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**ECONOMIC COMMISSION FOR EUROPE**

Administrative Committee for the TIR Convention, 1975

(Fortieth session, 2 February 2006,  
agenda item 4 (a) (i))

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB) \*

ACTIVITIES OF THE TIREXB

Report of the TIR Executive Board at its twenty-sixth session

**ATTENDANCE**

1. The TIR Executive Board (TIRExB) held its twenty-sixth session on 17-18 May and 14 June 2005 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.

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\* The UNECE Transport Division has submitted the present document after the official documentation deadline.

\*\* Mr. G. Grigorov (Bulgaria) and Mrs. H. Metaxa-Mariatou (Greece) were excused on 14 June 2005.

## **OPENING STATEMENT**

4. The meeting was opened by Mr. J. Capel Ferrer, Director, UNECE Transport Division, who congratulated the participants on their recent election as TIRExB members. He underlined the importance of the TIR Convention as the only existing global transit facilitation system and addressed the challenges which the TIR system faced, in particular Customs fraud. According to Mr. Capel Ferrer, the public-private partnership is essential to combat such illegal activities with a view to keeping the facilities of the TIR procedure for international trade and transport while protecting Customs revenues. He also stressed that the TIRExB plays a very important role in ensuring the smooth functioning and sustainability of the TIR system. Mr. J. Capel Ferrer wished the TIRExB much success in its initiatives and assured the Board of the full support that the UNECE would provide to its activities.

## **ADOPTION OF THE AGENDA**

5. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2004/26) with the inclusion of the following subjects under agenda item 10 "Other matters":

- Approval of road vehicles with sliding sheets;
- Implementation of the TIR procedure in Ukraine;
- Application of the TIR Convention in the region of Transnistria (part of the Republic of Moldova);
- Transport of passenger cars on their own wheels under the TIR procedure;
- New fraud pattern revealed at the Russian-Finnish border.

## **ELECTION OF A CHAIRMAN**

6. The Board recalled that, according to its Rules of Procedure, a Chairman shall be elected at the first meeting each year, who shall hold office until his/her successor is elected. He/she shall be eligible for re-election. In accordance with the above provision, Mrs. Natalya Rybkina (Russian Federation) was elected Chairman.

## **ADOPTION OF THE REPORT OF THE TWENTY-FIFTH SESSION OF THE TIRExB**

Documentation: TIRExB/REP/2005/25draft.

7. The TIRExB adopted the report of its twenty-fifth session (TIRExB/REP/2005/25draft), subject to the following modifications:

### Paragraph 5

Modify to read as follows:

"5. The Board recalled that, according to its Rules of Procedure, a Chairman shall be elected at the first meeting each year, who shall hold office until his/her successor is elected. He/she shall be eligible for re-election. In accordance with the above provision, Mr. M. Amelio (Italy) was re-elected Chairman. At the same time, the TIRExB felt that, when a new composition of the Board is elected at the spring session of the TIR Administrative Committee, the Chairman elected last year should continue until the first meeting of the newly elected TIRExB."

### Paragraph 12

Modify to read as follows:

"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."

Paragraph 13

In the last sentence, replace "the office of departure" with "the first office of departure".

Paragraph 22

Modify to read as follows:

"22. The TIRExB welcomed Informal document No.4 (2005) by the IRU, containing information on rules and procedures prescribed for the issue of TIR Carnets by national associations. Following an exchange of views, the TIRExB decided to revert to this issue at the next session. In this regard, the IRU offered to transmit for information and consideration by the Board the following additional documentation:

- relevant extracts of the declaration of engagement by the TIR Carnet holder to the association, related to the issue of TIR Carnets;
- declaration of loss of TIR Carnets;
- general rules prescribed for the issue of TIR Carnets related to the use of subcontractors in the course of a TIR transport."

8. The revised text of the report of the twenty-fifth session of the Board is contained in document TIRExB/REP/2005/25.

**PROGRAMME OF WORK FOR 2005 AND 2006**

Documentation: TIRExB/AGE/2005/26, annex.

9. The TIRExB adopted the programme of its work for 2005 and 2006, as contained in TRANS/WP.30/AC.2/2005/20.

**AMENDMENT PROPOSALS MADE IN THE FRAMEWORK OF THE TIR REVISION PROCESS**

Documentation: Informal document No. 8 (2005).

10. The TIRExB discussed at length Informal document No. 8 (2005), prepared by the secretariat, containing an overview of the amendment proposals of a technical nature made in the framework of the TIR revision process, which the TIRExB had been requested to consider.

### **Definition of the term “TIR procedure”**

11. The TIRExB recalled that, some years ago, one Contracting Party had raised the issue of facing legal problems in national proceedings due to the absence of a definition of the term “TIR procedure” in the TIR Convention. The TIRExB acknowledged that the idea of having a definition of the term “TIR procedure” might look tempting, but wondered whether, in fact, such definition would have any added value. The TIRExB considered that, first of all, providing a definition for the term “TIR procedure” would limit the application of the term, because, at this moment, the term “TIR procedure” encompasses all aspects of the TIR Convention without further specification. Secondly, the Board established that no other major transit procedure, as laid down in, for example, the Common Transit Convention and the Community Customs Code, contained a definition for its key-term (in casu: “Transit Procedure”). On this basis, the TIRExB considered to report back to WP.30 that the current indirect definition of the term “TIR procedure” as contained in Article 1 (a), stipulating that “the TIR procedure shall mean the procedure laid down in this Convention” seems to be sufficient and that the term does not need any further specification.

### **Title to Chapter II**

12. With regard to the possible amendment of the title of Chapter II, the TIRExB decided to revert to this issue once the discussion by the Ad hoc Expert Group on the TIR Revision Process and by the WP.30 on the content of Chapter II had been finalized.

### **Article 28**

13. The TIRExB considered the proposals by the European Community to amend the text of Article 28 as follows:

- incorporate the existing comment concerning the placement of the goods under another Customs procedure or system of control into paragraph 1 of Article 28 and into a new Explanatory Note therein;
- stipulate in paragraph 2 of Article 28 that not only the TIR Carnet holder, but also the guaranteeing association should not be responsible for any irregularity arising under the following Customs procedure.

14. The TIRExB was of the view that the proposed amendments would need further clarification. In particular, the Board pointed out that a clear distinction should be made between the concepts "termination of a TIR operation" and "discharge of a TIR operation" and that the irregularities mentioned in Article 28.2, which are not to be attributed to the TIR Carnet holder, should not be confused with the liability of the national association according

to Article 8 of the Convention. Therefore, the TIRExB felt that it would not be appropriate to include into paragraph 2 of Article 28 a reference to the guaranteeing association.

15. The Board took into account a statement by the IRU that the current wording of Article 28 seemed to be ambiguous and, thus, should be improved. To this end, the TIRExB requested the secretariat, in cooperation with the European Community, to elaborate on the underlying draft amendments and to report back to the Board at its forthcoming session. The Board also invited its members to transmit to the secretariat their proposals on the issue.

#### **Article 40**

16. With regard to the proposal to amend Article 40 to include a reference to the guaranteeing association, the TIRExB had similar considerations as for Article 28 and felt that this was not appropriate. However, the TIRExB was not in a position to clarify the practical application of Article 40 and its relation to other provisions of the TIR Convention, in particular Articles 19 and 39.2. Therefore, it requested the secretariat to draft a comment on the application of Article 40 and submit it to the Board for consideration at its next session.

#### **Article 41**

17. When discussing the proposal to amend Article 41, the TIRExB assessed that there seemed to be a discrepancy between the French text ("marchandises manquantes") and the English text ("goods which are short"), which may need to be addressed. It may be that the English word 'short' is too limited in scope and would not allow goods which by nature lose weight in the course of time (e.g. coffee) to profit from the provision of Article 40. The text may benefit from replacing 'short' by 'missing'. The Russian speaking members of the Board remarked that such change in the English text would not change (or improve) the Russian text. The TIRExB requested the secretariat to study the apparent linguistic inconsistency in the English and French texts and to draft a new proposal, also taking account of the possible repercussion of any change to the Russian version of the text.

#### **Article 42bis**

18. According to the European Community, the aim of the proposal to amend Article 42bis is to widen its scope by including a reference to the 'proper application of the TIR Convention'. The TIRExB felt that, so far, Article 42bis had worked well and that there was no indication that an amendment of the text was desirable. However, the Board was of the view that it would be important to stress that the proper application of the TIR Convention is a fundamental obligation of Contracting Parties. 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.

19. With regard to the proposal by the European Community to amend the text of Article 42**bis** with an Explanatory Note (stipulating that, in case of possible non-compliance with the provisions of the TIR Convention by a Contracting Party, the Administrative Committee could investigate the situation and take the appropriate steps), the Board decided to revert this issue back to WP.30, because it felt that such proposal was of a strategic nature and, therefore, went beyond the Board's mandate. The TIRExB also noted that, pursuant to Annex 8, Article 1**bis**, the Administrative Committee should supervise the application of the TIR Convention not only by the Contracting Parties, but also by the guaranteeing associations and international organization.

20. Finally, the Board decided to finalize its deliberations on Articles 28, 40 and 41 at the next session with a view to reporting back to WP.30 the full package of its findings with regard to the amendment proposals of a technical nature. In the interim, the TIRExB mandated its Chairperson to give a short oral report at the forthcoming WP.30 session, should it become necessary.

## **PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM**

### **Survey on TIR fraud patterns**

Documentation: Informal document No. 9 (2005).

21. The TIRExB discussed Informal document No. 9 (2005) prepared by the secretariat, containing a draft proposal for a so-called "Fraud Report Form (FRF)", which could be distributed among TIR Customs Focal points and, possibly, other interested bodies, in order to disseminate fraud related information. The Board generally endorsed the scope of the FRF, but felt that a number of improvements were required. The TIRExB requested the secretariat to include these improvements when redrafting the FRF and to come up with a client-friendly format and layout. In order to speed up the process, the Board agreed that further drafts could be discussed by means of a written consultation procedure.

22. In this context, the IRU recalled the results of the survey on TIR fraud patterns undertaken by the secretariat in 2004 (Informal document No.1 (2005)). The IRU was of the view that these results should further be considered, because they contained extensive information that could be used to prepare examples of best practices, etc. The TIRExB shared this view, but invited its members, as well as, the IRU to indicate concrete issues which they would like to elaborate on.

### **Harmonized application of Article 38 of the TIR Convention**

Documentation: Informal document No. 10 (2005).

23. The TIRExB considered at length Informal document No.10 drafted by the secretariat, containing an example of best practices regarding the application of Article 38 of the Convention. The Board delivered a number of remarks concerning the form and content of the example and requested the secretariat to modify the draft accordingly. In particular, the TIRExB felt that a standard notification form should be developed to inform the person being excluded from the TIR procedure.

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 into 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 seemed 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.

### **Information on rules and procedures prescribed for the issue of TIR Carnets by associations**

Documentation: Informal document No. 12 (2005); Informal document No. 13 (2005); Informal document No. 14 (2005).

25. The TIRExB welcomed Informal documents No. 12 (2005), No. 13 (2005) and No. 14 (2005) transmitted by the IRU, containing, respectively, extracts from the declaration of engagement by TIR Carnet holder, declaration of loss of TIR Carnets and general rules for the issue of TIR Carnets related to the use of sub-contractors in the course of a TIR transport. 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. The TIRExB also decided to consider Informal document No. 13 (2005) under agenda item 7 "Lost, stolen, "invalid" and "invalidated" TIR Carnets" and to discuss Informal document

No. 14 (2005) at one of its future sessions together with the issue of undertaking a TIR transport when the tractor unit does not belong to the TIR Carnet holder.

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

Documentation: Informal document No. 11 (2005).

26. The TIRExB held a first exchange of views regarding Informal document No. 11 (2005) 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 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 it 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.

## **ACTIVITIES OF THE TIR SECRETARIAT**

### **International TIR databank**

Documentation: Informal document No.15 (2005).

33. The TIRExB was informed of the activities of the secretariat aiming at providing on-line access to the ITDB for TIR Customs focal points, pursuant to the decisions of the TIR Administrative Committee. The TIRExB also took note of the latest update with regard to the transmission of the legally required documentation to the ITDB (Informal document No. 15 (2005)). Given the launch of the ITDBOnline application, the TIRExB mandated the

secretariat to undertake all necessary steps to ensure timely and full transmission of data from the Contracting Parties which did not yet comply with the respective provisions of the TIR Convention. The Board also felt that the TIR Administrative Committee should be informed of these problems.

### **Computerization of the TIR procedure**

34. The TIRExB was briefed on the current status of the eTIR project and the provisional agenda of the forthcoming session of the Informal Ad hoc Expert Group on Conceptual and Technical aspects of Computerization of the TIR Procedure (26 and 27 May 2005). In particular, the Board took note of the so-called "eTIR questionnaire" which had been sent to the Contracting Parties with a view to collecting information on Customs needs and constraints in the framework of the computerization of the TIR procedure. Given the importance of the project, the TIRExB urged all Customs authorities to actively participate in the eTIR project.

### **TIR seminars**

35. The Board took note of a national TIR seminar conducted by the secretariat at Bishkek (Kyrgyzstan) in March 2005, which highlighted some regional problems in the implementation of the TIR Convention. In this context, the TIRExB was also informed that the UNECE, in cooperation with the United Nations Economic and Social Commission for Asia and Pacific (UNESCAP), would undertake in summer 2005 a special study on the application of the TIR Convention in Central Asia.

36. The TIRExB took note of a regional TIR seminar which was planned to be held at Beijing (China) in September 2005. It was expected that participants from China as well as from other countries of Central Asia would take part in the event. The Board also felt that it would be desirable to organize a regional training seminar for the Balkan countries. In this regard, the TIRExB welcomed the kind invitation of Mr. G. Grigorov (Bulgaria) to host such a seminar in his country in October 2005.

## **OTHER MATTERS**

### **New fraud pattern revealed at the Russian-Finnish border**

37. The TIRExB was informed of the occurrence of a new fraud pattern in the traffic between Finland and the Russian Federation and decided to monitor the issue further.

### **Implementation of the TIR procedure in Ukraine**

Documentation: Informal document No.14 (2004).

38. 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 and TIRExB/REP/2004/24, paras.17-19). The Board was informed that, in the absence of new explanations from the Customs Administration of Ukraine, the secretariat sent a letter to the Ukrainian Customs authorities inviting them to review the underlying control measures which do not seem to be in line with the provisions of the TIR Convention.

39. The TIRExB requested the secretariat to inform the Board when a reply from Ukraine would be received and decided to revert to this matter at the next session.

40. 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.

### **Application of the TIR Convention in the region of Transnistria (part of the Republic of Moldova)**

41. The TIRExB was informed that, in 2001-2003, the Customs Department of Moldova had implemented a number of measures with a view to banning the application of the TIR procedure in the region of Transnistria which did not subordinate to the Government and other authorities of Moldova. For instance, the Customs Department had excluded the border crossings located at the border between Ukraine and Transnistria from the list of Customs offices approved for TIR operations. In addition, the Customs Department of Moldova had introduced new Customs seals and stamps which were not delivered to the former Customs offices situated in Transnistria. Nonetheless, those Customs offices continued clearing TIR operations with the old Customs seals and stamps, in particular, at the Ukrainian-Transnistrian border. At the request of the secretariat, the Ukrainian Customs Administration also clarified that no restrictions had been imposed on TIR transports through the border between Ukraine and Transnistria.

42. The IRU felt that this situation could lead to legal insecurity and, thus, should be resolved as soon as possible. The TIRExB took note of this information and decided to come back to this issue at the next session.

### **Approval of road vehicles with sliding sheets**

43. The TIRExB noted with concern that, apparently, one Contracting Party had issued a certificate of approval for a road vehicle with sliding sheets which did not conform to the provisions of Annex 2 to the TIR Convention. As a result, it was possible to have access to the sealed load compartment without leaving obvious traces of tampering. Members of the Board also recalled a few other examples when Customs insecure road vehicles had, nonetheless, been issued certificates of approval. The TIRExB felt that, in general, those facts could be attributed to lack of competence and/or attention of the approving authorities, rather than to inadequate provisions of the TIR Convention. The Board also stressed that, pursuant to Article 19 of the Convention and the Explanatory Note therein, the Customs office of departure should check the condition of the road vehicle, in particular, the sheets and fastenings in case of sheeted vehicles.

44. The TIRExB was of the view that the attention of the competent authorities of all Contracting Parties should be drawn to reinforcement of the application of Article 19 as well as of Annex 2 to the Convention. The Board also considered that an example of best practice could be prepared in this respect, for example, in the form of a check-list for the Customs office of departure. In this context, the TIRExB also recalled the training manual on the issue of non-compliance of road vehicles with the TIR technical regulations, prepared by the EU Customs and Fiscal Assistance Office to the FYR of Macedonia (TIRExB/REP/2005/24, para. 27). The Board looked forward to the permission by the EU to transmit the manual to the Contracting Parties.

### **Transport of passenger cars on their own wheels under the TIR procedure**

45. The TIRExB was informed of different interpretations, at national level, of the provisions of Article 3 (a) (iii) relating to vehicles "exported and therefore themselves considered as goods travelling by their own means". Some Contracting Parties seemed to accept that passenger cars travelling on their own wheels fall under the above description, while in other Contracting Parties national legislation explicitly forbids the use of TIR Carnets for transport of passenger cars, unless these cars are loaded onto another vehicle. These differences in interpretation had led to situations where TIR Carnets had been opened for transport of passenger cars in one Contracting Party, but were subsequently refused by a Customs office en route in another Contracting Party. 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.

## **RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS**

46. The TIRExB decided that the distribution of the following documents, issued in connection with its present session, should be restricted: Informal documents Nos. 9, 11 and 15.

## **DATE AND PLACE OF NEXT SESSIONS**

47. 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).

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