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Administrative Committee for the TIR Convention, 1975

TIR Executive Board (TIRExB)

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Agenda item VI (b)

Authorized consignors and consignees

Note by the secretariat

I. Background and mandate

1. At its fifty-third session, the TIRExB considered Informal document No. 5 (2013), prepared by Mr. H. Lindström (Finland), and commenced a first round of discussion on the possible introduction of the concept of authorized consignors in the TIR Convention. TIRExB has recognized that the use of TIR authorized consignees and consignors within the TIR system would further facilitate trade but stressed a need for further clarifications, in particular, who would be entitled to obtain the status of authorized consignor or consignee, the requirements that consignees and consignors would have to comply with to be authorized, as well as the consequences of and opportunities brought by computerization of the TIR procedure (TIRExB/REP/2013/53final, para.14).

2. At its fifty-sixth session, the TIR Executive Board (TIRExB), inter alia, continued its examination of the issue and took note of a presentation by Mr. Lindström (Finland), as contained in Informal document No. 27 (2013) which highlighted potential benefits of as well as possible scenarios for the application of the concept of authorized consignor in TIR. At its fifty-seventh session, due to lack of time, TIRExB could not discuss Informal document No. 3 (2014), prepared by the secretariat and compiling the individual contributions by TIRExB members on the question of whether the concept of authorized consignor could be introduced in the TIR Convention.

3. As a contribution to the discussion, the secretariat prepared the present Informal document No. 9 (2014), focusing only on the question of authorized consignors and outlining possibilities for and potential limitations of introducing such a concept into the TIR system. Additional information on legal definitions and interactions of potential relevance for the discussion is introduced as an Annex to the present document.

II. Introduction

4. The discussion so far seems to centre on the idea that a TIR Carnet holder may be recognized as authorized consignor which will allow him to take charge of a specific load at

a sender's premises, to seal the load compartment himself and to stamp the TIR Carnet prior to his arrival at the customs office of departure – which may or may not physically coincide with the customs office of exit – for the purpose of further facilitating the transit operation. This would mean that the TIR Carnet holder or his representative needs to be in possession of the necessary seals and stamps; this would be followed by a mandatory documents' check at the customs office of departure/exit. The concept is referred to as "authorized consignor".

5. The Board may wish to recall that in 2003 it had undertaken a legal study in which it had concluded that although the authorized consignee is consistent with the TIR Convention and may be applied, the facilitation of authorized consignor cannot be applied within the context of the current text of the TIR Convention. This conclusion was endorsed by WP.30 at its one hundred and fifth session (TRANS/WP.30/210 paras.45–47).

6. Upon revisiting the issue, if the Board and other Contracting Parties would wish to now consider introducing this concept into the TIR system, this would be evaluated in light of the following:

(a) The compatibility of the concept of the TIR Carnet holder as "authorized consignor" with the legal provisions of the TIR Convention, existing established practices, national laws and international customs agreements that may be applicable/relevant (e.g. the Revised Kyoto Convention);

(b) The possibility for and limitations of introducing it into the system as a national practice under Article 49 of the TIR Convention;

(c) The possibility for and limitations of introducing it into the system as a legal provision of the TIR Convention (amendment).

7. The secretariat's research has led to some preliminary conclusions, offered as a contribution to the discussion and reflected in the following paragraphs.

II. Who is the "authorized consignor"

8. An authorized consignor is defined by the WCO Revised Kyoto Convention (Specific Annex E, Chapter 1, definitions) as a person:

"empowered by the customs to send goods directly from his premises without having to present them at the office of departure".

9. The same Convention also specifies (Specific Annex E, Chapter 1, Appendix, paragraph B) that:

"seals or fastenings affixed by authorized consignors and other authorized persons for customs transit purposes to ensure security for customs purposes shall offer physical security comparable to that of seals affixed by the customs and shall make it possible to identify the person who affixed those seals, by means of numbers to be entered on the transit document".

10. Consequently, it may be contended that for the purposes of the Revised Kyoto Convention the authorized consignor is defined as the sender of the goods not the transporter of the goods¹, where the two are separate entities. This distinction is further

¹ Further analysis on the legal relationships between the sender and the transporter as well as the legal definition of consignor, consignee, owner, seller, buyer and other contracts/liabilities involved in imports/exports and transit may be found in the Annex to this document.

clarified where the definition differentiates between the authorized consignor and “other authorized persons”. Thus, anyone authorized to affix seals, who is not an authorized consignor under the definition of the Revised Kyoto Convention, would fall under the category of “other authorized persons”.

11. Furthermore, the definition also refers to sending goods from the [fixed] premises of the authorized consignor, because part of the authorization is to equate the authorized consignor’s premises with those of a customs office. A customs office is defined by the WCO Revised Kyoto Convention (General Annex, Chapter 2, definitions) as:

“the customs administrative unit competent for the performance of customs formalities, and the premises or other areas approved for that purpose by the competent authorities”.

12. So, fixed approved premises are also considered a pre-requisite for such authorization. The proposed concept of TIR “authorized consignor” as described in informal document No.3 (2014) is modified and refers to the TIR Carnet holder holding authorized consignor status, not loading the goods at his own premises, but picking up the goods from the sender’s premises. This difference would imply that not only the TIR Carnet holder, but also the sender’s premises should be indicated in the authorization as being approved for customs purposes.

13. From the above, the secretariat is of the general view that although the proposed concept of the TIR Carnet holder as “authorized consignor” as described in informal document No.3 (2014) may have merits for facilitation, it should not be called “authorized consignor”, but an alternative term and adapted procedure would be better suited.

III. The authorized consignor concept as a national practice, without amending the TIR Convention

14. National competent authorities have every right to legislate or extend facilities within their own jurisdiction as long as they remain within the bounds of the State’s international obligations under international agreements they are Parties to. Against this background, individual Contracting Parties to the TIR Convention may consider it beneficial to introduce additional facilities for TIR transport operators. This is in line with Article 49 of the TIR Convention, as long as these facilities do not impede the application of the Convention’s provisions.

15. One of the pillars of the TIR Convention is mutual recognition of customs controls performed at the office of departure. This recognition, other than being prescribed in the TIR Convention, is also a reflection of trust and good faith. Against this background, the question arises as to whether it should be a requirement to disclose to customs offices en route that a TIR transport has commenced at the sender’s premises by an “authorized consignor” operator.

16. Depending on how this question is addressed, there could also be a question on whether the customs offices en route would be obliged to recognize the controls performed under these circumstances or would it constitute grounds for additional checks and controls en route. For example seals and stamps afforded to the transport company in the context of it being an « authorized consignor » TIR Carnet holder, may actually in practice be used in some cases by a driver. As a result, customs offices en route may, in some circumstances, consider they have sufficient justification under Article 5, paragraph 2 of the TIR Convention, to examine the goods.

17. One of the possible ways forward proposed for operationalizing such a concept would be to modify the conditions of the agreement between customs and the national guaranteeing association as to include guarantee coverage between the sender’s premises

and the customs office of departure². In this context, it should be investigated if such an agreement would result in an extension of the liabilities of the guaranteeing association that could affect the guarantee chain as a whole.

18. For example, it would be a possibility that a guaranteeing association in a transit or destination country may, in some situations, become liable for an irregularity that in fact occurred at the sender's premises or en route between the sender's premises and the customs office of departure, since it is not always the case that the liable association is the one in the Contracting Party where the irregularity occurred, but the one where the irregularity is discovered (Article 37). In this case, it may be prudent to ensure that all Contracting parties and the guarantee chain are in agreement with a potential national facility of "authorized consignor" for TIR Carnet holders.

19. Further to this, according to Article 8, paragraph 4 of the TIR Convention, the liability of the guaranteeing association in the country of departure commences only at the time when the TIR Carnet is accepted at the customs office of departure. As previously mentioned (paragraph 10), an area approved to act as a customs office must be a designated area/fixed premise, approved for this purpose by customs and not the premises of any sender employing the services of a TIR Carnet holder with authorized consignor status. In addition, according to the proposed concept, the TIR Carnet will still have to be presented and accepted at the customs office of departure³. As a result, technically and legally, the liability of the association cannot begin before then, unless the premises where the goods are sealed are approved by customs, dispensing with the need for any further check at a customs office of departure.

20. If Article 8, paragraph 4 imposes such a limitation on the possibility to geographically extend liabilities and guarantee coverage, then does this mean that the facility would go beyond the scope of Article 49? (i.e. impeding the application of the provisions of the Convention); if so, would it be possible to introduce the facility nationally without amending the TIR Convention?

IV. Authorized consignor as part of the TIR Convention

21. The authorized consignor concept could be introduced into the TIR Convention, possibly under a different term such as "simplified procedure for authorized TIR Carnet holders". An Explanatory Note or additional paragraph to Article 19 would be required as to make the TIR Carnet holder or the sender eligible for this function subject to customs approval. Introducing such an amendment would also extend the scope of mutual recognition of controls, and as such it does not appear that any further modification would be required to Article 5. However, if the integrity of the principle of mutual recognition is to be maximally preserved, it may be beneficial to consider introducing harmonized criteria for "authorized consignor" authorizations, for those Contracting Parties that wish to implement it.

22. Article 8, paragraph 4 would need to be either modified, or supplemented by an Explanatory Note specifying that the liability of the association could, in the case of a procedure commencing under this simplified procedure, begin at the sender's premises where the TIR Carnet holder would load the goods. Further amendments relating to this may be required in order to ensure that all guaranteeing associations along the transit route

² See TIRExB Informal Document 3 (2014), Annex, paragraph 2, page 5

³ The major benefits of the authorized consignor concept will only be obtained if the customs office of departure is also the customs office of exit/en route.

of such operations would be prepared to cover liabilities that occur on this extended part. It remains open whether or not it would be necessary to include reference to the additional liability in Annex 9, Part I, paragraph 3.

23. Finally, the concept would have to be adapted to mention explicitly the requirement for approved fixed premises where the goods are to be loaded, in order to ensure effective communication with the customs office of departure and well defined locations where the seals, stamps and documentary proof are being kept for control purposes.

V. Considerations by the TIR Executive Board

24. As a preliminary conclusion, the “authorized consignor” for a TIR Carnet holder does not appear to be consistent with the definition and envisaged role of the “authorized consignor” in the WCO Revised Kyoto Convention, or with current practice. Furthermore, the current text of the TIR Convention seems to continue to place limitations on its introduction as a national facility, similarly to 2003–2004 when the same question was considered. Therefore, amendments to the Convention would be required in order to allow the application of an adapted “authorized consignor” concept.

25. TIRExB is invited to take due note of the above considerations, as well as of the additional information contained in the Annex, when discussing how to proceed with the further development of the concept of authorized consignor in TIR. The Board may also take stock of this information in conjunction with the additional relevant informal documents No. 3 (2014), No. 27 (2013) and No. 28 (2013). Further to information received at its fifty-third session (Geneva, June 2013), that Poland intended to introduce a TIR consignor status by the end of 2013 (See ECE/TRANS/WP.30/AC.2/2014/1, para. 13), the Board may also wish to request the secretariat to seek further clarification from the Polish customs authorities on this issue.

Annex

Further information on potentially relevant legal background

The term “consignor” in relation to the transporter

1. The consignor in commercial law is the person legally responsible for sending the goods to the consignee. The terms shipper and exporter are also often used as synonymous to consignor. The consignor is often acting on behalf of the owner of the goods as a direct or indirect representative for customs purposes. The consignor’s name appears in the export declaration and he may have sole or joint liability (with the owner) towards customs for the purpose of the export. As a representative of the owner, the consignor is responsible for the goods and for the actions of the consignee who receives the goods on consignment. The consignee is the person to whom delivery is to be made, but is not the buyer of the goods. The consignor does not give up responsibility for the goods until their sale by the consignee and thereby retains the financial risks and liability in the event of loss of the merchandise.

2. The consignor could also be the owner of the goods. The consignor – regardless of whether he is the owner - could also be the transporter but not necessarily. It is very rarely the case that the consignor is also the transporter. A further possibility is that the seller/owner of the goods arranges that the goods are transported directly to the buyer under a commercial contract of sale of the goods, without consignment or without an intermediary representative.

3. For customs purposes, the export declaration does not necessarily always make a distinction between these different legal terms. There is most often a requirement to indicate the name of the person responsible for the goods, may it be called “exporter”, “consignor”, or “principal party in interest”. In some export declarations there is a separate field to be filled out by the declarant representative. The name and details of the exporting carrier/transporter are always required, as well as the name and details of the recipient. For the recipient, customs export declarations frequently refer to the term “consignee”, when in fact the recipient could be the buyer. This is because customs is generally only concerned about ensuring that customs legislation is observed and that customs revenues are protected by being able to pinpoint the location of the goods and by identifying who is in possession of them.

4. Similarly, a transport operator could be engaged to perform the carriage of goods to be received on consignment, but also could be engaged to transport goods directly from the buyer to the seller and these details normally are of no consequence for the transport itself. The transport company is engaged under a contract of carriage to take the goods from the sender to the recipient and the transporter is not concerned if the relationship between the sender and the recipient is that of consignor/consignee or seller/buyer.

5. Generally speaking, the sender is responsible vis-à-vis the recipient as to ensuring that the goods are delivered as agreed between them, while the recipient is responsible vis-à-vis the sender as to the payment for the sale of the goods (whether as buyer or consignee), for receiving the goods from the transporter and, depending on the terms of delivery (Free on Board, Delivered Duty Paid etc) could also be responsible for clearing import formalities at the final destination. The carrier may be liable to either one or both parties depending on the contract of carriage, as to the transport only i.e. making sure that the goods reach the destination, in accordance with applicable laws as concerns the transport operation, including relevant customs legislation, without losing or damaging the goods in the process.

6. Following the export formalities, the engaged carrier may be required to transit through one or more territories to reach the destination. From that point onwards, it is the carrier/transporter that becomes liable towards customs in the transit countries, and the transit procedure is set in motion. If the transport is performed under cover of a TIR Carnet, the TIR Carnet holder is the “principal party in interest” or beneficiary of the guarantee obtained from guarantee chain, in the event that he is unable to cover his liabilities towards customs if the TIR transport is not properly terminated. He is also the named natural or legal person responsible for the transit goods listed in the TIR Carnet which is a customs transit document.

7. From this it could be contended that the transporter has distinctly different roles to play under the contract of carriage, in the export procedure and in the transit procedure.
