

**TIR EXECUTIVE BOARD (TIRExB)**

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COMMISSION DE CONTROLE TIR (TIRExB)

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Administrative Committee for the TIR Convention, 1975

TIR Executive Board (TIRExB)

Fifty-second session

Geneva, 4 February 2013

Agenda item 4

Monitoring the functioning of the guarantee system

Note by the secretariat

I. Background and mandate

1. At its fiftieth session, the Board conducted a first round of discussions on the issue of conformity of the use of additional guarantees with the provision of Article 4 of the TIR Convention. Some TIRExB members were of the view that the provision of Article 4 was clear in stipulating that “goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes at Customs offices en route”. In their view, the scope of Article 4 was not only to avoid any payment or deposit of import or export duties and taxes but also to exclude the requirement of any guarantee in addition to the guarantee provided by the TIR Carnet. Other board members argued that, due to the absence in Article 4 of a specific reference to additional guarantees, a different legal interpretation could be maintained. At the same time, the Board noted that in individual cases the costs of an additional guarantee could be lower than the costs of, for example, an obligatory escort. The Board also noted the possible correlation between the reduction, over time, of the real value of the recommended guarantee amount and the requirement of additional guarantees and escorts. The Board decided to pursue its discussions at the next session and requested the secretariat to prepare a document on the application of Article 4 of the Convention, for consideration at its next session. (TIRExB/REP/2012/50final, para. 15)

2. At its fifty-first session, the Board also extensively discussed Informal document No. 22 (2012), prepared by the secretariat and containing background information on the application of Article 4 of the Convention, together with a succinct summary of the various discussions that have taken place in the past in relation to its implementation. In the view of one member of the Board, the current wording of Article 4 could, in principle, allow competent authorities to request additional guarantees on top of the guarantee provided by the TIR Carnet.¹ He believed that, in case the Customs duties and taxes at stake exceed the TIR guarantee level, providing additional guarantees could be an option for the TIR Carnet

¹ One member of the Board proposed to complement the sentence with “if the TIR guarantee is insufficient to cover amount of customs duties and taxes.”

holder in order to avoid expensive Customs escorts whose costs can be higher than the price of the additional guarantee.² Other members, however, were of the view that the text of Article 4 clearly stipulates that no additional guarantee shall be required for goods transported under the TIR procedure, even if the Custom duties and taxes at stake exceed the maximum guarantee amount of \$US 50,000 or €60,000. In their view, any differing opinion would run counter to the principles of the TIR Convention, which aims at providing trade and transport maximum facilitation against minimum interference by Customs at border-crossings. With reference to the increased security of the TIR system, as once more confirmed by the recent TIRExB survey on Customs claims, they challenged the purpose of requiring an additional guarantee or prescribing a Customs escort as an appropriate tool to maintain the well-functioning of the TIR system. Various member of the Board reported that in their countries, further to the principle that the TIR system is based on a flat rate guarantee, Customs duties and taxes are not calculated upon entry and that, thus, any potential excess of guarantee did not really pose a problem. In their view, Customs authorities have sufficient tools at their disposal (in particular, the selection of authorized TIR Carnet holders and risk analysis tools) to ensure the due conduct of TIR transports in their territory. The Board took note of various reported incidents, where TIR Carnet holders had requested Customs to open more than one TIR Carnet per TIR vehicle or container in order to achieve a higher guarantee than prescribed by the TIR Convention. (TIRExB/REP/2012/51draft, para. 16)

3. In order to pursue the matter, TIRExB requested the secretariat to draft, on the basis of the text of the current Comment to Article 4, a proposal for the introduction of a new Explanatory Note, which would unambiguously stipulate that no additional guarantee is required as long as goods are transported under the TIR procedure. (TIRExB/REP/2012/51draft, para. 18)

4. Further to this request, the secretariat prepared this Informal document for consideration by the Board.

II. New Explanatory Note to Article 4

5. In order to further clarify the provisions of the TIR Convention, 1975, TIRExB may wish to consider following options to introduce for a new Explanatory note to Article 4.

² One member of the Board proposed to add the following text: "In his opinion, from a legal point of view, in accordance with the provisions of Article 4 "goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes". So, as for security, the legal provisions of Article 4 only mention "deposit". Other types of securities (e.g. guarantee by third persons or the pawning of goods) are not mentioned in the TIR Convention. In accordance with the comments to Article 4 "the basic principle of Customs transit is relief from the payment of import or export duties and taxes for goods in transit, provided that any security required has been furnished. Wordings "any security required" mean that the amount of security should be sufficient i.e. not less than the amount of Customs duties and taxes. Also, the comments to Article 4 specify that "as the goods carried under the TIR procedure are at any moment covered by the guarantee, as referred to in Article 3 (b), in the course of a TIR transport neither payment of import or export duties and taxes nor security in any other form shall be required". Article 3 (b) specifies only that "transport operations must be guaranteed by associations approved...". So, the mentioned legal provisions imply that the TIR guarantee covers the amount of Customs duties and taxes. The prohibition to use securities (other than deposit) in form of additional guarantees when the TIR guarantee does not completely cover the amount of Customs duties and taxes (except for Explanatory Note 0.8.3 and Article 23 on escorts) is not mentioned in the legal text of the TIR Convention. Taking this into account, the TIR Convention does not forbid the use of additional guarantees on top of the insufficient TIR guarantee as an alternative to escort."

Option 1 uses the exact wording of the current Comment to Article 4, whereas option 2 unambiguously states that the use of additional guarantees is forbidden.

Explanatory Note to Article 4 (option 1)

0.4. The basic principle of Customs transit is relief from the payment of import or export duties and taxes for goods in transit, provided that any security required has been furnished. As the goods carried under the TIR procedure are at any moment covered by the guarantee, as referred to in Article 3 (b), in the course of a TIR transport neither payment of import or export duties and taxes nor security in any other form shall be required in any Contracting Party involved in the TIR transport.

Explanatory Note to Article 4 (option 2)

0.4. The goods carried under the TIR procedure are at any moment covered by the guarantee, as referred to in Article 3 (b). The provisions of Article 4 gives relief from the payment of import or export duties and prohibit the authorised authorities in any Contracting Party to request or accept additional security in any form. In particular it is prohibited to open more than one TIR Carnet per TIR vehicle or container in order to achieve a higher guarantee than prescribed by the TIR Convention.

6. Furthermore, TIRExB may also wish to consider the deletion of the first part of the current comment to Article 4, while keeping the references to Articles and comments clarifying the use of escorts. The comment to Article 4 would then read as follows:

Comment to Article 4

Please refer to the comments to Explanatory Note 0.8.3 (Duties and taxes at risk) and to Article 23 (Escort of road vehicles).

III. Further considerations

8. While keeping in mind AC.2's discussions on the amendment(s) to the Convention with regard to the maximum level of guarantee per TIR Carnet (ECE/TRANS/WP.30/AC.2/111, para. 34), TIRExB may wish to consider the proposals contained in this document.
