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Economic Commission for Europe**Administrative Committee for the TIR Convention, 1975****Sixty-third session**

Geneva, 10–11 February 2016

Item 7 (b) of the provisional agenda

Revision of the Convention:**Amendment proposals to the Convention prepared
by the TIR Executive Board****Proposals for a new Explanatory Note and accompanying
comment to Article 49 of the Convention****Assessment of questions from the Committee and contributions from
Contracting Parties**

Note by the secretariat

I. Background and mandate

1. At its previous session, the Committee continued its considerations of document ECE/TRANS/WP.30/AC.2/2015/11, transmitting a proposal by TIRExB to introduce a new Explanatory Note and accompanying comment to Article 49 of the Convention, so as to widen the scope of greater facilities that Contracting Parties may grant to transport operators. The secretariat recalled that this proposal reflects a growing demand by customs and industry for further facilitations under the TIR Convention and that there are already a few successful examples of the concept of authorized consignor in various countries. It further recalled that the purpose of the proposals is to ensure that national competent authorities can independently decide on the conditions under which they would be willing to grant greater facilities within the meaning of Article 49, such as, in particular, authorized consignor and authorized consignee, in accordance with applicable provisions of national law. In other words, countries, whose national legislation does not provide for such facilities are not bound by the text of the Explanatory Note nor can they be forced by other Contracting Parties to introduce any such measure. Such countries, in accepting the proposal, only acknowledge that other countries have the sovereign right to introduce greater facilities in the context of the application of the TIR Convention on their national territory.

2. While some delegations were not opposed, in principle, to granting greater facilities, as long as they are in line with the TIR Convention, other delegations expressed grounded reservations, pending further clarification of the proposals by TIRExB and the secretariat. In the discussions, the following issues were raised:

(a) the relationship between the proposed Explanatory Note and the existing provisions of the TIR Convention, including the possibility of introducing contradictions in the application of the Convention;

(b) the impact of the acceptance of the concept of authorized consignor on the general principle of mutual recognition of customs controls;

(c) the treatment of TIR Carnets for TIR transports started at the premises of authorized consignors in countries en route and destination;

(d) the relationship between authorized TIR Carnet holders and authorized consignors under the TIR Convention;

(e) the justification that such important issue could be addressed by an Explanatory Note to an existing provision rather than requiring the drafting of a (or several) new provisions;

(f) the risk increase for customs authorities, as a consequence of the fact that TIR transports would start directly from the premises of an authorized consignor rather than from a customs office of departure;

(g) the alignment of the proposed text with the coverage of the concept of authorized consignor in other legal instruments, such as the Revised Kyoto Convention, or the World Customs Organization SAFE Framework of Standards.

3. The Committee requested the secretariat to prepare a document for consideration at the next session elaborating its assessment of the raised questions. Contracting Parties were also invited to submit their questions or position in writing to the secretariat, not later than by 16 November 2015, so that they could also be addressed in the aforementioned document (ECE/TRANS/WP.30/AC.2/127, paras. 26–28).

4. Further to this request, the secretariat prepared this document, which contains in Part II its assessment of the raised questions, based on the documentation used by TIRExB in the course of its discussions. Part III contains contributions by Contracting Parties.

II. Questions raised by the Committee

A. The relationship between the proposed Explanatory Note and the existing provisions of the TIR Convention, including the possibility of introducing contradictions in the application of the Convention

5. At its sixtieth session, TIRExB agreed that Article 49 provides sufficient legal basis for countries, which already now grant the simplification of authorized consignor or consignee for TIR transports. The Explanatory Note to Article 49 serves, on the one hand, to solidify this basis and, on the other hand, to provide other countries sufficient legal arguments to also allow these simplifications in their countries. TIRExB instructed that the new Explanatory Note be formulated in such a way that other provisions of the Convention, such as, but not limited to, Article 1 (c) and (d), Article 8 and Article 19 remain unaffected. Thus, the issue of potential contradictions does not arise.

B. The impact of the acceptance of the concept of authorized consignor on the general principle of mutual recognition of customs control

6. TIRExB, when discussing the concept of authorized consignor in TIR, took as premise that any authorization issued by the competent national authorities should ensure that all checks and controls, usually conducted by the customs authorities at the customs office of departure, be adequately performed by the authorized consignor. In addition, customs administrations may, on the basis of risk assessment, also decide to conduct random checks, either before departure of the goods or, alternatively, at the customs office of exit en route. Therefore, it is in the interest of authorized consignors that imposed requirements are strictly adhered to, because, if not, it will lead to the revocation of their authorization, as well as, possibly, other sanctions under national law (for negligence or, even, fraud). This system of checks and balances between national competent authorities and authorized consignors ensures that there is no reason to assume that the existence of the facility of authorized consignor in the country of departure would give cause for countries en route and of destination not to trust or recognize the controls conducted in the country of departure. In case of any reasonable doubt, competent authorities have to right to apply the provision of Article 38 of the Convention.

C. The treatment of TIR Carnets for TIR transports started at the premises of authorized consignors in countries en route and destination

7. As stated under question (a), the main purpose of the Explanatory Note is to provide the appropriate legal basis for countries that already provide facilitations for authorized or trusted operators, to be able to do so within the context of the TIR procedure. Against this background, the scope of the Explanatory Note was to leave the treatment of TIR transports in countries en route and destination entirely unaffected, as already addressed under question (b). The premise, thus, is that in the country of departure all TIR related formalities are performed by the authorized consignor under the authorization and supervision of customs authorities and that the responsibility of customs administrations is to take such measures as are necessary for satisfying themselves that the conditions required for a TIR transport are met. As a consequence, there is no reason for countries en route and of destination not to trust the checks and controls performed under the responsibility of the competent authorities of the country of departure or to treat TIR Carnets started at the premises of authorized consignors different from any other transport. And again, In case of any reasonable doubt, competent authorities have to right to apply the provision of Article 38 of the Convention.

D. The relationship between authorized TIR Carnet holders and authorized consignors under the TIR Convention

8. The formulation of the Explanatory Note to Article 49 does not address who can obtain the status of authorized consignor under the TIR procedure. This is left to the national competent authorities to decide. Thus, some countries have already granted authorized consignor status to authorized TIR Carnet holders, whereas other countries grant such status to duly authorized third parties, such as, but not limited to, manufacturers, warehouse keepers or exporters. With regard to the liability under the TIR procedure, it seems indispensable that the national guaranteeing association is either involved in the authorization process or, at least, has accepted to assume liability as of the actual start of the TIR transport. It has been proposed that this could be done by means of an addendum to

the existing guarantee agreement between national custom authorities and the national guaranteeing association.

E. The justification that such important issue could be addressed by an Explanatory Note to an existing provision rather than requiring the drafting of a (or several) new provisions

9. As stated under question (a), TIRExB instructed that the new Explanatory Note be formulated in such a way that other provisions of the Convention, such as, but not limited to, Article 1 (c) and (d), Article 8 and Article 19 should remain unaffected. In addition, considering that the formulation of the text of the Explanatory Note is based on the fact that, already now, countries apply the concept of authorized consignor under the TIR procedure, led TIRExB to establish that no changes to the Convention were required, considering that such countries apply the concept with reference to the provision of Article 49.

F. The risk increase for customs authorities, as a consequence of the fact that TIR transports would start directly from the premises of an authorized consignor rather than from a customs office of departure

10. As stated under question (b), the fact that the authorization to act as authorized consignor is only delivered to persons fulfilling strict criteria, the possibility of customs to perform random checks and the grave consequences for authorized consignors in case of infringements to get their authorization withdrawn ensure that there will be no risk increase for customs authorities. On the contrary, the combination of these aspects may even reinforce the level of customs supervision and, thus, further reduce risk.

G. The alignment of the proposed text with the coverage of the concept of authorized consignor in other legal instruments, such as the World Customs Organization (WCO) Revised Kyoto Convention (RKC), or the SAFE Framework of Standards

11. TIRExB extensively studied other legal instruments, in particular the WCO RKC, but, ultimately, agreed that the TIR authorized consignor concept should not be introduced in the TIR Convention by means of definitions and terminology found in other international legal instruments. In addition, the Board was of the general view that the authorized consignor needs not be defined in exhaustive detail (as was the case in other international legal instruments) in the Explanatory Note but, rather, only give enough scope to allow such simplifications (as well as, possibly, others) in any way that national administrations deem suitable (see ECE/TRANS/WP.30/AC.2/2015/1, para. 12).

III. Contributions from Contracting Parties

12. In a letter of 17 November 2015, the State Customs Committee of Belarus (GTK) informs the Committee that it is of the opinion that the Explanatory Note in its presented wording contains aspects that are in contradiction with certain provisions of the TIR Convention, in particular when it comes to the lifting of the obligation to present the goods, road vehicle and TIR Carnet to either the customs office(s) of departure (in accordance with Article 19 of the Convention), customs offices en route and the customs office(s) of destination (Article 21). GTK proposes the introduction of a new article into the text of the

TIR Convention, stipulating the procedures to grant simplifications to certain groups of authorized persons. In short, GTK proposes to leave Article 49 unchanged, as it deals with greater facilities at the national level, which do not impede the application of the provisions of the Convention.
