



7 February 2006

ENGLISH ONLY

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

TIR Executive Board (TIRExB)

**REPORT OF THE TWENTY-SEVENTH SESSION
OF THE TIR EXECUTIVE BOARD (TIRExB)
(17-19 October 2005)**

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its twenty-seventh session on 17-19 October 2005 in Moscow.
2. The following members of the TIRExB were present: Mr. R. Boxström (Finland); Mr. A. Habekh (Jordan); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mrs. N. Rybkina (Russian Federation); Mrs. N. Rynkevich (Belarus); Mr. R. Şen (Turkey); Mr. R. Šmidl (Czech Republic). Mr. G. Grigorov (Bulgaria) was absent.
3. In accordance with Annex 8, Article 11, paragraph 5 of the Convention, the International Road Transport Union (IRU) attended the session as observer and was represented by Mr. J. Acri, Head, TIR System.

ADOPTION OF THE AGENDA

4. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2005/27) with the inclusion of the following issue under agenda item 13 "Other matters":
 - Endorsement of the budget and cost plan of the TIRExB and the TIR secretariat for 2006.

ADOPTION OF THE REPORT OF THE TWENTY-SIXTH SESSION OF THE TIRExB

Documentation: TIRExB/REP/2005/26draft.

5. The TIRExB adopted the report of its twenty-sixth session (TIRExB/REP/2005/26draft), subject to the following modifications:

Paragraph 18

Modify the last sentence to read as follows:

"The functioning of the TIR system cannot be sustainable and efficient without Contracting Parties respecting the provisions of the TIR Convention and ensuring their proper application."

Paragraph 24

Modify to read as follows:

"24. Mr. R. Şen (Turkey) stated that, although such an example would be desirable, it would not solve in full the problem of harmonized application of Article 38 and, thus, other aspects of the issue should be addressed as well. In this context, the Board recalled that the issue of harmonized application of Article 38 could be split in two separate items:

- legal interpretation/definition of "serious offence against Customs laws or regulations" (Article 38.1);
- exchange of information regarding an exclusion of a transport operator from the TIR procedure (Article 38.2).

The TIRExB reiterated that, due to considerable differences in national legislations, it seems unrealistic to reach a consensus on the first item. Therefore, only the second item should be pursued for the time being with a view to preparing an example of best practice for the inclusion into the TIR Handbook. With regard to the first item, the Board felt that this issue should better be considered in WP.30."

Paragraph 25

Modify the second sentence to read as follows:

"The Board took note of Informal document No.12 (2005) and felt that it should be distributed to the Contracting Parties for information, with the consent of the IRU."

Paragraph 29

Modify the last sentence to read as follows:

"According to the IRU, any decision in this respect should finally be subject to national legislation."

New paragraph 39 bis

Add a new paragraph after para.39 to read as follows:

"39 bis. In this context, the TIRExB also considered as topical the issue of a possible increase in the recommended guarantee sum per TIR Carnet, stipulated in the Explanatory Note to Article 8, paragraph 3. The TIRExB decided to discuss this issue in further detail at the next session."

Paragraph 44

Modify the last sentence to read as follows:

"Following a short exchange of views, the TIRExB felt that this issue should be studied in-depth, in particular from the legal point of view, and requested the secretariat to prepare, in cooperation with the IRU, a document for consideration at the next session."

Paragraph 46

Modify to read as follows:

"46. The TIRExB welcomed and endorsed the proposal by Mrs. N. Rybkina (Russian Federation) to hold the twenty-seventh session of the Board in Moscow on 17-19 October 2005, at the invitation of the Federal Customs Service of the Russian Federation (to be confirmed)."

6. The revised text of the report of the twenty-sixth session of the Board is contained in document TIRExB/REP/2005/26.

AMENDMENT PROPOSALS MADE IN THE FRAMEWORK OF THE TIR REVISION PROCESS

Article 28

Documentation: Informal document No.16 (2005).

7. The Board discussed Informal document No.16 (2005), prepared by the secretariat, containing further considerations with regard to proposals to amend Article 28 of the Convention.

In view of the fact that the Board, at its previous session, had decided not to support the proposal to amend paragraph 2 of Article 28, discussions focussed on Article 28, para. 1.

8. After lengthy considerations, the Board felt that Article 28, para. 1 might benefit from clarification but that, considering the fact that, so far, its application had not led to known complications, no significant amendment was required. In view of the fact that diverging opinions remained, the Board decided to revert the issue back to WP.30 for final consideration, proposing the following alternatives.

Alternative 1

Leave the text of Article 28 unchanged.

Alternative 2

Amend the text of Article 28, para. 1 and insert a new Explanatory Note 0.28-2 to read as follows:

“1. Termination of a TIR operation shall be certified by the Customs authorities without delay. Termination of a TIR operation shall be subject to the goods specified on the manifest of a TIR Carnet being placed under another system of Customs control. 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.

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.”

Article 40

Documentation: Informal document No.17 (2005).

9. The TIRExB considered Informal document No.17 (2005), prepared by the secretariat, containing some practical examples of the application of Article 40 as well as a draft comment intended to clarify its provisions. The Board generally advocated the practical examples, but did not

support the proposed comment. Instead, the TIRExB felt that a broader example of best practices should be prepared addressing, inter alia, such issues as:

- providing distinction between the liability of the TIR Carnet holder for payment of Customs duties and taxes and his responsibility in terms of penal/administrative law;
- exchange of information between the Customs authorities, as provided for in Article 50;
- possible indication of the export cargo declaration number in the TIR Carnet.

Article 41

Documentation: Informal document No.18 (2005).

10. The Board discussed Informal document No.18 (2005) prepared by the secretariat, containing consideration with regard to the proposal to amend Article 41, in particular in view of apparent linguistic differences between the French (“marchandises manquantes”) and the English text (“goods which are short”). The Board agreed that the issue did not seem to be very important, as no problems in the application had come to its attention. At the same time, the Board, consisting of neither English nor French native speakers, admitted that it found it hard to judge whether or not the provision would benefit from any alternative wording. Therefore, the Board decided to revert the issue without amendment proposal back to the Working Party, save for the question addressed at English native speakers to judge if the provision would obtain more clarity if the word “short” would be replaced by “deficient”.

PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM

Survey on TIR fraud patterns

Documentation: Informal document No.9 (2005).

11. The Board considered at length Informal document No.19 (2005) prepared by the secretariat, containing an amendment proposal for a Fraud Report Form (FRF). The TIRExB decided to introduce a number of changes to the FRF with the aim to making it more user-friendly. An updated version of the FRF is contained in Annex 1 to this report. The Board also decided to finalize its discussion on the design of the FRF by means of a written consultation procedure and submit it to the October 2006 session of the TIR Administrative Committee for adoption. The TIRExB also felt that, meanwhile, the FRF should be translated into French and Russian and sent to the Customs administrations for provisional application.

Harmonized application of Article 38 of the TIR Convention

Documentation: Informal document No.20 (2005).

12. The TIRExB considered Informal document No.20 (2005), containing an updated example of best practice for the application of Article 38 of the Convention. The Board generally agreed to the example, but made few additional changes to the document. A modified example of best practice is contained in Annex 2 to the present report. The TIRExB also invited its members to transmit written comments on the issue, if any.

13. Mr. R. Şen (Turkey) was of the view that the exclusion of a person from the TIR regime should not come into force as long as appeal procedures against the initial decision of the competent authorities to exclude the person had not been completed. The initial decision to exclude a person from the TIR regime, if followed by a suspension or cancellation of this decision as a result of the appeal procedures, could cause unjustified damages for the transport operator and his reputation and could eventually lead to his bankruptcy. In order to avoid such negative consequences, in the course of the appeal procedures the Customs authorities should only apply transitional control measures, such as physical inspection of the cargo at the border and/or Customs escorts. Therefore, Mr. R. Şen (Turkey) felt that the underlying example of best practice should be modified with the aim to reflecting such transitional measures.

Application of Annex 9, Part II of the TIR Convention (controlled access to the TIR procedure for natural and legal persons)

14. The TIRExB was informed that the TIR Administrative Committee, at its October 2005 session, had noted the results of the Board's survey of Contracting Parties on the application of controlled access to the TIR procedure for natural and legal persons. The Committee felt that a number of replies to the survey gave raise to concern about the proper application of the Convention and invited the TIRExB to consider the elaboration of a set of best practices for the proper application of Annex 9, Part II as well as the need for a possible follow-up at bilateral level with a number of Contracting Parties that had provided replies (TRANS/WP.30/AC.2/79, para.15). Against this background, the TIRExB requested the TIR secretariat, in cooperation with the IRU, to draft an example of best practices for consideration at one of the future sessions.

LOST, STOLEN, "INVALID" AND "INVALIDATED" TIR CARNETS

Documentation: Informal document No.11 (2005).

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.

POSSIBILITY OF UNDERTAKING A TIR TRANSPORT WHEN A TRACTOR UNIT DOES NOT BELONG TO THE TIR CARNET HOLDER

Documentation: Informal document No.14 (2005), Informal document No.21 (2005).

19. The TIRExB welcomed Informal document No.21 (2005) prepared by the secretariat, containing an overview of modern logistical schemes in so-called intermodal transport operations* where several transport operators can take part in one delivery. The Board noted that the provisions of the TIR Convention, in particular Article 2, definitely provide for such operations, and that the use of such logistical schemes within the framework of the Convention are widely accepted in

* Intermodal transport: The movement of goods in one and the same loading unit or road vehicle, which uses successively two or more modes of transport without handling the goods themselves in changing modes (see term 1.1 of the Terminology on Combined Transport prepared by the UNECE, ECMT and the European Commission (United Nations, New York and Geneva, 2001)).

practice. The Board felt, however, that the Convention does not seem to contain adequate provisions to ensure a harmonized intermodal application of the Convention at national level.

20. The TIRExB noted that the holder of a TIR Carnet often outsources a part of the transport operation to another carrier who is normally referred to as "sub-contractor". In this regard, the Board decided to address the following issues:

- (i) Can the sub-contractor undertake a TIR transport under cover of a TIR Carnet issued to another person (holder)?
- (ii) If yes, under which conditions (if any) may such TIR transports be undertaken? Do these conditions have to be reflected in the legal text of the TIR Convention or somewhere else?

21. The Board agreed that the TIR Convention should not be an obstacle for modern logistic practices and, therefore, "sub-contractor" transport operations should somehow be accommodated within the TIR procedure. However, the TIRExB was not in a position to come to a consensus on the issue. Various views were expressed, such as:

- The TIR Convention recognizes the TIR Carnet holder as the only person responsible for the duly accomplishment of a TIR transport. The holder may outsource a transport operation (contract), but not his liabilities. Thus, it is at his discretion and at his own risk to find reliable sub-contractors. The Customs authorities do not need to pay attention to sub-contractors, and neither amendments, nor new Explanatory Notes/comments to the provisions of the TIR Convention are required in this respect;
- While sharing the above opinion on the sole responsibility of the TIR Carnet holder, some members felt that, nevertheless, a new Explanatory Note or comment, possibly to Article 1 (o), would need to be introduced with a view to ensuring a common approach at national level;
- Some other members felt that TIR transports with sub-contractors involve a higher risk of Customs fraud and, thus, these operations have to be subject to a number of requirements. The basic requirement should be the authorization for the TIR procedure of not only the TIR Carnet holder, but also of any subcontractor. The representative of the IRU mentioned that this aspect was also subject of debates within IRU's membership. Some rules had been developed by the IRU to cover cases where Carnets were issued to TIR Holders using subcontractors for TIR transports (as presented in Informal document No. 14 (2005)).

22. Finally, the TIRExB decided to continue its deliberations on the matter at the next session. To this end, the Board requested the secretariat to prepare a new document on the basis of various opinions by members of the TIRExB as well as Informal document No.14 (2005) by the IRU which could provide guidance with a view to arriving at a harmonized approach.

APPLICATION OF THE TIR CONVENTION IN TRANSNISTRIA (PART OF THE REPUBLIC OF MOLDOVA)

23. The TIRExB took note that in July 2005 the Customs Department of the Republic of Moldova had published an updated list of Customs offices approved for TIR operations that did not contain any offices located in Transnistria. This listing was put on the UNECE TIR website as well as distributed by the IRU.

TRANSPORT OF PASSENGER CARS ON THEIR OWN WHEELS UNDER THE TIR PROCEDURE

Documentation: Informal document No.22 (2005).

24. The TIRExB considered Informal document No.22 (2005) prepared by the secretariat, containing a legal analysis of the relevant provisions of the TIR Convention as well as of the consequences entailed by the use of the TIR procedure for passenger cars travelling on their own wheels. The Board agreed that the TIR Convention contains no clear-cut legal arguments which would explicitly allow or prohibit TIR transports of passenger cars on their own wheels. At the same time, the Board felt that the TIR Convention had not been designed for personal goods, including passenger cars, and that the extension of the TIR procedure to such goods could lead to a number of negative consequences and a higher risk of fraud. In view of that and also considering that the market demand for this type of TIR transports could only be of a limited nature, the TIRExB came to the conclusion that passenger cars on their own wheels should not be transported under the TIR procedure. To this end, the Board requested the secretariat to draft a new Explanatory Note to Article 3 (a) (iii) of the Convention.

IMPLEMENTATION OF THE TIR PROCEDURE IN UKRAINE

25. The TIRExB recalled its earlier considerations regarding obligatory suspension of a TIR transport in Ukraine in cases where the amount of Customs duties and taxes at stake was above the TIR guarantee level (TIRExB/REP/2004/22, paras. 55-56, TIRExB/REP/2004/24, paras.17-19 and TIRExB/REP/2005/26draft, paras. 38-39). The Board took note that, in July 2005, the secretariat had received a reply from Ukraine which was distributed to TIRExB members for comments. On that basis, the secretariat had drafted and transmitted to Ukraine another letter which still remained unanswered. In view of that, the TIRExB mandated the secretariat to get in touch with the State Customs Administration of Ukraine with a view to receiving a reply to the latest letter and to inviting Ukrainian Customs representatives for the next session of the TIRExB.

APPROVAL OF ROAD VEHICLES WITH SLIDING SHEETS

26. The TIRExB was informed that the underlying problem of the approval of road vehicles with sliding sheets seems to be more serious than expected. Apparently, before the relevant

amendments to the TIR Convention came into force in 2002, European manufacturers had already produced a lot of curtain-sided vehicles which were not designed for Customs sealing and, therefore, were not Customs secure. However, the new amendments were misunderstood as allowing not only curtain-sided vehicles conforming to the new provisions of Annex 2 to the TIR Convention, but all road vehicles with sliding sheets to transport goods under Customs seal. As a result, some "old" EU-made curtain-siders were sold to other Contracting Parties and subsequently approved there by Customs.

27. The Board decided to continue its considerations on the issue in two different ways:
- obtain more information on the scale of the problem;
 - invite some technical experts to the next TIRExB session with a view to better understanding Customs insecure elements of the construction of vehicles with sliding sheets. In this context, the Board recalled the experts from the EU Customs and Fiscal Assistance Office to the FYR of Macedonia who prepared the training manual on the issue of non-compliance of road vehicles with the TIR technical regulations (TIRExB/REP/2005/24, para.27).

TIR GUARANTEE LEVEL

28. The TIRExB held a first exchange of views on the issue whether or not the TIR guarantee level per TIR Carnet established in 1975 corresponds to the current needs of Customs authorities with regard to the protection of the State revenues. Some members were of the view that the present guarantee amount of US\$ 50,000 is insufficient and does not ensure an equal treatment of Contracting Parties. In this context, they pointed out that at present the EU countries enjoy a higher level of guarantee (EURO 60,000 equivalent to approximately US\$ 72,000), in spite of a lower risk of Customs fraud, compared to other countries. As a result, less protected Contracting Parties are tempted to introduce exceptional control measures like Customs escorts that lead to additional transport costs and border delays.

29. On the other hand, the Board noted that the TIR guarantee per TIR Carnet should be regarded as an average, rather than a full guarantee. In the event of infringement, the total amount of Customs duties and taxes may be claimed from the TIR Carnet holder or any other identified directly liable person.

30. In addition, the TIRExB was informed that some Contracting Parties complain that the present guarantee level is too high for typical products from their countries and leads to unjustified costs for transport operators using TIR Carnets. If the guarantee level was raised, that would inevitably lead to even more expensive TIR Carnets.

31. The IRU indicated that the request for an increase in the guarantee level in the present circumstances was inappropriate and demonstrated that this request was a result of misinterpretation

of the TIR Convention and of the aim and nature of the TIR guarantee. The IRU also pointed out that an "à la carte" guarantee level could be an open door to discrimination.

32. The Board decided to revert to this issue at its future sessions and, in particular, to consider the following options:

- possible introduction of a lower guarantee level for certain countries (regions);
- possible general increase in the TIR guarantee level;
- possible introduction of a guarantee arrangement similar to the voucher system of the EU, where vouchers can be staggered on top of each other.

The IRU was invited, and accepted, to prepare a document on the possible consequences of an increase in the TIR guarantee level.

ACTIVITIES OF THE TIR SECRETARIAT

International TIR databank

33. The Board was informed of the ongoing activities of the TIR secretariat and projects related to the International TIR Database (ITDB). The secretariat was maintaining and further developing the ITDB2001 application and the ITDBonline web application. Furthermore, the secretariat was working on the ITDBonline+ project which would allow Customs administrations to update their "own" data in the ITDB by means of a web application. Finally, having received a number of requests, the secretariat envisaged to start a new ITDB project, the so-called ITDB Web services project, which would allow authorized national computer systems and applications to directly update and/or access data in the ITDB.

34. The TIRExB also discussed the possible extension of authorized ITDBonline Customs users (at present – only TIR focal points) with a view to providing Customs officers "in the field" with the opportunity to consult the ITDB. The Board was informed that the necessary technical arrangements were already in place, but a positive decision by the TIR Administrative Committee would be required. At the same time, the TIRExB noted that, in view of the possible incompleteness of the ITDB data, Customs authorities should be rather prudent in using such information. The Board requested the secretariat to prepare a document containing various pros and cons as well proposals how to improve the quality and timeliness of ITDB data transmitted by the Contracting Parties.

Computerization of the TIR procedure

35. The Board was also informed of the major items to be discussed at the next Informal Ad hoc Expert Group on Conceptual and Technical aspects of Computerization of the TIR Procedure, which would take place in Geneva on 14 and 15 November 2005: the final results of the eTIR

questionnaire, the future eTIR system and the alignment of the TIR Carnet data elements with international standards such as UNTDED.

TIR seminars

36. The TIRExB took note of a national TIR Seminar held in Azerbaijan in September 2005 as well as of a Sub-regional TIR Seminar that had been organized in Beijing (China) in September 2005 for the benefit of the member and observer countries of the Shanghai Cooperation Organization. The Board noted that the experiences gained from the Seminars indicate that there are substantial benefits to be gained for the TIR system as a whole if new Contracting Parties establish bilateral partnerships with long standing Contracting Parties, with a view to ensuring the proper application of the Convention. The TIRExB also took note of plans to organize a national TIR seminar in Kazakhstan at the end of 2005 and tentative plans for organizing regional TIR seminars in 2006 for the countries in the Balkan and the Middle East regions, respectively.

OTHER MATTERS

Filling in the TIR Carnet

37. The Board was informed of some cases of negligent filling-in of TIR Carnets by holders and felt that transport operators should be reminded, through the respective national associations, of their obligations. At the same time, the TIRExB stressed the necessity to elaborate a detailed instruction on how to fill-in the TIR Carnet.

Endorsement of the budget and cost plan of the TIRExB and the TIR secretariat for 2006

38. The TIRExB endorsed the budget proposal and cost plan for 2006, as drafted by the secretariat (TRANS/WP.30/AC.2/2005/14), which was submitted to the TIR Administrative Committee for adoption.

RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

39. The TIRExB decided that the distribution of the following documents, issued in connection with its present session, should be restricted: Informal documents Nos. 19 and 21.

DATE AND PLACE OF NEXT SESSIONS

40. The TIRExB decided to hold its twenty-eighth session in Geneva on 26 and 27 January 2006, in conjunction with the 112th session of the UNECE Working Party on Customs Questions affecting Transport (WP.30).

Annex 1

FRAUD REPORT FORM (FRF) ^{1/}

This FRF has been developed by the TIRExB with the aim to promote the gathering and dissemination of fraud related information among authorized TIR Customs Focal Points as well as with dedicated other recipients. Its aim is to provide an early warning tool, facilitating the combating of fraud within the TIR system. The information contained in the FRF is of an indicative nature and is provided on a voluntary basis by its sender, without any obligation to fill-in all boxes. Any responsibility with regard to the accuracy and the right of retransmission in line with applicable data protection law remains with the original sender of the FRF. The TIRExB declines any responsibility for consequences emanating from the distribution of the FRF.

Information submitted by: */

Name.....

TIR Customs Focal Point of country.....

^{*/} This information is requested for identification purposes only. Name and country of sender will not be displayed when retransmitting the FRF to its list of recipients.

List of recipients of FRF:

I request that the enclosed information be distributed to ^{2/}:

TIR Customs Focal Points

The Working Party on Customs Questions affecting Transport (WP.30) and the TIR Administrative Committee (AC.2)

OLAF

WCO

The international organization, mentioned in Article 6.2. bis of the TIR Convention

Other, please specify.....

I. PRELIMINARY INFORMATION OF A GENERAL NATURE FOR EARLY WARNING PURPOSES ONLY

Reason for distribution of information

Distribution of information is requested with the aim to inform parties concerned of possible trends in the field of:

Counterfeit TIR Carnet

Nationality of the TIR operator.....

Country where the TIR Carnet was first presented to Customs.....

Number of the TIR Carnet(s) involved.....

Description of counterfeiting aspects.....

^{1/} Established by the TIRExB in accordance with Annex 8, Article 10, paragraph (c) or (d) of the TIR Convention.

^{2/} Please tick the appropriate box(es). The FRF will ONLY be retransmitted to the indicated list of recipients.

Falsified opening or termination of a TIR operation

Name of Customs office used for falsified opening or termination of a TIR operation.....

Vehicle specially equipped for fraudulent purposes

Place(s) of concealment.....

Curtain-sided vehicle

Country of registration of the vehicle.....

Falsified certificate of approval of TIR vehicle

Country of registration of the vehicle

Falsification in order to avoid approval procedure.....

Falsification with aim to smuggle goods.....

Serial number of vehicle.....

Type of vehicle.....

Approval by design type

Individual approval

Type of smuggled goods.....

Cover load.....

Details of route used.....

Other reason for distribution, please specify.....

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.....

Further details with regard to the fraud case (if appropriate):

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.....(please use extra sheet of paper if required).

II. FURTHER QUESTIONS^{3/}

1. Is this the first time you have experienced a fraud case as described above?

Yes;

No, please specify earlier experiences.....

^{3/} This information can be given at any moment when sending in the FRF, at the discretion of the sender

2. Is this the first time that the name of this TIR Carnet holder appears in relation to any relevant infringement of Custom law?

Yes;

No, please specify earlier involvements.....

3. Has the reported fraud case led to the withdrawal/exclusion of the involved TIR Carnet holder?

No

Yes (please specify type of withdrawal/exclusion):

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tnenamreP withdrawal (please provide any relevant detail).....

(rotarepo trospnart ngierof rof dednemocer) 1 hpargarap ,83 elcitra ^{4/}:

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isulcxe tnenamreP on (please provide any relevant detail).....

Please send the FRF to the TIRExB
by fax: +41-22-917 0614 or
by email: tirexb@unece.org

^{4/} Pending approval by AC.2 of retransmission of information on exclusions ex Article 38 via the ITDB.

Annex 2

**EXAMPLE OF BEST PRACTICE
WITH REGARD TO THE APPLICATION OF ARTICLE 38**

A. INTRODUCTORY REMARKS

1. Chapter IV "Irregularities" of the TIR Convention contains references to national legislation of the Contracting Parties. In particular, in accordance with Article 36, *"any breach of the provisions of this Convention shall render the offender liable, in the country where the offence was committed, to the penalties prescribed by the law of that country"*. Article 38 constitutes in itself a framework provision which also relies on national legislation for practical implementation. For example, national law determines:

- gravity of an infringement ("serious offence against Customs laws or regulations applicable to the international transport of goods");
- date when the exclusion according to Article 38 comes into force;
- appeal procedures and possible suspension of the exclusion in the course of appeal.

2. In general, Article 38 should be considered as a tool to protect and prevent the TIR procedure from abuses, rather than as an automatic mechanism of sanction in any circumstances. The application of Article 38 should be justified according to the gravity of the infringement.

3. Article 38 is closely linked to the provisions of Article 6 and of Annex 9, part II which govern the procedure of access of physical and legal persons to the TIR procedure. This relation is highlighted by two comments to Article 38 "Cooperation between competent authorities" and "Exclusion of a domestic transport operator from the TIR procedure".

4. Apart from the person being excluded, the following actors are mentioned in Article 38:

- the competent authorities of the Contracting Party where the offence has been committed and where Article 38.1 is implemented;
- the competent authorities of the Contracting Party on whose territory the excluded person is established or resident;
- the association(s) in the country where the offence has been committed;
- the TIR Executive Board.

In addition, the national association of the Contracting Party where the excluded person is established or resident is involved in the implementation of Article 38, although not mentioned explicitly in the text.

5. Because of the involvement of various actors, the close cooperation between them is indispensable for the smooth application of Article 38. Such cooperation should be based on two major elements:

- duly fulfilment by the actors involved of their respective functions;
- a fast and transparent exchange of information.

An example of best practices in this respect is given below*.

B. EXAMPLE OF BEST PRACTICE

6. The competent authorities of the Contracting Party where an infringement of the TIR Convention was committed should consider, in line with national legislation, whether this infringement constitutes "a serious offence against Customs laws or regulations applicable to the international transport of goods" and whether the TIR Carnet holder should be excluded from the TIR procedure according to Article 38.1.

7. If a decision is taken to implement Article 38.1, the person being excluded should be informed without delay. Such information should be made in any of the three official languages of the TIR Convention (English, French or Russian) and should contain at least the following particulars**:

- Date and place of issuance of the document;
- Name and official address of the competent authority;
- Name, address, country and ID-number of the person being excluded;
- TIR Carnet reference number;
- Registration No(s) of road vehicle(s) (if applicable);
- Identification No(s) of container(s) (if applicable);
- Description of the goods;
- Date and place of the infringement;
- Detailed description of the infringement;

* According to the comment "Exclusion of a domestic transport operator from the TIR procedure", the Customs authorities are recommended to use the provisions of Article 38.1 against foreign transport operators guilty of a serious offence of the Customs laws. The proposed example of best practice addresses such a situation.

** A specimen of information is given in the annex to the present document.

- Reasons for the application of Article 38.1;
- Type of the exclusion (temporary or permanent) and the date of its entry into force;
- Duration of the exclusion (for temporary exclusions only);
- Information on possible appeal procedures (deadline, appeal bodies, possible suspension of the exclusion in case of appeal, etc.).

Where possible, a copy of the TIR Carnet should be attached.

8. The information should be transmitted to the excluded person by the fastest available means of communication (fax, electronic mail, etc.). Within one week, this information should also be forwarded by registered mail to the person being excluded or should be handed over to his legal representative against signature on receipt.

9. Within one week, the same information should also be transmitted by the fastest available means of communication (fax, electronic mail, etc.) to the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, to the association(s) in the country or Customs territory where the offence has been committed, to the TIR Executive Board and, as far as possible, to the association of the Contracting Party where the excluded person is established or resident (issuing association).

10. In case of any changes in the status of the original exclusion (e.g., cancellation or suspension, etc.), the competent authorities, which have excluded the person, should keep the addressees mentioned in paras. 9 and 10 above informed of these changes.

11. The competent authorities of the Contracting Party on whose territory the excluded person is established or resident should consider whether the committed infringement can affect the minimum conditions and criteria set out in Annex 9, part II, that persons have to meet in order to have access to the TIR procedure. If the person concerned no longer fulfils these requirements, his authorization should be withdrawn. Such a withdrawal should be reported within one week to the TIR Executive Board. It is also recommended to inform the competent authorities which have issued the exclusion.

12. Irrespective of the possible decision on withdrawal of authorization by the competent authorities of the Contracting Party on whose territory the person concerned is established or resident, the issuing association should assess the reliability of the holder and may impose on him some sanctions in compliance with the association's internal rules, for example, suspend the issuance of TIR Carnets.

ANNEX

**INFORMATION OF EXCLUSION FROM THE TIR PROCEDURE
(in accordance with Article 38, para.1 of the TIR Convention)**

To:

(name, address, country and ID-number of the person being excluded)

This is to notify that you have been excluded from the TIR procedure on the territory of

_____ (name of the country)

This exclusion comes into force on _____ (date)

and is permanent temporary until _____ (date)

Appeal against the exclusion can be launched with _____
(name of appeal body)

before _____ (deadline for appeal, if any) possibly, by registered mail

The exclusion has been a result of the TIR infringement whose details are given below:

TIR Carnet reference number

Registration No(s) of road vehicle(s) (if applicable)

Identification No(s) of container(s) (if applicable)

Description of goods

Date and place of the infringement

Description of the infringement:

Reasons for the application of Article 38.1:

Attachments (if any)

Name and official address of the competent authority:

Date and place

Signature

Stamp (if applicable)