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Item 5 (d) of the provisional agenda

Revision of the Convention

Amendment proposals to the Convention prepared by the TIR Executive Board

Note by the secretariat

I. Background and mandate

1. At its sixty-third session (February 2016), the Committee, inter alia, pursued its discussions on the proposal by the TIR Executive Board (TIRExB) to introduce a new Explanatory Note and accompanying comment to Article 49 of the Convention, so as to widen the scope of greater facilities that Contracting Parties may grant to transport operators. Against this background, the Committee welcomed document ECE/TRANS/WP.30/AC.2/2016/5, prepared by the secretariat on the questions raised by the Committee at its previous session, as well as Addendum 1 to the aforementioned document, submitted by the Government of Switzerland.

2. When introducing its replies, the secretariat once more highlighted the concepts behind the proposed text of the Explanatory Note, stipulating that the concept of authorized consignors remains: (a) within the existing legal framework; (b) under the sole competence of national authorities; and (c) does not lead to differences in treatment of transports en route or at destination.

3. The delegations of Iran (Islamic Republic of), Turkey and the European Union (EU) expressed their support for the proposals. Other delegations (Kazakhstan and Ukraine), although not against the principle of granting further facilitations as such, felt that the proposed Explanatory Note did not fully meet the provisions of the Convention, frustrated the principle of mutual recognition and further increased the risk potential of TIR transports. They further argued that the delivery of any authorization should, at least, foresee the involvement of or approval by all competent authorities involved in TIR transports with authorized consignors. Ultimately, the requirements to be granted the status of authorized consignor should be set by the provisions of the TIR Convention. The Russian delegation informed the Committee it could not agree with the proposed

amendment neither in substance nor in form, as, in its view, such a facilitation would result in significantly increased risks, especially for customs offices of destination. The Russian delegation, further, stated that until a complex and well-designed system of regulation and control to ensure confidence accompanies this proposal it would be premature to consider the introduction of authorized consignors in the TIR system.

4. The Committee, further, took note of document ECE/TRANS/WP.30/AC.2/2016/6, outlining the discussions of TIRExB in preparation of the proposed Explanatory Note and accompanying comment. The Committee also took note of Informal document WP.30/AC.2 (2016) No. 4, transmitted by the International Road Transport Union (IRU) and providing examples of the practical application of the concept of authorized consignor and consignee in various countries. The Committee agreed that these examples would merit further consideration. The Committee invited TIRExB to further assess the examples by IRU and decided to resume its considerations on this proposal at a future session when TIRExB has finalized its findings (see also ECE/TRANS/WP.30/AC.2/129, paras. 26-29).

II. Further considerations by the Board

5. At its sixty-seventh session (April 2016), the Board decided, for now, to limit its discussions to the TIR Carnet holder as authorized consignor, linking the activity to the liability of the TIR Carnet holder under the TIR Convention. In such concept, the fact of being authorized TIR Carnet holder would serve as a prerequisite to become authorized consignor. The authorization could be implemented from various premises.

6. Various TIRExB members explained that granting a ‘simplification’ actually did not mean the lifting of criteria or obligations for operators. On the contrary: authorized TIR Carnet holders benefiting from any simplification were obliged to fulfil stricter criteria than for the regular application of the TIR procedure. It was further noted that the concept of Authorized Economic Operator (AEO) and mutual recognition agreements, though related to the issues at stake, go beyond the scope of the current discussions, which is focused on applying the concepts of authorized consignor/consignee as national simplifications. In conclusion, TIRExB agreed to pursue its discussions at a future session, based on the following aspects: (a) the application of facilitations as a national concept, with reinforced customs control; (b) limited to TIR Carnet holders only; and (c) describing a strict set of minimum conditions and requirements (see also ECE/TRANS/WP.30/AC.2/2016/13, paras. 12-14).

7. At its sixty-ninth session, TIRExB considered an amended amendment proposal, constituting a maximum effort to introduce further facilitations in the TIR Convention within the scope of Article 49. In a first reaction, some members explained that in their country the facilitation of authorized consignor or authorized consignee was not limited to the authorized TIR Carnet holder only and, therefore, requested the reference to be deleted or, alternatively, to be replaced by a more neutral term, such as “duly authorized person”. Other members were of the opinion that the text of the proposed Explanatory Note insufficiently addressed the liability of the TIR Carnet holder and was contrary to the provisions of Articles 19 and 21. They further stated that a facilitation, granted by one country to an authorized TIR Carnet holder, created additional risks during the rest of the TIR transport. Mr. S. Somka (Ukraine) reconfirmed that, in his view, facilitations granted to duly authorized persons should not be limited to customs offices of departure or destination and, therefore, pleaded to reinsert a reference to customs offices en route. In addition, as it is only seldom that a TIR Carnet holder acts as authorized consignor or consignee, he thought it more appropriate, in this context, to introduce the term “authorized carrier”.

8. The Chair, once more explained, that the provision of Article 11 remains fully intact and that the requirements of Articles 19 and 21 are replaced by a set of customs controls, thus leaving their scope unaffected.

9. In conclusion, TIRExB, (a) acknowledging that various Contracting Parties already now apply this facilitation, which is in line with modern logistics practices, (b) taking into account that there is no obligation for any Contracting Party to apply the facilitation for its own territory, (c) establishing that no amendments to other provisions of the Convention were required, (d) decided that the proposal could be transferred to the Administrative Committee for the TIR Convention, 1975 (AC.2) for further consideration. Mr. S. Amelyanovich (Russian Federation) reiterated not being in a position to support the proposals (see also ECE/TRANS/WP.30/AC.2/2017/2, paras. 13-16).

III. Amended proposal for a new Explanatory Note to Article 49

Explanatory Note to Article 49

“0.49¹ Contracting Parties may grant, in line with national legislation, duly authorized persons greater facilities in the application of the provisions of the Convention. The conditions prescribed by the competent authorities upon granting such facilities should, at least, include the application of information and communication technologies to ensure the good conduct of the TIR procedure, the exemption to produce goods, road vehicle, the combination of vehicles or the container with the TIR Carnet at the Customs offices of departure, ~~en-route~~ or destination, as well as instructions for duly authorized persons to perform specific duties entrusted pursuant to the TIR Convention to customs authorities, such as, in particular, the filling in and stamping of the TIR Carnet and the affixing or checking of customs seals. Duly authorized persons who have been granted any greater facility should put in place a system of record-keeping, enabling customs authorities to carry out effective customs control as well as to supervise the procedure and carry out random controls. Greater facilities should be granted without prejudice to the liability of TIR Carnet holders as stipulated by Article 11, paragraph 2 of the Convention. ~~Contracting Parties are recommended to monitor the application of any granted facility.~~”

IV. Proposal for a comment to Explanatory Note 0.49

10. In order to ensure that, inter alia, the concepts of authorized consignor and consignee will be considered to be encompassed by Explanatory Note 0.49, TIRExB proposes the following comment²:

Comment to Explanatory Note 0.49

Contracting Parties are recommended to grant greater facilities, such as authorized consignors and authorized consignees, as extensively as possible when they are satisfied that the prescribed conditions laid down in national legislation are met.

¹ Essential changes as compared to the proposal in document ECE/TRANS/WP.30/AC.2/2015/11 are in underlined italics, deleted text is marked in strikethrough.

² See also document ECE/TRANS/WP.30/AC.2/2015/11.

V. Considerations by the Committee

11. The Committee is invited to consider this amended proposal. In the course of its discussions, the Committee may wish to take, inter alia, into consideration that:

(a) granting a 'simplification' does not mean the lifting of criteria or obligations for operators. On the contrary: authorized TIR Carnet holders benefiting from any simplification are obliged to fulfil stricter criteria than for the regular application of the TIR procedure;

(b) the application of any greater facility leaves the application of the provision of Article 11 fully intact, whereas the requirements of Articles 19 and 21 are replaced by a set of record keeping and customs controls, thus leaving their scope unaffected;

(c) various Contracting Parties already now apply this facilitation, which is in line with modern logistics practices;

(d) even when adopting this Explanatory Note, there is no obligation for any individual Contracting Party to apply the facilitation on its own territory.
