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ECONOMIC COMMISSION FOR EUROPE

Administrative Committee for the TIR Convention, 1975
(Thirty-ninth session, 6 October 2005,
agenda item 3 (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-eighth session, the Administrative Committee considered document TRANS/WP.30/AC.2/2005/3, prepared by the secretariat, containing proposals for (a) opening up the access to the ITDB to Customs officials other than TIR Customs Focal Points and (b) providing additional information contained in the ITDB, such as information on exclusions and withdrawals. The Committee, after in-depth discussions, decided, for the time being:

- (a) to continue to restrict the access to TIR Customs Focal Points;

* The UNECE Transport Division has submitted the present document after the official documentation deadline due to planning oversight.

- (b) to provide additional information¹ on the status of authorizations, except exclusions, of TIR Carnet holders in addition to the contact information already provided².

2. Bearing in mind the issue of data protection, which is applicable in many countries, in particular in relation to establishing “black lists”, the Committee requested the secretariat to study in further detail the issue of providing information to TIR Customs Focal Points concerning exclusion of TIR Carnet holders from the TIR procedure. Contracting Parties were requested to inform the secretariat of specific concerns that they may have in this context (TRANS/WP.30/AC.2/77, para. 17).

3. In view of the fact that, so far, no specific concerns from Contracting Parties have reached the secretariat, underlying document reflects general considerations with regard to providing information about the exclusion of TIR Carnet holders from the TIR procedure to TIR Customs Focal Points.

B. PERSONS EXCLUDED FROM THE TIR SYSTEM IN ACCORDANCE WITH ARTICLE 38, PARAGRAPH 1 OF THE TIR CONVENTION

4. Article 38, paragraph 1 stipulates that “each of the Contracting Parties shall have the right to exclude temporarily or permanently from the operation of this Convention any person guilty of a serious offence against the Customs law or regulations applicable to the international transport of goods.” In a comment to the said Article, Customs authorities are recommended to reserve the exclusion of Article 38, paragraph 1 for foreign TIR Carnet holders, because the provisions of Article 6, paragraph 4 and Annex 9, Part II, paragraph 1 (d) provide them sufficient legal basis to act against TIR Carnet holders resident or established in their own country.

5. When a Contracting Party has decided to apply the provisions of Article 38, paragraph 1 temporarily or permanently, they are obliged to notify within one week:

- (a) the competent authorities of the Contracting Party on whose territory the person concerned is established or resident;

¹ The following status information is provided:

- the person in question is currently authorized to use TIR Carnets, or
- 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 TIR Convention, or
- the ITDB does not contain any information on the person in question (TRANS/WP.30/AC.2/3, para. 11).

² TIR Carnet holder ID number, Name of person(s)/enterprise, Business address, Name contact point, Telephone number, Fax number, E-mail address.

- (b) the association(s) in the country or Customs territory where the offence has been committed and
- (c) the TIRExB (Article 38, paragraph 2).

6. The TIRExB collects and stores information on Article 38-exclusions in a database, which is linked to the data stored in the ITDB.

7. Usually, information on exclusions is transmitted to the TIRExB by means of letters from the competent Customs authorities. These letters do not show much consistency, apart from mentioning the full name and official address of the TIR Carnet holder, a reference to Article 38 of the TIR Convention and the date on which the exclusion becomes/has become active. Some letters also refer to the TIR Carnet holder ID number, the underlying (court) decision, the number(s) of the TIR Carnet(s) concerned or provide a description of the infringement. It is striking to note that not many letters contain any information with regard to the temporary or permanent nature of the exclusion, thus suggesting that the exclusion should be regarded as permanent.

C. FURTHER CONSIDERATIONS

8. The issue of harmonized application of Article 38 is currently under discussion by the TIRExB (Informal document 10 (2005)). The aim is to devise a minimum set of data to be contained in the notification to be sent to, inter alia, the TIRExB. Once such example of best practices is adopted by the TIRExB and endorsed by the AC.2, the data contained in the ITDB would become more complete and suited for possible disclosure to authorized TIR Customs Focal points, upon their request.

9. In the meantime, the secretariat has requested the Office of Legal Affairs of the United Nations (OLA) to provide its observations with regard to the following three questions:
- (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?

D. CONSIDERATION BY THE AC.2

10. The AC.2 may wish to take note of the observations by OLA (when available) and the progress made by the TIRExB within the context of the issue at stake and provide the secretariat with further instructions how to proceed with disclosing information on exclusions ex Article 38 to, for the time being, authorized TIR Customs Focal Points only, at their request
