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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

Note by the secretariat

I. MANDATE

1. At its 118th session, the Working Party decided not to amend Article 4, but, at the same time, requested the secretariat to prepare a draft comment which should clarify that Customs should not require any payment or deposit of import or export duties and taxes as long as the goods were en route (ECE/TRANS/WP.30/236, para. 26(e)). At its 119th session, the Working Party considered such a comment to Article 4, as proposed by the secretariat in document ECE/TRANS/WP.30/2008/14, and suggested that some modifications be made in the title of the comment and in its text. The secretariat was requested to submit a revised proposal to the present session of the Working Party (ECE/TRANS/WP.30/238, para. 32). The present document has been prepared in line with this request.

II. BACKGROUND

2. In 2004, the European Community pointed out that clarification was needed to establish the principle that the key issue in Customs transit is the duty and tax paid status of the goods at the time they enter the territory of the Contracting Party. According to the Community, Article 4 was misleading in that it stated that the restriction on the payment or deposit of import (or export) duties and taxes shall only apply to payments made at the Customs offices en route. The European Community believed that this narrow application was not intended and proposed to delete the text “at Customs offices en route” to make it clear that the goods shall not be subjected to the payment or deposit of duties and taxes regardless of where these payments are made (TRANS/WP.30/2004/14, Annex).

3. This idea was preliminary analyzed by the secretariat in document TRANS/WP.30/2004/25, which pointed out that Article 4, when applied literally, does not prohibit the payment or deposit of duties and taxes, provided that this takes place at the Customs office of departure, destination or at any other Customs office not being a Customs office en route. A request to do so would be contrary to the principles of the TIR Convention and, thus, should not be allowed. In other words, as long as the goods are carried under the TIR procedure, they should not be subjected to the payment or deposit of import or export duties and taxes at any Customs office. The secretariat also commented on the use of the wording ‘deposit’ in the current text of Article 4. In view of the fact that, apart from a deposit, other forms of security exist (bank guarantee, surety, etc), which equally should fall under the prohibition of Article 4, the secretariat proposed to replace the word ‘deposit’ by ‘security’. For these reasons, the secretariat supported the proposal by the European Commission to delete the words “Customs offices en route” from the text of Article 4, while at the same time proposing the introduction of a new Explanatory Note to Article 4, stipulating that the provisions of Article 4 are applicable as long as the goods are carried under the TIR procedure. Before or after the TIR transport, the same goods may be subjected to the payment or security of duties and taxes, if appropriate.

4. Both proposals by the European Community and the secretariat were considered by the Ad hoc Expert Group on Phase III of the TIR revision (Geneva, 30 and 31 August 2004) which felt that it was desirable to refine the text of the Article with a view to avoiding any misunderstanding of its purpose. In this context, it was agreed that the aim of the Article should be that while goods are under the TIR procedure, the payment or deposit of (a) import or export duties and taxes or (b) financial securities should be suspended. The secretariat was requested to prepare a document containing a revised text for the consideration by the Working Party at one of its forthcoming sessions (TRANS/WP.30/2004/32, para.19). This request was repeated by the Working Party at its one-hundred-and-ninth session (TRANS/WP.30/218, para. 52).

5. In line with the above request, the secretariat produced document TRANS/WP.30/2005/16 which contained a further analysis of the issue and which proposed the following amendment:

(i) Modify Article 4 to read as follows:

“Goods carried under the TIR procedure shall not be subjected to the payment or security of import or export duties and taxes.”

(ii) Insert a new Explanatory Note to read as follows:

“0.4. Article 4 applies as long as the goods are carried under the TIR procedure. Before or after the TIR transport, the goods may be subjected to the payment or security of duties and taxes, if appropriate.”

6. At the one-hundred-and-tenth session of the Working Party, the representative of the European Community proposed the following alternative text with a view to further clarifying the meaning of the article: “As long as goods are carried under the TIR procedure the payment or security of import or export duties and taxes shall be suspended”. The Working Party invited the European Community to prepare an official proposal for consideration (TRANS/WP.30/220, para. 36).

7. At its one-hundred-and-eleventh session, the Working Party considered document TRANS/WP.30/2005/29, transmitted by the European Community, containing a revised proposal for amending Article 4 of the Convention. After due consideration of the issue, the following text was proposed with a view to further clarifying the meaning of the article: “As long as goods are carried under the TIR procedure the payment or security of import or export duties and taxes other than that mentioned in Article 3 (b) shall be suspended”. One delegation requested more time to consider the proposal and therefore the Working Party decided to revert to considering the proposed text at its session in February 2006 with a view to possibly adopting it (TRANS/WP.30/222, para. 41).

8. In February 2006, at the one-hundred-and-twelfth session of the Working Party, the delegation of the Russian Federation was of the view that, in contrast to the current wording of Article 4, the proposed draft text was acceptable neither in substance, nor linguistically. The Working Party decided to consider the following text at its next session as a part of the entire package of amendments: “As long as goods are carried under the TIR procedure the payment of import and export duties and taxes shall be suspended and security other than that mentioned in Article 3 (b) shall not be required” (ECE/TRANS/WP.30/224, para. 41).

III. REVISED KYOTO CONVENTION

9. Standard 3 of Specific Annex E to the Revised Kyoto Convention stipulates that "goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished". Article 4 of the TIR Convention seems to fully correspond to this provision.

10. Further explanation on the application of the above Standard is provided by the Guidelines to the Kyoto Convention:

"The basic principle of Customs transit is relief from import and export duties and taxes for goods in Customs transit passing through a Customs territory.

However, this provision does not prevent:

- The collection of export duties and taxes in the country of exportation when such duties and taxes remain due whether the goods are exported under Customs transit or under a national exportation procedure.

- The collection of import duties and taxes in the country of destination when the Customs transit operation is terminated and, for example, the goods are cleared for home use".

IV. PROPOSAL BY THE SECRETARIAT

11. On the basis of the above considerations, the secretariat proposes to add the following comment to Article 4: ^{1/}

*"Relief from the payment ~~or~~ and **additional** security of import or export duties and taxes*

The basic principle of Customs transit is relief from the payment of import or export duties and taxes for goods in transit, provided that any security required has been furnished. As the goods carried under the TIR procedure are at any moment covered by the guarantee, as referred to in Article 3 (b), in the course of a TIR transport neither payment of import or export duties and taxes nor security in any other form shall be required in any Contracting Party involved in the TIR transport. ~~However, this provision does not preclude the payment or security of duties and taxes under another Customs procedure before or after the TIR transport, where appropriate.~~"

12. The Working Party may wish to consider the draft proposal by the secretariat.

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^{1/} Additions to the original proposal from document ECE/TRANS/WP.30/2008/14 are in **bold** and deletions are in ~~strikethrough~~.