained that it relates to four loading and unloading points in the existing Convention. In the Expert Group I hear several indications. Some said still max. 4 – other experts said four loading and four unloading places – others said unlimited number. But I still do not understand why the guarantor has to indicate the number in his information about the guarantee.

ANSWER 6

This question confuses two different concepts, both existing in the current TIR Convention and in the description of the TIR system. On the one hand the number of TIR operations, which is not limited by the Convention. So far, the 20 voucher TIR Carnets, printed and distributed by the IRU, provide for maximally 10 TIR operations. However, the simultaneous use of several TIR Carnets for one single TIR transport is permitted, thus putting no restriction on the maximum number of TIR operations per TIR transport.

On the other hand, the number of loading and unloading places. A TIR transport may involve several Customs offices of departure and destination but their total number is currently limited to four (Article 18 of the Convention). After extensive discussion on the issue of extending the maximum number of loading and unloading places, the WP.30 decided, as an interim solution, that in exceptional cases the consecutive use of two TIR Carnets is allowed (see comment to Article 18 of the Convention for the particular conditions of such use).

From a technical point of view, the eTIR system could enable an unlimited number of TIR operations and places of loading and unloading. Any limitation would be the result of a political decision to either maintain the current status quo or to extend the options in line with the requirements of trade.

In the current situation, the national association, in issuing a 4, 6, 14 or 20 page TIR Carnet to an operator, provides an indication of the potential exposure of the guarantee. In line with this practice, it seems logical to request the guarantor to provide information on the maximum number of operations covered by a guarantee that it has issued to an operator.

QUESTION 7

Much discussion has taken place about what we call invalidation of Carnets, which in the documents is called "cancellation". I understood that the principle is that it is up to the Customs to ACCEPT an invalidation. I have thought about that. I have a guarantee for renting my apartment. The bank is of course the one who decides if he wants to withdraw the guarantee. Nobody else. His withdrawal shall of course not be accepted by the owner of the house. But this is – if I understand it – the case here.

ANSWER 7

The technical aspects regarding invalidation of a guarantee by the guarantor and the reaction thereto by Customs have been the subject of long discussions during the tenth session of the Expert Group, in which the IRU, although present, did not participate. In the case where a bank withdraws a guarantee for an apartment, this withdrawal will not become applicable until the owner has been informed officially. And even then, the withdrawal may not become effective immediately, but only after the expiry of a certain delay.

The same principles apply to the guarantee in the eTIR system. Because it is in the interest of both trade and Customs, the guarantor should have the opportunity to cancel a guarantee, even after the TIR transport for which the guarantee was provided, has begun. The question, however, is how Customs should respond to such cancellation and as of which time it would become effective. After ample discussion, the Expert Group decided to propose that, in case the guarantor wishes to cancel a guarantee, he notifies the eTIR international system. Upon termination of the TIR operation during which the cancellation was announced, the eTIR system will inform the subsequent Customs office of departure or entry en route that no valid guarantee is available for the remainder of the TIR transport. Consequently, the TIR Carnet holder will first have to request a new TIR guarantee or resort to another transit regime in order to continue his transport. This proposal for a technical solution is given without prejudice to the political considerations by the TIRExB, WP.30 or AC.2 on the issue.

QUESTION 8

The question of invalid Carnets is complicated and both WP.30 and TIRExB have spent time on it – as I remember concluding that in any case the consequence of invalidation is depending on national law. A complicated example: A transport operator goes bankrupt. The guarantor will of course immediately reduce his risks by trying to stop the use of the Carnets – also for transports already started. This is also a consequence of the CMR Convention. But the question if he succeeds or not depends on his communication to the involved Customs offices that the guarantee is invalid – not if the Customs have accepted!

ANSWER 8

The answer to this question, which in fact is more a remark, is given under 7. In case a transport operator goes bankrupt in the course of a TIR transport, resulting in the guarantor's cancellation of the guarantee, the Expert Group proposes a system that would allow this cancellation to become effective as of the next Customs office of departure or entry en route, at the start of the first consecutive TIR operation. It is not clear what the relevance of the CMR Convention in this context is.

QUESTION 9

I wanted to ask about SafeTIR, but I understand that the diagrams about the notification of the guarantor – or the query of the guarantor – were changed during the discussions in the Expert Group. I understand that at a certain moment the guarantor will be notified – or may query. I heard examples that sometimes, where there is a reservation on the termination it could take 12 months before the guarantor is notified. But of course he could always query. 10,000 times a day?

ANSWER 9

This question must be due to a misunderstanding. The eTIR international system informs the guarantor immediately of any change related to guarantees issued by him, including the termination (with or without reservation). It might, however, under circumstances, take up to twelve months (this delay was mentioned purely for the sake of the example and does not take account of any legally established delay in accordance with national legislation), due to possibly required inquiry procedures by Customs, before Customs discharge the said operation and notify the guarantor of the release of the guarantee.

Of course, the guarantor is free to query the eTIR international system at any time, but this would not give him with any additional information in relation to the information provided to him by the eTIR system every time that a change related to guarantees issued by him occurs. It should be stressed that information is only given with regard to those guarantees issued by that guarantor and as of the moment that they have been registered with the eTIR international system.

QUESTION 10

As is known, IRU has developed an electronic declaration system – called the NCTS-TIR declaration – which is tested in some EU countries for the moment. This declaration is sent by the transport operator to the Customs office of departure or the Customs office of entry into the EU through the IRU's Internet web transmission system. This is, of course, not directly. Shall the 40.000 TIR Carnet holders each develop their direct transmission of the declaration to the Customs offices?

ANSWER 10

For the sake of clarification, it should be stressed that the word 'direct' is not mentioned in either document ECE/TRANS/WP.30/2006/8 or ECE/TRANS/WP.30/GE.1/2006/9. In fact, the submission of the declaration is the responsibility of the individual operator, in line with national requirements. Any development of this kind is left to national or private initiative. Within the context of such developments, the NCTS-TIR declaration system constitutes a good example of private initiative contributing to the well functioning of the public-private partnership.

QUESTION 11

Today we have around 10,000 TIR transports started per day. So, 10,000 times per day Customs offices must transmit the declarations as well as a request for acceptance of the guarantee to the eTIR system. Even if each transmission and request only would take, say, 10 minutes for a Customs officer, this would mean 1500 extra working hours per day or around 200 more Customs officers employed. Will the Customs authorities be ready for this extra resource – in addition, of course to the financing of the cost of the development and operation of the system?

ANSWER 11

It is not possible to react to such arbitrary calculation. However, it is incorrect to assume that the first Customs office of departure will have to spend additional time and resources to inserting data into the eTIR system for the following reasons. First of all, the operator will submit his declaration in electronic format to the Customs office of departure (by means of using the NCTS-TIR declaration or by means of any other national or private initiative), thus rendering any keying-in of data by national Customs authorities redundant. Secondly, this situation may even lead to a decrease in resources required in the majority of Contracting Parties, where Customs authorities already now key-in data from the paper TIR Carnet in their national computerized Customs system. Similarly, multiple keying-in by all consecutive Customs offices is no longer required, thus saving resources. All in all, the introduction of eTIR will provide Customs authorities with enhanced risk management and fraud prevention tools to ensure a better and more effective control of the TIR procedure, to timely exchange information with all parties involved, to reduce paper work and to save resources. At the same time, transport and trade will benefit from eTIR as a result of reduced processing times at Customs offices, increased accuracy and real time exchange of information among all parties involved in the TIR system, thus leading to an overall reduction in costs.

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