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Economic Commission for Europe**Administrative Committee for the TIR Convention, 1975****Fifty-first session**

Geneva, 3 February 2011

Item 4 (a) (i) of the provisional agenda

**Activities and administration of the TIR Executive Board – activities
of the TIR Executive Board: report by the Chair of the TIR Executive Board****Report of the forty-third session of the TIR Executive Board***Summary*

The present document is submitted pursuant to Annex 8, Article 11, paragraph 4 of the TIR Convention, 1975, which stipulates that the TIR Executive Board (TIRExB) “shall report on its activities to the Administrative Committee at least once a year or at the request of the Administrative Committee”.

I. Attendance

1. The TIR Executive Board (TIRExB) held its forty-third session on 4 and 5 May 2010 in Istanbul, Turkey.
2. The following members of the TIRExB were present: Mr. S. Baghirov (Azerbaijan), Mrs. A. Dubielak (Poland), Mr. H. Köseoğlu (Turkey), Mr. H. Lindström (Finland), Mr. V. Luhovets (Ukraine), Mr. I. Makhovikov (Belarus), Mrs. H. Metaxa Mariatou (Greece), Mr. V. Milošević (Serbia) and Mrs. J. Popiolek (European Commission).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Muratbek Azymbakiev.

II. Adoption of the agenda

4. The TIRExB adopted the agenda of the session as prepared by the secretariat (Informal document TIRExB/AGE/2010/43) without further amendments.

III. Adoption of the report of the forty-second session of the TIR Executive Board

5. The TIRExB adopted the report of its forty-second session (Informal document TIRExB/REP/2010/42 draft with comments), subject to the following modification:

Paragraph 18

For the existing paragraph read 18. The Board carefully considered Informal document No 2 (2010) and agreed with the conclusion of the expert that the vehicle concerned could only have obtained TIR approval in accordance with the provisions of Annex 2, Article 1 (c) and (d), in case it would be possible to provide TIR approval for vehicles, designed for the exclusive transport of certain specific types of goods. However, considering that the TIR Convention does not provide this option and in view of the fact that the vehicle was designed for the alternative transport of other goods (or a combination of coils and other goods), such approval should not have been granted because the V-shaped troughs, designed to secure the coils, could, when covered with floorboards to create a level loading floor, easily hold and, thus, hide goods. In addition, the troughs could only be properly inspected from all sides after the vehicle (or part thereof) had been emptied.

Documentation

Informal document No. TIRExB/REP/2009/42draft with comments

IV. Best practices with regard to the use of the TIR Carnet

6. The TIRExB discussed Informal documents No. 5 and 6 (2010) and confirmed that, in accordance with Rule 12 of the “Rules regarding the use of the TIR Carnet:

(a) the holder (or his agent) must date and sign all vouchers (boxes 14 and 15) of the TIR Carnet and

(b) the Customs authorities of the last Customs office of departure must sign and date stamp box 17 of all remaining vouchers.

7. The TIRExB stressed that the above rules are clear and unambiguous and, thus, should be applied without exception. Further to this, the TIRExB discussed what to do in practice, in case these instructions are not followed. According to the findings of various members, it often happens that operators use a 14 or 20 voucher TIR Carnet, whereas, in fact, only 8 or 10 vouchers would be sufficient to cover the TIR transport. In such cases, the remaining vouchers are not filled in by the operator and Customs, nor taken out by Customs, thus constituting a potential abuse of that particular TIR Carnet.

8. The TIRExB invited its members to submit comments or proposals how to address this situation, at the latest by the end of August 2010, for discussion at its next session. The TIRExB invited the IRU to also investigate the issue, with a view to determining whether it would be possible to introduce an 8 or 10 voucher TIR Carnet to the existing range, in order to fill the gap between the 6-voucher and 14-voucher TIR Carnet.

Documentation

Informal document No. 5 (2010); Informal document No. 6 (2010)

V. Current status of the eTIR Project

9. The secretariat informed the TIRExB of the latest developments in the eTIR Project. The TIRExB took note of the report of the seventeenth session of the Informal Ad hoc Expert Group on Technical and Conceptual Aspects of Computerization (GE.1) which had taken place in Helsinki on 8 and 9 February 2010 (ECE/TRANS/WP.30/GE.1/2010/4). It welcomed the initiative of GE.1 to conduct part of its meeting by means of a number of presentations aimed at assessing the latest information and communication technology (ICT) developments related to the TIR procedure and took note that the presentations confirmed the need to pursue all aspects of the eTIR project, in particular the development of uniform declaration mechanisms. Furthermore, the TIRExB welcomed the finalization of Chapter 3 of the eTIR Reference Model as well as the preliminary work on Chapter 4. Finally, it recognized the establishment of a network of eTIR focal points and the creation of an eTIR web site as valuable opportunities to ensure broader participation of Contracting Parties in the eTIR project. The TIRExB concluded by reiterating the importance of the eTIR project and the need of swift actions towards its implementation.

VI. Procedure prior to suspension of the guarantee on the territory of a Contracting Party

10. The Board considered Informal document No. 7 (2010), transmitted by the IRU. In this document, the IRU provides an overview of the main contractual arrangements constituting the guarantee chain, together with their termination clauses.

11. The TIRExB expressed its appreciation for the informative nature of the document. At the same time, the Board regretted that the document did not clarify the correlation between the various applicable deadlines. Nor did it address the issue of the suspension of the guarantee under exceptional circumstances (including 'force majeure') or contain an outline of the functioning of the guarantee system at the national and international level, as the IRU had been requested to do.

12. The IRU informed that the international insurance contract between the international global insurers on the one hand and each of the member associations of the IRU as beneficiaries on the other hand, was concluded in accordance with the provisions of Annex 9, Part I. The application of Swiss law and the designation of Swiss courts as competent courts was a logical consequence of the international global insurers' establishment in Switzerland. According to the IRU, Swiss insurance law is not fundamentally different from insurance law in other countries and provisions similar to Article 30, paragraph 2 of the Swiss Insurance Law, which provides insurers the opportunity (in the case of aggravation of risk) to terminate the contract with a deadline of 14 days, can be found in other national legal systems.

13. Although the TIRExB took note of the information provided by the IRU that the relationship between IRU and the international global insurers was governed by Swiss law, it was not sure this was correct with regard to the relationship between the international global insurers and (all) national associations. And should the latter be the case, then the issue would need to be addressed for the future as, in line with the principles of consumer protection, it seemed to the TIRExB to be undesirable that the international global insurers as professionals and as the economic stronger party would benefit from their position to enforce the designation of a Swiss court and the application of Swiss law on the economic weaker and less defensible party of the national associations.

14. In conclusion, the TIRExB reiterated its request to the IRU to submit a document outlining the functioning of the guarantee system at national and international level, the

applicable deadlines and their interaction as well as the suspension of the guarantee under exceptional circumstances (including ‘force majeure’), for consideration by the Board at its next session.

Documentation

Informal document No. 7 (2010) (restricted)

VII. Approval of a specific construction of road vehicles

15. The Board took note of the fact that, due to proposed changes to the draft report of the forty-second session, the secretariat had not yet been in a position to convey the Board’s considerations to the Estonian and German authorities (See Informal document TIRExB/REP/2010/42final, paragraph 18). Now that the report had been adopted, the TIRExB requested the secretariat to pursue the matter without further delay.

16. The Board also took note of some recent experiences with regard to the non-compliance with the technical provisions of the TIR Convention, as contained in Informal document Nos. 8, 9 and 10 (2010). The TIRExB established that the non-compliance of vehicles seems to evolve around three major issues:

(a) non-observance of technical provisions of the TIR Convention, due to negligence or insufficient understanding from both operators and Customs;

(b) use of vehicles whose construction, by nature, cannot be modified to meet the requirement of the TIR Convention (particular types of vehicles and containers with sliding sheets — the so-called “curtain-siders”);

(c) use of vehicles, which, as a consequence of market developments, incorporate design or construction techniques not (yet) adequately addressed by the technical provisions of the TIR Convention.

17. In order to address the first two issues, the TIRExB was of the opinion that all efforts — at national and international levels — should be encouraged and supported to provide adequate training to technical experts. To underline this, the TIRExB requested the secretariat to initiate the organization of a technical seminar, specifically dedicated to officials dealing with the approval or inspection of vehicles. Such a seminar should, preferably, be organized as a “train the trainer” programme. The TIRExB stressed that the invitation should clearly specify that governments should ensure that, in particular, officials dealing with the approval or inspection of vehicles should attend this seminar. Part of this, or other, seminar, should be dedicated to the recurring problems of curtain-siders. In this regard, the TIRExB felt that the awareness of both the transport industry and competent authorities should be raised, because, more often than not, this type of vehicle, although mass produced, are not suitable for approval under TIR. First of all, it should be understood that curtain-siders have been designed principally for the intra-EU market, where no seals requirements exist, and that such vehicles are not suited for approval under TIR. Furthermore, the transport industry should be made aware that curtain-siders, which do comply with the provisions of the TIR Convention, require, as a rule, a higher investment, as TIR approved curtain-siders cost around fifteen percent more than their EU equivalent. Finally, the TIRExB recalled documents ECE/TRANS/WP.30/2007/22, ECE/TRANS/WP.30/2007/21 and ECE/TRANS/WP.30/2006/16, transmitted by the European Union Customs Assistance Programme in Serbia and Montenegro (CAFAO), which deals with the technical approval and control of TIR vehicles and loading compartments.

Documentation

Informal document No. 8 (2010) (restricted); Informal document No. 9 (2010) (restricted) and Informal document No. 10 (2010) (restricted).

VIII. Invalidation of TIR Carnets issued to excluded TIR Carnet holders

18. The Board considered Informal document No. 11 (2010), prepared by the IRU and elaborating on the applicable procedures and deadlines in case national associations have taken the decision not to issue TIR Carnets to authorized TIR Carnet holders.

19. The Board welcomed the efforts undertaken by the IRU to clarify the basic rules set by the national associations to, temporarily or permanently, stop the issuance of TIR Carnets to authorized TIR Carnet holders, but, at the same time was puzzled by the terminology used and the criteria applied. First of all, the TIRExB stressed the importance of sticking, in as far as possible, to the terms already available in the TIR Convention rather than introducing new terms, which also, completely or in part, seem to cover already legally defined situations. In addition, the TIRExB felt that the document failed to clarify what the consequences were in case a TIR Carnet holder was suspended temporarily (“for a few days”) both for the TIR Carnet holder himself and the TIR Carnets still in his possession as well as for Customs. The TIRExB was of the opinion that it was unacceptable that national associations introduce measures which materially have the same impact as decisions taken by national competent authorities, however without providing operators any form of legal security, including the right to oppose such measure. This particularly seemed to apply to the instrument of “permanent suspension” of a TIR Carnet holder by the national association. In addition, such measures did not seem to be taken on the basis of internal reasons only (regarding the association), but also as a consequence of infringements against Customs or other regulations, of which the association acted as the sole judge. In the view of the TIRExB, the national associations, in doing so, assume the role attributed by the Convention to the Customs authorities. At the same time, national associations expect Customs authorities to accept and follow-up on any decision taken by them with regard to the invalidation of TIR Carnets.

20. The IRU appreciated the comments provided by the TIRExB and agreed that further synchronization of procedures was required. However, it stressed that the procedures applied by the national associations and the international guarantee chain are the consequence of the establishment of a fully automated risk management system using the latest Information Technologies (IT), including data provided through the TIR Electronic Pre-Declaration system (EPD).

21. The TIRExB reiterated that it fully supports all efforts to improve the exchange of information between Customs and national associations, to the extent possible, in order to avoid the loss of Customs revenue, on the one hand, and the exposure of potential claims for the national associations, on the other hand. However, in the absence of an internationally recognized mechanism, the guarantee chain will have to accept that all TIR Carnets, presented for acceptance at the Customs office of departure before the final date of validity, are valid, in accordance with the provisions of Article 9 of the Conventions, as long as the Customs office of departure does not dispose of any data to the contrary.

22. Finally, various members of the TIRExB expressed their reservations with regard to the fact that data from the TIR-EPD seem to be used as part of the risk management applied by the international guarantee chain. In particular, they referred to applicable national and EU legislation which regulates the confidential nature of such data.

23. Bearing in mind the above, the TIRExB requested the IRU to revise the document or submit a new document for discussion at the Board's next session. In addition, the TIR secretariat was requested to reissue document TRANS/WP.30/AC.2/2004/7, clarifying the terminology used in the International TIR Data Bank (ITDB) in accordance with the provisions of the TIR Convention.

Documentation

Informal document No. 11 (2010)

IX. Problems encountered by TIR Carnet holders

Problems encountered by foreign TIR Carnet holders in the territory of the Russian Federation

24. The Board was informed by the secretariat of its follow-up activities undertaken with regard to the ongoing problems encountered by TIR Carnet holders from various countries in the territory of the Russian Federation. The Board took note that the secretariat had sent a letter to the Customs authorities of the Russian Federation, asking them to revise their practice with regard to the application of escorts in cases where the amount of import duties and taxes at risk exceed the TIR guarantee level of EUR 60,000. In this letter, the secretariat had stressed that it was not the requirement of escorts as such which was causing problems to TIR Carnet holders from various countries, but the fact that the local Customs authorities did not seem to be able to secure their efficient and expedient organization. Finally, the Board was informed by the IRU that it had also undertaken various steps, including the submission of a series of new cases to the Russian Ministry of Transport in order to advance the issue.

X. World Customs Organisation (WCO) e-learning course on TIR

25. The Board recalled its willingness to review an e-learning course on TIR which WCO had developed in cooperation with IRU, on the understanding that its comments would actually be used to improving the course so that it would fully meet with the expectations of Customs officials when taking the course in order to get acquainted with the principles of the TIR system (TIRExB/REP/2010/42final, paragraph 29).

26. In order to streamline the review of the course, the TIRExB agreed with the proposal of the secretariat to create a common on-line file where all comments and proposals for amendments could be posted in a consolidated manner. Furthermore, the TIRExB agreed, in view of the extensive work required, to subdivide the review process into three groups, each consisting of three TIRExB members. The TIRExB requested the secretariat to make the necessary arrangements and provide clear instructions, so that the review process could be launched as soon as possible, so that TIRExB members could provide their contribution to the review not later than by 31 July 2010.

27. The IRU stressed its commitment to work in close cooperation with the TIRExB to achieve improvements to the course which would satisfy all parties concerned.

XI. Activities of the TIR secretariat

A. Maintenance of the ITDB and IT-projects managed by the secretariat

28. The Board was informed by the secretariat about the current status of transmission of data to the International TIR Data Bank (ITDB) and documentation required by Annex 9, Part I of the Convention. The TIRExB noted with satisfaction that the secretariat continues to receive requests for access to the UNECE Register of Customs Sealing and Customs Stamps.

B. TIR training seminars

29. The TIRExB was informed that the secretariat had been invited by the Customs authorities of Kyrgyzstan to organize a TIR training seminar for Central-Asia, but that preparations had to be put on hold, due to the recent developments in that country. The TIR secretariat informed the TIRExB that it was looking at other options to organize a national or regional TIR seminars before the end of 2010.

C. Other activities of the TIR secretariat

30. The Board took note that the TIR Secretary had addressed a letter to the Customs authorities of the Russian Federation inquiring about reported incidents in the North-Western region of the country where TIR Carnet holders were forced to pay for Customs clearance. Furthermore, it was informed that, in cooperation with the IRU, a letter had been sent to the Director General of Customs of Turkmenistan in response to reports that, contrary to the provisions of Article 7 of the Convention, TIR Carnet forms had been subjected to the requirement to present a certificate of compliance issued by the government authorities responsible for standardization. Responses to both letters are still pending.

XII. Other matters

31. No other matters were raised.

XIII. Restriction on the distribution of documents

32. The TIRExB decided that the distribution of the following documents, issued for the present session, should be restricted: Informal document Nos. 7, 8, 9 and 10 (2010).

XIV. Date and place of next session

33. The TIRExB decided to hold its forty-fourth session in the week of 27 September – 1 October 2010 in Geneva, in conjunction with the 126th session of the Working Party on Customs Questions affecting Transport (WP.30) and the forty-ninth session of the TIR Administrative Committee (AC.2).
