



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

(Twenty-seventh session, 17-19 October 2005,
agenda item 3)

**AMENDMENT PROPOSALS MADE IN THE FRAMEWORK
OF THE TIR REVISION PROCESS**

Article 28

Note by the TIR Secretary

A. BACKGROUND

1. At its twenty-sixth session, the TIRExB discussed Informal document No. 8 (2005), containing an overview of the amendment proposals of a technical nature made in the framework of the TIR revision process. In this context, the Board discussed proposals by the European Community to amend the text of Article 28 as follows:

- incorporate the existing comment concerning the placement of the goods under another Customs procedure or system of control into paragraph 1 of Article 28 and into a new Explanatory Note thereto;
- stipulate in paragraph 2 of Article 28 that not only the TIR Carnet holder, but also the guaranteeing association should not be responsible for any irregularity arising under the following Customs procedure.

2. The TIRExB was of the view that the proposed amendments would need further clarification. In particular, the Board pointed out that a clear distinction should be made between the concepts “termination of a TIR operation” and “discharge of a TIR operation” and that the irregularities mentioned in Article 28.2. which are not to be attributed to the TIR Carnet holder, should not be confused with the liability of the national association according to Article 8 of the

Convention. Therefore, the TIRExB felt that it would not be appropriate to include into paragraph 2 of Article a reference to the guaranteeing association.

3. The Board took into account a statement by the IRU that the current wording of Article 28 seems to be ambiguous and, thus, should be improved. To this end, the TIRExB requested the secretariat, in cooperation with the European Community, to elaborate on the underlying draft amendments and to report back to the Board at its forthcoming session. The Board also invited its members to transmit to the secretariat their proposals on the issue (TIRExB/REP/26draft, paras 13-15).

4. Having received no further proposals on the issue, this document reflects the considerations of the secretariat.

B. EXISTING LEGAL TEXT

Article 28

1. Termination of a TIR operation shall be certified by the Customs authorities without delay. Termination of a TIR operation may be certified without or with reservation: where termination is certified with reservation this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.
{ECE/TRANS/17/Amend.21; entered into force on 12 May 2002}

2. In cases where the goods are placed under another Customs procedure or another system of Customs control, all irregularities that may be committed under that other Customs procedure or system of Customs control shall not be attributed to the TIR Carnet holder as such or any person acting on his behalf.
{ECE/TRANS/17/Amend.21; entered into force on 12 May 2002}

Explanatory Note to Article 28

0.28 The use of the TIR Carnet must be restricted to the function which it was intended to cover, namely the transit operation. The TIR Carnet must not, for example, be used to cover the storage of goods under Customs control at destination.
{ECE/TRANS/17/Amend.21; entered into force on 12 May 2002}

Comments to Article 28

Return of TIR Carnets to the holder or any other person acting on his behalf

(...)

Applicable procedures after termination of a TIR operation

Article 28 provides that termination of a TIR operation shall be certified by Customs authorities without delay. Termination will be subject to the goods having been placed under another Customs procedure or another system of Customs control. This may include clearance for home use, transfer across the border to a third

country or a free zone or storage in a place approved by the Customs authorities while awaiting the declaration for another Customs procedure.

{TRANS/WP.30/192, paragraph 26; TRANS/WP.30/AC.2/59, paragraph 46 and Annex 5}

Termination of a TIR operation

(...)

C. ORIGINAL PROPOSAL BY THE EUROPEAN COMMUNITY

5. In document TRANS/WP.30/2004/14 the EC proposes to amend this Article so that:

- (a) Article 28, paragraph 1 incorporates part of the wording currently in the comment “Applicable procedures after termination of a TIR procedure”;
- (b) Article 28, paragraph 2 stipulates that any irregularities arising under a following Customs procedure are not to be attributed to the guaranteeing association and
- (c) the comment “Applicable procedures after termination of a TIR operation” be changed into an Explanatory Note with a new wording.

6. To this end, the EC proposes to amend Article 28 as follows:

Insert a new opening sentence to read as follows:

“1 Termination of a TIR operation shall be subject to the goods specified on the manifest of a TIR Carnet being placed under another Customs procedure or another system of Customs control.”

Replace the text of paragraph 2 by the following:

“2 Any irregularities committed under another Customs procedure or another system of Customs control mentioned in paragraph 1 shall not be attributed to the guaranteeing association or the TIR Carnet holder as such or any person acting on his behalf.”

Renumber the existing Explanatory Note 0.28 into “0.28-1”.

Introduce a new Explanatory Note to read as follows:

“0.28-2 This Article provides that the termination of a TIR operation shall be subject to the goods being placed under another Customs procedure or another system of Customs control. This includes clearing the goods for home use (either in full or conditionally), the transfer across the border to a third country (export) or to a free

zone, or the storage of the goods in a place approved by the Customs authorities while awaiting the declaration for another procedure.”

D. MODIFIED PROPOSAL AFTER DISCUSSION BY TIRExB

“Article 28

1. Termination of a TIR operation shall be subject to the goods specified on the manifest of a TIR Carnet being placed under another Customs procedure or another system of Customs control. Termination of a TIR operation shall be certified by the Customs authorities without delay. Termination of a TIR operation may be certified with reservation: where termination is certified with reservation this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.

2. ...(unchanged)

Explanatory Notes to Article 28

0.28-1 (text of current Explanatory Note 0.28)

0.28-2 This Article provides that the termination of a TIR operation shall be subject to the goods being placed under another Customs procedure or another system of Customs control. This includes clearing the goods for home use (either in full or conditionally), the transfer across the border to a third country (export) or to a free zone, or the storage of the goods in a place approved by the Customs authorities while awaiting the declaration for another procedure.”

E. FURTHER CONSIDERATIONS BY THE TIRExB

7. When considering the proposals to amend Article 28, the TIRExB may wish to take into account that the original text of Article 28 has remained unchanged from 1975 until the entry into force of Amendment 21 on 12 May 2002.

8. The original text of Article 28 stipulated as follows:

Article 28

On arrival of the load at the Customs office of destination, and provided that the goods are then placed under another system of Customs control or are cleared for home use, discharge of the TIR Carnet shall take place without delay.

9. The text of Article 28 has been the subject of very intense and lengthy discussions by WP.30 and its Expert Groups. The Group of Experts on the revision of the TIR Convention, at its second

session (24-26 June 1998), identified Article 28 as one of the articles where the use of the term 'discharge' needed to be verified (TRANS/WP.30/1998/11, paras 14-17). The first proposal to amend the text of Article 28 is contained in a note by the secretariat (TRANS/WP.30/1999/1 and Add.1). At its ninety-second meeting (22-26 February 1999), the Working Party noted that (as a consequence of the introduction of the distinction between termination and discharge of a TIR operation) a number of provisions needed to be modified, among which Article 28 (TRANS/WP.30/184, paras. 25-27). A further proposal to amend Article 28 was discussed by the Expert Group, at its fourth session (21-24 June 1999, TRANS/WP.30/1999/7) and discussed and reviewed by the Working Party at its ninety-third and ninety-fourth sessions (TRANS/WP.30/186, para. 36, TRANS/WP.30/188, para. 27). A revised proposal TRANS/WP.30/200/12) was discussed by the Working Party at its ninety-fifth session (TRANS/WP.30/190, para. 16). This is the text as it was finally adopted by the AC.2 at its twenty-ninth session on 19-20 October 2000 (TRANS/WP.30/AC.2/59, Annex 3).

8. The enumeration by the secretariat is not intended to be exhaustive. Its sole purpose is to indicate that the current wording of Article 28, paragraphs 1 and 2, was the outcome of an extensive discussion process by all parties involved. The TIRExB may wish to take this on board in its further discussions, in particular with regard to improving the text of Article 28, paragraph 2.
