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Working Party on Customs Questions affecting Transport

**REPORT OF THE WORKING PARTY ON CUSTOMS QUESTIONS
AFFECTING TRANSPORT ON ITS ONE-HUNDRED-AND-EIGHTH SESSION
(11-15 October 2004)**

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15 October 2004

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REPORT

ATTENDANCE

1. The Working Party held its one-hundred-and-eighth session from 11 to 15 October 2004 in Geneva.

2. The session was attended by representatives of the following countries: Austria; Azerbaijan; Belarus; Belgium; Bosnia and Herzegovina; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Latvia; Lithuania; Netherlands; Norway; Poland; Romania; Russian Federation; Serbia and Montenegro; Slovakia; Slovenia; Sweden; Switzerland; The former Yugoslav Republic of Macedonia; Turkey; United Kingdom; United States of America. Representatives of the European Community (EC) were also present.

3. The United Nations Conference on Trade and Development (UNCTAD) was represented.

4. The following non-governmental organizations were represented: International Container Bureau (ICB); International Organization for Standardization (ISO); International Road Transport Union (IRU); International Touring Alliance/International Automobile Federation (AIT/FIA) and Liaison Committee of the Body and Trailer Building Industry (CLCCR).

ADOPTION OF THE AGENDA

Documentation: TRANS/WP.30/215.

Mandate and background: TRANS/WP.30/215, point 1.

5. The Working Party adopted the provisional agenda prepared by the secretariat (TRANS/WP.30/215).

ACTIVITIES OF UNECE BODIES AND OTHER UNITED NATIONS ORGANIZATIONS OF INTEREST TO THE WORKING PARTY

Documentation: TRANS/SC.2/2004/7; TRANS/SC.2/2004/8/Add.2.

Mandate and background: TRANS/WP.30/215, point 2.

6. The Working Party took note of information provided by the secretariat concerning developments in the field of facilitation of border crossing in international rail transport. In this context, note was taken of document TRANS/SC.2/2004/7 containing information about the preparation of an international conference on facilitation of border crossing in rail transport to take place at the beginning of 2006 and in the framework of which it has been considered to elaborate a new Annex to the so-called "Harmonization" Convention on railway border crossing. Note was also taken of document TRANS/SC.2/2004/8/Add.2, containing an overview of the results of the

monitoring of border crossing difficulties on selected international railway border stations. The Working Party will be informed about further developments in this field at its future sessions. The documents can be downloaded from the following web site:
<http://www.unece.org/trans/main/sc2/sc22004.html>.

ACTIVITIES OF OTHER ORGANIZATIONS OF INTEREST TO THE WORKING PARTY

Documentation: TRANS/WP.30/2004/19; Informal document No. 4 (2004); Draft WCO secretariat note on a secure and efficient transit system.

Mandate and background: TRANS/WP.30/215, point 3.

7. The Working Party was informed by the representative of the European Commission of issues relevant to the activities of the Working Party relating to the appointment of a new Commission for the European Union, which is expected to start work on 1 November 2004. Due to the enlargement of the European Union, the new Commission will have 25 Commissioners. The opportunity has been taken to introduce changes to lower levels within the European Commission, including the Directorate for Taxation and Customs Union. The vacant position of a Director for Customs Policy has been announced but no successor has yet been appointed. In addition, the unit responsible for Transit and TIR has also been reorganized. The Working Party also took note of information concerning the application of the Community's computerized transit system (NCTS). The next phase of the NCTS will introduce a system managing guarantees. This phase will be implemented in 7 EU member States, as well as Switzerland, by 31 December 2004 and is expected to be introduced fully in the Community and Common transit systems by 30 September 2005. The last phase of the original NCTS project, introducing enquiry procedures, will be introduced in all countries involved by 31 December 2005. In relation to the inclusion of the TIR procedure in NCTS, analyses are under way and it is expected that a pilot survey will take place with certain member States.

8. The Working Party also took note of information that had been transmitted by the World Customs Organization (WCO) on activities of this organization. Concerning the issue of supply chain security, the WCO Council adopted a new Resolution on Security and Facilitation at its Council Sessions in June 2004. This latest Resolution has initiated a High Level Strategic Group, composed of a critical number of Customs Directors General, and will provide leadership and guidance to WCO members in the establishment of an international framework on security and facilitation. Concerning the Customs Convention on Containers, 1972, the seventh meeting of the Administrative Committee for the Customs Convention on Containers, 1972 will take place at WCO in Brussels between 10 and 12 November 2004. This Committee will discuss proposals, which are currently under examination by WP.30 (TRANS/WP.30/2004/35 and TRANS/WP.30/2004/36), in terms of their relevance to the Customs Convention on Containers, 1972. Finally, in relation to the Transit Guide, of which the WCO secretariat provided an advance hard copy at the one-hundred-and-

seventh session of the Working Party, the WCO has now published it as part of its new Compendium series guidance to members on the establishment of a secure and efficient transit system. The definitive version may be obtained through the WCO Publications Service (www.wcoomd.org). The Working Party took note of information provided by the secretariat that it was foreseen that the UNECE and WCO secretariats would meet in connection with the session of the Administrative Committee of the Container Convention to discuss, amongst other issues, the future status of the WCO Transit Guide and how the two secretariats could cooperate on the issue of transit. The Working Party also took note of information provided by the IRU concerning the work which this organization had been invited to undertake by the WCO on security guidelines for road transport. The IRU will inform the Working Party of the guidelines as soon as possible.

9. The Working Party also took note of information provided by the representative of Switzerland concerning the launch of discussions in the framework of the World Trade Organization (WTO) of transport and facilitation related issues resulting from the decisions of the Cancun negotiation round. The secretariat confirmed that it was in contact with the WTO secretariat in this respect and had offered its assistance, for issues of relevance to the Working Party, in particular in relation to the negotiations relating to Article 5 of the GATT Agreement on Transit.

10. The Working Party noted document TRANS/WP.30/2004/19, transmitted by the European Conference of Ministers of Transport (ECMT) containing a survey on removal of obstacles at border crossings for international goods transport. The document had already been noted at the one-hundred-and-seventh session of the Working Party, as well as the underlying ECMT document CEMT/CM(2004)23, which had been made available in hard copy at the last session. The Working Party took note of the excessive average border waiting times that had been reported for some border crossings and decided to revert to this issue should problems continue to be reported in the future.

11. The Working Party took note of information provided by the International Organization for Standardization (ISO) on the status of work of the ISO Technical Committee 104 (ISO/TC 104) on Freight Containers. The ISO/TC 104 is actively developing amendments to its series of standards that will recognize and standardize this widely used intermodal freight container size by including containers that are 45 feet long, 8 feet wide and 9 ½ feet high with end frames and corner fittings at both the extreme ends of the container and at the 40 foot points. The Working Party also noted work under way to convert PAS 17712 on mechanical seals for freight containers to a full ISO standard, including a new annex which details quality control procedures for seal manufacturers to ensure that seals produced meet the standard and that they are properly controlled during manufacture and distribution to prevent theft, copying or other fraudulent use of the seals or seal numbers. It is expected that the final standard will be published in 2005. Furthermore, the Working Party noted that the TC104 is currently examining the design of the door end of the container from the aspect of improving security and making undetected entry into the container more difficult. Finally, significant

progress is being made in developing a series of standards that will jointly establish a standard for electronic seals for freight containers.

12. The Working Party took note of information provided by the International Container Bureau concerning its activities. In particular, the Working Party noted ICB's work concerning a possible revision of the Customs Convention on Containers, 1972 and work on supply chain security.

INTERNATIONAL CONVENTION ON THE HARMONIZATION OF FRONTIER CONTROLS OF GOODS, 1982 ("HARMONIZATION CONVENTION")

Documentation: ECE/TRANS/55 (<http://border.unece.org> - Legal Instruments);
TRANS/WP.30/196; TRANS/WP.30/AC.3/10; TRANS/WP.30/AC.3/8;
TRANS/WP.30/AC.3/2004/1; TRANS/WP.30/AC.3/2003/1; TRANS/WP.30/2004/22;
TRANS/WP.30/2003/20; TRANS/WP.30/2002/19; TRANS/WP.30/2001/16;
TRANS/WP.30/2000/16; TRANS/WP.30/2000/11, Informal documents No. 19 and 21 (2002).

Mandate and background: TRANS/WP.30/215, point 4.

(a) Status of the Convention

13. The Working Party was informed that the Convention has 44 Contracting Parties. The Working Party took note that Kazakhstan had informed the secretariat that it had acceded to the Convention. A formal notification on the accession can, therefore, be expected in the near future from the UN Secretary-General.

Information about the status of the Convention can be obtained from the following website:
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXI/subchapA/treaty17.asp>.

(b) Preparation of a new Annex on efficient border crossing procedures

14. The Working Party took note that the European Community was still not in a position to adopt the new draft Annex 8 to the Convention on efficient border crossing procedures for international road transport. The European Community would not be in a position to do so in February 2005 either.

15. The Working Party deplored this situation and decided, tentatively, to organize a meeting of the Administrative Committee of the Convention in June 2005 with the aim of finally adopting the new draft Annex 8.

16. The Working Party also took note of document TRANS/WP.30/2004/27, transmitted by the European Community, containing a number of comments concerning errors or inconsistencies that have been detected in connection with the review of the new draft Annex 8 as set out in document TRANS/WP.30/AC.3/2004/1. The Working Party decided to accept the proposed modifications to be included in a revised document, pending the information to be received by the secretariat from the International Organization on Legal Metrology concerning clarifications on item 4 as well as the notes for completion of the International Vehicle Weight Certificate.

17. The Working Party noted that none of the other delegations present had expressed specific concerns concerning issues contained in the new draft Annex 8 that should prevent its final adoption by them.

(c) Preparation of a new Annex on security related issues

18. The Working Party took note of information provided by the secretariat that the coordination between the UNECE and WCO secretariats which had been requested by the Working Party at its one-hundred-and-seventh session was only at a preliminary stage at this moment, pending concrete guidelines from the High-level Strategic Group on the specific issues that the WCO should focus on. The Working Party requested a concrete up-date by the WCO on the developments in this field at its one-hundred-and-ninth session and that the secretariat should pursue the coordination with the WCO in relation to the possible preparation of initiatives in this field.

19. The Working Party once again stressed the importance of ensuring that initiatives in this field were aligned and coordinated. In this context, the Working Party also felt that unilateral and bilateral initiatives in this field should be consistent with multilateral initiatives with a view to not losing the facilitation benefits that have already been gained.

CUSTOMS CONVENTIONS ON THE TEMPORARY IMPORTATION OF PRIVATE ROAD VEHICLES (1954) AND COMMERCIAL ROAD VEHICLES (1956)

Documentation: ECE/TRANS/107/Rev.1; ECE/TRANS/108; (<http://border.unece.org> – Legal Instruments); TRANS/WP.30/2004/21.

Mandate and background: TRANS/WP.30/215, point 5.

(a) Status of the Conventions

20. The Working Party was informed that the Customs Conventions on the Temporary Importation of Private (1954) and Commercial (1956) Road Vehicles as of 1 June 2004 have 77 and 39 Contracting Parties, respectively. The Working Party will be informed about the situation concerning the scope and the number of Contracting Parties to the Customs Conventions on the

Temporary Importation of Private (1954) and Commercial (1956) Road Vehicles. Information about the status of the Convention can be obtained from the following websites:

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXI/subchapA/treaty8.asp>;
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXI/subchapA/treaty10.asp>.

(b) Application of the Conventions

21. The Working Party recalled that, at its one-hundred-and-seventh session, it had considered document TRANS/WP.30/2004/21, transmitted by the AIT/FIA containing a number of questions in relation to outstanding Customs claims. The Working Party had decided to refer a number of the questions to the United Nations Office for Legal Affairs.

22. The Working Party took note that, so far, no reply had been received in this matter and decided to revert to the issue at its next session.

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

Documentation: ECE/TRANS/17 and Amends.1-23; 2002 TIR Handbook (<http://tir.unece.org>); TRANS/WP.30/AC.2/37: Depositary Notification C.N. 648.2004.TREATIES.1.

Mandate and background: TRANS/WP.30/215, point 6.

(a) Status of the Convention

23. The Working Party took note that the TIR Convention has 65 Contracting Parties and that it is applicable in 55 of these, according to information provided by the IRU.

24. A complete list of Contracting Parties to the Convention, as well as a list of countries in which TIR operations can be undertaken, dated October 2004, is annexed to the report of the thirty-seventh session of the TIR Administrative Committee (TRANS/WP.30/AC.2/75, annex 1). Permanently updated information on the scope of the TIR Convention is available on the UNECE TIR web site: (<http://tir.unece.org>).

25. The Working Party took note that, with Depositary Notification C.N. 648.2004.TREATIES.1, the Secretary-General of the United Nations has informed that the amendment to Article 26, para. 1 of the Convention, as adopted by the TIR Administrative Committee at its thirty-first session in October 2001, has come into force on 19 September 2004.

(b) Revision of the Convention**(i) Implementation of Phases I and II of the TIR revision process and examples of best practices**

Documentation: TRANS/WP.30/2004/28.

26. The Working Party took note of document TRANS/WP.30/2004/28, prepared by the secretariat, containing an overview of the status of implementation in Contracting Parties of Phase II of the TIR revision. A number of delegations provided additional information orally.

27. With a view to ensuring that the implementation of the Convention and its amendments are as transparent as possible, the Working Party urged all Contracting Parties to inform the secretariat in writing about the status of implementation in their respective countries, in particular concerning the implementation of Phase II of the TIR revision.

28. The Working Party took note of a request from the delegation of Turkey, as mentioned during the thirty-sixth session of the TIR Administrative Committee (AC.2), to review the deletion of the Explanatory Note to Article 38, para. 1 of the Convention concerning the offences committed by drivers. The Turkish delegation explained that reliable Turkish operators had recently been excluded from the TIR system, according to Article 38, without the possibility for appeal. According to the Turkish delegation, these exclusions were unjustified and would not have happened if the Explanatory Note to Article 38, para. 1 was still in force. The Working Party was informed by the representative of the European Community that, in the European Union, the TIR Carnet holder always has the right of appeal concerning such cases.

29. The Working Party undertook an in-depth discussion of the question. Several delegations expressed satisfaction with the deletion of the Explanatory Note to Article 38, para. 1 explaining that, prior to this deletion, it had been impossible for Customs authorities to exclude an operator who had been caught committing serious offences, as it would always be argued that it was the driver who had committed the irregularity without the knowledge of the TIR Carnet Holder. The Working Party, in general, was of the view that the decision concerning the possible exclusion, applying Article 38, should be taken according to national law. The Turkish delegation was of the view that, in such cases, a decision should be based on court decisions. The Working Party also noted the statement of the Turkish delegation that the deletion of the Explanatory Note to Article 38, para. 1 should not lead to the situation that the TIR Carnet Holder would automatically be excluded in all cases where serious offences committed by one of its drivers have been discovered. In such cases, consideration should be given to all the merits of the cases, including the involvement of drivers, and a decision should be taken on that basis, not necessarily leading to the exclusion of the TIR Carnet Holder.

30. Having said this, the Working Party recognized that it could be useful to elaborate some guidelines concerning the application of Article 38 with a view to aligning the application of the article at national level. In this context, the Working Party took note of a study of the TIRExB concerning the application of Annex 9 to the Convention. In this context, the TIRExB had decided to deal with the issue of exclusions according to both Annex 9 and Article 38 and to develop some guidelines for a harmonized approach in relation to exclusions. In this context, the Turkish delegation was invited to submit its observations for consideration by the TIRExB as well as by the Working Party.

31. The Turkish delegation requested that, until the time of having such guidelines, Contracting Parties should be recommended to withdraw the existing decisions according to Article 38.

32. The IRU expressed the view that Article 38 was very important in the application of the TIR Convention.

(ii) Preparation of Phase III of the TIR revision process

Documentation: TRANS/WP.30/212; TRANS/WP.30/210; TRANS/WP.30/208;
TRANS/WP.30/206; TRANS/WP.30/204; TRANS/WP.30/202; TRANS/WP.30/200;
TRANS/WP.30/198; TRANS/WP.30/196; TRANS/WP.30/194; TRANS/WP.30/192.

33. The Working Party recalled that, at its ninety-sixth session, it had decided to start work on Phase III of the TIR revision process, which would include a study of the following elements (TRANS/WP.30/192, para. 33):

- Revision of the TIR Carnet, including the insertion of additional data elements (ID number, HS code, value of goods, etc.);
- Increase in the number of places for loading and unloading under Customs seal;
- Use of new technologies in TIR operations also with a view to reducing the delay in notification of non-discharge;
- Revision of the TIR Carnet.

34. The Working Party considered document TRANS/WP.30/2004/29, prepared by the secretariat, concerning the incorporation of the provisions of the Recommendation for the use of the ID-number of the authorized holder in the body of the Convention.

35. The Working Party was of the view that it was of major importance to ensure that the inclusion of the ID-number in the Convention would be based on a harmonized numbering system, with regard to both the printed and the computed numbers. The Working Party welcomed the fact that the IRU in its systems had succeeded in arriving at the use of a uniform ID-number format in accordance with the Recommendation represented by the alpha-numeric number:

AAA/BBB/XX....X. As a result, the Working Party felt that this format should be followed and requested the secretariat to prepare a document for its next session containing a proposal following this format. The Working Party noted that, should a proposal following this format be adopted, this would mean that those Customs authorities that are not yet providing data on the ID-number in the proposed format would be obliged to do so in the future. Furthermore, it would also be necessary for the secretariat to change its systems with the necessary resource allocations that such changes would imply.

36. The Working Party also requested the secretariat to review the issue of assigning an ID-number, that could not be used again, to a holder with the aim of aligning this to practical procedures applied at national level.

37. The Working Party also considered document TRANS/WP.30/2004/30, prepared by the secretariat, containing a proposal for a Recommendation for the introduction of the HS-code into the goods manifest.

38. The Working Party recalled that, at its one-hundred-and-seventh session, it had considered that it would be useful to recommend including the HS-code in the goods description of the TIR Carnet. The Working Party confirmed this view in general terms, in particular bearing in mind the issues of supply chain security and computerization, where the use of the HS-code seemed inevitable. Nonetheless, the Working Party recognized that a number of questions would need further clarification and discussion before it could be recommended to proceed with the consideration of adopting the draft recommendation. These would include questions concerning the treatment of mixed cargos, the accuracy of HS-codes to be provided, possibilities of the departure offices to verify HS-codes, discrepancies between narrative texts and HS codes, liability of the holder for providing the HS code, etc. The issue was also raised that not all Contracting Parties to the TIR Convention were necessarily Contracting Parties to the Convention on the HS-code. The question was also raised about the usefulness of introducing a Recommendation if it was doubtful that TIR Carnet Holders would provide the HS-code. In this context, the Working Party was informed by one delegation that already, at the present time, it would seem that TIR Carnet Holders, in more and more cases, provide the HS-code under the goods description part of the TIR Carnet manifest. The Working Party also took note of information provided by the European Community that, in the context of the NCTS, it is only obligatory to provide the HS-code in cases of sensitive goods and when the transit operation is preceded by an export declaration. The IRU pointed out that, concerning the proposed recommendation, some changes would need to include a reservation for mistakes and that absences or mistakes should not lead to liabilities for the TIR Carnet Holder. Some delegations expressed support for the adoption of the draft Recommendation.

39. The European Community, at the invitation of the Working Party, offered to prepare a document for the next session of the Working Party, highlighting some of the issues to be addressed and providing further information on how the HS code is applied in the Community and Common transit systems.

40. The delegation of the Russian Federation invited the Contracting Parties to transmit their remarks on the text of the draft recommendation and to discuss it in substance at the next session of WP.30, in line with the decision taken at the one-hundred-and-seventh session.

- Use of new technology

41. The Working Party took note of the progress of the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of the Computerization of the TIR Procedure (hereafter called: "the Expert Group") at its fifth session, which had taken place on 28 and 29 June 2004 in Warsaw, at the invitation of the Polish Customs authorities and with the support of the Polish guaranteeing association ZMPD. The Working Party endorsed the summary report of the meeting contained in document ExG/COMP/2004/18. In this context, the Working Party considered a question raised by the Expert Group as to whether it should be considered to elaborate a new Convention, a so-called "eTIR" Convention, in connection with the introduction of the computerization of the TIR procedure with the aim of establishing a clear cut and tailor made legal instrument for a computerized transit procedure rather than embarking on amending the present Convention. The Working Party was of the view that it was premature to take any decisions concerning this question and that such work should be carefully considered before any decisions would be taken. However, the Working Party agreed that it would be useful to explore the options in this respect at an early stage and requested the secretariat to prepare a document for its session in June 2005 describing the scenarios and the consequences either in the case that a new so-called "eTIR" Convention would be opted for or in the case that an amendment of the present TIR Convention would be opted for.

42. The Working Party also took note of document TRANS/WP.30/2004/31, prepared by the secretariat, containing an overview of the status of the computerization process.

43. The sixth session of the Expert Group will take place on 26 and 27 October 2004 in Geneva.

(iii) **Draft amendments on the inclusion and attribution of voting rights to Regional Economic Integration Organizations (REIO)**

44. The Working Party was informed by the representative of the European Community that discussions on this issue were foreseen to be held in the near future in the context of a high-level meeting to take place between the European Union and the United States.

45. The representative of the United States stated that, consistent with longstanding practice, the United States welcomed the participation in this Convention of all relevant organizations and, particularly, the European Community. However, granting the European Community special status would mean that it could exercise power equivalent to that of a State, including negotiating in closed sessions. This would give the European Union twenty-six voices in the TIR Convention, as all European Union Member States would also retain the right to speak in all meetings. The United States does not support granting the European Community this special status in the Convention, particularly since the degree to which individual European Union countries have delegated to the European Community their national competencies in the TIR Convention is not at all clear. The European Community has an affirmative burden to show that its Member States have indeed (i) transferred competence to the European Community over the subject matter and that, because of that transfer, (ii) its Member States themselves cannot adequately represent their interests. The United States does not believe that denying voting rights to the European Community would diminish its ability to participate actively in the TIR Convention.

46. The representative of the European Community stated that it was impossible that, at present, the European Community, as a result of the amendment proposals, would have 26 votes and that there was obviously a need for further clarification on this issue based on the intervention of the United States and suggested that this be referred to the high-level meeting between the two parties.

47. The representative of Turkey informed that there were no new developments to report on this issue since there had been no contacts on the issue with the European Community.

48. The representative of the Russian Federation supported the views expressed by the United States and Turkey.

49. The Working Party will be informed about the progress on this issue at one of its future sessions.

(iv) Amendment proposals for the Convention

50. The Working Party took note of the report of the first session of the Ad hoc Expert Group on Phase III of the TIR revision (Geneva, 30 and 31 August 2004) as contained in document TRANS/WP.30/2004/32, prepared by the secretariat. The Working Party noted that, in line with the mandate it had given, the Ad hoc Expert Group had considered a number of issues to be of a technical nature and had recommended to invite the TIR Executive Board to consider these issues in further detail, pending the endorsement of the TIR Administrative Committee. Furthermore, the Ad hoc Expert Group had defined a number of issues as being of a strategic nature and had recommended that these issues should be considered in further detail during a second session of the Ad hoc Expert Group to be convened in November 2004.

51. The Working Party was of the view that, since the report of the Ad hoc Expert Group meeting was not yet available in all official languages, it could only express its general agreement with the recommendations contained in the report. Furthermore, the Working Party agreed that the second meeting of the Ad hoc Expert Group would take place on 15 and 16 November 2004 in Geneva.

52. The Working Party welcomed a presentation by the IRU on the organization and functioning of the TIR guarantee chain, as agreed during the session of the Ad hoc Expert Group meeting. The presentation is available in all three official languages of the UNECE on the following web site: <http://www.unece.org/trans/bcf/wp30/wp30-reports.htm>.

53. The questions and answer session following the presentation mainly focused on the following issues:

(a) Admission to the IRU guarantee chain and quota of the TIR Carnet holder

The IRU chain of guarantee requires a proof of sound financial standing for an operator to be admitted to use TIR Carnets. Such guarantees can be furnished either as a bank guarantee, a letter of guarantee from an insurance company acting as a financial institution or a cash deposit. The guarantee minimum according to IRU rules is US\$ 5,000 but can be fixed according to the requirements of the national associations up to US\$ 50,000. Several guarantee associations confirmed that the guarantee requirement had assisted them in avoiding access to the system of non-reliable operators. Based on the minimum guarantee requirement and the number of TIR Carnet holders registered in the ITDB, it seems that the total amount of guarantees lodged with the IRU associations could amount to US\$ 165,000,000. A quota system of TIR Carnets issued to TIR Carnet Holders has been put in place by the IRU and its associations as a risk management system. The IRU recommends that the quota is fixed corresponding to no more than two TIR Carnets per vehicle engaged in TIR transports. This recommendation can be adapted according to national practices and needs.

International and national financial institutions

The financial backing of the IRU guarantee chain is based on a two-tier system:

- (i) The international component: Based on a global contract between IRU and Zürich Financial Services with national guaranteeing associations as beneficiaries. The international insurance broker AON is the intermediary between IRU and Zürich. The contract covers the guarantee/surety provided by the IRU to national associations to back up the surety that national associations are providing towards Customs authorities. The aggregate maximum limit covered per year is CHF 300,000,000. The contract provides a guarantee/surety in all Contracting Parties where the TIR procedure can be used.

- (ii) The national component: Based on contracts between national guaranteeing associations and insurance companies/financial institutions with the aim of covering the liabilities of the holder towards the guaranteeing chain, 80 per cent of the national coverage is covered through the London based insurance broker Davison, who in turn has organized insurance though Lloyd's of London. Each national contract contains similar provisions with an annual aggregate limit between CHF 15,000,000 and 20,000,000 per year per contract.

The two-layer system has been established (a) as a result of the difficulties discovered with the old (PFA) insurance to recover claims at national level and (b) to solidify the guarantee chain and spread the risk. In practice, Zürich Financial Services can recover claims paid from the national insurers/national financial institution up to the maximum of the national insurance contact. The national insurer/national financial institution in turn can seek recovery from the TIR Carnet holder in cases where the TIR Carnet Holder is at fault or has shown negligence. In case a national aggregate limit would be exceeded, this would not affect the maximum coverage by the global financial contract mentioned above. In such a situation, the only consequence would be that the recovery from the national layer could not take place.

(c) Guarantee/Surety

The IRU explained that the guarantee chain is activated once a Customs debt has been defined and the person directly liable, being either the person in possession of the goods, the person introducing the goods on the market without using the relevant Customs procedures, or the Customs declarant, usually the TIR Carnet holder, does not pay the Customs claim. According to the IRU, the guarantee provided by the IRU chain of guarantee is a surety. IRU is of the view that, as surety provider, the IRU chain of guarantee has the same rights as the Customs debtor and, in addition, has own rights based on the guarantee agreement between the Customs authority in question and the national guaranteeing association. According to the IRU, the guaranteeing association, in accordance with Article 1q of the Convention, is not a co-debtor. The Working Party expressed the view that, the guarantee/surety obligation of the association was defined in the Convention and, in this context, the liability of the association should be considered also based on Article 8, para. 1 of the Convention. The IRU expressed the view that, according to national legislation, negotiations on groups of TIR claims are possible. The Working Party invited the IRU to transmit an official document for its one-hundred-and-ninth session containing an overview of how the IRU understands the guarantee/surety issue. Contracting Parties to the Convention were also invited to transmit any views, which they might have on the issue, to the secretariat. In this context, the view was also expressed that it should be analyzed if the view expressed by the IRU concerning the establishment of a debt and, in particular, the obligations of the TIR Carnet Holder and Customs authorities as described by the IRU are correct.

(d) Claims handling/payment and statistics

The procedure for handling of claims and payment as presented by the IRU demonstrated that the decision concerning the payment does not lie with the guaranteeing association but finally with the international insurers/financial institution and the IRU. Guaranteeing associations expressed the view that they would not be able to take on the liability according to the Convention without the backing of the guaranteeing chain and thus it was natural that all claims were dealt with centrally by the IRU. The Working Party considered it doubtful whether this procedure was in line with the provisions of the Convention and that it should be considered either to bring practice into line with the Convention or vice versa. In this context, it was also proposed to explore how other similar Conventions providing a guarantee are functioning. The IRU was asked how many of the cases paid were paid within the time limits stipulated according to the Convention. Some delegations were requesting IRU to provide detailed information concerning the TIR Carnet price, the price for insurance coverage per TIR Carnet and other financial data considered relevant. One Contracting Party was of the view that such data were not relevant and did not support that IRU should be asked to furnish such data. The IRU, when requested directly if it would be possible to provide the information requested for the one-hundred-and-eighth session of the Working Party, expressed the view that it could supply information as defined by the Agreement between the UNECE and the IRU. When asked about the experiences drawn from the system in place prior to 1995, compared to the present system, the IRU expressed the view that, within the IRU chain of guarantee, many lessons had been learned and that the management of the system had been strengthened so that the system today was fully reliable and robust. Moreover, the IRU confirmed that, regarding the settlement of claims in relation to the old insurance pool, the IRU guarantee chain would be able to honour all justified claims.

54. The Working Party considered document TRANS/WP.30/2004/33, prepared by the secretariat, containing three alternative proposals or adding a new Explanatory Note to Article 6.2 bis. The Working Party recalled its decision, at its one-hundred-and-seventh session, to consider this issue again at its present session. It also took note of the recommendation by its Ad hoc Expert Group on Phase III of the TIR revision process, that this issue was considered of a strategic nature and should be considered in a package together with other strategic amendment proposals.

55. The Working Party considered that it would be premature to adopt the Explanatory Note to Article 6.2 bis before it had been considered in conjunction with the other issues linked to the revision. Therefore, the Working Party decided to postpone its discussion of the issue and also decided to ask the Ad hoc Expert Group to take this issue into consideration at its future session.

56. The delegation of the Russian Federation was of the view that the Explanatory Note to Article 6.2 bis should be considered in substance at the present session, as foreseen by the decision of the Working Party at its one-hundred-and-seventh session. In this regard, the delegation of the Russian Federation supported the draft Explanatory Note contained in para. 2 a) of document TRANS/WP.30/2004/33. The delegation felt that the way chosen for consideration of this issue was inefficient as decisions, which are important for the future of the TIR system are deferred to future sessions.

(c) **Application of the Convention**

(i) **Functions and roles of the TIRExB, the TIR secretariat and the IRU**

57. The Working Party considered document TRANS/WP.30/2004/34, prepared by the secretariat, containing a revised proposal for a description of the roles and responsibilities of the national guaranteeing associations, the international organization, the TIRExB and the TIR secretariat to be included into point 1.9 of the introduction to the TIR Handbook.

58. The Working Party adopted the text with two modifications proposed by the IRU under points 1.9.4 and 1.9.5 as well as the deletion of references in the English and French versions to the text in Russian.

(ii) **Control system for TIR Carnets - IRU SafeTIR**

59. The Working Party took note, with appreciation, of a presentation by the IRU on the improved functionalities of the IRU operated CUTEWise system, which had been requested by the Working Party. The delay in data reporting is, for the time being, 24 hours but IRU has initiated a project for real-time operation.

60. The Working Party expressed the view that the CUTEWise system was very useful for Customs authorities in their control efforts. The Working Party requested the IRU to explore if the date of return of TIR Carnets from the holder to the association and the date of return to the IRU could also be included in the CUTEWise data. The IRU agreed to explore the possibilities for inclusion of such data. The Working Party also expressed the view that it would be useful for Customs authorities to receive more information on the correlation between missing information concerning termination of TIR Carnets and fraud. The IRU informed that it had started internal work on this issue and that it would inform the Working Party on progress on this issue accordingly.

61. The Working Party took note of information provided by the IRU on the functioning of the IRU SAFETIR system. IRU receives SAFETIR messages for 89 per cent of all terminated TIR operations with an average delay of 9 days, which is an improvement compared to previous reports. Concerning reconciliation requests to Customs authorities to verify the termination of TIR Carnets,

IRU has issued 9,446 reconciliation requests in the period 1 January to 31 August 2004 and has received replies to 65 per cent of their requests with an average delay of 28 days. The Working Party encouraged all Contracting Parties to actively work on improving their transmission of the data according to the Recommendation of 20 October 1995 with a view to improving the risk management of the TIR system.

62. The Working Party took note of information provided by the delegations of France and Germany respectively, that CUTEWise is available in all Customs offices. In Germany, as from 1 November 2004, SAFETIR data will be delivered on-line from the Customs authorities to the guaranteeing associations.

(iii) Settlement of claims for payments

63. The Working Party was informed by the IRU of the following figures:

- Notifications/pre-notifications received between 1 January 2004 to 31 August 2004: 5,943
- Pending payment requests:
 - 31 August 2004: 8,059
- Claim settlement in 2004:
 - 886 claims settled through payment
 - 152 claims settled administratively or by Court decisions without payment.

(iv) Amendment proposals relating to technical provisions

64. The Working Party considered document TRANS/WP.30/2004/26, prepared by the secretariat, containing a revised proposal for amendment of Annex 2 and Annex 7 of the Convention to allow for the use of fastening cables containing fibre-optics.

65. The Working Party adopted a slightly modified text as contained in Annex 1 to this report and decided to transmit it for adoption by the Administrative Committee at its thirty-seventh session in October 2004.

66. The Working Party also considered document TRANS/WP.30/2004/35, prepared by the secretariat, containing a proposal for a comment to Article 22 of the Convention on specifications for Customs seals.

67. The Working Party adopted a modified text as contained in Annex 2 to this report and decided to transmit it for endorsement by the Administrative Committee at its thirty-eighth session in February 2005. It also decided to add the comment both to Articles 19 and 22 of the Convention.

68. The Working Party took note of document TRANS/WP.30/2004/36, prepared by the secretariat, containing a proposal, elaborated by the United States, for a new comment to Annex, Article 2 of the Convention, the placement of seals.

69. The Working Party, considering that the proposal was only available in English, had not been made available in advance of the session and did not contain the necessary technical illustrations, decided to defer the discussion of the issue to its next session.

(v) **CITES**

70. The Working Party considered the proposal contained in the report of its one-hundred-and-sixth session (TRANS/WP.30/214, para. 57) for a new comment to Article 47 of the Convention concerning documentation required under other International Conventions and controls in the context of the TIR Convention.

71. The Working Party took note that, in relation to the CITES Convention, the specific document in question is the CITES authorization, which contains both a unique document number and specification of the goods. The Working Party also noted that information to be provided in the context of the draft comment should be inserted in box 8 of the goods manifest and the vouchers.

72. The Working Party adopted the text as contained in Annex 2 to this report and decided to transmit it for endorsement by the Administrative Committee at its thirty-eighth session in February 2005. The delegation of Turkey noted that it could not support the adoption of the comment containing the last sentence which refers to a reference to be inserted in the TIR Carnet.

(vi) **TIR Handbook**

73. The TIR Handbook contains the text of the Convention and its annexes, including the amendments to the Convention, at present including the amendments adopted under Phase II of the TIR revision process, as well as all relevant comments adopted by the Working Party, the Administrative Committee and the TIRExB.

74. The Working Party took note that the last edition of the TIR Handbook in English, French and Russian can be viewed and downloaded from the UNECE TIR web site (<http://tir.unece.org>). Hard copy versions of the TIR Handbook are available in Arabic, Chinese, English, French, Italian and Russian. A limited number of the Handbook may be obtained free of charge from the secretariat.

75. Updated versions of the TIR Handbook, with the latest amendments to the Convention in English, French, Russian and Spanish as well as German, are planned for January 2005. The secretariat plans to update the TIR Handbook in the English, French and Russian language versions in 2005. Versions in Arabic and Chinese will follow as soon as possible thereafter.

(vii) Other matters

76. The Working Party took note of an issue raised by the European Community concerning detection of a number of cases where TIR Carnets had been presented at the external borders of the European Union without a date of validity indicated on the front cover of the TIR Carnet. The European Community raised the question of how such Carnet should be considered.

77. The Working Party, after an in-depth discussion of the issue, decided to invite the TIRExB to consider the issue. The Chairman of the TIRExB confirmed that the Board had already decided to consider the issue in further detail.

PREVENTION OF THE ABUSE OF CUSTOMS TRANSIT SYSTEMS BY SMUGGLERS

78. No new information was provided by delegations on this subject.

PROGRAMME OF WORK FOR 2005 to 2009

79. The Working Party took note of the present Programme of Work for 2004 to 2008 as well as documents TRANS/2004/18 and TRANS/2004/19, prepared for the Inland Transport Committee (ITC) on the strategic objectives adopted by the Committee.

80. The Working Party was of the view that the Programme of Work would benefit from a closer review, bearing in mind the strategic objectives of the ITC, and focusing in more detail on providing targeted and result oriented expectations for the output. As a result, the Working Party invited delegations, in writing, to provide the secretariat with proposals for improvements to the Programme of Work. On the basis of the comments received, the secretariat was requested to prepare a revised Programme of Work for the one-hundred-and-ninth session of the Working Party.

OTHER BUSINESS

(a) Dates of the next sessions

81. The Working Party decided to convene its one-hundred-and-ninth session in the week from 31 January to 4 February 2005 in conjunction with the thirty-eighth session of the TIR Administrative Committee. The deadline for submission of official documentation is 15 November 2004.

82. The one-hundred-and-tenth session of the Working Party is tentatively scheduled to be held during the week of 13 to 17 June 2005 in conjunction with the seventh session of the Administrative Committee for the "Harmonization" Convention.

(b) Restriction on the distribution of documents

83. The Working Party decided that there were no documents to be restricted.

ADOPTION OF THE REPORT

84. The Working Party decided to adopt the report of its one-hundred-and-eighth session.

Annex 1

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

**agreed upon by the UNECE Working Party on Customs Questions affecting Transport
on 15 October 2004**

Replace the first two paragraphs of Annex 2, Article 3, paragraph 9 by the following text:

- “9 The following fastenings shall be used:
 - (a) steel wire ropes of at least 3 mm diameter; or
 - (b) ropes of hemp or sisal of at least 8 mm diameter encased in a transparent sheath of unstretchable plastic; or
 - (c) ropes consisting of batches of fibre-optic lines inside a spirally wound steel housing encased in transparent sheath of unstretchable plastic; or
 - (d) ropes comprising a textile cord surrounded by at least four strands consisting solely of steel wire and completely covering the core, under the condition that the ropes (without taking into account the transparent sheath, if any) are not less than 3 mm in diameter.

Ropes in accordance with paragraph 9 (a) or (d) of this Article may have a transparent sheath of unstretchable plastic.”

Delete Explanatory Note to Article 3, paragraph 9 (Textile cored steel fastening ropes).

{TRANS/WP.30/216, paragraph 65}

Replace Annex 2, Article 3, paragraph 10 by the following text:

- “10 Each type of rope shall be in one piece and shall have a hard metal end-piece at each end. Each metal end-piece shall allow the introduction of the thread or strap of the Customs seal. The fastener of each metal end-piece of ropes in accordance with the provisions of paragraph 9 (a), (b) and (d) of this Article shall include a hollow rivet passing through the rope so as to allow the introduction of the thread or strap of the Customs seal. The rope shall remain visible on either side of the hollow rivet so that it is possible to ensure that the rope is in one piece (see sketch No. 5 appended to these Regulations).”

{TRANS/WP.30/216, paragraph 65}

Replace the first two paragraphs of Annex 7, Part I, Article 4, paragraph 9 by the following text:

- “9 The following fastenings shall be used;
- (a) steel wire ropes of at least 3 mm diameter; or
 - (b) ropes of hemp or sisal of at least 8 mm diameter encased in a transparent sheath of unstretchable plastic; or
 - (c) ropes consisting of batches of fibre-optic lines inside a spirally wound steel housing encased in transparent sheath of unstretchable plastic; or
 - (d) ropes comprising a textile cord surrounded by at least four strands consisting solely of steel wire and completely covering the core, under the condition that the ropes (without taking into account the transparent sheath, if any) are not less than 3 mm in diameter.

Ropes in accordance with paragraph 9 (a) or (d) of this Article may have a transparent sheath of unstretchable plastic.”

{*TRANS/WP.30/216, paragraph 65*}

Replace Annex 7, Part I, Article 4, paragraph 10 by the following text:

- “10 Each type of rope shall be in one piece and shall have a hard metal end-piece at each end. Each metal end-piece shall allow the introduction of the thread or strap of the Customs seal. The fastener of each metal end-piece of ropes in accordance with the provisions of paragraph 9 (a), (b) and (d) of this Article shall include a hollow rivet passing through the rope so as to allow the introduction of the thread or strap of the Customs seal. The rope shall remain visible on either side of the hollow rivet so that it is possible to ensure that the rope is in one piece (see sketch No. 5 appended to these Regulations).”

{*TRANS/WP.30/216, paragraph 65*}

Annex 2

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

Comments adopted by the UNECE Working Party on Customs Questions affecting Transport

Add a new comment to Article 19 to read as follows:

"Specifications for Customs seals

The TIR Convention does not address the issue of standards and requirements for Customs seals. It only stipulates that, as a general rule, Contracting Parties must accept Customs seals affixed by other Contracting Parties. Thus, specification of Customs seals is left at the discretion of national Customs authorities. However, with a view to ensuring high security of Customs sealing, it is essential that Customs administrations use seals which conform to up-to-date international standards and requirements in this field. In this context, the attention of Customs authorities is drawn to the guidelines to Chapter 6 of the General Annex to the International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention) as well as to minimum requirements for Customs seals laid down in Specific Annex E, Chapter 1 of the said Convention elaborated under the auspices of the World Customs Organization (WCO)."

Add the same comment to Article 22.

{TRANS/WP.30/216, paragraph 67}

* * *

Add a new comment to Article 47 to read as follows:

"Accompanying documentation

Documentation required under international Conventions (such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973) should always accompany the goods concerned. In such cases a reference to this documentation on the TIR Carnet could facilitate Customs controls."

{TRANS/WP.30/216, paragraph 72}
