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Working Party on Customs Questions affecting Transport

(One-hundred-and-twelfth session, 31 January-3 February 2006,
agenda item 9 (b) (iii))

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

Revision of the Convention

Amendment proposals for the Convention

Note by the secretariat*

A. BACKGROUND

1. The Working Party, at its one-hundred-and-ninth session, considered the following proposals, submitted by Contracting Parties and discussed by the Ad hoc Expert Group at its first session, to be of a technical nature and invited the TIRExB to study these issues in further detail and to revert to the Working Party with its conclusions (TRANS/WP.30/2004/32 and TRANS/WP.30/218, paras. 51-54):

- Definition of the term “TIR Procedure”;
- Title of Chapter II;
- Article 28;
- Article 40;
- Article 41;
- Article 42bis.

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

2. This document provides the Working Party with the outcome of the discussion by the TIRExB at its twenty-sixth (TIRExB/REP/2005/26) and twenty seventh (TIRExB/REP/2005/27draft) sessions, for final consideration by the Working Party.

B. AMENDMENT PROPOSALS OF A TECHNICAL NATURE MADE IN THE FRAMEWORK OF THE TIR REVISION PROCESS

Documentation: TIRExB Informal documents No. 8, 16, 17 and 18 (2005).

Definition of the term “TIR procedure”

3. The TIRExB recalled that, some years ago, one Contracting Party had raised the issue of facing legal problems in national proceedings due to the absence of a definition of the term “TIR procedure” in the TIR Convention. The TIRExB acknowledged that the idea of having a definition of the term “TIR procedure” might look tempting, but wondered whether, in fact, such definition would have any added value. The TIRExB considered that, first of all, providing a definition for the term “TIR procedure” would limit the application of the term, because, at this moment, the term “TIR procedure” encompasses all aspects of the TIR Convention without further specification. Secondly, the Board established that no other major transit procedure, as laid down in, for example, the Common Transit Convention and the Community Customs Code, contained a definition for its key-term (in casu: “Transit Procedure”). On this basis, the TIRExB considered to report back to WP.30 that the current indirect definition of the term “TIR procedure” as contained in Article 1 (a), stipulating that “the TIR procedure shall mean the procedure laid down in this Convention” seems to be sufficient and that the term does not need any further specification (TIRExB/REP/2005/26, para. 11).

Title to Chapter II

4. With regard to the possible amendment of the title of Chapter II, the TIRExB decided to revert to this issue once the discussion by the Ad hoc Expert Group on the TIR Revision Process and by the WP.30 on the content of Chapter II had been finalized (TIRExB/REP/2005/26, para. 12).

Article 28

5. At its twenty-sixth session, the TIRExB was of the view that the amendments proposed by the European Community would need further clarification. In particular, the Board pointed out that a clear distinction should be made between the concepts “termination of a TIR operation” and “discharge of a TIR operation” and that the irregularities mentioned in Article 28, paragraph 2 which are not to be attributed to the TIR Carnet holder should not be confused with the liability of the national association according to Article 8 of the Convention. Therefore, the TIRExB felt

that it would not be appropriate to include into paragraph 2 of Article 28 a reference to the guaranteeing association (TIRExB/REP/2005/26, para. 14).

6. At its twenty-seventh session, the TIRExB felt that Article 28, paragraph 1 might benefit from clarification but that, considering the fact that, so far, its application had not led to complications, no significant amendment was required. In view of the fact that diverging opinions remained, the Board decided to revert the issue back to WP.30 for final consideration, proposing the following alternatives:

Alternative 1:

Leave the text of Article 28 unchanged

Alternative 2:

Amend the text of Article 28, para. 1 and to insert a new Explanatory Note 0.28-2 to read as follows:

“1. Termination of a TIR operation shall be certified by the Customs authorities without delay. Termination of a TIR operation shall be subject to the goods specified on the manifest of a TIR Carnet being placed under another system of Customs control. Termination of a TIR operation may be certified with reservation: where termination is certified with reservation this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.

Explanatory Notes to Article 28

0.28-1 (text of current Explanatory Note 0.28)

0.28-2 This Article provides that the termination of a TIR operation shall be subject to the goods being placed under another Customs procedure or another system of Customs control. This includes clearing the goods for home use (either in full or conditionally), the transfer across the border to a third country (export) or to a free zone, or the storage of the goods in a place approved by the Customs authorities while awaiting the declaration for another procedure.” (TIRExB/REP/27draft, para. 8).

Article 40

7. With regard to the proposal to amend Article 40 to include a reference to the guaranteeing association, the TIRExB had similar considerations as for Article 28 and felt this was not appropriate. However, the TIRExB felt that it was not in a position to clarify the practical application of Article 40 and its relation to other provisions of the TIR Convention, in particular Articles 19 and 39, paragraph 2 (TIRExB/REP/2005/26, para. 16).

8. Therefore, at its twenty-seventh session, the TIRExB continued its discussion of the issue and agreed that the responsibility of the holder, as stipulated in Article 40 could do with further clarification. To this end, the TIRExB requested the secretariat to draft a set of best practices for further discussion by the Board.

Article 41

9. The TIRExB considered the proposal to amend Article 41, in particular in view of the apparent linguistic differences between the French text (“marchandises manquantes”) and the English text (“goods which are short”). The Board agreed that the issue did not seem to be very important, as no problems in the application had come to its attention. At the same time, the Board, consisting of neither English nor French native speakers, admitted that it found it hard to judge whether or not the provision would benefit from any alternative wording. Therefore, the Board decided to revert the issue without amendment proposal back to the Working Party, save for the question addressed to English native speakers, to judge if the provision would obtain more clarity if the word “short” would be replaced by “deficient” (TIRExB/REP/2005/27draft, para. 10).

Article 42 bis

10. With regard to the proposal to amend Article 42, the TIRExB felt that, so far, it had worked well and that there was no indication that an amendment of the text was desirable. However, the Board was of the view that it would be important to stress that the proper application of the TIR Convention is a fundamental obligation of Contracting Parties. The functioning of the TIR system cannot be sustainable and efficient without Contracting Parties respecting the provisions of the TIR Convention and ensuring their proper application. With that, the Board decided to revert the issue back to WP.30 for further consideration, because it felt that the proposal was of a strategic nature and, therefore, went beyond the Board’s mandate. Finally, the TIRExB noted that, pursuant to Annex 8, Article 1**bis**, paragraph 2, the Administrative Committee should supervise the application of the TIR Convention not only by Contracting Parties, but also by associations and international organizations (TIRExB/REP/2005/26, paras. 18-19).
