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ENGLISH ONLY

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

TIR Executive Board (TIRExB)

**REPORT OF THE TWENTY-NINTH SESSION
OF THE TIR EXECUTIVE BOARD (TIRExB)**

(29 – 30 May and 1 June 2006)

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its twenty-ninth session on 29 and 30 May and on 1 June 2006 in Geneva.
2. The following members of the TIRExB were present: Mr. R. Boxström (Finland); Mr. G. Grigorov (Bulgaria); 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).
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/2006/29) with the inclusion of the following issues under agenda item 13 "Other matters":
 - application of the TIR procedure in Italy;
 - application of the TIR procedure in Ukraine;
 - clearance of TIR Carnets at the external Hungarian borders;
 - change in the ISO country code for Romania;
 - entry into force of Annex 10 to the Convention.

5. The TIRExB was informed about the sad passing away of Mr. J. Byrgesen, a former member of the TIR secretariat and the distinguished delegate of Denmark in the TIR Administrative Committee and WP.30. The Board observed a minute of silence in his memory.

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

Documentation: TIRExB/REP/2006/28draft.

6. The TIRExB adopted the report of its twenty-eighth session (TIRExB/REP/2006/28draft), subject to the following modifications:

Paragraph 13

Modify the paragraph to read as follows:

"13. In the course of the discussion, it was pointed out that for Customs it would be convenient to be confronted with one, single Customs debtor, being the TIR Carnet holder. On the other hand, the legal provision of Article 8.7 of the TIR Convention stipulates that Customs have to require payment, so far as possible, from all persons directly liable before making a claim against the guaranteeing association. Thus, it is not possible to ignore the existence of the subcontractor."

Paragraph 14

Modify the paragraph to read as follows:

"14. Taking all these aspects in consideration, the TIRExB drew the following, tentative, conclusions in anticipation of further discussions:

- The use of subcontractors under the TIR procedure does not contradict, in principle, the provisions and the spirit of the TIR Convention;
- In case a subcontractor actually performs a TIR transport under coverage of a TIR Carnet issued to an authorized TIR Carnet holder, his position is comparable to that of a person acting on behalf of the holder. Therefore, in case of an infringement, the subcontractor might be one of the directly liable persons, as referred to in Article 8.7, in accordance with national law;
- Information on the actual subcontractor(s) should be provided in the TIR Carnet or attached to it. Certain rules should be established which would allow Customs to distinguish between the legitimate use of a subcontractor and the illegal transfer of a TIR Carnet to third parties."

Paragraph 16

In the last sentence, modify "passenger cars" to read "passenger cars transported as goods".

Paragraph 18

In the last sentence, replace "50%" with "15%".

Paragraph 20

Modify the second indent of the last sentence to read as follows:

"- in cooperation with the invited experts, prepare, translate and disseminate to approval authorities training materials, for instance, a check-list, example of best practice and a training manual;"

7. The revised text of the report of the twenty-eighth session of the Board is contained in document TIRExB/REP/2006/28.

HARMONIZED APPLICATION OF ANNEX 9, PART II OF THE TIR CONVENTION (CONTROLLED ACCESS TO THE TIR PROCEDURE)

Documentation: Informal document No.1 (2006)/Rev.1.

8. The Board considered in depth Informal document No.1 (2006)/Rev.1, containing an example of best practice with regard to the application of Annex 9, Part II of the TIR Convention as well as comments by TIRExB members. The Board delivered a number of remarks concerning the form and content of para.7 of the above document and decided to complement para.10 with the following sentence: "It is up to the competent authorities to arrange a procedure for regular checks." Finally, the TIRExB requested the secretariat, in cooperation with the IRU, to revise the document with a view to submitting a modified draft for consideration at the next session of the Board.

9. The TIRExB also touched upon the issue of the legal status of the examples of best practices included into the TIR Handbook. The Board stressed that all these examples are not legally binding for the Contracting Parties. To reflect this idea, the TIRExB suggested that introductory Chapter 5.1 of the TIR Handbook be complemented with a sentence similar to the first sentence of para.4 of Chapter 5.7: "It should be noted that Contracting Parties are under no legal obligation to comply with the recommendations set out in paragraph 5.7".

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

Documentation: Informal document No.7 (2006).

10. The TIRExB, having had a general exchange of views on the concept of subcontractor when finalizing the text of the report of its twenty-eighth session, considered Informal document No. 7 (2006) by the TIR secretariat, containing proposals for the introduction of the subcontractor into the TIR Convention. Some members maintained the view that subcontractors must fulfil the criteria of Annex 9, Part II, whereas others argued that the application of the TIR system would be deprived of its flexibility in case a subcontractor would de facto obtain the same status as the TIR Carnet holder himself. It was mentioned that often a subcontractor was hired to cover only a limited distance (e.g. between the port and the nearest Customs warehouse), within the territory of a single country, thus making it seem disproportionate to expect him to fulfil the criteria for authorized TIR Carnet holders. Against this background, it was argued that the relationship between the TIR Carnet holder and the subcontractor should be considered as purely private or commercial, without any transfer of financial liability taking place, as e.g. in the CMR Convention. However, at the same time, the Board recognized that it would be difficult to maintain this point of view when considering the application of Article 8.7. In case, in a given situation, the subcontractor could be identified by law as a person directly liable, it would be impossible to ignore neither his existence nor his liability.

11. Thus, without being able to reach consensus about the de jure position, the TIRExB realized it had to address the de facto existence of the subcontractor in order to avoid that the absence of any information in the TIR Convention would be considered by Contracting Parties as a clear interdiction to allow subcontractors. For that reason, the TIRExB requested the secretariat to further elaborate its proposal for an Explanatory Note to Article 1 (o) of the Convention, for discussion at its next session.

APPROVAL OF ROAD VEHICLES

Documentation: Informal document No.8 (2006).

12. The TIRExB was informed of activities undertaken as a follow-up to its decisions at the previous session (TIRExB/REP/2005/28draft, para.20), namely:

- Liaison Committee of the Body and Trailer Building Industry (CLCCR) had prepared and transmitted to the TIRExB guidelines for checking vehicles or containers with sliding sheets (Informal document No.8 (2006));
- EU Customs Assistance Mission (CAFAO) to Serbia and Montenegro had made available to the secretariat an updated version of the training manual on the non-

compliance of road vehicles with the TIR technical regulations (see TIRExB/REP/2005/26, para.44);

- at the recent Regional TIR Seminar (Sophia, 11 and 12 May 2006), a presentation and practical demonstration of the current problems with TIR-approved vehicles had been provided. The Seminar urged the competent authorities and authorized TIR Carnet Holders to ensure that vehicles used in the TIR system conform to the technical prescriptions set out in Annexes 2 and 7 of the Convention.

13. The TIRExB expressed its appreciation to CLCCR for the check-list and felt that, given the urgency of the problem with curtain-siders, it should be distributed to the approval authorities of the Contracting Parties as soon as possible, together with a number of pictures illustrating the key technical prescriptions regarding vehicles with sliding sheets. The Board stressed that similar check-lists or examples of best practices should also be elaborated for other types of constructions of road vehicles. Concerning the CAFAO's training manual, the TIRExB invited the European Commission to give a permission for the transmission of the manual to the Contracting Parties. Meanwhile, the Board requested the secretariat to look into the possibilities of its translation.

14. The TIRExB discussed the idea to organize in Geneva a training seminar for approval authorities, solely dedicated to the correct application of Annexes 2 and 7 to the TIR Convention. It was noted that the participation in such a seminar should be different from the one for the regular WP.30/AC.2 meetings and, thus, would entail extra mission costs for the Contracting Parties. With a view to ensuring as broad representation as possible, the Board invited all players in the TIR system as well as other organizations to explore the possibility of funding travel expenses of the participants.

APPLICATION OF ARTICLES 39 AND 40

Documentation: Informal document No.3 (2006)/Rev.1.

15. The TIRExB continued its deliberations with regard to an example of best practice in case of discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment (Informal document No.3 (2006)/Rev.1). The Board highlighted that decisions in such situations should be taken on a case-by-case basis, depending on the circumstances and national legislation. Nevertheless, the TIRExB was of the view that general guidance on the application of Articles 39 and 40, including some generic examples, could be of assistance to Customs authorities. In this respect, members of the Board informed of their experiences at national level. Furthermore, the Board noted that, in case of discrepancies, the CMR Convention may also apply. In order to take into account the above considerations, the TIRExB requested the secretariat to redraft Informal document No.3 (2006)/Rev.1.

TIR GUARANTEE LEVEL

Documentation: Informal document No.9 (2006), Informal document No.11 (2006).

16. On the basis of comments submitted by TIRExB members and the IRU (Informal document No.9 (2006) and Informal document No.11 (2006), respectively), the Board reconsidered the possible increase in the TIR guarantee level within the context of the difference in the maximum guarantee amount between the EU Member States (EURO 60,000) and other Contracting Parties (US\$ 50,000). The TIRExB noted that this difference had appeared unintentionally and was due to the fact that the US dollar had significantly lost its value against the EURO. Nevertheless, the Board felt that there should be an equal treatment of all Contracting Parties, and having the same guarantee level would be in the spirit of the Convention. Once this goal is achieved, precautionary measures should be taken with a view to avoiding problems with fluctuating currency exchange rates in the future.

17. The TIRExB noted that not only the declining US dollar exchange rate, but also other factors, such as a big share of expensive and highly taxable goods, an increase in the vehicles' carrying capacity and new packing technologies had contributed to a significant number of TIR transports where the amount of Customs duties and taxes due exceeded the TIR guarantee level. This situation resulted in an excessive use of Customs escorts in some countries. With a view to obtaining an overall picture, the Board decided to undertake a study on the issue whether or not the current TIR guarantee level is considered appropriate by the Contracting Parties. As a first step, the secretariat was requested to draft a questionnaire for consideration at the next session of the TIRExB.

18. The Board also recalled its request to the IRU to look into the financial consequences of increasing the TIR guarantee limit to the level applicable in the EU (TIRExB/REP/2005/28, para.25). In this regard, the IRU pointed out (Informal document No.11 (2006)) that the international financial institutions would not be in a position to accept an increase of the maximum level of the TIR guarantee for countries outside the EU to the US\$ equivalent of EUR 60,000, because that would lead to a massive escalation of the guarantee cover and perceived risk. Thus, according to the IRU, it did not make any sense to discuss a general increase of the guarantee level throughout all the Contracting Parties.

MONITORING OF THE FUNCTIONING OF THE TIR GUARANTEE SYSTEM

Documentation: Informal document No.10 (2006).

19. The TIRExB took note of a draft survey on Customs claims prepared by the secretariat (Informal document No.10 (2006)) and invited its members to transmit written comments, if any, prior to 1 July 2006. The Board felt that this survey should be combined with the study

on the guarantee level, as mentioned in para.17 above, and requested the secretariat to draft a new document for consideration at the next session.

FILLING-IN OF BOX 8 OF THE TIR CARNET

20. The TIRExB was informed of the non-harmonized filling-in of box 8 "Documents attached to the manifest" on the TIR Carnet: some Customs authorities indicate the numbers of the accompanying CMR consignment notes, even if they are not physically attached to the TIR Carnets, while other Customs authorities do so only in case CMR's are stapled to the TIR Carnet. The Customs Administration of Finland had recently brought this issue to the attention of the European Commission. The TIRExB decided to revert to this issue at its next session on the basis of information submitted by the Finnish Customs. The Board also invited its members to provide, before 1 August 2006, the secretariat with national regulations on filling-in of the TIR Carnet, with a view to preparing a step-by-step instruction for TIR Carnet holders and Customs authorities.

REQUEST BY THE CUSTOMS ADMINISTRATION OF SERBIA

21. The TIRExB was informed of a request for clarification received from the Serbian Customs Administration about TIR transports performed by a tractor unit – semi-trailer combination. The Serbian Customs wondered whether the TIR Convention allows for a change of the tractor unit without Customs surveillance and, if yes, when and how such a change should be reflected in the TIR Carnet.

22. The Board felt that two situations should be distinguished: (1) both tractor units belong to one and the same TIR Carnet holder and (2) tractor units belong to different TIR Carnet holders. It was realized that the second situation is closely linked to the issue of subcontractors (see paras. 9 and 10 above). On the assumption that a change of the tractor unit is permitted, the TIRExB shortly discussed whether this change should be indicated on the TIR Carnet. Here two opposite views were expressed:

- the TIR Convention focuses on the load compartment (trailer, semi-trailer, container) where TIR goods are located. A tractor unit without a load compartment is not subject to TIR approval and is of no interest to Customs authorities. Thus, neither tractor unit nor its possible replacement should be reflected in the TIR Carnet;
- a tractor unit is considered as a road vehicle, according to the definition of Article 1 (g). The TIR procedure applies not only to the transported goods, but also to all road vehicles carrying out a TIR transport. Both goods and vehicles are under Customs surveillance and, therefore, should be included in the TIR Carnet. In case the tractor unit is substituted, the proper corrections should be made in the TIR Carnet.

In order to make further progress, the Board requested the secretariat and IRU to draft documents which would take into account various views on the issue.

ACTIVITIES OF THE TIR SECRETARIAT

ITDB

23. The TIRExB took note of the latest status of data transmitted to the ITDB by the Contracting Parties as well as of efforts undertaken by the secretariat to increase the response rate.

Register on Customs sealing devices

24. At the request of the secretariat, the TIRExB considered a number of issues related to the maintenance of the Register on Customs seals and Customs sealing devices, which exists in a paper-based format and is distributed to TIR Customs Focal Points on an annual basis. The TIRExB was of the opinion that the Register is a valuable tool for Customs authorities and should further be maintained, preferably in an electronic form. The Board underlined the importance of its regular updates and of providing on-line access not only for the TIR Focal Points, but also for Customs officers "in the field". The secretariat was requested to prepare for the next session a document outlining the relevant technical and administrative issues.

Computerization of the TIR procedure

25. The TIRExB was informed that the Informal Ad-hoc Expert Group on Conceptual and Technical aspects of the Computerization of the TIR procedure held its ninth session in Bratislava at the kind invitation of Slovak Customs on 7 and 8 March 2006 and that the report of the meeting was contained in document TRANS/WP.30/GE.1/2005/5. It took note that the first part of the work performed by the Expert Group, the first chapter of the Reference Model of the TIR procedure, had been endorsed by WP.30 and that the Expert Group was now preparing a high level description of the future eTIR system together with the steps that would lead to it. It also took note that two proposals for the computerization were currently on the table, Customs experts being in favour of the one whereas IRU and associations experts were in favour of the other proposal. The TIRExB took note of the fact that the major differences between two proposals lie in the guarantee management and the declaration procedures.

TIR seminars

26. The TIRExB was informed of the outcome of the Regional TIR seminar for the countries of the Balkan region (11-12 May 2006, Sofia (Bulgaria)) as well as of national TIR seminars conducted by the secretariat in Uzbekistan and Tajikistan in April 2006.

AUDIT BY THE UN BOARD OF AUDITORS AND BY THE OIOS

27. The TIRExB was informed that, following the initial audit in 2005, the United Nations Board of Auditors (BOA) in May 2006 had carried out a follow-up audit of the UNECE. In addition, as recommended in BOA's Management Letter of 5 May 2005, the UN Office of Internal Oversight (OIOS), had carried out in March – May 2006 an audit of the UNECE-IRU Agreement, the general functioning and operation of the TIR secretariat and the tasks carried out by the secretariat. The outcomes of both BOA and OIOS audits were still pending. Once finalized, they would be transmitted to the TIR Administrative Committee for information and consideration.

OTHER MATTERS

Application of the TIR procedure in Italy

28. The Board was informed of problems that Turkish transport operators experience in Italy in case they pick up at the port of Trieste semi-trailers destined to Spain. The shortest way to Spain from Trieste goes to the west via Verona, Brescia, Genova and further to France and Spain, but this East-West route is subject to a quota which is fixed at the level of 4,000 operations per year for all Turkish operators, while the annual demand is equal to around 23,000 operations. For operations above the quota, Turkish carriers intend to use the so-called South-North route going from Trieste to Tarvisio and further to Austria, Germany, France and Spain. Although this itinerary is about 600 km longer than the East-West route, it could be a viable solution to Turkish operators who exceed the established quota. However, making use of the provisions of Article 20 of the TIR Convention, the Italian Customs authorities at Trieste require Turkish transport operators to follow the East-West route and do not allow the South-North route, even when the quota is exceeded.

29. The TIRExB noted that, according to the Explanatory Note to Article 20, the Customs authorities are recommended to exercise their right to prescribe a route only when they consider it essential. The Board also felt that the underlying difficulties might be seen as lack of coordination between the Customs and other Italian authorities responsible for quota issues. With a view to clarifying the situation, the TIRExB requested the secretariat to send an inquiry to the Italian Customs Administration.

Implementation of the TIR procedure in Ukraine

30. Having 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 exceeded 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 TIRExB noted with regret that the above control measure remained in force and that the State Customs Administration of

Ukraine had, so far, failed to reply to several communications by the secretariat. The Board felt that this issue should be brought to the attention of the Permanent Mission of Ukraine in Geneva and, unless solved, reported to the TIR Administrative Committee at its September 2006 session.

Clearance of TIR Carnets at the external Hungarian borders

31. The TIRExB was informed by the IRU of problems which TIR transport operators had experienced since a year and a half at some external border crossings of Hungary. Namely, operators were forced to use the services of a Customs broker for Customs clearance of their TIR Carnets and to pay a service fee of EURO 19. The use of a broker was required even when a Hungarian translation of the goods manifest was available. According to the IRU, this practice contradicted not only the provisions of the Convention, but also internal instructions issued by the Hungarian Customs administration. The TIRExB requested the secretariat, on the basis of detailed information to be submitted by the IRU, to contact the Hungarian Customs authorities with the view to rectifying the situation. In this context, Mr. J. Marques (European Community) informed the Board that the European Commission would also try to address this issue at Community level.

Change in the ISO country code for Romania

32. The TIRExB took note that, in 2002, the International Organization for Standardization (ISO) had changed the 3-letter country code for Romania from ROM to ROU. As a result, the former ID-numbers of the Romanian TIR Carnet holders should be replaced with new ones. However, a number of Romanian operators were still indicating their old ID-numbers on TIR Carnets. This led to problems with the Customs authorities in some countries. The Board mandated the secretariat to look in this matter and to find a solution.

Entry into force of Annex 10 to the Convention

33. The Board recalled that on 12 August 2006 Annex 10 to the Convention would come into force, introducing a control system for TIR Carnets into the legal text of the Convention. The TIRExB noted that, in the future, the IRU would provide detailed information concerning the performance of Contracting Parties under this control system.

Application of Customs escorts in the Republic of Belarus

34. At the request of the TIRExB (TIRExB/REP/2005/28, para.35), Mrs. N. Rynkevich (Belarus) provided the Board with the tariff rates for escort applicable in the Republic of Belarus. According to the Byelorussian legislation, escorts could be organized by three different subdivisions of the State Customs Committee and of the Interior Ministry, whose

tariff rates varied from US\$ 0.5 to US\$ 1.0 per km. These figures were expected to decrease in the nearest future.

Other business

35. The Chairperson informed the TIRExB that she had received a letter from the Customs Administration of Kyrgyzstan, asking the Board for assistance in solving some problems with the national TIR guaranteeing association. Since the scope of the possible TIRExB's intervention in the matter did not seem clear, the Kyrgyz Customs were invited to transmit further details. The Board took note of this information.

RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

36. The TIRExB decided that the distribution of the following documents, issued in connection with its present session, should be restricted: Informal documents Nos. 7, 9 and 11 (2006).

DATE AND PLACE OF NEXT SESSIONS

37. The TIRExB tentatively scheduled its thirtieth session to take place in Geneva on 30 and 31 October 2006.
