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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport
(One-hundred-and-seventh session, 15-18 June 2004,
agenda item 6 (c) (i))

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

Application of the Convention

Functions and roles of the TIRExB, the TIR secretariat and the IRU

Note by the secretariat

1. The Administrative Committee, at its thirty-sixth session, considered document TRANS/WP.30/AC.2/2003/11, containing the views of the Chairman of WP.30 on the roles and responsibilities of the parties involved in the TIR system.
2. The Administrative Committee requested the secretariat to prepare a document for the UNECE Working Party WP.30 containing proposals for the inclusion of parts C, D, E and F of document TRANS/WP.30/AC.2/2003/11 into point 1.9 of the introduction to the TIR Handbook (TRANS/WP.30/AC.2/71, paras. 55-57).

3. Following the above request, the secretariat has issued document TRANS/WP.30/2004/16. As indicated in para.5 of this document, since the underlying parts of document TRANS/WP.30/AC.2/2003/11 were not originally drafted for the introduction to the TIR Handbook, it did not seem feasible to incorporate their contents as such. Therefore, the secretariat has taken the liberty to re-arrange the text and to introduce some linguistic changes.

4. In particular, such modifications have been made to chapter C "Role and functioning of the TIRExB – clarification", a major part of which contains comments on various provisions of the TIR Convention. Though valuable, these comments do not fit the context of the TIR Handbook's introduction whose objective it is to give a general overview of the TIR system and which is mainly designed for readers who have not much experience in the TIR Convention.

5. On the other hand, chapter C of document TRANS/WP.30/AC.2/2003/11 includes numerous pertinent remarks on the role and functioning of the TIRExB which could be used as guidance for the future activities of the TIRExB. Therefore, if not incorporated into the introduction to the TIR Handbook, they can could be included into other documents, such as the Terms of Reference of the TIRExB and its Rules of Procedure.

6. For example, the following proposals may be included into the Rules of Procedure:

Status of TIRExB documentation

- (i) Documents prepared by the TIRExB, or on its request by the TIR secretariat, are working documents and are to be so endorsed;
- (ii) In principle all TIRExB documents should be "open" documents and the classification "restricted" should not be applied;
- (iii) It follows from para. 2 above that the content of all TIRExB working documents are not legally binding nor can they be regarded as representing the position of the AC.2. Each document should be annotated accordingly;
- (iv) However, commercially sensitive documents or information are to be treated with appropriate discretion.

Organization of work

- (i) At the beginning of each 2-year term, the TIRExB will develop a prioritized, yet flexible, work programme and submit it to the AC.2 for approval;
- (ii) This work programme will ensure that the TIRExB's energies are focused on its prime functions;
- (iii) The Chairman will periodically report on the Work Programme to the AC.2.

7. The Terms of Reference may benefit from the following proposals:

Status of TIRExB decisions

- (i) TIRExB must, out of necessity, give its opinion on how the TIR Convention should be applied, and inevitably this will involve an interpretation of the Convention;
- (ii) However, TIRExB cannot give legally binding interpretations of the Convention; this is the sole preserve of the AC.2;
- (iii) Accordingly TIRExB can only make recommendations (for change) or give its opinion;
- (iv) While the TIRExB gives its views on a dispute, it has no arbitration role. It should avoid intervening in matters that are subject to (or proper to) the judicial process at national courts.

8. Furthermore, there are some provisions concerning the performance of TIRExB members, such as:

- The individual members should bring to the TIRExB their personal experience, wisdom and awareness to enable both the technical and strategic consideration of the issue under consideration;
- The role of the Chair is vital to ensure that this balance is maintained.

Since these suggestions are of moral nature, rather than legal, they could be included in the reports of sessions of WP.30 and/or AC.2. Alternatively, WP.30 may wish to consider the incorporation of these proposals into the Code of Conduct of TIRExB – a document which does not exist for the time being, but could be established at a later stage.

9. The secretariat considers the proposals reproduced above as general recommendations and will use their substance in order to complement the respective TIRExB documents. At the same time, it seems that the wording of these provisions could be further improved. WP.30 is invited to provide the secretariat with its views in this respect.
