



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

TIR Executive Board (TIRExB)

(Forty-second session, 1 February 2010,
agenda item 8)

**INVALIDATION OF TIR CARNETS ISSUED TO EXCLUDED TIR CARNET
HOLDERS**

Note by the secretariat

A. BACKGROUND

1. At its 123th session, the Working Party had a first exchange of views on the validity of a TIR Carnet which had been invalidated by the guarantee chain before its expiry date and, in particular, in the course of a TIR transport, on the basis of Informal document No. 7 (2009), submitted by the European Community. The Working Party noted that the TIR Convention does not address the issue of lost, stolen or invalidated TIR Carnets. However, over the years, a practice has been developed whereby Customs would not accept TIR Carnets which the guarantee chain had communicated to Customs as being lost, stolen, invalid or invalidated. The guarantee chain expressed the view that, from the moment the notification is received by Customs, the invalid or invalidated TIR Carnets no longer carry a guarantee. On the other hand, Customs representatives pointed out that, once a TIR Carnet has been accepted by the Customs office of departure, it should remain valid until the very end of the TIR transport.

2. The European Community and some other delegations were of the view that Article 8 of the Convention should be supplemented with a provision confirming the liability of the guaranteeing association for TIR Carnets accepted by the Customs office in case the information on the invalidation had not reached Customs on time. Given the complexity of the issue, the Working Party decided to consider it in detail at the next session on the basis of the following information:

¹ The information contained in this document has also been issued as working document for the 124th session of the Working Party on Customs Questions affecting Transport (WP.30), with reference ECE/TRANS/WP.30/2010/5

- document and/or presentation by IRU on the current practice of invalidation of TIR Carnets by the guarantee chain;
- past considerations by the TIR Executive Board, to be summarized by the secretariat.

The European Community was invited to submit a proposal in this respect (ECE/TRANS/WP.30/246, paras 35-36).

3. This document contains in Annex, in a summarized form, the past considerations by the TIR Executive Board.

Annex

TRANS/WP.30/AC.2/2005/2, paras. 10-15; TIRExB/REP/2004/23, paras. 10-15

“10. Some TIRExB members expressed their concerns over a sudden increase in the list of lost and stolen TIR Carnets, as reported by the IRU. It was considered remarkable that only few national issuing associations and transport companies seemed to have lost a great number of TIR Carnets. At the request of the Board, the IRU informed of the circumstances of those cases and of measures taken in this respect.

11. According to the IRU, the issue of lost and stolen TIR Carnets had always been considered by the IRU and national issuing associations as a priority item. Strict rules had been introduced with regard to the safekeeping of TIR Carnets at the premises of the associations and holders of TIR Carnets. All cases of theft and loss should immediately be reported to the IRU, to allow for the invalidation of the TIR Carnets.

12. Lost and stolen TIR Carnets could be divided into two groups:

- (i) TIR Carnets lost or stolen after their use or after their validity has expired. They can no longer be used and, thus, involve no further risk;
- (ii) TIR Carnets lost or stolen before use and still valid. These TIR Carnets involve high risk of misuse.

Since January 2000, about 11,000 TIR Carnets have been reported lost/stolen and subsequently invalidated by the IRU. However, the current list of high-risk TIR Carnets (group (ii) above) contains only 315 TIR Carnets. Following the expiry of their validity, the TIR Carnets will be removed from the list. Information on such TIR Carnets is regularly distributed by fax or by e-mail throughout Customs administrations and also made available in the CUTEWISE system.

13. Regarding the recent cases, the IRU informed that they were related to the two following incidents. In one Contracting Party a batch of TIR Carnets had been stolen when being transported from the airport to the national association. In another Contracting Party, a holder had sent a package of unused TIR carnets to its branch abroad via an express mail company, and the whole package had been lost.

14. The TIRExB also recalled that recently another type of invalid TIR Carnets had come into being: unused TIR Carnets issued in advance to a person who afterwards has not respected internal rules of the international guaranteeing chain and, as a result, has been refused to obtain new TIR Carnets from the association. One member of the Board informed about practical problems encountered by the Customs authorities in this situation and proposed to complement listings of invalid TIR Carnets with a number of additional data elements. The IRU would consider these proposals.

15. The TIRExB pointed out that the TIR Convention does not address the issue of lost, stolen or invalidated TIR Carnets. The Board also recalled the opinion by WP.30 that, in principle, all TIR Carnet should be considered as bearing a valid TIR guarantee (TRANS/WP.30/162, para.55). The TIRExB invited the IRU, in cooperation with the secretariat, to prepare a document on the relevant issues for consideration at one of the future sessions.”

TRANS/WP.30/AC.2/2005/6, paras. 9-12; TIRExB/REP/2004/24, paras. 9-12

“9. The TIRExB continued its deliberations on the issue of lost and stolen TIR Carnets and the listings by the IRU of the so-called "invalidated TIR Carnets". The Board agreed that such TIR Carnets could involve a high risk of Customs fraud and, therefore, should be checked and retained by the Customs authorities. At the same time, members of the TIRExB raised a number of points, both of legal and practical nature, which should be resolved with a view to making these activities more efficient:

- the legal/guarantee status of such TIR Carnets is not defined. As a result, when such a TIR Carnet is found, the Customs authorities have no clear legal grounds for follow-up actions. It concerns, in particular, TIR Carnets which have been listed as "invalidated" by the issuing association due to alleged infringements of internal rules committed by the holder;
- in some cases, a TIR Carnet, which first was listed as "invalidated" by the issuing association, has subsequently been withdrawn from the list. That may happen in the course of a TIR transport under cover of this TIR Carnet and can create confusion among the Customs authorities. To facilitate the work of Customs in this regard, it was proposed to complement lists of so-called "invalidated" TIR Carnets with the following data elements: date of invalidation, reason for invalidation, date of revalidation (if any and reason for that).

10. The IRU explained that according to the rules in place, once invalidated, a TIR Carnet cannot be "revalidated".

11. The IRU offered to prepare, in cooperation with the secretariat, a document on the relevant issues for consideration at the next session of the Board. The IRU would also inform the TIRExB of all rules and procedures prescribed for the issue of TIR Carnets by associations.

12. The TIRExB was informed that one Contracting Party had discovered some cases where a TIR Carnet, bearing no validity date in box 1 of the cover page, had been presented at the Customs office of departure. In this regard, the IRU pointed out that such occurrences were a serious breach of not only the provisions of the TIR Convention, but also of the IRU's internal rules and regulations. The IRU urged the Customs authorities to retain such TIR Carnets and

inform the IRU without delay. The Board generally agreed that TIR Carnets with no validity date should not be accepted by the Customs authorities.”

TRANS/WP.30/AC.2/2005/19, paras. 10-12; TIRExB/REP/2005/25, paras. 10-12

“10. The TIRExB took note of Informal document No. 5 (2005) in which the IRU distinguished between four different types of TIR Carnets (lost, stolen, so-called "invalid" and so-called "invalidated") and described the dissemination of data on such TIR Carnets among Customs authorities. The Board welcomed the fact that, following the request of the TIRExB at the previous session (TIRExB/REP/2004/24, para.9), the IRU had changed the layout of its database and complemented it with additional data. These modifications would be applicable as of 1 February 2005.

11. The TIRExB reiterated that, with a view to combating Customs fraud, the Customs authorities have to continuously verify all TIR Carnets against listings issued by the IRU and retain such TIR Carnets, if discovered. In order to make these activities more efficient, the above listings should be disseminated as soon as possible from the IRU to central Customs administrations, and then from the latter to local Customs offices. The ultimate solution to this problem could be achieved in a fully computerized environment where all Customs officials "in the field" would have on-line access to the IRU's database.

12. For the time being, in view of inevitable delays in the distribution of data, the legal/guarantee status of lost, stolen, "invalid" and "invalidated" TIR Carnets seems to be a crucial issue for the Customs authorities. In this context, the TIRExB reiterated that the TIR Convention does not address this issue and recalled the opinion expressed by the Working Party at its eightieth session that "no general opinion could be given on the validity of stolen TIR Carnets as this was dependent on the specific circumstances of each individual case. However, the Working Party felt that in principle all properly issued TIR Carnets were considered to bear a valid guarantee..." (TRANS/WP.30/162, para.55). The representative of the IRU reiterated the position already expressed by the IRU at various occasions in the WP.30 on this matter and reproduced in the Informal document No. 5 (2005), i.e. once Customs authorities had been informed of stolen TIR Carnets and/or stamps, the use of such Carnets and/or stamps had no legal bearing and would thus not carry any guarantee. To make further progress, the TIRExB requested the secretariat to prepare a document on the relevant issues for consideration by the Board.”

ECE/TRANS/WP.30/AC.2/2006/1, paras. 26-32; TIRExB/REP/2005/26, paras. 26-32

“26. The TIRExB held a first exchange of views regarding Informal document No.11 (2005) 2 in which the secretariat had studied the validity of a TIR Carnet in various situations during the TIR Carnet life cycle (before issuance to the holder, between issuance and acceptance by the Customs office of departure and following such acceptance). In particular, the secretariat had tried to find answers to the following key questions concerning the relation between the TIR Carnet and TIR guarantee:

- Is the TIR Carnet covered by the guarantee from the moment it is printed? If not, at which moment is the TIR guarantee "attached" to the TIR Carnet?
- Who or what "attaches" the guarantee to a TIR Carnet? Is it done purely in line with the provisions of the TIR Convention or is it the international TIR guarantee chain which takes a decision in this regard, in line with its own rules and procedures?
- Which incidents can put the validity of a TIR Carnet into question?

27. The TIRExB noted with satisfaction that the IRU transmitted data on "invalid" and "invalidated" TIR Carnet to central Customs administrations via the fastest available means of communication and that some Customs administrations, without delay, inserted this information into their national automated Customs transit systems, so that all local Customs offices could perform "real time" checking of all TIR Carnets at the moment they were cleared. At the same time, the Board considered that in Contracting Parties which had not yet reached such a level of computerization, other factors should be taken into account, such as delays in the distribution of data to Customs officers "in the field" and their capability of checking TIR Carnets without disruption of the flow of vehicles.

28. The IRU stated that, in line with internationally recognized legal principles, the guarantor has the right to withdraw his guarantee. According to the consistent opinion of the IRU, once Customs authorities have been notified of "invalid" or "invalidated" TIR Carnets, the use of such Carnets has no legal bearing and will thus not carry any guarantee, starting from the moment this notification is received. The act of "invalidation" cannot be applied retroactively, i.e. the guarantee is deemed to be valid in situations which have happened before the notification.

29. The TIRExB pointed out that the TIR Convention is essentially based on a trade-off between the facilitation of international transport of goods, on the one hand, and the provision of a reliable TIR guarantee to protect Customs revenues, on the other. The Board stressed that Customs authorities should try, as far as possible, to disseminate and make use of information on "invalid" or "invalidated" TIR Carnets for the purpose of prevention of Customs fraud. At the same time, the Board highlighted that the TIR procedure is a mass system, and if Customs

² Note by the secretariat: the TIRExB decided that the distribution of Informal document No. 11 (2005) was restricted to TIRExB members only.

authorities checked the validity of each and every TIR Carnet, that would lead to inevitable delays of road vehicles. Considering three main phases of the TIR Carnet life cycle (see para. 25 above), the Board was of the view that, at least, if a TIR Carnet has been accepted by a Customs office of departure on or before the final date of validity, the guarantee linked to this TIR Carnet should remain valid until the very end of the TIR transport. According to the IRU, any decision in this respect should finally be subject to national legislation.

30. The TIRExB took note of Informal document No.13 (2005), containing a declaration of loss of TIR Carnets. The Board understood that such a declaration, being a part of the reporting mechanism, should be filled-in and submitted by the TIR Carnet holder in any situation where he is not in possession of TIR Carnets which have previously been issued to him.

31. The TIRExB also noted that the format of the expiry date of the TIR Carnet, as appeared in box 1 of the cover page, varies from one Contracting Party to another, and that some national associations mark the month of issuance with the respective number. This could lead to confusion of Customs authorities in other countries if they are not aware which format – day/month/year or month/day/year – has actually been used. The Board requested the IRU to look into possible solutions to this problem.

32. Finally, the TIRExB decided to continue its deliberations on this issue at the next session.”

ECE/TRANS/WP.30/AC.2/2006/5, paras. 15-18; TIRExB/REP/2005/27, paras. 15-18

“15. The TIRExB continued its deliberations on the validity of a TIR Carnet in various situations during the TIR Carnet life cycle. The Board felt that, rather than trying to address the issue of the TIR guarantee in general, it should focus on the so-called "invalidated" TIR Carnets. "Invalidated" TIR Carnets were understood as TIR Carnets that had been legitimately issued to the holders, but afterwards declared invalid by the international guarantee chain. The main question the TIRExB intended to answer was whether or not the guarantee coverage for such TIR Carnets may be withdrawn by the TIR guarantee chain and, if yes, from which moment this withdrawal comes into effect.

16. The TIRExB recalled its earlier opinion that, at least, if a TIR Carnet has been accepted by a Customs office of departure on or before the final date of validity, the guarantee linked to this TIR Carnet should remain valid until the very end of the TIR transport (TIRExB/REP/2005/26, para.29). The IRU reiterated its view that any decision in this respect should finally be subject to national legislation (ibid).

17. The Board felt that no clear-cut approach to this issue could be provided under the present paper-based system, due to inevitable delays in the distribution of information on "invalidated" TIR Carnets at various stages (holder – association, association – IRU, IRU –

central Customs administrations, central Customs administrations – local Customs offices) and different levels of computerization and EDI developments in the Contracting Parties to the Convention. This problem can be solved in the framework of the eTIR project where all Customs offices would have access to the guarantee status of each and every TIR operation. As far as the current situation is concerned, the TIRExB stressed that at the start of a TIR transport Customs must be sure about the existence of the TIR guarantee. Uncertainty in this issue might lead to additional checks and delays.

18. The Board pointed out that, in the absence of a common guidance, any dispute concerning the guarantee/legal status of an "invalidated" TIR Carnet would have to be solved on a case-by-case basis in line with national laws and regulations. At the same time, the TIRExB cautioned against making references to any previous court decision, because the circumstances of every particular case may be quite different.”
