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INLAND TRANSPORT COMMITTEE

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affecting Transport

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

Application of the Convention

Road vehicles considered as heavy or bulky goods

Transmitted by the Government of Estonia

Note: The secretariat reproduces below a communication transmitted by the Government of Estonia referring to document TRANS/WP.30/2001/10.

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1. Paragraph 1 of document TRANS/WP.30/2001/10 refers to the comment adopted by the TIR Administrative Committee at its twenty-ninth session to the newly proposed Article 3 of the Convention as contained in Annex 6 to TRANS/WP.30/AC.2/ 59. In order to avoid any misunderstanding, the Government of Estonia wishes to clarify the issues covered by this comment.

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2. The comment adopted by the Administrative Committee contains the following text: “ *If such vehicles are carrying normal goods in the load compartment or in containers, the vehicle or the containers must be previously approved under the conditions set forth in Chapter III (a) and the load compartment or the container have to be sealed. Also an additional Carnet has to be used for such transports. Appropriate inscriptions to this effect should be made in each of the TIR Carnets utilized.* ”

3. In paragraph 3 of document TRANS/WP.30/2001/10, Article 17, paragraph 1 of the Convention is quoted, which reads as follows: “*A single TIR Carnet shall be made out in respect of each road vehicle or container.*” Consequently, one TIR Carnet shall be made out in respect of one vehicle. The text continues: “*However, a single TIR Carnet may be made out in respect of combination of vehicles (coupled vehicles) or for several containers loaded either ...*” etc. This text has no relationship to the comment to the new Article 3 of the Convention.

4. Furthermore, Rule 4 of the Rules Regarding the Use of the TIR Carnet as contained in Annex 1 to the Convention prescribes: “*Number of carnet: Only one TIR Carnet need be required for a combination of vehicles (coupled vehicles) or for several containers loaded either on a single vehicle or on a combination of vehicle (see also rule 10 d) below.*” As a consequence, the two last sentences of the above comment in Annex 6 to document TRANS/WP.30/AC.2/59 concerning one vehicle transporting normal goods, are in legal contradiction with Article 17 of the Convention as well as with the obligatory rules in Annex 1 to the Convention (similarly as Article 12 of the Convention and the regulations in Annex 2 to the Convention are obligatory).

5. In accordance with Part II of Annex 9 to the Convention, each TIR Carnet holder has signed a written declaration of engagement, by which he accepts the rules in Annex 1 to the Convention (Rules on the inside cover of the TIR Carnet).

6. The view expressed in document TRANS/WP.30/2001/10 that these undersigned obligations are not obligatory, but optional for TIR Carnet holders, is a very dangerous legal mistake.

7. Consequently, as the case is treated concerning one vehicle, then the opinion expressed in paragraph 4 of document TRANS/WP.30/2001/10 is legally invalid (simply legally wrong) or has no relationship, legally speaking, with the text of the comment proposed in Annex 6 to document TRANS/WP.30/AC.2/59.

8. An attempt has been made in paragraphs 5, 6, 7 and 8 of document TRANS/WP.30/2001/10 to link the situation in question with the term “heavy and bulky goods”. Referring to Articles 30 and 32 of the Convention it is pointed out that a TIR Carnet shall bear the endorsement “heavy or bulky goods”. As it is correctly stated, the objective is to provide a clear distinction between normal goods to be transported under Customs seal and heavy or bulky goods, which may be transported by means of a non-sealed vehicle or container in accordance with Article 29 of the Convention.

9. As the treated case in the comment in Annex 6 to document TRANS/WP.30/AC.2/59 is formulated concerning one vehicle that has a Certificate of Approval and bears Customs seals (it is not subject to the special conditions set forth in Chapter III (c) of the Convention), the vehicle itself is treated in accordance with the Convention as normal goods.
10. The Administrative Committee is not authorized to require by means of a comment the submission of a fictitious document by the TIR Carnet holder. Consequently, the obligatory instruction in the comment proposed in Annex 6 to document TRANS/WP.30/AC.2/59 to use a fictitious second TIR Carnet is from a legal point of view inadmissible. It is well known that the use of such fictitious TIR Carnets could help organized crime and smugglers to use the so-called method “submission of documents step-by-step”, but such a practice should not be approved by Customs authorities.
11. As a consequence, document TRANS/WP.30/2001/10 does not contain any serious legal arguments for keeping the invalid text in the comment in Annex 6 to document TRANS/WP.30/AC.2/59. The text of the body of the Convention legally prevails over the text of a comment. Thus, the comment to Article 3 in Annex 6 to document TRANS/WP.30/AC.2/59 is legally invalid from the very beginning of issuing document TRANS/WP.30/AC.2/59.
12. In order to avoid a contradiction to Article 17, paragraph 1 of the Convention, the proposal is therefore to delete the two following sentences from the comment to Article 3 of the TIR Convention adopted by the TIR Administrative Committee at its twenty-ninth session: “Also an additional Carnet has to be used for such transports. Appropriate inscriptions to this effect should be made in each of TIR Carnets utilized.” (TRANS/WP.30/AC.2/59, paras. 61 and 62 and Annex 6).
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