



TIR EXECUTIVE BOARD (TIRExB)
COMMISSION DE CONTROLE TIR (TIRExB)
ИСПОЛНИТЕЛЬНЫЙ СОВЕТ МДП (ИСМДП)

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TIR Executive Board (TIRExB)

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Agenda item 11

Monitoring the functioning of the TIR guarantee system

Note by the secretariat

A. Background

1. TIRExB may wish to recollect that, within its mandate to supervise the application of the Convention, including the operation of the guarantee system, it successfully conducted surveys of national Customs administrations on Customs claims in 2002 and 2006. Further to the last survey, TIRExB expressed the view at its thirty-sixth session (May 2008) that these surveys should be conducted not more frequently than every 2–3 years (TIRExB/REP/2008/36, paragraph 13). TIRExB, at its forty-fifth session (January 2011), invited the next composition of TIRExB to conduct, inter alia, a new survey on Customs claims in the course of 2011 (See also under agenda item IV of the present agenda).

2. In order to streamline the activities of TIRExB and to facilitate the preparation of the 2011 survey, the secretariat prepared this Informal document, containing an updated version of the 2006 survey, for consideration by the Board. In particular, TIRExB may wish to establish if the questions in the survey are still relevant or need amendment and which years should it cover. Finally, TIRExB may wish to provide guidance to the secretariat how to conduct the survey and its tentative timeframe.

B. Survey content

Customs claims statistics

3. With regard to the possible content of a survey on settlement of Customs claims, the TIRExB may wish to be reminded that, 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.

4. 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 and 2006 surveys were 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

5. Further to the 2006 survey, 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

6. Once the TIRExB has approved the content of the survey, it should establish a procedure for data collection. 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. Considering that the previous surveys have covered three (1999–2001) or four years (2002–2006), the proposed coverage of four years (2007-2010) seems to fall within the habitual timeframe;
- 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.

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

I. *Customs claims raised against the national guaranteeing association(s)*

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

US dollars (preferable)

Other (please specify) _____

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

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

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)
2007										
2008										
2009										
2010										
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)?

2007	_____
2008	_____
2009	_____
2010	_____

II. Customs claims raised against the persons directly liable

5. Please provide the following aggregate data on Customs claims raised against the persons directly liable:

	Claims lodged with the person(s) directly liable (in line with Article 8.7)		Claims contained in columns (a) and (b) and <u>paid</u> by the person(s) directly liable (as of today)		Claims contained in columns (a) and (b) and <u>not paid</u> by the person(s) directly liable (as of today)			
					Claims withdrawn by Customs ⁸		Pending claims	
Year ⁹	Number (a) ¹⁰	Total amount (b)	Number (c)	Total amount (d)	Number (e)	Total amount (f)	Number (g)	Total amount (h)
2007								
2008								
2009								
2010								
Total								

⁸ Reasons for withdrawal of claims could be as follows: inquiries have established that the relevant TIR operation has been discharged, a relevant court decision, etc.

⁹ 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

¹⁰ (a) = (c) + (e) + (g)

EXAMPLE OF FILLING-IN THE TABLE IN PARAGRAPH 2

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 2007, 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)
2007	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

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

- US dollars 50'000**
- EURO 60'000**
- Other (please specify) _____**

7. In 2010, what was the percentage of TIR operations where the amount of Customs duties and taxes exceeded the established guarantee level?

8. Among the claims submitted in 2010 (either against the person(s) directly liable or against the national guaranteeing association), what was the percentage of claims where the amount of Customs duties and taxes due exceeded the established guarantee level?

9. 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 10 and 11)**
- No (go to question 12)**

10. If you have replied 'yes' to question 9, please indicate which additional control measures you apply:

- Escorts**
- Other (please specify) _____**

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

Systematically

Selectively

12. 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?
