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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision Process

REPORT OF THE FIFTH SESSION
(10 and 11 November 2005)

ATTENDANCE

1. The Ad hoc Expert Group held its fifth session on 10 and 11 November 2005 in Geneva.
2. The session was attended by experts from the following Contracting Parties: Finland; Germany; Hungary; the Netherlands; Russian Federation and the European Community (EC). Representatives of the International Road Transport Union (IRU) also participated.

ADOPTION OF THE AGENDA

Documentation: [TRANS/WP.30/GE.2/2005/4](#) and [Corr.1](#).

3. The Ad hoc Expert Group adopted the provisional agenda, prepared by the secretariat, in line with the request from the Working Party at its one-hundred-and-eleventh session ([TRANS/WP.30/222](#), para. 45).

BACKGROUND AND MANDATE

Documentation: [TRANS/WP.30/222](#); [TRANS/WP.30.AC.2/79](#);
[TRANS/WP.30/GE.2/2005/3](#); Informal document No. 5 (2005).

4. The Ad hoc Export Group took note of the mandate and instructions provided by the Working Party at its one-hundred-and-eleventh session ([TRANS/WP.30/222](#), paras. 45).

5. The Ad hoc Expert Group took note of Informal document No. 5 (2005) transmitted by the Government of the Russian Federation, addressing their concerns about the state of play of Phase III of the TIR revision process. These concerns relate, in particular, to the fact that a number of submitted proposals seem to aim at merely improving the text of certain provisions, whereas their application, so far, has not encountered serious problems and the fact that some proposals lead to decreasing and ‘fading out’ of the responsibilities of the guarantee chain, instead of strengthening it (Informal document No. 5 (2005), paras. 4 and 5).

6. With regard to the proposal to amend Article 6.2**bis**, as adopted by the Ad hoc Expert Group at its fourth session ([TRANS/WP.30/GE.2/2005/3](#), para. 7), the Ad hoc Expert Group decided that, because the proposal contained a reference to the yet to be discussed new Annex 9, Part III, it should only be transmitted to the TIR Administrative Committee once the Ad hoc Expert Group had finalized the whole package of proposals.

CONSIDERATION OF AMENDMENT PROPOSALS OF A STRATEGIC NATURE

Documentation: [TRANS/WP.30/GE.2/2005/9](#); [TRANS/WP.30/GE.2/2005/8](#);
[TRANS/WP.30/GE.2/2005/7](#); [TRANS/WP.30/GE.2/2005/6](#); [TRANS/WP.30/GE.2005/5](#);
[TRANS/WP.30/GE.2/2005/4](#); [TRANS/WP.30/GE.2/2005/3](#); [TRANS/WP.30/GE.2/2005/2](#);
[TRANS/WP.30/2005/19](#); Informal documents No. 3, 4 and 5 (2005).

7. The Ad hoc Expert Group decided to consider the various documents, containing proposals to amend the text of the TIR Convention, as compared to either its current wording or the proposals submitted by the Government of the Netherlands ([TRANS/WP.30/GE.2/2005/2](#)), on the basis of [Informal document No. 4 \(2005\)](#), prepared by the secretariat, providing a comparative overview of all submitted proposals. All finalized proposals are contained in the annex to this document.

Article 8.1.

8. Being unable to reach a consensus decision, the Ad hoc Expert Group decided to propose to the Working Party to consider the word “established” as an alternative to the word “noted”, because, according to the European Commission, the word “establish” better reflects the idea that the irregularity mentioned in the Article should be based on a formal decision by the competent authorities. The Russian delegation, however, had pointed out that such a change in wording would impact the legal requirements and, therefore, proposed that both words be put in square brackets.

Article 8.2.

9. In view of ongoing Court cases in Germany, the Ad hoc Expert Group decided to transmit the proposal to delete Article 8.2 and the Explanatory Notes thereto, for the time being, in square brackets to the Working Party.

Article 8.3.

10. The Ad hoc Expert Group decided not to propose any changes to the text of Article 8.3., apart from a possible alignment proposal, in case it would be decided to delete Article 8.2. With regard to the various proposals to amend Explanatory Note 0.8.3. with the aim that it would no longer contain references to the T/A TIR Carnet, the Ad hoc Expert Group decided to propose to the Working Party to adopt the text proposal by the European Commission, including the proposal to convert the comment to Article 3 into a new Explanatory Note 0.8.3-2.

Article 8.4-Article 8.6.

11. Apart from alignment, no changes are proposed.

Article 8.7.

12. The Ad hoc Expert Group decided to propose to the Working Party to delete Article 8.7. and move it to Article 11, provided its full content would be reflected in the reworded Article 11.

Article 11.1.

13. The German delegation explained that its proposal to amend Article 11.1 was prompted by a difference of opinion with the IRU on the status of falsified certificates of termination. According to the IRU, the use of falsified certificates of termination did not lead to a situation in which the two-year deadline, stipulated by Article 11.1, second phrase could be invoked, whereas the German authorities were of the opinion that it was applicable, for the reason that the deadline of Article 11.1 first phrase did not apply.

14. In response to the proposals made by the German delegation, the Commission representatives noted that they questioned the interpretation of Article 1 (e), Article 10.2 and Article 11.1, which needed to be analyzed. The Ad hoc Expert Group agreed that the question of non-termination and non-discharge was a complex matter that required further work. The secretariat expressed some hesitation to prepare a document on the issue without the agreement of all parties that the secretariat would have the necessary flexibility to do so without being criticized for its efforts. Bearing this in mind, the Chairman informed the meeting that, in order to make progress on this matter, a group comprising the Dutch, Finnish and German delegations would analyze the matter in further detail and revert to the group with their findings.

15. The Commission representatives asked why the Commission had been excluded from this group given the Commission's competence in the area and the fact that the Commission is a main partner in the reform process. The Chairman rejected the arguments raised by the representatives of the European Commission responding to the effect that the EU internal procedures were not an issue for discussion in this forum. The Chairman then proposed to stop any further discussion of the matter. In response, the Commission representatives announced that, pending further instructions, they would enter a general reservation on all the issues discussed by the Ad hoc Expert Group. Moreover, the Commission representative said that the Commission's proposals contained in document [TRANS/WP.30/GE.2/2005/8](#) were global, comprehensive and took into account all the other proposals and that the Commission continued to support its proposals. The Commission said that it, unfortunately, could no longer take part in the discussion of the Ad hoc Expert Group adding that, if the meeting did not result in a common position on the proposals, this was not the fault of the Commission representatives.

16. Therefore, with regard to the remainder of this report, the opinion of the Ad hoc Expert Group does not include the opinions of the Commission representatives.

Article 11.2.

17. The Ad hoc Expert Group discussed the issue, raised by the German authorities, as to what would be the legal consequences of the fact that competent authorities had submitted a claim for payment to the national association before the expiry of the three month deadline stipulated by Article 11.2. without reaching a consensus. However, the Ad hoc Expert Group agreed that, in case of untimely submission, Customs did not forfeit their right to claim, but that such claim needed to be repeated after the expiry of the three-month period in order to become valid.

18. The Ad hoc Expert Group also discussed a further issue, submitted by the German authorities within the context of Article 11.2, related to the fact that, due to the fact that it only refers to ‘decision of the court’, the provision is also applicable in case the issue is decided in an administrative legal ruling but could not reach consensus. The IRU informed the Ad hoc Expert Group that it could not agree with an interpretation or amendment of the provision which would provide an administrative legal ruling with the same impact as a court decision.

Article 11.3.

19. The Russian Federation introduced, once more, its proposal to amend Article 11.3 to include a reference to the role performed by the international organization in advising the national guaranteeing association whether or not to oppose a claim for payment. It pointed out that the TIR Convention already now contains references to issues of a private-law nature, like in Article 6.2., Annex 8, Article 10 (e), Annex 9, Part I, Article 1 (f) (v) and Annex 9, Part II, Article 1 (e). The Ad hoc Expert Group decided to take over the Russian proposal to amend Article 11.3 and the Explanatory Note thereto for discussion and, possibly, adoption by the Working Party. However, at the request of several delegations, the Ad hoc Expert Group decided to put the word ‘legal’ in the last phrase of the proposal in brackets, because it did not seem necessary in all countries for Customs to start proceedings of a legal nature, once it had been decided not to take into account the opposition by the national guaranteeing association to the claim for payment.

Annex 9, Part I.

20. Because the Ad hoc Expert Group had decided to recommend to the Working Party the proposal by the Russian Federation to amend Article 11.3. the proposal to amend Annex 9, Part I had become redundant and was, therefore, withdrawn.

Annex 9, Part II.

21. In view of the decision by the European Commission not to intervene in the discussion of the Ad hoc Expert Group and in the absence of interventions by the other delegations, the Chairman decided not to discuss this and further proposals and closed the session.

OTHER MATTERS

22. The Ad hoc Expert Group did not discuss any other matter of interest, nor did it take any decision with regard to possible dates of further meetings.

Annex

Article 8

1. The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the Customs laws and regulations of the country in which an irregularity has been [noted] [established] in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

[2. Delete].

Explanatory Notes to Article 8, para. 3

0.8.3-1 Explanatory Notes to 0.8.3-1 Customs authorities are recommended to limit to a sum equal to US\$ 50,000 per TIR Carnet the maximum amount which may be claimed from the guaranteeing association.

Transport operations involving the following types of goods cannot be transported under cover of TIR Carnet, given the extraordinarily high risk of fraud associated with these goods:

- (1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher (HS code: 22.07.10);
- (2) Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages (HS code 22.08);
- (3) Cigars, cheroots and cigarillos, containing tobacco (HS code 24.02.10);
- (4) Cigarettes containing tobacco (HS code: 24.02.20);
- (5) Smoking tobacco, whether or not containing tobacco substitutes in any proportion (HS code: 24.03.10).

0.8.3-2 In accordance with Article 4 of the Convention, the payment or security of import or export duties and taxes shall be suspended as long as the goods are carried under the TIR procedure, even if the duties and taxes at risk exceed the amount of US\$ 50,000 or a similar sum fixed by the national Customs authorities. In such cases, Customs authorities in transit countries could, however, in conformity with Article 23 of the

Convention, require road vehicles to be escorted at the carriers' expense on the territory of their country.

7. Delete

Article 11

3. The guaranteeing association without delay informs the international organization referred to in Article 6, paragraph 2bis of the reception of a claim for payment. The international organization shall have a period of one month to inform the guaranteeing association of its position concerning the claim for payment. The guaranteeing association shall have a period of three months, from the date when the claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. If the competent authorities consider the reasons of the opposition as ungrounded, they have the right to start [legal] proceedings against the guaranteeing association according to national legislation.

Explanatory Note to Article 11, paragraph 3

0.11-3 If a guaranteeing association, in accordance with the procedure set out in Article 11, is asked to pay the sums referred to in Article 8, paragraphs 1 [and 2], and fails to do so within the period of three months prescribed by the Convention and the competent authorities do not receive a motivated opposition to the claim for payment, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under the national law.
