

Distr.: General
24 September 2013
English
Original: English and Russian

Economic Commission for Europe

Administrative Committee for the TIR Convention, 1975

Fifty-sixth session

Geneva, 3 October 2013

Item 3 (a)(i) of the provisional agenda

Activities and administration of the TIR executive board (TIRExB):

Activities of the TIR Executive Board –

Report by the Chair of the TIR Executive Board

Conclusions of the TIR Executive Board at its fifty-fourth session (Geneva, 27 August 2013)

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 (ASMAR) 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) ASMAP'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 ASMAP seems to be based on outdated national legislation. In particular, the way in which ASMAP 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, ASMAP 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 ASMAP to clarify the debt situation and to review the pending claims from 1999 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.
