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Working Party on Customs Questions
affecting Transport

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agenda item 7 (b) (i))

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

Revision of the Convention: Phase II of the TIR revision process

Adoption of amendment proposals under Phase II of the TIR revision process

Improper or fraudulent discharge of a TIR operation

Note by the UN/ECE secretariat

1. At its ninety-third session the Working Party on Customs Questions affecting Transport (WP.30) (18-22 October 1999) approved, in particular, the following wording for the amended Article 10 of the Convention and the explanatory note therein (TRANS/WP.30/186, para. 36):

Article 10

1. When the Customs authorities of a country **have discharged a TIR operation** they can no longer claim from the guaranteeing association payment of the sums mentioned in Article 8, paragraphs 1 and 2, unless the **certificate of termination** was obtained in an improper or fraudulent manner.

2. ...

Explanatory Note to Article 10

0.10 The **certificate of termination** shall be regarded as having been obtained in an improper or fraudulent manner when the TIR operation has been carried out by means of load compartments or containers adapted for fraudulent purposes, or when such malpractice as the use of false or inaccurate documents, the substitution of goods, tampering with Customs seals, etc., have been discovered, or when the certificate has been obtained by other illicit means.

2. At the same time some experts expressed their concern that the amended Article 10 of the Convention would not cover the cases of improper or fraudulent discharge of a TIR operation, if any (TRANS/WP.30/186, para. 39).

3. Indeed, the present text of the Convention contains the term “certificate of discharge obtained in an improper or fraudulent manner” instead of the newly proposed term “certificate of termination obtained in an improper or fraudulent manner”. This results from the basic decision taken earlier by the Working Party to distinguish between the termination of a TIR operation as the obligation of the TIR Carnet holder and the discharge of a TIR operation as the recognition by Customs authorities of the legality of a TIR operation. The latter should be established by the Customs authorities on the basis of a comparison of the data or information available at the Customs office of destination or exit (en route) and that available at the Customs office of departure or entry (en route).

4. The following situation may occur: The goods transported under the TIR procedure, the road vehicle and the TIR Carnet are not presented at the Customs office of destination or exit (en route), i.e. there is no termination at all and, in particular, no certificate of termination is obtained in an improper or fraudulent manner. Nevertheless, due to some reasons (see below), Customs authorities have discharged this operation. In other words, improper or fraudulent discharge has taken place. Should it be the case, new Article 10 would prevent Customs authorities from claiming payment from the guaranteeing association.

5. Improper or fraudulent discharge could be caused by such factors as:

- a mistake made by Customs officials during the discharge procedure, e.g. that of a PC operator (improper discharge);

- unauthorised access to the Customs telecommunications, computer network, ledgers, etc. (fraudulent discharge);

- deliberate illegal activity of Customs officials (fraudulent discharge).

6. All above circumstances could be attributed to relevant shortcomings in the performance of Customs authorities (lack of trained personnel, data protection and internal security). At the same time, a Customs infringement has been committed (non-termination of a TIR operation) which resulted in State revenue losses. Provided that new Article 10 was adopted, this possible damage to the State budget would not be covered by the TIR guarantee system.

7. As an alternative, the amended Article 10 could be modified in order to cover the cases of improper or fraudulent discharge. This approach, if approved, would require a few further modifications to be made in Article 11, paragraphs 1 and 2 where the wording "certificate of termination obtained in an improper or fraudulent manner" should be replaced by a new term.

8. The UN/ECE secretariat is of the view that the above speculations could be useful for the Working Party before it has taken a final decision on amendment proposals.
