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Administrative Committee for the TIR Convention, 1975
(Thirty-fourth session, 6 and 7 February 2003,
agenda item 4 (a) (i))

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)

Activities of the TIRExB

Report by the Chairman of the TIRExB

Report of the TIRExB at its fourteenth session

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its fourteenth session on 17 and 18 June 2002 in Geneva.
2. The following members of the TIRExB were present: Mr. M. Amelio (Italy); Mr. G.-H. Bauer (Switzerland); Mr. R. Ehmcke (Germany); Mrs. Y. Kasikçi (Turkey); Mr. D. Kulevski (The former Yugoslav Republic of Macedonia); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mr. M. Olszewski (Poland); Mrs. N. Rybkina (Russian Federation).
3. The TIR Secretary attended the session in accordance with Annex 8, Article 9, paragraph 1 of the Convention.

4. The International Road Transport Union attended the session as observer in accordance with Annex 8, Article 11, paragraph 5 of the Convention and was represented by Mr. J. Groenendijk, Head, TIR Policy and Customs Border Crossing Facilitation.
5. Other organizations did not attend the session.

ADOPTION OF THE AGENDA

6. The TIRExB adopted the agenda of the session as prepared by the TIR Secretary (TIRExB/AGE/2002/14) and decided to give priority to the following agenda items:

- Item 3: Concept of authorized consignee in the TIR Convention.
- Item 5: Monitoring of the price of TIR Carnets.
- Item 6: Example procedure for effective communication between Customs authorities and the national guaranteeing association.
- Item 8: Monitoring of the functioning of the TIR guarantee system.
- Item 9: National control measures.
- Item 11: Prevention of the abuse of the TIR system.

ADOPTION OF THE REPORT OF THE THIRTEENTH SESSION OF THE TIRExB

Documentation: TIRExB/REP/2002/13 and Rev.1.

7. The TIRExB adopted the report of its thirteenth session as prepared by the TIR Secretary (TIRExB/REP/2002/13), subject to the following modifications:

Paragraph 11

At the end, add a new sentence to read as follows:

"The IRU informed the TIRExB that this type of invalid TIR Carnets had always been reported, under the usual formats (CuteWise and faxes). The accompanying faxes attached to the informal document had been sent by mistake and it would not be repeated."

Paragraph 14

Add the words “by the IRU” after the words “data could not be submitted”.

Paragraph 15

Modify the first sentence to read as follows:

“The TIRExB expressed its deep regret over this situation that may be perceived as a lack of co-operation from the IRU. This lack of co-operation unfortunately requires that the Board change its methods to ensure the fulfilment of one of its tasks according to the provisions of the TIR Convention – the supervision of the functioning of the TIR guarantee system.”

Paragraph 18

Modify the last sentence to read as follows:

“In this context, the IRU pointed out that national associations may effect payments from their own resources, but in order to get reimbursement from the international guarantee chain these payments should be made with the consent of the IRU.”

Paragraph 19

Modify the first sentence to read as follows:

“The TIRExB was of the view that the SCC under the current circumstances should bring a lawsuit against ASMAP before a competent national court.”

After the first sentence, add two new sentences to read as follows:

“The observer of the IRU was of the view that many of the claims referred to in the document were out of the scope of the TIR Convention and the related guarantees provided by ASMAP. Remedies should be found outside the TIR Convention, i.e. the payments should be requested from the real debtors and liable persons all located in the Russian Federation in this particular context”.

Paragraph 25

After the fourth sentence, add a new sentence to read as follows:

“The TIR secretariat would send a reminder to those countries.”

Paragraph 26

At the end, add a new sentence to read as follows:

“A sample of the IRU questionnaire was distributed during the meeting.”

8. The revised text of the report of the thirteenth session of the Board is contained in document TIRExB/REP/2002/13/Rev.1.

CONCEPT OF AUTHORIZED CONSIGNEE IN THE TIR CONVENTION

Documentation: Informal document No. 13 (2002).

9. At the request of the Board, the TIR Secretary had prepared Informal document No. 13 (2002), which, on the assumption that the concept of authorized consignee was in line with the spirit of the TIR Convention, analyzed in detail the repercussions on the provisions of the Convention, in particular with regard to the termination and discharge of a TIR operation.

10. The TIRExB endorsed the general idea, expressed in the document, that the existing provisions of the TIR Convention are flexible enough to take account of the concept of authorized consignee. Knowing that a number of countries already today implement the concept in their territory to the satisfaction of all parties concerned, the Board felt it may not be necessary to prepare comments as a means of clarifying the use of the concept of authorized consignee within the context of the TIR Convention and to harmonize its application. The Board agreed to ask the opinion of the UNECE Working Party on Customs Questions affecting Transport (WP.30) whether or not comments with regard to the acceptance of authorized consignees in general and with regard to a possible harmonized authorization procedure in particular were deemed necessary and/or useful.

11. The Board was of the opinion that the description of the termination of a TIR operation, as contained in Informal document No. 13 (2002), needed further clarification. Some members indicated that their national Customs legislation did not allow authorized consignees to stamp and sign vouchers No.2 and Counterfoils No.2. These tasks were considered to be clear prerogatives of Customs. In this context, particular reference was made to the provisions of the Customs Code of the European Union (Regulation 2454/93) which does not allow authorized consignees to affix stamps

or to sign the SAD. In this context the TIR Secretary drew attention to the fact that the TIR procedure may be different from other similar Customs procedures to the extent that it provides for the return of the TIR Carnet to the TIR Carnet holder by the Customs office of destination (Comment to Article 28). Finally, the Board requested the TIR Secretary to elaborate the issue of liability of the authorized consignee against the background of Article 8, paragraphs 1 and 7 and Explanatory Note 0.8.7.

12. The TIRExB took note of IRU's remark that the transport industry so far had not expressed any wish for direct delivery at the premises of consignees. IRU warned about the possible negative implications that the (mis)use of the concept of authorized consignee might have on the TIR procedure, its security and on the guarantee system and asked that a further study on the concept should also take account of the repercussions of the use of the concept for the SafeTIR system. The TIRExB took note of these observations, but stressed that trade and industry in general kept asking for a speedy introduction, pointing out that the current use of authorized consignees in a number of countries had not led to (an increase in) claims against the guarantee system. On the contrary, the fact that authorized consignees were under strict surveillance by Customs authorities had so far ensured a smooth functioning of the concept.

13. Concluding the issue, the TIRExB endorsed the general idea of the document and requested the TIR Secretary to prepare a working document for consideration by the WP.30, also taking account of the initial analysis on the subject, contained in Informal document No. 1 (2002) and the various remarks and observations made by the Board and IRU during the session.

PREPARATION OF AN EXAMPLE OF A TIR CARNET DULY FILLED-IN

Documentation: Informal document No. 14 (2002); Informal document No. 25 (2001); Informal document No. 14 (2001).

14. The issue was not discussed due to lack of time.

MONITORING OF THE PRICE OF TIR CARNETS

Documentation: Informal document No. 7 (2002); Informal document No. 15 (2002).

15. The TIRExB was informed by the IRU of an 25-30 % increase of the issuing price of TIR Carnets as of 29 May 2002. The TIRExB decided to consider this issue in detail at its next session on the basis of official information to be provided by the IRU.

16. The TIRExB also took note of Informal document No. 15 (2002) prepared by the TIR Secretary in cooperation with the IRU and explaining the relation between the levy on TIR Carnets charged for the operation of the TIRExB and the TIR secretariat and the actual as well as expected numbers of TIR Carnets issued in 1999-2001.

EXAMPLE PROCEDURE FOR EFFECTIVE COMMUNICATION BETWEEN CUSTOMS AUTHORITIES AND THE NATIONAL GUARANTEEING ASSOCIATION

Documentation: Informal document No. 19 (2002).

17. The TIRExB took note of Informal document No. 19 (2002), prepared by the TIR Secretary, containing first observations with regard to the issue at hand. The Board generally endorsed the description of the pre-notification and notification procedure. It was underlined that, although payment of a claim by the national association may be considered as an automatic and incontestable act by virtue of Article 11, paragraphs 2 and 3 of the TIR Convention, it nevertheless, just as any other decision by competent authorities, was subject to the possibility of appeal, in which, in accordance with national law, the obligation to pay could even be suspended. Particular reference was made to EU Regulation 2913/92, Articles 243-246, which contains specific provisions with regard to the right to appeal.

18. In this context, it was pointed out that it would be useful to introduce references to the CuteWise-system into the description of the various procedures, in particular with regard to the pre-notification.

19. The Board addressed the issue of designing standardized letters, which could be used by Customs authorities for the pre-notification, notification and submission of claims, but decided that it would be more useful, as a first step, to limit the work to drawing up a minimum list of data, leaving the presentation up to national competent authorities, in line with provisions of national legislation.

20. The Board decided to revert to this issue at its next session on the basis of the current document, but it requested the TIR Secretary to amend the document, taking account of the observations made by the Board and IRU during the session.

INCREASE IN THE NUMBER OF LOADING AND UNLOADING PLACES

Documentation: TRANS/WP.30/2001/19 and Rev.1, TRANS/WP.30/2002/17.

21. The issue was not discussed due to lack of time. The Board decided to include the issue in the priority agenda items of the next session.

MONITORING OF THE FUNCTIONING OF THE TIR GUARANTEE SYSTEM

Customs claim statistics

Documentation: Informal document No. 20 (2002).

22. The TIRExB took note that, following its request at the previous session, the TIR Secretary had prepared and distributed a questionnaire on Customs claims covering the period from 1999 to 2001 (TIRExB/REP/2002/13, para.15). The deadline for replies was set at 31 July 2002. The distributed questionnaire was reproduced in Informal document No. 20 (2002).

Settlement of Customs claims in the Russian Federation

Documentation: Informal document No. 9 (2002).

23. The TIRExB recalled its previous discussions concerning the settlement of Customs claims in the Russian Federation and suggestions given to the Russian Customs authorities in this respect (TIRExB/REP/2002/13, paras.17-20). The TIRExB took note that the State Customs Committee of the Russian Federation had been informed of the opinion of the Board and had decided to follow the advice and is considering legal proceedings against the national guaranteeing association ASMAP. The TIRExB decided to come back to this issue when new information would be available, in particular the results of the questionnaire on Customs claims mentioned in para. 22 above.

Impact of the amendments to the TIR Convention (Phase II of the TIR revision process) entering into force on 12 May 2002 on the TIR guarantee system

Documentation: Informal document No. 17 (2002).

24. The TIRExB noted that, according to new Article 6.2 bis of the TIR Convention, the TIR Administrative Committee, at its session in October 2002, was supposed to take a decision regarding authorization of the only international organization (IRU) to take on responsibility for the effective organization and functioning of the international guarantee system. The Board felt that, at this stage, given the IRU's experience and know-how in the administration of the TIR guarantee chain, such a

decision should be a simple legal act of changing the status of the IRU as the organizer of the guarantee system from de facto to de jure. The TIR Secretary, in co-operation with the IRU, was requested to prepare proposals on a possible practical procedure for such authorization.

25. Concerning new Explanatory Note 0.6.2 bis of the TIR Convention which referred to the relationship between the international organization and its member associations, the TIRExB was of the view that neither the TIR Convention nor working documents of the TIR Administrative Committee and the WP.30 provided clear guidance on how the above provision should be implemented in practice.

26. Therefore, the TIRExB decided to continue its considerations on the matter at one of its forthcoming sessions. The Board also felt that, at a later stage, the relevant issues should be considered at meetings of the WP.30 as well.

NATIONAL CONTROL MEASURES

Customs escorts

27. The TIRExB took note that the IRU was undertaking a survey of the transport industry with regard to Customs escorts. First results of the survey would be presented at the next session of the Board. It would be interesting for the Board to compare the outcome of this survey with the results of the survey on the same subject undertaken by the TIR Secretary at the request of the Board (Informal document No. 11 (2002)).

Order No. 1132 of 28.11.2001 by the State Customs Committee (SCC) of the Russian Federation

Documentation: Informal document No. 12 (2002).

28. On the basis of Informal document No. 12 (2002) and oral explanations by Mrs. N. Rybkina (Russian Federation), the TIRExB re-examined Order No. 1132 of 28.11.2001 by SCC providing for an opportunity to facilitate Customs clearance of certain sensitive goods by means of a preliminary cargo declaration which the consignee (importer) could lodge at the Customs office of destination. The Board scrutinized the provision of the above order and noted that, in general, pre-payment of duties and taxes should be made before such a declaration was accepted by Customs and before the goods entered the Russian Federation.

29. The TIRExB felt that such a declaration, if applied in respect of goods transported under the TIR procedure, would mean that the goods were effectively covered by two Customs procedures. It is a general principle of Customs law that goods can only be subject to one Customs procedure at a time. Although not explicitly stated in the Convention, this interpretation is supported by Article 28

para. 2. With regard to the advance payment of the duties and taxes, this is clearly contrary to the application of Article 4 of the Convention. Although Article 4 refers to the payment at the Customs office en route the key issue is the duty/tax status of the goods at the time they enter the Contracting Party. Irrespective of the physical place where the duties and taxes are paid, the fact remains that at the time the goods enter the Russian Federation those goods have been subject to the payment of duties and taxes. That being the case, the TIR operation in Russian territory should be started and terminated at the Russian border. As a result, the Board came to the conclusion that the above Order was not in line with Articles 4 and 28 of the TIR Convention. The TIR Secretary was requested to bring this decision to the attention of SCC.

30. The TIRExB also recalled many other occasions when it had considered national control measures introduced in the Russian Federation. Having noted a good co-operation of the Russian Customs authorities who regularly informed the Board of new measures in line with Article 42 bis of the TIR Convention, the TIRExB, however, expressed its concern over the number and complexity of and the frequent changes in the orders and other legal instruments issued by the Russian Customs.

National control measures introduced in the Russian Federation and Republic of Belarus against Lithuanian transport operators

Documentation: Informal document No. 21 (2002).

31. The TIRExB was informed that in 2000-2001 some Lithuanian transport operators had committed a large number of infringements in the Russian Federation and Republic of Belarus. As a result, the Russian and Byelorussian Customs authorities had raised claims against these Lithuanian carriers and, at a later stage, against the national guaranteeing associations ASMAP and BAMAP. Due to non-payment of the claims, the Russian Customs authorities had introduced in November-December 2001 special control measures (escorts) against all Lithuanian carriers including those who had not committed infringements. At this moment, these measures applied to "blacklisted" transport operators only.

32. The Board was of the view that Article 23 of the TIR Convention did not allow for the application of Customs escorts against all transport operators of a certain nationality, irrespectively of infringements committed by these transport operators. However, such measures when applied against infringers only, were considered as being fully in line with the provisions of the TIR Convention.

33. The Board noted with concern that Lithuanian transport operators had also been involved in cases of smuggling in other countries. The TIRExB felt that this situation could be a consequence of the improper implementation of controlled access to the TIR procedure at the national level. In this context, the Board welcomed recent measures undertaken by the Customs authorities of Lithuania, in close co-operation with the national guaranteeing association LINAFA, to review the list of authorized TIR Carnet holders.

FRAUDULENT ACCEPTANCE OF A TIR CARNET AT THE CUSTOMS OFFICE OF DEPARTURE

Documentation: Informal document No. 8 (2002), Informal document No. 22 (2002).

34. The issue was not discussed due to lack of time.

PREVENTION OF THE ABUSE OF THE TIR SYSTEM

35. The TIRExB was informed by Mr. Ehmcke (Germany) of a recent study by German criminal investigation services on possible weaknesses of the TIR procedure. The study had addressed a number of practical issues, such as: falsification of TIR Carnets, false declarations, weaknesses in the issuance system, transfer of TIR Carnets to third persons, type of goods involved, sealing devices used and preferred smuggling routes. So far, the study had shown that Customs investigation services tend to concentrate their activities first of all on operational irregularities at the national level, whereas weaknesses related to the international structure of the TIR system seem to require more investigation. The Board felt that this issue should be pursued in the future, possibly supported by an international survey along the lines of the study conducted by the German authorities.

ACTIVITIES BY THE TIR SECRETARIAT

Use of the International TIR Databank (ITDB)

36. The TIR Secretary informed the Board of the distribution of a CD-ROM to TIR Focal Points (Customs and associations), containing the ITDB 2001 programme. The Board expressed the hope that both Customs authorities and associations would benefit from the increased efficiency offered by the programme.

Implementation of SafeTIR system

37. The Board took note of the progress report by the joint TIR secretariat and IRU SafeTIR Taskforce on its activities to improve the SafeTIR system at the national level and stressed once

again the importance of the full implementation of the SafeTIR system as a workable tool to effectively control the functioning of the TIR transit procedure.

Computerization of the TIR regime

38. The Board was informed of the second meeting of the informal ad hoc Expert Group on Conceptual and Technical aspects of the computerization of the TIR procedure, due to take place on 14 and 15 November 2002 in Prague, at the kind invitation of the Czech Customs administration.

Communications by the TIR Secretary

39. The Board took note of Informal document No. 23 (2002), containing communications by the TIR secretariat regarding interpretation of the TIR Convention and application of national control measures, which had been transmitted in the course of 2002 at the request of a number of parties involved in the TIR procedure.

DATE AND PLACE OF NEXT SESSION

40. The TIRExB decided to hold its fifteenth session on 17, 18 and 21 October 2002 in Geneva in conjunction with the one-hundred-and-second session of the WP.30.
