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Geneva, 6 February 2014

Item 4 (a)(i) of the provisional agenda

Activities and administration of the TIR Executive Board –**Activities of the TIR Executive Board:****Report by the Chair of the TIR Executive Board****Report of the fifty-fourth session of the TIR Executive Board
(TIRExB)****Summary*

The present document is submitted pursuant to Annex 8, Article 11, paragraph 4 of the TIR Convention, 1975, which stipulates that the TIR Executive Board (TIRExB) “shall report on its activities to the Administrative Committee at least once a year or at the request of the Administrative Committee”.

I. Attendance

1. On 5 July 2013, the Federal Customs Service of the Russian Federation (FCS) announced that, starting 14 August 2013, carriers transporting goods in the territory of the Russian Federation under cover of a TIR Carnet, would be required to provide other guarantees, according to Article 217, paragraph 1 and Article 86 of the Customs Code of the EurAsEC Customs Union. On 8 August 2013, it was announced that introduction of the measure was postponed until 14 September 2013. Following those announcements and in line with Annex 8, Article 11, paragraph 1 of the Convention, Mr. M. Ciampi (Italy), Mrs. A. Dubielak (Poland) and Mr. H. Lindström (Finland) requested the secretariat to urgently organize an extraordinary TIRExB session to assess the situation. Consequently, TIRExB held its fifty-fourth session on 27 August 2013 in Geneva.

2. The following members of TIRExB were present: Mr. M. Ciampi (Italy), Mrs. D. Dirlik (Turkey), Mrs. A. Dubielak (Poland), Mrs. L. Jelinkova (European Commission),

* This document was submitted late for processing since clearance in finalizing this document took longer than anticipated.

Mr. H. Lindström (Finland), Mr. S. Somka (Ukraine) and Mr. K. Syaskov (Russian Federation).

3. Mr. I. Makhovikov (Belarus) and Mr. V. Milošević (Serbia) were excused.

4. At the invitation of the Chair of TIRExB and in accordance with Annex 8, Article 11, paragraph 5 of the Convention, the following experts and organizations attended the session as observers: Chair of the Administrative Committee of the TIR Convention (AC.2), Chair of the UNECE Working Party on Customs Questions affecting Transport (WP.30), European Commission, Eurasian Economic Commission, Permanent Mission of the Russian Federation in Geneva, Association of International Road Transport Carriers (ASMAP) and International Road Transport Union (IRU).

II. Introductory statement by the Chair

5. In her opening statement, Mrs. Dubielak (Poland) once more clarified that the reason for convening, at short notice, this extraordinary session of the Board was to assess the situation created by the measure by the FCS to require additional guarantees for goods carried under cover of a TIR Carnet, announced to be introduced on 15 August 2013 (and, on 8 August 2013 postponed until 14 September 2013). According to the limited information available, the measure seemed to have been mainly triggered by two facts:

(a) an accumulated customs debt by ASMAP of more than twenty billion roubles;

(b) the fact that the guarantee provided by ASMAP to cover its liabilities vis-à-vis customs was no longer in conformity with national Russian legislation.

6. FCS had posted the intended measure on its website on 5 July 2013, providing any further information for TIR operators how to proceed. The announced measure had also not been submitted to TIRExB for examination, as required by the provision of Article 42 bis of the Convention.

7. The purpose of this session was to (a) gather a complete picture and real facts about the disputed debts, in particular against the backdrop of the various agreements concluded between the Russian Customs and IRU up and until December 2002; (b) assess whether or not the measure seems to be in compliance with the provisions of the TIR Convention; and (c) discuss the repercussions of the measure, once implemented, for the national and international transport industry and seek ways how to minimize the negative impact for transport and trade.

III. Opening statement on behalf of the UNECE

8. On behalf of UNECE, Mrs. Molnar, Director of the Transport Division, thanked TIRExB for having taken the decision to come together at such short notice, in an attempt to avoid the TIR system landing in a crisis. She also expressed her satisfaction with the fact that various outside stakeholders, who are directly affected by the measure, had positively replied to the invitation by the Chair of TIRExB (which usually meets in closed sessions) to attend this extraordinary meeting. At the same time, she expressed her regret that neither the head of FCS nor one of his senior staff had accepted the invitation to attend. At the same time, she much appreciated the fact that Mr. Syaskov (Russian Federation), who is a TIRExB member but also a staff member of FCS had made himself available to come to the meeting and provide as much information as possible on the situation, talking from his personal perspective.

9. According to Mrs. Molnar, although the current situation might evolve to become the biggest threat, so far, to the continuity of the TIR system, she expressed the hope that it

could also lead to the further strengthening or renewal of the TIR system. In her view, the main purpose of the meeting was (a) to obtain clarity about the situation at hand; (b) prevent a crisis from happening by convincing FCS to postpone or, eventually, abandon the intended measure; and (c) show the relevance of TIRExB's objective and professional assessment for this and future situations.

IV. Adoption of the agenda

Documentation: Informal document TIRExB/AGE/2013/54/Rev.1, Informal document TIRExB/AGE/2013/54/Rev.1/Add.1

10. TIRExB adopted the agenda of the session as contained in Informal document TIRExB/AGE/2013/54/Rev.1 and its annotations as contained in Informal document TIRExB/AGE/2013/54/Rev.1/Add.1 without further additions.

V. Settlement of disputes between Contracting Parties, associations, insurance companies and international organizations

The decision of the Russian Federal Customs Service affecting the functioning of the TIR system

A. Background and rationale of the decision

1. Accumulated debt by ASMAP

Documentation: Informal document No. 18 (2013), Informal document No. 19 (2013), Informal document No. 25 (2013)

11. Mr. Syaskov (Russian Federation) informed the Board of the significant debts by ASMAP that have been accumulated over more than a decade and, according to the Russian Federal Customs Service (FCS), the on-going trend for these debts to increase. The debts mainly involve claims against foreign carriers having committed infringements against Customs legislation in the Russian territory, for which ASMAP acts as liable national association. FCS insists on the full payment by ASMAP of these debts as they cannot be written-off. FCS and ASMAP have established a working group, in which the Ministry of Foreign Affairs and IRU participate as observers to analyse all pending claims from 1994 up to present. In the view of Mr. Syaskov (Russian Federation), it may be concluded as a result of the two sessions of the working group, that the parties had achieved better understanding of each other's position, but not converging of their positions. However, the working group is expected to formulate first conclusions, before 14 September 2013.

12. Mr. Syaskov (Russian Federation) further clarified that ASMAP does no longer fulfil the criteria to continue as national guaranteeing association in the Russian Federation, in accordance with the provisions of the TIR Convention and the Russian national legislation. He explained that, in accordance with the provisions of Annex 9, Part I, Article 3 (v), when concluding an agreement with the competent authorities, the association has to provide for coverage of its liability. According to the provisions of the TIR Convention, a guarantee agreement is based on the national legislation of the Contracting Party. He informed the Board that, according to FCS, the supreme court of Russia had concluded that the 2004 agreement between FCS and ASMAP is a surety (letter of comfort). According to Russian legislation, a surety of an association can only be accepted by the customs authorities if a banking guarantee is furnished to cover financial liabilities. In the eyes of FCS, ASMAP has, until now, not furnished the due cover of its liabilities, as foreseen by the TIR Convention and the national legislation.

13. In reply to questions from various TIRExB members how this situation could have evolved so dramatically, Mr. Syaskov (Russian Federation) stated that this is one of the issues the working group has been asked to assess.

14. With regard to the legal basis of the intended measure, Mr. Syaskov explained that the rationale of the decision is stated in a letter signed by Mr. Beliyaninov, head of FCS, on 4 July 2013, which was sent to ASMAPs and posted on the FCS website on 5 July 2013. The purpose of the measure was twofold: to find a solution for old debts and to prevent the establishment of new debts. In reply to a question from Mrs. Molnar (UNECE), Mr. Syaskov was of the view that, in case a solution for both issues could be found before 14 September 2013, the intended measure would not be implemented.

15. From its side, IRU clarified that up and until 2003 there have been various agreements between IRU and, at that time, State Customs Committee (SCC), in order to settle claims which were, to a large extent, the consequence of large scale serial fraud, in which, in particular one single Russian Customs office had been involved. Since then, the situation has greatly improved with, in 2012, 30 claims paid and only three unsettled and, in 2013, 8 claims pending. Despite repeated requests, FCS has not provided IRU with a detailed list of pending claims, but, in the view of IRU, it remained obvious that the claims stemming from before the December 2002 agreements were included in the list.

16. ASMAP confirmed its surprise over the intended measure. In its view, the debts dating from before 2003 had been fully settled by the December 2002 Agreement. The fact that these debts have not been written-off by Russian customs was a clear violation of the provisions of the Agreement. With regard to the evolution of debts over the period of 2003–2013, it referred to Informal document No. 25 (2013), which contains detailed information.

17. TIRExB welcomed Informal document 19 (2013) by the secretariat, in which it reported on the three surveys (2002, 2007 and 2011) conducted by TIRExB on claims raised against the person(s) directly liable as well as against national guaranteeing associations. The figures reported by the Russian Federation show that, in 2002 and 2007, the situation was very serious, considering that 84 per cent, respectively 97 per cent, of claims raised in the periods 1999–2001 and 2004–2006 were still pending in the reporting year. This ratio dropped to 12 per cent for the period 2007–2010, indicating that, with regard to recent claims, the situation had improved drastically.

18. TIRExB established that the various parties apply different statistics when it comes to the number and amount of pending claims, making it impossible to assess the real extent of the debt problem. But all of them show that the number and amount of customs claims have substantially reduced over the last decade, due to the concerted efforts of FCS, ASMAP and IRU and through the introduction of modern IT tools. At the same time, the large number of old claims, which seem to remain unsettled, threaten the continuity of the TIR system.

19. TIRExB welcomed the establishment of a working group by FCS and ASMAP to clarify the debt situation and to review the pending claims from 1994 until now. The Board stressed that finding a solution remains the responsibility of the above parties and called upon them to reach an agreement on the validity and settlement of these claims as soon as possible, based on the TIR Convention and applicable national legislation.

20. With regard to problems related to the authorization of ASMAP, TIRExB was of the view that this issue belongs to the domain of national legislation and urged the concerned parties to find a solution which would be in line with the Customs Code of the Customs Union and the national legislation of the Russian Federation as well as the provisions of the TIR Convention. At the same time, TIRExB stressed that, as long as ASMAP is authorized by the competent authorities, its guarantee is valid and should be the only one required to perform the operations under cover of TIR Carnets in the Russian Federation.

2. The Customs Code of the EurAsian Customs Union

Documentation: Informal document No. 20 (2013)

21. TIRExB considered Informal document No. 20 (2013), prepared by the secretariat and containing an analysis of the links between the TIR Convention and the Customs Code of the EurAsian Customs Union. Mr. Syaskov (Russian Federation), challenged the correctness of some of the statements, but preferred to reply at a later stage once the document would have been made available in Russian. As a consequence, TIRExB decided to revert to this document at its next session.

3. Other considerations

22. Due to the absence of any further background material, TIRExB had no further considerations under this agenda item.

B. Legal analysis of the Federal Customs Service decision

Documentation: Informal document No. 21 (2013), Informal document No. 22 (2013)

23. TIRExB took note of Informal document No. 21 (2013), containing a legal analysis prepared by DLA Piper.

24. The Board extensively discussed Informal document No. 22 (2013), containing a preliminary analysis by the secretariat of the application of the provisions of the TIR Convention. The Board expressed its satisfaction with the analysis and agreed that requiring any kind of additional or alternative guarantee in any form, as stipulated by the announced measure, would contradict Articles 3, 4, 6 and 49 of the Convention. In addition, the Board was of the view that FCS was not honouring the requirement of Article 42 bis, considering that the measure had not been submitted to TIRExB for examination. In this regard, TIRExB considered the publication of the measure on the website of FCS as an insufficient and improper method of conveying such important decision, both with regard to TIRExB as well as to the general public. With regard to the future, TIRExB invited FCS to communicate any prospective measure well in advance to TIRExB, thus allowing TIRExB (and AC.2) sufficient time to properly examine the measure, well in advance of its entry into force.

25. In view of the above considerations, TIRExB concluded that, should the FCS decision come into force, it would not comply with the various provisions of the TIR Convention, in particular its Articles 3, 4, 6, 42 bis and 49. Therefore, the Board called upon FCS to properly apply the TIR Convention and to abandon the introduction of the announced measure. Pending a decision on cancellation, the measure should be postponed until, at least, the end of 2013.

26. Mr. Syaskov (Russian Federation) drew the attention of TIRExB to the fact that the provisions of the TIR Convention define the application of the national legislation of a Contracting Party with respect to the guarantee agreement and do not restrict the right of the competent authorities to request that the national guaranteeing association's liabilities be financially covered in a proper way. In the absence of such coverage, the measures introduced by FCS are not additional control or security measures, but replacing measures. Thus, according to him, the FCS decision does not fall under Article 42 bis and does not constitute an infringement of Articles 3, 4, 6 and 49 of the TIR Convention.

C. Procedures to follow in communicating measures that affect the functioning of the TIR system

Documentation: Informal document No. 23 (2013)

27. TIRExB took note of Informal document No. 23 (2013) and thanked the secretariat for preparing it. In view of the limited time, the Board decided to revert to this document at its next session.

D. Implications of the Federal Customs Service decision

Documentation: Informal document No. 24 (2013)

28. TIRExB took note of Informal document No. 24 (2013), submitted by ASMAP and containing an analysis of the economic costs which will be incurred by transport operators in case they would have to acquire national guarantees rather than being able to continue using the TIR procedure. In view of limited time, the Board decided to revert to this document at its next session.

E. Transparency in the TIR system

29. Due to lack of time, TIRExB decided to postpone discussions on this agenda items to its next session.

F. Conclusions and recommendations of the TIR Executive Board

30. TIRExB adopted the conclusions and recommendations of the session, as contained in Annex to this report and requested the TIR secretariat to make them public.

31. Mr. Syaskov (Russian Federation) expressed his reservations with regard to parts of the report as well as to the conclusions and recommendations.

V. Other matters

32. TIRExB did not consider any other matter.

VI. Restriction in the distribution of documents

33. TIRExB decided to keep all Informal documents prepared for the session restricted but decided that its conclusions and recommendations should be made public by means of posting them at the TIRExB website.

VII. Date and place of next session

34. TIRExB decided to conduct its 55th session from 30 September to 1 October 2013 in Geneva, in conjunction with the 135th session of WP.30 and the 56th session of AC.2.

Annex

Conclusions of the session

1. On 5 July 2013, the Federal Customs Service of the Russian Federation (FCS) announced that, starting 14 August 2013, carriers transporting goods in the territory of the Russian Federation under cover of a TIR Carnet, would be required to provide other guarantees, according to Article 217, paragraph 1 and Article 86 of the Customs Code of the EurAsEC Customs Union. On 8 August 2013, it was announced that introduction of the measure was postponed until 14 September 2013.
2. On 27 August 2013, the TIR Executive Board (TIRExB) held an extraordinary session, pursuant to Annex 8, Article 11, paragraph 1 of the Convention, to assess the situation created by the above decision. At the invitation of the Chair of TIRExB and in accordance with Annex 8, Article 11, paragraph 5 of the Convention, the following experts and organizations attended the session as observers: Chair of the Administrative Committee of the TIR Convention (AC.2), Chair of the UNECE Working Party on Customs Questions affecting Transport (WP.30), European Commission, Eurasian Economic Commission, Permanent Mission of the Russian Federation in Geneva, Association of International Road Transport Carriers (ASMMap) and International Road Transport Union (IRU).
3. TIRExB regretted that FCS had failed to officially bring the proposed measure for consideration by TIRExB, in line with Article 42 bis of the TIR Convention according to which national measures taken by competent authorities should be communicated immediately to the TIR Executive Board, which will examine their conformity with the provisions of the TIR Convention. Therefore, the Board requested FCS to urgently submit the details of the planned measure as well as of their rationale for examination to TIRExB.
4. In the absence of official FCS communications, based on the limited amount of information made public by various stakeholders as well as contributions by its members and invited experts at the session, TIRExB made the following considerations, conclusions and recommendations.
5. TIRExB noted that, as a justification for this measure, two arguments have been put forward by FCS:
 - (i) ASMMap's large and increasing number as well as amount of unpaid Customs claims due to frequent TIR infringements; and
 - (ii) The guarantee agreement between FCS and the national guaranteeing association ASMMap seems to be based on outdated national legislation. In particular, the way in which ASMMap covers its guarantee and liabilities under the TIR Convention does not correspond to the current Customs Code of the Customs Union of Belarus, Kazakhstan and the Russian Federation and the national legislation of the Russian Federation.
6. Concerning the first argument (5 (i)), the Board noted with satisfaction that the number and amount of Customs claims have substantially reduced in the Russian Federation over the last decade, due to concerted efforts of FCS, ASMMap and IRU and through the introduction of modern IT tools. At the same time, the large numbers of old claims, which still seem to be unsettled, threaten the continuity of the TIR system. TIRExB welcomed the establishment of a working group by FCS and ASMMap to clarify the debt situation and to review the pending claims from 1994 until now. The Board stressed that finding a solution remains the responsibility of the above parties and called upon them to reach an agreement on the validity and settlement of these claims as soon as possible, based on the TIR Convention and applicable national legislation.

7. Concerning the second argument by FCS (see 5 (ii) above), the Board was of the opinion that this issue falls in the domain of national legislation. The Board urged FCS, ASMAP and other relevant competent authorities to address this issue and, if required, to find a solution which would be in line with the Customs Code of the Customs Union and the national legislation of the Russian Federation and would also comply with the provisions of the TIR Convention. At the same time, TIRExB stressed that, as long as ASMAP is authorized by the competent authorities, its guarantee is valid and should be the only one required to perform the operations under cover of TIR Carnets in the Russian Federation. Requiring any other (additional, replacing, etc.) guarantees in any form would contradict to Articles 3, 4, 6 and 49 of the TIR Convention. Thus, this argument can by no means be used to impede the functioning of the TIR system.

8. In view of the above considerations, TIRExB concluded that, should the FCS decision come into force, it would not comply with the various provisions of the TIR Convention, in particular, its Articles 3, 4, 6, 42 bis and 49. Therefore, the Board called upon FCS to properly apply the TIR Convention and to abandon the introduction of the announced measure. Pending a decision on cancellation, the measure should be postponed until, at least, the end of 2013.

9. The Board also highlighted that, according to the Vienna Convention on International Law of Treaties, 1969, provisions of the Customs Code of the Customs Union and/or national legislation cannot be invoked to justify the non-compliance with the TIR Convention.

10. The Board pointed out the potentially damaging economic and political consequences that the FCS decision may entail, including but not limited to border delays, higher transport costs, disruption of road freight traffic and trade from/to/through Russia. It could not be excluded that those Contracting Parties, which would be most affected by the FCS decision, would start proceedings against the Russian Federation on the basis of relevant provisions of the TIR Convention, GATT and/or the Vienna Convention and might eventually introduce counter-measures against transport operators from Russia.

11. TIRExB invited the competent authorities of the Russian Federation, if required, to bring all relevant and potentially still pending issues for consideration to the Board and/or the TIR Administrative Committee (AC.2) at their forthcoming sessions on 30 September and 3 October 2013, respectively, and to refrain from taking any further measures, before these bodies discuss these issues and have come to a decision.

12. TIRExB mandated its Chair to report to AC.2 on the findings of the present session. The Board also requested the TIR secretariat to inform all parties concerned about the above considerations as well as to publish them in the form of the current conclusions on the UNECE TIR website without delay.

13. In summary, the Board:

- was of the view that the FCS decision would be in breach of the TIR Convention;
- urged FCS to properly apply the TIR Convention and to abandon the introduction of the announced measure;
- called upon the parties concerned to accelerate the negotiations and find solutions which would remove the concerns raised by FCS;
- declared its readiness to further assist the Russian Federation in finding ways and means to ensure smooth functioning of the TIR procedure in Russia, in line with modern Customs and business requirements.

14. The member of TIRExB from the Russian Federation expressed his reservations with regard to some of the above conclusions.