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Activities and administration of the TIR Executive Board –

Activities of the TIR Executive Board:

Survey on customs claims

Survey on customs claims

Note by the secretariat

I. Background and mandate

1. The TIRExB, at its fifty-fifth session, approved the final version of the survey on the TIR guarantee level and on the functioning of the TIR guarantee system and requested the secretariat to proceed with its distribution to Contracting Parties (TIRExB/REP/2013/55, para. 49). The secretariat prepared an online version of the survey and, in December 2013, sent out letters inviting countries to reply to the questionnaire via Internet. The deadline for replies was set at 31 January 2014.^{1, 2}

II. Replies

2. The following 38 countries have replied to the questionnaire: Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Lithuania, Malta, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and Turkey. Out of the 38, 18 countries did not have claims to report.

¹ On 13 February 2014, the deadline was further extended to 28 February 2014 (TIRExB/REP/2013/57, para. 23)

² On 30 June 2014, TIRExB took note that Turkey had also provided a reply and requested that a reminder be sent to the Russian Federation (TIRExB/REP/2013/59, para. 20)



III. Results of the survey

3. To provide a better overview of the situation in various Contracting Parties, the results are analysed separately for EU and non-EU countries. All amounts provided in national currencies have been converted into € using the exchange rates of 1 February 2014.³

A. Customs claims against national guaranteeing associations

1. EU countries

Table 1

General situation

(number of claims)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|-------------|------------------|----------------|
| 2009 | 76 | 13 | 56 | 7 |
| 2010 | 102 | 43 | 41 | 18 |
| 2011 | 74 | 16 | 25 | 33 |
| 2012 | 31 | 17 | 11 | 3 |
| Total | 283 | 89 | 133 | 61 |

Table 2

General situation

(amount of claims in €)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|------------------|------------------|------------------|
| 2009 | 1 125 996 | 192 385 | 822 913 | 115 664 |
| 2010 | 2 485 712 | 791 555 | 1 000 603 | 693 553 |
| 2011 | 3 352 380 | 444 759 | 313 530 | 2 321 588 |
| 2012 | 456 939 | 231 986 | 58 277 | 166 148 |
| Total | 7 421 028 | 1 660 685 | 2 195 324 | 3 296 953 |

³ Sources: United Nations Operational Rates of Exchange

Average claims

An average submitted claim amounts to € 26,223. Average paid, withdrawn and pending claims are equal to, respectively, € 18,659; € 16,506 and € 54,048.

Table 3

Paid claims

(number)

| <i>Year</i> | <i>Within 3 months</i> | <i>After 3 months</i> | <i>Total</i> |
|--------------|------------------------|-----------------------|--------------|
| 2009 | 3 | 10 | 13 |
| 2010 | 3 | 40 | 43 |
| 2011 | 7 | 9 | 16 |
| 2012 | 8 | 9 | 17 |
| Total | 21 | 68 | 89 |

Table 4

Paid claims

(amount in €)

| <i>Year</i> | <i>Within 3 months</i> | <i>After 3 months</i> | <i>Total</i> |
|--------------|------------------------|-----------------------|------------------|
| 2009 | 26 816 | 165 569 | 192 385 |
| 2010 | 36 596 | 754 960 | 791 555 |
| 2011 | 92 253 | 352 506 | 444 759 |
| 2012 | 77 278 | 154 707 | 231 986 |
| Total | 232 944 | 1 427 742 | 1 660 685 |

Withdrawn claims

On average, 47 per cent of claims have been withdrawn by customs.

Comments by countries why pending claims have not been paid

- Claims challenged in court.
- Appeals from the holders.

Claims that are subject to legal proceedings

52 claims in total (5 in 2009 and 15 in 2010 and 32 in 2012)

2. Non-EU countries

Table 5

General situation

(number of claims)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|-------------|------------------|----------------|
| 2009 | 21 | 13 | 7 | 1 |
| 2010 | 59 | 32 | 6 | 21 |
| 2011 | 51 | 46 | 2 | 3 |
| 2012 | 47 | 22 | 14 | 11 |
| Total | 178 | 113 | 29 | 36 |

Table 6
General situation
(amount of claims in €)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|------------------|------------------|----------------|
| 2009 | 321 948 | 269 053 | 95 625 | 17 619 |
| 2010 | 1 299 442 | 857 296 | 14 135 | 533 628 |
| 2011 | 917 634 | 1 025 444 | 0 | 33 927 |
| 2012 | 954 830 | 625 322 | 95 737 | 234 272 |
| Total | 3 493 854 | 2 777 115 | 205 497 | 819 445 |

Average claims⁴

An average submitted claim amounts to € 20,797. Average paid, withdrawn and pending claims are equal to, respectively, € 24,576; € 10,816 and € 22,762.

Table 7
Paid claims
(number)

| <i>Year</i> | <i>Within 3 months</i> | <i>After 3 months</i> | <i>Total</i> |
|--------------|------------------------|-----------------------|--------------|
| 2009 | 0 | 13 | 13 |
| 2010 | 2 | 30 | 32 |
| 2011 | 2 | 44 | 46 |
| 2012 | 17 | 5 | 22 |
| Total | 21 | 92 | 113 |

Table 8
Paid claims
(amount in €)

| <i>Year</i> | <i>Within 3 months</i> | <i>After 3 months</i> | <i>Total</i> |
|--------------|------------------------|-----------------------|------------------|
| 2009 | 0 | 269 053 | 269 053 |
| 2010 | 114 205 | 743 091 | 857 296 |
| 2011 | 9 324 | 1 016 120 | 1 025 444 |
| 2012 | 474 134 | 151 188 | 625 322 |
| Total | 597 663 | 2 179 451 | 2 777 115 |

Withdrawn claims

On average, 16 per cent of claims have been withdrawn by customs.

Comments by countries why pending claims have not been paid

- Carrier presented evidence about finding cargo at temporary storage. This evidence is now under verification by customs authorities.

⁴ Excludes Switzerland (did not provide the claims' amounts)

- The judicial procedures are still continuing. The national guaranteeing association generally files a lawsuit against customs when a claim for payment is sent.

Claims that are subject to legal proceedings

None.

B. Historical pending claims

Twenty-three countries replied to the following two questions and 9 reported figures other than zero.

Table 9

Number of pending claims due at the end of the year in the column header that were raised in the year (or time span) indicated in the line header

| <i>Claim raised in</i> | <i>Pending claims at the end of...</i> | | | |
|------------------------|--|-------------|-------------|-------------|
| | <i>2012</i> | <i>2011</i> | <i>2010</i> | <i>2009</i> |
| 2012 | 9 | | | |
| 2011 | 33 | 34 | | |
| 2010 | 18 | 18 | 18 | |
| 2009 | 7 | 9 | 9 | 9 |
| 2008 | 0 | 0 | 0 | 1 |
| 2007 | 1 | 1 | 2 | 2 |
| 2006 | 0 | 0 | 0 | 4 |
| 2005 | 0 | 0 | 1 | 8 |
| 2004 | 4 | 4 | 4 | 4 |
| 2003 | 0 | 0 | 0 | 1 |
| 2002 | 4 | 4 | 4 | 6 |
| 2001 | 0 | 0 | 0 | 0 |
| 2000 | 1 | 1 | 1 | 2 |
| 1995–1999 | 0 | 0 | 0 | 1 |
| 1990–1994 | 0 | 0 | 0 | 0 |
| 1985–1989 | 0 | 0 | 0 | 0 |
| 1980–1984 | 0 | 0 | 0 | 0 |
| 1979 and before | 0 | 0 | 0 | 0 |

Table 10

Amount of pending claims due at the end of the year in the column header that were raised in the year (or time span) indicated in the line header

| <i>Claim raised in</i> | <i>Pending claims at the end of...</i> | | | |
|------------------------|--|-------------|-------------|-------------|
| | <i>2012</i> | <i>2011</i> | <i>2010</i> | <i>2009</i> |
| 2012 | 193 506 | | | |
| 2011 | 2 321 588 | 2 354 288 | | |
| 2010 | 693 553 | 693 553 | 693 553 | |
| 2009 | 115 664 | 510 545 | 116 107 | 116 107 |

| <i>Claim raised in</i> | <i>Pending claims at the end of...</i> | | | |
|------------------------|--|-------------|-------------|-------------|
| | <i>2012</i> | <i>2011</i> | <i>2010</i> | <i>2009</i> |
| 2008 | 0 | 0 | 0 | 12056 |
| 2007 | 7 716 | 7 716 | 13 482 | 13 482 |
| 2006 | 0 | 0 | 0 | 99 116 |
| 2005 | 0 | 0 | 42 925 | 140 795 |
| 2004 | 5 078 | 5 078 | 5 078 | 5 078 |
| 2003 | 0 | 0 | 0 | 2 704 |
| 2002 | 90 541 | 90 541 | 90 541 | 94 208 |
| 2001 | 0 | 0 | 0 | 0 |
| 2000 | 12 998 | 12 998 | 12 998 | 15 994 |
| 1995–1999 | 0 | 0 | 0 | 19 953 |
| 1990–1994 | 0 | 0 | 0 | 0 |
| 1985–1989 | 0 | 0 | 0 | 0 |
| 1980–1984 | 0 | 0 | 0 | 0 |
| 1979 and before | 0 | 0 | 0 | 0 |

C. Customs claims against the persons directly liable

1. EU countries

Table 11

General situation

(number of claims)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|-------------|------------------|----------------|
| 2009 | 119 | 37 | 75 | 8 |
| 2010 | 101 | 33 | 50 | 16 |
| 2011 | 113 | 36 | 29 | 48 |
| 2012 | 81 | 43 | 20 | 18 |
| Total | 414 | 149 | 174 | 90 |

Table 12

General situation

(amount of claims in €)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|------------------|------------------|------------------|
| 2009 | 2 166 595 | 157 491 | 930 289 | 1 078 813 |
| 2010 | 2 461 372 | 385 173 | 1 058 820 | 1 064 541 |
| 2011 | 3 570 568 | 129 665 | 323 958 | 2 959 268 |
| 2012 | 1 043 744 | 365 294 | 281 411 | 397 038 |
| Total | 9 242 279 | 1 037 622 | 2 594 478 | 5 499 660 |

2. Non-EU countries

Table 13

General situation

(number of claims)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|-------------|------------------|----------------|
| 2009 | 34 | 34 | 0 | 0 |
| 2010 | 46 | 43 | 0 | 3 |
| 2011 | 50 | 46 | 0 | 4 |
| 2012 | 108 | 107 | 0 | 1 |
| Total | 238 | 230 | 0 | 8 |

Table 14

General situation

(amount of claims in €)

| <i>Year</i> | <i>Claims lodged</i> | <i>Paid</i> | <i>Withdrawn</i> | <i>Pending</i> |
|--------------|----------------------|------------------|------------------|----------------|
| 2009 | 264 336 | 264 336 | 0 | 0 |
| 2010 | 230 771 | 137 757 | 0 | 93 014 |
| 2011 | 191 769 | 156 630 | 0 | 35 139 |
| 2012 | 1 473 425 | 1 444 962 | 0 | 477 |
| Total | 2 160 302 | 2 003 686 | 0 | 128 630 |

D. TIR guarantee level

1. EU countries

Current level of guarantee

€ 60,000.

Percentage of TIR operations where the amount of customs duties and taxes exceeds the established guarantee level

Nine countries indicated the following percentages: 25, 15, 8.2, 5–10, 4, less than 1, 0.49, 0.12 and 0.06. Twelve countries indicated that the percentage was zero or close thereto.

Percentage of claims where the amount of customs duties and taxes exceeds the established guarantee level

Only 1 country indicated a 5–10 per cent range. Twenty–one countries indicated that the percentage was zero.

Application of additional control measures if the guarantee level is exceeded

No: 17 countries / Yes: 6 countries.

Where applicable, which type of additional control measures do you apply?

Escorts: 3 countries. Imposing an extra national guarantee: 1 country. One country also mentioned the existence of a € 100,000 TIR Carnet.

Where applicable, how do you apply the control measures?

Systematically: 4 countries. Selectively: 2 countries. 2 countries mentioned that it was based on risk analysis.

Problems and suggestions related to the Guarantee level

- The cases where the duties and taxes exceed the amount of the established guarantee level (€ 60,000) are few. Nevertheless the guarantee should cover the whole amount. It is difficult or almost impossible for the customs services to collect the required amount from the TIR Carnet holder. That is the reason why they collect it from their national association. When the amount exceeds the € 60,000, they have to continue to require the payment from the TIR Carnet holder although they know from the very beginning that the holder is not willing to pay.
- TIR operators choose the TIR-system instead of the NCTS-system in the EU if they can. For example, a transport operation between Oslo, Norway and Poland requires a very high guarantee in the NCTS-system, but with a TIR Carnet the operator can avoid the higher guarantee. With a higher TIR guarantee level, using several TIR Carnets or a TIR+ system this could be avoided.
- In general no problems were reported with regard to the current guarantee level of € 60,000 valid in EU. In 2012 there were no cases of claims where the total amount of customs debt would exceed this guarantee level.
- The overwhelming majority of the holders of TIR Carnets processed at the customs office of departure in recent years, are of Eastern European countries or the Arab countries, in addition to the natural difficulty of communication with drivers from these territories that are unaware that the TIR Carnet has a maximum limit of coverage, the national economic operators (who are agents of freight forwarders or customs brokers), do not provide the remaining individual guarantee for the amount not covered by the TIR Carnet due to real difficulties for reimbursement in the case of a customs debt. Thus, it would be of any interest, not only for economic operators and customs administrations, that the amount covered by the TIR guarantee, was raised to a minimum of € 100,000, since the TIR operations are usually complete trucks invoiced goods with high value, high rates of duties and maximum rate of VAT.

Problems and suggestions related to the collecting of the customs duties and taxes relating to irregular TIR operations

None.

2. Non-EU countries

Current level of guarantee

US\$ 50,000 (approx. € 36,700): 5 countries

€ 60,000: 6 countries

SwF 100,000 (approx. € 82,000): 1 country

Percentage of TIR operations where the amount of customs duties and taxes exceeds the established guarantee level

The following replies were given: 10, 1, 0.4 and 0 per cent (6 countries) and no data (2 countries). Incomplete data for one country (only 5 out of the 16 Regional Customs

Directorates provided data) does not allow calculating this percentage, but, in 2012, at least 172 TIR operations had an amount of customs duties and taxes exceeding € 60,000 (1,131,148 TIR Carnets were processed in 2012).

Percentage of claims where the amount of customs duties and taxes exceeds the established guarantee level

The following replies were given: 0 per cent (9 countries) and no data (3 countries).

Application of additional control measures if the guarantee level is exceeded

Yes: 5 countries / No: 7 countries.

Where applicable, which type of additional control measures do you apply?

Escorts: 4 countries.

- Immediate oral or written communication between customs office of departure and customs office of destination about directing certain goods, and there is the possibility of determining customs escort if that is necessary.
- Vehicle Tracking System is mostly preferred for these TIR operations.

Where applicable, how do you apply the control measures?

Systematically: 2 countries. Selectively: 3 countries.

- From time to time.
- If there is any data of risk analysis on the goods or transporter, suspicion of smuggling, denunciation or intelligence on TIR operation, we mostly use Vehicle Tracking System. The escort is only preferred when the customs office does not have enough VTS mobile units.

Problems and suggestions related to the guarantee level

- Since the implementation of the TIR procedure there were no customs claims or payments by the guarantors, therefore we do not have any problems regarding the TIR guarantee level
- The present TIR guarantee level is € 60.000. We think that this level is convenient currently but it should be reconsidered in the coming years in compliance with the changing requirements of international trade.

Problems and suggestions related to the collecting of the customs duties and taxes relating to irregular TIR operations

- As per Explanatory Note to Article 11, paragraph 2 of the TIR Convention, the customs administration should send the claim for payment to the TIR Carnet holder or the person of persons liable at least. When a claim for payment is sent to a foreign TIR Carnet holder, the notice is mostly returned because the holder is not resident at that address anymore. (If the address indicated in the TIR Carnet is not readable, we use ITDB+ to find the holder's address. All notices are sent via the Embassy/Consulate by hand.) We think that if the notice is returned, the customs administration should make a claim against the guaranteeing association immediately and the mentioned Explanatory Note should be clearer in this manner.

IV. Preliminary considerations by the secretariat

4. First of all, it should be noted that the number of respondents to the survey is regrettably lower than for the previous survey (41 countries had replied) and that significant users of the TIR system such as Iran (Islamic Republic of), the Russian Federation and Ukraine did not reply. Considering the recent developments in the Russian Federation, it is unfortunate that the data on Russian claims are missing, thus biasing the results of the survey. With this in mind, the results of the survey should be taken with caution, in particular the part outside the EU.

1. Customs claims statistics and comparison with the results of previous surveys

5. The table below provides a summary comparison between the results of the 2013, 2011 and 2007 surveys. Unfortunate is the absence of replies from important TIR users for the comparison of the results. The only figure that can be compared is the average value of a claim lodged, which almost returned to the level of the 2007 survey.

Table 15

| | <i>2013 survey</i> | <i>2011 survey</i> | <i>2007 survey</i> |
|---|------------------------|--------------------|--------------------|
| Average number of lodged claims per year | 115 ⁵ | 201 | 866 |
| Average amount of lodged claims per year (€) | 2 728 720 ⁵ | 3 630 378 | 22 625 657 |
| Average number of claims paid per year | 51 ⁵ | 91 | 58 |
| Average amount of claims paid per year (€) | 1 109 450 ⁵ | 1 705 851 | 853 984 |
| Average value of lodged claim (€) | 23 677 | 17 992 | 26 142 |
| Claim rate (number of issued carnets per claim) | 24 480 ⁵ | 14 193 | 3 900 |

2. Historical pending claims

6. The statistics on historical pending claims do not allow explaining the large number of pending claims that were reported by the IRU (i.e. more than 6000). Either a large majority of those claims have been lodged by countries that did not reply to the survey or they are actually not anymore considered as claims by customs authorities. Considering the low response rate and the fact that the IRU, further to a revision in their method for calculating pending claims, is now only reporting less pending claims (e.g. 645 in February 2014), TIRExB might want to consider if it is worth keeping those questions in future surveys.

3. TIR guarantee level

7. In most cases the guarantee level seems to be satisfactory. Only four countries indicate that the guarantee limit represents or will represent a problem and propose to either remove the limit or find ways to increase this level. It should be recalled that, in line with the provisions of the TIR Convention, the guarantee limit defined in the contract between the competent authorities and the guaranteeing association can go beyond the recommended amount indicated in the Explanatory Note to Article 8.3. Indeed, in many country the amount is now 60,000€ and reaches even SwF 100,000.

⁵ Considering that important users of the TIR system did not reply to the 2013 survey, those numbers should not be compared to the results of previous surveys.

4. Comparison with the IRU claim statistics

8. The table below shows the differences in the total annual number of claims lodged according to the 2013 TIRExB survey and the IRU statistics (taking into account only the figures concerning countries that have replied to the 2013 TIRExB survey). Despite, having informed TIR focal points of the divergence between the previous survey results and the IRU statistics and the changes in the methodology and tool used by the IRU for their statistics, the differences remain significant (e.g. for 2012 the IRU has in its statistics 40 per cent more claims lodged than reported by the responding countries).

Table 16

Comparison with the IRU claim statistics

| 2009 | | 2010 | | 2011 | | 2012 | |
|---------------|------------|---------------|------------|---------------|------------|---------------|------------|
| <i>TIRExB</i> | <i>IRU</i> | <i>TIRExB</i> | <i>IRU</i> | <i>TIRExB</i> | <i>IRU</i> | <i>TIRExB</i> | <i>IRU</i> |
| 97 | 100 | 161 | 172 | 125 | 151 | 78 | 110 |

5. Other issues for consideration

9. The ratio of claims withdrawn reaches on average 35 per cent of the claims lodged. Considering that these claims have passed through the stages of pre-notification and notification, TIRExB may wish to consider why such a large number of claims is withdrawn by customs.

10. In the EU and outside the EU, in 76 per cent, respectively 81 per cent, of the cases, payment is made after the three months deadline stipulated by the TIR Convention. These numbers might actually increase in the course of time as some pending claims will eventually obtain payment one day.

V. Considerations by TIRExB

11. At its sixtieth session, the Board welcomed Informal document No. 21/Rev.1 (2014), containing an updated assessment of the results of the survey on customs claims for the period 2009–2012 presented in this document. The Board regretted that important users of the TIR system, e.g. Iran (Islamic Republic of), Russian Federation and Ukraine, had failed to submit their data (despite repeated requests), making it hard, if not impossible, for the Board to judge the outcome of the survey or to compare data with previous surveys. Considering that supervision of the operation of the guarantee system is one of its principle tasks, TIRExB urged the Chair to include in his report to the TIR Administrative Committee (AC.2) the request to Contracting Parties to reply to duly justified requests for data and any other information, thus allowing the Board to fulfil its functions as entrusted by the Convention.

12. As concerns future surveys, the Board requested the secretariat to present the results without making a difference between EU and non-EU countries and to include the full and complete replies per individual country in Annex. The Board also noted that the two questions of the survey, dedicated to identifying the origin of pending claims as reported by IRU, did not seem to provide the desired result, due to the fact that the great majority of respondents was not in a position to reply to them. Consequently, the Board decided to remove those questions from future surveys. (TIRExB/REP/2014/60, paras. 24–25)