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COMMISSION DE CONTROLE TIR (TIRExB)
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Agenda item V

Implementation of the intermodal aspects of the TIR procedure

Note by the secretariat, in cooperation with the International Road Transport Union

A. Background and mandate

1. At its forty-sixth session (April 2011), TIRExB decided, as part of its Programme of Work for 2011–2012, to dedicate time to the preparation of guidelines for the TIR Administrative Committee how to promote the multimodal use of the TIR Carnet (See ECE/TRANS/WP.30/AC.2/2011/8, para. 8 and ECE/TRANS/WP.30/AC.2/2011/9).
2. At its fifty-third session (April 2013), TIRExB decided, as part of its Programme of Work for 2013–2014 to continue this activity under a modified formulation of supporting the adaptation of the TIR procedure to modern business, logistics and transport requirements, including intermodal transport (ECE/TRANS/WP.30/AC.2/2014/1, para. 9 and ECE/TRANS/WP.30/AC.2/2013/7).
3. In 2015, the current composition of the Board decided, in view of the growing relevance of the topic, to further continue this activity as part of its Programme of Work for 2015–2016 (TIRExB/REP/2015/63draft with comments, para. 10–12 and Annex).

B. Past considerations by TIRExB

4. At its forty-eighth session (October 2011), the Board considered Informal document No. 18 (2011) by the secretariat, which contained introductory information on multimodality, such as an overview of main definitions, references to the multimodal use of the TIR Carnet in the TIR Convention as well as an historic overview of the so-called multi-modal TIR Carnet, which was introduced in the late 1980s but never really used and which was abandoned after a few years of unsuccessful promotion. As a first assessment, TIRExB agreed that, at present and as long as no final position on subcontractors in the TIR Convention has been found, the term “intermodal” seems to better reflect the options offered by the TIR Convention than the term “multimodal”, which explicitly allows for the use of subcontractors. Intermodal transport is defined as “the movement of goods in one and the same loading unit or road vehicle, which uses successfully two or more modes of transport without handling the goods themselves in changing modes.”
5. From its side, IRU confirmed that today a certain amount of intermodal TIR transports takes place. In particular, these refer to TIR transports including ferry services

(Baltic States, Mediterranean, Black Sea and Caspian regions) or involving block trains. However, in the case of ferries, the use of the TIR (or another Customs) transit procedure is not required during the sea leg, whereas in the case of block trains, the TIR Carnet generally remains unprocessed during the rail leg. Thus, although it is correct to say, in general, that the TIR Carnet can be used in transports involving more than one mode of transport, the practical function of the TIR Carnet is limited to the road leg only and its intermodal value remains to be proven.

6. As a first step to pursue its efforts to draft an example of best practice of an intermodal TIR transport by means of a combined road–rail transport, TIRExB agreed to conduct a short survey among concerned stakeholders in the transport industry (logistic companies and multimodal transporters) in order to determine if there is a specific demand from the transport industry for a single intermodal Customs document and accompanying guarantee. TIRExB invited IRU to contribute to the drafting of the questionnaire as well as identifying its target group (see ECE/TRANS/WP.30/AC.2/2012/5, paras. 21–25).

7. At its fifty–third session (June 2013), TIRExB took note of the results and the conclusions of the survey on the intermodal aspects of the TIR procedure presented in Informal document No. 4 (2013), in particular that the TIR procedure is already used for intermodal transport and that the most mentioned obstacles for a wider use of the TIR procedure for intermodal transport are the lack of information for transport companies and for competent authorities, as well as the fact that the TIR procedure is still paper based (see ECE/TRANS/WP.30/AC.2/2014/1, paras 10–12).

8. Due to the ongoing situation in the Russian Federation, TIRExB could only continue its assessment of the issue at its fifty–ninth session (June 2014), when it was informed of a meeting between the secretariat and IRU, with the aim to relaunching the Board’s efforts to promote the use of the TIR Carnet for intermodal transports. The Board took note of information that, although there seems to be a familiarity among customs and trade with the use of the TIR Carnet in roll-on/roll-off (ro-ro) transport (see, for example, Chapter 7 of the TIR Handbook), little is known about the use of the TIR Carnet for containers, combined rail-road transports or transports involving inland waterways. TIRExB mandated the secretariat to continue its cooperation with IRU in the field of intermodal transport and to report back at regular intervals on issues of interest to the Board (such as, but not limited to, the use of subcontractors or the transfer of liability etc.) (see ECE/TRANS/WP.30/AC.2/2015/1, para. 16).

9. At its sixtieth session (September 2014), the Board was informed about the ongoing cooperation between the secretariat and IRU to facilitate the use of the TIR Carnet for intermodal transport. In particular, TIRExB took note of the efforts undertaken by IRU to obtain an in-depth understanding of the current use of the TIR Carnet for intermodal transport, which seems to be mainly limited to ro-ro transports, as well as to identify where the TIR procedure could further enhance the global supply chain. TIRExB, noting that the future accession of China to the TIR Convention could have a great potential for the intermodal use of the TIR procedure, was of the view that this aspect of the TIR Convention should not be considered in isolation. The computerization of the TIR procedure, the use of subcontractors, the possibility to start and terminate the TIR procedure at the premises of authorized consignors and authorized consignees, respectively, seem to be key factors to ensure that the TIR procedure could appeal to the largest number of actors in the global supply chain. Indeed, the main challenges for the use of the TIR Carnet in intermodal transports lie in the opportunity of offering logistics operators uninterrupted door-to-door transports under cover of a single guarantee, thus, for example, bypassing existing bottlenecks in ports. TIRExB mandated the secretariat to continue its cooperation with IRU and, if required, to follow-up on the outcome of the survey of 2013 by contacting those operators who had declared themselves available to share their experiences on the intermodal use of the TIR Carnet. The Board invited IRU to assist the secretariat in this work.

C. Intermodal and subcontractors

10. In 2008, after lengthy discussions and including an extensive survey among customs administrations and national associations, TIRExB established that many Contracting Parties permit the use of subcontractors within the context of the current Convention, under the condition that, in case of an infringement, the TIR Carnet holder will be held liable, often together with the subcontractor. Various national associations, with the approval of IRU, supported this approach by offering special arrangements between interested TIR Carnet holders and (a selection of) subcontractors. However, at the same time, there are countries which do not accept the concept of subcontractors. At the request of TIRExB, the secretariat had formulated a comment to Article 1 (o) which would, in view of the absence of any legal or practical problem with regard to the use of subcontractors and in order to support the uninterrupted use of subcontractors, allow those countries which accept subcontractors to continue this practice. Due to various reasons, the draft proposal was only discussed at the fifty-fourth session of the TIR Administrative Committee (October 2012). In the meantime, the Government of Belarus had proposed an alternative proposal for a comment to Article 1 (o):

(a) Proposal by the secretariat

“Comment to Article 1 (o)

Use of a TIR Carnet by (an)other person(s) than the holder

Some Contracting Parties accept that, with the consent of the TIR Carnet holder, (an)other person(s) perform(s) a TIR transport or part of it by means of a TIR Carnet issued to the TIR Carnet holder. In those Contracting Parties, when the TIR Carnet is presented at the customs office of departure by (an)other(s) than the TIR holder, the latter shall, as proof of his or her consent, indicate in Box 11 of the cover page of the TIR Carnet the following:

- (a) The name(s) of the person(s) performing the TIR transport or part of it;
- (b) The words “acting on behalf of” followed by
- (c) The name of the TIR Carnet holder.

Box 12 of the cover page should bear the signature of the TIR Carnet holder.

Once the customs office of departure has accepted the duly filled in TIR Carnet, all other competent authorities en route and at the customs office of destination involved in that TIR transport are recommended to accept such TIR Carnet without further requirements

(b) Proposal by Belarus

“Comment to Article 1 (o)

Successive use of a TIR Carnet by several holders within one TIR transport:

It is allowed to successively use a TIR Carnet by several TIR Carnet holders within one transport. In such cases a guaranteeing association, issuing the TIR Carnet, indicates on the cover page of the TIR Carnet the following:

- (a) In Box 3: the name of the first TIR Carnet holder;
- (b) In Box 11: the name of the successive TIR Carnet holder. The information specified in Box 11 shall be certified in the manner provided for Box 4 of the cover page of the TIR Carnet;
- (c) In Box 12: signature of the first TIR Carnet holder.

When the need for the use of the successive holder(s) arises in the course of a TIR transport, the first holder of the TIR Carnet must provide the customs authorities en route with a written confirmation of the possibility of the successive holder(s), issued by the guaranteeing association of the Contracting Party on which territory the TIR transport will be continued by the successive holder(s) and the customs authorities of which will open the corresponding TIR operation. Here, the first holder must fill in Boxes 3 and 11 of the cover page of the TIR Carnet in the manner specified in the first part of the comment and make changes in the relevant boxes of vouchers No. 1 a 2 of the TIR Carnet and certify the records by his or her signature. In this case, the above-mentioned written confirmation issued by the guaranteeing association (or its copy) must accompany the TIR Carnet.

Once the customs office of departure has accepted the duly filled in TIR Carnet, all other competent authorities en route and at the customs office of destination involved in that transport accept such TIR Carnet from persons specified as the TIR Carnet holders without further requirements.

In case of violation of the TIR procedure and the necessity of applying the provisions of the TIR Convention concerning the obligations to pay import or export customs duties and charges, including the application of Article 38 of the TIR Convention, the first and successive holder(s) bear the same responsibility as defined by the TIR Convention” (See ECE/TRANS/WP.30/AC.2/2012/13, paras 22–23).

11. During discussions at the fifty–fifth session of AC.2 (February 2013), a majority of countries was willing to support the comment by the secretariat, arguing that the Belarus proposal would mean the end to the current practice. Various delegations expressed their concerns about the concept of subcontractor in the TIR Convention in general and the liability of the TIR Carnet holder in particular as well as the application of Article 38 in case a subcontractor is involved. They were also interested to know more about the role of the guarantee chain as to accepting liability for TIR Carnets used by subcontractors. In particular, the question was raised if a national association would assume liability for a TIR Carnet issued to one of its holders but used by a subcontractor from another country.

12. The delegation of Belarus clarified that the main differences between its proposal and the one of the secretariat were the approach to the use of TIR carnets by a subcontractor who has no access to the TIR procedure as well as the application of Article 38 and of other provisions concerning the liability. According to the delegation of Belarus, granting the right to use TIR Carnets to a transport operator who has no access to the TIR procedure would not conform to one of the pillars of the TIR Convention, namely the controlled access of carriers to the TIR procedure (Annex 9, part II). The delegation also raised the issue if the TIR guarantee chain would cover TIR operations performed by a subcontractor who has not been authorized to use TIR. Due to lack of time, no reply was given to this question (see ECE/TRANS/WP.30/AC.2/115, paras 51–52).

13. Since then, the issue has not been discussed due to a lack of time.

D. Intermodal and authorized consignee/consignor

(a) authorized consignee

14. At its 105th session (September 2003), WP.30 acknowledged that the granting and the implementation of the facilitation of authorized consignee is left to the competence of individual Contracting Parties and deemed no further instructions necessary (ECE/TRANS/WP.30/210, para. 47). In this, the Working Party took over the main findings of a legal study undertaken by TIRExB and a pilot held by the French customs authorities, neither of which had found any pressing argument indicating that the concept of

authorized consignee could not be applied within the current text of the TIR Convention (See ECE/TRANS/WP.30/AC.2/20013/1, para. 10).

15. During its 2013–2014 term of office, TIRExB prepared a proposal for an example of best practice on authorized consignees in the European Union (EU). The Board decided not to transmit the document to AC.2, due to the fact that further amendments to the text might be required once the ongoing work on EU legislation would have been finalized (TIRExB/REP/62final, para. 15)

(b) authorized consignor

16. At its 105th session (September 2003), the Working Party endorsed the conclusion of TIRExB, in the course of its legal study on authorized consignees, that, for the time being, the facilitation of authorized consignor cannot be applied within the current text of the TIR Convention (ECE/TRANS/WP.30/210, para. 47).

17. At its fifty-eighth session (April 2014), TIRExB took note of an analysis by the secretariat of the substantive practical and legal considerations to be taken into account for the introduction of the concept of authorized consignor into the TIR Convention. After extensive discussions, TIRExB concluded that it wished to move forward with the introduction of the authorized consignor by, eventually, making a complete and concrete proposal to AC.2 and that it would strive doing so by means of a new Explanatory Note to Article 49 of the TIR Convention, which should provide a general legal basis for the introduction of further simplifications. The choice for Article 49 would also underline the Board's overall opinion that the concept of authorized consignor should be treated as a national facility which did not impede the application of the TIR Convention (see ECE/TRANS/WP.30/AC.2/2014/9, para. 28).

18. At its sixty-second session (February 2015), TIRExB adopted a proposal for a new Explanatory Note to Article 49 of the Convention with an accompanying comment and requested the secretariat to transmit the amended proposal to AC.2 for further consideration (TIRExB/REP/2015/62final, para. 14). The proposal, as contained in document ECE/TRANS/WP.30/AC.2/2015/11) will first be discussed by AC.2 at its June 2015 session.

(c) Text of outstanding proposals

- (i). Amend Annex 6, with a new Explanatory Note to Article 49 of the Convention:

“0.49 Contracting Parties may grant, in line with national legislation, greater facilities in the application of the provisions of the Convention. The conditions prescribed by the competent authorities upon granting such facilities should, at least, include, the application of information and communication technologies to ensure the good conduct of the TIR procedure, the exemption to produce goods, road vehicle, the combination of vehicles or the container with the TIR Carnet at the customs offices of departure, en route or destination, as well as instructions for duly authorized persons to perform specific duties entrusted pursuant to the TIR Convention to customs authorities, such as, in particular, the filling in and stamping of the TIR Carnet and the affixing or checking of customs seals. Greater facilities affecting persons authorized to utilize TIR Carnets should be granted without prejudice to their liability as stipulated by Article 11, paragraph 2 of the Convention. Contracting Parties are recommended to monitor the application of any granted facility.

- (ii) In order to ensure that, inter alia, the concepts of authorized consignor and consignee will be considered to be encompassed by Explanatory Note 0.49, the secretariat proposes the following comment.

Comment to Explanatory Note 0.49

Contracting Parties are recommended to grant greater facilities, such as authorized consignors and authorized consignees, as extensively as possible when they are satisfied that the prescribed conditions laid down in national legislation are met.

(iii) Justification of the proposal

In order to ensure that national competent authorities can independently decide on the conditions under which they would be willing to grant additional facilities within the meaning of Article 49, it is considered essential that greater facilities are granted in accordance with applicable provisions of national law.

The proposed Explanatory Note makes reference to facilitative measures involving the use of information and communication technology as well as to the possibility for exemption from the obligation to present the vehicle and TIR Carnet at any competent customs office of departure, en route or destination. Although for the time being, the main facilities addressed by this Explanatory Note are the concepts of authorized consignor and consignee, which are related to the tasks and responsibilities entrusted by the Convention to the customs offices of departure and destination, the general nature of the text of this Explanatory Note requires the inclusion of a reference to the customs office en route as well, as it may occur, at some point in time, that facilities will be granted implying their involvement as well.

As a final note, although it is the sole competence of national competent authorities to formulate the specific conditions under which they would grant any facility, the Explanatory Note also indicates certain pre-requisite elements that are considered important for inclusion in the authorization of natural or legal persons to utilize such greater facilities. The authorization should, for example, include detailed instructions concerning which persons are granted certain specific and well-defined tasks, which the TIR Convention usually entrusts to customs authorities. Such tasks include, but do not need to be limited to, the filling in and stamping of the TIR Carnet and the affixing or checking of customs seals. TIR Carnet holders who have been granted any facilitation, cannot invoke any circumstance related to the granted facilitation to release themselves from the liability imposed on them by virtue of Article 11, paragraph 2 of the Convention. Finally, competent authorities of Contracting Parties are recommended to closely monitor any facility granted in line with the provisions of national law and, in particular, apply stricter conditions to safeguard the proper functioning of the Convention.

E. Intermodal and the computerization of the TIR procedure

19. In various countries, ro-ro lines have demonstrated that TIR Carnets can be used for intermodal TIR transports. However, the use of paper TIR Carnets for containerized transport still raises numerous concerns, in particular when the containers are transported by ship. The shipping industry, as well as ports around the world, has efficient computerized systems, in which a procedure based on a paper document would be hard to integrate. Furthermore, considering that there is no agreement on the possibility to allow subcontractors in the framework of the TIR procedure, the submission of a paper TIR Carnet still requires in many countries the physical presence of the TIR Carnet holder or his representative. It goes without saying that such a requirement does not seem compatible

with the intermodal transportation of containers as neither the TIR Carnet holder nor his representative will travel with the container once it get loaded on a ship.

20. The computerization of the TIR procedure will provide solutions needed to resolve these issues. On the one hand, a seamless TIR information flow will allow all actors along the route of the TIR transport to obtain the information they require, not only in electronic form but also, in most cases, prior to the arrival of the goods. On the other hand, the submission of declaration in electronic format will allow TIR Carnet holders to submit declarations at distance.

21. However, even for a computerized TIR procedure, the role of subcontractors will have to be further clarified to allow a seamless integration of TIR in the overall supply chain.

F. Experience of the International Road Transport Union in the field of intermodal TIR transports

22. The IRU indeed confirms that most intermodal TIR transports taking place today are TIR ro-ro transports including ferry services. Randomly checked TIR Carnet samples indicate that TIR transports, although mainly conducted in the Mediterranean, also take place in the Caspian and Black Sea regions. TIR Carnets are usually used as illustrated in the example in Chapter 7 of the TIR Handbook, including a sea leg, for example between Turkey and a port in Italy. After termination of the TIR operation in Turkey, the TIR procedure is suspended and later resumed at the customs office in the port upon arrival. According to the traditional procedure, the TIR Carnet would be with the driver throughout the journey – including on board the ferry - and be presented upon arrival for resumption of the TIR procedure to the competent authorities in the port of arrival. However, the procedure was optimized, notably in the port of Trieste, in such a way that the TIR Carnets arrive in advance of the ferry arrival in the destination port, which allows pre-arrival checks of the TIR Carnet and related transport documents by the authorized local customs agent. In this way procedures are expedited, vehicles are allowed to disembark and leave the port swiftly (in less than 2 hours) with minimum formalities, thus avoiding congestion in the port.

23. While in some areas TIR ro-ro transports operate efficiently, there are areas where difficulties are encountered by TIR Carnet users which often cause delays and, thus, impact the TIR procedure. These difficulties do not relate to the TIR procedure itself but rather to, notably, operations in ports. For example, low ferry capacity, irregular ferry schedules, discrimination of operators of one mode of transport over another, etc. The efficient cooperation between public and private stakeholders is essential in order to overcome these difficulties in the future.

24. The use of TIR Carnets for other types of intermodal transports, notably for transports involving inland waterways, combined rail-road transports and for containers, requires further research to verify, and where necessary, to test the practical use of TIR Carnets for these types of transports. The IRU has already undertaken some research regarding transports of containers under the TIR procedure, which today is currently practiced by road. Little information is available on the intermodal transport of containers, although the practice is feasible today with the paper based TIR Carnet.

25. The research carried out so far indeed shows that modern logistics practices and main actors in the global supply chain support the implementation of additional facilitation under the TIR procedure, which could positively contribute to promoting its use, including for intermodal transports. Additional facilitation could include a wider acceptance of the subcontracting concept accepting that a person(s) other than the TIR Carnet holder could perform a TIR transport or part of it. This could be achieved through the introduction of a comment to Article 1 (o) as proposed by the TIR secretariat. Such a comment would

introduce the concept of subcontractors in the TIR Convention, without imposing it on Contracting Parties. Moreover, the introduction of the authorized consignor/consignee concept would also provide further practical benefits both to customs and trade for the following reasons: (a) formalities can be done outside the working hours of customs offices, (b) controls at the start and end of TIR operations are minimized further to risk analysis on the basis of advance cargo information, (c) customs procedures are much faster and more focused on high risk consignments, (d) the workload of the customs authorities is diminished as well as (e) waiting times for transport operators, (f) there are more accurate deliveries of the goods to customers and (g) supply chain efficiency is improved.

26. In the same vein, the computerization of the TIR procedure appears as an additional facilitation tool, as it follows the current general trend of enhanced efficiency in data exchange between key stakeholders and dematerialization of documents in all modes of transport.

27. From a more operational perspective, it is also essential that competent authorities provide appropriate support, notably through ensuring that a suitable number of customs offices in/nearby ports, terminals, etc. are approved to carry out TIR operations.

28. Finally, possible cooperation with the Working Party on Intermodal Transport (WP.24) could also be considered to support adaptation of the TIR procedure to intermodal transports.

G. Considerations by the TIR Executive Board

29. The Board is invited to consider and endorse this document as constituting an accurate reflection of the current state of play of the implementation of the TIR procedure for intermodal transports and, possibly, provide guidance to the TIR secretariat, in collaboration with the IRU, how to further pursue the issue.
