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Working Party on Customs Questions
affecting Transport

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

Phase II of the TIR revision process: Proposals for amendments to the Convention

Note by the secretariat

A. BACKGROUND AND MANDATE

1. At its ninety-first session, the Working Party was informed by the Chairman of the Ad hoc Group of Experts on Phase II of the TIR Revision Process of the views and amendment proposals prepared by the group during its three sessions in 1998 (TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1998/11; TRANS/WP.30/1998/17). He pointed out that, while no consensus had been arrived at on the role and functions of the international organization with regard to the effective functioning of an international guarantee system, amendment proposals had been prepared on harmonized termination and discharge operations, on recommended inquiry procedures as well as on alternative forms of evidence as proof for the termination of a TIR operation.

2. Due to time constraints, no substantive progress had been made on the definition of the holder of TIR Carnets nor on the revision of the TIR Carnet and the computerization of the TIR procedure.
3. The Working Party endorsed the views expressed and the amendment proposals made by the group of experts as contained in the reports of its three meetings held in 1998 and recommended to the Inland Transport Committee to prolong the mandate of the group of experts to the year 1999 in order to conclude phase II of the TIR revision process and to start phase III focusing on a revision of the TIR Carnet and the computerization of the TIR procedure. The Working Party also decided to review in detail, at its next session in February 1999, the amendment proposals already prepared by the group of experts on the basis of a consolidated document to be prepared by the secretariat (TRANS/WP.30/182, paras. 28-30).
4. In accordance with this mandate, the secretariat has prepared the present document.

B. PROPOSALS PREPARED AND DISCUSSED BY THE GROUP OF EXPERTS^{*/}

5. In line with the mandate provided to the group of experts by the Working Party and the TIR Administrative Committee (TRANS/WP.30/178, para. 35; TRANS/WP.30/AC.2/49, paras. 33 and 34), the main objective of the work undertaken by the group of experts in 1998 was to contribute to a stable and well-functioning international guarantee system and to better harmonize administrative procedures in the application of the Convention at the national level, also with a view to facilitating the issuance and settlement of Customs notifications and payment claims.
6. A document transmitted by the Government of Belarus, containing a number of amendment proposals, could not be considered by the group of experts due to its late issuance and lack of time (TRANS/WP.30/1998/16). Therefore, these proposals should also be taken into account by the Working Party in reviewing the proposals of the group of experts as described below.

^{*/} The secretariat has used, throughout this document, the terminology proposed by the group of experts relating to the “termination” and the “discharge” of a TIR operation (see para. 17 below).

I. Status and functions of the international organization(s)

Documentation: TRANS/WP.30/1998/17; TRANS/WP.30/1998/11; TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1998/8; TRANS/WP.30/1998/1; TRANS/WP.30/R.195 and Corr.1; TRANS/WP.30/R.186; TRANS/WP.30/R.182; TRANS/WP.30/R.181; TRANS/WP.30/R.178; TRANS/WP.30/180; TRANS/WP.30/178.

7. The group of experts recalled that the Working Party had already considered the results of an ECE meeting of experts on a revised guarantee system for the TIR procedure (8-9 April 1997) during which the present international guarantee and insurance system, as established by the IRU, has been analysed and described in its entirety (TRANS/WP.30/R.195 and Corr.1). The experts had proposed a number of concrete measures to improve the performance of the TIR guarantee system realizing that a replacement of the present centralized system by a decentralized system seemed to be neither possible nor necessary for the moment. The Working Party had also considered already some concrete proposals made by the Russian Federation to define in detail the relationship between national associations and the international organization for the settlement of payment claims (TRANS/WP.30/R.186). The Working Party had felt that, with a view to further improving transparency of the international guarantee system, the role and the responsibilities of the international organization, particularly as regards the settlements of payment claims, could be further defined (TRANS/WP.30/180, paras. 24-27).

8. The group of experts confirmed that the proposals to replace the present centralized insurance system by a decentralized system, possibly along the lines of the Community and Common Transit System applicable in the European Union and a few other countries, should not be pursued for the moment. It decided, however, to improve the present system by inserting into the Convention a number of key elements providing for a stable, well-functioning and transparent international guarantee system (TRANS/WP.30/1998/5, paras. 8-16; TRANS/WP.30/1998/11, paras. 8-11; TRANS/WP.30/1998/17, paras. 12-14).

9. Considering ways and means to define in the Convention the status and the functions of the international organization(s) as referred to in article 6, paragraph 2 and in annex 8, (new) paragraph 10, the group of experts agreed on the following principles:

- (i) general provisions on the role and functions of the international organization(s), as referred to in article 6, paragraph 2 of the Convention, should be inserted into the Convention;
- (ii) national associations - not international organizations - remain liable vis-à-vis Customs authorities for the settlement of all Customs claims relating to national and foreign TIR Carnets;
- (iii) new provisions to be inserted into the Convention should focus on Customs related issues;

- (iv) the revised Convention (Phase I) provides already in annex 8, article 10 for the possibility of Contracting Parties to the Convention to supervise the international guarantee system through the TIR Executive Board (TIRExB).

10. Within this conceptual framework, the majority of experts agreed to propose the following amendments to the Convention for consideration by the Working Party:

Add a new paragraph 2 bis, article 6 of the Convention to read as follows:

“2 bis. An international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee to take on responsibility for the effective functioning of an international guarantee system.”

Add a new explanatory note 0.6.2 bis (to article 6.2 bis), annex 6 to the Convention to read as follows:

“0.6.2 bis The relationship between an international organization and its member associations shall be defined in [written] agreements on the functioning of the international guarantee system.”

11. An alternative wording for a new paragraph 2 bis, article 6 of the Convention was proposed by some other experts as follows:

“2 bis An international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee as a body administering the centralized guarantee systems provided that such an organization assumes the responsibility for the functioning of this system.”

II. Definition of termination and discharge procedures

Documentation: TRANS/WP.30/1998/17; TRANS/WP.30/1998/15; TRANS/WP.30/1998/11; TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1997/1; TRANS/WP.30/178; TRANS/WP.30/176; TRANS/WP.30/164; TRANS/WP.30/R.134.

12. The group of experts recalled that the details of the discharge procedure depended to a large extent on national legislation and administrative procedures and were not prescribed in the Convention. It felt, however, that for an efficient and rapid settlement of Customs claims, internationally accepted definitions and transparent procedures in this area would be extremely useful.

13. On the basis of a document prepared by the secretariat (TRANS/WP.30/1998/15), the group of experts considered a number of amendment proposals to the Convention, aiming at a clear distinction between (a) the termination of a TIR operation as an obligation of the TIR Carnet holder and (b) the discharge of a TIR operation as the recognition by Customs authorities that a TIR operation has been terminated correctly.

14. The group of experts noted that the proposed amendments, as contained in the secretariat document, did not modify existing Customs procedures in the Contracting Parties to the Convention, but would allow for a better understanding of the rights and obligations of Customs authorities, TIR Carnet holders and national associations during TIR transit operations.

15. Several experts, while approving in principle the definitions proposed and the approach taken by the secretariat to ensure that a TIR operation is restricted to the transit transport operation only and that Customs claims for payment of duties and taxes were clearly linked to the discharge procedure and not to the termination of the TIR operation, felt that

- certification of the termination of the TIR operation by Customs authorities might become part of the relevant definition on “termination”;
- in English, the word “termination” might be replaced by “ending” in line with the terminology used in the European Community and that, in general, the precise wording of the newly defined terms would still need to be reviewed;
- termination of a TIR operation should only be allowed if another system of Customs control followed in an uninterrupted way;
- definitions for partial and final termination of a TIR operation, while not contained in the present text of the Convention might need to be prepared for use under the international EDI control system for TIR Carnets as recommended by the TIR Administrative Committee on 20 October 1995;
- Article 11, paragraph 1 of the Convention should not only provide for notification of the association, but also, as far as possible, of the TIR Carnet holder (even though such a provision might be better placed eventually in article 8, paragraph 7); furthermore such notification might also refer to conditional termination of the TIR operation) (TRANS/WP.30/1998/17, paras. 16-17).

[Italy stressed that article 11, paragraph 1 should provide for notification to be sent not only to the national association, but also to the holder of the TIR Carnet.]

16. Taking account of the above general views of the group of experts on this matter, the Working Party may wish to consider amendment proposals to the Convention as well as comments for inclusion into the TIR Handbook aiming at a clear distinction between:

- (a) the termination of a TIR operation (French: “fin de l’opération TIR”, Russian: “прекращение”) as an obligation of the TIR Carnet holder and
- (b) the discharge of a TIR operation (French: “apurement de l’opération TIR”, Russian: “завершение”) as the recognition by Customs authorities that a TIR operation has been terminated correctly.

17. The amendment proposals and comments proposed by the group of experts for consideration by the Working Party relating to his matter are the following:

Article 1 of the Convention

Add new paragraphs (a bis and a ter) to article 1 of the Convention:

“(a bis) the term “termination of a TIR operation” shall mean that the obligations of the holder of a TIR Carnet have been met in a Contracting Party when the road vehicle, the combination of vehicles or the container are produced for purposes of control to the Customs office of destination or of exit (en route) together with the load and the TIR Carnet relating thereto and all other relevant provisions of the Convention have been complied with;

(a ter) the term “discharge of a TIR operation” shall mean the recognition by Customs authorities that the TIR operation has been terminated correctly in a Contracting Party. This is established by the Customs authorities on the basis of a comparison of the data or information supplied by the Customs office of destination or exit (en route) and those supplied by the Customs office of departure or entry (en route);”

Note: The secretariat is of the opinion that the term “conditional termination of a TIR operation” does not need to be defined in the Convention as the conditions for conditional termination vary considerably at the national level and a decision to conditionally terminate a TIR operation by filling-in box 27 on voucher No.2 and by placing an “R” under item No.5 on the counterfoil No.2 could be left at the discretion of the concerned national Customs authorities. The term “partial/final termination” does not appear in the text of the Convention and therefore does not need to be defined either. The terms “certificate of termination” and “improper or fraudulently obtained certificate of termination” are indirectly clarified by the newly proposed definitions of “termination” and “discharge” (TRANS/WP.30/1998/11, para. 15).

Comment to article 8 (Information to guaranteeing associations)
(1995 TIR Handbook, page 41)

Replace the wording: "... when a TIR Carnet has not been discharged or has been discharged conditionally." by: "... when a TIR operation has not been terminated or has been terminated conditionally."

Article 10, paragraph 1 of the Convention

Delete paragraph 1.

Note: It is proposed that the amended article 10 refers only to discharge operations. Therefore the text of paragraph 1 has been moved to the revised article 28 describing termination procedures.

Article 10, paragraph 2 of the Convention

Delete paragraph No. "2".

Replace the wording: "have discharged a TIR Carnet unconditionally" by: "have discharged a TIR operation".

Replace the wording: "certificate of discharge" by: "certificate of termination (French: certificat de fin de l'opération TIR)".

Note: In the view of the secretariat there can be no "conditional discharge" of a TIR operation, as defined under article 1 (a ter) above, in contrast to a possible "conditional termination" of a TIR operation. The statement of discharge of a TIR operation by Customs authorities usually terminates the Customs procedures under the TIR regime; a statement of non-discharge will trigger the procedures as provided for under article 11 of the Convention.

Explanatory note 0.10 (to article 6), annex 6 to the Convention

Replace the word: "certificate of discharge" by: "certificate of termination".

The existing comments to article 10 (1995 TIR Handbook, pages 44 and 45) will be placed under the revised article 28 (see below).

Article 11, paragraph 1 of the Convention

Modify the beginning of the first sentence to read as follows:

“1. Where a TIR operation has not been discharged, the competent authorities ...”.

Delete at the end of the first sentence the wording: “or conditional discharge”.

Replace in the second sentence the word: “certificate of discharge” by: “certificate of termination”.

Article 11, paragraph 2 of the Convention

Modify the first sentence to read as follows:

“2. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the TIR operation had not been discharged or that the certificate of termination had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date.”

Article 17, paragraph 2 of the Convention

Replace the word “discharge” by: “termination of a TIR operation”.

Article 28 of the Convention

Replace the text of article 28 by the following:

“1. Termination of a TIR operation shall be certified by Customs authorities without delay. A TIR operation may be terminated unconditionally or conditionally: where termination is conditional this shall be on account of facts connected with the TIR operation itself. These facts shall be clearly indicated in the TIR Carnet.

Note: Refer to the amended article 10 above.

2. Upon termination of a TIR operation at the Customs office of destination, the goods shall be placed under another system of Customs control (French: surveillance douaniere) or shall be cleared for home use.”

Note: Paragraph 2 of article 28 may seem to be superfluous as it covers procedures following the termination and outside the scope of the TIR operation. The substance covered in this paragraph is therefore neither necessary for the termination nor for the discharge procedures under the TIR regime.

Explanatory note 0.28 (to article 28), annex 6 to the Convention

“Explanatory note 0.28” will become “Explanatory note 0.28-2”.

Modify the beginning of paragraph 1 of explanatory note 0.28-2 to read as follows:

“1. Article 28 provides that termination of the TIR Carnet ...”.

Comment to article 28 (Return of TIR Carnets)

(1995 TIR Handbook, page 56)

Replace the wording “whether discharged conditionally or unconditionally” by: “whether the TIR operation has been terminated conditionally or unconditionally”.

The existing comments to article 10 (1995 TIR Handbook, pages 44 and 45) will be placed following the revised article 28.

Comment to article 10 (Discharge of TIR Carnets)

(1995 TIR Handbook, page 44)

Modify the existing comment to read as follows:

“Comment to article 28, paragraph 1

Termination of a TIR operation

1. In cases where a TIR operation has been terminated unconditionally, the Customs administration which declares such termination as having been obtained improperly or fraudulently should specify in its request for payment its reasons for declaring this termination improper or fraudulent.
2. The Customs authorities should not terminate TIR operations subject to systematic unspecified reservations, without giving reasons, solely for the purposes of avoiding the requirements of Article 10, paragraph 2 and Article 11, paragraph 1.”

Comment to article 10 (Indication of reservations)

(1995 TIR Handbook, page 44)

Modify the existing comment to read as follows:

“Comment to article 28, paragraph 1

Indication of reservations

Customs administrations should make any reservation, i.e a conditional termination of a TIR operation, very clear and should indicate the existence of a reservation by filling in box 27 on voucher No. 2 and by placing an “R” under item 5 on the counterfoil No.2 of the TIR Carnet.”

Comment to article 10 (Alternative forms of evidence as proof for the discharge of TIR Carnets)
(1995 TIR Handbook, page 45)

Modify the existing comment to read as follows:

“Comment to article 28, paragraph 1

Alternative forms of evidence as proof for the termination of a TIR operation

Customs authorities are recommended to accept exceptionally, as alternative proof for the proper termination of a TIR operation, to be provided by the international organization which must confirm that ...”

Annex 1 to the Convention

Model of TIR Carnet, Version I and Version II

Replace in box 24 on voucher No.2 the words “Certificate of discharge” by: “Certificate of termination”.

Modify in box 26 on voucher No.2 the words “Number of packages discharged” by: “Number of packages for which the TIR operation has been terminated”.

Modify under item 3 on the counterfoil No. 2 the words “Discharged packages or articles (as specified in the manifest)” by: “Terminated under the TIR operation packages or articles (as specified in the manifest)”.

Comment to annex 1 (Discharge of TIR Carnets)

(1995 TIR Handbook, page 73)

(For reference: see proposed amended text of this comment as contained in document TRANS/WP.30/1997/1)

Modify the existing comment to read as follows:

“Termination of a TIR operation

In boxes 24 to 28 of voucher No. 2, in addition to the required inscriptions, only one Customs stamp and one signature are necessary and sufficient to terminate a TIR operation. Other authorities than Customs are not entitled to stamp and sign the vouchers (the sheets on the front cover).

The filling-in by competent authorities of the counterfoil to voucher No. 2, including one Customs stamp and one signature, confirm for the TIR Carnet holder and the guaranteeing association the termination of the TIR operation, with or without reservation.”

Comment to annex 1 (Customs stamps on the counterfoil)

(1995 TIR Handbook, page 73)

Replace in the second sentence the wording: “discharge the TIR Carnet unconditionally” by: “terminate the TIR operation unconditionally”.

Comment to annex 1 (Alternative forms of evidence as proof for the discharge of TIR Carnets)

(1995 TIR Handbook, page 74)

Modify the existing comment to read as follows:

“Alternative forms of evidence as proof for the termination of a TIR operation

Customs authorities are recommended to accept exceptionally, as alternative proof for the proper termination of a TIR operation, to be provided by the international organization which must confirm that ...”

Comment to annex 1 (Indication of reservations)

(1995 TIR Handbook, page 74)

Modify the existing text as follows:

“Customs administrations should make any reservation, i.e a conditional termination of a TIR operation, very clear and should indicate the existence of a reservation by filling-in box 27 on voucher No. 2 and by placing an “R” under item 5 on the counterfoil No.2 of the TIR Carnet.”

Note: Following consideration of the above amendment proposals, an authentication of the three language versions of the text of the Convention could be undertaken as requested earlier by the group of experts (TRANS/WP.30/1998/11, para. 17).

III. Recommended termination, discharge and inquiry procedures

18. The group of experts was of the view that once a consensus had been achieved on amendment proposals on the concepts of termination and discharge of a TIR operation, recommended termination, discharge and inquiry procedures (best practices) could be developed together with guidelines for the filling-in of TIR Carnets (TRANS/WP.30/1998/17, para. 18).

(a) Recommended procedures for the termination of a TIR operation

19. The group of experts has not yet prepared recommended procedures for the termination of a TIR operation at Customs offices of destination or exit (en route).

20. The Working Party may wish to identify elements for such recommended procedures allowing the group of experts to prepare such procedures for the termination of a TIR operation which, once agreed, could become part of a comment for inclusion into the TIR Handbook.

(b) Recommended procedures for the discharge of a TIR operation

Documentation: TRANS/WP.30/1998/17; TRANS/WP.30/1998/11;
TRANS/WP.30/1998/5 and Corr.1.

21. Taking account of the experiences made with regulations on mandatory discharge procedures for TIR Carnets applicable in the European Community, the group of experts felt that the procedures outlined below as prepared at its first session could be a basis for recommended practices to be applied in all Contracting Parties to the Convention (TRANS/WP.30/1998/5, para. 22; TRANS/WP.30/1998/11, para. 18).

22. The recommended procedures for the discharge of a TIR operation as prepared by the group of experts are as follows:

- (1) Customs offices processing TIR Carnets shall keep separate registers in their Customs ledgers for TIR Carnets.
- (2) The Customs office of departure or entry (en route) shall retain voucher No.1 of the TIR Carnet and, with a view to assisting in the return of voucher No. 2, shall enter in the box "For official use" of voucher No. 2 the following text: "To be returned to" followed by the name and full address of the Customs office to which voucher No. 2 must be returned (where applicable, via or to a centralized office). This text should, as far as possible, be inserted by means of a stamp and must be clearly legible.

- (3) The Customs office of departure or entry (en route) shall ensure that box 22 in voucher No. 1 contains the name of the Customs office of destination or exit (en route) with a view to facilitating inquiry procedures.
- (4) The Customs office of destination or exit (en route) shall detach and send without delay (within 5 working days) following the termination of the TIR operation, the part of voucher No. 2 relating to boxes 18 to 28 to the Customs office designated in the box "For official use", where applicable, via or to a central office.
- (5) In case of several Customs offices of departure or destination, the above procedure shall apply mutatis mutandis.
- (6) In cases where the Customs office of destination or exit (en route) is different from that mentioned in voucher No. 2 of the TIR Carnet, that office shall inform the office mentioned in voucher No.2 without delay.
- (7) With a view to detecting and preventing fraud, the office of departure or entry (en route) (where applicable, the centralized office), apart from cases of doubt, shall verify a posteriori a random proportion of 1 per thousand with a minimum of 6 documents per month of all returned vouchers No. 2.

Specific provisions for the transport of sensitive goods under the TIR procedure as well as on the use of the EDI control system for TIR Carnets, recommended by the TIR Administrative Committee on 20 October 1995, may need to be added.

23. Such recommended procedures for the discharge of a TIR operation could become part of a comment for inclusion into the TIR Handbook.

(c) **Recommended inquiry procedures**

Documentation: TRANS/WP.30/1999/2; TRANS/WP.30/1998/11; TRANS/WP.30/1998/5.

24. Taking account of the experiences made with regulations on prescribed inquiry procedures for TIR Carnets applicable in the European Community, the group of experts felt that the procedure outlined below as prepared at its first session could be a good basis for recommended practices applicable in all Contracting Parties to the Convention on the understanding that other procedures in line with the provisions and the spirit of the Convention were also acceptable (TRANS/WP.30/1998/5, para. 24) .

25. Recommended inquiry procedures as prepared by the group of experts are as follows:

- (1) The inquiry procedure shall be initiated if:
 - voucher No. 2 of the TIR Carnet is not returned to the Customs office of departure or entry (en route) or where applicable, to the centralized office within a reasonable time period;
 - voucher No. 2 of the TIR Carnet is returned within a reasonable time period, but the TIR Carnet has been terminated conditionally (with reservation) (article 11, paragraph 1 of the Convention).
- (2) When voucher No. 2 of a TIR Carnet is not returned to the Customs office of departure or entry (en route) within a period of three months (one month for sensitive goods as defined by the national Customs authorities) from a Customs office of destination or exit (en route), the Customs office of departure or entry (en route) having accepted the Carnet shall send a request for information on a standard form to the office of destination or exit (en route). In case centralized offices are used, these offices shall take the appropriate action.
- (3) At the same time, the relevant national guarantee association shall be informed on a standard form of the possible non-termination of a TIR operation (pre-notification). Such pre-notification should be accompanied by all relevant information and data allowing the association(s) and the international organization(s) to furnish relevant documentation and, if possible, alternative evidence as proof for the proper termination of a TIR operation.
- (4) If there is no reply to this request for information under (2), a reminder shall be transmitted, three months later, to the supervisory authority of the said Customs office of destination or exit (en route).
- (5) If, following three months from the transmission of the reminder, no response has been received by the Customs office of departure or entry (en route) or upon receipt of a negative response from the Customs office of destination or exit (en route), the Customs office of departure or entry (en route) shall notify the relevant guaranteeing association and, if possible, the TIR Carnet holder of the non-termination or the conditional termination (with reservation) of the TIR operation.
- (6) The holder of the TIR Carnet and the guaranteeing association shall have three months, starting with the day of the notification, to furnish proof of the regularity of the TIR operation in question.

- (7) Upon receipt of information or alternative forms of evidence from the holder of the TIR Carnet and/or the guaranteeing association(s) concerning the regularity of the TIR operation in question, the Customs office of departure or entry (en route) shall inform the holder of the TIR Carnet and/or the guaranteeing association(s) within ...[to be determined]... months of its decision to accept such information or alternative evidence.
- (8) If, following the expiry of the time limit under (6), proof of regularity of the operation is not furnished, the Customs office of departure or entry shall proceed to calculate the duties, taxes and other charges on the appropriate form.
- (9) Payment should be requested, as far as possible, from the person(s) directly liable (TIR Carnet holder, transport operator, consignee, etc.) immediately following the registration of the calculations (article 8, paragraph 7).
- (10) In default of payment by the TIR Carnet holder, after one month a demand for payment shall be sent to the guaranteeing association which shall have three months as of the date of demand for payment to remit the sums due.

Recommended standard specimen forms for the inquiry notices and the reminder still need to be prepared. Specific provisions for the transport of tobacco and alcohol as well as for other sensitive goods, including the establishment of an early warning system may need to be added.

26. The Working Party may also wish to consider in this context a document transmitted by the IRU proposing further and some alternative elements for recommended inquiry procedures (TRANS/WP.30/1999/2).

27. Such recommended inquiry procedures could become part of a comment for inclusion into the TIR Handbook.

IV. Reduction in the notification period for Customs claims

Documentation: TRANS/WP.30/1998/11; TRANS/WP.30/1998/5.

28. The group of experts felt that, for the time being, a reduction in the legal notification periods for Customs claims (article 11, paragraph 1 of the Convention) could not be recommended, mainly in view of the present administrative structures in Customs authorities and national associations and due to the fact that no additional information allowing for a better risk management of the international insurers would arise from such a reduction. The very large majority of these notifications would not be the result of an actual non-discharge, but of the lengthy administrative procedures to return and examine TIR Carnet voucher No.2 within the Customs authorities.

29. This position of the group of experts could be reviewed in light of experiences yet to be made with the EDI control system for TIR Carnets which could not yet be utilized properly by Customs authorities, the new amendment proposals scheduled to come into force in early 1999 under phase I of the TIR revision process and the above recommended discharge and inquiry procedures providing, for example, for pre-notification of national associations and persons liable within three months of the termination of the TIR operation (TRANS/WP.30/1998/11, para. 21).

V. Alternative forms of evidence as proof for the termination of a TIR operation

Documentation: TRANS/WP.30/1998/5; TRANS/WP.30/1997/1.

30. The group of experts was of the view that alternative forms of evidence as proof for the termination of a TIR operation other than the duly filled-in voucher No. 2 in the TIR Carnet should be accepted as an exceptional measure by Customs authorities. In addition to the duly stamped counterfoil No.2 in the TIR Carnet or a copy thereof to be provided by the IRU, as recommended already in the comment to article 10 (1995 TIR Handbook, page 45), the group of experts considered briefly the following new comment for inclusion into the TIR Handbook as proposed in document TRANS/WP.30/1997/1:

Comment to article 10 and to annex 1

"Customs authorities are also recommended to accept exceptionally, as alternative evidence for the proper termination of a TIR operation:

- any official certificate or confirmation of the termination for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use or
- the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in article 6 of the Convention or
- the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance with the Recommendation of the TIR Administrative Committee of 20 October 1995 (in line with article 42 bis of the Convention)."

31. The Working Party may wish to consider this comment on the acceptance of alternative forms of evidence for the termination of a TIR operation.

VI. Definition of the holder of TIR Carnets

Documentation: TRANS/WP.30/1998/8; TRANS/WP.30/1998/5; TRANS/WP.30/180; TRANS/WP.30/166; TRANS/WP.30/162; TRANS/WP.30/R.149; TRANS/WP.30/R.138.

32. The group of experts noted different views by competent authorities of Contracting Parties to the Convention on a possible definition of the holder of a TIR Carnet as inscribed in the model of the TIR Carnet, but not defined in the Convention.

33. Some experts felt that the TIR Carnet holder as inscribed in the model of the TIR Carnet (annex 1 of the Convention) must be the transport operator actually accompanying or transporting the sealed load compartment or container in accordance with national Customs laws and regulations. This interpretation would be in line with the provisions of the new annex 9, Part II of the TIR Convention stipulating minimum conditions and requirements for persons utilizing TIR Carnets, such as proven experience to engage in regular international transport (as an example, refer to the views transmitted by the expert from the Russian Federation contained in the annex to this document).

34. Other experts were of the view that the holder of a TIR Carnet is the person to whom a TIR Carnet has been issued by a national association and with whom it is jointly and severally liable vis-à-vis the national Customs authorities. Most of these experts felt that the holder was free to sub-contract transport operators in line with modern transport procedures and techniques (semi-trailers, containers, etc.). The multimodal TIR Carnet introduced earlier supported such an interpretation (as an example, refer to the views transmitted by the expert from Denmark contained in the annex to this document).

35. Due to time constraints, the group of experts did not consider this important issue in greater detail. It agreed, however, that a clear-cut and internationally accepted definition was urgently required in this field since the different interpretations by Contracting Parties had led to the non-acceptance of duly opened TIR Carnets which defeated the very objective of the Convention (TRANS/WP.30/1998/17, paras. 19-22).

36. The Working Party may wish to consider this matter with a view to providing guidance to the group of experts in possibly preparing a definition of the holder of TIR Carnets.

VII. EDI control system for TIR Carnets: Implementation of the Recommendation of 20 October 1995

Documentation: TRANS/W.30/1998/1; TRANS/WP.30/178;
TRANS/WP.30/AC.2/37, annex 4.

37. The group of experts felt that the EDI control system installed and administered by the International Road Transport Union (IRU) in cooperation with national Customs authorities could provide an important element in safeguarding the international guarantee system and in reducing the amount of Customs fraud. The system was designed to work effectively in a large number of geographically diverse and distant countries and did not require cooperative arrangements among Customs authorities other than those already stipulated and foreseen in the Convention.

38. The majority of experts felt that the present recommendation of the TIR Administrative Committee on the EDI control system for TIR Carnets should be fully implemented in all countries utilizing the TIR procedure and should be extended in the future to cover all stages in the distribution and use of TIR Carnets. The possible future full or partial computerization proper of the regime would need to be compatible with the computerized system being developed for the Community and Common Transit systems.

39. The group of experts felt that, before making the application of such an expensive and difficult to operate system compulsory in all countries utilizing the TIR procedure, as proposed in document TRANS/WP.30/198/1, paras. 4 and 5, the usefulness of the provided data, particularly on stolen and discharged TIR Carnets for Customs authorities still needed to be verified.

Annex

Definition of the holder of TIR Carnets

A. VIEWS TRANSMITTED BY THE EXPERT FROM THE RUSSIAN FEDERATION

1. The TIR Convention employs the terms “TIR carnet holder” and “carrier” or “transport operator”. It does not, however, provide a clear definition of these terms or of the relationship between them. In practice, this gives rise to a number of serious problems for Customs authorities when establishing who is liable for breaches of the TIR procedure.
2. Article 36 of the TIR Convention provides that “any breach of the provisions of this Convention shall render the offender liable in the country where the offence was committed to the penalties prescribed by the law of that country”. Under the customs laws of the CIS States, full liability vis-à-vis the Customs authorities in the case of carriage of goods, including payment of Customs dues, rests with the transport operator.
3. At the same time, annex 6 explanatory note 0.11-1 assumes that liability for Customs payments rests with the TIR carnet holder, which in point of fact does not follow from the actual text of the Convention. Paragraph 7 of article 8, where this question is touched upon, speaks only of “persons directly liable for Customs payments” without any further explanation. Paragraph 7 of article 8 is therefore interpreted in different ways by different parties to the TIR procedure, who may consider that person to be either the transport operator or the consignee, or else the holder of the TIR carnet. Against a background of such uncertainty, the conclusion deriving from explanatory note 0.11-1 is inconsistent with annex 6 to the TIR Convention, according to which the explanatory notes do not modify the provisions of the Convention but merely make their contents, meaning and scope more precise.
4. In our view, paragraph 7 of article 8 of the TIR Convention cannot be considered in isolation from paragraph 1 of article 8, which refers to the Customs laws and regulations of the country in which an irregularity has been noted in connection with a TIR operation (by analogy with article 36 of the Convention). On this basis, we consider that the persons referred to in paragraph 7 of article 8 as being directly liable for Customs payments must be determined by the national Customs laws. If not, the Customs authorities may find themselves in a situation where penalties are imposed on one person while another is held liable for Customs payments.

5. Some inconsistency also exists as regards the question of who can be held liable for any divergence between the information provided in the goods manifest of the TIR carnet and the actual contents of the road vehicle or container. According to annex 6, explanatory note 0.17-1, liability in such an event may rest with the carrier, while under paragraph 2 of article 39 it is the holder of the TIR carnet who is liable.

6. All the above-mentioned inconsistencies are resolved if we assume that the carrier of the goods is identical with the TIR carnet holder. This also follows indirectly from paragraph 2 of article 26, which speaks of the carnet being used by its holder in the course of a transport operation.

7. The amendments to the TIR Convention adopted by the Administrative Committee in June 1997 (new annex 9, part II) confirm the conclusion that transport under cover of the TIR carnet must be effected by the carnet holder. Thus, in order to have access to the TIR procedure a person must:

- Have proven experience or, at least, capability to engage in regular international transport (holder of a licence for carrying out international transport, etc.);
- Give an undertaking in a written declaration of commitment to comply with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination.

Furthermore, the authorization issued by the competent authorities is to use (not to obtain) TIR carnets.

8. The above arguments prove that persons obtaining access to the TIR procedure (i.e. the possibility, subject to certain additional conditions, of obtaining TIR carnets from associations) must perform the transport operations themselves, rather than transmit the TIR carnet they have received to another person.

9. The TIR Convention employs the terms "TIR carnet holder" and "carrier" or "transport operator". It does not, however, provide a clear definition of these terms or of the relationship between them. In practice, this gives rise to a number of serious problems for Customs authorities when establishing who is liable for breaches of the TIR procedure.

10. Article 36 of the TIR Convention provides that "any breach of the provisions of this Convention shall render the offender liable in the country where the offence was committed to the penalties prescribed by the law of that country". Under the customs laws of the CIS States, full liability vis-à-vis the Customs authorities in the case of carriage of goods, including payment of Customs dues, rests with the transport operator.

11. At the same time, annex 6 explanatory note 0.11-1 assumes that liability for Customs payments rests with the TIR carnet holder, which in point of fact does not follow from the actual text of the Convention. Paragraph 7 of article 8, where this question is touched upon, speaks only of “persons directly liable for Customs payments” without any further explanation. Paragraph 7 of article 8 is therefore interpreted in different ways by different parties to the TIR procedure, who may consider that person to be either the transport operator or the consignee, or else the holder of the TIR carnet.
12. Against a background of such uncertainty, the conclusion deriving from explanatory note 0.11-1 is inconsistent with annex 6 to the TIR Convention, according to which the explanatory notes do not modify the provisions of the Convention but merely make their contents, meaning and scope more precise.
13. In our view, paragraph 7 of article 8 of the TIR Convention cannot be considered in isolation from paragraph 1 of article 8, which refers to the Customs laws and regulations of the country in which an irregularity has been noted in connection with a TIR operation (by analogy with article 36 of the Convention). On this basis, we consider that the persons referred to in paragraph 7 of article 8 as being directly liable for Customs payments must be determined by the national Customs laws. If not, the Customs authorities may find themselves in a situation where penalties are imposed on one person while another is held liable for Customs payments.
14. Some inconsistency also exists as regards the question of who can be held liable for any divergence between the information provided in the goods manifest of the TIR carnet and the actual contents of the road vehicle or container. According to annex 6, explanatory note 0.17-1, liability in such an event may rest with the carrier, while under paragraph 2 of article 39 it is the holder of the TIR carnet who is liable.
15. All the above-mentioned inconsistencies are resolved if we assume that the carrier of the goods is identical with the TIR carnet holder. This also follows indirectly from paragraph 2 of article 26, which speaks of the carnet being used by its holder in the course of a transport operation.
16. The amendments to the TIR Convention adopted by the Administrative Committee in June 1997 (new annex 9, part II) confirm the conclusion that transport under cover of the TIR carnet must be effected by the carnet holder. Thus, in order to have access to the TIR procedure a person must:
- Have proven experience or, at least, capability to engage in regular international transport (holder of a licence for carrying out international transport, etc.);
 - Give an undertaking in a written declaration of commitment to comply with all Customs formalities required under the Convention at the Customs offices of departure, en route and of destination.

Furthermore, the authorization issued by the competent authorities is to use (not to obtain) TIR carnets.

17. The above arguments prove that persons obtaining access to the TIR procedure (i.e. the possibility, subject to certain additional conditions, of obtaining TIR carnets from associations) must perform the transport operations themselves, rather than transmit the TIR carnet they have received to another person.

18. If a person having obtained access to the TIR procedure is to have the right to transmit his or her TIR carnets to another person (whether or not that person also has access to the TIR procedure), it is essential to define clearly in the TIR Convention how liability in respect of the Customs authorities, including payment of Customs dues, shall be apportioned and transmitted between the holder of the TIR carnet and the de facto carrier. Until this is done, authorizing the use of TIR carnets by transport operators who are not carnet holders is premature.

B. VIEWS TRANSMITTED BY THE EXPERT FROM DENMARK

19. The TIR Convention applies to the transport of goods in road vehicles, combinations of vehicles or in containers across one or more frontiers between a Customs office of departure of one Contracting Party and a Customs office of destination of another Contracting Party, provided that some part of the journey is made by road (article 2 of the Convention). This means that part of the journey could be performed by ship.

20. Today, it has become more and more common to ship semi-trailers or containers without the tractor units. At the port where the ship's voyage ends, the onward transport by road is then performed by using a different tractor unit.

21. According to article 8, paragraph 1 of the Convention, the guaranteeing association concerned is liable, jointly and severally, with the persons from whom taxes and duties are due (directly liable).

22. According to article 8, paragraph 7 of the Convention, the competent authorities shall require payment from the persons directly liable before making a claim against the guaranteeing association. Who are those persons "directly" liable?

23. There is no clear definition in the Convention, but in most Contracting Parties the holder of the TIR Carnet is considered as the person “directly” liable for the payment of duties and taxes. The views of the ECE Working Party WP.30 and the TIR Administrative Committee are expressed indirectly in the comments to article 8, which allow for the interpretation that the “person” mentioned in paragraph 1 is “the holder”. As nobody else than the guaranteeing association is mentioned in this paragraph, the holder must necessarily be the person “directly liable”.

24. In accordance with the legislation of the Russian Federation, however, the transporter (driver) is considered to be the person “directly liable”.

25. As a result of this interpretation of the person “directly liable” by the Russian Federation, it is not allowed to transport goods in semi-trailers or containers on the onward journey, following the sea transport leg, under cover of TIR Carnets of a different nationality than that of the transport operator (driver).

26. Under a TIR transport operation, an export procedure will normally be completed at the same time as the TIR Carnet is discharged on the territory of the country of export. On arrival (following export procedures and the sea journey) the TIR Carnet will be re-opened on entry into the territory of the next Contracting Party.

27. The interpretation of the “person liable” by the Russian Federation leads to a situation where the TIR Carnet will not be opened before the end of the sea journey since it is not allowed to use the same TIR Carnet for the onward part of the transport leg.

28. As a consequence, the guaranteeing (issuing) associations in the countries of export will not be able to issue TIR Carnets (and thus lose income from their sale) unless tractor units from the country of export are also shipped together with the semi-trailers and containers. This would however lead to a very considerable increase in transport costs and in the duties and taxes payable on the goods.

29. The need to define the TIR Carnet holder has often been expressed in past meetings of the Working Party. However, if the Russian Federation is unable or unwilling to change its and their national legislation in this respect, it will not be possible and feasible to define the TIR Carnet holder as the person directly liable (and authorized).

30. The only solution would then be the establishment of a new TIR Carnet which would allow the transfer of the liability from one operator to the other - a multi-user TIR Carnet. The introduction of such an additional Carnet will certainly give rise to a number of problems as its use will require the approval of the international insurers as well as an authorization procedure for sub-contractors.
