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

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the International Road Transport Union (IRU)

1. The Working Party at its last session invited the IRU to provide its estimates of impacts due to the increase in the level of guarantee as proposed by the government of Belarus in document ECE/TRANS/WP.30/2007/19 (ECE/TRANS/WP.30/234 paragraphs 26 - 27).
2. In the meantime, the Ministry of Transport of the Russian Federation has also issued an Informal document WP.30 No. 4 (2008) supporting document ECE/TRANS/WP.30/2007/19. The IRU consequently also takes into account this Informal document WP.30 No. 4 (2008) in the following paragraphs.
3. Although it has already been stated on many occasions, it seems necessary to recall that the European Union's decision to express the maximum amount in Euro rather than US dollars was not taken with the intention to increase the guarantee level for TIR operations on the EU territory, but only to use the Euro currency as a reference on EU territory. Indeed an analysis of the historic rates of exchange show that when, in early 2002, the EU member states decided to express the maximum amount as EURO 60,000 that amount equated to some USD 50,000. The fact that EURO 60,000 currently equates to almost USD 90,000 is the unforeseen and unexpected result of the US currency depreciation versus the Euro.
4. The document ECE/TRANS/WP.30/2007/19 also justifies the proposed amendment on the grounds that the "increase would reflect the overall development of international trade in that cargoes carried are becoming more valuable". If the Belarus government is suggesting that the rates of *ad valorem* duties and taxes have increased, the IRU doubts that is the case; indeed the IRU believes the contrary is the case in that import duty rates have been reduced.
5. The IRU assumes that the reference to the value of these cargoes in document

ECE/TRANS/WP.30/2007/19 is actually taken to imply that the duties and taxes potentially due on the goods have increased to the point where they exceed USD 50,000. Such argument is also raised in Informal document WP.30 No. 4 (2008), based on an “analysis carried on foreign trade transportations in Russia”. Moreover the latter document, in its paragraph 7, clearly links the implementation of article 23 of the TIR Convention with the fact that the average sum of customs duty has increased due to the growth of the commercial batch average cost.

6. The IRU has issued document ECE/TRANS/WP.30/2008/6, which aims at illustrating the artificial linkage that is made between escorts as mentioned in Article 23 of the TIR Convention and the recommended guarantee level. The document ECE/TRANS/WP.30/2007/19 and Informal document WP.30 No. 4 (2008) seem to suggest that when the duties and taxes are above the guarantee limit, there is a risk while *a contrario*, when the amounts are below the guarantee limit, there would be no risk because there is a guarantor covering the full amount. The IRU is worried that such an arbitrary interpretation would lead to suggest that the usual and recognized nature of the TIR guarantee could be transformed in such a way that the guarantee chain would become a kind of “Super Customs Debtor”, thus setting aside the requirements of Customs legislations of Contracting Parties and of current Article 8.7 of the TIR Convention.

7. Therefore, in order to avoid any ambiguity in the next coming discussion and to allow a proper assessment of the issue, it appears indispensable to clarify the background and objectives of this request for a change in the recommended guarantee level.

8. In particular, it is necessary to bear in mind that any sustainable and reliable guarantee system is dependent on its exposure to risk. This implies that the guarantors can only engage themselves if the risks covered are measurable, and if effective Risk Management procedures are implemented at all levels. The provision of an “effective guarantee system”, as referred to in article 6.2-bis of the TIR Convention quoted in Informal document WP.30 No. 4 (2008) also implies the capacity for the international organisation to correctly measure and monitor the risks covered. Such measurement and monitoring of the risk exposure must be done in connection with the implementation of Risk Management and Risk Assessment procedures. In other words, the ability to provide guarantee is dependent on the level of legal certainty and security, itself dependent on Risk Management procedures. Moreover, it is an imperative necessity for the guarantor to be informed immediately of any alleged irregularity that might lead to potential financial consequences.

9. It has been demonstrated in the past with the devastating experiences of Tobacco and later Tobacco/Alcohol carnets, that without strong control measures at all levels, to assure security for all involved, fraudulent activities are encouraged.

10. The guarantors are unable to undertake such risks. This has also demonstrated that such an important issue is never solved by an even enormous increase of the costs of the guarantee provided, but only by effective Risk Management procedures which allow to minimize the cost impact.

11. The IRU understands the concerns expressed by some Contracting Parties on this sensitive issue. However, in order to allow an appropriate and non ambiguous discussion, it appears indispensable to reaffirm some key basic principles which should be supported by Contracting Parties, in particular:

- There cannot be sustainable and reliable guarantee system without implementation at all levels of Risk Management and Risk Assessment procedures to monitor and measure the exposure to risks.
- The guarantee chain must be informed immediately of any potential irregularity that might have financial consequences.
- In that sense, in line with Annex 10 of the TIR Convention, real time transmission of SafeTIR data must be ensured.
- The nature of the TIR guarantee must be confirmed as being limited to a maximum amount.
- The protection of Customs revenues is fully guaranteed without any limitation through the Customs legislations of the Contracting Parties and the current Art. 8.7 of the TIR Convention which gives to Customs authorities full and unlimited rights towards the direct liable person or persons to obtain payment of evaded taxes and duties.
- Customs authorities should not be influenced in their actions by the fact that they dispose of a guarantee, but must carry on their duties with due diligence in applying Risk Assessment methods, possibly as recommended by the WCO.
- Escorts must only be imposed on exceptional basis, and not on the only criteria of the amount of the guarantee limit.
- To allow appropriate and well founded assessment of the need to increase the current recommended guarantee limit, mutual and documented statistics must be made available.

12. Under the above-mentioned basis, when the respective constraints are acknowledged by all involved, a constructive impact assessment can be carried out.

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