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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions affecting Transport  
One-hundred-and-twenty-first session  
Geneva, 2-6 February 2009  
Item 9 (c) (iv) of the provisional agenda

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

Application of Article 38

Note by Turkey

1. At its 108th session, the Working Party, at the request of the government of Turkey, undertook an in depth discussion of the application of Article 38. The Working Party recognized that it would be useful to elaborate some guidelines concerning the application of Article 38 with the view to aligning the application of the Article at the national level. The Working Party was informed that the TIRExB had decided to deal with the issue of exclusions according to Article 38 and would develop some guidelines for a harmonized approach to the application of Article 38.
2. In January 2006, the TIRExB finalized an example of best practice relating to the application of Article 38 and the Working Party at its 114th session generally endorsed the document and provided some minor amendments to the text. In February 2007 the Working Party considered a revised proposal and requested the UNECE secretariat to make the appropriate changes to the text and to submit the text to the forthcoming session of the TIR Administrative Committee for endorsement (ECE/TRANS/WP.30/230, para. 36).

3. At its forty-fourth session the Administrative Committee considered the revised example of best practice contained in document ECE/TRANS/WP.30/2006/17/Rev2 – ECE/TRANS/WP.30/AC.2/2006/17/Rev2. The Committee decided to postpone its approval of the document to the next session to allow Turkey more time to carry out its internal consultations.

4. The government of Turkey duly completed its internal consultations and its proposals to modify the text of the best practice were transmitted in Informal document WP.30/AC.2 No 2 (2008) to the Administrative Committee for consideration at its forty fifth session. The Administrative Committee gave its preliminary reaction to the proposed modifications and invited Turkey to further elaborate its proposals and to submit them as an official document for consideration at the next session of the Administrative Committee.

5. On reflection the government of Turkey considers that it would be more appropriate to propose new Explanatory Notes to Article 38 rather than to modify the text of the best practice. Accordingly the government of Turkey proposes to introduce the following Explanatory Notes to Article 38, paragraph 1 to read as follows:

0.38.1 The competent authorities recognize that the exclusion of a person from the operation of this Convention is the ultimate sanction foreseen under the Convention. Thus in applying the provisions of Article 38 the competent authorities should bear in mind that the sanction should be proportionate to the committed offence. In particular the competent authorities should take into consideration the seriousness of the offence and the complicity of the person involved in the offence on a case by case basis. This will include the investigation of the TIR Carnet holder's and/or its appointed representative's degree of involvement in the offence. Mitigating factors such as the road vehicle driver's commitment of the offence on his own account, the absence of any negligence on the part of the TIR Carnet holder and its previous compliance record should be taken into consideration before taking a decision to exclude the TIR Carnet holder.

0.38.2 Before taking a decision to exclude a TIR Carnet holder the competent authorities should also first consider the outcome of any administrative or Court proceedings related to the case. If, in accordance with the laws of the Contracting Party concerned, the TIR Carnet holder contests the decision of the administration or the Courts, he should be enabled to request the suspension of the decision until the final decision of the administration or the Courts is taken. During this period, the competent authorities could avail themselves of other control measures, provided this is proportionate with the alleged offence. If however a serious offence has taken place in accordance with the laws of the Contracting Party concerned, the competent authority may decide to exclude the TIR Carnet holder from the operation of the TIR Convention until the final decision of the administration of the Court is taken.

6. The government of Turkey proposes that the Working Party adopts the proposed Explanatory Notes to Article 38 as set out in paragraph 5 above at its forthcoming session and transmits the proposal to the Administrative Committee for endorsement at its next session.