



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/2004/11
1 December 2003

ENGLISH
Original: RUSSIAN

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions
affecting Transport

(One-hundred-and-sixth session, 3-6 February 2004,
agenda item 7 (c) (i))

**CUSTOMS CONVENTION ON THE INTERNATIONAL
TRANSPORT OF GOODS UNDER COVER OF TIR
CARNETS (TIR CONVENTION 1975)**

Application of the Convention

Functions and roles of the TIRExB, the TIR secretariat and the IRU

Submitted by the Government of the Russian Federation

Note: The secretariat reproduces below a document transmitted by the Government of the Russian Federation.

1. In accordance with paragraph 34 of the report of the UN/ECE Working Party on Customs Questions affecting Transport on its one-hundred-and-fifth session (TRANS/WP.30/210), we are transmitting comments on our proposals for the introduction of supplementary amendments to the TIR Convention.

Questions raised by the EC

2. Proposals for supplementary amendments were introduced by the Russian delegation (TRANS/WP.30/2003/11) in connection with the fact that IRU in a number of documents has expressed its disagreement with some provisions of amendments to the TIR Convention which have already been adopted by all the Contracting Parties and entered into force. In particular, disagreement was expressed by IRU with functions entrusted to the TIR Executive Board, etc.

3. In our opinion, an international organization acting in pursuance of the mandate assigned to it by the TIR Administrative Committee should follow unconditionally all provisions of the TIR Convention without exception, taking into account the amendments adopted, since otherwise the powers of the Contracting Parties to the Convention, as represented in the Administrative Committee, are placed in doubt.

4. Despite the signature of an agreement between UN/ECE and IRU in which the said international organization has recognized the functions of the TIR Executive Board, it is at present continuing in practice to insist on the introduction of a procedure for the settlement of claims that has nothing in common with the TIR Convention.

5. Thus, notwithstanding the provisions contained in paragraph 1 (f) (v) of part I of Annex 9 to the TIR Convention, whereby an association issuing TIR Carnets is bound to cover its liabilities in connection with TIR operations, in insurance companies, IRU is endeavouring to introduce another system of covering liabilities, the essence of which is that compensation should be made not as per each separate TIR Carnet in accordance with the insurance contracts, but through payment to the competent authorities of a sum arbitrarily specified by IRU.

6. In this interpretation of the matter by IRU it is unclear for what purposes the insurance contract is concluded, since it serves here only to obtain commercial benefit from the amounts of the insurance premiums charged to transport operators on the issue of each TIR Carnet to them.

7. According to article 11, paragraph 2, of the TIR Convention, the claim for payment of sums due is presented by the competent authorities directly to the guaranteeing association, which in practice together with IRU and the insurers assess the validity of the claim. In those cases when the competent authority does not agree with their assessment, the matter is considered in the judicial bodies of the country in which the respective association and competent authority are located.

8. The question as to which of the parties (the guaranteeing association or the competent authority) can apply to a court of its country regarding the given matter in the event of non-settlement of the claim has already been resolved in the existing TIR Convention, since explanatory note 0.11-3 makes it clear that this initiative belongs to the competent authorities if the guaranteeing association fails to pay within the period specified by the Convention, i.e. three months as from its receipt of the claim for payment.

Questions raised by IRU

9. The general conditions of insurance in respect of TIR Carnets drawn up and approved by IRU provide for all claims to be considered by IRU, which determines the validity of each claim. Thus, without IRU's consent, the guaranteeing associations and insurance companies cannot independently take a decision on payment of the claim.

10. Despite the fact that all claims received by guaranteeing associations are transmitted without delay to IRU, the latter does not consider them for a long time and does not express its point of view regarding their validity, and this causes serious difficulties in relations between the guaranteeing association and the competent authorities.

11. The new paragraph 2 bis of article 11 of the TIR Convention proposed by the Russian delegation is intended to regulate this matter.

12. If no agreement is reached between the competent authority and the guaranteeing association on the settlement of a claim, the competent authority is entitled to apply to a court in accordance with its country's national legislation. Thus, the new paragraph 2 bis of article 11 of the TIR Convention indicates that such disputes are to be decided in the courts pursuant to the national legislation of the Contracting Parties, since the issue here concerns the execution of a guarantee contract concluded by the guaranteeing association with its competent authority on the basis of national legislation, as underlined in explanatory note 0.11-3.

13. Regarding the question raised by IRU as to why the term "insurer" is used and whether commercial relations between an international organization and insurance companies have to be dealt with in the TIR Convention, this has already been answered in article 10 (e) of Annex 8 and paragraph 1 (f) (v) of part I of Annex 9 to the Convention. As to IRU's question about the expediency of overruling agreements between guaranteeing associations and the international organization, we would point out that the Russian delegation has not and does not intend to put forward such proposals; however, the content of those agreements cannot be contrary to the TIR Convention.

14. In our opinion, the adoption of the amendments being considered will facilitate precise observance of the requirements of the TIR Convention and avoid any misunderstanding in future between the positions of IRU and Contracting Parties to the TIR Convention.
