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Item 3 (b) (i) of the provisional agenda

**Customs Convention on the International Transport
of Goods under Cover of TIR Carnets (TIR Convention, 1975) –
Revision of the Convention:
Amendment proposals to the Convention****Proposal to amend Article 3, paragraph b****Note by the secretariat****I. Background and mandate**

1. At its previous session, the Working Party considered document ECE/TRANS/WP.30/2014/17, transmitted by the Government of the Russian Federation and containing various proposals to amend the TIR Convention, in combination with document ECE/TRANS/WP.30/2015/1 and Add.1, consolidating comments by various Contracting Parties on the proposals made by the Russian Federation in documents ECE/TRANS/WP.30/2014/17 and ECE/TRANS/WP.30/2014/14. The Working Party decided to consider each amendment proposal, as contained in the above-mentioned documents, individually.

2. With reference to the proposal to amend Article 3(b) line 1, the Russian Federation proposed using the term “approval” regarding the customs seals, vehicles and other technical equipment, whereas to use the term “authorization” with reference to the guaranteeing association, introduced in Annex 9, Part I, paragraph 1. The Working Party was in general agreement that a closer examination of the use of the terms “approval” and “authorization” was warranted, to ensure consistency and accuracy. The Working Party requested the secretariat to review the overall consistency in the use of these two terms and to develop proposals for new definitions if necessary (ECE/TRANS/WP.30/278, para. 11).

II. Introduction

3. As a starting point, it would be useful to look up the literal/linguistic, as well as the legal definition of the terms under discussion.

4. According to the Oxford English dictionary – the reference for all United Nations documents – authorization means to give official permission or approval to do something, whereas approval is defined as the official acceptance of something as being satisfactory. In the definition of “authorization”, “approval” is given as a synonym.

5. However, in accordance with various dictionaries of legal definitions, authorization is generally understood to be the written consent by a regulatory body for another entity or person to proceed with a requested activity, without in any way diminishing the applicant’s obligation to meet the standards or specified requirements. In sum, authorization is to officially empower someone to act in a specific way, or a document that grants some [qualified] right.

6. Approval, in legal terms is somewhat different from authorization; it generally refers to the acceptance of a given situation, standard, act, entity or person as satisfactory by means of certification, licencing, stamp/verification, registration or written agreement.

7. The terms “authorization” and “approval” appear several times in the TIR Convention. It seems that the term “approval” is used with relative consistency when referring to technical equipment (e.g. containers), as well as to certification of equipment quality (e.g. certificate of approval). The term “authorization” in the current text of the TIR Convention is predominantly referring to the conferral of power to act by a Contracting Party or the Administrative Committee, to another entity or person.

A. Key provisions with apparent consistent use

1. Article 6

8. Some of the key principles of the TIR procedure are laid down in Article 6. Paragraphs 1, 2, 2bis, 4 and 5 make reference to the term “authorization” and “approval”. More specifically, paragraph 1 establishes the right and responsibility of each Contracting Party to authorize associations to issue TIR Carnets and to act as guarantors. As per the legal definition of “authorization”, the competent authority of each Contracting Party, a regulatory body, as it were, provides written consent for an association to issue TIR Carnets as long as said association fulfills certain conditions and requirements as specified in Annex 9, Part I. Annex 9, Part I, in turn, specifies that the authorized association must, among others, cover all liabilities incurred in connection with operations under cover of TIR Carnets issued by foreign affiliated associations in accordance with Article 6 of the Convention (specifically its paragraph 2).

9. In the subsequent paragraph 2 of Article 6 and its Explanatory Note, reference is made to “approval” of an association on the basis of or dependent upon acceptance of the incurred liabilities in connection with the guarantee coverage. That is to say that for an association to be accepted as satisfactory (approved), its guarantee must cover all liabilities incurred in connection with TIR Carnets issued by foreign affiliated associations. It is not clear if this approval is a prerequisite for authorization or subsequent to authorization. The lack of clarity is rooted in the fact that the current text of Article 6, paragraph 1 already refers to Annex 9, Part I as a pre-requisite for authorization, and Annex 9, Part I already includes the scope of guarantee coverage that is to be accepted by the association in its agreement with customs authorities.

10. These two paragraphs of Article 6 have remained substantively unchanged in the Convention since 1978 — in 1978 Article 6 read:

“1. Subject to such conditions and guarantees as it shall determine, each Contracting Party may authorize associations to issue TIR Carnets, either directly or through corresponding associations, and to act as guarantors.

2. An association shall not be approved in any country unless its guarantee also covers the liabilities incurred in that country in connection with operations under cover of TIR Carnets issued by foreign associations affiliated to the same international organization as to that to which it is itself affiliated”.

11. Paragraph 1 was amended in 1999; it was not only re-formulated, but a reference to the newly in force Annex 9 was added as well. Annex 9 also entered into force in 1999 (and was adopted in 1997). It is possible that, until then, in the absence of the detailed provisions relating to the conditions for authorization of an association, it was deemed necessary to specify the scope of liabilities to be incurred by the authorized association within the main text of the Convention, i.e. in paragraph 2 of Article 6. On the other hand, this still does not appear sufficient to explain the difference in the use of terminology. If the scope of the coverage is a pre-requisite for authorization, the provision could, for example, have read that “an association shall not be authorized unless [...]”.

From this it follows that the most logical explanation is that the procedure was – at least until the entry into force of Annex 9 in 1999 – two-fold:

(a) Authorization by the Contracting Party;

(b) Approval by the customs authorities by means of written agreement with the association.

12. This conclusion is also supported by the wording of Article 1(q) prior to its latest amendment of 2012. The former version of Article 1(q) was that an association is defined as one that is approved by customs authorities (as opposed to authorized by Contracting Parties)

13. As a concluding note on Article 6, it is possible that in some countries both the authorization and the approval are granted by the same authority (e.g. customs authorities). Secondly, the authorization alone does not suffice to render an association functional in the context of the TIR Convention. It is also necessary to conclude a written agreement between the authorized association and the customs authorities; therefore, it may be contended that the distinction between the terms as used in Article 6 stems from that requirement. It is not clear to the secretariat if the entry into force of Annex 9 has rendered Article 6, paragraph 2 redundant or if an amendment to it is warranted.

14. Other paragraphs that were later added to Article 6, relate to the authorization of the international organization by the Administrative Committee and to the authorization of operators to access and use the TIR procedure. In line with the definition of “authorization”, in both cases natural and legal persons are granted a right to act in a specific and qualified way.

2. Article 3 (b)

15. Article 3(b) specifies that operations must be guaranteed by associations approved in accordance with Article 6. It appears, from the syntax and formulation used that this provision most likely refers to the element of the guarantee and, therefore, to the scope of the guarantee coverage as mentioned in Article 6, paragraph 2 in particular and not in the entirety of Article 6. Although paragraph (a) of this article has been amended in 2002, paragraph (b) has never been changed. Therefore, this formulation is consistent with the use

of the terms in Article 6, as formulated and applicable prior to the introduction of Annex 9. That is to say that, when referring to the guarantee and to the role of customs authorities, the term “approval” was consistently used.

3. Article 1 (r)

16. This provision refers to the authorization of the international organization (entity) by the Administrative Committee (regulatory authority of the TIR Convention). The term appears entirely consistent with the legal definition of “authorization”.

4. Annex 9, Parts I, II and III

17. Throughout Annex 9, it appears that the term authorization is used consistently to convey the meaning of granting a qualified right. The term “approval” does not appear in Annex 9.

5. Chapter III (a) Approval of Vehicles and Containers, and Annexes 2, 3, 4 and 7

18. The term “approval” in these parts of the Convention consistently refers solely to the acceptance of the standard of technical equipment as satisfactory for carrying out TIR transports and to the related certification, in line with the legal definition of “approval” as described earlier in the present document. The term “authorization” does not appear in these provisions.

B. Key provisions with potentially inconsistent use

1. Article 1 (q)

19. This provision was amended in 2012 to replace the term “approved” with “authorized”. This in itself would not appear to create any issue of consistency, except that the paragraph reads “[...] association authorized by the customs authorities [...]”. If Contracting Parties were to accept the consistency with which the terms are used elsewhere in the Convention, then the association would either have to be defined as authorized by a Contracting Party or approved by the customs authorities or both, since the association has to be authorized as to its right to issue TIR Carnets and to act as guarantor (Article 6, paragraph 1) and approved as to the coverage of liabilities (Article 6, paragraph 2). Arguably, it would be sufficient to refer to “authorization by Contracting Parties” considering that paragraph 1 of Article 6 makes reference to Annex 9, Part I.

2. Article 26

20. Article 26 has no reference to either term. The comment to Article 26, however, refers to the term “approval”. Comments are not part of the legally binding text of the Convention; therefore, any inconsistency does not carry legal consequences. However, it is worth noting that the comment refers to suspension of a TIR transport in a Contracting Party where no approved association exists.

21. If the Contracting Parties were to accept the distinction and consequent interpretation of terms as presented in this document, then the comment may be referring to cases where no guarantee agreement exists or where the authorized association has not been approved because it does not or cannot cover the liabilities as specified in article 6, paragraph 2.

III. Proposal by the Russian Federation

22. The Russian Federation has proposed to amend Article 3 (b) to read¹:

“The transport operations must be guaranteed by associations ~~approved~~ **authorized by the Contracting Parties** in accordance with the provisions of Article 6 and must be performed under cover of a TIR Carnet, which shall conform to the model reproduced in Annex 1 to this Convention.

23. As mentioned earlier in this document, the provision appears to refer to the requirements of Article 6, paragraph 2, for which the term used is “approval”. In light of the analysis provided in this document, if this amendment goes forward it would, possibly, make sense to also review and potentially amend the wording of Article 6, paragraph 2.

IV. Considerations by the Working Party

24. The Working Party is invited to consider the information provided in the present document in its deliberations and decisions concerning the understanding and use of the terms “authorization” and “approval” in the TIR Convention. In light of this information, the Working Party is also invited to consider and decide on the amendment proposal of the Russian Federation.

¹ New text marked in bold, deletions marked in strikethrough