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Working Party on Customs Questions affecting Transport

(One-hundred-and-seventh session, 15-18 June 2004,
agenda item 6 (c) (iii))

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

Application of the Convention

Settlement of claims for payments

Old insurance pool

Transmitted by the International Road Transport Union (IRU)

Note: The secretariat reproduces below a communication transmitted by the International Road Transport Union (IRU).

1. The Working Party, at its last meeting, has requested the International Road Transport Union (IRU) to provide a document summarizing the Arbitration Decision pronounced in the framework of the procedure engaged by the International Road Transport Union (IRU) against the old insurance pool, as well as the assessed results of this procedure.

A. SUMMARY AND OBJECTIVE OF THE ARBITRATION PROCEDURE

2. After the cancellation by the insurers of the surety-insurance contract concluded with the International Road Transport Union (IRU) and the guarantee chain, notified by registered letter dated 5 December 1994 and according to the insurance contract, the International Road Transport Union (IRU) engaged 2 arbitration procedures against the 3 companies forming an insurance pool, PFA - La Concorde - Kravag, namely:

- (a) A procedure to convict the insurers for the illegal cancellation of the insurance contract and to obtain confirmation of the validity of the contract;
- (b) Procedure to obtain confirmation of the insurance guarantee for each claim presented by the Customs.

3. On the 17 November 1997 the Arbitration Court submitted its decision in the first procedure confirming the illegal cancellation by the insurers and confirming as a consequence, the validity of the insurance contract for the carnets issued before the date of cancellation.

4. In the framework of the second procedure, the Arbitration Court on the same day submitted a first partial decision with the purpose of defining the method to be used for the individual examination of the files.

5. From that date long and tedious exchanges took place, and categories of files were constituted in order to be examined by the Arbitration Court.

6. As indicated several times it is important to note that the arbitration procedures engaged by the International Road Transport Union (IRU) did not aim at judging the legitimacy of the claims for payment presented by the customs authorities, but solely had the purpose of assessing, case by case, the existence of the guarantee from the insurers.

B. THE DECISION OF 16 DECEMBER 2003

7. With its decision of 16 December 2003, the Arbitration Court has finalized the procedure of examining all individual files. The result of the decision was the classification, in 3 categories, of the files which were still open:

- (a) Cases for which the insurers' guarantee was confirmed, to the extent that oppositions are rejected by a final Decision by a local competent Court that confirms the legitimacy of the Customs' claims.
- (b) Time-barred cases for which the delays foreseen by the TIR Convention (Art. 11) for the notification and presentation of the payment claims to the national guaranteeing associations were not respected, and for which no guarantee neither by the associations nor, *a fortiori*, by the insurers could be called upon.
- (c) Cases for which the insurers were relieved of every obligation and for which the International Road Transport Union (IRU) (and its member associations) had to assume the administration and the financial consequences of the cases, if the legitimacy of the payment claims was established and confirmed by local competent Courts.

C. STATISTICS

- Number of open cases under the coverage of the old insurance pool: 6,205
- Number of cases closed (through payment or closed without payment) between 05.12.1994 and 25.04.2004: 3,993 (i.e. more than 64% of the open cases).
- Number of cases for which the insurers' guarantee was confirmed in circumstances where the oppositions are rejected by a final Decision of a local Court that confirms the legitimacy of the claims: 1,500 (i.e. 24% of the open cases).
- Time-barred cases where no guarantee can be called upon: 228 (i.e. 3.6 % of the open cases).
- Number of cases for which the insurers are relieved of all obligations: 484 (i.e. 7.8 % of the open cases).

8. The statistics show that thanks to the efforts of the International Road Transport Union (IRU) and its member associations, 3,993 cases, i.e. 64 % of all cases concerned, have already been dealt with and settled during the (too long) arbitration period, covering all countries in which claims were presented - an achievement that should not be underestimated.

9. It seems reasonable to conclude that all cases, which could be settled during the 10 years, have been settled and terminated.

10. For the files still open it should be remembered that the legitimacy of these files have been disputed from the very beginning by the guaranteeing associations, the International Road Transport Union (IRU) and the insurers in accordance with the usual procedures. The lack of proof of legitimacy in calling on the guarantee which existed earlier still remains today.

D. NEXT STEPS

11. For the files still open or unsettled, the legitimacy has to be established either:

- by an administrative decision taken by the Customs Authorities, closing all cases where, according to the TIR Convention and its constant application for the last 50 years and the precedent by the Highest Courts of several countries, no amounts are due to be paid by the guarantee chain, or
- by bringing the cases before the competent National Courts in full equality and independency to confirm the validity of the claims presented by the Customs Authorities to the guaranteeing Associations acting as surety or by deciding to reject them on the basis of legal arguments presented by the guarantee chain,
- by resolving the situation by global treatment through appropriate agreements.
