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ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975
(Thirty-third session, 24 and 25 October 2002,
agenda item 8 (c))

OTHER PROPOSALS FOR AMENDMENTS TO THE CONVENTION

**Draft amendments on the attribution of voting rights to
Regional Economic Integration Organizations (REIO)**

Transmitted by the European Community (EC)

A. INTRODUCTION

1. Document TRANS/WP.30/2001/8 of 11 April 2001 concerning the European Community's proposal to amend Article 52.3 of the TIR Convention was analysed by the WP.30 during the sessions of June and October 2001. The proposal sought to introduce the concept of the term "regional economic integration organization" (REIO) and, in common with other UN conventions, to establish the right of REIOs to vote.

2. In order to answer the questions posed by certain delegations, the European Commission and the TIR Secretariat submitted documents TRANS/WP.30/2001/15 and Informal Document No. 20 (2001), respectively, and these documents were analysed at the October 2001 session of the WP.30. At that session, the WP.30 decided to forward the proposal to the Administrative Committee for consideration. Taking into account the results of the discussions in WP.30, the

European Community (EC) has modified the text of its original proposal, which it now submits to the Administrative Committee.

B. PROPOSAL

3. The modified proposal to amend Article 52, paragraph 3 and Annex 8, Article 5 of the TIR Convention 1975, may be found as annex 1 to this document.

C. DEFINITIONS

4. Informal Document No. 20 (2001) provides a definition of the term Regional Economic Integration Organization as used in the Customs Conventions on the Temporary Importation of Road Vehicles, the Convention on Customs Treatment of Pool Containers Used in International Transport and the International Convention on the Harmonization of Frontier Controls of Goods ^{1/}. The term Customs or Economic Union ^{2/} is conceptually identical to an REIO. The term and its definition is used in the revised Kyoto Convention where it appears to have been drafted to take into account the special situation of the European Community (EC). As far as the EC is concerned, either term is acceptable although, given the fact that the term REIO is to be found in a number of UN conventions ^{3/}, the EC considers REIO to be the preferred term.

5. It should be stressed that a Customs Union has a much narrower meaning concerning as it does a free trade area comprising two or more customs territories unlike the more complex concept of a Customs or Economic Unions fixed by the Kyoto Convention. It is not the EC's intention that the proposed amendment to Article 52.3 of the TIR Convention shall apply to members of a simple Customs Union.

D. THE DISTRIBUTION OF COMPETENCES BETWEEN THE EC AND ITS MEMBER STATES

6. Certain Contracting Parties asked how the EC and its Member States will share their competences regarding the TIR Convention in order to identify which will vote on a particular subject, whether the Community collectively or its Member States individually.

7. The EC is by definition an REIO that has developed a level of integration that is unparalleled on the international scene. The competences of the EC in Customs matters are

^{1/} See para. 7 of Informal Document 20 (2001).

^{2/} See para. 14 of Informal Document 20 (2001).

^{3/} For examples see para. 6 of Informal Document 20 (2001).

established under the Treaty of Rome (the founding Act of the EC) and its successive modifications. These instruments are supplemented by an important body of complementary legislation, principally the Community Customs Code and its implementing provisions. The texts of these regulations are directly applicable in the Member States of the EC, and have supremacy over national legislation.

8. In broad terms the competences of the EC Member States can be summarized as “the administrative implementation of the Community law shall in principle be the responsibility of the Member States in accordance with their constitutional arrangements”^{4/}. The Court of Justice of the EC has ruled that as soon as common rules are adopted, the EC has exclusive authority in its relations with third parties. Moreover, in the cases of competence shared between the EC and its Member States, the Court considered that, for the EC and its bodies as well as for the Member States, there is an obligation of co-operation and a requirement of unity in international representation.

9. Because Community competences are in continual development, it would not be appropriate to submit a detailed list of the respective responsibilities between the EC and its Member States. Moreover, the question of the distribution of the competences falls within the sole responsibility of the EC and its Member States and it would not be appropriate to discuss this in the WP.30 or AC.2. Yet, the EC notes that the proposed text of Article 52.3 (a) makes it clear that the REIO, as a Contracting Party to the TIR Convention, shall inform the depositary of its competence in the matter and this will be done in due course.

10. For some general background information, an explanation of the EC’s responsibilities and its relationship with its Member States may be found as annex 2 to this document.

E. JUSTIFICATION FOR THE EC TO HAVE THE RIGHT TO VOTE

11. The reasons are given in document TRANS/WP.30/2001/15. In the Customs field the Community has exclusive competence and this also applies, in the main, to issues arising under the TIR Convention. In most practical respects, the amendment to Article 52.3 will be neutral in its effect, the EC would simply substitute itself for its Member States in respect of voting and the number of votes cast would remain the same.

12. The EC fully shares the view expressed by the TIR Secretariat^{5/} that there is no need to consider the hypothetical question of whether or not a country will be able to be a member of

^{4/} Quotation taken from Declaration (No. 43) annexed to the Treaty of Amsterdam.

^{5/} See para. 17 of Informal Document No. 20 (2001) given in response to the intervention made by Turkey (see

two (or more) REIOs and so increase their voting rights. In the EC's view this would never happen, given the level of integration required for an REIO as defined in our proposed amendment to Article 52.3. REIO membership imposes a significant transfer of competences from the country to the organization and this would prevent that the country acceded to another REIO. The EC is not aware of this happening with regard to the other Conventions that provide for REIOs to vote.

F. HOW MATTERS WILL OPERATE IN PRACTICE

13. Where, in the context of the TIR Convention, questions currently arise concerning the distribution of competences, pragmatic institutional arrangements are applied, to the general satisfaction of the EC's Member States. In practice, the internal decision-making procedure (co-ordination, taking of decisions, and exercise of responsibilities, etc.) enables that the EC's agreed position be expressed to the various bodies of the TIR Convention without any ambiguity. The EC is unaware of any occasion where this process has been called into question.

14. The procedure outlined above would apply in the future and the EC anticipates no problems with the voting arrangements in the Administrative Committee. When the EC delivers its votes it will make it absolutely clear that it is exercising its authority under Article 52.3 and there should be no ambiguity. With its enlargement, the EC will continue to exercise its authority and will present the Community positions in representation of its Member States. The EC sees no reason why this should impede the Administrative Committee from making the decisions as suggested by one Contracting Party^{6/}. The acquisition of the proposed voting right for REIOs merely provides recognition, at the legal level, by the TIR Convention of the role and rightful place it occupies in other Conventions managed either by the EEC/UN or by the WCO.

para. 54 of TRANS/WP.30/198).

^{6/} Para. 54 of TRANS/WP.30/198 records the following statement by the Turkish delegate: "The Turkish delegation ... expressed the view that, considering the EU's possible enlargement, the proposal by the European Community could in the future block the decision-making process of the TIR Administrative Committee."

Annex 1

Article 52.3 of the TIR Convention is amended to read as follows:

“3. (a) Any regional economic integration organization, constituted by and composed of States, which has competence to adopt its own regulations that are binding on those States in respect of matters governed by this Convention, and has competence to decide, in accordance with its internal procedures, to sign, ratify or accede to this Convention, may become a Contracting Party to this Convention in accordance with the provisions of paragraphs 1 and 2 of this Article. Such an organization shall inform the depositary of its competence with respect to the matters governed by this Convention. It shall also inform the depositary of any substantial modification in the extent of its competence.

(b) A regional economic integration organization which is a Contracting Party to this Convention shall, for the matters within its competence, exercise in its own name the rights, and fulfil the responsibilities, which the Convention confers on the Members of such an organization which are Contracting Parties to this Convention. In such a case, the Members of such an organization shall not be entitled to individually exercise these rights, including the right to vote.”

Article 5 of Annex 8 of the TIR Convention is amended to read as follows:

“1. Proposals shall be put to the vote. Each State which is a Contracting Party represented at the session shall have one vote. Proposals other than amendments to this Convention shall be adopted by the Committee by a majority of those present and voting. Amendments to this Convention and the decisions referred to in Articles 59 and 60 of this Convention shall be adopted by a two-thirds majority of those present and voting.

2. Where Article 52, paragraph 3 of this Convention applies, the regional economic integration organizations which are Contracting Parties shall have, in case of voting, only a number of votes equal to the total votes allotted to their Members which are Contracting Parties.”

Annex 2

Explanation of the responsibilities of the EC and its relationship with its Member States

The European Economic Community came into being on 1 January 1958 (the Treaty of Rome). From the outset one of the principle objectives of the Community was the establishment of a customs union between the Member States. There are no customs duties and other internal trade barriers in operation between the Member States, and there is a Common Customs Tariff in their relations with third countries. These provisions apply to products originating in the Member States, as well as products which are from third countries and which are placed in free circulation in the Member States.

In commercial and customs matters, the Member States of the EC act as if they formed only one country, within which the borders between States have been abolished.

The customs and economic union of the EC is based on common legislation that is adopted by a qualified majority and not unanimously. This legislation no longer falls within the legal competence of the Member States of the EC, which, by the Treaty of Rome, have transferred the relevant decisional competences to specific common Institutions.

The adoption of customs legislation devolves on common Institutions created by the Treaty of Rome: the Council of the European Union, the European Parliament (in certain cases) and the European Commission (for measures of application and control of compliance with Community law). Moreover, the European Court of Justice was created to interpret Community law. To date, the EC constitutes a unique example of such deep customs integration, being also developed on the political, legal, economic and monetary level.

For the most part, the scope of the TIR Convention falls within the exclusive competence of the Community. Fields having a scope not exclusively related to customs matters fall within a competence that is shared between the EC and its Member States.
