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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions

affecting Transport

(One-hundred-and-first session, 19-21 June 2002,
agenda item 6 (c) (4))

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

Application of the Convention

Trade facilitation and Customs controls

Note by the secretariat

A. BACKGROUND

1. The TIR Executive Board, at its eleventh session (18-22 October 2001), adopted a comment to Article 47 of the TIR Convention which stipulated that the application of additional restrictions and controls, mentioned therein, only referred to other Governmental bodies than Customs and should not be used to justify supplementary Customs requirements (TIRExB/REP/2001/11/Rev.1).

2. At its one-hundredth session (12-15 February 2002), the Working Party discussed a draft proposal for a new Article (and comment), prepared by the European Community, on the limitation of restrictions, controls or other provisions, applied by the competent authorities to the transport of goods carried under the TIR procedure (TRANS/WP.30/2002/1).

3. As both proposals refer to the application of the TIR Convention at the national level and seem to address the same concern, the Working Party requested the secretariat to prepare a document containing both texts, allowing for further, detailed study of the matter, possibly in co-operation with the representative of the European Community (TRANS/WP.30/200, para. 76).
4. The present document reproduces both proposals mentioned above, together with further considerations.

B. PROPOSAL BY THE TIRExB

“Comment to Article 47

Application of restrictions and controls

The TIR Convention is a Customs Convention aimed at the Customs transit regime. The objective of Article 47 is to allow for application of additional restrictions and controls based on national regulations other than Customs. Therefore, it should not be used to justify supplementary Customs requirements.” (TIRExB/REP/2001/11/Rev.1, para. 18)

C. PROPOSAL BY THE EUROPEAN COMMUNITY

“New Article

Any restrictions, controls or other provisions to be applied by the competent authorities to goods carried under the TIR procedure shall be limited to cases where they are justified by the circumstances or risk and shall be applied in such a way that they interfere as little as possible with the transport of goods under the TIR procedure.

New Comment to this Article

Trade facilitation and Customs controls

The aim of the TIR Convention is to facilitate the international carriage of goods by road. Any restrictions, controls or provisions that are applied in addition to those specifically set out in the TIR Convention will usually lead to delays and extra costs for the transport of goods under the TIR procedure and therefore run counter to the aim of the TIR Convention. They should therefore be kept to a minimum.” (TRANS/WP.30/2002/1)

D. FURTHER CONSIDERATIONS

5. Both proposals address the situation that Contracting Parties sometimes introduce new regulations, aimed at improving the level of Customs controls. Such regulations however jeopardize the well functioning of the TIR Convention, main objective of which it is to facilitate the international carriage of goods (see preamble to the Convention).

6. In order to avoid that this is indeed the case, the European Community proposes the introduction of a new Article and a new Comment, whereas the TIRExB is of the opinion that a new comment to Article 47 would be sufficient. Since the adoption of a new Article to the Convention is a lengthy and complicated procedure, the secretariat proposes to first see if amending the existing comment to Article 47 would solve the above-described situation. If, at a later stage, the Working Party finds that the introduction has not led to the desired result, the adoption of a new Article can still be considered.

7. There already exists a comment to Article 47 which stipulates that the controls applied within the context of the Article should be kept to a minimum and limited to the cases where the circumstances or the real risks justify such controls. However, both the European Community and the TIRExB feel that this comment has not been sufficiently clear to prevent Article 47 from being used as a tool to justify additional Customs controls. Therefore, an amendment to the comment seems appropriate.

8. To obtain a dedicated use of Article 47, para. 1, the secretariat proposes to replace the existing comment by a new one, to read as follows:

“Comment to Article 47, paragraph 1

Trade facilitation and Customs controls

In order to safeguard the objective of the TIR Convention of facilitating the international carriage of goods by road, the provisions of Article 47, paragraph 1 cannot be used to justify stricter Customs restrictions and controls than those provided for by the Convention. Indeed, Article 47, paragraph 1 only allows for the application of restrictions and controls imposed under national regulations on grounds of public morality, public security hygiene or public health, or for veterinary or phytopathological reasons, or the levy of dues chargeable by virtue of such regulations. In case Article 47, paragraph 1 becomes applicable, such restrictions and controls shall be kept to a minimum and be limited to the cases where the circumstances or the real risks justify such controls.”

9. Adoption of the proposed amended comment would mean that Contracting Parties acknowledge that Article 47 cannot be used to justify supplementary national Customs requirements and that additional restrictions and controls, imposed on the grounds of specific and well-defined national competence, have to be kept to a minimum and limited to cases where such controls are justified. Adoption of the proposed text would equally mean that the existing reference to {TRANS/GE.30/17, para. 42} could be maintained, as its wording is used in the last sentence of the comment.
