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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions

affecting Transport

*(Ninety-ninth session, 23-26 October 2001,  
agenda item 7 (b) (ii))*

**CUSTOMS CONVENTION IN THE INTERNATIONAL TRANSPORT OF GOODS  
UNDER COVER OF TIR CARNETS**

**(TIR CONVENTION 1975)**

**Revision of the TIR Convention**

**Preparation of Phase III of the TIR revision process**

**Regional Economic Integration Organizations**

**Note by the TIR Secretariat**

**Background**

1. At its ninety-sixth session, the representative of the European Community had informed the Working Party that his organization planned to submit, also for consideration under Phase III of the TIR revision process, proposals for a definition of the role of Regional Economic

Integration Organizations and their voting rights in the framework of the Convention (TRANS/WP.30/192, paragraph 40).

2. At its ninety-eighth session, the Working Party considered first amendment proposals, transmitted by the European Community, contained in document TRANS/WP.30/2001/8, concerning a change of the name of Customs or economic Unions referred to in the TIR Convention to Regional Economic Integration Organizations, the insertion of a definition of such organizations as well as an explanation of their voting rights (TRANS/WP.30/196, paras. 45-48).

3. The Working Party considered the issue in detail, but found that there were a number of questions that still needed to be considered, such as, for instance, accreditation, competence and mandate provisions, practical procedures and the status of other Customs and Economic Unions before the proposals could be considered.

4. Therefore, the European Commission was requested to provide precise information on how the proposed definition and voting rights have been implemented in other legal instruments and international organizations, to be discussed at the ninety-ninth session of the Working Party (TRANS/WP.30/2001/15). At the same time the secretariat was asked to assist in the assessment of the situation as it refers to other legal instruments, in particular legal instruments prepared under the auspices of the United Nations, and other international organizations and to analyze, as far as possible, the practical repercussions of the proposed amendments, in particular as this relates to the work of the TIR Administrative Committee and the TIR Executive Board.

5. The underlying document will first outline the issue against the background of other United Nations conventions and then give a first analysis of the main repercussions of the proposed amendments on the TIR Convention itself.

### **The position of Regional Economic Integration Organizations in various United Nations conventions**

6. To date, various United Nations conventions already contain provisions with regard to the accession and voting rights of Regional Economic Integration Organizations. Within the field of transport, the following conventions can be mentioned:

- Customs Convention on the Temporary Importation of Private Road Vehicles, done at Geneva on 4 June 1954;
- Customs Convention on the Temporary Importation of Commercial Road Vehicles, done at Geneva on 18 May 1956;

- International Convention on the Harmonization of Frontier Controls of Goods, done at Geneva on 21 October 1982;
- Convention on Customs Treatment of Pool Containers used in International Transport, done at Geneva on 21 January 1994.

7. The 1954 and 1956 Conventions on Temporary Importation as well as the 1994 Pool Container Convention contain the same definition of the term “Regional Economic Integration Organization”, stating that:

“The term “Regional Economic Integration Organization” shall mean an organization constituted by and composed of States, which has competence to adopt its own legislation that is binding on its Member States, in respect of matters governed by this Convention, and has competence to decide, in accordance with its internal procedures, to accede to this Convention.”

8. The procedure for amending the Temporary Importation Conventions is contained in Article 42 of the 1954 Convention and (in a slightly different wording) in Article 41 of the 1956 Convention of the Conventions. Article 42, paragraph 2 states that:

“1. Any Contracting Party may propose one or more amendments to this Convention. The text of any proposed amendment shall be transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties.  
2. Regional Economic Integration Organizations which are Contracting Parties to the Convention, for the matters within their competence, shall exercise their right to objection. In such cases the Member States of said organizations, which are Contracting Parties to this Convention, shall not be entitled to exercise individually such rights.”

9. With regard to the 1994 Pool Container Convention the issue of voting rights of Regional Economic Integration Organizations is treated in Article 19, paragraph 10:

“(…) the Regional Economic Integration Organizations, Contracting Parties to this Convention, shall have, in case of voting, only a number equal to the total votes allotted to their Member States which are Contracting Parties to this Convention.”

10. The 1982 Harmonization of Frontier Controls Convention recognizes in Article 16 the possibility of Regional Economic Integration Organizations to adhere to it. The text of the article is as follows:

- “1. This Convention, deposited with the Secretary-General of the United Nations, shall be open to the participation of all States and of Regional Economic Integration Organizations constituted by sovereign States which have competence to negotiate, conclude and apply international agreements on matters covered by the Convention.
2. The Regional Economic Integration Organizations referred to in paragraph 1 may, for the matters within their competence, exercise on their own behalf the rights and fulfil the responsibilities which this Convention otherwise confers on their Member States which are Contracting Parties to this Convention. In such cases the Member States of the said Organizations shall not be entitled to exercise individually such rights, including the right to vote.
3. etc...”

11. The most studied case in literature on the role and functioning of Regional Economic Integration Organizations is the European Community’s accession on 26 November 1991 to the Food and Agricultural Organization (FAO), a Specialized Agency of the United Nations<sup>1</sup>. In order to enable the accession, Article II of the FAO Constitution was amended. In this regard paragraphs 4-10 of the said Article II are worth mentioning:

- “4. To be eligible to apply for membership of the Organization under paragraph 3 of this Article, a Regional Economic Integration Organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters.
5. Each Regional Economic Integration Organization applying for membership in the Organization shall, at the time of such application, submit a declaration of competence specifying the matters in respect of which competence has been transferred to it by its Member States.
6. Member States of a Member Organization shall be presumed to retain competence over all matters in respect of which transfers of competence have not been specifically declared or notified to the Organization.
7. Any change regarding the distribution of competence between the Member Organization and its Member States shall be notified by the Member Organization or its Member States to the Director-General, who shall circulate such information to the other

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<sup>1</sup> see e.g. P.J.G. Kapteyn, P. Verloren van Themaat: Introduction to the Law of the European Communities, Third Edition (1998), Chapter XII (External Relations) and R.Frid: The European Economic Community, A Member of a Specialized Agency of the United Nations, European Journal of International Law 1993, 239-255.

Member Nations of the Organization.

8. A Member Organization shall exercise membership rights on an alternative basis with its Member States that are Member Nations of the Organization in the areas of their respective competences and in accordance with rules set down by the Conference.

9. Except as otherwise provided in the Article, a Member Organization shall have the right to participate in matters within its competence in any meeting of the Organization, including any meeting of the Council or other body, other than bodies of restricted membership referred to below, in which any of its Member States are entitled to participate. A Member Organization shall not be eligible for election or designation to any such body, nor shall it be eligible for election or designation to any body established jointly with other organizations. A Member Organization shall not have the right to participate in bodies of restricted membership specified in the rules adopted by the Conference.

10. Except as otherwise provided in this Constitution or in rules set down by the Conference, and Article III paragraph 4 notwithstanding, a Member Organization may exercise on matters within its competence, in any meeting of the Organization in which it is entitled to participate, a number of votes equal to the number of its Member States which are entitled to vote in such meeting. Whenever a Member Organization exercises its right to vote, its Member States shall not exercise theirs, and conversely.”

12. Within the framework of the issue at stake paragraphs 5 and 10 seem to be the most interesting ones. Paragraph 5 deals with the division of power. Prior to its accession a Regional Economic Integration Organization will have to supply a list of the powers transferred to it from its Member States. Any powers not mentioned in this list will be assumed to belong to the Member States. All members of the FAO are entitled to demand a clarification of the division of powers.<sup>2</sup> Paragraph 10 deals with the voting rights, stating that if the Regional Economic Integration Organization votes on a question, its Member States should refrain from doing so and vice versa<sup>3</sup>

### **The position of REIO's in other international conventions**

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<sup>2</sup> According to G. Frid: “a declaration on division of powers within the Community is desirable for parties external to the EEC in the interest of legal certainty. In practice, however, such a declaration does not meet the need. The knowledge that a certain issue belongs to the Community's competence or not is of little use to a third party.”

<sup>3</sup> This ‘no plural voting’ clause is in accordance with the case-law of the Court of Justice of the European Community, which excludes in principle any concurrent exercise of powers of the EC and its Member States on the same question.

13. Studying the position of Regional Economic Integration Organizations in other international Conventions, exceeds the scope of this document. However, generally speaking, it should be noted that most conventions need amending, in order to allow for the accession of Regional Economic Integration Organizations, including the right to vote.

#### **The position of REIO's in the World Customs Organization**

14. Unlike is the case in most other UN and international conventions, the revised Kyoto Convention (1999) does not refer to Regional Economic Integration Organizations, but to Customs or Economic Unions. However, the definition, which is mentioned in Article 1 (k) of the Convention, is very similar.

“Customs or Economic Union means a Union 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.”

The voting rights of such organizations are dealt with in Article 6, paragraph 9 and Article 8, paragraph 5 (b) of the Convention.

“Where Article 8, paragraph 5 of this Convention applies, the Customs or Economic Unions 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.”

“A Customs or Economic Union which is Contracting Party to this Convention shall, for the matters, within its competence, exercise in its own name the rights, and fulfill the responsibilities, which the Convention confers on the Members of such a Union which are Contracting Parties to this Convention. In such a case, the Members of such a Union shall not be entitled to individually exercise these rights, including the right to vote.”

#### **The position of REIO's in the TIR Convention**

15. So far, Article 52, paragraph 3 of the TIR Convention acknowledges the existence of Customs or economic unions, without given a definition of the content of the term. Customs or Economic Unions are not granted the right to vote. In line with this provision, Annex 8, Article 5 only refers to States which are Contracting Parties, when determining the voting procedure in the Administrative Committee of the TIR Convention. In case the TIR Convention would be

changed along the lines of the abovementioned Conventions, this would mean that a Regional Economic Integration Organization would be allowed to vote with the number of votes, allotted to its Member States, provided that it had been able to supply proof of its competence. In such cases, the individual Member States would not be allowed to vote.

16. Annex 8, Article 9, deals with the composition of the TIR Executive Board. The TIRExB is composed of 9 members, each from different Contracting Parties to the Convention. TIRExB members should be nominated by their respective Governments or organizations being Contracting Parties to the Convention. They should represent the interest of the Contracting Parties to the Convention and not the specific interests of any one individual Government or organization (TRANS/WP.30/AC.2/51, Annex). Thus it is well imaginable that one of the TIRExB members is nominated by a Regional Economic Integration Organization. This does not constitute a particular problem, as he/she is supposed to represent the interest of the Contracting Parties in general. Like all other members this person will have one vote in the TIRExB.

#### **Further issues for consideration**

17. During the discussion on the subject at the ninety-ninth session of the Working Party the question was raised how to proceed if one country, Contracting Party to the TIR Convention, would be a member of two (or more) Regional Economic Integration Organizations. This seems to be a very hypothetical question, which does not require further analysis at this stage. Accession to a Regional Economic Integration Organization is a far-reaching step for any country, in particular as it includes the transfer of legal competences in certain fields and therefore it is not likely that any country would or could belong at the same time to more than one Regional Economic Integration Organization. Thus, the problem of two or more Regional Economic Integration Organizations within the TIR Convention, sharing the same Contracting Parties and thus creating a problem with regard to the execution of voting rights, seems to be purely theoretical.

18. When the matter of the introduction of Regional Economic Integration Organizations into the Convention, together with the issue of its voting rights, is settled, it still will have to be decided how the European Community will have to proceed in order to become acknowledged as such an organization. It will have to be studied whether it is sufficient that it includes a statement to that extent into its letter of acceptance of the amendment proposals or whether a request will have to be addressed to the Administrative Committee.

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