



**TIR EXECUTIVE BOARD (TIRExB)**

**COMMISSION DE CONTROLE TIR (TIRExB)**

**ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)**

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## **Administrative Committee for the TIR Convention, 1975**

### **TIR Executive Board (TIRExB)**

**Sixty-first session**

Geneva, 2–3 December 2014

Agenda item IV

## **Application of specific provisions of the TIR Convention**

### **Use of additional guarantees**

#### **Note by the secretariat**

### **I. Background and mandate**

1. At its fifty-ninth session, TIRExB, inter alia, recognized that, further to the renewed discussions in the Working Party on Customs Questions affecting Transport (WP.30) and the TIR Administrative Committee (AC.2) on the recommended amount of the guarantee, a re-assessment of the recommended guarantee amount and related aspects seemed warranted, with the aim of, possibly, introducing a more flexible application of the guarantee in the context of the TIR Convention. To that end, TIRExB requested the secretariat to prepare a document outlining some preliminary thoughts, for consideration by the Board at its next session (see TIRExB/REP/2014/59draft, para. 11).

2. At its sixtieth session, TIRExB requested the secretariat, inter alia, to amend Informal document No. 26 (2014) with a summary of recent discussions in the Working Party and the Administrative Committee on Explanatory Note 0.8.3., in particular with regard to the argument that raising the level of the guarantee would increase the costs of TIR Carnets. These considerations are contained in new Part III of the document.

3. Further to this request, the secretariat prepared this document for consideration by the Board.

### **II. Past considerations by the Board**

4. In 2005 (at its twenty-seventh session), 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. Furthermore, they pointed out that the European Union (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. On the other hand, the Board noted that the TIR guarantee per TIR Carnet should not be regarded as a full guarantee. In the event of infringement, customs

claim the total amount of customs duties and taxes from the TIR Carnet holder or any other identified directly liable person. 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.

5. 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 (see TIRExB/REP/2005/27, paras. 28–32).

6. At its twenty–eighth session, TIRExB, inter alia discussed Informal document No. 5 (2006)\* prepared by IRU and containing, in a nutshell, the following findings:

- the TIR guarantee has not been designed to cover the full amount of export or import duties and taxes, which should be claimed from the holder of the TIR Carnet or any other person identified as being directly liable;
- in the vast majority of TIR operations, an amount of USD 15,000 – 20,000 would be sufficient to guarantee the duties and taxes at stake. The number of operators that could be affected by a customs debt exceeding USD 50,000 is negligible and, due to the trend of a global decrease of taxes and duties, should even become quasi non-existent;
- international financial institutions are not prepared to raise the TIR guarantee coverage;
- as far as the possible introduction of a lower guarantee level for certain countries (regions) is concerned, such a regional approach would be contrary to global nature of the TIR Convention, would ruin the equilibrium and the mutual recognition of the risks and would induce inappropriate management costs, as well as potential discrimination.

7. Some TIRExB members were of the view that the present TIR guarantee level is enough and that the Convention provides for adequate additional measures to protect customs revenue even in situations where the amount of duties and taxes due exceeds the guarantee limit. However, this opinion was not shared by some other members who argued that such additional national control measures, in particular customs escorts, had always been subjected to criticism by the transport industry and other Contracting Parties, and that raising the guarantee level would spare the need of these measures (see TIRExB/REP/2006/28/paras. 23–25).

8. At its twenty–ninth session, TIRExB continued its discussions of the issue, 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). 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.

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\* Documents attached as Annex to this document.

9. 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 (see TIRExB/REP/2006/29/paras.–18).

10. The issue of the guarantee level was, eventually, included in the TIR claims survey over the years 2004–2006 and resulted in the following observations by the Board:

- since 2002, an average submitted claim has raised by 60% from US\$ 21'900 to 34'730;
- an average claim in the EU corresponds to 21% of the EU guarantee level, while an average non-EU claim is equal to 77% of the non-EU guarantee level;
- more than a half of non-EU countries apply additional control measures in case the guarantee level is exceeded. Some of these measures do not seem to comply with the provisions of the TIR Convention (see TIRExB/REP/2007/35, paras. 15–18).

11. The latest available information on the guarantee level stems from Informal document No. 2 (2012)/Rev.1 on the results of the 2007–2010 claims survey, which contains, inter alia, the following table, providing examples of the evolution of the value of 50'000USD from 1975 to 2009 in various countries (the countries in the table are active TIR Contracting Parties which have complete time series in the IMF statistics database over the whole period – data for the United States are provided as reference). The values are calculated as follows:

1. 50,000USD<sub>1975</sub> are converted to national currencies (NC) using the 1975 NC/USD exchange rate\*.
2. National inflation rates<sup>†</sup> are applied to calculate the real value in NC.
3. The real value in NC is then divided by the exchange rates of the given year to calculate the equivalent dollar value.

	1975	1980	1985	1990	1995	2000	2005	2009
BELGIUM	50,000	85,326	75,044	135,400	160,930	118,555	166,895	220,602
DENMARK	50,000	84,241	82,709	155,775	178,788	138,596	193,746	256,336
FINLAND	50,000	83,484	89,211	169,352	157,210	115,769	155,852	206,202
FRANCE	50,000	81,816	77,354	132,713	155,066	114,460	159,474	206,810
GREECE	50,000	81,446	65,592	136,824	174,127	143,003	213,901	292,375
HUNGARY	50,000	92,065	86,664	133,450	181,219	179,043	317,502	446,845
IRELAND	50,000	90,583	105,846	177,730	182,025	151,875	228,912	302,874
ISRAEL	50,000	51,505	58,326	124,189	148,241	156,454	149,107	201,672
ITALY	50,000	78,371	82,645	161,719	147,354	126,542	180,829	239,086
JORDAN	50,000	92,732	101,088	86,885	100,336	114,959	129,526	165,324
MALTA	50,000	81,891	79,485	120,326	121,202	109,905	149,656	201,738
NETHERLANDS	50,000	84,703	79,821	135,771	163,585	123,181	176,653	229,920
NORWAY	50,000	80,636	84,879	147,467	155,038	124,056	176,833	226,338
PORTUGAL	50,000	68,865	65,867	132,893	167,544	132,286	196,052	257,287
SPAIN	50,000	88,440	80,944	176,151	180,846	139,730	207,577	279,581
SWITZERLAND	50,000	83,383	87,324	158,438	208,383	152,029	197,470	261,343
TURKEY	50,000	60,730	47,931	80,175	71,641	100,245	171,423	218,119
UNITED KINGDOM	50,000	115,278	98,776	175,819	167,050	183,684	239,007	250,154
<i>UNITED STATES</i>	<i>50,000</i>	<i>76,540</i>	<i>99,948</i>	<i>121,367</i>	<i>141,547</i>	<i>159,954</i>	<i>181,404</i>	<i>199,281</i>

12. In addition, the survey revealed that, for the period of 2007–2010, an average submitted claim amounted to €17'110. (EU), €18'874 (Non-EU) and that the average

\* National Currency per U.S. Dollar, end of period (source : IMF)

† Consumer Prices, All items (source : IMF)

claim amount had dropped by more than 30%, compared to the figures from the 2007 survey;

### **III. Considerations by the Working Party and the Administrative Committee**

13. The Working Party, at its 116th session (June 2007), discussed Informal document No. 12 (2007) submitted by the government of Belarus concerning increasing the level of maximum guarantee to €60,000. The delegations of the Russian Federation and Ukraine supported this proposal. The IRU reminded the Working Party that this matter was currently under consideration by the TIRExB. IRU also recalled the historical background to the issue and highlighted the consequences should the proposal be adopted. The Working Party requested the secretariat to issue this document as an official document for consideration at the next meeting of the Working Party in September (ECE/TRANS/WP.30/232, para. 40).

14. At its 117th session (October 2007), the Working Party considered document ECE/TRANS/WP.30/2007/19\* proposing to increase the level of maximum guarantee to sixty thousand euros from fifty thousand United States dollars. While many countries expressed their support for the increase, the IRU recalled the extreme sensitivity of the issue for the guarantee chain. The IRU was invited to provide its estimates of impacts due to the increase in the level of guarantee. The Working Party welcomed a proposal by Turkey to submit a study analyzing this issue (see ECE/TRANS/WP.30/234, para. 27).

15. At its 118th session (February 2008), the Working Party took note of Informal document No. 6 (2008)\*, submitted by the IRU and pointing at possible impacts on the financial stability of the international guarantee chain related to the amendment proposals in document ECE/TRANS/WP.30/2007/19. Furthermore, the Working Party took note of Informal document No. 4 (2008)\*, submitted by the Russian Federation, elaborating its support for the proposal to increase the level of the maximum guarantee to sixty thousand euros from fifty thousand United States dollars in the interest of the transport industry and Informal document No. 7 (2008)\* submitted by the IRU and pointing at possible impacts due to the increase in the level of guarantee to sixty thousand euros from fifty thousand United States dollars.

16. Various Contracting Parties reiterated their view that an increase in the level of guarantee would be beneficial to the sustainability of the TIR system. One Contracting Party, the IRU and some of its member associations voiced strong concerns, fearing that any increase would have a negative impact on the overall costs for the transport industry and national economies. During the discussion, some delegations drew particular attention to the systematic use of Customs escorts in some countries in case the amount of Customs duties and taxes at risk exceeded the guaranteed amount of fifty thousand United States dollars. Within the context of this discussion, the Working Party took note of document ECE/TRANS/WP.30/2008/6\*, submitted by the IRU and containing its assessment of the application of Article 23 of the Convention. Furthermore, the issue was raised that the difference between the guarantee level inside the European Union and in other countries seemed to be, at least to some extent, a consequence of the fluctuation in currency rates between the United States dollar and the Euro. In the opinion of the delegate of Belarus the current provisions of the TIR Convention already provide for the use of various guarantee levels. The delegation of Belarus gave the Working Party information, demonstrating the need to establish the maximum amount of the guarantee limit for the TIR Carnet at sixty thousand euros, which, in the opinion of the delegation of Belarus is, first and foremost, in the interest of the carriers.

17. The Working Party felt that all these aspects needed to be taken into account when further discussing the issue. Bearing in mind the urgency and importance of this matter, the Russian Federation, supported by Belarus and Ukraine, suggested that the amendment to the Explanatory Note to paragraph 3 to Article 8 on increasing the maximum guarantee level for the TIR Carnet to sixty thousand euros be separated from the consolidated amendment package and be submitted to the Administrative

Committee for consideration and adoption as soon as possible. In response, the Working Party decided to deal with this aspect of the amendment proposals separately and on a priority basis. Therefore, it requested the secretariat to prepare for discussion at its forthcoming meeting a proposal to amend Explanatory Note 0.8.3 to the extent that it would, on the one hand, refer to the guarantee level of sixty thousand euros and, on the other hand, accommodate a regular review if fluctuations in exchange rates would so require, possibly by applying a value based on a basket of various main currencies, such as the Special Drawing Right (SDR), introduced by the International Monetary Fund in 1969. In addition, the Working Party requested the secretariat to prepare proposals to introduce an amendment to Article 23 or an Explanatory Note or comment thereto, which would make it clear that Customs authorities should only impose escorts based on risk assessment procedures. In order to facilitate further discussions, the Working Party reminded the IRU and the government of Turkey that it still awaited their impact studies of the increase in the level of the maximum guarantee to sixty thousand euros, as requested at the one-hundred-and-seventeenth session. Finally, the Working Party took note of opinions on the introduction of various levels of guarantees in the TIR system. The IRU was requested and agreed to provide its assessment of the proposal to accommodate multiple guarantee levels within the TIR system, including a possible time frame for its introduction. The IRU further informed the Working Party that it would submit Informal document No. 6 (2008) as formal document for consideration by the Working Party at its next session (ECE/TRANS/236, paras. 23–25).

18. At its 119th session (June 2008), the Working Party recalled its earlier discussions on the proposal to increase the level of maximum guarantee per TIR Carnet to sixty thousand euros from fifty thousand United States dollars (ECE/TRANS/WP.30/232, para. 40; ECE/TRANS/WP.30/234, para. 27; ECE/TRANS/WP.30/236, paras. 23-25). Bearing in mind the urgency and importance of this matter, the Working Party, at its 118th session, had decided to deal with this aspect of the amendment proposals separately and on a priority basis. The Working Party considered document ECE/TRANS/WP.30/2008/9\* and Corr.1 containing proposals to amend Explanatory Note 0.8.3 as well as Informal document No. 9 (2008)\* containing the outcome of a feasibility study undertaken by the IRU and its insurers at the request of the Working Party.

19. A representative of the insurers stressed that insurance coverage could under no circumstances replace effective risk management measures, such as the use of computerized systems in order to minimize the risks covered. According to the insurers, the proposal to increase the maximum amount of guarantee to sixty thousand euros, if implemented without the required risk management measures, would lead to a major increase in risk. Nevertheless, such an increase would be feasible in a given country if the following pre-conditions had been met to the full satisfaction of the insurers: the real-time data transmission to the SafeTIR system and the electronic pre-declaration (Informal document No. 9 (2008))\*.

20. The Working Party took note of various arguments put forward by delegations to support the proposed increase in the maximum guarantee level. Concerning the assessment by the insurers in Informal document No. 9 (2008), the Working Party noted that the suggested link between the TIR guarantee level and the SafeTIR data transmission and the electronic pre-declaration does not seem to be justified, as a number of countries with poor SafeTIR performance nevertheless enjoyed the guarantee level of sixty thousand euros, while some countries, advanced in SafeTIR, did not have this possibility. It was also pointed out that the issue of electronic pre-declaration should be addressed in the framework of the eTIR project.

21. The delegation of Turkey was of the view that taking any decision with regard to an increase of the maximum level of guarantee would be premature before the Contracting Parties better understood the risk management measures required by the insurers in Informal document No. 9 (2008), in particular the proper implementation of the SafeTIR system. Furthermore, Turkey pointed out that the proposed increase would run counter to WTO efforts to reduce Customs duties and taxes worldwide and would also impose a burden on the transport industry through a considerable increase in the

price of TIR Carnets. For these reasons, the Turkish delegation did not accept the proposal.

22. On the basis of the above considerations, the Working Party decided on the following amendment proposal to Annex 6, Explanatory Note 0.8.3: for \$US 50,000 read 60,000 euros. The secretariat was mandated to transmit this proposal to the October 2008 session of the TIR Administrative Committee for consideration and possible adoption. The Working Party also noted that the endorsed proposal would not prevent Contracting Parties from establishing a lower guarantee level, if they so wish. Concerning the expression of the maximum guarantee amount in terms of SDR with a view to accommodating fluctuations in exchange rates (ECE/TRANS/WP.30/2008/9 and Corr.1), the Working Party decided to revert to this issue at a later stage (see ECE/TRANS/WP.30/238, paras 23–28).

23. At its forty–sixth session (October 2008), the Committee was informed that, at its June 2008 session, the WP.30 had decided on the following amendment proposal to Annex 6, Explanatory Note 0.8.3: "for \$US 50,000 read 60,000 euros". The Committee approved in principle this amendment proposal. As the European Community was not in a position to formally accept the proposal, the Committee decided to revert to this issue at its next session, thus allowing the Community to conclude its internal approval procedures.

24. Some delegations stressed the urgency and importance of this amendment for their countries and expressed concerns about the delay in its formal approval. The delegation of Turkey was not in a position to support the proposal for the reasons mentioned in the course of discussions at the June 2008 session of WP.30 (ECE/TRANS/WP.30/238, para. 26).

25. The IRU recalled the feasibility study (WP.30 Informal document No. 9 (2008)) undertaken by the insurers and reiterated that the proposed increase in the guarantee coverage should be taken on a country-by-country basis and would only be feasible if the identified pre-conditions had been met to the full satisfaction of the insurers. Taking account of the fact that the underlying amendment proposal had been in principle approved by the Committee, the TIR guaranteeing chain would be prepared to raise the guarantee level for a country as soon as the pre-conditions established by the insurers are met. In this regard, the Committee supported the views expressed by WP.30 at its June 2008 session (ECE/TRANS/WP.30/238, para. 25) (ECE/TRANS/WP.30/AC.2/95, paras. 21–23).

26. At its forty–seventh session (February 2009), the Committee approved the following amendment proposal to Annex 6, Explanatory Note 0.8.3: replace \$US 50,000 by EUR 60,000. In accordance with paragraph 1 of Article 60, the Committee decided that this proposal would enter into force on 1 January 2010, unless at least five objections had been received before 1 October 2009. In this regard, the delegation of Turkey reiterated its reservation made at the previous session (ECE/TRANS/WP.30/AC.2/95, para. 22) (ECE/TRANS/WP.30/AC.2/97, para. 22).

27. At its forty–ninth session (February 2010), the Committee reverted to the rejected amendment proposal to increase to EUR 60,000 the recommended maximum level of guarantee per TIR Carnet (refer to para. 8 above), in order to analyse why the Committee, when considering and taking a decision on this proposal, had not been in a position to take into account the concerns of those Contracting Parties which later had raised their objections. The Committee noted that, apart from the delegation of Turkey which had openly and consistently opposed the amendment proposal, other objecting countries had either not participated in the relevant sessions of the Committee or had not indicated that they would oppose to the proposed amendment. To better understand their views, the Committee invited the delegations of those countries, who were present, to clarify the rationale behind the submitted objections. These representatives pointed out that the competent authorities of their countries had considered the proposed amendment not to be in line with the national interests. The representative of the Syrian Arab Republic added that the absence of convincing arguments in favour of the

necessity of this amendment proposal had contributed to the objection raised by his Government. No particular arguments on this issue were provided.

28. The delegations of the Republic of Belarus and Ukraine drew the attention of the Committee to the long negotiation process within WP.30 and AC.2 which had preceded the adoption of the underlying amendment proposal. They pointed out that the proposed increase of the recommended maximum guarantee level per TIR Carnet to EUR 60,000 would by no means deny the right of Contracting Parties to maintain a lower guarantee level, if they so wish. These countries also stressed their continued need of the EUR 60,000 TIR guarantee for further transport facilitation and wondered whether the underlying amendment proposal, possibly in a modified form, could be reconsidered by the Committee at a later stage. The secretariat explained that the TIR Convention contained no provisions that would prevent any amendment proposal, once rejected, from being re-submitted (see ECE/TRANS/WP.30/AC.2/101, paras 21–23).

29. At its fiftieth session (October 2010), the delegations of the Republic of Belarus, Russian Federation and Ukraine were of the view that the rejected amendment proposal to increase the recommended maximum guarantee level per TIR Carnet to EUR 60,000 remains topical, as it aims at a harmonized implementation of the Convention in all Contracting Parties.

30. Upon invitation of the Committee, delegations of some countries which had raised objection to the underlying amendment explained the reasons behind their decision, including the financial implications that the proposed increase might lead to and non-compliance with internal procedures and regulations. Some other countries were not in a position to clarify their objections at this point in time. Finally, the Committee decided to revert to this issue at one of its future sessions (ECE/TRANS/WP.30/AC.2/103, paras. 30–31).

31. At its fifty-second session (October 2011), the Committee noted that no changes had taken place in the positions of various countries on the underlying amendment proposal. One delegation pointed out that, according to the Convention, raising an objection is a sovereign right of any Contracting Party and that countries are under no legal obligation to clarify the rationale behind their objections. Therefore, keeping this agenda item makes unjustified pressure on such countries. This delegation requested that the technical nature of AC.2 be maintained and proposed to delete this agenda item. The delegations of the Russian Federation and Ukraine stressed the importance of this amendment proposal to their countries and requested that this item be kept on the agenda. The delegation of the Russian Federation also pointed out that understanding the arguments of delegations, which are opposing to this amendment, is indispensable for conducting a constructive dialogue within AC.2. The delegation of the Republic of Belarus informed the Committee that the Customs administration of Belarus would this item in the provisional agenda (see ECE/TRANS/WP.30/AC.2/107, paras 27–28).

32. At its fifty-third session (February 2012), the following information was reported to the Committee:

- the delegation of Iran (Islamic Republic of) had conducted informal consultations with some delegations and would inform AC.2 about the outcome in due course;
- the TIRExB survey on the status of Customs claims (see para. 10 above), the results of which would be submitted for consideration at the next session, also contained a section on the TIR guarantee level;
- Turkey was reconsidering, both at the national level and in bilateral discussions, the issue of the maximum level of guarantee per TIR Carnet and would report about the outcome at the next session (ECE/TRANS/WP.30/AC.2/109, para. 26).

33. At its fifty-fourth session, (October 2012), the Committee, taking into account the outcome of the survey on Customs claims (ECE/TRANS/WP.30/AC.2/2012/7 and para. 13 above), continued its considerations with regard to the recommended level of guarantee per TIR Carnet. The Committee noted that this issue is closely linked to managing the financial risks involved in TIR operations, both for Customs authorities

and the TIR guarantee chain. While the guarantee chain considers a global increase in the TIR guarantee level to Euro 60,000 not to be justified by the average Customs claim, the Customs authorities wish to protect the revenues against possible infringements with high-value goods when the amount of Customs duties and taxes at stake goes beyond the guarantee level. Sometimes, this even leads to requirements to submit additional guarantees which are not foreseen in the Convention. To make progress on this issue, the Committee invited delegations to identify which goods, excepting alcohol and tobacco products, pose a major risk for Customs. As a next step, Contracting Parties and IRU may wish to study how the guarantee level can be increased for transports of those specific goods. Turkey reported that the level of guarantee of Euro 60,000 had been in principle agreed with the national association and that it will keep the Committee informed of any further developments ECE/TRANS/WP.30/AC.2/111, paras 34–35).

34. At its fifty-fifth session (February 2013), the Committee noted the following developments and views:

- Turkey reported that it does not object to raising the TIR guarantee level to Euro 60,000;
- A study conducted in December 2012 in Belarus identified a wide nomenclature of goods for which the import Customs duties and taxes exceed the established guarantee level of Euro 60,000. The Customs authorities of Belarus, in close cooperation with IRU and the national guaranteeing association, considered the possibility of launching a new project, so-called TIR+, aimed at introducing a voucher with an additional guarantee for the amount of Euro 100,000;
- TIRExB was studying whether or not additional guarantees comply with the provisions of the TIR Convention, in particular, its Article 4;
- Highlighting the importance of sufficient guarantees in times of austerity and financial scrutiny, EU felt that the TIR guarantee level of Euro 60,000 per TIR Carnet had remained the same for many years and needs to be changed in a flexible manner, to provide higher or lower guarantees depending on the circumstances. EU also pointed out that Customs escorts can be very costly and are not an option for the European Union.

35. The Committee looked forward to receiving information on the above and other related developments and decided to keep this issue on the agenda (ECE/TRANS/WP.30/AC.2/113/32–33)<sup>‡</sup>.

#### **IV. Further considerations by the Board**

36. TIRExB is invited to take note of the above, as well as of the underlying documents by the TIRExB, various national competent authorities and IRU. In particular, TIRExB may wish to note the – sometimes diametrically – different arguments used in favour or against, inter alia, changing the reference currency to express the recommended amount of the guarantee limit, increasing the level of the guarantee limit or introducing various levels of guarantees. The documents also address the issue of amending the comment to Article 23, as agreed upon by Contracting Parties in 2009. TIRExB is invited to establish the extent to which all past arguments, such as the need to accommodating fluctuations in exchange rates, are still relevant and sufficient for establishing a long-standing solution to the long discussed issue of the recommended guarantee limit.

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<sup>‡</sup> Since then, the issue has remained on the agenda of AC.2, but, due to a lack of time, has no more been addressed.



**TIR EXECUTIVE BOARD (TIRExB)**  
**COMMISSION DE CONTROLE TIR (TIRExB)**  
**ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)**



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

**TIR Executive Board (TIRExB)**

(Twenty-eighth session, 26-27 January 2006,  
agenda item 9)

**TIR GUARANTEE LEVEL PER TIR CARNET**

**Transmitted by the International Road Transport Union (IRU)**

**A. Background**

1. At its twenty-seventh session, the TIRExB held a preliminary exchange of views on the issue of whether or not the existing TIR guarantee level per TIR Carnet corresponds to the current needs of Customs authorities, with regard to the protection of the State revenues. The IRU was asked to present a written document related to the possible consequences of an increase in the guarantee level in the context of the specific situation between the European Union (EU) and other countries.

2. Before explaining the possible consequences of an increase in the guarantee level, it must be recalled that the TIR Convention establishes a Customs transit system by virtue of which goods are allowed to travel while payments of the applicable taxes and duties are suspended until the goods are transferred under a subsequent Customs regime. The TIR System is therefore neither an import nor an export regime.

3. This is why the TIR Convention clearly states that the Holder of the TIR Carnet or any other person identified as being directly liable remains the Customs debtor responsible for the full payment of applicable taxes and duties, without any limitation in the amount. Through this very clear principle, Customs Authorities are fully protected for the entire amount of the taxes and duties that will eventually be due. The TIR Chain of Guarantee is not aimed at being a substitute to the debtors; it aims at providing Customs with a credible and internationally recognized financial guarantee, limited to a maximum amount independent of the sum of Customs duties and taxes at stake. The spirit of the TIR Convention thus differs from import or

export regimes, which require a full guarantee for the amount of taxes and duties at stake, and also differs from the voucher mechanism applied within the EU.

## **B. Situation in the EU and other Contracting Parties to the TIR Convention**

4. Concerning the situation in the EU, it must be recalled that in the course of the 80ies the guarantee level was based in some EU Member States on the equivalent of USD 50,000 expressed in national currency, and then in ECU (ie. 60'024 ECU). On this basis, when the EU currency was harmonized throughout the EU zone, the guarantee of EUR 60,000 was kept as a reference for the level of TIR guarantee to be applied in the EU. The apparent discrepancy in the level of guarantee between the EU and other Contracting Parties to the TIR Convention is consequently only the result of "history".

5. In all Contracting Parties that do not belong to the EU, the maximum guaranteed amount for the taxes and duties relating to goods which can transit under the TIR procedure has been limited since 1975 to USD 50,000.

6. In various international fora, in particular the World Trade Organization and the World Customs Organization, there is a general trend to consider that the amount of taxes and duties should be drastically reduced, with the final aim being for them to disappear altogether. In practice, the global level of taxes and duties has indeed decreased over the years (tobacco and alcohol excluded).

## **C. Conclusions**

7. Considering the above, the IRU is of the opinion that the guaranteed amount should be aligned in accordance with effective needs, whilst, however, constantly respecting the spirit of the TIR Convention and its basic requirements. The current situation cannot be solved by a general increase of the TIR guarantee level because:

- several Contracting Parties have expressed their view that 50,000 USD represents a comfortable level;
- the number of operators that could be concerned by a Customs debt exceeding 50,000 USD is negligible and, due to the trend of a global decrease of taxes and duties, should even become quasi-nonexistent;
- an increase in the level of the TIR guarantee, allowing it to cover all situations and thus involving a minimal number of operators, would denature the TIR system and transform the TIR guarantee, implying that it would cover taxes and duties in all circumstances, hence evoking a radical change in the spirit of the TIR Convention. This consideration is made without even mentioning the fact that, taking into account the current status of the financial markets, no financial institution would accept such an increase in the levels and the risks involved.

The TIR Convention is a global instrument intended for the world market. A regional approach to the maximum guarantee level would be contrary to the present movement of globalization. It

would ruin the equilibrium and the mutual recognition of the risks and would induce inappropriate management costs, as well as potential discrimination.

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**TIR EXECUTIVE BOARD (TIRExB)**  
**COMMISSION DE CONTROLE TIR (TIRExB)**  
**ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)**



RESTRICTED  
Informal document No. 9 (2006)  
10 May 2006

ENGLISH ONLY

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

**TIR Executive Board (TIRExB)**

(Twenty-ninth session, 29-30 May 2006,  
agenda item 7)

**TIR GUARANTEE LEVEL**

**Comments by TIRExB members**

Mr. R. Boxström (Finland)

In my view the present guarantee is enough but I understand the demand from some members who has lower level (50 000 \$) instead of the level of 60 000 Euros in the European Union. If the EU-Commission and the Member States could agree on a lower level (50 000 Euros?), it might solve the problems.

Mr. G. Grigorov (Bulgaria)

Concerning the guarantee level (para. 25 of the draft report), I would like to let you know that, having analyzed the transport operations through the territory of our country, I must note that it would be more appropriate to increase the amount of the guarantee level for each TIR Carnet. Of course, it should be borne in mind that this is only the obligation of the guaranteeing association with regard to a TIR operation and that there is a responsible person /holder/ for the specific TIR Carnet, but because the transported goods have undergone a repetitive increase in price, for instance transport of luxury goods (apparel, footwear, leather products), IT components, machinery, vehicles etc., the current guarantee level of US\$ 50 000 is not enough to cover the due amounts in case of possible inconsistency in performing the TIR operations and makes it necessary to use escort quite often, which does not conform to the spirit of Article 23 of the Convention. Therefore, I deem it necessary to conduct a more profound analysis as to whether or not the guarantee level needs to be increased for each TIR Carnet.

Mr. R. Şen (Turkey)

I think it will be more appropriate to make a survey through Contracting Parties for the need of increasing TIR guarantee level. (My idea is that the difference between the guarantee level applied in general (50.000 \$) and that of applied in the EC (60.000 Euro), at least, should be removed.)

Mrs. N. Rybkina (Russian Federation)

A big share of expensive and highly taxable goods is a characteristic feature of modern international road haulage. The global increase in prices (due to inflation), an increase in the vehicles' carrying capacity (by means of new constructions) as well as the use of modern packing and stuffing technologies have recently led to numerous transport operations where the amount of Customs duties and taxes due exceeds the recommended limit of the national association's liability per TIR Carnet (Explanatory Note 0.8.3).

As a consequence, in order to avoid the possible revenue losses, the Customs authorities are more and more often forced to apply additional control measures. In this respect, Customs escort is the only efficient measure which is provided for in the TIR Convention and which makes sure that the goods are delivered to the Customs office of destination. However, Customs escorts lead to delays and extra expenses to be covered by transport operators. Therefore, the application of Customs escort is criticized by both transport operators and by national guaranteeing associations.

Paradoxically, this control measure is most actively condemned by representatives of those countries which enjoy the higher level of the TIR guarantee and on whose territory some 'sensitive' goods are excluded from the TIR procedure.

According to the Russian Customs' experience in 2003-2004, around 50 % of Customs claims lodged with ASMAP relate to TIR infringements for which the amount of duties and taxes at stake exceeds US\$ 50'000. Thus, a part of the revenue damages is knowingly not covered by the TIR guarantee system. On top of that, this part is not paid by the infringers either who are mainly foreign transport operators and who cannot be forced to pay the amounts due.

It seems necessary to bring the recommended maximum amount per TIR Carnet, which may be claimed from the guaranteeing association, in line with the figure of EURO 60'000 applicable in most European countries.

Solving the underlying problem would contribute to a more harmonized and balanced application of the TIR Convention and would be to the benefit of both transport industry and Customs.

In view of the above, a relevant survey of Contracting Parties to the TIR Convention could be proposed. Countries could be invited to provide the following information:

- the TIR guarantee limit established in the country;
- a share of TIR operations for which the amount of Customs duties and taxes due exceed the established guarantee level;
- the application of additional control measures in case of such TIR operations (which measures apply and how: systematically or selectively);
- existing problems in this field and proposals, if any.

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**TIR EXECUTIVE BOARD (TIRExB)**  
**COMMISSION DE CONTROLE TIR (TIRExB)**  
**ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)**



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

TIR Executive Board (TIRExB)  
(Twenty-ninth session, 29 and 30 May 2006,  
agenda item 7)

**TIR GUARANTEE LEVEL PER TIR CARNET**

**Transmitted by the International Road Transport Union (IRU)**

**Background**

1. At its twenty-eighth session, the TIRExB took note of Informal Document No 5 (2006) in which the IRU commented on the consequences of a possible increase in the guarantee level in the context of the apparent difference in the maximum guarantee amount between the European Union (EU) and other Contracting Parties.
2. In presenting Informal Document No 5 (2006) the IRU made the following points:
  - the TIR guarantee is not meant to cover the full amount of the export or import duties and taxes concerned in the TIR operation;
  - notwithstanding this, given the current levels of duties and taxes the maximum guaranteed amount of USD 50,000 is sufficient to cover the full amount of duties and taxes at risk in the vast majority of TIR operations; and
  - no international financial institution would accept an increase in the level of guarantee cover.
3. The IRU was asked by the Board to prepare a document on the financial consequences of a general increase of the TIR guarantee limit up to the level applied in the European Union.

**A. The situation in the EU**

4. Before commenting on the financial consequences, IRU would like to make a further observation concerning the IRU's understanding of the situation in the EU.
5. The current reference to EUR 60,000 in EU legislation was introduced in Commission Regulation (EC) No 881/2003 which, in respect of this particular item, came into force in

September 2003. Prior to this amendment the EU's legislation (Commission Regulation (EEC) No 2454/1993) made no specific reference to the amount of the TIR guarantee to be applied within the Community. Advice concerning how the EU would apply Article 8.3 of the TIR Convention was set out in non-legally binding guidelines. However it is understood that those guidelines were historically based on the assumption that the maximum amount of the TIR guarantee would be the broad equivalent of USD 50,000, whether the actual amount was expressed in the national currencies of the Member States or the ECU.

6. The amendment to Commission Regulation (EEC) No 2454/1993 was obviously designed to provide a legal basis for the EU's application of Article 8.3 of the TIR Convention. The preamble to the amending Regulation makes it clear that the intention of the amendment was simply to express the maximum amount of the TIR guarantee in Euro. At the time the amending legislation was drafted, EUR 60,000 equated broadly to USD 50,000.
7. It is a feature of the currency markets that rates of exchange fluctuate. However since the implementation of the EU's amending Regulation referred to above, the US Dollar has significantly lost value against the Euro and so at the moment EUR 60,000 equates to more than USD 50,000. No one, not even the EU legislators, could have foreseen such a change in the respective values of the 2 currencies and the IRU assumes that it was never the intention of the EU to increase the amount of the TIR guarantee to current levels. In an ideal world the EU would have taken steps to revise its legislation in order to correct this distortion. However the IRU appreciates that the process of amending EU legislation is a time consuming and complicated matter and that the EU is unlikely to be persuaded to take the action needed to correct this distortion.

#### **B. Financial consequences of increasing the maximum level of the TIR guarantee**

8. In the IRU's opinion the action taken by the EU to stipulate the maximum amount of the TIR guarantee in its legislation has produced an unintended result. It follows that, in the IRU's view, it is a false premise for some other Contracting Parties to cite the situation within the EU as a justification to increase the level of guarantee to EUR 60,000.
9. Financial institutions, just like the Customs authorities, operate on the basis of risk assessment. It is common knowledge that in the world of financial institutions not all parties to be insured represent the same risk. Whereas some countries or regions are currently generally regarded as a low risk for the purposes of financial guarantees, that is certainly not the case for some others. The same general assessment is made as far as TIR financial coverage is concerned. Thus to increase the maximum level of the TIR guarantee outside the EU to the USD equivalent of EUR 60,000 would represent a massive escalation of the guarantee cover and perceived risk.
10. As stated by the IRU during the meeting of the 28<sup>th</sup> session of the TIRExB (cf. par. 23, 4<sup>th</sup> indent of TIRExB/REP/2005/28 draft), the conclusion that can be drawn from the consequences of an increase in the amount of the TIR guarantee could be that there would be no guarantee coverage. This is not an idle assessment but one based on the IRU's years of experience of dealing with international financial institutions. For the reasons set out in Informal Document No 5 (2006) the IRU maintains that there is no need to increase the maximum level of the guarantee which should continue to be based on USD 50,000 as recommended in the TIR Convention.



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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions affecting Transport

One-hundred-and-seventeenth session  
Geneva, 24-28 September 2007  
Agenda item 8 (b) (ii)

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

**Revision of the Convention**

**Revised amendment proposals for the Convention**

**Transmitted by the State Customs Committee of the Republic of Belarus**

1. The State Customs Committee of the Republic of Belarus, having considered document ECE/TRANS/WP.30/2006/5, which was discussed at the session of the Working Party held from 31 January to 2 February 2007, informs the Working Party of the following.
2. As is generally known, two amounts are currently applied under the TIR system with respect to the maximum sum that may be claimed from guaranteeing associations per TIR carnet: US\$ 50,000 and EUR 60,000. The first amount is specified in the explanatory note to article 8, paragraph 3, of the TIR Convention, and is recommended to all Contracting Parties. The second amount has historically been applied in countries members of the European Union, despite the fact that, in the aforementioned explanatory note, customs authorities are recommended to limit the maximum guarantee amount to US\$ 50,000.

3. In the light of the divergences between the levels of the maximum guarantee amount in the countries members of the European Union and the remaining Contracting Parties to the TIR Convention, the State Customs Committee proposes that an amendment should be made to the explanatory note to article 8, paragraph 3, and the comment to article 23, which, in place of US\$ 50,000, would specify the sum of EUR 60,000. This would establish a single, higher, amount for the guarantee under the TIR Convention, which would promote the further harmonious development of the TIR system, contribute to more rapid circulation of goods in world trade, liberalize the conditions of application of article 23 of the TIR Convention with respect to the escorting of road vehicles at the carriers' expense and render these conditions more advantageous for carriers.

4. It must be noted that an increase in the level of the guarantee would reflect the overall development of international trade in that the cargoes carried are becoming ever more valuable, making it objectively necessary to raise the level of the maximum guarantee amount per TIR carnet.

5. In the light of the foregoing, the State Customs Committee suggests that this proposal should be included in the summary table of amendments to the TIR Convention (document ECE/TRANS/WP.30/2006/5) for subsequent discussion at the session of the Working Party.

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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions Affecting Transport

One-hundred-and-eighteenth session  
Geneva, 29 January - 1 February 2008  
Item 9 (c) of the provisional agenda

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

Application of the Convention

Transmitted by the International Road Transport Union (IRU)

**I. INTRODUCTION**

1. A major concern facing the road transport industry today is the severe waiting times at borders, which at certain locations are reported to exceed 10 days. These delays, which predominantly arise at the European Union's external border with the CIS countries, have a severely damaging impact on international trade and transport. Drivers all too frequently find themselves stranded in a long queue of trucks without access to basic sanitation facilities. In addition both the drivers and the goods they carry are exposed to criminal activity.

2. There are number of causes for the delays at border crossing points and not of all of these causes fall under the ambit of the WP.30. However it is hoped that the implementation of the requirements of the anticipated Annex 8 of the Convention on Harmonization of Frontier Control of Goods 1982 will eventually assist in eradicating some of the causes. However one significant cause for these delays which does concern this Working Party is the fact that some Contracting

Parties are deviating from the principles of the TIR Convention and are systematically imposing the use of escorts for TIR transport operations on their territory.

3. The IRU considers the increasing and systematic use of escorts results from a fundamental misapplication of the provisions of Article 23 of the TIR Convention. The IRU calls on the WP.30 to urgently address this matter and to recall the correct application of Article 23. In the short to medium term the IRU proposes that the WP.30 should augment this clarification and publish an example of best practice on the matter. That is why the IRU believes it is appropriate for the WP.30 to consider this matter under agenda item 9 (b) (i) of its present session.

## II. APPLICATION OF ARTICLE 23

4. Article 23 of the TIR Convention states:

*“The Customs office shall not:*

*- require road vehicles, combinations of vehicles or containers to be escorted at the carriers' expense on the territory of their country,*

*- ...*

*except in special cases.”*

5. Article 23 is very clear – the use of escorts is only permitted in exceptional/special cases. The Comment to Article 23, which of course is not legally binding, provides one example of where the use of escorts might be considered appropriate: that is in those cases where the duties and taxes at risk exceed the maximum level of the TIR guarantee. However, this Comment is used by a number of Contracting Parties to interpret Article 23 in such a way that the imposition of escorts becomes legitimized through the creation of an artificial link between the guarantee level and the use of escorts. Indeed the Belarus government in document ECE/TRANS/WP.30/2007/19 concerning its proposal to increase the maximum level of guarantee from USD 50,000 to EURO 60,000 states that the increase would “liberalize the conditions of Article 23 of the TIR Convention with regard to the escorting of road vehicles”.

6. With all due respect to the governments of the Contracting Parties that have voiced similar views, this statement reveals a fundamental misinterpretation of not only the nature of the TIR guarantee but also the application of Article 23. It has been a long established and agreed legal principle that in the event of an irregularity the TIR guarantor does not replace the person directly liable who, as the debtor, always remains liable to pay the full amount of the duties and taxes due. In the event of a claim against the TIR guarantee the guarantor would be liable to an amount up to the maximum of the fixed level of the guarantee. The TIR Convention is clear, the TIR guarantee is not meant to cover the full amount of the duties and taxes involved in any given TIR transport operation.

7. The IRU is in possession of substantial documentary and anecdotal evidence which shows that the use of escorts has, over recent years, been systematically imposed by the Customs

authorities of certain Contracting Parties in direct contravention of the requirements of Article 23. Apart from the additional business and operational costs, burdens and bureaucracy caused by the use of escorts, the carrier also experiences delays at the border simply because there are insufficient escorts available. Hence the IRU believes that the proper and regular application of Article 23 will have an immediate and significant effect on reducing some of the artificial, yet damaging, delays currently experienced at the borders.

### III. USE OF RISK MANAGEMENT TECHNIQUES

8. The Comment to Article 23 does not provide the only, definitive example of the special case where the use of escorts should be considered. The IRU believes that in determining what constitutes a “special case” the Customs authorities should take into consideration a range of factors, and not just the simplistic factor concerning the amount of duties and taxes involved. Indeed the Comment to Article 23 refers specifically to the duties and taxes “*at risk*” and this is the key phrase. This implies the Customs authorities should apply a risk analysis based on the TIR operation as a whole and not just base its decision to impose escorts on the amount of duties and taxes involved.

9. Indeed if the amount of duties and taxes involved was the only factor to be taken into consideration in assessing the risk then this would lead to the conclusion that there is no risk where the duties and taxes are less than the maximum guarantee level. Such an interpretation would be perverse for the profile of claims, as recently confirmed by the survey carried out by the TIRExB, consistently shows that the vast majority are below the USD 50,000 maximum level of the guarantee recommended in the TIR Convention.

10. The application of comprehensive risk analysis techniques is now widespread and now forms part of the daily work practice of many Customs administrations. The World Customs Organization has produced a Risk Management Guide which together with its Manual of Risk Assessment, Profiling and Targeting provides the Customs authorities with guidance to help them develop a more effective approach to risk management. In these guidelines, the amount of taxes and duties involved in the Customs procedure is just one of the many factors that should be taken into account in assessing the risk.

11. The IRU cannot understand why the use of risk analysis as recommended by WCO and applied by many Customs administrations throughout the world can be seen as a valuable tool for a range of Customs procedures but not for the TIR procedure. The IRU believes that the use of risk analysis should also apply to the TIR procedure and that is why it has proposed to amend the Comment to Article 23 to include a reference to the WCO’s initiatives in this field (document ECE/TRANS/WP.30/2008/1 refers).

#### IV. PROPOSAL

12. Given the growing scale of the problem and with the onset of winter which will make the conditions experienced by drivers even more intolerable, the IRU calls on the WP.30 at its 118<sup>th</sup> session to unequivocally confirm that, as a matter of principle, the use of escorts as foreseen in accordance with Article 23 of the TIR Convention shall only be used in exceptional/special cases. Moreover the WP.30 should also make it clear that the amount of duties and taxes involved in the TIR operation should not be the only factor taken into consideration by the Customs authorities when deciding whether to impose the use of an escort.

13. The WP.30 is requested to unequivocally confirm that, in order to determine if a particular case is exceptional or special in the sense of Article 23, the use of risk analysis techniques as developed by the World Customs Organization must be applied . Furthermore the WP.30 should encourage the Contracting Parties to apply the WCO risk analysis techniques immediately and so stop the systematic imposition of escorts.

14. In the short to medium term the WP.30 should undertake to develop some best practice guidance on the matter which would include a clarification of the application of Article 23. This best practice should also consider Article 20 of the TIR Convention which provides the competent authorities with several other means to secure TIR transports such as the setting of an itinerary and imposing deadlines for the transit.

15. Finally, with regard to the scope and coverage of the TIR guarantee the WP.30 should also confirm that the TIR guarantee is, by its nature, a maximum fixed rate guarantee and that in the event of an irregularity which gives rise to the payment of the duties and taxes due, the person direct liable for the irregularity always and without exception remains the debtor.

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**ECONOMIC COMMISSION FOR EUROPE** Informal document WP.30 No. 4 (2008)

INLAND TRANSPORT COMMITTEE 24 January 2008

Working Party on Customs Questions affecting Transport ENGLISH and RUSSIAN ONLY

One-hundred-and- eighteenth session  
Geneva, 29 January-1 February 2008  
Item 9 (b) (iii) of the provisional agenda

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

**Revision of the Convention**

**Amendment proposals for the Convention**

**Transmitted by the Ministry of Transport of the Russian Federation**

1. In course of the last session a document was presented for consideration of members of Working Party on customs questions, affecting transport (WP.30). This document № ECE/TRANS/WP.30/2007/19, prepared by the Byelorussian State Custom Committee, proposes to amend the text of the explanatory note to the item 3 article 8 of TIR Convention and to increase the recommended responsibility limit under Carnet TIR from 50 000 USD up to 60 000 Euro.
2. The Ministry of Transport of the Russian Federation, being competent authority in the Russian Federation for TIR Convention, completely supports the Byelorussian proposal and shares its position concerning the arguments stated in the specified document.
3. We believe that now the necessity to increase the existing responsibility limit became obvious.
4. For example, according to the analysis carried on foreign trade transportations in Russia, an average cost of a commercial batch transported by road has increased by 63 per cent in the last 5 years. At the same time the responsibility limit under Carnet TIR, established in the seventies of the previous century, never changed.
5. And it is necessary to take into consideration that, although the rates of customs duties remained basically at the former level, the average sum of customs duty also has essentially increased due to the growth of the commercial batch average cost. Consequently, in the last years



there are more of those transportations of goods, under which the sum of customs taxes and duties exceeds 50 000 USD.

6. Besides, in the period passed from the seventies, the USD exchange rate has essentially decreased, that affected also the TIR system. Taking into account that the European region is a territory where an overwhelming quantity of TIR operations is performed, the use of Euro currency as a criterion of the responsibility limit of TIR guarantee system will be quite logical.

7. In view of provisions stated in the article 23 of TIR Convention, customs authorities have the right to demand as an exemption to escort the vehicle at carrier's expense. The amount of transportations to which customs authorities are compelled to apply vehicle's escort, increases every year for above mentioned reasons.

8. Carriers of many countries, including Russian transport companies, are looking forward to increase the TIR Carnet guarantee that will allow them to reduce essentially the transport expenses. In this way the payments for vehicles customs escort and additional idle times, which vehicles should wait for its organization, will be reduced and the delivery of a cargo to its destination will be sooner realized.

9. As discussion in summer and autumn sessions of the Working Party WP.30 in 2007 has shown, the decision of this issue worries both competent authorities and representatives of transport sector of many countries, i.e. the most important members of the TIR system.

10. We hope that all interested parties, including the international organization, the objective of which according to article 6.2-bis of TIR Convention is to provide an effective guarantee system, will also support this proposal. That will allow continuing to use with stability the TIR system with a view of the interests of the Contracting Parties to the Convention, keeping its competitiveness compared with other customs transit systems.

11. The Ministry of Transport of the Russian Federation kindly asks the UNECE Secretariat to bring to the notice of the TIR Convention member-states the position of the Russian Federation on the specified issue and to submit it as an informal document for the discussion of the Working group on customs questions, affecting transport.

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<b>ECONOMIC COMMISSION FOR EUROPE</b>	Informal document WP.30 No. 7 (2008)
INLAND TRANSPORT COMMITTEE	25 January 2008
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One-hundred-and- eighteenth session Geneva, 29 January-1 February 2008 Item 9 (b) (iii) of the provisional agenda	

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

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the International Road Transport Union (IRU)

1. The Working Party at its last session invited the IRU to provide its estimates of impacts due to the increase in the level of guarantee as proposed by the government of Belarus in document ECE/TRANS/WP.30/2007/19 (ECE/TRANS/WP.30/234 paragraphs 26 - 27).
2. In the meantime, the Ministry of Transport of the Russian Federation has also issued an Informal document WP.30 No. 4 (2008) supporting document ECE/TRANS/WP.30/2007/19. The IRU consequently also takes into account this Informal document WP.30 No. 4 (2008) in the following paragraphs.
3. Although it has already been stated on many occasions, it seems necessary to recall that the European Union's decision to express the maximum amount in Euro rather than US dollars was not taken with the intention to increase the guarantee level for TIR operations on the EU territory, but only to use the Euro currency as a reference on EU territory. Indeed an analysis of the historic rates of exchange show that when, in early 2002, the EU member states decided to express the maximum amount as EURO 60,000 that amount equated to some USD 50,000. The fact that EURO 60,000 currently equates to almost USD 90,000 is the unforeseen and unexpected result of the US currency depreciation versus the Euro.
4. The document ECE/TRANS/WP.30/2007/19 also justifies the proposed amendment on the grounds that the "increase would reflect the overall development of international trade in that cargoes carried are becoming more valuable". If the Belarus government is suggesting that the rates of *ad valorem* duties and taxes have increased, the IRU doubts that is the case; indeed the IRU believes the contrary is the case in that import duty rates have been reduced.
5. The IRU assumes that the reference to the value of these cargoes in document ECE/TRANS/WP.30/2007/19 is actually taken to imply that the duties and taxes potentially due

on the goods have increased to the point where they exceed USD 50,000. Such argument is also raised in Informal document WP.30 No. 4 (2008), based on an “analysis carried on foreign trade transportations in Russia”. Moreover the latter document, in its paragraph 7, clearly links the implementation of article 23 of the TIR Convention with the fact that the average sum of customs duty has increased due to the growth of the commercial batch average cost.

6. The IRU has issued document ECE/TRANS/WP.30/2008/6, which aims at illustrating the artificial linkage that is made between escorts as mentioned in Article 23 of the TIR Convention and the recommended guarantee level. The document ECE/TRANS/WP.30/2007/19 and Informal document WP.30 No. 4 (2008) seem to suggest that when the duties and taxes are above the guarantee limit, there is a risk while *a contrario*, when the amounts are below the guarantee limit, there would be no risk because there is a guarantor covering the full amount. The IRU is worried that such an arbitrary interpretation would lead to suggest that the usual and recognized nature of the TIR guarantee could be transformed in such a way that the guarantee chain would become a kind of “Super Customs Debtor”, thus setting aside the requirements of Customs legislations of Contracting Parties and of current Article 8.7 of the TIR Convention.

7. Therefore, in order to avoid any ambiguity in the next coming discussion and to allow a proper assessment of the issue, it appears indispensable to clarify the background and objectives of this request for a change in the recommended guarantee level.

8. In particular, it is necessary to bear in mind that any sustainable and reliable guarantee system is dependent on its exposure to risk. This implies that the guarantors can only engage themselves if the risks covered are measurable, and if effective Risk Management procedures are implemented at all levels. The provision of an “effective guarantee system”, as referred to in article 6.2-bis of the TIR Convention quoted in Informal document WP.30 No. 4 (2008) also implies the capacity for the international organisation to correctly measure and monitor the risks covered. Such measurement and monitoring of the risk exposure must be done in connection with the implementation of Risk Management and Risk Assessment procedures. In other words, the ability to provide guarantee is dependent on the level of legal certainty and security, itself dependent on Risk Management procedures. Moreover, it is an imperative necessity for the guarantor to be informed immediately of any alleged irregularity that might lead to potential financial consequences.

9. It has been demonstrated in the past with the devastating experiences of Tobacco and later Tobacco/Alcohol carnets, that without strong control measures at all levels, to assure security for all involved, fraudulent activities are encouraged.

10. The guarantors are unable to undertake such risks. This has also demonstrated that such an important issue is never solved by an even enormous increase of the costs of the guarantee provided, but only by effective Risk Management procedures which allow to minimize the cost impact.

11. The IRU understands the concerns expressed by some Contracting Parties on this sensitive issue. However, in order to allow an appropriate and non ambiguous discussion, it appears indispensable to reaffirm some key basic principles which should be supported by Contracting Parties, in particular:

- There cannot be sustainable and reliable guarantee system without implementation at all levels of Risk Management and Risk Assessment procedures to monitor and measure the exposure to risks.

- The guarantee chain must be informed immediately of any potential irregularity that might have financial consequences.
- In that sense, in line with Annex 10 of the TIR Convention, real time transmission of SafeTIR data must be ensured.
- The nature of the TIR guarantee must be confirmed as being limited to a maximum amount.
- The protection of Customs revenues is fully guaranteed without any limitation through the Customs legislations of the Contracting Parties and the current Art. 8.7 of the TIR Convention which gives to Customs authorities full and unlimited rights towards the direct liable person or persons to obtain payment of evaded taxes and duties.
- Customs authorities should not be influenced in their actions by the fact that they dispose of a guarantee, but must carry on their duties with due diligence in applying Risk Assessment methods, possibly as recommended by the WCO.
- Escorts must only be imposed on exceptional basis, and not on the only criteria of the amount of the guarantee limit.
- To allow appropriate and well founded assessment of the need to increase the current recommended guarantee limit, mutual and documented statistics must be made available.

12. Under the above-mentioned basis, when the respective constraints are acknowledged by all involved, a constructive impact assessment can be carried out.

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Working Party on Customs Questions Affecting  
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CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER  
COVER OF TIR CARNETS (TIR CONVENTION, 1975)

Revision of the Convention

Amendment proposals for the Convention

Transmitted by the International Road Transport Union (IRU)

CONVENTION DOUANIERE RELATIVE AU TRANSPORT INTERNATIONAL  
DE MARCHANDISES SOUS LE COUVERT DE CARNETS TIR  
(CONVENTION TIR DE 1975)

Révision de la Convention

Propositions d'amendements révisées à la Convention

Note transmise par l'Union Internationale des Transports Routiers (IRU)

By e-mail and by mail

Ms Eva Molnar  
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Transport Division of the United Nations  
Economic Commission for Europe (UNECE)  
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AD/G58950/MMM

Geneva, 21 May 2008

**Document submitted by the IRU  
for the 119th session of the WP.30 (2 – 5 June 2008)  
Item 8 (b) (iii) of the provisional agenda**

Dear Mrs Molnar,

As requested in document ECE/TRANS/WP.30/236, para. 25, the IRU provides hereafter, in English and in French, its impact study of the increase in the level of the maximum guarantee to 60,000 Euros as well as its assessment of the proposal to accommodate multiple guarantee limits within the TIR system.

I thank you in advance for making this document available to the Contracting Parties for the forthcoming session of the WP.30.

Yours sincerely,



Martin Marmy  
Secretary General

As reported in document ECE/TRANS/WP.30/236, para. 25 the Working Party requested the IRU to provide its impact study of the increase in the level of the maximum guarantee to 60'000 Euros as well as its assessment of the proposal to accommodate multiple guarantee limits within the TIR system.

As the IRU cannot provide the TIR guarantee coverage alone but only through its insurers, the IRU has requested the insurers of the TIR international guarantee chain to undertake their feasibility assessment according to the requests of the WP.30.

This feasibility assessment together with its accompanying letter by Zurich Insurance is reproduced in Annex. This assessment has been considered and fully supported by all the IRU competent Bodies including by the General Assembly of 15th May 2008.

Annexe: ment.

\*\*\*\*\*



International Road Transport Union  
Secretariat General  
Mr. Martin Marmy  
3, rue de Varembe  
1211 Geneva 20

Your reference

Our reference

Date

Christian Straube

29.4.2008

**Insurance Contract no. 3.186.842 in respect of Carnet TIR Guarantee**

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Dear Secretary General,

Following your request to conduct a feasibility assessment to implement the decision taken by the WP.30 at its 118th session regarding the amendment to Explanatory Note 0.8.3 of the TIR Convention to increase the guarantee limit to €60,000 and to accommodate a regular review of fluctuations in exchange rates, by applying a value based on a basket of various main currencies, such as the Special Drawing Right (SDR), as well as to accommodate multiple guarantee limits within the TIR System and their consequences for the IRU and its members, we have undertaken the appropriate research work and analysis with the insurers and reinsurers involved in our contractual relations.

Please find the document containing the results of our feasibility study in Annexe.

As is clearly mentioned in this document, the insurers and reinsurers have duly taken note of the objectives of the WP.30 in the framework of the numerous amendment proposals to the Convention and the current status of the application of the Convention which all lead to a major increase in risk.

Despite this critical situation, the analysis of the insurers and reinsurers concludes that the objectives of the WP.30 to increase the Guarantee limit by 100% and to change the currency to be used are both feasible. However, the risk management measures requested by the insurers and reinsurers since 1995, as established since 2006 in Annexe 10 of the TIR Convention, should effectively be implemented country by country to ensure the proper functioning of real-time SafeTIR data transmission with the electronic pre-declarations, in order to achieve the required risk reduction to the full satisfaction of the insurers and reinsurers, prior to increasing the guarantee limit.





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For the insurers and reinsurers to be in a position to make any quotations on the costs of the new coverage, the wording of the Explanatory Note to 0.8.3 of the TIR Convention needs to ensure that the risk management requested by the insurers and reinsurers will be duly approved by the appropriate UN bodies and effectively implemented.

Finally, taking into account the magnitude of the proposed changes as well as the fact that there has been no adaptation of our current contract since 2002, you must understand that there will subsequently be the need for an adaptation of our contractual relations.

As far as the introduction of multiple guarantee limits within the TIR System is concerned, the assessment made by the insurers and reinsurers, based on previous experience, demonstrates that there is no possibility to diminish the prime risk and therefore the costs, hence the suppression of the mutualisation of the risk, which is one of the basic principles of the TIR Convention, without threaten the entire guarantee chain.

We remain at your disposal for any further information.

Best regards,  
Zurich Insurance Company  
Global Corporate Switzerland

A handwritten signature in blue ink, appearing to read 'Patrick Amschwand', written in a cursive style.

Patrick Amschwand

A handwritten signature in blue ink, appearing to read 'Christian Straube', written in a cursive style.

Christian Straube

Annexe mentioned



## INSURERS AND REINSURERS OF THE ZURICH CONTRACT PROVIDING THE COVERAGE OF THE TIR INTERNATIONAL GUARANTEE CHAIN

### FEASIBILITY ASSESSEMENT ACCORDING TO THE REQUEST OF WP.30 AS PER ECE/TRANS/WP.30/236 of 7 FEBRUARY 2008

After analysing the report of the Working Party on Customs Questions affecting Transport on its one-hundred-and-eighteenth Session (29 January – 1 February 2008), the amendments proposed in the Secretariat's Note ECE/TRANS/WP.30/2008/9 and their implications, as well as the additional information provided by the IRU, the insurers and reinsurers of the TIR guarantee chain, confirm that they are ready to do all within their capacity to achieve the objectives fixed by the WP.30.

The insurers and reinsurers, also taking note of the WP.30 request to assess the possibility to accommodate multiple guarantee limits within the TIR System, have carried out an analysis based on the understanding that this request should provide a reduction of costs for the use of the TIR System at regional level by reducing the cost of the guarantee.

#### **I. WP.30 request to increase the TIR guarantee limit to 60,000 EUROS**

The insurers and reinsurers have taken note of the objectives of the WP.30 in the framework of the current amendment proposals for the TIR Convention and the current status of the application of this Convention, which all lead to a huge increase in risk, and confirm that the objectives pursued by the WP.30 cannot be attained in the way proposed in the Secretariat's Note ECE/TRANS/WP.30/2008/9 without appropriate accompanying measures, as they cannot be fulfilled by the insurance and reinsurance market. Nonetheless, the request to increase the TIR guarantee limit to €60,000 is feasible.

However, to render feasible such an increase, the risk management measures requested by the insurers and reinsurers since 1995, as established since 2006 in Annexe 10 of the TIR Convention, should effectively be implemented country by country to ensure the proper functioning of real-time SafeTIR data transmission with the electronic pre-declarations, in order to achieve the required risk reduction to the full satisfaction of the insurers and reinsurers, prior to increasing the guarantee limit.

Indeed, after assessing fully the situation, the insurers and reinsurers can now inform you as follows:

1. The current text of Explanatory Note 0.8.3 of the TIR Convention is well known and understood by the insurers and the reinsurers. It is precisely due to the recommendation contained in this Note, that since the introduction of the ECU in 1993 in the European Union, we have been able, in the annual renewal of the insurance and reinsurance contracts, to integrate the gradual exchange rate fluctuations, with the resulting increase in the financial coverage, reserves, risk management and costs.
2. The request by the WP.30 to introduce an increase of the guarantee limit to €60,000 and the introduction of a basket of currencies to prevent compensation or fluctuation, by an amendment to Explanatory Note 0.8.3, is in no way comparable to the gradual increases realised since 1994, as mentioned under point 1.



In fact, the request by the WP.30 and the Secretariat's Note to amend Explanatory Note 0.8.3 would have huge financial consequences on the functioning of the international guarantee chain, by increasing the guarantee limit by 100% and hence the exposure of the TIR Guarantee chain, all at once, where the risk is highest. Not only are 75% of the carnets issued and terminated in these countries, but the trade in these countries is still currently realised mainly in US dollars, where the weakness of the dollar is automatically and regularly compensated by a corresponding increase in the price of goods and hence by an increase in the amount of the customs and excise duties.

Unfortunately, such an increase in the guarantee limit, in conjunction with the proposal of the European Community at the last WP.30 meeting which clearly requests "the practice of excluding products from the TIR guarantee on Community territory to stop as soon as possible" does not at all take into account the previous dramatic experience with sensitive goods, nor the major effort of the insurers and reinsurers to increase the risk coverage, as from 1 January 2008, to cover additional sensitive goods.

Nor does such an increase in the guarantee limit take account of the major additional increase in risk, which will result from the recent new WP.30 proposals to extend the timeframe for customs to notify claims to the guarantee chain, as expressed notably in document ECE/TRANS/WP.30/2008/11.

3. Despite the above, according to our contractual relations, the insurers and reinsurers have always done all within their capacity to provide the required financial coverage permitting the IRU to fulfil its obligations and responsibilities for the effective organisation and functioning of the international guarantee system, which is implemented through its guaranteeing associations in 56 TIR Contracting Parties. However, in such a higher risk situation, the 100% increase of the guarantee limit requested by the WP.30 cannot be met only by an adaptation of the premium, but more importantly, will require an adaptation of our contractual relations as well as of the Explanatory Note 0.8.3 to ensure, prior to any increase, the significant reduction of risk through the effective implementation of appropriate risk management measures.
4. Since 1994, the insurers, in order to assume their contractual obligations, have on several occasions clearly requested a reduction of risk through the effective implementation of the appropriate risk management measures.

These clear requests have led to the adoption of the UNECE recommendation of October 1995 concerning the implementation, country by country, of an effective control of the TIR carnet usage.

Subsequently, these requests by the insurers led to the introduction by the AC.2 in August 2006 of the Annex 10 of the TIR Convention: requiring "the information to be provided by contracting parties to the guaranteeing associations and to the IRU" in order to allow the latter to fulfil its responsibilities.

5. However, as mentioned in the statistics cited in the last WP.30 meeting, and despite the above, as highlighted repeatedly and at every renewal of our contractual relation, the TIR control system (SafeTIR) is still far from providing the risk reduction required by the insurers and reinsurers since 1995.



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Indeed, despite the adoption of an AC.2 recommendation in 1995 and the entry into force of Annex 10 in August 2006, numerous countries where this increase limit needs to be implemented still do not transmit the SafeTIR information data at all. In fact, the statistics show that only 9 countries out of 56 transmit the required information data daily, within 24 hours, while 11 countries are still not connected nor transmitting any information data at all to the SafeTIR system.

We also note from the same statistics that the average transmission period is 5 days with a most worrying high missing rate of information data. Even worse, out of the 9245 reconciliation requests in 2007, 40% were never replied and the remaining 60% had an average delay of 42 days.

Of even greater concern to the insurers and reinsurers is the fact that despite noting these severe dysfunctions in the requirements of the TIR Convention, no corrective actions have been undertaken by WP.30. This clearly demonstrates that the risk management required by the insurers and reinsurers since the signature of our contract in 1994 is still not a preoccupation of WP.30 and as such, despite the huge investments made, still does not provide the required reduction in risk permitting us to fulfil our obligations.

It is precisely this continued dysfunction which has prompted the insurers and reinsurers to impose, on several occasions, notably after the major Vyborg cases, in addition to the requested improvement of SafeTIR, an increase of the financial risk to be covered directly by the IRU.

It is also this continued dysfunction, in conjunction with a total lack of progress in reducing risk through the implementation of the other requested risk management measures, in particular the proposed electronic pre-declaration system (EPD), which has led to an out-of-control increase in EU pre-notifications, according to Article 455.2 EU Reg. 2454/93, which remain a serious outstanding concern for the insurers and reinsurers.

Taking into consideration the critical remarks on the application of the TIR Convention mentioned in the last WP.30 meetings along with the long list of outstanding amendment proposals using most of the proposals made, while systematically modifying or rejecting those of the IRU, we must confirm that the situation so created has a dramatic impact on the risk to be covered and thus on the financial obligations of the insurers and reinsurers party to the contract. In light of the above, to render feasible the WP.30's objectives regarding the increase in the guarantee limit, and in order to allow the insurers and reinsurers to maintain the contract providing the coverage pursuant to Article 6.2 bis, as well as to minimise the risk, liability and costs, the following requirements need to be met:

- a) Effective risk management measures must be introduced in a given country, to the satisfaction of the insurers and reinsurers, to reduce the risks covered by the guarantee chain, namely the real-time SafeTIR with the electronic pre-declaration, prior to the implementation of any increased guarantee on its territory.
- b) This will require the written consent of the insurers, country by country, prior to any increase of the guarantee in a given country, once the proper functioning of all the required accompanying measures, as per a) above, has been duly confirmed to the full satisfaction of the insurers and reinsurers.



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- c) Taking into account the important increase of the coverage requested from the insurers, the insurers also request the IRU to increase its part in the financial risk coverage.
- d) Finally, once the above requirements are met, the insurers and reinsurers would agree to provide the new guarantee coverage in Special Drawing Rights (SDR).

To conclude, the insurers and reinsurers confirm that the objectives of the WP.30 to increase by 100% the guarantee limit as well as to change to SDR the currency of the financial guarantee to be provided are feasible, if the above requirements are met.

However, for the insurers and reinsurers to be in a position to make any quotations on the costs of the new coverage, the wording of the Explanatory Note to 0.8.3 of the TIR Convention needs to ensure that the risk management requested by the insurers and reinsurers will be duly approved by the appropriate UN bodies and effectively implemented.

## **II. WP.30 request to accommodate multiple guarantee limits within the TIR System**

The insurers and reinsurers have always aimed to provide the required financial coverage of the guarantee, permitting the IRU and its guaranteeing associations to fulfil all their obligations. By doing so, the insurers and reinsurers have also followed carefully the market demand for such requests, while not penalising the universality and mutual recognition of any regional coverage provided by the TIR carnets and the mutualisation of the risk to be covered as foreseen by the TIR Convention.

Statistics and practice prove that when a TIR carnet is used, irrespective of the number of countries transited, the risk of fraud is predominant in the country of destination of the TIR transport, that is, where the customs taxes and duties are due.

Therefore, the cost of the guarantee to be provided by the insurers and reinsurers is not dependent on its regional usage, but rather on the duration of the financial coverage and, more importantly, on the effectiveness of the risk management measures such as real-time SafeTIR and electronic pre-declaration, which allow the insurers and reinsurers to diminish the risk exposure and the number of claims.

Moreover, the basic principle of the TIR Convention is the mutualisation of the risks amongst all the participants in the TIR guarantee chain.

In this framework, several attempts have been made over the years to accommodate the use of the TIR System at regional level, in particular by reducing under certain conditions the price of the TIR carnets for a specific region.

The mutualisation of the costs, of the risk, and of the requested risk management measures permitted a significant reduction in the cost of such carnets to be used only in specific regions. However all these attempts failed, due to the lack of market demand because of their lack of universality for their usage by the TIR holders.

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To conclude on this point, the insurers and reinsurers, on the basis of the past attempts and experiences, and on a pure risk assessment, cannot introduce various limits of guarantee other than the 50,000 USD and 60,000 EUROS or their equivalent in SDRs.

Zurich, 29.4.2008

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**ECONOMIC COMMISSION FOR EUROPE**

**INLAND TRANSPORT COMMITTEE**

Working Party on Customs Questions Affecting Transport

One-hundred-and-eighteenth session  
Geneva, 29 January - 1 February 2008  
Item 9 (c) of the provisional agenda

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

Application of the Convention

Transmitted by the International Road Transport Union (IRU)

## **I. INTRODUCTION**

1. A major concern facing the road transport industry today is the severe waiting times at borders, which at certain locations are reported to exceed 10 days. These delays, which predominantly arise at the European Union's external border with the CIS countries, have a severely damaging impact on international trade and transport. Drivers all too frequently find themselves stranded in a long queue of trucks without access to basic sanitation facilities. In addition both the drivers and the goods they carry are exposed to criminal activity.

2. There are number of causes for the delays at border crossing points and not of all of these causes fall under the ambit of the WP.30. However it is hoped that the implementation of the requirements of the anticipated Annex 8 of the Convention on Harmonization of Frontier Control of Goods 1982 will eventually assist in eradicating some of the causes. However one significant cause for these delays which does concern this Working Party is the fact that some Contracting Parties are deviating from the principles of the TIR Convention and are systematically imposing the use of escorts for TIR transport operations on their territory.

3. The IRU considers the increasing and systematic use of escorts results from a fundamental misapplication of the provisions of Article 23 of the TIR Convention. The IRU calls on the WP.30 to urgently address this matter and to recall the correct application of Article 23. In the short to medium term the IRU proposes that the WP.30 should augment this clarification and publish an example of best practice on the matter. That is why the IRU believes it is appropriate for the WP.30 to consider this matter under agenda item 9 (b) (i) of its present session.

## II. APPLICATION OF ARTICLE 23

4. Article 23 of the TIR Convention states:

*“The Customs office shall not:*

*- require road vehicles, combinations of vehicles or containers to be escorted at the carriers’ expense on the territory of their country,*

*- ...*

*except in special cases.”*

5. Article 23 is very clear – the use of escorts is only permitted in exceptional/special cases. The Comment to Article 23, which of course is not legally binding, provides one example of where the use of escorts might be considered appropriate: that is in those cases where the duties and taxes at risk exceed the maximum level of the TIR guarantee. However, this Comment is used by a number of Contracting Parties to interpret Article 23 in such a way that the imposition of escorts becomes legitimized through the creation of an artificial link between the guarantee level and the use of escorts. Indeed the Belarus government in document ECE/TRANS/WP.30/2007/19 concerning its proposal to increase the maximum level of guarantee from USD 50,000 to EURO 60,000 states that the increase would “liberalize the conditions of Article 23 of the TIR Convention with regard to the escorting of road vehicles”.

6. With all due respect to the governments of the Contracting Parties that have voiced similar views, this statement reveals a fundamental misinterpretation of not only the nature of the TIR guarantee but also the application of Article 23. It has been a long established and agreed legal principle that in the event of an irregularity the TIR guarantor does not replace the person directly liable who, as the debtor, always remains liable to pay the full amount of the duties and taxes due. In the event of a claim against the TIR guarantee the guarantor would be liable to an amount up to the maximum of the fixed level of the guarantee. The TIR Convention is clear, the TIR guarantee is not meant to cover the full amount of the duties and taxes involved in any given TIR transport operation.



7. The IRU is in possession of substantial documentary and anecdotal evidence which shows that the use of escorts has, over recent years, been systematically imposed by the Customs authorities of certain Contracting Parties in direct contravention of the requirements of Article 23. Apart from the additional business and operational costs, burdens and bureaucracy caused by the use of escorts, the carrier also experiences delays at the border simply because there are insufficient escorts available. Hence the IRU believes that the proper and regular application of Article 23 will have an immediate and significant effect on reducing some of the artificial, yet damaging, delays currently experienced at the borders.

### III. USE OF RISK MANAGEMENT TECHNIQUES

8. The Comment to Article 23 does not provide the only, definitive example of the special case where the use of escorts should be considered. The IRU believes that in determining what constitutes a “special case” the Customs authorities should take into consideration a range of factors, and not just the simplistic factor concerning the amount of duties and taxes involved. Indeed the Comment to Article 23 refers specifically to the duties and taxes “*at risk*” and this is the key phrase. This implies the Customs authorities should apply a risk analysis based on the TIR operation as a whole and not just base its decision to impose escorts on the amount of duties and taxes involved.

9. Indeed if the amount of duties and taxes involved was the only factor to be taken into consideration in assessing the risk then this would lead to the conclusion that there is no risk where the duties and taxes are less than the maximum guarantee level. Such an interpretation would be perverse for the profile of claims, as recently confirmed by the survey carried out by the TIRExB, consistently shows that the vast majority are below the USD 50,000 maximum level of the guarantee recommended in the TIR Convention.

10. The application of comprehensive risk analysis techniques is now widespread and now forms part of the daily work practice of many Customs administrations. The World Customs Organization has produced a Risk Management Guide which together with its Manual of Risk Assessment, Profiling and Targeting provides the Customs authorities with guidance to help them develop a more effective approach to risk management. In these guidelines, the amount of taxes and duties involved in the Customs procedure is just one of the many factors that should be taken into account in assessing the risk.

11. The IRU cannot understand why the use of risk analysis as recommended by WCO and applied by many Customs administrations throughout the world can be seen as a valuable tool for a range of Customs procedures but not for the TIR procedure. The IRU believes that the use of risk analysis should also apply to the TIR procedure and that is why it has proposed to amend the Comment to Article 23 to include a reference to the WCO’s initiatives in this field (document ECE/TRANS/WP.30/2008/1 refers).

#### IV. PROPOSAL

12. Given the growing scale of the problem and with the onset of winter which will make the conditions experienced by drivers even more intolerable, the IRU calls on the WP.30 at its 118<sup>th</sup> session to unequivocally confirm that, as a matter of principle, the use of escorts as foreseen in accordance with Article 23 of the TIR Convention shall only be used in exceptional/special cases. Moreover the WP.30 should also make it clear that the amount of duties and taxes involved in the TIR operation should not be the only factor taken into consideration by the Customs authorities when deciding whether to impose the use of an escort.

13. The WP.30 is requested to unequivocally confirm that, in order to determine if a particular case is exceptional or special in the sense of Article 23, the use of risk analysis techniques as developed by the World Customs Organization must be applied. Furthermore the WP.30 should encourage the Contracting Parties to apply the WCO risk analysis techniques immediately and so stop the systematic imposition of escorts.

14. In the short to medium term the WP.30 should undertake to develop some best practice guidance on the matter which would include a clarification of the application of Article 23. This best practice should also consider Article 20 of the TIR Convention which provides the competent authorities with several other means to secure TIR transports such as the setting of an itinerary and imposing deadlines for the transit.

15. Finally, with regard to the scope and coverage of the TIR guarantee the WP.30 should also confirm that the TIR guarantee is, by its nature, a maximum fixed rate guarantee and that in the event of an irregularity which gives rise to the payment of the duties and taxes due, the person direct liable for the irregularity always and without exception remains the debtor.

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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions Affecting Transport

One-hundred-and-nineteenth session

Geneva, 2-5 June 2008

Item 8 (b) (iii) of the provisional agenda

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

Revision of the Convention

Amendment proposals for the Convention

Note by the secretariat<sup>5</sup>

**I. MANDATE**

1. At its one-hundred-and-eighteenth session, the Working Party, bearing in mind the urgency to increase the level of guarantee to sixty thousand euros from fifty thousand United States dollars, decided to deal with this aspect of the amendment proposals separately and on a priority basis. Therefore, it requested the secretariat to prepare for discussion at this meeting a proposal to amend Explanatory Note 0.8.3 to the extent that it would, on the one hand, refer to the guarantee level of

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<sup>5</sup> The UNECE Transport Division has submitted the present document after the official documentation deadline.

sixty thousand euros and, on the other hand, accommodate a regular review if fluctuations in exchange rates would so require, possibly by applying a value based on a basket of various main currencies, such as the Special Drawing Right (SDR), introduced by the International Monetary Fund in 1969 (ECE/TRANS/WP.30/236, para. 25).

2. The purpose of this document is to provide the Working Party, first, with background information on the SDR and, second, the requested proposal to amend Explanatory Note 0.8.3.

## II. PURPOSE, USE AND VALUE OF SPECIAL DRAWING RIGHTS

3. The Special Drawing Rights (SDRs), created by the International Monetary Fund (IMF) in 1969 to support the Bretton Woods fixed exchange rate system, are defined in terms of a basket of major currencies used in international trade and finance. At present, the currencies in the basket are the euro, the pound sterling, the Japanese yen and the United States dollar. The amounts of each currency making up one SDR are chosen in accordance with the relative importance of the currency in international trade and finance. The determination of the currencies in the SDR basket and their amounts is made every five years by the IMF Executive Board.

4. The exact amounts of each currency in the basket and their approximate relative contributions to the value of an SDR in the past and at present are:

period	USD	GBP	JPY	EUR	DEM	FRF
1981-1985	42%	11%	13%	---	19%	13%
1886-1990	42%	11%	15%	---	19%	12%
1991-1995	40%	11%	17%	---	21%	11%
1996-1998	39%	11%	18%	---	21%	11%
1999-2000	39%	11%	18%	32%	---	---
2001-2005	45%	11%	15%	29%	---	---
2006-2010	44%	11%	11%	34%	---	---

5. SDRs are used as a unit of account by the IMF and several other organizations. A few countries fix their currencies against SDRs. It is also used to denominate some international financial instruments. For example, the Warsaw Convention, regulating liability for international carriage of persons, luggage or goods by air uses SDRs to value the maximum liability of the air carrier. Similarly, Article 23 of the CMR Convention, which regulates the contract for the international carriage of goods by road, expresses the maximum compensation in SDRs. SDRs also form the basis for the international fees of the Universal Postal Union, responsible for the world-wide postal system.

6. The value of one SDR in terms of United States dollars is determined daily by the IMF, based on the exchange rates of the currencies making up the basket, as quoted at noon at the London market (the exchange rate in euros (as of 1 January 1999) is listed for improved comparison).

Date	1 SDR = US dollar	1 SDR = Euro
2-1-1995	0.6739440000	---
2-1-1996	0.6739440000	---
2-1-1997	0.6943740000	---
2-1-1998	0.7445200000	---
4-1-1999	0.7087710000	0.8355700000
3-1-2000	0.7266960000	0.7332360000
2-1-2001	0.7639380000	0.7198590000
2-1-2002	0.7918310000	0.7156570000
2-1-2003	0.7365610000	0.7694120000
2-1-2004	0.6730490000	0.8475030000
3-1-2005	0.6482070000	0.8755330000
2-1-2006	0.7001110000	0.8279510000
2-1-2007	0.6627890000	0.8795210000
2-1-2008	0.6335250000	0.9305220000
1-2-2008	0.6267420000	0.9331560000
3-3-2008	0.6200150000	0.9426090000
17-3-2008	0.6059100000	0.9426090000

### III. PROPOSALS TO AMEND EXPLANATORY NOTE 0.8.3

7. In order to accommodate the request by the Working Party, the secretariat submits two separate proposals: in the first one, the dollar is replaced by the euro; in the second one, the reference to the SDR is introduced.

#### A. Proposal 1

##### Annex 6, Explanatory Note 0.8.3

For \$US 50,000 read 60,000 euros

For \$US 200,000 read [amount to be discussed] euros

##### Comment to Explanatory Note 0.8.3

For \$US 50,000 read 60,000 euros

For \$US 200,000 read [amount to be discussed] euros

##### Comment to Article 23<sup>6</sup>

For \$US 50,000 read 60,000 euros

For \$US 200,000 read [amount to be discussed] euros

<sup>6</sup>For alternative proposals to amend the comment to Article 23, see also document ECE/TRANS/WP.30/2008/10.

**B. Proposal 2**

Annex 6, Explanatory Note 0.8.3

For \$US 50,000 read [amount to be discussed] Special Drawing Rights

For \$US 200,000 read [amount to be discussed] Special Drawing Rights

At the end of the Explanatory note insert a new paragraph reading

The unit of account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund.

Comment to Explanatory Note 0.8.3

For \$US 50,000 read [amount to be discussed] Special Drawing Rights

For \$US 200,000 read [to be discussed] Special Drawing Rights

Comment to Article 23<sup>7</sup>

For \$US 50,000 read [amount to be discussed] Special Drawing Rights

For \$US 200,000 read [amount to be discussed] Special Drawing Rights

**IV. FINAL CONSIDERATIONS BY THE WORKING PARTY**

8. The Working Party is invited to consider both proposals, separately or together and, if possible, decide to transmit the finalized proposal to the TIR Administrative Committee for adoption.

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<sup>7</sup> For alternative proposals to amend the comment to Article 23, see also document ECE/TRANS/WP.30/2008/10.