



TIR EXECUTIVE BOARD (TIRExB)
COMMISSION DE CONTROLE TIR (TIRExB)
ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

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TIR Executive Board (TIRExB)

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Agenda item VIII (b)

Authorized consignors and consignees

Note by the secretariat

In this document, the secretariat reproduces previous discussions and conclusions with regard to the issue of authorized consignors and consignees by TIRExB and WP.30 (Annex I), together with a copy of the most relevant documents (TRANS/WP.20/2003/1 and TRANS/WP.30/2003/19) (Annex II).

Annex I

TIREXB/2002/15 (paras. 8–9) (17,18 and 21 October 2002)

8. The TIRExB welcomed Informal document No. 24 (2002) prepared by the TIR Secretary which had consolidated all papers produced by the TIRExB on the issue. Having introduced some changes into the document, in particular with regard to the basic approach by the TIRExB on the issue and the use of the term "authorized consignee" as explained in Informal document No. 1 (2002), the Board decided not to continue further deliberations on the subject and to submit Informal document No. 24 (2002) to the UNECE Working Party on Customs Questions affecting Transport (WP.30) for consideration.

9. The majority of the TIRExB expressed the view that the Authorized Consignee should not be permitted to sign and stamp the TIR Carnet. In this regard the TIRExB supported the option described under point (a) of paragraph 23 of Informal document No. 24 (2002). The IRU recalled its earlier reservations (see, for example, TIRExB/REP/2002/14/Rev.1, para.12) concerning the concept of authorised consignee in the TIR Convention and informed the TIRExB that this issue had been studied in detail by the IRU's Commission on Customs Matters which was of the view that it would be too premature to introduce such a facilitation within the TIR system.

TRANS/WP.30/206 (paras. 63–65) (4-7 February 2003)

63. The Working Party had a first exchange of views on the issue [on the basis of document TRANS/WP.30/2003/1]. Some delegates pointed out that the conclusion, drawn by the TIRExB, that the TIR Convention already at present provides for the use of the concept authorized consignee, thus making any amendment to the text of the Convention obsolete, should be taken as a guideline for any further consideration. Other delegates, however, raised a number of impediments of a legal and/or practical level, which would not allow the Working Party to endorse the TIRExB's conclusions.

64. The IRU informed the meeting that its internal considerations of the issue had led to the conclusion that it would be premature at this stage to envisage an amendment of the TIR Convention with a view to obtaining a more harmonized use of the concept.

65. Without entering into detail, the Working Party decided to continue its considerations at its next session, on the basis of a further document, to be prepared by the secretariat, which should in particular address the complications coinciding with the use of the concept within the context of the provisions of the TIR Convention and which should also address in more detail the implications for the other actors involved (transport operator, national association, international organization and the international insurer). The Working Party welcomed a proposal by France to give a presentation at the next session, outlining the experiences gained in a pilot survey, conducted by the French Customs administration, whereby certain consignees had been granted the authorization, under observation of Customs procedures and strict criteria, to receive goods under cover of a TIR Carnet directly at their premises.

ECE/TRANS/WP.30/208 (paras. 55–56) (17–20 June 2003)

55. The Working Party took note of a presentation by the representative of France on the French experiences gained in a pilot study providing consignees with the right to receive goods under the TIR procedure directly at their premises, the outlines of which were contained in working document TRANS/WP.30/2003/12, based on the opinion of the TIRExB that the TIR Convention at present, already, provides for the use of concept of

authorized consignee and that it was the competence of individual Contracting Parties to decide whether or not the facilitation could be applied and for which operators (TRANS/WP.30/2003/1, para. 34). The French Customs authorities outlined how they had developed a procedure by which, within the framework of the current text of the TIR Convention and in line with the existing provisions of Community and national law, it had been possible to grant certain consignees with the right to receive goods directly at their premises while at the same time, ensuring uninterrupted Customs controls at all times. In particular, the pilot study had addressed the question as to when the liability for the regularity of the TIR transport transfers from the TIR Carnet holder to the consignee.

56. The Working Party welcomed the presentation and the detailed explanation on a number of practical matters such as the breaking of seals by other people than Customs and the application of the concept in case of part loads. Although the pilot study had not answered all the outstanding questions, the Working Party felt that, in view of the fact that the concept of authorized consignee was already applied in a number of Contracting Parties, it should continue its discussion on the subject at its next meeting. It requested the secretariat to prepare a new document, aimed at merging the theoretical analysis, made by the TIRExB and contained in document TRANS/WP.30/2003/1, with the practical experience gained by France, contained in document TRANS/WP.30/2003/12. The IRU, however, expressed concern about the consequences for the effective organization and functioning of the international guarantee system according to Article 6.2 bis of the Convention should the concept of authorized consignee be introduced in the Convention.

ECE/TRANS/210 (paras. 45–47) (23–26 September 2003)

45. The Working Party discussed at length document TRANS/WP.30/2003/19, prepared by the secretariat, containing the main conclusions of the legal study undertaken by the TIRExB and the pilot held by the French authorities. Neither the legal study nor the pilot had found any pressing arguments indicating that the concept of authorized consignee could not be applied within the current text of the TIR Convention. However, outstanding issues remained, in particular how to recognize the recipient of the goods as being an authorized consignee and how to reconcile the activities undertaken by the authorized consignee upon reception of the goods with two comments of Article 28 of the Convention.

46. The Working Party did not reach agreement on these outstanding issues. The IRU indicated that in theory the transfer of responsibility from the Customs office of destination to the authorized consignee would not endanger the well functioning of the guarantee system, but pointed out that nevertheless a number of practical issues remained, which prevented it from supporting the issue, such as the complications of establishing a reliable list of authorized consignees and problems in the field of transmission of data to the SafeTIR system, in case goods had been delivered directly to the premises of the authorized consignee instead of to the Customs office of destination.

47. The Working Party acknowledged that the granting and the implementation of the facilitation of authorized consignee is left to the competence of individual Contracting Parties and deemed no further instructions or guidelines necessary. The Working Party endorsed the conclusion, drawn by the TIRExB in the course of its legal study on the issue, that, for the time being, the facilitation of authorized consignee cannot be applied within the context of the current text of the TIR Convention. The Working Party invited Contracting Parties, having experience in the application of the concept of authorized consignee within their territory to share this experience with other Contracting Parties and decided not to continue its discussion of the matter unless new information would be available.

TRANS/WP.30/212 (paras. 42–43) (3–6 February 2004)

42. The Working Party, as a follow-up to its previous discussions on this issue, where it had been established that the TIR Convention did not exclude the concept of authorized consignee, was informed by the representative of France that, as a result of the initial experiences gained in France, many companies showed interest in being authorized under this procedure. Concerning the questions that had previously been raised by the IRU in relation to the procedure applied in France, the Working Party took note that a TIR Carnet presented to an authorized consignee must be presented within 24 hours to the Customs authorities who, subsequently, should transmit a message concerning termination to the SAFETIR database. Furthermore, in the French experience there did not seem to be a need for a database of authorized consignees as transport operators seemed to have the necessary information.

43. The Working Party decided to revert to this issue in the future, only if a need or interest was expressed.

Annex II



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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions

affecting Transport

(One-hundred-and-third session, 4-7 February 2003,
agenda item 8 (c) (ix))

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

Application of the Convention

The concept of authorized consignee in the TIR Convention

Note by the secretariat

A. BACKGROUND

1. This issue has been included into the programme of work of the TIR Executive Board in 1999 and in 2000 (TIRExB/1999/2/Rev.2, para.36; TIRExB/REP/2000/5, para.9). Initial discussion has taken place at the eighth session of the TIRExB (TIRExB/REP/2001/8, para. 21 and 22). At its ninth session (23 February 2001), the TIRExB agreed that the issue be put on its priority list for consideration and resolution in 2001 (TIRExB/REP/2001/9, para. 9). Extensive discussion has taken place at the tenth and eleventh sessions of the TIRExB (TIRExB/REP/2001/10, paras. 34-37 and TIRExB/REP/2001/11, paras. 26-30).

2. At its eleventh session, the TIRExB acknowledged that, with regard to the direct unloading at the consignee's premises, a distinction should be made between two different situations. In the first situation, goods and documents are delivered and unloaded directly at the consignee's premises in the presence of Customs. In the view of the TIRExB, this type of situation is covered by Article 46 of the TIR Convention, which provides for Customs attendance at other places than at the Customs office of destination (at the cost of the requesting person). In the second situation, goods and documents are delivered and unloaded directly at the consignee's premises without Customs officials being present. In the opinion of the TIRExB, it was the latter situation which it had to address, as there was no clarity so far as to whether this was in line or not with the spirit and the provisions of the TIR Convention.

3. The TIRExB considered that the concept of authorized consignee was complicated by two factors. Firstly, the fact that it involved an actor (the consignee, the recipient of the goods) who was not yet recognized in the TIR Convention. Secondly, the possible repercussions it might have on the guarantee chain due to the fact that there was a close link between the authorized consignee and the proper termination of the TIR operation (TIRExB/REP/2001/11, paras. 28-29).

4. The TIRExB was aware that the use of Customs facilities at the premises of the consignee often meets today's trade and transport requirements and acknowledged that the framework of the TIR Convention accepts such facilities. Therefore, the TIR Secretary was requested to prepare a document, which would analyze in detail the consequences of allowing for the use of authorized consignees for the provisions of the TIR Convention, in particular with regard to the process of termination and discharge. The TIRExB would then have to decide what kind of measures would be required to ensure a harmonized approach in all Contracting Parties. As a next step, the Working Party on Customs Questions affecting Transport (WP.30) could provide further guidance on this matter (TIRExB/REP/2002/12, paras. 27-28).

5. At its fourteenth session, the TIRExB endorsed the general idea that the existing provisions of the TIR Convention allow for the use of the concept of authorized consignee. Knowing that a number of countries already implement at present the concept in their territory to the satisfaction of all parties concerned, the Board felt that it may not be necessary to prepare comments as a means to clarify the use of the concept of authorized consignee within the context of the TIR Convention and to harmonize its application. The Board agreed to ask the opinion of the Working Party whether or not comments with regard to the acceptance of authorized consignees in general and with regard to a possible harmonized authorization procedure in particular were deemed necessary and/or useful (TIRExB/REP/2002/14, para. 10).

6. Against this background, the present document, endorsed by the TIRExB at its fifteenth meeting, contains a summary of the discussions by the TIRExB on the validity of the concept of

authorized consignee within the framework of the TIR Convention. The document is structured as follows:

- (a) Introduction;
- (b) Delimitation of the discussion;
- (c) The concept of authorized consignee in the TIR Convention;
- (d) Legal provisions at stake;
- (e) Repercussions on termination and discharge procedure;
- (f) Impact of the introduction of the concept of authorized consignee on the guarantee system;
- (g) Conclusions;
- (h) Further considerations by the Working Party.

B. INTRODUCTION

7. Already in 1999, the TIRExB had decided to study the concept of authorized consignor and consignee. This decision was based on the following facts:

- The recommended practice in Specific Annex E to the newly revised Kyoto Convention, inviting Customs to approve persons as authorized consignors and consignees when they are satisfied that the prescribed conditions laid down by Customs are met;
- The existence of authorized consignors and consignees in other international legal instruments, in particular the Common Transit Convention and the Community Customs Code;
- The fact that already at present a number of Contracting Parties to the TIR Convention (inter alia: France, Germany, Poland, Switzerland) allow certain consignees to receive and unload goods directly at their premises under the TIR procedure;
- Repeated requests from trade for greater facilitation measures under the TIR procedure.

C. DELIMITATION OF THE DISCUSSION

8. The TIRExB decided to limit the discussion, for the time being, to the concept of authorized consignee, considering that the introduction of the concept of authorized consignor seemed to be outside the scope of the current text of the TIR Convention, because it was linked to the very critical function of the Customs office of departure and as it required cooperation between Customs authorities of more than one Contracting Party.

9. The TIRExB also decided, for the time being, to refer to ‘authorized consignee’ although the term as such is not yet used in the TIR Convention, and not to propose any definition. This is due to the fact, that the term “authorized consignee” will not appear in the body of the Convention. As the term was used in a general sense, a TIR-specific definition did not seem necessary.

D. THE CONCEPT OF AUTHORIZED CONSIGNEE IN THE TIR CONVENTION

10. The TIR Convention does not contain provisions specifically allowing for authorized consignees. However, Article 49 provides for greater facilities which may be granted by unilateral provisions or by virtue of bilateral or multilateral agreements provided that such facilities do not impede the application of the provisions of this Convention, and in particular, TIR operations. Countries, recognizing authorized consignees in their territory, mainly do so on the basis of said article. Some countries also refer to Article 46, which allows for the unloading of goods at other locations than the Customs office of destination, against charges and in the presence of Customs officials, although this article mainly aims at facilitating the delivery of perishable goods.

11. As stated in paragraph 2 of this document, the TIRExB decided not to include Article 46 into its discussion, because of the fact that it only refers to the direct unloading of goods at the premises of a consignee in the presence of Customs officials.

12. With regard to the question as to what extent the application of Article 49 acknowledges the concept of authorized consignee, the TIRExB was of the view that the provisions of the TIR Convention either could be interpreted very strictly, implying that under no circumstances a deviation from their literal text could be accepted, or that they could be interpreted more freely, as long as it was ensured that the underlying objectives behind the provision involved were maintained. The latter interpretation could be defended by referring to the fact that the current TIR system dated from 1975, a time when the concept of “authorized consignee” was unknown and a time when it was unthinkable that others than Customs authorities themselves could/would perform Customs duties. The TIRExB considered that nowadays it was not always necessary for Custom authorities to be present and/or inspect the goods physically in order to ensure full Customs control over the TIR operation.

13. Both interpretation techniques could be used when explaining, for example, Article 2 of the TIR Convention, which stipulates the application of the TIR Convention when goods are transported between a Customs office of departure of one Contracting Party and a Customs office of destination of another. On the one hand, it can be argued that the concept of authorized consignee is incompatible with this article, because of the simple fact that goods are transported to the premises of a consignee and not to a Customs office of destination. On the other hand, it can be said that compatibility exists, as long as a mechanism is put in place, which will link the consignee to the Customs office of destination, most likely on the basis of an authorization granted by the Customs authorities to the consignee.

14. On the basis of the above considerations, the TIRExB expressed the view that the framework of the TIR Convention was flexible enough to accept facilities such as the concept of authorized consignee (TIRExB/REP/2002/12, rev.1, para. 28).

E. LEGAL PROVISIONS AT STAKE

15. A number of Articles of the TIR Convention stipulate specific tasks and/or obligations to be fulfilled by the “Customs office of destination”. These are: Article 1 (a), (b), (d), (e), (l) and (o); Article 2; Article 9, para. 2; Article 15, para. 2; Article 18; Article 21; Article 27; Article 45. In addition, Explanatory Note 0.18-1 and the Comments to Article 3, Article 21, Article 28 and Article 29 contain references to the “Customs office of destination”.

16. In the context of the analysis by the TIRExB, Article 45 does not play a role, as it refers to the obligation for Contracting Parties to publish a list of, *inter alia*, Customs offices of destination. Neither does Explanatory Note 0.18-1, which refers to the designation of a Customs office of exit *en route* as a Customs office of destination nor the comments to Articles 3 and 29, which refer to “the country where the office of destination is located”. Thus, the introduction of the concept of direct delivery of the goods to the premises of the consignees, only has repercussions as far as the other articles and comments are concerned.

17. Article 1 (a), (b), (d), (e) and (o) contains various definitions, involving the Customs office of destination, whereas Article 1 (l) gives a definition of what is meant by that notion. Article 2, Article 9, para. 2, Article 18 and Article 27 determine the Customs office of destination as the geographical location where the goods are delivered. Article 15, para. 2, Article 21, the Comment to Article 21 and the Comment to Article 28 refer to specific formalities (with regard to the re-exportation of the vehicle, Customs control, the termination of the TIR transport and the return of the TIR Carnet to the holder) which have to be performed by the Customs authorities concerned.

18. A first step towards a common application of the concept of direct delivery of the goods at the premises of authorized consignees is achieved through the analysis of the definition of the Customs office of destination (Article 1 (l)). Based on the assumption that the current text of the TIR Convention already recognizes the concept as such, the TIRExB felt that maintaining the definition as it stands would not impede third parties from performing certain tasks, which the TIR Convention has entrusted to the Customs office of destination. This assumption is confirmed by the provisions of Standard 2 of Specific Annex E to the Kyoto Convention, which stipulate, *inter alia*, that the term “Customs office” is not strictly limited to the premises and site of a Customs office. For example, when transit begins at the ‘Customs office’, this can mean the domicile of an authorized consignor.”

19. The role of the Customs office of destination in Article 15, para. 2 is to ensure that, once the TIR operation has been completed, the road vehicle, the combination of vehicles or the container, will be re-exported. The fact that the vehicle arrives directly at the premises of the authorized consignee complicates this task of the Customs authorities at the Customs office of destination. However, as the procedure how to ensure the proper re-exportation of the vehicle is left to formalities, laid down in national legislation, the issue need not be addressed further at the international level.

20. Article 21 is one of the key articles in the TIR Convention, as it constitutes the obligation for the Customs authorities at the Customs office of destination to control the road vehicle, the combination of vehicles or the container, the load and the corresponding TIR Carnet. It is clear that Customs authorities cannot renounce this obligation, entrusted to them by the TIR Convention. In case certain consignees have obtained the right to receive goods directly at their premises, a way has to be found to compensate for the absence of the physical presence of Customs, ensuring that, nevertheless, a sufficient level of Customs controls remains guaranteed. This may be achieved by means of an authorization. Considering that the concept of authorized consignee is already functioning well in various Contracting Parties to the satisfaction of all parties involved, the TIRExB felt that, at this stage, it did not seem necessary to amend the TIR Convention with a comment, aimed at harmonizing the authorization procedure.

21. The various comments to Article 21 refer to the partial and final termination of a TIR operation at the Customs office of destination. Formally, the introduction of persons authorized to receive goods at their premises does not interfere with the meaning of these comments. However, knowing that upon partial unloading, the truck or load compartment will have to be resealed and the relevant information will have to be inserted into the TIR Carnet before the truck can continue its route, it seems doubtful to assume that Customs authorities could allow a consignee to perform such activities on their behalf.

22. According to Article 27, it is acceptable to replace one Customs office of destination by another, as long as the maximum of four offices of departure and destination is not exceeded. The scope of the article is to give the transport industry the necessary flexibility to change route while the goods are already under way. The fact that the goods, instead of being presented at the Customs office of destination, are presented directly at the premises of an authorized holder does not alter this.

F. REPERCUSSIONS ON TERMINATION AND DISCHARGE PROCEDURE

23. Under normal circumstances, a TIR operation will be considered terminated, when the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination, together with the load, in accordance with Article 1 (d) of the

TIR Convention. To certify the termination, Customs will fill-in boxes 24-28 of voucher No. 2 in the TIR Carnet (certificate of termination of the TIR operation) and they will stamp and sign box 28 therein.

24. Currently, as stipulated in a comment to the model of the TIR Carnet in Annex 1 of the TIR Convention, no other authority than Customs is entitled to stamp and sign the vouchers, counterfoils and the front cover of the TIR Carnet (TRANS/WP.30/AC.2/59, annex 5). This comment, introduced to safeguard the transport operator from obtaining stamps and signatures from third parties, portraying themselves as being authorized to do so, may complicate the adequate use of the concept of authorized consignee. In case the concept of authorized consignee in TIR only enables the direct unloading at the consignee's premises, but still obliges the transport operator to go to the Customs office of destination to obtain signature and stamp, as prerequisites for the proper termination of the TIR operation and in order to be able to take the TIR Carnet back home, its added value is rather limited. However, this is what seems to be the case in those countries, which have provided documentation on the implementation of authorized consignee in their national legislation.

25. Without being able to come to a conclusion, the TIRExB felt that this issue need be considered further. Contrary to other, similar transit procedures where the Customs documents are taken in by the Customs authorities or the consignee at the arrival of the goods, the TIR Convention mentions the return of the TIR Carnet to the holder as "an essential duty of the Customs office of destination" (Comment to Article 28). Basically, there seem to be three ways of addressing this issue:

- (a) not to allow the consignee to do anything at all with the TIR Carnet and continue to require that the TIR Carnet holder (after unloading) goes to the Customs office of destination, which will establish the termination of the TIR operation and return the duly stamped and signed TIR Carnet to the TIR Carnet holder;
- (b) to allow the consignee, under strict provisions, to sign and stamp the TIR Carnet and counterfoil No. 2 on behalf of Customs, detach voucher No. 2 and return the TIR Carnet to the TIR Carnet holder. In line with the applicable provisions, the consignee will then have to take care that voucher No. 2 is sent back to the Customs office of destination within a certain time-limit;
- (c) to allow the consignee, under strict provisions, to collect the TIR Carnet and provide the transport operator with a document certifying the termination of the TIR operation. In line with the applicable provisions, the consignee will then have to take care that the TIR Carnet is sent to the Custom office of destination within a certain time limit. Finally, Customs will have to ensure that the TIR Carnet be returned to the TIR Carnet holder.

26. The majority of the members of the TIRExB expressed the view that the authorized consignee should not be permitted to sign and stamp the TIR Carnet. In this regard, the TIRExB supported option (a).

27. In case the Working Party would wish to pursue options (b) or (c), it would have to take account of the repercussions they would have on the termination and discharge of a TIR operation. In those cases, a distinction between termination/discharge vis-à-vis the TIR Carnet holder and termination/discharge vis-à-vis the authorized consignee may need to be introduced. In any case it should be clear that regardless of which approach is taken, TIR Carnet holders will only benefit from the use of the concept of authorized consignee if a TIR operation will be considered as terminated once they have fulfilled their obligations.

28. As far as the discharge procedure is concerned, there is no real difference, from a Customs point of view, between a “regular” discharge and a discharge in case of an authorized consignee. However, when Customs establish that discharge cannot take place, they should only hold the holder liable for any irregularity that has taken place up to the moment of termination of the TIR operation by the authorized consignee. Irregularities occurring after that moment should fall under the liability of the authorized consignee.

G. IMPACT OF THE INTRODUCTION OF THE CONCEPT OF AUTHORIZED CONSIGNEE ON THE GUARANTEE SYSTEM

29. Irrespective of the question whether or not the current provisions of the TIR Convention enable the use of “authorized consignee” or amendments may be required, the concept also has to be analysed against the background of the existing guarantee system.

30. Without going into details, the TIRExB felt that it was important to underline that a satisfactory functioning of the guarantee system presupposes effective Customs control over the goods from the Customs office of departure until the Customs office of destination. Based on the assumption that the use of the concept of authorized consignee does not prevent uninterrupted Customs control, as long as national authorities introduce a mechanism which ensures that either the checks, performed by the consignee, fully meet Customs requirements or as long as these checks get endorsement from Customs before unloading takes place, the guarantee system could continue to function as it does today and no change be required.

31. In case of an irregularity, however, Customs would have to accept that they cannot claim against the TIR Carnet holder (and, in case he cannot meet the claim, against the national association), once it has been established that the irregularity has taken place after the TIR operation was properly terminated as far as the TIR Carnet holder is concerned.

32. It goes without saying, that the use of authorized consignees and the possible introduction of a distinction in termination procedures, will have repercussions on the well functioning of the so-called IRU SafeTIR-system. This issue will have to be addressed, once the Working Party has taken a final decision on the exact procedure.

33. Within the context of the liability scheme, it may be appropriate to address the question of as to how the TIR Carnet holder will know that the recipient of the goods is indeed authorized to receive goods directly at his premises. Normally, at the Customs office of entry (en route), Customs authorities indicate in box 22 the Custom office where the goods must be produced. In case the goods are intended to be delivered directly to the premises of an authorized consignee, Customs authorities should, on the basis of information they can extract from the CMR consignment note, instead of filling-in the name of a Customs office, insert the name and address of the authorized consignee in box 22. Of course, they should only do this, when they have established on the basis of their own records, that the person concerned is indeed authorized to receive the goods directly at his premises.

H. CONCLUSIONS

34. The TIRExB has discussed the issue of authorized consignee at great length, taking into account all possible legal and practical repercussions its use may have on the well functioning of the TIR procedure. After thorough consideration, the TIRExB is of the opinion that the TIR Convention already provides at present for the use of the concept of authorized consignee. The fact that some provisions, explanatory notes and comments refer specifically to tasks to be fulfilled by the Customs office of destination does not run counter to this understanding, as long as Customs authorities ensure by other means continuous and uninterrupted Customs control from the Customs office of departure to the Customs office of destination.

35. At this stage, the TIRExB feels that the concept of authorized consignee is not compatible with the possibility of partial termination, exactly because in such situations uninterrupted Customs control can no longer be guaranteed. The TIRExB feels it should be left to national authorities to decide which procedure they use to enforce efficient Customs control and therefore has not considered the idea to introduce a new comment to the TIR Convention, dealing with criteria for the authorization of certain consignees. Finally, the TIRExB thinks that, with the proper Customs mechanism to supervise consignees who have obtained the right to receive goods directly at their premises, the existence of authorized consignees should not jeopardize the well functioning of the existing guarantee system.

I. FURTHER CONSIDERATIONS

36. The Working Party is requested to consider the observations by the TIRExB, which are based on the opinion that the TIR Convention provides, in principle, for the use of the concept of authorized consignee. In addition, the Working Party is requested, on the basis of national experiences in this field, to consider whether it would be useful to prepare, for example, comment(s) for inclusion into the TIR Handbook, aimed at harmonizing the application of the concept of authorized consignee at the national level.

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Working Party on Customs Questions
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**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF
GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION 1975)**

Application of the Convention

The concept of authorized consignee in the TIR Convention

Transmitted by the Government of France

A. INTRODUCTION

The TIR Convention is a Customs convention which permits the suspension of duties or taxes during the carriage of goods from a Customs office of departure in a country which is a Contracting Party to the Convention, to a Customs office of destination in another country which has acceded to the Convention, under cover of a TIR Carnet with a guarantee of US\$ 50,000, by a means of transport approved and sealed by the competent authorities (generally the Customs authorities).

It consists of a deferred payment regime, on expiry of which, once the goods carried have been presented to the Customs office, they must receive Customs-approved treatment by being placed under a new Customs regime: import, re-export, economic regime (bonded warehouse, ...) etc. It is naturally the responsibility of the Customs to ensure that a new Customs regime has been assigned to the goods.

B. PROBLEMS

The development of international commerce and the faster pace of trade, the requirements and the costs arising from the logistics, mean that the Customs authorities regularly have to modify established Customs regulations while maintaining provisions allowing the competent authorities to carry out checks.

In this regard, a number of countries have introduced into their Customs regulations simplifications which, after review, may be granted to operators accepted as reliable.

The status of authorized consignee is one of these simplifications. It enables an operator bound by an agreement-based act with a Customs office of domicile to receive the goods directly on premises approved by the Customs authorities; this is regarded as a presentation to the Customs office. The arrival notice sent by the operator to the Customs office when the goods arrive is equivalent to the deposit of a summary declaration assigning a holding regime (temporary storage) to the goods. The operator is then responsible for the goods and for their assignment to a Customs regime.

No provision has been made for this in the TIR Convention. The developments referred to above, however, should lead to envisaging the offer of this possibility to **the most reliable operators**, enabling transport operators to have round-the-clock access to the company's premises. This may have advantages:

- For the transport operator: safe parking of the means of transport and the goods - rapid re-loading of new goods (for the return journey);
- For Customs: the Customs office facilities do not permit of in-depth checks of the means of transport (complete unloading);
- For authorized consignees: rapid assignment of goods for future distribution;
- For traffic: avoidance of congestion in certain areas already overcrowded with means of transport.

C. STUDY OF THE PROJECT

The essential aspect of the dispositions which may be taken with reference to the authorized consignee is to ascertain clearly the limits of responsibility of each of the participants in a TIR operation - transport operator/holder of a TIR Carnet and authorized consignee. Naturally, as is the case for all rules, the participants must accept and observe them.

On the basis of the comments and practices of the offices in which this procedure has been tried out, a model authorization for an authorized consignee under the TIR regime has been drawn up, which endeavours to determine the general arrangements and to identify each person's responsibilities during the course of operations: arrival of the goods at the premises of the authorized consignee with the seals intact - information from Customs - compliance with the deadline permitting Customs to carry out a check - breaking of the seals - unloading - deferred presentation of the TIR Carnet and the certificate of approval to the Customs office - discharge by Customs of the TIR Carnet. It should be noted that it is accepted that the consignee should present

the TIR Carnet, the certificate of approval and the transport permit to the Customs office, and that only the latter can decide on the inspection of the means of transport.

It is also on the basis of the comments by the Customs offices where the trials have taken place, and in the light of existing rules, that provision has been made for the “discrepancy report” which is drawn up (and signed), after both parties have been heard, by the consignee and the transport operator/holder of the TIR Carnet, and contains particulars of the shortages, overages and substitutions.

Naturally, it must also be clear that if the means of transport can arrive on the consignee’s premises at any hour of day or night and if the arrival notice/control document can be dispatched immediately, the period within which the Customs office can carry out its control of the means of transport and the goods only begins with the legal opening time of the Customs office.

D. CONCLUSION

The introduction of this possibility into the TIR Convention seems feasible since each Contracting Party decides for itself matters concerning it and it alone is in a position to know whether this facilitation can be applied and for which operators. It is for each competent authority of each Contracting Party to determine whether there are operators suitable for approval as authorized consignees. According to the consignees authorized, it can be ascertained for what goods (or for what regular service) authorization has been given.

PROCEDURE

I. ARRANGEMENTS FOR ASSIGNING AUTHORIZED CONSIGNEE STATUS UNDER THE TIR REGIME

1. General conditions

The operator shall comply with the following conditions:

- Is established in a Contracting Party to the TIR Convention;
- Regularly receives TIR consignments;
- Can prove to the Customs authorities that he will fulfil the obligations of his status;
- Has not committed serious or repeated breaches of Customs legislation (the TIR Convention);
- Must furnish the data required to process the application;
- Is responsible for the information furnished; informs the Customs administration of any subsequent amendment.

2. Deposit of a written application, dated and signed by the operator (in which he commits himself to abiding by the terms of the authorization):
 - With the competent authorities of the location where the applicant is established.
3. Consideration of the application by the competent authorities:
 - In accordance with the information provided by the operator and/or collected from the competent authorities (the operator's usual Customs office, central investigations services);

Authorization is granted only if the Customs administration:

 - Is able to ensure the supervision and monitoring of the system without setting up a plan of action out of proportion to the operator's needs;

and if

 - The operator holds documents permitting Customs to make an efficient inspection.
 - Reply to the operator within a pre-defined deadline;
 - Permanent possibility of amending and/or revoking the authorization.

II. MODEL AMENDMENT

AUTHORIZATION FOR THE CONSIGNEE UNDER THE TIR REGIME

(possibly for insertion in the authorization for the consignee)

The ... company, with the status of authorized consignee, is permitted to take reception on its premises during Customs office working hours, of goods carried by road under the TIR regime, which have not first been presented to the Customs office of destination, under the following conditions:

1. General compliance with the set of obligations relating to authorized consignee status in Community/common transit (Customs destination of the goods, etc.).
2. Information from the competent office by:
 - Fax;
 - E-mail;
 - Other electronic means.

3. Frequency of information:

- Each arrival;
- Programme forecast submitted to the Customs office, permitting individual information to be dispensed with.

4. Time period before sealed consignments are unloaded

Compliance with a time limit of: ...

5. Preparation of the document “Control by the office of destination” containing the following particulars:

- Name (or business name) of the authorized consignee;
- Number and date of authorization assigned;
- Completion of boxes Nos. 1, 2 and 3 of the document “Control by the office of destination” and signature by the person authorized or one of the persons authorized: in two copies (one for the Customs office (Arrival notice), one for the authorized consignee (copy of the Arrival notice)).

This document may be inserted in the “Arrival notice” as the provisions concerning the status of authorized consignee in Community/common transit stipulate, and must be sent to the office of domicile as soon as the means of transport arrives, in particular, the information contained in boxes 1, 2 and 3 of the document.

6. Authorization for the representative(s) of the authorized consignee to complete and sign this document (model(s) of signature attached to the amendment) with assurance that the particulars included conform to the observed facts.

7. Special TIR obligations:

A. The authorized consignee undertakes:

- Not to implement the facilities granted and to inform the competent authorities if he observes irregularities such as:
 - Seals which are not intact;
 - Evident lack of conformity of the means of transport with the rules of the TIR Convention (torn sheeting, lack of TIR plate ...).

- To unload the goods after the deadline referred to above, under the following conditions:
 - Breakage of the seals, unless a contrary service instruction is received;
 - Overview and count of the packages.

B. To advise the competent Customs office immediately, in the form of a “discrepancy report” and in accordance with the arrangements for which the authorization provides, of any overages, shortages or substitutions.

- Once the irregularity has been observed by the two parties when unloading takes place, the responsibility of the TIR Carnet holder is engaged. This document must be established, after both parties have been heard, by the representative of the holder of the TIR Carnet (the driver) and the authorized consignee;
- Otherwise, or if the service is not notified of the anomaly, the responsibility of the authorized consignee is engaged. In these circumstances, the arrival notice will be tantamount to a summary declaration subject to the discrepancy report.

The failure to produce the discrepancy report incurs the responsibility of the authorized consignee for all the goods listed on the TIR manifest for partial/total unloading at the Customs office of ... (office of the domicile of the authorized consignee).

C. Undertakes to perform the material operations to enable the service to conclude the TIR transit regime:

- Presentation to the Customs office of destination for control and discharge, on the day of arrival of the goods or at latest the next working day:
 - The document “control by the office of departure”, duly completed;
 - The TIR Carnet;
 - The TIR certificate of approval;
 - *The means of transport shall be left at the disposal of the service and shall be presented to the Customs office on demand, if it expressly requests. The authorized consignee undertakes not to release the means of transport until the formality of the discharge of the TIR Carnet has been completed and the Carnet and the TIR certificate of approval returned to the transport operator.*

PLEASE NOTE

Only the Customs office is competent to endorse and discharge the TIR Carnet and check the compliance of the means of transport and the certificate of approval with the rules of the TIR Convention.

8. Final provisions

The authorized consignee shall be responsible vis-à-vis the Customs authorities once the goods and the TIR Carnet have been presented.

He shall undertake to observe the conditions set out in the TIR amendment and to take all necessary measures in that regard.

In the event of a breach of procedure, in respect of the conditions set out in the authorization, involving in particular the failure to present the TIR Carnet and the means of transport to the Customs office, the authorization shall be suspended or revoked.

Done at On

Signature of the collector of Customs
(officer in charge of the office of domicile)

Signature of the authorized consignee

DATE 22/01/2003 CONSOLIDATION No. 1031

CORRESPONDENT APRIL LOGISTICS

No. LORRY 17UN 5073

ORIGIN ISTANBUL

Arrival date	No. Customs file + Customs file	MAG/CAM	Type	No. heading and transit	No. of packages	Packaging	Description
22/01/2003	310204	S/C		TIR XV 3 743 590	64	Pallets	Motor vehicle parts

TOTAL 64

CONTROL BY THE OFFICE OF DESTINATION Authorization granted to BANSARD INTERNATIONAL S.A.	CARNET TIR XV 3 743 TIR No.: 590 OF:
Approval No. B 0059 of 11/12/2001	Vehicle No.: 17UN 5073
Date of arrival: 22 01 2003 Seals checked: Yes x Remarks: Authorized signature:	CUSTOMS ENDORSEMENT:

III. PROGRESS OF OPERATIONS

The practical arrangements are as follows:

- Arrival of the vehicle on the premises of the authorized consignee (round the clock).
- Dispatch - by fax or e-mail - of an arrival notice **incorporating** the TIR Carnet control document. This document is sent to the Customs office during its legal opening hours as soon as the vehicle arrives. If the vehicle arrives outside office opening hours the arrival notice is sent notwithstanding, but the response time of the service begins only when the next service period commences.
- If the agent authorized by the company observes an irregularity, such as a seal which is not intact or defective sheeting, it is recorded in the control document along with the signatures of the representatives of the consignee and the transport operator. This document shall be drawn up, after both parties have been heard, by the representative of the TIR Carnet holder (the driver) and the authorized consignee. The operation shall be suspended pending the arrival of the competent authorities.
- Compliance with a response time which enables the vehicle and the goods to be inspected. Decision of the competent authorities to check taken in accordance with the provisions in force in the Contracting Party (rate of physical checks for imports).
- After this period, the authorized consignee, in the absence of a check, shall be permitted to break the seals and unload the vehicle.
- After unloading and in the event of an irregularity, the authorized consignee shall fax a “discrepancy report” as soon as the irregularities are observed, at latest prior to the legal discharge of the TIR Carnet. If the irregularity is observed outside the legal opening hours of the office, the report shall be sent as soon as the next service period commences. This document shall be drawn up, after both parties have been heard, by the representative of the TIR Carnet holder (the driver) and the authorized consignee. Once the irregularity is observed by both parties during unloading, the responsibility of the TIR Carnet holder is engaged. Otherwise, or if the service is not informed of the irregularity, the responsibility of the authorized consignee is engaged. In these circumstances, the arrival notice is equivalent to a summary declaration subject to the discrepancy report.
- After the unloading of the vehicle in accordance with the time-periods set out in the amendment (the same day or the next working day), the authorized consignee shall come to the Customs office with the TIR Carnet, the vehicle approval, [transport licences] and two copies of the summary declaration (arrival notice and TIR control document). The service shall check that the TIR discharge corresponds to the quantities accepted by the authorized consignee and that the arrival notice has been received (copy faxed as soon as the vehicle arrives). If an irregularity is observed, it shall determine the person responsible and proceed to the recovery of the duties and taxes and any penalties due. *In the case of the holder of the TIR Carnet, the Carnet will only be returned to him after recovery of the debt TO BE VERIFIED IN ACCORDANCE WITH LITIGATION ARRANGEMENTS IN EACH CONTRACTING PARTY.* The two copies of the summary

declaration shall be endorsed by the service; the first copy shall be returned to the declarant, the second kept by the service with voucher No. 2 (green) of the TIR Carnet, since the regime has expired.

- The vehicle is not presented to the office with the TIR Carnet but is held at the disposal of the service for a possible check. It shall not be permitted to leave the premises of the company until the Carnet, the transport licences and the approval have been returned. *In the absence of these documents, the risk of the vehicle disappearing is negligible.* If the service wishes to carry out an inspection, the check shall take place on the premises of the authorized consignee. *These provisions make it possible to ensure that the vehicles do not travel through densely populated urban areas (pollution) while they expedite the formalities for the reloading of the vehicle which is already on the spot in view of the fact that the means of transport will be leaving again.*



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**ECONOMIC COMMISSION FOR EUROPE
INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions
affecting Transport

(One-hundred-and-fifth session, 23-26 September 2003,
agenda item 7 (c) (viii))

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

Application of the Convention

The concept of authorized consignee in the TIR Convention

Note by the secretariat

A. INTRODUCTION

1. At its one-hundred-and-fourth session, the Working Party took note of a presentation by the representative of France on the French experiences gained in a pilot study providing consignees with the right to receive goods under the TIR procedure directly at their premises, the outlines of which were contained in working document TRANS/WP.30/2003/12, based on the opinion of the TIRExB that the TIR Convention at present, already provides for the use of the concept of authorized consignee and that it was the competence of individual Contracting Parties to decide whether or not the facilitation could be applied and for which operators (TRANS/WP.30/2003/1, para. 34).

2. The Working Party welcomed the presentation and the detailed explanation on a number of

practical matters such as the breaking of seals by other people than Customs and the application of the concept in case of part loads. Although the pilot study had not answered all the outstanding questions, the Working Party felt that, in view of the fact that the concept of authorized consignee was already applied in a number of Contracting Parties, it should continue its discussion on the subject at its next meeting. It requested the secretariat to prepare a new document, aimed at merging the theoretical analysis, made by the TIRExB and contained in document TRANS/WP.30/2003/1, with the practical experience gained by France, contained in document TRANS/WP.30/2003/12. The IRU, however, expressed concern about the consequences for the effective organization and functioning of the international guarantee system according to Article 6.2. bis of the Convention should the concept of authorized consignee be introduced in the Convention (TRANS/WP.30/2008, paras. 55-56).

B. EVALUATION BY THE TIRExB

3. Document TRANS/WP.30/2003/1 contains an extensive reflection of the discussions by the Board to decide on the acceptance of the concept of authorized consignee within the current text of the TIR Convention. It should be clearly stressed that the TIRExB endorsed the general idea that the existing provisions of the TIR Convention allow for the use of the concept of authorized consignee (TIRExB/REP/2002/14, paragraph 10). It did not find any provision in the TIR Convention which would run counter to this approach (TRANS/WP.30/2003/1, paras. 15-22), with the exception of Article 21, referring to partial and final termination of a TIR operation at the Customs office of destination. The TIRExB felt that the concept of authorized consignee was not compatible with the possibility of partial termination, because in such situations uninterrupted Customs controls could not be guaranteed.

4. Without being able to come to a conclusion, the TIRExB felt that the issue of termination and discharge needed to be further treated, in order to obtain a procedure which will comply with the provisions of Article 28 of the Convention, while at the same time allowing the TIR Carnet holder to benefit from the facilitation of being able to deliver goods directly at the premises of the authorized consignee and giving him the certainty that regular termination has taken place. The TIRExB preferred a solution for this issue which would not give the authorized consignee any right to perform Customs duties (TRANS/WP.30/2003/1, para. 25) (see para. 7 for the practical solution found in the French pilot).

5. The TIRExB was of the opinion that, with the proper mechanisms to supervise consignees who have obtained the right to receive goods directly at their premises, the existence of authorized consignees should not jeopardize the well functioning of the existing guarantee system (TRANS/WP.30/2003/1, paras. 29 and 34).

C. EVALUATION OF PILOT

6. The French pilot, as presented to the Working Party at its one-hundred-and-fourth meeting, is extensively described in document TRANS/WP.30/2003/12. It evolves around the assumption that the TIR Convention does not forbid the granting of facilities, such as authorized consignee, as long as uninterrupted Customs controls are ensured and that it is left to the competence of individual Contracting Parties to decide on the implementation of the facility and the conditions under which it is granted.

7. With this in mind the French pilot has designed a procedure, where selected consignees are authorized to receive goods directly at their premises, to break the seals and unload the goods. However, before being allowed to do so, approval has to be obtained from Customs. Within a certain response time after having received a request for the breaking of seals, Customs will decide whether or not physical inspection of the goods is required or the unloading can be approved. Whenever the consignee detects any irregularity (upon arrival of the goods, when breaking the seals or while unloading), he is obliged to inform the Customs immediately. At that moment the use of the facility will be stopped. Any further activity will require direct Customs involvement. After having unloaded the goods, the authorized consignee will have to present himself to Customs, together with the TIR Carnet, the vehicle certificate of approval, transport licenses and a copy of the summary declaration (as proof that the termination of the TIR transit will be followed by another Customs procedure). In case any discrepancy between the information in the TIR Carnet and the actual state of the goods is detected, the consignee has to report this immediately to Customs, so that this information can be taken on board when presenting the TIR Carnet, in order to define the occurrence of a Customs irregularity. If no discrepancy is reported upon unloading, but only detected by Customs later on, the irregularity will be deemed to have taken place while the goods were under the liability of the consignee.

8. As the French pilot shows, it is more the general trade than transport industry which will benefit from the use of the concept. However, transporter operators should bear in mind that, while the consignee presents the TIR Carnet and other documents to Customs, the vehicle remains at the consignee's premises. In case Customs would decide that an inspection is necessary, this will take place at the consignee's premises. This saves the transporter the trip to the Customs office, often located in densely populated urban areas, while at the same time offering him the opportunity to immediately start reloading his vehicle, before starting a new TIR transport at the Customs office of departure.

9. The French approach shows, that, as long as Customs have ensured uninterrupted Customs control and have set clear conditions when granting the facility to the consignee, the concept does not have any negative impact on the functioning of the guarantee system.

D. FURTHER CONSIDERATIONS

10. Neither the legal analysis, nor the pilot have been able to meet the Working Party's reluctance on the following two questions:

- (a) How can a transporter be sure that a consignee is indeed entitled to receive goods directly at his premises?
- (b) How to deal with the fact that the transporter hands over the TIR Carnet to a third party for presentation to Customs, in particular in the light of the comments to Article 28 (return of TIR Carnets to the holder or any other person acting on his behalf) and Article 30 (improved procedures in the use of TIR Carnets by transport operators)?

11. As indicated in para. 32 of document TRANS/WP.30/2003/1, the secretariat is of the opinion that the Customs office of entry in the country of destination plays an important role in solving the first question. In case goods are intended to be delivered directly to the premises of a consignee, Customs authorities should, on the basis of information they can extract from the CMR consignment note, instead of filling-in the name of a Customs office, insert the name and address of the consignee in box 22 of the TIR Carnet. Of course, they should only do this when they have established on the basis of their own records that the person concerned is indeed authorized to receive the goods directly at his premises. When the TIR Carnet holder is assured that the consignee is indeed authorized by Customs to receive goods directly at his premises, he will no longer be reluctant to hand over the TIR Carnet for presentation to Customs.

E. CONCLUSION BY THE WORKING PARTY

12. The Working Party is requested to endorse the opinion that extensive study has demonstrated that there are no legal or practical impediments to the application of the concept of authorized consignee under the current provisions of the TIR Convention. It is the competence of individual Contracting Parties to decide on the implementation of the facility and the conditions under which it is granted.

13. In order to clarify the remaining outstanding questions, Contracting Parties, having gained experience with the use of the concept of authorized consignee in their territory, are invited to share their experiences with the Working Party.
