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ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975

Forty-second session
Geneva, 28 September 2006
Item 3 (a) (ii) of the provisional agenda

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)

Activities of the TIRExB

International TIR Data Bank (ITDB) *

Note by the secretariat

I. MANDATE

1. At its fortieth session, the Administrative Committee considered document ECE/TRANS/WP.30/AC.2/2006/2, prepared by the secretariat, containing the views of the United Nations Office of Legal Affairs (OLA) on the issue of including exclusions in accordance with Article 38 of the Convention in the information contained in the ITDB. The Committee was of the view that Contracting Parties should study the question in further detail before its next session, in particular taking into account the following questions:

- (i) Do exclusions in accordance with Article 38 of the Convention fall under Article 8 (a), last indent of the Terms of Reference of the Convention and
- (ii) Would inclusion and publication in the ITDB of data concerning exclusions in accordance with Article 38 be in line with national data protection laws?

* The UNECE Transport Division has submitted the present document after the official documentation deadline.

2. The Committee decided to revert to these questions at its next session.
3. Finally, the Committee requested the secretariat to prepare a proposal for a disclaimer for the ITDB based on a combination of the four alternatives contained in document ECE/TRANS/WP.30/AC.2/2006/2 (ECE/TRANS/WP.30/AC.2/81, para. 19).
4. This document provides a proposal for a disclaimer for the ITDB.

II. BACKGROUND

5. As contained in document ECE/TRANS/WP.30/AC.2/2006/2, the secretariat had, inter alia, requested the view of the United Nations Office of Legal Affairs on the question if the TIR secretariat could be held liable for the correctness of any information retransmitted via the ITDB (in particular with regard to data in application of Article 38 of the TIR Convention) and, if yes, if the use of a disclaimer would be sufficient to decline any liability.

6. OLA, in response to this question, was of the opinion that it would be prudent to use a disclaimer, stating that the TIR secretariat was exercising its functions pursuant to a mandate of the TIR secretariat under the TIR Convention and the Terms of Reference of the TIRExB and, therefore, the TIR secretariat played no role in the determination of the contents of the ITDB, in particular with regard to the information provided by a Contracting Party under Article 38. OLA provided four possible alternatives for the wording of a disclaimer.

7. The Administrative Committee, when considering the four alternatives, was of the opinion that, whereas two alternatives focused on the content of the ITDB, the other two addressed the circle of recipients of the data contained in the ITDB. The Administrative Committee requested the secretariat to merge all aspects of the alternatives in its proposal.

8. Further analysis by the secretariat has made clear that it very well possible to merge the text of the various alternatives, in order to take account of all aspects which should be encompassed by a disclaimer.

III. PROPOSAL

8. Taking account of the above, the secretariat proposes the following wording for a disclaimer for the ITDB:

“DISCLAIMER

In accordance with the provisions of the TIR Convention, 1975, Contracting Parties to the TIR Convention are responsible for the collection and transmission of information to the TIRExB and the ITDB. Thus, the UNECE TIR secretariat cannot be held responsible for any omissions. The UNECE TIR secretariat maintains the ITDB on behalf of the TIRExB, pursuant to a mandate of the TIR secretariat under the Convention and the Terms of Reference of the TIRExB. Contracting Parties and their designated Customs TIR Focal Points are the sole intended users of the information contained in the ITDB. No other

person, or entity, shall have any rights whatsoever, relating to the information contained in the ITDB.

The content of the information transmitted by the Contracting Parties to the UNECE secretariat, and in particular information provided by a Contracting Party under Article 38, has been determined by the transmitting Contracting Party, and the UNECE TIR secretariat has thus not been involved in determining the content nor has it made any attempt to ascertain the accuracy of such information. As such, the information provided in the ITDB is provided 'as is', without warranty of any kind. The UNECE TIR secretariat specifically does not make any warranties as to the accuracy or completeness of the information provided in the ITDB, and, thus, the UNECE TIR secretariat cannot be held responsible for any omissions. Under no circumstances shall the UNECE TIR secretariat be liable for any loss, damage, liability or expense incurred or suffered that is claimed to have resulted from the use of the ITDB, including, without limitation, any fault, error, omission, interruption or delay with respect thereto. Under no circumstances, including but not limited to negligence, shall the UNECE TIR secretariat be liable for any direct, indirect, incidental, special or consequential damages, even if the UNECE TIR secretariat has been advised of the possibility of such damages.

The user of the ITDB specifically acknowledges and agrees that the UNECE TIR secretariat is not liable for any conduct of any Contracting Party, pursuant to disclosure by the UNECE TIR secretariat, of information in the ITDB, in particular with regard to information provided under Article 38 of the TIR Convention.”

IV. FURTHER CONSIDERATIONS

9. Without prejudice to the outcome of the discussion on the inclusion of information under Article 38 in the ITDB, The Administrative Committee may wish to consider and, possibly, adopt the text of the disclaimer.
