



**Economic and Social
Council**

Distr.
GENERAL

ECE/TRANS/WP.30/AC.2/2006/2
23 December 2005

Original: ENGLISH

ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975
(Fortieth session, 2 February 2006,
agenda item 4 (a) (ii))

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB) *

Access to the International TIR Data Bank (ITDB)

Note by the secretariat

A. BACKGROUND

1. At its thirty-ninth session, the Administrative Committee considered document TRANS/WP.30/AC.2/2005/8, prepared by the secretariat, containing considerations concerning the issue of including information on exclusions according to Article 38 of the Convention in the ITDB. The Committee was informed, orally, of the views of the United Nations Office of Legal Affairs (OLA) on the issue. The Committee requested the secretariat to prepare a document for its forthcoming session in February 2006, containing an overview of the opinion of the OLA and proposals for consideration by the Committee (TRANS/WP.30/AC.2/79, para. 19).

B. VIEWS OF THE UN OFFICE OF LEGAL AFFAIRS

2. In a memorandum of 27 June 2005, the secretariat had requested the Office of Legal Affairs of the United Nations (OLA) to provide its observations with regard to the following three questions:

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

- (a) Is the secretariat authorized to disclose information received by the TIRExB with regard to the information on exclusion received from Contracting Parties in application of Article 38 of the TIR Convention?
- (b) If yes, is there any limitation with regard to the content of the information which can be transmitted to other Contracting Parties?
- (c) Could the secretariat be held liable for the correctness of any information retransmitted and, if yes, would the use of a disclaimer be sufficient to decline any liability?

3. OLA provided its views in a memo, dated 3 October 2005. As an introductory remark, the OLA stressed the fact that, with regard to questions (a) and (b), it was not in a position to provide clear-cut answers because they require interpretation of the provisions of the TIR Convention. However, considering the fact that the TIR Administrative Committee had asked the secretariat to 'study' the issue of providing information to TIR Customs Focal Points concerning exclusion of TIR Carnet holders from the TIR procedure, the OLA felt, nevertheless, that it could provide points for consideration.

4. In the view of the OLA, the Terms of Reference (ToR) of the TIRExB are instrumental when addressing the issue of access to the ITDB. Article 8 (a) of the ToR stipulates that:

“The TIR secretariat, under the direction of the TIR Secretary, shall undertake the following tasks:

- (a) **Establishment and maintenance of an international Governmental TIR data bank accessible to all Contracting Parties on:**
 - **approved and excluded transport operators (Annex 9, Part II, paragraphs 4 and 5), stolen and falsified TIR Carnets, approved Customs sealing devices;**
 - **approved Customs offices for accomplishing TIR operations (Article 45);**
 - **contact points (Customs, enforcement agencies, national associations etc.);**
 - **Other data may also be compiled, for example, on approved, falsified and stolen Customs stamps, if feasible. Particular attention should be given to data protection. This includes the establishment of effective rules to avoid unauthorized access to the protected data files.”**

5. As a follow-up to the AC.2 decision at its thirty-eighth session (TRANS/WP.30/AC.2/77, para. 17) that “status information¹”, except exclusions, should be made accessible to TIR Customs Focal points, OLA feels that AC.2 should now consider whether such information falls within the limits of Article 8 (a), the first three indents, or, if not, whether it constitutes “other data”, mentioned in the fourth indent, which “may be compiled” by the TIR secretariat and made accessible in the ITDB. In case it is established that such information falls within the purview of paragraph 8 (a) of the ToR, it would follow, according to the OLA, that this information may be included in the ITDB and made accessible to the Contracting Parties.

6. With regard to the third question, the OLA is of the opinion that it would be prudent to use a disclaimer, stating that the TIR secretariat is exercising its functions pursuant to a mandate of the TIR secretariat under the TIR Convention and the ToR of the TIRExB and, therefore, the TIR secretariat has played no role in the determination of the content of the information provided by a Contracting Party under Article 38, as reflected in the ITDB. To this end, the OLA proposes various possible wordings, to be determined by the TIR Administrative Committee:

Disclaimer 1:

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.

Disclaimer 2:

The content of the information transmitted to the UNECE TIR secretariat by the Contracting Parties of the TIR Convention has been determined by the Contracting Party transmitting such information and, the UNECE TIR secretariat has thus not been involved in determining the content of such information received. As such, the information provided in the ITDB is provided ‘as is’, without warranty of any kind, either express or implied, including, without limitation, fitness for a particular purpose and non-infringement. The UNECE TIR secretariat specifically does not make any warranties or representations as to the accuracy or completeness of any such information provided herein, 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,

¹ (a) the person is currently authorized to use TIR Carnets;
(b) the authorization of the person in question has been withdrawn temporarily or permanently by the competent authorities in accordance with Annex 9, Part II of the Convention;
(c) the ITDB does not contain any information on the person in question (TRANS/WP.30/AC.2/2005/3).

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.

Disclaimer 3:

The recipient specifically acknowledges and agrees that the UNECE TIR secretariat is not liable for any conduct of any Contracting Party, pursuant to disclosure by the TIR secretariat, of information in the ITDB.

Disclaimer 4:

Contracting Parties to the TIR Convention and their designated Customs TIR Focal Points are the sole intended recipients of the information contained in this data bank. No other person, or entity, shall have any rights whatsoever relating to the information contained in such data bank.

C. FURTHER CONSIDERATIONS BY THE AC.2

7. In the view of the secretariat, OLA's considerations would have been even more useful, if OLA would have been able to shed light on the terminological 'faux-pas' in Article 8 (a) of the ToR, in that it refers to "*approved* and *excluded* transport operators (Annex 9, Part II, paragraphs 4 and 5)". In fact, within the context of Annex 9, Part II the term *withdrawn* is used, whereas the term *excluded* is reserved for operators, suffering from the consequences of the application of Article 38 of the TIR Convention. Because of the confusion in terminology, it is not completely clear if the OLA, when referring to the said Article 8 (a), provides an answer to the question as to whether or not the TIR secretariat is authorized to disclose information on exclusions ex article 38 of the Convention.

8. However, even if the conclusion would be that, in spite of the fact that in Article 8 of the ToR the term 'excluded' is used, it is obvious that, while it refers to the consequences of the application of the provisions of Annex 9, Part II and not to Article 38 of the TIR Convention, the reasoning used by the OLA can be used in analogy. Thus, the only question AC.2 has to ask itself in addressing the issue of dissemination of information under Article 38 via the ITDB is whether such information is covered by the mandate provided by Article 8 (a) of the ToR. Within the context of answering this question, the AC.2 may wish to look, in particular, to the last indent of Article 8 (a) and determine if Article 38 information can be considered as "other data". In case the Administrative Committee considers that that is possible, it may wish to approve that the secretariat discloses the information received by the TIRExB with regard to exclusions received

from Contracting Parties in application of Article 38 of the TIR Convention to the TIR Customs Focal Points by virtue of its mandate in Article 8 (a) of the ToR.

9. As a final point, the AC.2 may wish to provide guidance to the secretariat with regard to the most appropriate text to be used as a disclaimer.
