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Working Party on Customs Questions affecting Transport

Report of the Working Party on Customs Questions affecting Transport on its 124th session (2–5 February 2010)

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I. Attendance

1. The Working Party held its 124th session from 2 to 5 February 2010 in Geneva. The session was attended by representatives of the following countries: Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iran (Islamic Republic of), Italy, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Netherlands, Norway, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Syrian Arab Republic, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey and Ukraine. Representatives of the European Union (EU) were also present. The following intergovernmental organizations were represented: Intergovernmental Organization for International Carriage by Rail (OTIF), the Organization for Cooperation between Railways (OSJD) and the World Customs Organization (WCO). The following non-governmental organizations were represented: the International Road Transport Union (IRU) and the International Touring Alliance and the International Automobile Federation (AIT/FIA).

II. Opening statement

2. In her opening statement, Ms. Eva Molnar, Director of the Transport Division of the United Nations Economic Commission for Europe (UNECE), informed the Working Party of a number of UNECE activities in the area of transport facilitation, including the forthcoming session of the Inland Transport Committee (23–25 February 2010), the outcome of the Inland Transport Security Forum (28–29 January 2010) and the preparation of the OSCE-UNECE Handbook on best practices at border crossings. She also highlighted priorities in the WP.30 work, such as monitoring the implementation of the Harmonization Convention, finalizing a draft new Annex on rail border crossing to the Harmonization Convention and a new part III of Annex 9 to the TIR Convention with regard to the authorization of an international organization as well as speeding up the development of the eTIR project. According to Ms. E. Molnar, in 2010 the major challenges for the Working Party will be to ensure a smooth implementation of the UNECE facilitation instruments in the newly-established Customs Union of Belarus, Kazakhstan and the Russian Federation and to follow-up on the rejected amendment to the TIR Convention concerning the maximum TIR guarantee level.

III. Adoption of the Agenda (Agenda item 1)

Documentation: ECE/TRANS/WP.30/247

3. The Working Party adopted the provisional agenda, prepared by the secretariat (ECE/TRANS/WP.30/247).

IV. Election of officers (Agenda item 2)

4. The Working Party re-elected Mr. Guus Jacobs (the Netherlands) as Chair for its sessions in 2010. The delegations were also encouraged to consider the nomination of candidates for the post of Vice-Chair.

V. Activities of UNECE bodies and other United Nations organizations of interest to the Working Party (Agenda item 3)

Documentation: ITC Informal Document No.12 (2009)

5. The Working Party was informed of the UNECE activities in the area of e-governance in transport, such as the digital tachograph, intelligent transport systems (ITS) and the additional protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) concerning the electronic consignment note (e-CMR). It also took note of initiatives aimed at establishing legal interoperability for rail transport at the Eurasian level, including a common liability regime. The Working Party welcomed a presentation of the activities of the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), including trade facilitation recommendations, electronic business standards and technical specifications. The Working Party noted with interest that many developing countries had started the implementation of the UN/CEFACT recommendation on Single Window Examples of single windows in various countries can be found in a repository under: http://www.unece.org/cefact/single_window/welcome.htm. Finally, the secretariat was requested to keep the Working Party informed of further developments in the above areas.

VI. Activities of other organizations and countries of interest to the Working Party (Agenda item 4)

Documentation: ECE/TRANS/WP.30/2010/1

6. The Working Party was informed of the recent activities by WCO concerning the Framework of Standards to Secure and Facilitate Global Trade (SAFE), in particular, of a survey of its implementation which was conducted in August 2009. The survey demonstrated a strong level of commitment among the Customs administrations towards the introduction of SAFE. At the same time, the Customs authorities pursue this goal at their own pace, depending on the available resources and capacities. Regarding mutual recognition of the Authorized Economic Operators (AEO), seven bilateral arrangements had been finalized and ten others were under negotiation. The Working Party also noted that WCO had continued its constructive cooperation with the competent United States authorities on the 100% scanning issue and the Security Filing (10 + 2) rule.

7. The Working Party noted that WCO, in cooperation with IRU, had developed and posted on its website an e-learning module on the TIR procedure. IRU pointed out that 340 users, half from governmental authorities and half from national associations, had already registered for this course. It transpired, however, that neither competent TIR bodies nor UNECE secretariat had been given a serious opportunity to review and comment on this module before it had been published. The Working Party was of the view that the quality of the course would have benefited from the participation of TIR Customs experts. In this context, the Working Party welcomed the information that WCO had invited the TIRExB to review this course and proposed that its content could be amended in the future, if necessary.

8. The Working Party welcomed a study on the implications of SAFE for the TIR Convention (ECE/TRANS/WP.30/2010/1), conducted by the secretariat at the request of the Working Party. The Working Party noted that the TIR Convention already includes a number of elements which are compatible with the relevant SAFE standards. However, given the different scopes of the two legal instruments, a lot of elements from the SAFE Framework are not present in the TIR Convention. In particular, the following core elements of SAFE are missing: advance electronic information, risk management, outbound

security inspection and Customs-to-business partnership based on the AEO concept. According to the study, the incorporation of the “Advance electronic information” and “Risk management” elements can be achieved in the framework of the eTIR project, while the inclusion of “Outbound security inspections” may be done through an Explanatory Note or Comment to Article 47 on supply chain security or as a part of a new security Annex to TIR Convention. This Annex can also integrate other missing elements of the SAFE Framework. Regarding the AEO concept, all SAFE standards and programmes, including AEO, are voluntary. Therefore, applying for the AEO status within the TIR Convention should remain optional for transport operators, and the incorporation of the AEO security elements into the TIR Convention should not lead to discrimination between TIR Carnet holders with and without the AEO status. In other words, all facilities provided for in the TIR Convention have to be offered to authorized TIR Carnet holders irrespective of their AEO status. This principle may lead to difficulties when Contracting Parties define the security benefits for the owners of the AEO status, as these benefits would go beyond the scope of the TIR Convention.

9. Some delegations felt that it would be premature to amend the TIR Convention before SAFE had been widely implemented at the national level. Given the complexity of the issues at stake and the availability of the underlying document in English only, the Working Party decided to continue its discussions on the subject at its next session. Meanwhile, the secretariat was requested to do its utmost to have the document translated, in spite of its length.

10. The Working Party noted an IRU resolution on business-to-Customs IT communication and data protocols (Informal document No. 2 (2010)) which calls on the competent governmental bodies to ensure the appropriate standardization and harmonization of the above communication and its data protocols, also in the framework of the TIR procedure. According to IRU, the adoption of this resolution was triggered by the problems experienced by road transport operators at the external borders of EU, following the introduction of the New Computerized Transit System (NCTS/TIR) and Economic Operators Registration and Identification (EORI) regulations on 1 January 2009 and 1 July 2009, respectively. In this regard, the EU representative considered that the eTIR project would solve the trader interface question of data formats through the Customs-to-Customs transmission of the TIR declaration and, as the proper way forward, called on IRU to stop delaying the eTIR project. A number of delegations were of the view that the language used in the IRU resolution did not seem to be appropriate.

VII. International Convention on the Harmonization of Frontier Controls of Goods, 1982 (“Harmonization Convention”) (Agenda item 5)

A. Status of the Convention

11. The Working Party noted that no new countries had acceded to the Harmonization Convention.

B. Annex 8 on road transport

Documentation: ECE/TRANS/WP.30/2009/8

12. The Working Party was informed of the status of replies to the survey concerning the implementation of Annex 8 at the national level and encouraged all Contracting Parties, which had not yet answered, to do so as soon as possible.

13. The Working Party invited delegations to comment on the draft chapter on border crossing performance measurement, which would be included into the OSCE-UNECE Handbook on best practices at border crossings (ECE/TRANS/WP.30/246, para. 16), as well as to participate in an informal meeting in March-April 2010 to consolidate the comments received and submit them to OSCE.

C. Preparation of a new Annex on rail border crossing

Documentation: ECE/TRANS/WP.30/2009/2/Rev.2

14. The Working Party approved the revised text of a new Annex 9 to the Harmonization Convention, as contained in document ECE/TRANS/WP.30/2009/2/Rev.2, subject to the deletion of the footnote in Article 8.1, and decided to transmit it to the Administrative Committee for the Harmonization Convention (AC.3) for adoption. The secretariat was mandated to convene an AC.3 session on 27 May 2010, in conjunction with the next WP.30 meeting.

VIII. International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage Carried by Rail, of 10 January 1952 (Agenda item 6)

Documentation: ECE/TRANS/WP.30/2008/7; ECE/TRANS/WP.30/2007/12/Rev.1; ECE/TRANS/WP.30/2007/12; WP.30 Informal document No. 2 (2008)

15. Having recalled its earlier considerations (ECE/TRANS/WP.30/246, para. 18), the Working Party noted that the secretariat, in close liaison with the United Nations Treaty Section, had considered that the introduction of a standard amendment clause in the 1952 Convention could be done by means of an additional protocol which must be signed by all Contracting Parties to the Convention. The secretariat would prepare a draft proposal for the next WP.30 session.

IX. Rail transit (Agenda item 7)

16. The Working Party noted that no new countries had acceded to the Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of Agreement on International Goods Transport by Rail (SMGS) Consignment Note. In this respect, the representative of the Russian Federation informed of continued internal approval procedures.

X. Customs Conventions on the Temporary Importation of Private Road Vehicles (1954) and Commercial Road Vehicles (1956) (Agenda item 8)

Documentation: ECE/TRANS/107; ECE/TRANS/107/Rev.1; ECE/TRANS/108

A. Status of the Conventions

17. The Working Party took note that the Customs Conventions on the Temporary Importation of Private (1954) and Commercial (1956) Road Vehicles had, respectively, 80 and 41 Contracting Parties.

B. Application of the Conventions

Documentation: ECE/TRANS/WP.30/2009/3

18. The Working Party noted that the comments and best practices to assist in the proper application of the 1954 Convention, which had been approved by the Working Party (ECE/TRANS/WP.30/2009/3), had been published by AIT/FIA in the Carnet de Passage Handbook.

XI. Other UNECE legal instruments for border crossing facilitation (Agenda item 9)

Documentation: ECE/TRANS/WP.30/2010/2

19. The Working Party took note of document ECE/TRANS/WP.30/2010/2 prepared by the secretariat, containing an overview of some UNECE conventions on border crossing facilitation, in order to assess their coherence with other international or regional treaties and to keep them in line with modern transport and border control requirements. Delegations were invited to study this document with a view to identifying which agreements would require specific attention of WP.30 in the future.

XII. Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975) (Agenda item 10)

Documentation: ECE/TRANS/17 and Amends.1-28; 2007 TIR Handbook¹

A. Status of the Convention

20. The Working Party welcomed the information that the Foreign Trade Chamber of Bosnia and Herzegovina, Association of International Road Hauliers (AIRH) had been designated issuing and guaranteeing body for TIR Carnets in Bosnia and Herzegovina and had started issuing and guaranteeing TIR Carnets as of 1 January 2010. As a result, Bosnia and Herzegovina should be considered a country with which a TIR transit operation can be established as of that date.

21. The Working Party noted that more than five States which are Parties to the TIR Convention, 1975 (Armenia, Georgia, Iran (Islamic Republic of), Kyrgyzstan, Syrian Arab Republic, Tajikistan, Turkey and the former Yugoslav Republic of Macedonia) had notified their objection to the proposed amendment to Annex 6, Explanatory Note 0.8.3 concerning

¹ <<http://tir.unece.org>>.

the maximum guarantee amount per TIR Carnet (Depository Notification C.N.722.2009.TREATIES-10 (reissued) of 13 November 2009). Consequently, in accordance with the provisions of Article 59, paragraph 4 of the Convention, the amendment is deemed not to have been accepted and has no effect.

B. Revision of the Convention

1. Preparation of Phase III of the TIR revision process

Use of new technologies

22. The Working Party was informed of the latest developments in the area of the eTIR project and the work of the Informal Ad hoc Expert Group on Conceptual and Technical aspects of Computerization of the TIR Procedure (GE.1). It also welcomed the organization of the seventeenth session of the GE.1, which will take place in Helsinki on 8-9 March 2010, at the kind invitation of the Finnish Customs authorities. The Working Party took note that the meeting would not only focus on Chapters 3 and 4 of the Reference Model of the TIR procedure, but would also consider the latest national and international developments in the field of Information Communication Technologies (ICT) and their possible impact on the eTIR project, in particular with regard to national and international tools to facilitate the electronic submission of declarations. Furthermore, the Working Party supported the secretariat's call to all Contracting Parties to participate in the work of GE.1 as well as the proposal to organize activities of the GE.1 at long distance by means of a network of focal points for eTIR, which should also include representatives from Contracting Parties who are not able to attend the GE.1 sessions.

23. The representative of the national association of Norway clarified his intervention at the previous session (ECE/TRANS/WP.30/246, para. 27) and stated that the computerization of the TIR procedure could be achieved much faster, if a true public-private partnership was established and the already existing IT systems were interconnected. He recalled various successful IT projects that had been developed by the Customs authorities, private sector or both, like SafeTIR Real Time and TIR-EPD which had been a result of constructive public-private partnership. To save time and resources, he called upon both sides to identify which eTIR objectives and requirements could be achieved through the already computerized elements of the TIR procedure. This would reduce the complexity of the eTIR project and speed up its development. This goal, however, can only be achieved in the atmosphere of mutual responsibility and respect.

2. Amendment proposals for the Convention

Documentation: ECE/TRANS/WP.30/2010/3; ECE/TRANS/WP.30/2010/4

24. The Working Party considered document ECE/TRANS/WP.30/2010/3, containing the text of amendment proposals to Annex 9, Part I in the appropriate legal format. The Working Party adopted the document, subject to the following minor changes in the Annex: at the end of new paragraph 1 (d), delete "of this Article"; and amend new paragraph 3 (ix) to read "comply strictly with the decisions of the competent authorities of the Contracting Party in which it is established concerning the revocation or withdrawal of the authorization in line with Article 6 of the Convention and Part II of this Annex or the exclusion of persons in line with Article 38 of the Convention."

25. The Working Party held its first deliberations on document ECE/TRANS/WP.30/2010/4, containing proposals for the introduction of a new Annex 9, Part III of the Convention on the authorization of an international organization to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets. The Working Party took

particular note of the audit provisions which had been introduced in the text in consultation with the competent United Nations services. Upon understanding that a final decision regarding the proposed amendments lies within the exclusive competence of the Contracting Parties, the Working Party did not see a need to request the secretariat to provide access to its internal correspondence leading up to the formulation of the audit clauses. The representative of IRU pointed out that the issues of financial responsibility and confidentiality should be addressed in the framework of applicable national law. He also noted that the new amendment proposals would provide for numerous audits of an international organization and might create difficulties in the functioning of the guarantee system. In reply to concerns expressed by the IRU, the secretariat informed that the purpose of the newly-introduced provisions was to ensure that the audit requirements encompass the full scope of the authorization granted by the Administrative Committee. The Working Party expressed its general support to the proposed text, but requested the secretariat to provide, at its next session, more details with regard to which persons other than the United Nations Office of Internal Oversight Services (OIOS) and the United Nations Board of Auditors (BOA) the international organization should allow access to its relevant records and accounts. The Working Party looked forward to the availability at the next session of the document in the three working languages in order to continue its discussions and, possibly, reach a final decision.

C. Application of the Convention

1. Control system for TIR Carnets - IRU SafeTIR

26. The Working Party was informed by IRU of the functioning of the IRU SafeTIR system. From 1 January to 31 December 2009, IRU had received 2,469,621 SafeTIR messages with an average transmission delay of 3 days. Sixty-six per cent of messages had been transmitted in real-time (within 24 hours). The Customs administrations of Belarus, Croatia, Czech Republic, Republic of Moldova, Russian Federation, Serbia, Slovakia and Slovenia transmitted data in real-time. In the same period, IRU had issued 8,686 reconciliation requests and had received replies to 6,054 (70 per cent) of them with an average delay of 37 days.

2. Settlement of claims for payment

27. The Working Party was informed by IRU of the present situation with regard to the settlement of claims for payments made by Customs authorities against national guaranteeing associations. From 1 January to 31 December 2009, IRU received 7,709 pre-notifications and 2,225 notifications (from all Contracting Parties) as well as 178 payment requests. The number of pending payment requests as of 31 December 2009 amounted to 6,778. In the same period, 126 payment requests had been paid and 59 had been settled without payment. The Working Party also invited Customs authorities to keep it informed of any problems that may arise in the settlement of claims.

3. Review of Annex 10 of the Convention

28. The Working Party noted that TIRExB had finalized a new example of best practice concerning the implementation of Annex 10 at the national level and submitted it to the TIR Administrative Committee for consideration (ECE/TRANS/WP.30/AC.2/2010/6).

4. TIR Handbook

Documentation: 2007 TIR Handbook²

29. The Working Party was informed that the 2010 version of the TIR Handbook had been finalized and published on the TIR website in English, French and Russian. Hard copies would also soon be available. The Arabic, Chinese and Spanish language versions of the 2010 Handbook were under preparation.

5. TIR Carnets invalidated by the guarantee chain

Documentation: ECE/TRANS/WP.30/2010/5

30. The Working Party welcomed a detailed presentation by IRU and Informal document No.1 (2010) on the current practice of invalidation of TIR Carnets by the guarantee chain. In particular, the Working Party was informed of the differences between various categories of invalidated TIR Carnets, the strict reporting procedures that IRU had put in place, as well as different technical solutions used for the transmission of relevant data to Customs authorities. Following an in-depth discussion on various practical situations which might occur in the course of invalidation, the Working Party noted that, in spite of all above efforts, the invalidation procedure required human intervention at various instances and, therefore, was subject to delays in the distribution of information. This might lead to disputes between the Customs and guarantee chain on the validity of TIR Carnets at different stages of the invalidation process, as considered by TIRExB on several occasions (ECE/TRANS/WP.30/2010/5). In particular, the Board pointed out that any dispute concerning the guarantee/legal status of an invalidated TIR Carnet would have to be solved on a case-by-case basis in line with national laws and regulations and that the ultimate solution to this problem would only be achieved in a fully computerized environment, for example, in the framework of the eTIR project.

31. The Working Party invited the delegations to examine whether, under the present paper-based system, the Convention could be amended with a view to providing common guidance on the validity of TIR Carnets under specific circumstances. The Working Party also noted that the initiative to invalidate a TIR Carnet always belonged to the issuing association. For example, the issuing association by its own decision can suspend the issuance of TIR Carnets to a holder and initiate the process of invalidating the TIR Carnets that he has in his possession. In particular, this can be done if the association has intelligence that the holder intends to commit fraud under cover of a TIR Carnet. The Working Party was of the view that this practice should further be evaluated by TIRExB, in line with its mandate, and invited IRU to submit to TIRExB all necessary information.

6. Application of the TIR Convention in a Customs union with a single Customs territory

Documentation: ECE/TRANS/WP.30/2010/6

32. The Working Party was informed of the developments in the Customs union between Belarus, Kazakhstan and the Russian Federation, including the adoption of a common Customs Code of the Customs Union and its entry into force on 1 July 2010. In this context, the Working Party welcomed ECE/TRANS/WP.30/2010/6, prepared by the secretariat in cooperation with the European Commission, which highlighted key issues of the proper implementation of the TIR procedure within a single Customs territory. The Working Party stressed that the member States of a Customs union were free to apply

² <<http://tir.unece.org>>.

various solutions, but should ensure the smooth functioning of the TIR procedure in the Customs union, so that its establishment would lead to further facilitation rather than to new barriers for international transport and trade. In this context, the Working Party invited the three countries in question to provide, at the next session, detailed information on the functioning of the TIR procedure in the new Customs union.

7. Application of the TIR Convention in the Russian Federation

33. Following the invitation at the previous WP.30 session, the Russian delegation provided information on the application of Customs escorts and pointed out that the Russian Customs authorities apply the provisions of Article 23 of the TIR Convention in line with the comment approved by the TIR Administrative Committee, on the basis of analysis of the risk of TIR infringements that might be committed by a transport operator. The Russian delegation suggested that the Working Party, rather than drawing final conclusions on this matter, should refer it to TIRExB for consideration of complaints by transport operators on a case-by-case basis. In this context, the Working Party noted that the same explanations from the Russian Customs had already been considered by TIRExB at its session on 1 February 2010. The available correspondence had revealed that the Russian Customs authorities seem to impose escorts in all cases when the amount of import duties and taxes at risk exceeds the TIR guarantee level of EUR 60,000 and without taking into account the limited capacities of border Customs offices to organize such escorts. As a result, transport operators experience long border delays while waiting for escort to be organized and, in this way, are de-facto forced to change from TIR to the national transit procedure and to cover the costs of required national guarantees. The Working Party felt that these measures were against the spirit and text of the TIR Convention, in particular Article 23 and the comment thereto on the application of risk assessment, and mandated the secretariat to convey this opinion to the competent Russian authorities. The Working Party invited TIRExB to keep it informed of further developments. It also questioned a recommendation of the Russian Customs authorities to load road vehicles in such a way that the Customs duties and taxes would not exceed the guarantee level.

8. Other matters

34. The Working Party was informed by IRU of the increasing application of the TIR-EPD system which had been used for 19,540 transports in the last six months. At present, this tool is available in eight EU member States and will be extended to several other countries.

XIII. Prevention of the abuse of Customs Transit Systems by smugglers (Agenda item 11)

35. The Working Party noted that the Croatian Customs authorities had recently submitted three new fraud report forms (FRF) which were published under the restricted section of the TIR website. The Working Party congratulated the Croatian authorities with their successful interventions and expressed its thanks for making the fraud reports available.

XIV. Programme of Work for 2010 to 2014 (Agenda item 12)

Documentation: ECE/TRANS/WP.30/2010/7

36. The Working Party adopted its Programme of Work for 2010 to 2014 (ECE/TRANS/WP.30/2010/4), subject to minor modifications in the priorities, and decided that, in the future, the Programme of Work should be reviewed every two years.

XV. Other business (Agenda item 13)

A. Dates of the next sessions

37. The Working Party decided to hold its 125th session in the week of 25 – 28 May 2010 and the 126th session in the week of 27 September – 1 October 2010.

B. Restriction on the distribution of documents

38. The Working Party decided that there were no restrictions with respect to the distribution of documents issued in connection with its current session.

XVI. Adoption of the report (Agenda item 14)

39. The Working Party adopted the report on its 124th session on the basis of a draft prepared by the secretariat.
