



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

(Thirtieth session, 29 and 30 November 2006,
agenda item 7)

**DRAFT SURVEY ON THE TIR GUARANTEE LEVEL AND
ON THE FUNCTIONING OF THE TIR GUARANTEE SYSTEM**

Note by the secretariat

A. BACKGROUND

1. The Board, at its twenty-eighth session, recalled that, according to its Programme of work, the TIRExB should supervise the functioning of the TIR international guarantee system and should monitor constantly the settlement of Customs claims on the basis of information provided by national Customs authorities and the IRU. The TIRExB noted that the figures submitted by the IRU do not provide for data on a country-by-country basis, which are important for the monitoring of Customs claims. In this context, TIRExB recalled the survey of national Customs administrations on Customs claims undertaken by the TIR secretariat in 2002 (TIRExB/REP/2003/17, para.28 and Informal document No. 26/Rev.1 (2002)). The Board felt that similar information on a country-by-country basis should be collected at regular intervals and requested the secretariat to prepare proposals on the content and procedure of such a survey. Following this request, the secretariat drafted Informal document No.10 (2006).

2. At its twenty-ninth session, the TIRExB took note of a draft survey on Customs claims prepared by the secretariat (Informal document No.10 (2006)). The Board felt that this survey should be combined with the study on the guarantee level, as mentioned below, and requested the secretariat to draft a new document for consideration at the next session (TIRExB/REP/2005/29draft, para.19).

3. In parallel to the survey on Customs claims, the TIRExB considered Informal document No.9 (2006) and Informal document No.11 (2006) on the possible increase in the TIR guarantee

level within the context of the difference in the maximum guarantee amount between the EU Member States (EURO 60,000) and other Contracting Parties (US\$ 50,000). The TIRExB noted that this difference had appeared unintentionally and was due to the fact that the US dollar had significantly lost its value against the EURO. Nevertheless, the Board felt that there should be an equal treatment of all Contracting Parties, and having the same guarantee level would be in the spirit of the Convention. Once this goal is achieved, precautionary measures should be taken with a view to avoiding problems with fluctuating currency exchange rates in the future (TIRExB/REP/2005/29draft, para.16).

4. The Board also considered that not only the declining US dollar exchange rate, but also other factors, such as a big share of expensive and highly taxable goods, an increase in the vehicles' carrying capacity and new packing technologies had contributed to a significant number of TIR transports where the amount of Customs duties and taxes due exceeded the TIR guarantee level. This situation resulted in an excessive use of Customs escorts in some countries. With a view to obtaining an overall picture, the Board decided to undertake a study on the issue whether or not the current TIR guarantee level is considered appropriate by the Contracting Parties. As a first step, the secretariat was requested to draft a questionnaire for consideration at the next session of the TIRExB (TIRExB/REP/2005/29draft, para.17).

5. Against this background, the secretariat has prepared Informal document No.10 (2006)/Rev.1.

B. SURVEY CONTENT

Customs claims statistics

6. With regard to the possible content of a survey on settlement of Customs claims, the TIRExB may wish to consider the previous questionnaire distributed by the Board in 2002 (Informal document No.20 (2002)), which is reproduced in the Annex to the present document for easy reference.

7. When drafting this questionnaire, a lengthy procedure for raising and settlement of Customs claims was taken into consideration. Indeed, according to the time-scale stipulated in Article 11:

- a notification to the guaranteeing association can be made up to one year following the date of acceptance of the TIR Carnet;
- a request for payment can be made up to two years from the date of notification;
- the association has three months to pay the claim. However, if the claim becomes the subject of court proceedings, it may well take one year or longer for the competent court to pronounce its judgement.

As a consequence, a typical Customs claim is settled between 1-3 years from the date of infringement. Given such a delay, the common statistics providing for absolute figures of various claim groups at specific moments in time are not very informative, as they do not reflect progress made in the settlement of particular claims and their subsequent migration from one group to another. For this reason, the 2002 survey was based on another approach: to fix a group of claims at the moment they appear (for example, claims submitted during one calendar year) and then to see how these claims evolve over time.

TIR guarantee level

8. As suggested in comments by TIRExB members in Informal document No.9 (2006), Contracting Parties to the TIR Convention could be invited to provide the following information:

- TIR guarantee limit established in the country;
- percentage of TIR operations for which the amount of Customs duties and taxes due exceed the established guarantee level;
- application of additional control measures in case of such TIR operations (which measures apply and how: systematically or selectively);
- existing problems in this field and proposals, if any.

C. SURVEY PROCEDURE

9. Once the survey content is approved, a procedure for data collection should be looked at. In particular, the following issues would need to be addressed:

- periodicity of collecting data on Customs claims. On the one hand, the more often data are collected, the more accurate the settlement of Customs claims can be monitored. On the other hand, the preparation of data would require certain efforts from Customs and could be time-consuming for countries with large numbers of claims. Thus, such an exercise should not be repeated too often. In view of the above, surveying Contracting Parties every 1 or 2 years may be regarded as a reasonable compromise;
- form in which the questionnaire will be distributed to Contracting Parties and reported back to the TIRExB. It is proposed to use, to the extent possible, an interactive on-line questionnaire providing for fast collection and processing of data;
- follow-up actions by the TIRExB. The Board may wish to decide which activities should be undertaken, depending on the reported data.

D. CONSIDERATIONS BY THE TIRExB

10. The TIRExB may wish to discuss the proposals by the secretariat.

TIR CONVENTION, 1975

QUESTIONNAIRE ON CUSTOMS CLAIMS AND ON THE TIR GUARANTEE LEVEL¹

(Draft – please do not reply at this stage!)

Country: _____

**Competent
authority:** _____

Date: _____

A. Customs claims statistics

1. Currency in which the total amount of claims (see table below) is indicated:

US dollars (preferable)

Other (please specify) _____

¹ On request, this questionnaire can be sent by e-mail as a MS Word file

2. Please provide the following aggregate data on Customs claims:

Claims lodged with the national guaranteeing association(s) ² (in line with Article 11.2)		Claims contained in columns (a) and (b) and <u>paid</u> by the association(s) ³ (as of today)				Claims contained in columns (a) and (b) and <u>not paid</u> by the association(s) (as of today)				
		Paid <u>within</u> 3 months from the date of submission of a claim (in line with Article 11.3)		Paid <u>after</u> 3 months from the date of submission of a claim		Claims withdrawn by Customs ⁴		Pending claims		
Year ⁵	Number (a) ⁷	Total amount ⁶ (b)	Number (c)	Total amount (d)	Number (e)	Total amount (f)	Number (g)	Total amount (h)	Number (i)	Total amount (j)
2002										
2003										
2004										
2005										
Total										

² In case of several guaranteeing associations established in one country, the cumulative figures should be given

³ Including direct payments made by the IRU or international insurers, if any, but excluding payments effected by the person(s) directly liable (Article 8.7)

⁴ Reasons for withdrawal of claims could be as follows: inquiries have established that the relevant TIR operation has been discharged, the Customs debt has been extinguished by the person directly liable, the stipulated one year deadline (Article 11.1) has not been met, etc.

⁵ Year applies only to columns (a) and (b). Other columns (from (c) to (j)) describe further developments concerning the claims included into (a) and (b), irrespective of the time when these developments have occurred

⁶ According to Article 8, paragraphs 1-3 of the TIR Convention

⁷ (a) = (c) + (e) + (g) + (i)

3. Main reasons why the abovementioned pending claims (columns (i) and (j)), if any, have not been met:

4. How many pending claims (columns (i) and (j)), if any, have become the subject of legal proceedings against the guaranteeing association(s)?

2002 _____

2003 _____

2004 _____

2005 _____

EXAMPLE OF FILLING-IN THE TABLE

The example given below describes a rather complicated imaginary situation in a Contracting Party. Its objective is to facilitate your filling-in the questionnaire.

Situation

In 2002, in a given Contracting Party, 50 claims (column (a)) were made against the national guaranteeing association with a total amount of USD 300,000 (column (b)). 10 claims (column (c)) out of 50 with a total amount of USD 70,000 (column (d)) were paid by the association within 3 months from the date when the relevant claim was lodged. The association also accepted 15 other claims (column (e)) with a total amount of USD 100,000 (column (f)) but effected payments after the stipulated deadline of 3 months.

The remaining 25 claims with a total amount of USD 130,000 were opposed by the association because, in their view, in 15 cases the TIR operations in question had been properly terminated and in 10 cases the Customs authorities had not taken measures against the person(s) directly liable in line with Article 8.7 of the TIR Convention. Relevant documents were forwarded to Customs. Following that, the Customs authorities performed further investigations and/or actions and were able to discharge 10 TIR operations and obtained payments from the TIR Carnet holder in 5 cases. As a result, Customs has withdrawn 15 claims (column (g)) with a total amount of USD 80,000 (column (h)).

With regard to the 10 debatable claims left, the Customs authorities have started legal proceedings before competent national courts. The courts have ruled in favour of Customs in 3 cases and in favour of the association in 2 cases. 5 controversial claims (column (i)) with a total amount of USD 25,000 (column (j)) are still under consideration. On the basis of relevant court decisions, the association has met 3 claims (to be added to (e)) with a total amount of USD 15,000 (to be added to (f)), and the Customs authorities have withdrawn 2 claims (to be added to (g)) with a total amount of USD 10,000 (to be added to (h)).

Table

Claims lodged with the national guaranteeing association(s) (in line with Article 11.2)		Claims contained in columns (a) and (b) and <u>paid</u> by the association(s) (as of today)				Claims contained in columns (a) and (b) and <u>not paid</u> by the association(s) (as of today)				
		Paid <u>within</u> 3 months from the date of submission of a claim (in line with Article 11.3)		Paid <u>after</u> 3 months from the date of submission of a claim		Claims withdrawn by Customs		Pending claims		
Year	Number (a)	Total amount (b)	Number (c)	Total amount (d)	Number (e)	Total amount (f)	Number (g)	Total amount (h)	Number (i)	Total amount (j)
2002	50	300,000	10	70,000	15+3=18	100,000+15,000=115,000	15+2=17	80,000+10,000=90,000	5	25,000

B. TIR guarantee level

5. What is the current TIR guarantee level in your country?

US dollars 50'000

EURO 60'000

Other (please specify) _____

6. What is the percentage of TIR operations where the amount of Customs duties and taxes due exceed the established guarantee level?

7. Do you apply additional control measures in case of TIR operations where the amount of Customs duties and taxes due exceed the established guarantee level?

Yes (go to questions 8 and 9)

No (go to question 10)

8. If you have replied 'yes' to question 7, please indicate which additional control measures you apply:

Escorts

Other (please specify) _____

9. If you have replied 'yes' to question 7, please specify how you apply the underlying measures:

Systematically

Selectively

**10. Which problems relating to the present TIR guarantee level, if any, would you like to report to the TIR Executive Board?
In your view, how could these problems be solved?**
