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Administrative Committee for the TIR Convention, 1975

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

Application of the Convention

Sustainability of the TIR procedure

Transmitted by the International Road Transport Union (IRU)

Note: The secretariat reproduces below a communication transmitted by the International Road Transport Union (IRU).

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1. At the last meeting of WP.30 in June 2002 IRU delivered a policy statement on the sustainability of the TIR procedure (paragraphs 12 and 13 TRANS/WP.30/202). That policy statement called on the UNECE, the UNECE bodies and the TIR Secretariat to:

- (a) Re-focus the activities of the TIR Secretariat to address the real problems facing the application of the TIR Convention;
- (b) Recognise the clear responsibilities of the IRU and its Members to manage their activities with commercial partners in an atmosphere of mutual trust and to refrain from any interference in such issues;
- (c) Commit to a policy of partnership with the IRU to meet the changing needs of international trade and to achieve greater control of risk, through the full implementation of SafeTIR under the Convention and as a first step towards computerisation of the TIR System,

and asked for a response at the WP.30 and AC.2 meetings in October 2002 .

2. During the discussion on this issue at the WP.30 meeting in June 2002, it was agreed that the first objective was to ensure constructive co-operation between the IRU and the relevant bodies within the UNECE. These views were emphasised in subsequent bilateral meetings between IRU and notably the previous Chairman of WP.30, the Chairman of TIRExB, the Director of UNECE Transport Division, the TIR Secretary and several leading Contracting Parties including the EU Commission.

3. All concerned in these discussions agreed that a new spirit of partnership based on mutual trust and understanding, had to be established between the partners involved. Furthermore, there was general agreement that the roles and responsibilities of the TIRExB and the IRU should be better defined so as to provide greater clarity for all concerned and better distinguish the functions of the TIR Secretary, the TIR Secretariat and the TIRExB from those of the IRU. It was suggested that these objectives could be achieved through new guidance that the Administrative Committee of the TIR Convention needs to issue to fulfil its responsibilities in two areas:

- (a) Article 58 ter of the TIR Convention makes it clear that the TIRExB is a subsidiary body of the Administrative Committee. Now that the TIRExB has been operating for nearly four years, it is entirely appropriate that the Administrative Committee should review its performance and the manner in which it has interpreted its legal responsibilities under Annex 8 of the Convention and should issue any necessary guidance for the future.
- (b) The new article 6(2) bis of the Convention that entered into force in May 2002 states “An international organization, as referred to in paragraph 2, shall be authorized by the

Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility.”

4. The Administrative Committee must therefore now carry out the task of authorizing an international organization. There is clearly a need for the Administrative Committee to issue guidance that clarifies in some detail the role and responsibility it expects of this international organization, namely the IRU.
5. In some ways, the guidance to be issued by the Administrative Committee appears to relate to two separate issues. However, almost all the functions of the TIRExB concern matters in which the IRU has a major involvement. This confirms the absolute need for the two bodies to work together in partnership and, consequently, the desirability of their roles and responsibilities being set out in a unified way in a single document.
6. The IRU fully endorsed this conclusion and recommends that AC.2 should take such action.
7. The TIR Convention, in article 1 bis of Annex 8, establishes that AC.2’s role of supervision and monitoring solely concerns the application of, and conformity with, the Convention by the Contracting Parties the IRU and national associations. Furthermore whilst the functions of TIRExB are defined in article 10 of Annex 8 of the Convention, greater precision is necessary on the supervisory role of the TIRExB and TIR Secretariat. Such precision together with other clauses, notably article 11 (5) of Annex 8 and article 6 (2) bis in the main part of the Convention, demands that the role of the IRU should be better defined to ensure, subject to compliance with applicable laws, the necessary freedom required in any contractual relations with, member associations, insurers, printers and any other contractual partners.
8. This note with its appendix identifies the form that such guidance could take and this approach is consistent with the provisions of the TIR Convention.
9. The proposed guidance to be provided by AC.2 should be reflected in an all-embracing contractual agreement between the UNECE and the IRU. The existing agreements that are in force between UNECE and the IRU need to be updated. Consequently it is proposed that AC.2 mandates UNECE to conclude a contract on this basis with IRU to settle all the aspects of the partnership between IRU, the UNECE, the TIRExB, the TIR Secretariat, and the TIR Secretary.

**Proposed guidance to be given by the Administrative Committee of the TIR Convention
for the TIRExB, the TIR Secretariat and the IRU**

A. Introduction

1. The purpose of this guidance is to clarify:
 - (a) the functions of the TIRExB, including the TIR Secretary and the TIR Secretariat acting on its behalf, as set out in Annex 8, article 10 of the TIR Convention, and
 - (b) the role and responsibility of the IRU as the international organization authorized as referred to in article 6 of the TIR Convention.
2. The guidance is combined in a single document because the functions of the TIRExB and the responsibility of the IRU are interdependent in most respects and can therefore be carried out effectively only if the two bodies work together in partnership.
3. Several overriding principles apply which is an implicit part of this guidance:
 - The TIRExB must recognise at all times that Contracting Parties, the IRU and its member associations are subject to restriction resulting from different national law such as confidentiality, data protection, Customs and duty regimes,
 - The only bodies entitled to give an official and binding interpretation of the provisions of the TIR Convention are the Contracting Parties on proposal from AC.2; such authority cannot be delegated to the TIRExB.
 - The rights and powers of the TIRExB cannot exceed those of AC.2 and attendance at any meeting of any relevant UN body including the TIRExB, must be limited to Contracting Parties and organisations currently involved in the TIR system.
 - An effective partnership can only be based on mutual trust and understanding and requires great clarity on the respective rules and functions of the TIRExB and the IRU.
 - To ensure such co-operation, the UNECE, the TIR secretariat and the IRU shall hold regular informal meetings.

- All references to the TIRExB in the above principles and the following guidance apply equally to the TIR Secretary and the TIR Secretariat acting on behalf of the TIRExB.
- 4. The proposed guidance that follows is cross-referenced to the relevant clauses in the TIR Convention and finally refers to associated contractual and financial issues.

B. Proposal

Annex 8, article 10 (a): to supervise the application of the Convention.....

- 5. The primary role of the TIRExB is to supervise the proper application of the complete TIR convention including its annexes, its resolutions its recommendations and its amendments. Under this role, supervision by the TIRExB means overseeing the measures undertaken by the Contracting Parties and in particular those intended to prevent and fight Customs fraud.
- 6. These measures are:
 - (a) Ensuring conformity of vehicles under the requirements of the Convention, by the national competent authorities,
 - (b) The authorisation by the national competent authorities of national associations under article 6 of the Convention,
 - (c) Ensuring that the Customs termination and discharge procedures conform with the TIR Convention,
 - (d) Ensuring that smugglers are subject to criminal and civil pursuit by the competent authorities of the Contracting Parties (identification, prosecution and payment request from persons liable) and that necessary related research and intelligence gathering on new trends in fraudulent activity are exchanged amongst the Contracting Parties, and to the extent possible with the IRU, to enable proper risk management.
 - (e) All measures undertaken by national competent authorities, and national associations to exclude from the TIR system operators who do not satisfy or no longer satisfy the conditions and requirements as set out in article 38 and the second part of Annex 9 of the Convention,
 - (f) Ensuring that the Contracting Parties, Customs Administration or other competent authorities implement the TIR Convention properly, notably by ensuring that the

provisions of the Convention, its Annexes and their Amendments, Resolutions and Recommendations have been translated when necessary into their national language, published and implemented properly and that their national practical application is not in conflict with these legal instruments.

7. In addition the TIRExB shall:
 - (a) Ensure that the wording of the three official languages of the Convention and its Annexes its Amendments, Resolutions and Recommendations is identical.
 - (b) Analyse the conformity of new measures taken by any Contracting Party as per article 42 bis, and if need be inform the Administrative Committee for proposing proper interpretation and action by Contracting Parties.
8. Under this provision:
 - (a) The IRU will inform the TIRExB as necessary of problems encountered by the Industry with the application of the TIR Convention in a particular Contracting Party or Union of Contracting Parties.

Annex 8, article 10 (a) :.....including the operation of the guarantee system.....

9. To fulfil this obligation the TIRExB must ascertain that the proper guarantee is in place. In order to achieve this objective, the TIRExB will:
 - (a) Be the depository of the global guarantee contract.
 - (b) Be the depository of the national deed of guarantees, which will, in line with the explanatory note of article 6(2)bis contain a clause confirming the existence of a written contract between the national associations and the IRU.
 - (c) Be the depository of the annual guarantees certificates.
10. Under this provision the IRU shall:
 - (a) Ensure effective organisation and functioning of the TIR system including the guarantee system, in accordance with its obligations under article 6(2) bis, and take all the necessary steps to ensure the guarantee remains in place.

- (b) Provide certified copy of the global guarantee contract and proof of guarantee coverage for the associations for remittance to Customs.
- (c) Provide on a yearly basis the total number of “pending” claims that have been presented by all Contracting Parties to all the guaranteeing associations.

Annex 8, article 10 (a) :.....and fulfil the functions entrusted to it by the Administrative committee;

11. No guidance is necessary for this provision as any instructions from the Administrative Committee will be specific as to the actions required and the necessary budgetary provisions.

Annex 8, article 10 (b) : supervise the centralized printing and distribution to the associations of TIR Carnets which may be performed by an agreed international organization as referred to in article 6;

12. Supervision of the printing and centralised distribution of TIR carnets concerns exclusively their conformity with the requirements of the Convention.

13. Under this provision, the TIRExB shall:

- (a) Validate the conformity of the model of the TIR carnets printed by IRU.
- (b) Obtain records on an annual basis of the number of carnets delivered by the IRU to each contracting country.

14. Under this provision, the IRU shall:

- (a) Undertake the centralized printing of TIR Carnets and distribution of TIR carnets to the national authorized associations.
- (b) Take all reasonable steps to avoid the counterfeiting of TIR Carnets by introducing appropriated security features.
- (c) Provide samples of TIR carnets when requested.
- (d) Provide annually to the TIRExB statistics on the number of TIR Carnets delivered to each Contracting country.

Annex 8, article 10 (c) : coordinate and foster the exchange of intelligence and other information among competent authorities of Contracting Parties;

15. Under this provision the TIRExB shall:

- (a) On the basis of evidence provided by Contracting Parties, report on new trends and methods of fraud to the other bodies of the UNECE and the IRU.

Annex 8, article 10 (d) : coordinate and foster the exchange of information between competent authorities of Contracting Parties, associations and international organizations;

16. Under this provision, the TIRExB shall:

- (a) Promote the full implementation of SafeTIR including the proper reconciliation procedure on the data transmitted, first by framing proposals to incorporate its provisions in the TIR Convention and secondly by reinforcing the activities of the SafeTIR Taskforce in cooperation with IRU with a view to boosting its effective implementation in each and every TIR contracting country.

17. Under this provision, the IRU shall:

- (a) Manage the SafeTIR system with the associations and the Customs Administrations and inform as necessary the Contracting Parties and the TIRExB of problems encountered in the system.

Annex 8, article 10 (e) : facilitate the settlement of disputes between Contracting Parties, associations, insurance companies and international organizations without prejudice to article 57 on the settlement of disputes;

18. The role of the TIRExB does not include interpretation of the Convention, as this is a matter for the Contracting Parties on a proposal from the Administrative Committee. Moreover, the settlement of disputes cannot incorporate mediation on, or the settlement of Customs claims, as this would unreasonably interfere with the proper contractual relationships that exist between the Contracting Parties, the national guarantors, the IRU and the international guarantee chain.

19. Therefore under this provision, the TIRExB shall:

- (a) Act as a possible conciliator when requested by all the parties involved, with the sole purpose to assist in reaching an acceptable solution. The TIRExB should not arbitrate on any disputes and has no power of direct intervention.

(b) Convene all parties concerned at their joint request. It shall provide appropriate translation services.

20. Under this provision, the IRU shall:

(a) Where appropriate, co-operate and provide its expertise.

Annex 8 article 10 (f) : support the training of personnel of Customs authorities and other interested parties concerned with the TIR procedure;

21. It is the responsibility of Customs to train its staff. Equally it is the responsibility of the guarantee chain to train the association's staff and the operators.

22. Under this provision, the TIRExB shall:

(a) Assemble a library of TIR related existing material.

(b) Look for donors with a view to funding this training.

21. Under this provision, the IRU shall:

(a) Contribute to the library and provide expertise as appropriate or as required.

Annex 8 article 10 (g) : maintain a central record for the dissemination to Contracting Parties of information to be provided by the international organizations as referred to in article 6, on all rules and procedures prescribed for the issue of TIR carnets by associations, as far as they relate to the minimum conditions and requirements laid down in Annex 9;

22. The implementation of this provision would demand a large bureaucracy within the UNECE and all the Contracting Parties if all these tasks were to be undertaken. Furthermore the other provisions of article 10 and of this guidance establish a full programme of activity for the TIRExB and therefore no specific action and guidance is required under this article.

Annex 8 article 10 (h) : monitor the price of the TIR carnet;

23. This concerns the monitoring of the price levied by the IRU for each type of carnet.

24. Under this provision, the TIRExB shall:

- (a) Record and update the issue prices levied by the IRU to the associations for each type of carnet.

25. Under this provision, the IRU shall:

- (a) Provide the TIR Secretariat on a yearly basis the price levied for each type of TIR Carnets charged to its issuing association.

Annex 8 article 11 (5) : the Board shall consider any information and queries transmitted to it by the Administrative Committee, Contracting Parties, the TIR Secretary, national associations and international organizations referred to in article 6 of the Convention. These international organizations shall have the right to attend the sessions of the TIR Executive Board as observers unless its Chairman decides otherwise. If necessary, any other organization may attend the sessions of the Board as observer at the invitation of the Chairman;

26. The information and questions submitted to the TIRExB must be in its field of competence and consistent with guidance given by the Administrative Committee in respect of the specific responsibilities of the TIRExB. They shall concern only the supervision of the conformity of implementing measures with the Convention as defined in its annexes. No organisation may attend sessions of the TIRExB unless it is either a Contracting Party or an organisation currently involved in the TIR system.

Annex 8 article 13 (1) : the operation of the TIR Executive Board and the TIR Secretariat shall be financed, until such time as alternative sources of funding are obtained, through a levy on each TIR Carnet distributed by the international organization as referred to in article 6;

27. Explanatory note to annex 8 article 13 (1) : following an initial period of two years, the Contracting Parties to the Convention envisage the operation of the TIR Executive Board and the TIR Secretariat to be financed through the Regular Budget of the United Nations. This does not preclude a prolongation of the initial financing arrangement should financing from the United Nations or alternative sources not be forthcoming;

Annex 8 article 13 (2) : the amount of the levy and the procedure for its collection shall be determined by the Administrative Committee following consultations with the international organization as referred to in article 6. Any proposed changes to the levy shall be authorized by the administrative committee;

28. Particular care should be taken at all times to ensure that the funds are allocated to specific tasks and used efficiently.

29. Therefore the annual budget of the TIRExB and its Secretariat on a task-by-task basis must be produced in the autumn of the year preceding. This budget must reflect the objectives and guidance set by the Administrative Committee and must accord with the financial and evaluation rules of United Nations' Trust Funds. The prescribed consultation foreseen under annex 8 article 13 (2) with the IRU is essential and should take place early enough to realize the constructive partnership envisaged in this guidance.

30. The Budget and the amount of the levy must be approved each year, on the one side, by the Administrative Committee and, on the other side, by the IRU General Assembly acting independently according to the IRU Constitution.

Contractual relations between IRU and UNECE

31. Annex 8, article 10 (b) : supervise the centralized printing and distribution to the associations of TIR Carnets which may be performed by an agreed international organization as referred to in article 6;

32. Article 6(2) bis (entered into force in May 2002) : an international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility;

33. The existing agreements between UNECE and the IRU, based on article 6 and annex 8 of the Convention, must at all times be maintained to take account of any changes to the Convention or to any guidance provided by the Administrative committee in the form of an all-embracing contractual agreement that settles at the same time all aspects of the partnership between the IRU, the UNECE and the TIRExB.
