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Item 5 (f) of the provisional agenda

Revision of the Convention:

Proposal to amend Annex 9, Part I, paragraph 5

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Note by the secretariat

I. Background and mandate

1. The Committee may wish to recall that it, at its sixty-third session, it was informed that the Working Party had considered the proposal submitted by the Russian Federation on amending Annex 9, Part I, paragraph 5, to expressly specify that non-compliance with the duties of the association under paragraph 3 of Annex 9, Part I constitute grounds for termination of the agreement between the national association and the customs authorities (see ECE/TRANS/WP.30/2015/1/Rev.1 - ECE/TRANS/WP.30/AC.2/2015/7/Rev.1). The Committee noted that the Working Party was of the view that such an amendment is not warranted, due to sufficient clarity of the existing text. However, at the request of the Russian Federation, the Working Party had transmitted this proposal to AC.2 with the request to consider whether referring the question to TIRExB would be warranted. The Committee considered the amendment proposal and the information provided by the delegation of the Russian Federation on the details of this proposal and decided that there would be merit in further consideration by TIRExB. Therefore, the Committee decided to revert to this issue at a future session when TIRExB has transmitted its findings (see ECE/TRANS/WP.30/AC.2/129, para. 37).

2. In Annex, the secretariat reproduces an excerpt of the report of TIRExB at its sixty-seventh session, containing the findings of the Board in reply to the above request.

II. Considerations by the Committee

The Committee is invited to resume its discussions in light of these findings.

Annex

Excerpt from the report of TIRExB at its sixty-seventh session¹

“Further to this request [from the Committee], the Board considered the Russian proposal, as well as an assessment by various Contracting Parties and the secretariat. Mr. Amelyanovich (Russian Federation) explained that the application of the term “duties” in Annex 9, Part I, paragraph 3 versus the use of the term conditions and requirements in the title of Annex 9, Part I, as well as in paragraphs 5 and 7, had led Russian courts to the conclusion that the non-compliance with the duties as set out in paragraph 3 would not (automatically) lead to the revocation of the authorization, as stipulated by paragraph 5. Mr. Fedorov (Belarus) supported this view. Other TIRExB members disagreed with this interpretation and, after having consulted with legal experts, confirmed that Annex 9, Part I should be read in its full context, as was supported by the use of the word “above” in paragraph 7 of the text of Annex 9, Part I. Thus, the term “conditions and requirements” referred to all provisions of Annex 9, Part I, including paragraph 3. Therefore, there was no need to include a specific reference to it in paragraph 5. On the contrary, such inclusion could frustrate the understanding that the provision of paragraph 5 referred to Annex 9, Part I as a whole and not just to some of its provisions. Finally, such understanding of the text was supported by the wording of paragraph 1 (d) of Annex 9, Part I, which stipulated that the conditions and requirements as contained in that sub-paragraph (as well as in the rest of that paragraph) included the unequivocal acceptance by the national associations of its duties as set out in paragraph 3.

18. In conclusion, the Board agreed to transmit the above assessment as a majority opinion back to AC.2, with the proposal that, possibly, AC.2 could clarify the understanding of the text of Annex 9, Part I in its report. Mr. Amelyanovich (Russian Federation) was invited to submit examples of court decisions, based on a different understanding of Annex 9, Part I, paragraph 5, to the Board for further assessment.”

¹ For the text of the full report, please refer to document ECE/TRANS/WP.30/AC.2/2016/13.