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Administrative Committee for the TIR Convention, 1975
(Thirty-ninth session, 6 October 2005,
agenda item 3 (a) (i))

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

Activities of the TIRExB

Report by the Chairman of the TIRExB

Report of the TIRExB at its twenty-fifth session

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its twenty-fifth session on 27 and 28 January 2005 in Geneva.
2. The following members of the TIRExB were present: Mr. M. Amelio (Italy); Mr. S. Bagirov (Azerbaijan); Mr. G.-H. Bauer (Switzerland); Mr. R. Boxström (Finland); Mrs. Y. Kasikçi (Turkey); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mrs. N. Rybkina (Russian Federation). Mr. O. Fedorov (Ukraine) was absent.

* The UNECE Transport Division has submitted the present document after the official documentation deadline due to planning oversight.

3. In accordance with Annex 8, Article 11, paragraph 5 of the Convention, the International Road Transport Union (IRU) attended the session as observer and was represented by Mr. J. Acri, Head, TIR System.

ADOPTION OF THE AGENDA

4. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2004/25) with the inclusion of the following subjects under agenda item 10 "Other matters":

- Dissemination of information regarding Customs stamps used in transit operations ;
- Implementation of Customs escorts in Ukraine;
- Application of the TIR procedure in Serbia and Montenegro;
- Transfer of funds to the TIR budget for the year 2005;
- Financial situation of the TIR Trust Fund on 31 December 2004;
- Statistical data on TIR Carnets distributed by the IRU to its member-associations in 2004;
- Computerization of the TIR system;
- Transmission of the legally required documentation to the TIRExB.

ELECTION OF A CHAIRMAN

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

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

Documentation: TIRExB/REP/2004/24draft.

6. The TIRExB adopted the report of its twenty-fourth session (TIRExB/REP/2004/24draft), subject to the following modifications:

Chapter title before paragraph 9

Modify to read as follows:

"Lost and stolen TIR Carnets"

Paragraph 9

Modify to read as follows:

"9. The TIRExB continued its deliberations on the issue of lost and stolen TIR Carnets and the listings of the issued by the IRU so-called "invalidated TIR Carnets". The Board agreed that such TIR Carnets could involve a high risk of Customs fraud and, therefore, should be checked and detained by the Customs authorities. At the same time, members of the TIRExB raised a number of points, both of legal and practical nature, which should be resolved with a view to making these activities more efficient:

- the legal/guarantee status of such TIR Carnets is not defined. As a result, when such a TIR Carnet is found, the Customs authorities have no clear legal grounds for follow-up actions. It concerns, in particular, TIR Carnets which have been listed as "invalidated" by the issuing association due to alleged infringements of internal rules committed by the holder;
- in some cases, a TIR Carnet, which first was listed as "invalidated" by the issuing association, has subsequently been withdrawn from the list. That may happen in the course of a TIR transport under cover of this TIR Carnet and can create confusion among the Customs authorities. To facilitate the work of Customs in this regard, it was proposed to complement lists of so-called "invalidated" TIR Carnets with the following data elements: date of invalidation, reason for invalidation, date of revalidation (if any and reason for that)."

After paragraph 9 add a new paragraph 10 to read as follows:

"10. The IRU explained that according to the rules in place, once invalidated, a TIR Carnet cannot be "revalidated"."

Change the numbering of paragraphs 10 – 28.

New paragraph 20 (old paragraph 19)

Modify the fourth sentence to read as follows:

"As a result, transport operators were forced to use a national transit procedure to cross the territory of Montenegro and to cover additional transit fees (up to EURO 400, according to the IRU)."

New paragraph 22 (old paragraph 21)

Delete the last sentence.

New paragraph 23 (old paragraph 22)

Modify the first sentence to read as follows:

"The TIRExB welcomed the possibility to consider the second group of amendment proposals and declared its readiness to contribute to the TIR revision."

New paragraph 24 (old paragraph 23)

Modify the paragraph to read as follows:

"24. The secretariat provided explanations with regard to interpretation of the figures in document TRANS/WP.30/AC.2/2004/12 concerning the budget of the TIRExB and the TIR secretariat for the year 2004, which had been prepared by the UN Financial Services in accordance with their standard layout. The TIRExB was satisfied with these explanations, but wondered whether it would nevertheless be possible, in the future, to present budget figures in such a way so that the amount of US\$ 305,000,00, which was reserved in order to cover the separation costs of the TIR secretariat in case of an early termination or expiration of the UNECE-IRU Agreement (TRANS/WP.30/AC.2/71, para.40), would be clearly visible. The TIRExB also endorsed the budget proposal and cost plan for 2005, as drafted by the secretariat (TRANS/WP.30/AC.2/2004/13), which was submitted to the TIR Administrative Committee for adoption."

New paragraph 25 (old paragraph 24)

Modify the paragraph to read as follows:

"25. At the request of the EU representative, the TIRExB was informed that the Government of the Russian Federation was considering to introduce obligatory pre-shipment inspection of certain goods before they are imported into Russia, and that this issue was not in the competence of the Russian Customs Service. The TIRExB felt that, as soon as the above measures would come into force, the Board should monitor whether their implementation had an impact on the application of the TIR procedure."

7. The revised text of the report of the twenty-fourth session of the Board is contained in document TIRExB/REP/2004/24.

BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER

Documentation: Informal document No. 2 (2005).

8. The TIRExB recalled that, at its twenty-fourth session, it had reached basic agreement on a procedure for by-elections in case of resignation of a TIRExB member. However, before reaching a final decision, the TIRExB wished to undertake an in-depth analysis of the opinion of the UN Office of Legal Affairs (OLA) with regard to the possible repercussions of the amended Rules of Procedure, contained in Informal document No. 2 (2005). To that end, the TIRExB had decided to revert to the issue at the present session.

9. The TIRExB took note of the views by the OLA, pointing out various complications which could accompany the introduction of the proposed procedure for by-elections. It particularly noted the OLA's opinion that the proposal would require an amendment of the legal text of the TIR Convention. In view of this, the TIRExB decided not to pursue the issue for the time being, as it had always been its intention to find a workable solution for the replacement of TIRExB members within the framework of the current text of the TIR Convention. However, the TIRExB recalled the seriousness of the situation it had faced in the course of its current mandate, where one member repeatedly had not taken part in the meetings of the Board without providing information regarding the background of his absence. Considering that the reoccurrence of this or a similar situation could seriously impede the well-functioning of the Board, the TIRExB stressed the importance of Contracting Parties ensuring the effective participation of the TIRExB member from their country in the meetings of the TIRExB. The Chairman of the TIRExB was requested to transmit the Board's considerations and concerns to the TIR Administrative Committee. Finally, the TIRExB requested the secretariat to prepare a document on conduct of business and voting procedures, to be discussed at one of the future sessions.

VALIDITY OF TIR CARNETS UNDER CERTAIN CIRCUMSTANCES

TIR Carnets invalidated by the TIR guarantee chain

Documentation: Informal document No. 5 (2005).

10. The TIRExB took note of Informal document No. 5 (2005) in which the IRU distinguished between four different types of TIR Carnets (lost, stolen, so-called "invalid" and so-called "invalidated") and described the dissemination of data on such TIR Carnets among Customs authorities. The Board welcomed the fact that, following the request of the TIRExB at the previous session (TIRExB/REP/2004/24, para.9), the IRU had changed the layout of its database and complemented it with additional data. These modifications would be applicable as of 1 February 2005.

11. The TIRExB reiterated that, with a view to combating Customs fraud, the Customs authorities have to continuously verify all TIR Carnets against listings issued by the IRU and detain such TIR Carnets, if discovered. In order to make these activities more efficient, the above listings should be disseminated as soon as possible from the IRU to central Customs administrations, and then from the latter to local Customs offices. The ultimate solution to this problem could be achieved in a fully computerized environment where all Customs officials "in the field" would have on-line access to the IRU's database.

12. For the time being, in view of inevitable delays in the distribution of data, the legal/guarantee status of lost, stolen, "invalid" and "invalidated" TIR Carnets seems to be a crucial issue for the Customs authorities. In this context, the TIRExB reiterated that the TIR Convention does not address this issue and recalled the opinion expressed by the Working Party at its eightieth session that "no general opinion could be given on the validity of stolen TIR Carnets as this was dependent on the specific circumstances of each individual case. However, the Working Party felt that in principle all properly issued TIR Carnets were considered to bear a valid guarantee..." (TRANS/WP.30/162, para.55). The representative of the IRU reiterated the position already expressed by the IRU at various occasions in the WP.30 on this matter and reproduced in the Informal document No. 5 (2005), i.e. once Customs authorities had been informed of stolen TIR Carnets and/or stamps, the use of such Carnets and/or stamps had no legal bearing and would thus not carry any guarantee. To make further progress, the TIRExB requested the secretariat to prepare a document on the relevant issues for consideration by the Board.

Presentation of a TIR Carnet with no validity date at the Customs office of departure or en route

13. The TIRExB recalled its earlier conclusion that TIR Carnets with no validity date should not be accepted by the Customs authorities (TIRExB/REP/2004/24, para.12). The Board was of the view that, in line with Article 9 of the Convention, the national issuing association is obliged to insert a validity date into box 1 of the cover page of the TIR Carnet. The Customs office of departure, in its turn, has to make sure that a validity date has been indicated and that the TIR Carnet is presented before the final date of validity. It was also pointed out that, in case the Customs office of departure had not checked the date of validity, Customs offices of other countries involved in the same TIR transport might bear the negative consequences of that mistake. For this reason, the TIRExB decided to recommend all Customs offices en route to check box 1 of the cover page and not to accept TIR Carnets with no validity date or if the TIR Carnet has been presented to the first office of departure after the final date of validity.

Transport of goods under cover of an expired TIR Carnet

14. The TIRExB decided not to consider this issue, because its initiator, the Polish guaranteeing association ZMPD, had withdrawn its request. The Board also made reference to its considerations reflected in the previous paragraph of the present report.

PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM

Survey on TIR fraud patterns

Documentation: Informal document No. 18 (2004).

15. The TIRExB discussed Informal document No. 1 (2005), prepared by the secretariat and containing the consolidated answers to the questions of the survey on the prevention of fraud within the TIR system (Annex 1), a draft accompanying letter (which, in the meantime, had been sent to Director-Generals of Customs, OLAF and WCO (Annex 2)) and an in-depth analysis of questions 3, 4, 6, 7, 9 and 10 (Annex 3). The TIRExB noted with satisfaction that many Customs authorities had put considerable effort in answering the questionnaire, providing extensive considerations to the various questions raised. At the same time, however, the TIRExB realized that the questionnaire would have limited impact, because of the fast pace with which circumstances, defining the context of fraudulent activities, change and because its conclusions only echoed the general trends of fraud, without being able to uncover new, as yet unknown, methods. In view of the importance of dissemination of information on new fraud trends to the competent authorities of Contracting Parties, the

TIRExB requested the secretariat to prepare a document outlining its ideas how to gather from and transmit to TIR Customs focal points information on fraud.

Application of Annex 9, Part II of the TIR Convention (controlled access to the TIR procedure for natural and legal persons)

Documentation: Informal document No. 6 (2005).

16. The TIRExB considered Informal document No. 6 (2005) by the secretariat, containing the results of the survey on the application of Annex 9, Part II of the TIR Convention. In particular, the Board noted that some progress had been made in the implementation of controlled access to the TIR procedure. The Contracting Parties take their obligations according to the relevant provisions of the TIR Convention seriously. A very important contribution is made by the national guaranteeing associations which, through the unified rules established by the IRU, provide for harmonized conditions for admission of their members to the TIR system.

17. On the other hand, the TIRExB noted with concern shortcomings in the application of Annex 9, Part II of the TIR Convention at the national level. For example, some Customs authorities outsourced their functions to the guaranteeing association. In particular, it was noted that few countries even considered the national association as a governmental authority. The Board felt that, although concerted actions by the Customs and national association are indispensable for the smooth implementation of the access procedure, the Customs authorities represent the Government and should not delegate their official role to the private sector.

18. The TIRExB was of the view that further improvement and harmonization of the application of Annex 9, Part II at the national level should be conducted through examples of best practice. To this end, the Board requested the secretariat to prepare relevant proposals. In this context, the IRU recalled its earlier proposals, as contained in Informal document No. 19 (2003). The TIRExB also decided that the main results of the survey should be distributed, by a circular letter, to all Contracting Parties as well as be published as a document for the TIR Administrative Committee.

Harmonized application of Article 38 of the TIR Convention

Documentation: TRANS/WP.30/2005/9.

19. At the request of Turkey, the Board discussed document TRANS/WP.30/2005/9 on a harmonized application of Article 38 of the TIR Convention. The Board felt that this issue should be split in two separate items:

- legal interpretation/definition of "serious offence against Customs laws or regulations" (Article 38.1);
- exchange of information regarding an exclusion of a transport operator from the TIR procedure (Article 38.2).

20. With regard to the first item, the TIRExB was of the view that, due to considerable differences in national legislations, it would be quite difficult to come to a common understanding of "serious offence against Customs laws or regulations", as it has not even been feasible in the European Union whose Member States have reached a very high degree of harmonization of national legislations. The Board felt that the gravity of an infringement should be determined according to the national law of the country where this infringement has been committed.

21. Concerning the second item, the TIRExB shared the concern of Turkey that more transparency on practical procedures in case of exclusions should be provided. To this end, a recommendation or example of best practice should be prepared, addressing such issues as:

- notification to the transport operator being excluded;
- a minimum number of details which communications regarding the exclusion should contain, like its motivation, details of the infringement, if the exclusion is temporary or permanent, etc.;
- means of appeal.

The secretariat was requested to prepare relevant proposals for consideration at one of the future sessions of the TIRExB.

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

Documentation: Informal document No.4 (2005).

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

- relevant extracts of the declaration of engagement by the TIR Carnet holder to the association, related to the issue of TIR Carnets;
- declaration of loss of TIR Carnets;

- general rules prescribed for the issue of TIR Carnets related to the use of subcontractors in the course of a TIR transport.

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

Documentation: Informal document No.3 (2005).

23. At the request of Mrs. N. Rybkina (Russian Federation), the TIRExB considered practical situations where a TIR transport (or a part of it) was conducted by a tractor unit which did not belong to the holder of the TIR Carnet (Informal document No. 3 (2005)). Such a situation occurs, for example, if trailers or semi-trailers with goods arrive at a sea port by ferry, and TIR Carnets have been already accepted in the country of departure where the holders are resident. In the port, the vehicles are picked up by tractor units belonging to transport companies who are resident in the country of destination.

24. The TIRExB felt that this matter is closely linked to the issue of responsibility of the TIR Carnet holder. The Board also noted that such operations are becoming more and more common in every day's practice, being a particular example of so-called intermodal operations where several transport operators take part in one delivery. To begin with, the Board decided to study modern logistical schemes applicable in this field and requested the secretariat, possibly in cooperation with the IRU, to draft a document for consideration by the TIRExB.

ISSUES RAISED BY THE AD HOC EXPERT GROUP ON THE TIR REVISION PROCESS

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25; TRANS/WP.30/2004/32; TRANS/WP.30/2004/38.

25. The TIRExB took note that the TIR Administrative Committee, at its October 2004 session, mandated the TIRExB to consider the amendment proposals of a technical nature, as identified by the Ad hoc Expert Group on the TIR Revision, and to report to the UNECE Working Party (WP.30) with its findings (TRANS/WP.30/AC.2/75, para.13). Following a short discussion, the Board requested the secretariat to prepare a consolidated document on the issue and invited its members to provide the secretariat with written comments on the proposed amendments.

ACTIVITIES OF THE TIR SECRETARIAT

26. The TIRExB took note of activities of the TIR secretariat that had been carried out in accordance with its mandate, in particular, of TIR-related meetings held since the previous session of the Board (October 2004) as well as planned for the rest of 2005. The TIRExB was also informed of the steps undertaken by some countries in Asia in order to accede to the TIR Convention. In addition, the Board took note that a new edition of the TIR Handbook was made available on the TIR website in English, French and Russian.

OTHER MATTERS

Dissemination of information regarding Customs stamps used in transit operations

27. Mr. J. Marques (European Community) informed the TIRExB that the European Union had established a register which contained specimens of Customs stamps used in the framework of the TIR procedure in the EU Member States. He wondered whether it would be possible for the secretariat to establish a similar database covering all Contracting Parties to the TIR Convention or, at least, to share with the European Community specimens of Customs stamps of other countries which are available already now in the UNECE Register of Customs sealing Devices and Customs Stamps. It was agreed that the European Community would submit a written request in this regard which would be considered by the secretariat.

Implementation of Customs escorts in Ukraine

28. The TIRExB recalled its considerations, at the previous session, on the application of Customs escorts in Ukraine (TIRExB/REP/2004/24, paras.17-19). As no further information on the issue had been made available, the Board requested the secretariat to get in touch with the Ukrainian authorities concerning this matter.

Application of the TIR procedure in Serbia and Montenegro

29. The TIRExB recalled its earlier discussions on the application of the TIR procedure in Serbia and Montenegro (TIRExB/REP/2004/24, para.20) where two different Customs transit regimes existed. The Board took note that the UNECE secretariat had been in touch with authorities of this country and was informed about internal bilateral contacts between Serbia and Montenegro with a view to finding a solution to the problem. If it would not be solved in the near future, the secretariat would contact the UN Office of Legal Affairs (OLA) for clarification.

Transfer of funds to the TIR budget for the year 2005

30. The TIRExB took note that in November 2004 the IRU transferred to the TIR Trust Fund the funds required for the functioning of the TIRExB and TIR secretariat in 2005.

Financial situation of the TIR Trust Fund on 31 December 2004

31. The TIRExB took note that the expenses borne by the TIRExB budget in 2004 were provisionally estimated as US\$ 716,000. At the time of the present TIRExB session, the UNECE accounts, including the TIR Trust Fund, were reviewed by the UN Group of Auditors which might issue some recommendations for the future. The final audited accounts for the year 2004 would be transmitted for the October 2005 session of the TIR Administrative Committee for approval.

32. In this context, the TIRExB also took note that, due to the restrictions imposed on the regular UN budget, the posts of the TIR secretariat had not been included into the draft UNECE budget for 2006-2007 submitted to the UN Secretariat in New-York for further consideration and approval.

Statistical data on TIR Carnets distributed by the IRU to its member-associations in 2004

33. The TIRExB took note that in 2004 the IRU had issued some 3,200,000 TIR Carnets to its member associations. This figure did not substantially differ from the number of TIR Carnets issued in 2003.

Computerization of the TIR system

34. The TIRExB was informed of the recent developments and planned activities in the field of computerization of the TIR procedure. In this context, it noted that the secretariat was about to distribute to the Director-General's of Customs Administrations of the Contracting Parties to the TIR Convention an on-line questionnaire which would gather the requirements and constraints of the Contracting Parties in the context of computerization. The questionnaire also aimed at gathering the views of Contracting Parties on the expected outcome of the eTIR project as well as verifying their strategic and political support. The Board also took note that on-line access to the ITDB for the TIR Customs Focal points would be made available shortly, thanks to the launch of the ITDBonline web application.

Transmission of the legally required documentation to the TIRExB

Documentation: Informal document No.7 (2005).

35. The Board was informed of the current situation with regard to transmission of the legally required documentation to the TIRExB (Informal document No.7 (2005)). The TIRExB noted with concern that many countries still had to provide the TIR secretariat with an update as per 31 December 2004.

RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

36. The TIRExB decided that the distribution of the following documents, issued in connection with its present session, should be restricted: Informal documents No. 1 (2005) and No. 6 (2005).

DATE AND PLACE OF NEXT SESSIONS

37. In view of the forthcoming election of the TIRExB members on 3 February 2005, the Board felt that it would be more appropriate if the newly elected composition of the Board would decide to on the date and venue for the next session.
