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Working Party on Customs Questions

affecting Transport

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

Application of the Convention

The concept of authorized consignee in the TIR Convention

Note by the secretariat

A. BACKGROUND

1. This issue has been included into the programme of work of the TIR Executive Board in 1999 and in 2000 (TIRExB/1999/2/Rev.2, para.36; TIRExB/REP/2000/5, para.9). Initial discussion has taken place at the eighth session of the TIRExB (TIRExB/REP/2001/8, para. 21 and 22). At its ninth session (23 February 2001), the TIRExB agreed that the issue be put on its priority list for consideration and resolution in 2001 (TIRExB/REP/2001/9, para. 9). Extensive discussion has taken place at the tenth and eleventh sessions of the TIRExB (TIRExB/REP/2001/10, paras. 34-37 and TIRExB/REP/2001/11, paras. 26-30).

2. At its eleventh session, the TIRExB acknowledged that, with regard to the direct unloading at the consignee's premises, a distinction should be made between two different situations. In the first situation, goods and documents are delivered and unloaded directly at the consignee's premises in the presence of Customs. In the view of the TIRExB, this type of situation is covered by Article 46 of the TIR Convention, which provides for Customs attendance at other places than at the Customs office of destination (at the cost of the requesting person). In the second situation, goods and documents are delivered and unloaded directly at the consignee's premises without Customs officials being present. In the opinion of the TIRExB, it was the latter situation which it had to address, as there was no clarity so far as to whether this was in line or not with the spirit and the provisions of the TIR Convention.

3. The TIRExB considered that the concept of authorized consignee was complicated by two factors. Firstly, the fact that it involved an actor (the consignee, the recipient of the goods) who was not yet recognized in the TIR Convention. Secondly, the possible repercussions it might have on the guarantee chain due to the fact that there was a close link between the authorized consignee and the proper termination of the TIR operation (TIRExB/REP/2001/11, paras. 28-29).

4. The TIRExB was aware that the use of Customs facilities at the premises of the consignee often meets today's trade and transport requirements and acknowledged that the framework of the TIR Convention accepts such facilities. Therefore, the TIR Secretary was requested to prepare a document, which would analyze in detail the consequences of allowing for the use of authorized consignees for the provisions of the TIR Convention, in particular with regard to the process of termination and discharge. The TIRExB would then have to decide what kind of measures would be required to ensure a harmonized approach in all Contracting Parties. As a next step, the Working Party on Customs Questions affecting Transport (WP.30) could provide further guidance on this matter (TIRExB/REP/2002/12, paras. 27-28).

5. At its fourteenth session, the TIRExB endorsed the general idea that the existing provisions of the TIR Convention allow for the use of the concept of authorized consignee. Knowing that a number of countries already implement at present the concept in their territory to the satisfaction of all parties concerned, the Board felt that it may not be necessary to prepare comments as a means to clarify the use of the concept of authorized consignee within the context of the TIR Convention and to harmonize its application. The Board agreed to ask the opinion of the Working Party whether or not comments with regard to the acceptance of authorized consignees in general and with regard to a possible harmonized authorization procedure in particular were deemed necessary and/or useful (TIRExB/REP/2002/14, para. 10).

6. Against this background, the present document, endorsed by the TIRExB at its fifteenth meeting, contains a summary of the discussions by the TIRExB on the validity of the concept of authorized consignee within the framework of the TIR Convention. The document is structured as follows:

- (a) Introduction;
- (b) Delimitation of the discussion;
- (c) The concept of authorized consignee in the TIR Convention;
- (d) Legal provisions at stake;
- (e) Repercussions on termination and discharge procedure;
- (f) Impact of the introduction of the concept of authorized consignee on the guarantee system;
- (g) Conclusions;
- (h) Further considerations by the Working Party.

B. INTRODUCTION

7. Already in 1999, the TIRExB had decided to study the concept of authorized consignor and consignee. This decision was based on the following facts:

- The recommended practice in Specific Annex E to the newly revised Kyoto Convention, inviting Customs to approve persons as authorized consignors and consignees when they are satisfied that the prescribed conditions laid down by Customs are met;
- The existence of authorized consignors and consignees in other international legal instruments, in particular the Common Transit Convention and the Community Customs Code;
- The fact that already at present a number of Contracting Parties to the TIR Convention (inter alia: France, Germany, Poland, Switzerland) allow certain consignees to receive and unload goods directly at their premises under the TIR procedure;
- Repeated requests from trade for greater facilitation measures under the TIR procedure.

C. DELIMITATION OF THE DISCUSSION

8. The TIRExB decided to limit the discussion, for the time being, to the concept of authorized consignee, considering that the introduction of the concept of authorized consignor seemed to be outside the scope of the current text of the TIR Convention, because it was linked to the very critical function of the Customs office of departure and as it required cooperation between Customs authorities of more than one Contracting Party.

9. The TIRExB also decided, for the time being, to refer to ‘authorized consignee’ although the term as such is not yet used in the TIR Convention, and not to propose any definition. This is due to the fact, that the term “authorized consignee” will not appear in the body of the Convention. As the term was used in a general sense, a TIR-specific definition did not seem necessary.

D. THE CONCEPT OF AUTHORIZED CONSIGNEE IN THE TIR CONVENTION

10. The TIR Convention does not contain provisions specifically allowing for authorized consignees. However, Article 49 provides for greater facilities which may be granted by unilateral provisions or by virtue of bilateral or multilateral agreements provided that such facilities do not impede the application of the provisions of this Convention, and in particular, TIR operations. Countries, recognizing authorized consignees in their territory, mainly do so on the basis of said article. Some countries also refer to Article 46, which allows for the unloading of goods at other locations than the Customs office of destination, against charges and in the presence of Customs officials, although this article mainly aims at facilitating the delivery of perishable goods.

11. As stated in paragraph 2 of this document, the TIRExB decided not to include Article 46 into its discussion, because of the fact that it only refers to the direct unloading of goods at the premises of a consignee in the presence of Customs officials.

12. With regard to the question as to what extent the application of Article 49 acknowledges the concept of authorized consignee, the TIRExB was of the view that the provisions of the TIR Convention either could be interpreted very strictly, implying that under no circumstances a deviation from their literal text could be accepted, or that they could be interpreted more freely, as long as it was ensured that the underlying objectives behind the provision involved were maintained. The latter interpretation could be defended by referring to the fact that the current TIR system dated from 1975, a time when the concept of “authorized consignee” was unknown and a time when it was unthinkable that others than Customs authorities themselves could/would perform Customs duties. The TIRExB considered that nowadays it was not always necessary for Custom authorities to be present and/or inspect the goods physically in order to ensure full Customs control over the TIR operation.

13. Both interpretation techniques could be used when explaining, for example, Article 2 of the TIR Convention, which stipulates the application of the TIR Convention when goods are transported between a Customs office of departure of one Contracting Party and a Customs office of destination of another. On the one hand, it can be argued that the concept of authorized consignee is incompatible with this article, because of the simple fact that goods are transported to the premises of a consignee and not to a Customs office of destination. On the other hand, it can be said that

compatibility exists, as long as a mechanism is put in place, which will link the consignee to the Customs office of destination, most likely on the basis of an authorization granted by the Customs authorities to the consignee.

14. On the basis of the above considerations, the TIRExB expressed the view that the framework of the TIR Convention was flexible enough to accept facilities such as the concept of authorized consignee (TIRExB/REP/2002/12, rev.1, para. 28).

E. LEGAL PROVISIONS AT STAKE

15. A number of Articles of the TIR Convention stipulate specific tasks and/or obligations to be fulfilled by the “Customs office of destination”. These are: Article 1 (a), (b), (d), (e), (l) and (o); Article 2; Article 9, para. 2; Article 15, para. 2; Article 18; Article 21; Article 27; Article 45. In addition, Explanatory Note 0.18-1 and the Comments to Article 3, Article 21, Article 28 and Article 29 contain references to the “Customs office of destination”.

16. In the context of the analysis by the TIRExB, Article 45 does not play a role, as it refers to the obligation for Contracting Parties to publish a list of, inter alia, Customs offices of destination. Neither does Explanatory Note 0.18-1, which refers to the designation of a Customs office of exit en route as a Customs office of destination nor the comments to Articles 3 and 29, which refer to “the country where the office of destination is located”. Thus, the introduction of the concept of direct delivery of the goods to the premises of the consignees, only has repercussions as far as the other articles and comments are concerned.

17. Article 1 (a), (b), (d), (e) and (o) contains various definitions, involving the Customs office of destination, whereas Article 1 (l) gives a definition of what is meant by that notion. Article 2, Article 9, para. 2, Article 18 and Article 27 determine the Customs office of destination as the geographical location where the goods are delivered. Article 15, para. 2, Article 21, the Comment to Article 21 and the Comment to Article 28 refer to specific formalities (with regard to the re-exportation of the vehicle, Customs control, the termination of the TIR transport and the return of the TIR Carnet to the holder) which have to be performed by the Customs authorities concerned.

18. A first step towards a common application of the concept of direct delivery of the goods at the premises of authorized consignees is achieved through the analysis of the definition of the Customs office of destination (Article 1 (l)). Based on the assumption that the current text of the TIR Convention already recognizes the concept as such, the TIRExB felt that maintaining the definition as it stands would not impede third parties from performing certain tasks, which the TIR Convention has entrusted to the Customs office of destination. This assumption is confirmed by the

provisions of Standard 2 of Specific Annex E to the Kyoto Convention, which stipulate, inter alia, that the term “Customs office” is not strictly limited to the premises and site of a Customs office. For example, when transit begins at the ‘Customs office’, this can mean the domicile of an authorized consignor.”

19. The role of the Customs office of destination in Article 15, para. 2 is to ensure that, once the TIR operation has been completed, the road vehicle, the combination of vehicles or the container, will be re-exported. The fact that the vehicle arrives directly at the premises of the authorized consignee complicates this task of the Customs authorities at the Customs office of destination. However, as the procedure how to ensure the proper re-exportation of the vehicle is left to formalities, laid down in national legislation, the issue need not be addressed further at the international level.

20. Article 21 is one of the key articles in the TIR Convention, as it constitutes the obligation for the Customs authorities at the Customs office of destination to control the road vehicle, the combination of vehicles or the container, the load and the corresponding TIR Carnet. It is clear that Customs authorities cannot renounce this obligation, entrusted to them by the TIR Convention. In case certain consignees have obtained the right to receive goods directly at their premises, a way has to be found to compensate for the absence of the physical presence of Customs, ensuring that, nevertheless, a sufficient level of Customs controls remains guaranteed. This may be achieved by means of an authorization. Considering that the concept of authorized consignee is already functioning well in various Contracting Parties to the satisfaction of all parties involved, the TIRExB felt that, at this stage, it did not seem necessary to amend the TIR Convention with a comment, aimed at harmonizing the authorization procedure.

21. The various comments to Article 21 refer to the partial and final termination of a TIR operation at the Customs office of destination. Formally, the introduction of persons authorized to receive goods at their premises does not interfere with the meaning of these comments. However, knowing that upon partial unloading, the truck or load compartment will have to be resealed and the relevant information will have to be inserted into the TIR Carnet before the truck can continue its route, it seems doubtful to assume that Customs authorities could allow a consignee to perform such activities on their behalf.

22. According to Article 27, it is acceptable to replace one Customs office of destination by another, as long as the maximum of four offices of departure and destination is not exceeded. The scope of the article is to give the transport industry the necessary flexibility to change route while the goods are already under way. The fact that the goods, instead of being presented at the Customs office of destination, are presented directly at the premises of an authorized holder does not alter this.

F. REPERCUSSIONS ON TERMINATION AND DISCHARGE PROCEDURE

23. Under normal circumstances, a TIR operation will be considered terminated, when the road vehicle, the combination of vehicles or the container have been presented for purposes of control to the Customs office of destination, together with the load, in accordance with Article 1 (d) of the TIR Convention. To certify the termination, Customs will fill-in boxes 24-28 of voucher No. 2 in the TIR Carnet (certificate of termination of the TIR operation) and they will stamp and sign box 28 therein.

24. Currently, as stipulated in a comment to the model of the TIR Carnet in Annex 1 of the TIR Convention, no other authority than Customs is entitled to stamp and sign the vouchers, counterfoils and the front cover of the TIR Carnet (TRANS/WP.30/AC.2/59, annex 5). This comment, introduced to safeguard the transport operator from obtaining stamps and signatures from third parties, portraying themselves as being authorized to do so, may complicate the adequate use of the concept of authorized consignee. In case the concept of authorized consignee in TIR only enables the direct unloading at the consignee's premises, but still obliges the transport operator to go to the Customs office of destination to obtain signature and stamp, as prerequisites for the proper termination of the TIR operation and in order to be able to take the TIR Carnet back home, its added value is rather limited. However, this is what seems to be the case in those countries, which have provided documentation on the implementation of authorized consignee in their national legislation.

25. Without being able to come to a conclusion, the TIRExB felt that this issue need be considered further. Contrary to other, similar transit procedures where the Customs documents are taken in by the Customs authorities or the consignee at the arrival of the goods, the TIR Convention mentions the return of the TIR Carnet to the holder as "an essential duty of the Customs office of destination" (Comment to Article 28). Basically, there seem to be three ways of addressing this issue:

- (a) not to allow the consignee to do anything at all with the TIR Carnet and continue to require that the TIR Carnet holder (after unloading) goes to the Customs office of destination, which will establish the termination of the TIR operation and return the duly stamped and signed TIR Carnet to the TIR Carnet holder;
- (b) to allow the consignee, under strict provisions, to sign and stamp the TIR Carnet and counterfoil No. 2 on behalf of Customs, detach voucher No. 2 and return the TIR Carnet to the TIR Carnet holder. In line with the applicable provisions, the consignee will then have to take care that voucher No. 2 is sent back to the Customs office of destination within a certain time-limit;

(c) to allow the consignee, under strict provisions, to collect the TIR Carnet and provide the transport operator with a document certifying the termination of the TIR operation. In line with the applicable provisions, the consignee will then have to take care that the TIR Carnet is sent to the Custom office of destination within a certain time limit. Finally, Customs will have to ensure that the TIR Carnet be returned to the TIR Carnet holder.

26. The majority of the members of the TIRExB expressed the view that the authorized consignee should not be permitted to sign and stamp the TIR Carnet. In this regard, the TIRExB supported option (a).

27. In case the Working Party would wish to pursue options (b) or (c), it would have to take account of the repercussions they would have on the termination and discharge of a TIR operation. In those cases, a distinction between termination/discharge vis-à-vis the TIR Carnet holder and termination/discharge vis-à-vis the authorized consignee may need to be introduced. In any case it should be clear that regardless of which approach is taken, TIR Carnet holders will only benefit from the use of the concept of authorized consignee if a TIR operation will be considered as terminated once they have fulfilled their obligations.

28. As far as the discharge procedure is concerned, there is no real difference, from a Customs point of view, between a “regular” discharge and a discharge in case of an authorized consignee. However, when Customs establish that discharge cannot take place, they should only hold the holder liable for any irregularity that has taken place up to the moment of termination of the TIR operation by the authorized consignee. Irregularities occurring after that moment should fall under the liability of the authorized consignee.

G. IMPACT OF THE INTRODUCTION OF THE CONCEPT OF AUTHORIZED CONSIGNEE ON THE GUARANTEE SYSTEM

29. Irrespective of the question whether or not the current provisions of the TIR Convention enable the use of “authorized consignee” or amendments may be required, the concept also has to be analysed against the background of the existing guarantee system.

30. Without going into details, the TIRExB felt that it was important to underline that a satisfactory functioning of the guarantee system presupposes effective Customs control over the goods from the Customs office of departure until the Customs office of destination. Based on the assumption that the use of the concept of authorized consignee does not prevent uninterrupted Customs control, as long as national authorities introduce a mechanism which ensures that either the checks, performed by the consignee, fully meet Customs requirements or as long as these checks get

endorsement from Customs before unloading takes place, the guarantee system could continue to function as it does today and no change be required.

31. In case of an irregularity, however, Customs would have to accept that they cannot claim against the TIR Carnet holder (and, in case he cannot meet the claim, against the national association), once it has been established that the irregularity has taken place after the TIR operation was properly terminated as far as the TIR Carnet holder is concerned.

32. It goes without saying, that the use of authorized consignees and the possible introduction of a distinction in termination procedures, will have repercussions on the well functioning of the so-called IRU SafeTIR-system. This issue will have to be addressed, once the Working Party has taken a final decision on the exact procedure.

33. Within the context of the liability scheme, it may be appropriate to address the question of as to how the TIR Carnet holder will know that the recipient of the goods is indeed authorized to receive goods directly at his premises. Normally, at the Customs office of entry (en route), Customs authorities indicate in box 22 the Custom office where the goods must be produced. In case the goods are intended to be delivered directly to the premises of an authorized consignee, Customs authorities should, on the basis of information they can extract from the CMR consignment note, instead of filling-in the name of a Customs office, insert the name and address of the authorized consignee in box 22. Of course, they should only do this, when they have established on the basis of their own records, that the person concerned is indeed authorized to receive the goods directly at his premises.

H. CONCLUSIONS

34. The TIRExB has discussed the issue of authorized consignee at great length, taking into account all possible legal and practical repercussions its use may have on the well functioning of the TIR procedure. After thorough consideration, the TIRExB is of the opinion that the TIR Convention already provides at present for the use of the concept of authorized consignee. The fact that some provisions, explanatory notes and comments refer specifically to tasks to be fulfilled by the Customs office of destination does not run counter to this understanding, as long as Customs authorities ensure by other means continuous and uninterrupted Customs control from the Customs office of departure to the Customs office of destination.

35. At this stage, the TIRExB feels that the concept of authorized consignee is not compatible with the possibility of partial termination, exactly because in such situations uninterrupted Customs control can no longer be guaranteed. The TIRExB feels it should be left to national authorities to

decide which procedure they use to enforce efficient Customs control and therefore has not considered the idea to introduce a new comment to the TIR Convention, dealing with criteria for the authorization of certain consignees. Finally, the TIRExB thinks that, with the proper Customs mechanism to supervise consignees who have obtained the right to receive goods directly at their premises, the existence of authorized consignees should not jeopardize the well functioning of the existing guarantee system.

I. FURTHER CONSIDERATIONS

36. The Working Party is requested to consider the observations by the TIRExB, which are based on the opinion that the TIR Convention provides, in principle, for the use of the concept of authorized consignee. In addition, the Working Party is requested, on the basis of national experiences in this field, to consider whether it would be useful to prepare, for example, comment(s) for inclusion into the TIR Handbook, aimed at harmonizing the application of the concept of authorized consignee at the national level.
