United Nations ECE/TRANS/WP.30/2018/9

Economic and Social Council

Distr.: General
9 April 2018
English
Original: English and Russian

Economic Commission for Europe

Inland Transport Committee

Working Party on Customs Questions affecting Transport

149th session
Geneva, 12–14 June 2018
Item 3 (b) (i) 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 to the Convention

Transmitted by the Government of Ukraine

Background and mandate

1. At its 149th session, the Working Party continued its discussions on proposals to amend Article 20, as contained in document ECE/TRANS/WP.30/2017/21. The delegation of the European Union confirmed its wish to maintain the proposal to replace, in Article 20, the word "country" by "contracting party", and invited other delegations to support this proposal, as it would not have any negative repercussions on the application of the provision in Customs Unions that were not contracting party to the TIR Convention in their own right. The delegation of Ukraine, while expressing support for the position of the European Union, offered to prepare a comparison between the TIR Convention and other relevant international legal instruments such as, in particular, the Revised Kyoto Convention or the World Trade Organization Transit Facilitation Agreement (WTO-TFA). The delegation of the Russian Federation advised the Working Party to apply caution to the various proposals, which it regarded a complex matter. In addition, it stated that the application of Article 48 did not fully offer a solution for the situation of the Eurasian Economic Union. In conclusion, the Working Party gladly accepted the offer of the delegation of Ukraine to prepare a comparative document for consideration, if possible, at its next session (see ECE/TRANS/WP.30/296, para. 8).

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2. The secretariat transmits, in Annex[1], the proposals submitted by the Government of Ukraine.

Annex

TIR Convention Articles 20 and 48

A. Objective of the amendment

1. At present, the European Union is both a Customs Union and a non-State contracting party to the TIR Convention. The Eurasian Economic Union (EAEU), on the other hand, is a Union whose Member States are individually contracting parties to the TIR Convention, but the EAEU itself has not acceded to the Convention. Therefore, the EAEU would seem to have to rely on Article 48 for any special conditions or legislative measures applicable on its single Customs territory, including for the prescription of routes and time-limits as per Article 20. The proposals for Article 20 aim to replace the word "country" with a word or phrase that would be, on the one hand, editorially consistent with the rest of the Convention and, on the other hand, more suitable for the purposes of Customs Unions regardless of whether or not said Customs Unions are also contracting parties.

2. As a general observation, it is commonly stipulated in national Customs Codes or relevant legislation (including legislation of Customs or Economic Unions), that customs authorities can fix time-limits and prescribe itineraries in various cases or for various procedures including, quite typically, transit. The right of customs authorities to fix a time-limit or prescribe a route for TIR operations in particular has also always been reflected in the TIR Convention, i.e. in the 1959 TIR Convention (Article 10) and in the 1975 TIR Convention (Article 20).

3. Against this background, it is fair to say that Article 48 provides freedom and the necessary scope for contracting parties (namely states, countries or others, mentioned in Article 52) including Customs or Economic Unions to enact special provisions in respect of all scope of transport operations including transit on their single customs territory (the territory of countries forming such a Union).

4. Such special provisions could be the Customs Code of the Customs or Economic Union, Regulations of such a Union (UCC and EAEU CC etc.).

5. Provisions of Article 48 of the TIR Convention, 1975 are clearly reflected in the European Commission Implementing Regulation (European Union) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (European Union) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

[1] Contribution reproduced as received.

B. Applicable legislation

1. Article 275
Itinerary for movements of goods under a TIR operation (Articles 226 (3) (b) and 227 (2) (b) of the Code)

1. Goods moved under a TIR operation shall be transported to the customs office of destination or exit along an economically justified itinerary.

2. Where the customs office of departure or entry considers it necessary, it shall prescribe an itinerary for the TIR operation taking into account any relevant information communicated by the TIR carnet holder.

[…]

and

2. Article 276
Formalities to be completed at the customs office of departure or entry for movements of goods under a TIR operation (Articles 226 (3) (b) and 227 (2) (b) of the Code)

[…]

2. The customs office to which the TIR carnet data has been submitted shall set a time-limit within which the goods shall be presented at the customs office of destination or exit, taking into account the following:

(a) the itinerary;

(b) the means of transport;

(c) transport legislation or other legislation which might have an impact on setting a time-limit;

(d) any relevant information communicated by the TIR carnet holder.

3. Where the time-limit is set by the customs office of departure or entry, it shall be binding on the customs authorities of the Member States the territory of which the goods enter during the TIR operation, and that time-limit shall not be altered by those authorities.

[…]

5. The customs office of departure or entry shall transmit the particulars of the TIR operation to the declared customs office of destination or exit.

3. The Customs Code of the EAEU
Article 144
Time-limits for customs transit

1. When placing goods under the customs procedure of customs transit, the customs authority of departure shall specify the period of time within which the goods must be delivered from the customs office of departure to the customs office of destination (hereinafter - the time-limit for customs transit).

2. With regard to the goods transported by rail, the time-limit for customs transit is set at the rate of 2 thousand kilometres for 1 month, but not less than 7 calendar days. In relation to goods transported by other means of transport, the time-limit for customs transit is set in accordance with the usual timeframe of conveyance (transportation) of the goods based on the mode of transport and the capabilities of the vehicle, the established route for the carriage of goods, other conditions of carriage and (or) information communicated by the declarant or the carrier, with regard to the requirements of the drivers' working hours in accordance with the international agreements of the Member States with the third party, but not exceeding the deadline for customs transit.

3. The time-limit for customs transit shall not exceed the set range of 2 thousand kilometres per 1 month, or the period set by the Commission based on the specifics of the carriage of goods placed under the customs procedure of customs transit.

4. Article 344
Route (itinerary) for the transportation of goods

1. The route for the carriage of goods shall be set by the customs authorities in order to ensure control over the transportation of goods under the customs control across the customs territory of the Union.

2. The route for the carriage of goods shall be set with respect to the goods placed under the customs procedure of customs transit or in respect of the goods under customs control when, in accordance with this Code, such goods can be transported through the customs territory of the Union without being placed under the customs procedure for customs transit.

3. The route for the carriage of goods shall be set when the goods are transported by road and water transport, except for the carriage of foreign goods by vessels, including combined-type (river-sea) vessels, between seaports of a Member State and / or Member States without calling to the internal waterways of a Member State and / or Member States.

4. The route for the carriage of goods is set with respect to the goods placed under the customs procedure of customs transit shall be set by the customs office of departure on the basis of the information specified in the transport (transportation) documents.

5. The change of the route for the carriage of goods set with regard to the goods placed under the customs procedure for customs transit by the carrier shall be granted by permission of the customs office of departure or any customs authority ‘en route’ that is communicated to the carrier in electronic or written form.

6. In the case of setting the route for the carriage of goods in respect of the goods transported through the territory of only one Member State, Customs authorities may use information systems and technical means of customs control that provide remote control over the movement of vehicles and compliance with the established route for the carriage of the goods.

7. The procedure for the performance of customs operations related to the prescription, rerouting and observance of the route for the carriage of goods set in respect of the goods placed under the customs procedure of customs transit shall be determined by the Commission, and in respect of the goods under customs control, when in accordance with this Code such goods can be transported through the

customs territory of the Union without being placed under the customs procedure of customs transit, by the legislation of the Member States.

C. Considerations by the Government of Ukraine

6. As such Article 20, even in its current wording would not appear to place any significant restriction on Customs or Economic Unions as it could be applied mutatis mutandis under the scope of Article 48.

7. However, in light of the discussions on amendments of an editorial nature, the Working Party has been considering possible ways to replace the word “country”.

8. Specifically, it was considered more fitting to use the phrase “contracting party”, which is the dominant term used 54 times in the TIR Convention. In as far as can be discerned from the reports on the discussion on editorial amendments, it was not intended to make any substantive alteration to the understanding or application of Article 20 as has been established over the course of several decades. At this point it is worth noting that Article 20 has never been amended.

9. As regards the word “country”, it appears 41 times across the legal text in various articles and in various contexts. Therefore, the term “country” that appears in Article 20 is also used quite broadly elsewhere in the Convention already. As a result, it is editorially consistent with the terminology used in the TIR Convention. At the same time, it should be noted that, if the preferred term for Article 20 is “contracting party”, this would have not only editorial but material value also.

10. However, there is also the term “State” that appears 20 times in the legal text of the TIR Convention, and is similar within the context of the Convention both to “the country” and “the contracting party”, which may affect and to be of restrictive nature either to the national competent authorities of the “country” or “the State” or “the contracting party” on the one hand, or to “Customs or Economic Union as the contracting party” on the other hand.

11. On this basis and provided by Article 52 the contracting party to the TIR Convention shall be clearly identified:

(a) All States Members of the United Nations;

(b) members of any of the specialized agencies;

(c) members of the International Atomic Energy Agency;

(d) Parties to the Statute of the International Court of Justice;

(e) any other State invited by the General Assembly of the United Nations;

(f) Customs or Economic Unions.

12. The next step is to identify the rights, competence, obligations (authorities) of the stakeholders.

13. In case of Customs or Economic Unions they have no right to vote, but their Member States have the right to enact special provisions in relation to the TIR Convention.

14. At the same time the “International convention on the simplification and harmonization of customs procedures (as amended)”, also known as Kyoto Convention defines in subpara. (k) of Article 1 "Customs or Economic Union" as a union constituted by, and composed of, States which has competence to adopt its own regulations that are binding on those States in respect of matters governed by this Convention, and has

competence to decide, in accordance with its internal procedures, to sign, ratify or accede to this Convention.

15. Article 8 is almost identical to Article 52 of the TIR Convention, but contains some significant issues such as para. 5:

(a) Any Customs or Economic Union may become, in accordance with paragraphs 1, 2 and 3 of this Article, a contracting party to this Convention. Such Customs or Economic Union shall inform the depositary of its competence with respect to the matters governed by this Convention. Such Customs or Economic Union shall also inform the depositary of any substantial modification in the extent of its competence.

(b) A Customs or Economic Union which is a contracting party to this Convention shall, for the matters within its competence, exercise in its own name the rights, and fulfil the responsibilities, which the Convention confers on the Members of such a Union which are Contracting parties to this Convention. In such a case, the Members of such a Union shall not be entitled to individually exercise these rights, including the right to vote.

16. Provisions of Article 11 also put some requirements and obligations to such unions stating that “For the application of this Convention, a Customs or Economic Union that is a contracting party shall notify to the Secretary General of the Council the territories which form the Customs or Economic Union, and these territories are to be taken as a single territory”.