



**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

(Twenty-second session, 24 and 25 May 2004,
agenda item 2)

ADOPTION OF THE REPORT OF THE TWENTY-FIRST SESSION OF THE TIRExB

**Draft report of the twenty-first session with the incorporation of comments
transmitted by TIRExB members and IRU**

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its twenty-first session from 5 to 7 January 2004 in Geneva.
2. The following members of the TIRExB were present: Mr. M. Amelio (Italy); Mr. S. Bagirov (Azerbaijan); Mr. G.-H. Bauer (Switzerland); Mr. R. Boxström (Finland); Mr. O. Fedorov (Ukraine); Mrs. Y. Kasikçi (Turkey); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mrs. N. Rybkina (Russian Federation).
3. The International Road Transport Union (IRU) attended the session as observer in accordance with Annex 8, Article 11, paragraph 5 of the Convention and was represented by Mr. S. Rasmussen, Deputy Head, TIR System.
4. The TIRExB recalled its concerns that Mr. O. Fedorov (Ukraine) had not participated in several consecutive TIRExB sessions and that no written information had been provided about the reasons for his absence (TIRExB/REP/2003/19, para. 4 and TIRExB/REP/2003/20, paras. 25 and 26). Mr. O. Fedorov (Ukraine) explained that he had not been in a position to participate in those meetings due to the lengthy bureaucratic procedures for official travel and a re-organization of the Ukrainian Customs Administration, following which he had changed his duties to Deputy Head, Centre for Risk Analysis and Audit. Mr. O. Fedorov also informed the Board that he would continue as TIRExB member and that an official letter in this respect had recently been sent to the UNECE secretariat. The TIRExB took note of this information.

ADOPTION OF THE AGENDA

5. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2003/21) with the inclusion of the following subjects:

New agenda item 1 bis Election of a Chairman

Under agenda item 6 (b) New Customs Code applicable in the Russian Federation.

ELECTION OF A CHAIRMAN

6. In accordance with Annex 8, Article 11, paragraph 3 of the Convention, Mr. Mario Amelio (Italy) was re-elected Chairman.

ADOPTION OF THE REPORT OF THE TWENTIETH SESSION OF THE TIRExB

Documentation: TIRExB/REP/2003/20draft.

7. The TIRExB adopted the report of its twentieth session as prepared by the TIR secretariat (TIRExB/REP/2003/20draft), subject to the following modifications:

Paragraph 26

Modify the paragraph to read as follows:

"26. At the present session, the TIRExB again noted with concern the absence of Mr. O. Fedorov who had not participated in three sessions in a row, without any particular reason. The TIRExB requested the TIR secretariat to send a reminder to the competent Ukrainian authorities."

Annex "Recommendations for improvement of communication between national competent authorities and national guaranteeing associations"

Modify paragraph 2 to read as follows:

"2. The stages recognized by the TIR Convention:

- (a) Notification: Within a period of one year from the date of acceptance of the TIR Carnet, the competent authorities of the Contracting Party, in which the TIR Carnet has not been discharged, have to notify the association in writing of the non-discharge (Article 11, paragraph 1 of the Convention);
- (b) Claim for payment: Competent authorities dispose of a period between three months and two years after the date on which the association has been informed that the TIR

operation has not been discharged (or that the certificate of termination of the TIR operation has been obtained in an improper or fraudulent manner), within which to submit a claim for payment to the association (Article 11, paragraph 2 of the Convention)."

Insert a new paragraph 2bis to read as follows:

"2bis. Preceding these legal obligations, various Contracting Parties have introduced as a best practice:

- (c) Pre-notification: Although not a legal requirement, it has become a standing procedure in various Contracting Parties to inform the guaranteeing association at the earliest possible stage of the fact that Voucher No. 2 has not been returned to the Customs office of departure or entry en route, inviting it to furnish proof that the TIR operation has been terminated. This communication, which has become known as "pre-notification" is sent without prejudice to the notification to be made in accordance with Article 11, paragraph 1 of the Convention. However, as not all Contracting Parties apply this concept in the same way and/or at the same time, the degree of compliance with the recommended elements may vary considerably from country to country. Contracting Parties and national associations are recommended to bear this in mind when applying the best practices of Chapter 5.6."

8. The revised text of the report of the twentieth session of the Board is contained in document TIRExB/REP/2003/20.

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

Documentation: Informal document No. 25 (2003).

9. The TIRExB took note that, following its request at the previous session (TIRExB/REP/2003/20, para.7), some members of the Board had transmitted to the TIR secretariat a number of remarks concerning the example of a TIR Carnet duly filled-in, as contained in Informal document No. 25 (2003). The TIRExB made further comments on the subject, in particular on prescribed time-limits to be indicated under box 20 of vouchers No.1 and No.2 of the TIR Carnet. The TIR secretariat was requested to modify the example accordingly, post it on the TIR website as well as to produce an informal document for the forthcoming session of the UNECE Working Party on Customs Questions affecting Transport (WP.30) in February 2004.

RESULTS OF THE ITC BUREAU SURVEY ON THE FUNCTIONING OF THE TIR CONVENTION

Documentation: Informal document No.1 (2004), TRANS/BUR.2003/3, TRANS/BUR.2003/4, TRANS/BUR.2003/11.

10. The TIRExB welcomed Informal document No.1 (2004) prepared by its Chairman, analysing the results of the survey on the functioning of the TIR Convention undertaken by the UNECE secretariat (TRANS/BUR.2003/3) and indicating some items for possible further consideration by the TIRExB, for instance, the lack of transparency in the TIR system, including the lack of trustworthy "early warning" mechanisms, and the lack of a clear definition and harmonized implementation of provisions to identify the persons directly liable. The Board also discussed in detail proposals by the IRU for improving the TIR system, as contained in para. 9 of document TRANS/BUR.2003/4.

11. On the basis of the above documents, the TIRExB came to the following conclusions:

- the current difficulties in the TIR system could be mainly attributed to lack of the full and harmonized implementation of the TIR procedure both at national and international level, rather than to incomplete or inadequate provisions of the TIR Convention;
- most concerns raised by the Contracting Parties and the IRU are either already dealt with by different TIR-related bodies (such as, for instance, the amendment proposals on the introduction of a control system for TIR Carnets, being an agenda item for WP.30 and the TIR Administrative Committee) or included into the programme of work of the TIRExB for 2003-2004 as priority issues.

12. On the other hand, the Board was of the view that some new issues would need to be addressed by the TIRExB, in particular, the lack of training of Customs personnel, the insufficient implementation of Article 19 of the TIR Convention and comments thereof by Customs offices of departure as well as the newly emerged issue of security in a supply chain. The TIR secretariat was requested to prepare documents on these issues for the consideration of the Board at its future sessions.

PREVENTION OF CUSTOMS FRAUD WITHIN THE TIR SYSTEM

Cooperation with other international organizations in the field

13. The TIRExB was informed that, following its request at the previous session (TIRExB/REP/2003/20, paras. 11 and 12), the TIR secretariat had sent letters to OLAF and WCO thanking them for their cooperation and outlining the intended activities of the Board. The TIRExB also noted with satisfaction that the WCO agreed to include the issue of Customs fraud within the

TIR procedure into the agenda of the forthcoming session of the WCO Enforcement Committee and that the TIR secretariat would be invited to participate in its proceedings as observer.

14. In line with the request of the TIRExB at its previous session (TIRExB/REP/2003/20, para.12), some TIRExB members informed the Board of their contacts with national enforcement agencies with a view to obtaining some preliminary information on TIR fraud patterns discovered and/or analyzed by these bodies. It was pointed out that, most often, national enforcement agencies did not provide a distinction between the TIR regime and other Customs transit procedures. However, the TIRExB felt that this circumstance should not necessarily be regarded as an disadvantage, as similar fraud schemes could be used by smugglers under different Customs regimes.

15. Several TIRExB members informed the Board of recent TIR fraud cases revealed by the Customs authorities in their respective countries. The TIRExB welcomed this initiative and invited the above members to submit written information on these infringements. The Board was also of the view that this information, had it been distributed without delay, could have assisted Customs authorities of other Contracting Parties to the TIR Convention in combating fraud. The Board felt that, with a view to preventing fraud, all Customs authorities should be encouraged to report, as soon as possible, to the TIRExB on new fraud cases on a confidential basis. The TIR secretariat should collect such classified information and disseminate it among TIR Customs focal points. However, a procedure for that should be developed, which would find a compromise between the timeliness and confidentiality of data to be distributed. The TIR secretariat was requested to prepare relevant proposals, taking also into account the experiences gained by other inter-governmental law enforcement organizations (WCO, OLAF, Europol, etc.) in this regard.

Proposals by the IRU on preventing and combating Customs fraud within the TIR system

Documentation: Informal document No. 19 (2003).

16. The TIRExB continued its deliberations on IRU's proposals on preventing and combating Customs fraud within the TIR system (Informal document No.19 (2003)). In particular, the Board had an exchange of views concerning the proper application of the key provisions of the TIR Convention related to authorized access to the TIR procedure for transport operators, namely Articles 6.4, 38 and Annex 9, part II. It was pointed out that the Customs authorities normally function under legal constraints imposed by national law and have to fulfill certain formalities before sanctioning persons who have committed Customs infringements. For this reason, the immediate exclusion or withdrawal of authorization of such a person by Customs may not be possible. Under these circumstances, the national guaranteeing association, being more flexible in the framework of national legislation, could play a crucial role in promptly barring this person from the use of TIR Carnets. In this context, the Board stressed the importance of close cooperation between the Customs authorities and the national guaranteeing associations.

17. The TIRExB also touched upon the issue of a harmonized implementation of the above provisions of the TIR Convention at the national level. The Board recalled that in 1999-2000, immediately following its establishment, the TIRExB already studied this issue and prepared a number of proposals regarding the application of Article 38 of the TIR Convention. Although some of them were later adopted by the TIR Administrative Committee, it did not seem to be feasible to provide for a true standard application of this Article at the national level, due to differences in the domestic legislations of Contracting Parties. Another characteristic example was the attempt to ensure a harmonized approach for the use of TIR Carnets by third persons (so-called subcontractors) at the national level. No consensus had been found on this issue within the TIR Administrative Committee.

18. On the other hand, the IRU had introduced in all Contracting Parties, implementing the TIR regime, common rules and procedures for the issue of TIR Carnets by national guaranteeing associations. In this regard, the TIRExB reiterated its request to the IRU to transmit the above regulations to the Board for information (TIRExB/REP/2003/20, para.15).

19. The TIRExB also had an exchange of views regarding a broader interpretation of Article 8.7 of the TIR Convention proposed by the IRU in annex 3 to Informal document No.19 (2003). Some Board members were not in a position to accept this interpretation and were of the opinion that it went much beyond the legal text of the Convention. It was also stressed that the TIR Convention should be interpreted within its full context, not provision by provision. The TIRExB took note that the European Court of Justice had recently taken a decision concerning the role of the national guaranteeing association **in the European Union**¹ in the claim procedure. The Board invited the European Community to submit a copy of this decision to the TIRExB for information and possible discussion.

20. Finally, the TIRExB decided to continue its deliberations on the issue at the next session, with a view to deciding which elements contained in Informal document No.19 (2003) could be used in the future for examples of best practice, etc. To facilitate considerations by the Board, the TIR secretariat was requested to review old TIRExB documents issued in 1999-2001 and select among them those relevant for the present discussion.

Draft survey on the application of Annex 9, Part II of the TIR Convention

Documentation: Informal document No. 27 (2003).

21. On the basis of written comments transmitted by some TIRExB members and the IRU, the Board continued its deliberations with regard to Informal document No.27 (2003), containing a draft survey on the application of Annex 9, Part II of the TIR Convention at the national level. The

¹ Modification by Mrs. Y. Kasikci (Turkey), supported by Mrs. H. Metaxa-Mariatou (Greece).

Board delivered a number of remarks concerning the structure and content of the survey and mandated the TIR secretariat to finalize the document.

NATIONAL CONTROL MEASURES

Practical application of the TIR procedure in the Customs Union between the Russian Federation and the Republic of Belarus

Documentation: TRANS/WP.30/2004/5, Informal document No. 32 (2003).

22. The TIRExB welcomed a presentation by Mrs. N. Rybkina (Russian Federation) who outlined the background and perspectives of the Customs Union between the Republic of Belarus and the Russian Federation as well as provided explanations of its consequences for the TIR system. According to Ms. N. Rybkina, following the abolition of Customs control at the border between the Russian Federation and the Republic of Belarus, the Customs authorities of the two countries were faced with the problem how to split the liability of the national guaranteeing associations ASMAP and BAIRC if there were no evidence on which territory a TIR infringement had been committed. The only feasible short-term solution was found in the establishment of so-called registration points (PPU), along the former common border, with the function to fill-in and stamp TIR Carnets entering the Russian territory. Taking into account the composition of goods flows, it was considered appropriate to arrange that the registration points would function in West-East direction only. In this context, a reference was made to the provisions of Article 48 of the TIR Convention, pursuant to which Contracting Parties that form a Customs or Economic Union may enact special provisions in respect of transport operations commencing or terminating, or passing through, their territories, provided that such provisions do not attenuate the facilities provided for by this Convention. Mrs. N. Rybkina also described in detail the procedures for data exchange and discharge of TIR operations applicable in the Customs Union.

23. At present, the Russian and Byelorussian Customs authorities consider the following long-term solutions how to distinguish between the liability of the national guaranteeing associations ASMAP and BAIRC:

- establish a single guaranteeing association;
- follow the EU principle where the association of the country of entry of the goods onto the territory of the Community is considered liable.

24. The TIRExB recalled its considerations of the matter at the previous session (TIRExB/REP/2003/20, paras. 19-23) and, in particular, its finding that the Customs procedure applicable in West - East direction, namely the lack of termination of TIR operations at the exit from Belarus, had resulted in a number of practical problems such as duplicate claims and/or notifications raised by both Byelorussian and Russian Customs authorities. In this context, the IRU informed the Board that the underlying situation had greatly improved in 2003 and seemed to be

under control. With regard to the old cases reported by the IRU in Informal document No. 32 (2003), they would be settled on a bilateral basis between the Russian and Byelorussian Customs authorities, on the one hand, and the IRU, on the other.

25. Despite the reported progress on this issue, the TIRExB felt that the application of the TIR procedure in the Customs Union between the Russian Federation and Republic of Belarus would need to be further improved, in particular, the procedure for clearance of TIR operations carried out in West - East direction which did not seem to be straightforward. On the other hand, the Board noted that, if this procedure had been cancelled without introducing a proper alternative, that would lead to even more numerous and serious problems than there were for the time being. That is why the TIRExB urged the Customs authorities of the Russian Federation and Republic of Belarus to ensure the entry into force of one of the long-term solutions mentioned above in para. 23 as soon as possible.

New Customs Code applicable in the Russian Federation

Documentation: Informal document No. 28 (2003).

26. The TIRExB was informed of SCC Order No. 828 which came into force in September 2003 and which provided for faster border crossing procedures (Informal document No. 28 (2003)). The Board took note that this order, as well as many other SCC's regulations, had been cancelled following the entry into force on 1 January 2004 of the new Customs Code of the Russian Federation.

27. According to Mrs. N. Rybkina (Russian Federation), the new Customs Code had been prepared in line with best Customs practices world-wide, including the revised Kyoto Convention, and in close consultations with representatives of the private sector. Compared to the former Russian Customs Code adopted in 1993, it provides for more facilitation of trade and transport. In addition, the implementation of the new Customs Code should be more transparent, as its provisions would apply directly without numerous intermediary instructions to be issued by SCC. Although there is no specific chapter on the TIR procedure, the TIR Convention, being an international treaty to which Russia is a member, has the priority over the national Customs legislation.

28. The TIRExB welcomed the above information. In this context, Mr. O. Fedorov (Ukraine) informed that a new Customs Code had also come into force in his country on 1 January 2004. Relevant information would be submitted to the TIR Administrative Committee and WP.30.

MONITORING OF THE FUNCTIONING OF THE TIR GUARANTEE SYSTEM

Current Customs claim statistics

Documentation: Informal document No.26 (2003).

29. The TIRExB took note of Informal document No.26 (2003), containing the latest data on Customs claims and infringements from the Republic of Belarus. In addition, Mrs. N. Rybkina (Russian Federation) and the IRU provided oral information, to be given in writing at the next session of the TIRExB, on the current situation in the Russian Federation. Despite the fact that the number of TIR operations undertaken in Russia had increased by 40 % in 2003, an average rate of TIR infringements had dropped to less 0.03 % of the overall number of TIR operations. According to Mrs. N. Rybkina and the IRU, this result was due to:

- implementation of sanctions against persons directly liable;
- fruitful cooperation between the Russian Customs, IRU and ASMAP, in particular, due to the timely transmission of data to the SafeTIR system.

30. The TIRExB was informed by the IRU of the current status of notifications and claims:

- 6.399 notifications and pre-notifications had been received in the period I January - 20 December 2003. The number had increased in the second half of 2003, mainly due to a modified procedure in the EU;
- on 20 December 2003 8130 pending payment requests existed related both to the old and the new pool of insurers. The corresponding figure at the end of 2002 was 7984. Even if the figure showing open payment requests were a little higher, the IRU did not see signs of a worsening of the situation;
- during 2003 (until 20 December 2003) 137 claims were settled through payment of the amounts demanded whilst 490 claims were settled administratively or by a court decision without payment.

Old insurance pool

31. The IRU informed the TIRExB of the status of the arbitration procedure between the IRU and the old pool of insurers which had unilaterally terminated the insurance coverage of TIR Carnets at the end of 1994, due to a significant number of Customs claims (~~around 7,000~~). In November 1997, the Court of Arbitration declared this cancellation of the insurance contract abusive and illegal. In November 2003, the court pronounced the final ruling according to which all Customs claims were sorted out into several groups. The insurance pool was obliged to pay claims

of certain groups, some other groups would not be paid by the insurer. ~~Meanwhile, 1359 claims had already been settled, out of which one half had been paid.~~²

32. ~~On the basis of the Arbitration Court Decision the IRU hopes to meet with the insurers in the course of February 2004 in order to implement at national level the handling of claims. The first information to the authorities about the consequences of the decision by the Arbitration Court will also be given in February 2004. With its decision, the Court had obliged both parties, together, to start negotiations with the national Customs authorities concerned with a view to reviewing all Customs claims, including those for which the decision to pay had been taken. According to the IRU, in practice it would mean that a delegation consisting of representatives of the IRU, the insurance pool and the national guaranteeing association, should negotiate with the national Customs authorities on the subject.~~³

33⁴. The TIRExB pointed out that the competence of the Court of Arbitration was to decide on responsibilities of the IRU and the old pool of insurers regarding the execution of the insurance contract terminated in 1994. The Court decisions neither concerned the guarantee contracts concluded between the guaranteeing associations and Customs authorities at national level nor determined the validity of Customs claims. Thus, the Board felt that national court proceedings might be expected if there would be no consensus concerning the justification of some claims. Finally, the TIRExB requested the IRU to provide more detailed information on the matter.

APPLICATION OF THE TIR CONVENTION IN SERBIA AND MONTENEGRO

Documentation: Informal document No.29 (2003).

34. The TIRExB recalled that, at its eighteenth session, it expressed concern over the fact that there was no list of Customs offices assigned for TIR operations in the area of Serbia and Montenegro which had been communicated to the Customs authorities of the Contracting Parties (TIRExB/REP/2003/18, paras. 41 and 42). The Board took note that, following the above session, the secretariat and the IRU had received from the Serbian Customs a list of Customs offices authorized for TIR operations in Serbia and Montenegro (Informal document No. 29 (2003)), which was identical to the one provided in 2001 when the Federal Republic of Yugoslavia re-entered the TIR system.

² Modifications by the IRU.

³ Modifications by the IRU.

⁴ Mrs. N. Rybkina (Russian Federation) is of the view that the TIRExB voiced no opinion on the issue, but simply took note of the information provided by the IRU. Thus, Mrs. N. Rybkina proposes to delete the references to the TIRExB in para.33 and insert a new paragraph 33 bis to start with "**The TIRExB took note of the above information by the IRU...**".

BY-ELECTIONS IN CASE OF RESIGNATION OF A TIRExB MEMBER

35. The TIRExB held a short exchange of views regarding proposals by some Board members on how to modify the Rules of Procedure of the TIRExB with a view to replacing a Board member who is not in a position to continue his or her activities with the term of office. On the basis of these discussions, the TIR secretariat was requested to produce a document for the next session of the TIRExB and consult, in case of need, the UN Legal Office in New York.

LEGAL OPINION ON THE APPOINTMENT OF THE TIR SECRETARY

Documentation: Informal document No.30 (2003).

36⁵. The TIRExB was informed of a legal opinion by the United Nations Legal Office in New York on the appointment of the TIR Secretary (Informal document No.30 (2003)). The Board also took note that the TIR Administrative Committee, at its September 2003 session, requested the secretariat to provide it with the legal opinion including the background correspondence mentioned therein and decided to revert to this question at its next session (TRANS/WP.30/AC.2/71, paras. 16 and 17). In this regard, the secretariat informed the TIRExB that it had asked the UN Legal Office for the mandate to publish the underlying background correspondence. No reply had yet been given to this inquiry.

37⁶. ~~The Board considered that the procedure used to appoint the new TIR Secretary had caused concern amongst the Contracting Parties and, in turn, had a disturbing impact on the work and efficiency of the Board. The Board also felt that it would have been preferable had the UNECE consulted the TIR Administrative Committee over this matter and requested the UNECE to undertake a consultation in order to avoid a similar situation arising in the future.~~ **The Board considered that the procedure used to nominate the new TIR Secretary had caused concern amongst the Contracting Parties and affected negatively the work of the TIRExB. The Board considers that the UNECE should have consulted the TIR Administrative Committee over this matter and requests the UNECE to undertake that in the future when arising a similar situation any decision will be made after a consultation with the AC.2. Some members of the Board expressed the view that the new TIR Secretary has to be endorsed by the AC.2.**⁷

⁵ Mrs. Y. Kasikci (Turkey) is of the view that para.36 should be redrafted as it seems to be illogical and does not duly reflect the discussion.

⁶ Mrs. Y. Kasikci (Turkey) is of the view that para.37 does not properly reflect the outcome of the TIRExB discussions on the issue.

⁷ Modification by Mrs. H. Metaxa-Mariatou (Greece).

REGIONAL TIR SEMINAR IN MOSCOW

Documentation: TRANS/WP.30/2004/1.

38. The TIRExB was informed of the results of the Regional training TIR Seminar held in Moscow on 2 and 3 October 2003, in close cooperation with the Ministry of Transport and the State Customs Committee of the Russian Federation (TRANS/WP.30/2004/1). The Board recalled that originally the Seminar was planned as a follow-up action to the December 2002 TIR crisis. Thus, the Board felt that the report of the Seminar should carefully be studied with a view to identifying problems that may endanger the TIR system in the future. The TIRExB decided to revert to this issue at the next session.

39. The TIRExB also took note of activities planned by the TIR secretariat in 2004, in particular, TIR-related training seminars in China (January 2004) and Central Asia (provisionally September 2004).

OTHER MATTERS

40. The IRU informed the TIRExB of the following issues related to the printing, distribution and use of TIR Carnets:

- in 2003, the total number of TIR Carnets issued by the IRU to national guaranteeing associations was 3,298,000 TIR Carnets which is 200,000 more than the respective figure for 2002 (3,095,200);
- the prices for TIR Carnets as well as the levy collected for the operation of the TIRExB had remained unchanged in 2003;
- the average SafeTIR reply rate was 89 %;
- in the first 11 months of 2003, 12295 requests for reconciliation had been transmitted, out of which 9855 had been replied to. The average delay for reply was 52 days, which was still highly unsatisfactorily.

DATE AND PLACE OF NEXT SESSIONS

41. The TIRExB decided to hold its twenty-second session on 6 and 7 May 2004 in Rome, at the invitation of Mr. Mario Amelio (Italy) (to be confirmed). The TIRExB also provisionally decided to convene its successive sessions in June and October 2004.
