



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/AC.2/2000/14
4 August 2000

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975
(Twenty-ninth session, 19 and 20 October 2000,
agenda item 3 (a) (i))

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)

Activities of the TIRExB

Report by the Chairman of the TIRExB

Implementation of Article 38 of the TIR Convention

Note by the TIR Secretary

1. Controlled access of natural and legal persons to the TIR procedure is considered to be one of the main pillars of the whole TIR system (see 1999 TIR Handbook, page 8). This fundamental principle may be fully implemented by the competent authorities of Contracting Parties by means of the provisions of Article 6, paragraph 4 and Annex 9, part II as well as partially by means of the provisions of Article 38, paragraphs 1 and 2 of the TIR Convention.
2. The TIR Executive Board (TIRExB), at its sixth session (23-25 May 2000), studied the correlation between the two above groups of provisions and some practical aspects of their application. Below the TIR Secretary reproduces the relevant deliberations of the session and, following the request of the TIRExB, has prepared new proposals on the implementation of Article 38 of the TIR Convention.

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3. The TIRExB focused its attention on the issue as to what legal consequences the exclusion of a person from the TIR procedure in accordance with Article 38, paragraph 1 in one Contracting Party

should have for other Contracting Parties, in particular for the country where this person is established or resident. The TIRExB noted that the reason for the exclusion of a person from the TIR regime in accordance with the said article, e.g. guiltiness of a serious offence against the Customs laws or regulations applicable to the international transport of goods, could have quite different interpretations in various Contracting Parties. Therefore, the TIRExB was of the view that such an exclusion in one Contracting Party should not be automatically extended to other Contracting Parties, in particular to the country where this person is resident or established.

4. Nevertheless, during the authorization procedure in line with Annex 9, Part II of the Convention the competent authorities of the Contracting Party where the person concerned is resident or established should take into due account any information on serious or repeated offences against Customs or tax legislation to be provided by other Contracting Parties in accordance with Article 38, paragraph 2. The authorization for a person to utilize TIR Carnets could be revoked temporarily or permanently, if the competent authorities consider such evidences to be sufficiently in line with national legislation.

5. The TIRExB stressed that notification of an exclusion in accordance with Article 38, paragraph 2 should contain not only the name of the excluded person, but also detailed reasons for such an exclusion, in order to allow for efficient consideration of the case by the Contracting Party where the person concerned is resident or established. While a possible withdrawal of the authorization is under consideration by the competent authorities, the excluded person should be given the possibility of presenting explanations, documents and witnesses for the defence.

6. Taking account of the above considerations, the TIRExB felt that full implementation of the amended Article 38, paragraphs 1 and 2 would need some comments by the TIR Administrative Committee on such notions as "a person guilty", "a serious offence against the Customs laws or regulations applicable to the international transport of goods" as well as on a procedure of co-operation between the Customs authorities while implementing Article 38 of the Convention. The TIR Secretary was requested to prepare relevant proposals for the next sessions of the TIRExB and Administrative Committee.

7. The TIRExB was also of the opinion that, before such comments were adopted, it would be premature to disseminate any data on excluded persons (so-called "black lists") which are also reported to the Board in accordance with Article 38, paragraph 2 of the Convention. Distribution of this information should be restricted to the organizations which are already referred to in the amended Article 38 of the Convention.

8. In line with the aforementioned request, the TIR Secretary proposes the following draft comments to Article 38, paragraphs 1 and 2 of the TIR Convention:

Comments to Article 38

Add a new comment to Article 38, paragraph 1 to read as follows:

“A person guilty of a serious offence against the Customs laws or regulations

A person should be considered guilty of a serious offence against the Customs laws or regulations applicable to the international transport of goods, if the competent authorities of a Contracting Party (Customs authorities, competent courts, etc. in line with national legislation) have brought in a verdict of guilty resulting in liability of that person for payment of a Customs debt, administrative fines and/or other pecuniary sanctions. This verdict should be deemed true unless it is revoked or suspended by the authorities having taken the decision, other competent authorities or by other bodies of appeal in accordance with national legislation.”

Add a new comment to Article 38, paragraph 1 to read as follows:

“Seriousness of an offence against the Customs laws or regulations applicable to the international transport of goods

In general, the seriousness of an offence is determined in line with national legislation of the Contracting Party where the offence has been committed or detected, in accordance with Article 37 of the Convention. However, in order to harmonize the application of Article 38 of the Convention, the Customs authorities are recommended to consider the cases listed below as serious offences:

- smuggling or attempted smuggling of goods into/from the Customs territory of a Contracting Party;
- non-payment of a Customs debt in connection with the international transport of goods amounting to or more than the maximum sum per TIR Carnet established by the Contracting Party in line with Article 8, paragraph 3 of the Convention.”

Add a new comment to Article 38, paragraph 2 to read as follows:

“Cooperation between competent authorities

During the procedure of authorization of a person to utilize TIR Carnets in line with Annex 9, Part II of the Convention the competent authorities of the Contracting Party where the person concerned is resident or established should take into due account any information notified by another Contracting Party in accordance with Article 38, paragraph 2 on serious or repeated offences against Customs legislation committed by that person. Thus, in order to allow for efficient consideration of the case by the Contracting Party where the person concerned is resident or established, such notification should contain as many details as possible.”

Add the same comment to Annex 9, Part II, "Procedure".

9. The TIRExB also noted that the competent authorities of a Contracting Party could use the provisions of both Article 38, paragraph 1 and Annex 9, Part II, paragraph 1 (d) to exclude from the TIR regime a national transport operator guilty of a serious offence against the Customs laws committed on the territory of that country. The TIRExB felt that the provisions of Annex 9, Part II, paragraph 1 (d) should preferably be used for that purpose since the first option might lead to a situation where a transport operator excluded from the TIR procedure in its own country may still carry out TIR operations elsewhere as its authorization to utilize TIR Carnets has not been revoked. In this regard the following new comment is proposed:

Comment to Article 38

Add a new comment to Article 38, paragraph 1 to read as follows:

"Exclusion of a domestic transport operator from the TIR procedure

In order to exclude from the TIR regime a national transport operator guilty of a serious offence against the Customs laws committed on the territory of the country where he is resident or established, the Customs authorities are recommended to use the provisions of Article 6, paragraph 4 and Annex 9, Part II, paragraph 1 (d) rather than the provisions of Article 38, paragraph 1. The latter option might lead to a situation where a transport operator excluded from the TIR procedure in its own country may still carry out TIR operations elsewhere as its authorization to utilize TIR Carnets has not been revoked."

Add the same comment to Annex 9, Part II, "Procedure".

10. The TIR Administrative Committee may wish to consider the above draft comments with a view to their adoption or transmission to the UN/ECE Working Party on Customs Questions affecting Transport for further deliberations.
