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**Economic Commission for Europe****Inland Transport Committee****Working Party on Customs Questions affecting Transport****137th session**

Geneva, 10 – 13 June 2014

Item 4 (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:  
Preparation of Phase III of the TIR revision process****Legal aspects of computerizing the TIR procedure****Note by the secretariat****I. Background and mandate**

1. At its 136<sup>th</sup> session, the Working Party on Customs Questions affecting Transport (WP.30), *inter alia*, considered document ECE/TRANS/WP.30/2013/8, containing an analysis of various options providing a legal basis for the implementation of eTIR. Some delegations expressed their preference for the option of a protocol, while others were of the view that all technical, conceptual and financial aspects should be finalized before considering the legal aspects. Therefore, the Working Party could not reach consensus on the legal option to pursue and decided to revert to this issue at its next session. At the same time, the Working Party requested the secretariat to prepare a document elaborating the substance that any envisaged legal option should contain to enable the establishment of the eTIR system. To this end, the secretariat prepared this document for consideration by the Working Party, providing more details about the implications of amending the TIR Convention or concluding an additional protocol to the TIR Convention.

**II. Amending the TIR Convention**

2. When going through the current text of the TIR Convention, there are numerous provisions where the TIR Carnet is mentioned, either as a customs and guarantee document or symbolizing the procedure conducted by it. In addition, there are various other provisions of a procedural nature in the Convention which will be affected to the extent that they will no longer be conducted only by means of data available on paper. Annex III to the

present document contains a non-exhaustive enumeration of the legal provisions of the Convention that might need to be revisited to allow the TIR procedure to function electronically.

3. Considering that the computerization process should not change the principles governing the current paper TIR procedure, it was considered that the introduction of a single article could be sufficient to allow to gradually replacing the TIR Carnet by the exchange and processing of electronic messages. For example, in the process of computerizing the Istanbul Convention on Temporary Admission, 1990, the inclusion of a single new article allowing the use of electronic data interchange has been proposed. This article was elaborated to enable the use of an electronic Admission Temporaire/Temporary Admission (ATA) Carnet<sup>1</sup>, but is formulated in a general/flexible way. The corresponding amendment proposal will come into force in November 2014 if, by May 2014, there will have been no objections to it.

#### New Article 21a: Electronic Data-Processing Techniques

“All formalities necessary for implementing the provisions of this Convention may be carried out electronically by using electronic data-processing techniques approved by the Contracting Parties”.

4. Taking into account that the numerous functions of the TIR Carnet in the TIR procedure (i.e. a proof of existence of the guarantee, a standard declaration document, a document allowing customs administrations to manage TIR operations and exchange information with other customs administrations), the option to introduce a single new article, as described above, may not be sufficient. Therefore, if the decision will be to amend the existing Convention, a selected number of provisions would require to be amended and, most likely, a new Annex 11 would need to be included to deal with technical, administrative and operational details related to the functioning of the electronic TIR system.

5. This approach would be consistent with the findings of the Informal ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1) in 2001 whereby:

“Regardless of the finally selected approach, from a legal point of view, the amount of changes to be made to the TIR Convention could be limited and that it would basically be sufficient to amend the Convention with either a definition of the TIR Carnet, that would include the use of portable electronic files or introduce one new article which would allow for the use of new technologies in general, including the acceptance of electronic signatures, leaving the existing text of the Convention as it stands. Special provisions dealing with the legal and technical specifications of the accepted new technologies could be inserted into a separate, newly to be created Annex” (TRANS/WP.30/2001/13, para.23).

6. In Annex I, the secretariat has formulated a first example of possible amendments, as well as elaborated the structure of the new Annex 11 to the TIR Convention. The proposed amendments present eTIR as an optional procedure available between those Contracting Parties that would have the means to carry out the TIR procedure in electronic form. The paper based TIR procedure would remain available for TIR transports involving Contracting Parties that are not yet ready to implement the electronic TIR procedure, thus, allowing for a gradual shift of Contracting Parties to a fully electronic environment.

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<sup>1</sup> On the basis of the work carried out by the eATA Carnet Working Group

### **III. Creating an optional Protocol to the TIR Convention**

7. If Contracting Parties would, alternatively, wish to elaborate the eTIR legal framework in an optional Protocol, the substantive provisions contained in Annex I are also presented in the form of a possible Protocol in Annex II. Due to it being a separate legal instrument, additional provisions on entry into force, reservations, dispute settlement, notifications, amendments etc. should also be included. The two legal instruments would function in parallel, thus also allowing for a gradual implementation of eTIR. In this case, TIR Contracting Parties will have to accede to the optional Protocol when they are ready and willing to implement electronic TIR procedures with the other parties to the Protocol.

8. This avenue was followed, for example, by the Contracting Parties to the Convention on the Contract for the International Carriage of Goods by Road (CMR) when they prepared the Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) Concerning the Electronic Consignment Note, which has been already ratified by 9 countries but has not yet resulted in any practical implementation of electronic consignment notes.

### **IV. Considerations by the Working Party**

9. The Working Party is invited to consider the examples of amendments as contained in Annex I, the proposed structure and content of the example Protocol as contained in Annex II, as well as the list of the provisions of the TIR Convention that might be affected by eTIR, as contained in Annex III. The Working Party may wish to provide guidance as to the direction which the legal framework of eTIR could take and, possibly, consider the establishment of an informal ad hoc group of legal experts to look further into the details of the legal framework of eTIR.

## Annex I

### Example amendments to the TIR Convention and the new Annex 11

New text is indicated in **bold**, deletions are indicated in ~~strikethrough~~

#### Chapter I, General, (a) Definitions

##### Article 1 (a)

“(a) The term "TIR transport" shall mean the transport of goods from a Customs office of departure to a Customs office of destination under the procedure, called the TIR procedure, laid down in this Convention; **and performed either by means of a TIR Carnet, which shall conform to the model reproduced in Annex 1 to this Convention, or by means of the eTIR procedure in accordance with the provisions of Annex 11 to this Convention**”.

##### Article 1(o)

“the term “holder” of a TIR Carnet shall mean the person to whom a TIR Carnet has been issued in accordance with the relevant provisions of the Convention and on whose behalf a Customs declaration has been made, **either** in the form of a TIR Carnet **or by electronic means using the eTIR procedure**, indicating a wish to place goods under the TIR procedure at the Customs office of departure. He shall be responsible for presentation of the road vehicle, the combination of vehicles or the container together with the load and the TIR Carnet relating thereto at the Customs office of departure, the Customs office en route and the Customs office of destination and for due observance of the other relevant provisions of the Convention;

*Explanatory Note to Article 1(o) to read:*

**“For the eTIR procedure, the declaration is made by presenting the reference to the submitted advance cargo information to the Customs office of departure. The term "advance cargo information" shall mean the information provided to the competent Customs authorities within the prescribed deadlines and in the prescribed form and manner of the intention of the holder to place goods under the TIR procedure or pursue a TIR transport”**

#### Chapter I, General, (b) Scope

##### Article 3(b):

“the transport operations must be guaranteed by associations approved in accordance with the provisions of Article 6 and must be performed under cover of a TIR Carnet **or by the eTIR procedure**, ~~which shall conform to the model reproduced in Annex 1 to this Convention~~”.

#### Chapter VI, Miscellaneous Provisions, Article 45

Each Contracting Party shall cause to be published the list of the Customs offices of departure, Customs offices en route and Customs offices of destination approved by it for accomplishing TIR **or eTIR** operations. The Contracting Parties of adjacent territories shall consult each other to agree upon corresponding frontier offices and upon their opening hours.

*Insert comment to Article 45 to read:*

**“Contracting Parties which decide to implement the eTIR procedure, shall also accept and process paper TIR Carnets issued, not only for TIR transports involving Contracting Parties that have not yet implemented the eTIR procedure but also for those passing by Customs offices not yet able to handle the eTIR procedure.”**

*Comment by the secretariat:* This may be necessary as eTIR will most likely be phased in gradually via pilot projects or other means. As a result, in order to accommodate this gradual shift and facilitate both customs authorities and operators, information on the offices and routes along which eTIR can be used, should be publicly available. In order to facilitate this process, the TIR Executive Board (TIRExB) has developed plans to launch an electronic database for approved customs offices, which is currently under discussion at AC.2 (see ECE/TRANS/W.30/AC.2/2014/4)

#### Chapter VII, Final Clauses, Article 60

*Modify title of Article 60 to read:*

**“Special procedure for amending Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11”**

*Modify paragraph 1, line 1 to read:*

**“Any proposed amendment to Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 [...]”**

*Comment by the secretariat:* Due to the technical content of Annex 11, Contracting Parties may wish to consider whether it would be preferable to maintain the amendment procedure of Article 60 for this new Annex, or to design a special procedure in a new article 60bis, or within the new Annex 11 itself. This may be an issue for consideration due to the fact that it is a distinct possibility that technological developments and technical progress may need to be incorporated rapidly into the eTIR legal framework, in which case a simplified amendment procedure could be a viable option. Another option, elaborated further later in the document, is to give the eTIR Reference Model legal force by reference, without reproducing it in whole in the legal text. This way, the eTIR Reference Model could be amended separately, which could be more efficient.

#### New Annex 11:

Title: **The fully computerized TIR system**

##### **Article 1: Scope of application**

**(a) The Contracting Parties that wish to implement the eTIR procedure shall be subject to the provisions of the present Annex.**

**(b) All provisions of this Convention shall be applicable *mutatis mutandis* for the eTIR procedure, with the exception of the provisions of Annex 10.**

*Article 2: The eTIR procedure*

**The eTIR procedure shall mean the Customs transit procedure under cover of an electronic TIR guarantee, implemented by means of electronic data exchanged in accordance with the provisions of this Annex.<sup>2</sup>**

*Article 3: Conceptual, functional and technical specifications of the eTIR procedure*

**(a) The conceptual, functional and technical specifications of the eTIR procedure are laid down in the eTIR Reference Model. The Contracting Parties shall apply the eTIR procedure in conformity with the specifications contained in the eTIR Reference Model.**

**(b) The procedure for amending or endorsing the specifications contained in the eTIR Reference model shall be approved by the Administrative Committee.**

*Comment by the secretariat:* One of the available options for introducing technical and functional amendments to the eTIR Reference Model would be for the Administrative Committee to convene ad hoc sessions of technical experts, such as the experts comprising G.E.1 who have the expertise and experience to develop technically complex amendment proposals for approval by A.C.2.

As a general observation, with eTIR as a part of the TIR Convention, the administrative structure of the Convention will remain intact, since the provisions will entail legal rights and obligations for all Contracting Parties to the TIR Convention, regardless of whether eTIR can be applied optionally. By contrast, in the case of eTIR being a separate legal instrument (e.g. Protocol), a few questions could arise, which are discussed/commented on in Annex II of the present document.

*Article 4: The eTIR international system*

**The eTIR international system is an Information and Communication Technology (ICT) system devised to facilitate the exchange of electronic information between the actors involved in the eTIR procedure. It is under the responsibility of Contracting Parties and managed by the UNECE secretariat.**

*Article 5: Administration of the eTIR international system*

*Comment by the secretariat:* If the eTIR international system is administered by a sub-contracted private entity, this article would set out the procedure for designating/authorizing the entity responsible for receiving, transmitting and storing the eTIR information. In this case, this article should also specify the rules for bidding and tender, if applicable, as well as the responsibilities and liabilities of the entity, confidentiality clauses to be included in the engagement contract for data received and stored etc.

If the eTIR international system is administered by the United Nations, this article should describe the responsibilities of the United Nations, the role of the TIR secretariat in the administration of this system, the financing and staffing of the system (including a 24-hour help-desk) and auditing requirements, if applicable.

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<sup>2</sup> Or similar definition as agreed by Contracting Parties

For these provisions to be drafted it will be necessary to first have a decision on how the system will be administered and financed.

***Article 6: Mutual recognition of authentication mechanisms***

**The Contracting Parties that apply the eTIR procedure shall recognize the authentication of the TIR Carnet holder performed by the competent authorities of the country to which the advance cargo information is submitted.**

## Annex II

### Example of a Protocol

(Entirely new text proposal, no changes indicated by means of bold or strikethrough text)

### **Protocol to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975)**

*The Parties to this Protocol,*

*Being Parties to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, done in Geneva on 14 November 1975,*

*Desiring to further facilitate the international inland transport of goods,*

*Have agreed as follows:*

#### *Article 1: Application*

(a) The provisions herein shall apply in the relations between Contracting Parties to the TIR Convention that have ratified this Protocol.

(b) The provisions herein shall apply without prejudice to applicable provisions as stipulated in the TIR Convention.

#### *Article 2: Definitions*

(a) For the purposes of this Protocol an eTIR procedure shall mean the customs transit procedure under cover of an electronic TIR guarantee implemented by means of electronic data exchanged in accordance with the provisions of this Protocol.<sup>3</sup>

(b) The term "advance cargo information" shall mean the information provided to the competent Customs authorities within the prescribed deadlines and in the prescribed form and manner of the intention of the holder to place goods under the TIR procedure or pursue a TIR transport.

(c) For the purposes of an eTIR procedure, the term "declaration" shall mean the reference to the submitted advance cargo information to the Customs office of departure.

#### *Article 3: Conceptual, functional and technical specifications of the eTIR procedure*

(a) The conceptual, functional and technical specifications of the eTIR procedure are laid down in the eTIR Reference Model. The Contracting Parties shall apply the eTIR procedure in conformity with the specifications contained in the eTIR Reference Model.

(b) The procedure for amending or endorsing the specifications contained in the eTIR Reference model shall be approved by the Parties to this Protocol.

*Comment by the secretariat:* For example, in the Protocol on the electronic CMR consignment note, proposals for amendments should

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<sup>3</sup> Or similar definition as agreed by Contracting Parties



be submitted to the Working Party on Road Transport (S.C.1) for consideration and decision (e-CMR, Article 13, para.2). However, the same Article in its paragraph 3 also specifies that if the Parties to the Protocol agree by consensus or majority vote on an amendment, then it may be considered adopted and be notified to the Depositary. As a result, it would appear that although there is an obligation to present proposals for discussion to the Working Party, ultimately, it is the Parties to the Protocol that decide if they wish to adopt an amendment.

Similarly, in this case, the Working Party is invited to consider the formula under which amendments to the eTIR Reference Model could be adopted i.e. whether WP.30 would be the first platform of discussion or whether the Contracting Parties to the Protocol can directly proceed with amendments as it sees fit. Further to this, as the eTIR Reference Model is a very technical document, Contracting Parties to the Protocol may wish to allow for an expert body to be convened on request, to develop amendment proposals as required.

*Article 4: The eTIR international system*

The eTIR international system is an Information and Communication Technology (ICT) system devised to facilitate the exchange of electronic information between the actors involved in the eTIR procedure. It is under the responsibility of Contracting Parties and managed by the UNECE secretariat.

*Article 5: Administration of the eTIR international system*

*Comment by the secretariat:* As above, see Annex I; if the eTIR international system is administered by a sub-contracted private entity, this article would set out the procedure for designating/authorizing the entity responsible for receiving, transmitting and storing the eTIR information. In this case this article should also specify the rules for bidding and tender, if applicable, as well as the responsibilities and liabilities of the entity, confidentiality clauses to be included in the engagement contract for data received and stored etc.

If the eTIR international system is administered by the United Nations, this article should describe the responsibilities of the United Nations, the role of the TIR secretariat in the administration of this system, the financing and staffing of the system (including a 24-hour help-desk) and auditing requirements, if applicable.

For these provisions to be drafted it will be necessary to first have a decision on how the system will be administered and financed.

*Article 6: Mutual recognition of authentication mechanisms*

The Contracting Parties that apply the eTIR procedure shall recognize the authentication of the TIR Carnet holder performed by the competent authorities of the country to which the advance cargo information is submitted.

*Article 8: Signature, ratification, acceptance, approval and accession*

*Article 9: Entry into force*

*Article 10: Denunciation*

*Article 11: Settlement of disputes*

*Article 12: Reservations*

*Article 13:* Functions of the Administrative Committee of the TIR Convention and the TIR Executive Board

*Comment by the secretariat:* Following from the comment to draft Article 3(b) of the Protocol, Contracting Parties are invited to consider the role of AC.2 and TIRExB within the context of the Protocol. In principle, the TIR Convention (and its annexes as integral parts of the Convention) shall apply, *mutatis mutandis*, in accordance with draft Article 1(b). Consequently, Annex 8 shall also apply in its entirety unless it is specifically excluded from the scope of application of the Protocol or its content otherwise explicitly defined in the Protocol. Thus, with the current proposal, the eTIR Protocol would be within the scope of work/supervision of AC.2 and of the TIRExB. However, it should be underscored that the Contracting Parties to the Protocol will be responsible for decisions – particularly amendments – relating to this separate legal instrument to which they are Parties, in accordance with the fundamental principles of international law.

On the other hand, certain functions for AC.2 and TIRExB cannot be entirely excluded from the discussion, particularly since several TIR Contracting Parties will be interested in eventually acceding to the new Protocol and applying the eTIR procedure. Against this background, cooperation, exchange of information, discussion of proposals, efforts to ensure that the eTIR procedure is implemented in accordance with applicable provisions of the TIR Convention (for example Annex 9) as well as supervision of the functioning of the guarantee system under the eTIR scheme, could be envisaged either as separate legal provisions in the Protocol or as an amendment to Annex 8, or – as currently envisaged – by *mutatis mutandis* interpretation.

As an example, Annex 8, Article 10 para (a) of the TIR Convention would either be interpreted *mutatis mutandis* (without amendment) to mean, or amended to read:

“The TIR Executive Board shall:

- (a) supervise the application of the Convention (**and its Protocol**), including the operation of the guarantee system, and fulfil the functions entrusted to it by the Administrative Committee;

Alternatively, these responsibilities could be spelled out separately in the Protocol.

*Article 14:* Financing of the TIR Executive Board and the TIR secretariat

*Comment by the secretariat:* Depending on how Contracting Parties decide on the question of administration of the system, additional or supplemental financing scenarios may become a relevant consideration.

*Article 15:* Procedure for amending this Protocol

*Article 16:* Requests, communications and objections

*Article 17:* Notifications

*Article 18:* Authentic text

## Annex III

### Legal consequences of computerization

#### Direct reference to the TIR Carnet<sup>4</sup>:

Article 1 (c) (TIR Carnet – document)

Article 1 (d) (TIR Carnet – document)

Article 1 (o) (holder of the TIR Carnet; issuance of TIR Carnet – document and procedure)

EN 0.2-1 (TIR Carnet – document)

EN 02-2 (TIR Carnet – document)

Comment to Article 2 (TIR Carnet – document)

Article 3 (b) (TIR Carnet – document)

Comment Article 3 (TIR Carnet – document and procedure)

EN 0.5 (TIR Carnet – document)

Chapter II, title (issuance of TIR Carnets – document and procedure)

Article 6.1. (issuance of TIR Carnets – document and procedure)

Article 6.2 (guarantee/TIR Carnet – procedure)

EN 0.6.2 (liability/guarantee – procedure)

Article 6.2. bis (organization and functioning of an international guarantee system and to print and distribute TIR Carnets – procedure)

Article 6.3 (TIR Carnet – document and procedure)

Article 7 (TIR Carnet – document)

Article 8.3 (TIR Carnet – document)

EN 0.8.3. (TIR Carnet – document)

Comment to EN 0.8.3 (TIR Carnet-document)

Article 8.4. (acceptance of TIR Carnet – document)

Article 8.5. (TIR Carnet – document)

EN 0.8.5. (TIR Carnet – document)

Article 8.6 (TIR Carnet – document)

EN 0.8.6. (TIR Carnet – document)

Article 9 (TIR Carnet – document)

Article 11.1 (TIR Carnet – document)

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<sup>4</sup> For the sake of simplicity, a distinction is made where the TIR Carnet is mentioned as document or where it represents a procedure, or both.

Comment to EN 0.11-1 (non-discharge of TIR Carnet – procedure)  
Chapter III, title (TIR Carnet – document and procedure)  
Chapter III (b) title (TIR Carnet – procedure)  
E.N 0.15 (particulars on vouchers 1+2 of TIR Carnet – document and procedure)  
Comment to Article 15 (TIR Carnet – document and procedure)  
Article 17.1 (TIR Carnet – document)  
EN 0.17-1 (TIR Carnet – document)  
Article 17.2 (TIR Carnet – document)  
EN 0.17-2 (TIR Carnet – document)  
Comment to Article 17 (TIR Carnet – document)  
Article 18 (TIR Carnet – document)  
EN 0.18-2 (box 12 of TIR Carnet – document)  
Comments to Article 18 (TIR Carnet – document)  
Article 19 (TIR Carnet – document)  
Comment to Article 19 (TIR Carnet – document)  
Article 21 (TIR Carnet – document)  
EN 0.21-3 (TIR Carnet – document)  
Comment to Article 23 (TIR Carnet – document)  
Article 24 (TIR Carnet – document)  
Article 25 (TIR Carnet, certified report – document)  
Article 26.1 and 2 (TIR Carnet – document and procedure)  
Article 28.1 (TIR Carnet – document)  
EN to Article 28 (TIR Carnet – document)  
Comments to Article 28 (TIR Carnet – document)  
Comment to Article 29 (TIR Carnet – document)  
Article 31 (TIR Carnet – document)  
Article 32 (TIR Carnet – document)  
Article 33 (TIR Carnet – document)  
Article 34 (TIR Carnet – document)  
Article 35 (TIR Carnet – document)  
Article 39.2 (TIR Carnet – document)  
Article 41 (TIR Carnet – document)  
Comment to Article 42 (non-discharge of TIR Carnet – procedure)  
Article 42bis (TIR Carnet – document and procedure)  
Article 44 (b) (TIR Carnet – document)  
Article 54 (TIR Carnet – document)

Annex 1 (TIR Carnet – document)

Annex 3, Article 5, 6, 17, 19, 20, 21 (TIR Carnet – document and procedure)

Model certificate (page 171) (TIR Carnet – document)

Annex 8, Article 10 (b) (TIR Carnet – document)

E.N. 8.10 (b) (TIR Carnet – document)

Annex 8, Article 10 (g) (issuance of TIR Carnets) – document)

Annex 8, Article 13 (levy on TIR Carnet – document)

Annex 9 Part I (issuance of TIR Carnets – document)

Annex 9, Part I, Article 1 (issuance of TIR Carnets – document)

Annex 9, Part I, Article 3 (ii) (TIR Carnet – document)

Annex 9, Part I, Article 3 (v) (TIR Carnet – document)

Annex 9, Part I, Article 3 (vi) (TIR Carnet – document)

Annex 9, Part I, Article 3 (viii) (TIR Carnet – procedure)

Annex 9, Part I, Article 5 (issuance of TIR Carnets/revocation – document)

Annex 9, Part II, Article 4 (TIR Carnet – procedure)

Annex 9, Part II, Article 6 (TIR Carnet – procedure)

Annex 9, Part II, 7 (TIR Carnet – procedure)

Comments to Part II (TIR Carnet – procedure)

Annex 9, Part III (organization and functioning of an international guarantee system and to print and distribute TIR Carnets – document and procedure)

Annex 9, Part III, Article 1 (print and distribute TIR Carnets – document)

Annex 9, Part III, Article 2 (b) (TIR Carnet – procedure)

Annex 9, Part III, Article 2 (e) (TIR Carnet – document)

Annex 9, Part III, Article 2 (f) (TIR Carnet – document)

Annex 9, Part III, Article 2 (g) (TIR Carnet – document)

Annex 9, Part III, Article 2 (h) (TIR Carnet – document)

Annex 9, Part III, Article 2 (l) (TIR Carnet – document and procedure)

Annex 10, Article 1 (TIR Carnet document and procedure)

### **Indirect reference to the TIR procedure**

Article 1 (c) (discharge of a TIR operation)

Article 1 (k) (customs office of departure)

Article 1 (l) (customs office of destination)

Article 1 (m) (customs office en route)

(Article 1 (q) (guaranteeing association))

(Article 1 (r) (international organization))

Article 10 (discharge)

Article 11.1 (certificate of termination)

Article 11.3 (certificate of termination)

(Article 15 (temporary importation))

Article 22 (customs seals)

Article 27 (substitution of customs office of destination)

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