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Geneva, 27 September 2007
Item 3 (a) (i) of the provisional agenda

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)

Activities of the TIRExB

Report by the Chairperson of the TIRExB at its thirty-second session

I. ATTENDANCE

1. The TIR Executive Board (TIRExB) held its thirty-second session on 29 and 30 March 2007 in Geneva.
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. V. Milošević (Serbia), Mrs. J. Popiolek (European Commission), Mrs. N. Rybkina (Russian Federation), Mr. R. Šmidl (Czech Republic).
3. In accordance with Annex 8, Article 11, paragraph 5 of the Convention, the International Road Transport Union (IRU) attended the session as observer and was represented by Mr. J. Acri, Head, TIR System.

II. OPENING STATEMENT

4. The meeting was opened by Mr. J. Capel Ferrer, Director, UNECE Transport Division, who congratulated the participants on their recent election as TIRExB members and wished the Board a successful term. He underlined the important role that the TIRExB plays in the framework of the TIR Convention through enhancing cooperation among competent authorities and supervising the application of the TIR Convention. He recalled the main tasks of the Board according to its Terms of Reference, in particular, supervision of the operation of the TIR guarantee system, supervision of the centralized printing and distribution of TIR Carnets by the IRU and monitoring the price of the TIR Carnet. The importance of these activities had been highlighted by the UN audit bodies to provide the necessary transparency and accountability in the TIR system. Mr. J. Capel Ferrer also highlighted other functions of the TIRExB, such as settlement of disputes, combating fraud and providing support in the application of the TIR procedure with a view to ensuring the sustainability of the Convention, including the maintenance of the delicate balance between the public and private partners. According to Mr. J. Capel Ferrer, the public-private partnership, being one of the foundations of the TIR Convention, requires both sides to demonstrate responsibility and flexibility to ensure the continued success of the TIR Convention and to provide real value to all users.

5. Mr. J. Capel Ferrer assured the TIRExB of the UNECE's commitment to the sustainability of the TIR Convention and of the full support that the UNECE and the TIR secretariat would provide to the Board's activities. In this context, Mr. J. Capel Ferrer informed the TIRExB that Mr. Poul Hansen would leave his position as TIR secretary due to his move to another UN organization. Until a final replacement had been found, his responsibilities would be performed by Mr. Robert Nowak of the UNECE Transport Division. The TIRExB members were invited to extend their support to Mr. R. Nowak and to the TIR secretariat during this transition period.

6. The TIRExB thanked Mr. P. Hansen for many years of fruitful cooperation and welcomed Mr. R. Nowak.

III. ADOPTION OF THE AGENDA

7. The TIRExB adopted the agenda of the session as prepared by the secretariat (TIRExB/AGE/2007/32). The Board also noted that the Chairperson and the IRU would provide additional information under agenda item 8 (a) "Flaws in the Customs clearance of TIR Carnets at the Customs office of departure".

IV. ELECTION OF A CHAIRMAN

8. The Board recalled that, according to its Rules of Procedure, "a Chairman shall be elected at the first meeting each year, who shall hold office until his/her successor is elected. He/she shall be eligible for re-election". In accordance with the above provision, Mrs. Natalya Rybkina (Russian Federation) was re-elected Chairperson for 2007.

V. ADOPTION OF THE REPORT OF THE THIRTY-FIRST SESSION OF THE TIRExB

Documentation: TIRExB/REP/2007/31draft

9. The TIRExB adopted the report of its thirty-first session (TIRExB/REP/2007/31draft), subject to the following modifications:

Paragraph 10

Modify the paragraph to read as follows:

"10. The Board stressed that the structure of the listing of lost and invalidated TIR Carnets should be kept as simple as possible with a view to giving a clear-cut indication to Customs officials "in the field" whether or not they should accept a specific TIR Carnet. The TIRExB was of the view that the Contracting Parties, through the UNECE Working Party on Customs Questions affecting Transport as well as the TIR Administrative Committee, should also be informed of the principles laid down in Informal document No. 5 (2005) and in Informal document No. 3 (2007). To this end, the Board invited the IRU to prepare a new document and, possibly, a presentation for consideration at one of the future WP.30/AC.2 sessions."

Paragraph 13

Modify the paragraph to read as follows:

"13. The IRU was of the view that the above or a similar comment might also apply to open platforms used for the transport of containers or heavy/bulky goods and the TIRExB decided to consider this issue at its next session."

10. The revised text of the report of the thirty-first session of the Board is contained in document TIRExB/REP/2007/31.

VI. PROGRAMME OF WORK FOR 2007 AND 2008

Documentation: TIRExB/AGE/2007/32 (annex); Informal document No. 2 (2007)

11. The TIRExB adopted its programme of work for 2007 and 2008, as contained in ECE/TRANS/WP.30/AC.2/2007/8.

12. With regard to monitoring of the price of TIR Carnets at national level (item 9 of the programme), the IRU pointed out that the "ex-national association" price of TIR Carnets was a result of many factors and that the IRU did not and would not collect this information. The IRU also questioned under which legal basis the UN or the UNECE or the TIRExB would be entitled to collect and keep record of prices at national level and act as economical and or competition control bodies. The Board was of the view that the mandate is contained in the TIR Convention, but decided to study this issue further.

VII. TRACTOR UNITS IN THE FRAMEWORK OF THE TIR CONVENTION

Documentation: TIRExB/REP/2007/31draft; Informal document No. 1 (2007)

13. The TIRExB recalled the new draft comment to Article 15, paragraph 1 of the Convention, which was endorsed at the previous session (TIRExB/REP/2007/31draft, para. 12), with a view to facilitating Customs treatment of tractor units carrying out TIR transports. The Board discussed whether this comment should be extended to cover open platforms used for transport of containers or heavy/bulky goods, but decided not to pursue this idea for the time being. The Board agreed to submit the draft comment to the TIR Administrative Committee for consideration and possible adoption. The TIRExB also believed that the underlying issue was of particular importance to multimodal transport operations and decided to discuss this matter at one of its future sessions. In addition, the Board noted that the example of the TIR Carnet duly filled-in, as contained in Chapter 7 of the TIR Handbook, would need to be updated so as to include not only semi-trailer, but also tractor unit registration numbers.

VIII. POSSIBILITY OF UNDERTAKING A TIR TRANSPORT WHEN A TRACTOR UNIT DOES NOT BELONG TO THE TIR CARNET HOLDER

Documentation: Informal document No. 4 (2007)

14. The TIRExB considered Informal document No. 4 (2007), in which the secretariat provided a summary of the discussions by the Board over the past two years, with a view to allowing the Board to reassess how to focus its deliberations on the issue.

15. The TIRExB took note that in several countries authorized TIR Carnet holders conclude agreements with subcontractors in line with national law. Depending on national law, in such situations the liability may remain with the authorized TIR Carnet holder or could be transferred to the subcontractor. Some members of the Board stated that the flexibility of the application in accordance with national law would be lost if the concept of subcontractor were formally introduced into the text of the Convention and the conditions of Annex 9, Part II applied on an equal footing to both authorized TIR Carnet holders and subcontractors. On the other hand, some members argued that, due to the introduction of the authorization process for operators, the TIR system's status had been reinforced as a reliable and secure transit system. Allowing the TIR system to be used by non-authorized subcontractors would counter all the efforts, undertaken over the last decade, to ensure the long-term sustainability of the TIR system. Elaborating on this aspect, the TIRExB considered whether it would make sense to develop a separate, less stringent, set of criteria for subcontractors. It was decided, for the time being, not to further pursue this idea, because such an additional authorization mechanism might be difficult to monitor.

16. To continue its deliberations on the issue, the TIRExB decided to obtain more information on the application of the concept of subcontractor at the national level, including the relevant provisions on liability. To this end, the secretariat was requested to prepare for the forthcoming session of the Board a short survey for distribution among national Customs TIR Focal points and national associations. The TIRExB requested the secretariat, when preparing the survey, to take into account a TIRExB survey of 1999, which, inter alia, provided information on how 14 out of 39 responding countries allowed TIR operations to be carried out

by persons other than the TIR Carnet holder (see AC.2/WP.30 Informal document No. 5 of 1999).

IX. APPLICATION OF ARTICLES 39 AND 40

Documentation: TIRExB/REP/2007/31draft; Informal document No. 3 (2006)/Rev.3

17. The TIRExB further discussed best practices concerning the application of Articles 39 and 40 in case of discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment (Informal document No. 3 (2006)/Rev.3). The Board recalled that, at the previous session, one TIRExB member was not in a position to accept practical situation No. 2 (application of Article 40) as it did not seem to comply with recent rulings by the European Court of Justice. In this context, the Board welcomed a short summary of the related court cases (C-238/02 jointly with C-246-02 of 4 March 2004 and C-195/03 of 3 March 2005) prepared by the secretariat. The TIRExB pointed out substantial differences between the Customs infringements which constituted the basis for the court cases and the example of best practice under consideration, such as:

- all infringements were committed not within the TIR procedure, but in the framework of the European Union Customs transit regime;
- all cases involved smuggling of goods which were concealed from Customs controls;
- all infringements involved, most likely, some form of malicious intent on the part of the transport operator.

18. Therefore, the TIRExB was of the view that the decisions by the European Court of Justice did not seem to be relevant for the application of Article 40 of the TIR Convention and for practical situation No. 2, as laid down in Informal document No. 3 (2006)/Rev.3. To highlight the distinction with the court cases, the Board complemented the example of best practice with remarks stressing that none of the described practical situations involved smuggling and deliberate breaches of the TIR Convention by the TIR Carnet holder. Finally, the TIRExB adopted the example of best practice on the application of Articles 39 and 40, as contained in ECE/TRANS/WP.30/AC.2/2007/9, and decided to submit it to the TIR Administrative Committee for consideration.

X. PROPER USE OF THE TIR CARNET

Flaws in the Customs clearance of TIR Carnets at the Customs office of departure

19. The TIRExB was informed of serious flaws in the filling-in and clearance of TIR Carnets at departure, in particular, putting a Customs stamp in box 16 of the vouchers instead of box 17 and acceptance of an expired TIR Carnet. The Board expressed its deep concern over these facts and requested the secretariat to contact the Customs administrations concerned with a view to rectifying the situation.

20. The TIRExB also noted rare mistakes in the stitching of TIR Carnets at the printing house, when one page with a different reference number (usually next consecutive number) was

included into a TIR Carnet. Such occasions created considerable difficulties for the Customs authorities and made discharge of the relevant TIR operations almost impossible, as respective vouchers No. 1 and No. 2 had different reference numbers.

New Customs fraud pattern

21. The Board was informed of a sophisticated scheme of documentary fraud that involved a number of countries and several Customs procedures (exportation, EU common transit, storage at a Customs-bonded warehouse, TIR procedure and importation). In the course of a transaction, commercial and transport documents, such as invoices, packing lists and CMR consignment notes, were repeatedly replaced to falsify the goods description and their commercial value. A falsified invoice was also attached to the TIR Carnet used for the last leg of the journey. The goods manifest on the TIR Carnet contained no goods description, but only reference to the attached documents. Moreover, the said documents were stapled to the TIR Carnet in such a way that they could easily be substituted without leaving obvious traces. All these manipulations led to significant Customs undervaluation and to evasion of Customs payments.

22. The TIRExB appreciated being informed about this fraud technique and encouraged all Contracting Parties to exchange information on Customs fraud by means of the so-called Fraud Report Form (FRF), with a view to developing efficient risk management tools. It was highlighted that in the underlying situation the consignor was an off-shore company and that the TIR Carnet was opened not in the country of exportation, but in a transit country. Many Customs administrations, in their risk management profiles, consider such situations to be a possible indication of fraud. The Board believed that an incomplete filling-in of the goods manifest of the TIR Carnet could also be an early warning signal.

23. The TIRExB held an in-depth discussion on how to combat fraudulent activities based on the above or similar patterns. The IRU stated that attaching the export Customs declaration to the TIR Carnet or, at least, indicating the export declaration number in the TIR Carnet could provide a solution. However, some other members argued that the export declaration contains sensitive commercial information and can be misused. Instead, they advocated mutual assistance and closer cooperation among Customs administrations. The TIRExB pointed out the crucial role of the Customs office of departure in ensuring the proper filling-in of the TIR Carnet and the stapling and stamping of the attached documents. However, as the practice had shown, this function was always ignored. The Board was of the opinion that all Customs authorities should be reminded of their responsibilities according to the TIR Convention and reiterated the importance of preparing best practices with regard to the use of the TIR Carnet (see para. 24 below).

24. The IRU contributed to the discussion by pointing out that, for the time being, Contracting Parties encounter two general types of fraudulent activities: (i) documentary fraud which might spread in countries where no strict controls are carried out with regard to road vehicles and (ii) violent crimes (hijacking trucks, thefts, robberies) in countries where it is more difficult to commit Customs fraud by using false or incorrect documents. In this context, the IRU recalled effective measures taken against thefts/robberies of trucks and goods under cover of a TIR Carnet in one Contracting Party in 2002-2003 (for details, see Informal document No. 7 (2004)).

Best practices with regard to the use of the TIR Carnet

Documentation: Informal document No. 5 (2007)

25. The TIRExB took note of a first draft instruction on how to fill-in the TIR Carnet as well as of an example of best practices on the use of the TIR Carnet by the Customs offices of departure, destination and en route (Informal document No. 5 (2007)). This extensive document was made available shortly before the session, so the Board decided to revert to this issue at the next session and invited its members to study the document and submit their comments, if any, to the secretariat by 15 May 2007.

XI. APPLICATION OF THE TIR PROCEDURE IN ITALY

26. The TIRExB recalled information that Turkish operators had experienced problems when picking up semi-trailers in the port of Trieste, destined for Spain, as a consequence of the limited availability of East-West permits (TIRExB/REP/2006/29, paras. 28 and 29). The Board discussed Informal document No. 6 (2007), containing a letter by the Italian Customs of 21 February 2007 on the application of the TIR procedure in Italy. The Italian Customs explained that the issue of permits was a matter under primary responsibility of the Ministry of Transport. In recognition of the signaled problems, the number of permits for 2006 and 2007 had been increased.

27. In a reaction, the Turkish member of the Board confirmed that the number of East-West permits had indeed increased from 4,000 to 5,500 per year, but that this number was still largely insufficient to meet the requests from Turkish operators for at least 25,000 East-West transports per year. He stressed that the reasons given by the Italian Customs Administration were not essential even though it was recommended that the right prescribing the route should be used only when it was essential. In addition, he wanted more clarification about ad-hoc authorization. He maintained the view that the Italian Customs in prescribing the East-West route, despite the absence of sufficient permits, inappropriately applied the provisions of Article 20 of the TIR Convention. The TIRExB took note of the letter by the Italian Customs and the comments thereto by the Turkish member of the Board, and invited the Turkish authorities to further elaborate the issue in a letter to the TIR secretariat, which it would retransmit to the Italian competent authorities for further clarification.

XII. ACTIVITIES OF THE TIR SECRETARIAT

Follow-up actions to the previous decisions by the TIRExB

28. The TIRExB was informed about the activities conducted by the secretariat as a follow-up to the previous decisions by the Board, in particular, about the preparation of an on-line version of the survey on the TIR guarantee level and on the functioning of the TIR guarantee system (TIRExB/REP/2007/31, para. 14).

ITDB

29. The TIRExB took note of the situation with regard to the transmission of data to the ITDB as well as of efforts undertaken by the secretariat to increase the response rate. Taking into account that some Contracting Parties to the Convention did not have authorized TIR operators, information from four countries was still missing. The Board also noted that the ISO country code for Serbia would change as of 1 April 2007.

TIR events

30. The TIRExB was informed of the outcome of the International Conference on the Contribution of the TIR System to the Security of Trade and Transport (Moscow, 13 and 14 March). The Board also took note of an informal meeting of experts (Belgrade, 7 and 8 March 2007) in the framework of the Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization which updated the second chapter of the Reference Model of the Computerization of the TIR procedure, containing the so-called "eBusiness Requirements", with a view to submitting it to the next session of the Ad hoc Expert Group (Geneva, 12 June 2007). The TIRExB was of the view that the issue of the current status of computerization of the TIR procedure should be a recurrent item on the Board's agenda.

XIII. OTHER MATTERS

31. The TIRExB was briefly informed of problems experienced by TIR operators in two countries and invited the IRU to submit a document for consideration at the next session.

XIV. RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

32. The TIRExB decided that the distribution of the following document, issued in connection with its present session, should be restricted: Informal document No. 4 (2007).

XV. DATE AND PLACE OF NEXT SESSIONS

33. The TIRExB decided to hold its thirty-third session in Geneva on 11 June 2007, in conjunction with the 116th session of the Working Party on Customs Questions affecting Transport (WP.30).
