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Item 3 (a) (i) of the provisional agenda

Activities and administration of the TIR Executive Board – activities of the TIR Executive Board: report by the Chair of the TIR Executive Board

Report of the forty-second session of the TIR Executive Board

Summary

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

I. Attendance

1. The TIR Executive Board (TIRExB) held its forty-second session on 1 February 2010 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. I. Makhovikov (Belarus), Mrs. H. Metaxa Mariatou (Greece), Mr. V. Milošević (Serbia) and Mrs. J. Popiolek (European Commission).
3. The International Road Transport Union (IRU) attended the session as observer and was represented by Mr. Muratbek Azymbakiev.

II. Adoption of the agenda

4. The TIRExB adopted the agenda of the session as prepared by the secretariat (Informal document No. TIRExB/AGE/2009/42/Add.1), with the inclusion of the following issue:

Under agenda item 11 “Other matters”

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

III. Election of the chair

5. The Board recalled that, in accordance with its Rules of Procedure “a Chair 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” and re-elected Mr. V. Luhovets (Ukraine) to chair the Board’s meetings in 2010.

IV. Adoption of the report of the forty-first session of the TIR Executive Board

6. The TIRExB adopted the report of its forty-first session (Informal document TIRExB/REP/2009/41draft), subject to the following modification:

Agenda-item III

For thirty-ninth read fortieth

Paragraph 6

For thirty-ninth read fortieth

Paragraph 17

For the existing paragraph read

Taking into account the TIRExB’s considerations that the provisions of the TIR Convention do not provide for the approval of vehicles, whose construction include an open platform for the transport of heavy or bulky goods as well as a closed compartment that can be sealed, Mr. Makhovikov (Belarus) thanked the Board for the in-depth study of the question and informed that the Belarusian Customs authorities accept the considerations by the TIRExB with regard to the use in practice and that, at present, there does not seem to be a need to submit a request to the Working Party on Customs Questions affecting Transport (WP.30) for further discussion, despite an invitation of the Board to that extent.

Paragraph 37, last phrase

For the existing phrase read

The Board was reminded that the insurers had clearly stated that they were willing to accept an increase in the guarantee level for any country which would have introduced appropriate risk management tools, such as Real Time SafeTIR (transmission in real time of SafeTIR data and online facilities to check the validity of guarantees).

7. The revised text of the report of the forty-first session of the Board is contained in Informal document No. TIRExB/REP/2009/41final.

Documentation

Informal document TIRExB/REP/2009/41draft

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

8. The TIRExB continued its discussions on the issue of the refusal for a TIR transport to enter a country on the basis of Informal document No. 9 /Rev.2 (2009), prepared by the

secretariat and containing, on the one hand, proposals for an Explanatory Note encouraging Customs authorities to indicate the reason(s) for refusal in the TIR Carnet and, on the other hand, an example of best practices, clarifying how Customs authorities should process a TIR Carnet in the case of refusal.

9. The TIRExB adopted the draft text of the comment to Annex 1 of the Convention as well as the text of the example of best practices on the use of the TIR Carnet, subject to the deletion of the words “if possible” in point (b) thereof and requested the secretariat to submit the proposals for consideration and, possibly, endorsement to the TIR Administrative Committee (AC.2).

10. The TIRExB shortly discussed the issue of the filling-in of the TIR Carnet. The TIRExB confirmed that, in accordance with Rule 12 of the “Rules regarding the use of the TIR Carnet, the holder (or his agent) must date and sign all vouchers (boxes 14 and 15). Customs authorities of the Customs office of departure should check if this is the case before signing and date stamping box 17 of all these vouchers. Considering that the issue of the filling-in of boxes 14–15 of the TIR Carnet, although linked to this agenda item, merits a separate discussion, the TIRExB requested the secretariat to prepare a short Informal document for discussion at its next session. In addition, the TIRExB invited the IRU to also prepare a short written contribution on the issue, clarifying its instructions to holders and any further experience in this regard.

Documentation

Informal document No. 9/Rev.2 (2009)

V. Current status of the eTIR project

11. The secretariat informed the TIRExB extensively of the latest activities of the Informal Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization of the TIR Procedure (GE.1). In particular, the Board took note that Chapter 3 had been finalized and was now ready for adoption and that work on Chapter 4, which would require input from external consultants, had started. With regard to the work of the GE.1, the TIRExB invited the secretariat to explore options how to organize the activities of the GE.1 at long distance by means of email exchange, which would mean that also representatives from Contracting Parties who were not able to attend the GE.1 sessions could participate in its work.

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

12. The Board considered Informal document No. 1 (2010). In this document the secretariat had reviewed the contributions, previously submitted by members of the Board and presented them in a (chrono)logical order, together with the secretariat’s own, preliminary, considerations.

13. The TIRExB was of the opinion that the description of the various activities to establish an ongoing information exchange mechanism between parties concerned and the TIRExB constituted a good basis to continue discussions on the issue. In particular, the TIRExB stressed that it was important for the continuity of the international guarantee mechanism that the national association kept the competent TIR bodies (national Customs administrations and TIR Administrative Committee or TIRExB) informed of any disruption in the regular claim settlement procedure, in order to provide them an opportunity to

undertake any required action. In case national associations failed to do so, this should be done by IRU, pursuant to the UNECE¹/IRU agreement, which stipulates that the authorized international organization accepts “to provide the competent bodies of the TIR Convention with timely and well-founded information on trends in the number of non-terminated TIR operations, claims lodged and pending that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its guarantee system.” The Board pointed out that it was crucial for the well-functioning of any information exchange mechanism that relevant deadlines (in the Convention, national agreements and insurance contracts etc.) be known and respected.

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

15. The TIRExB requested the IRU to submit a document outlining the functioning of the guarantee system at national and international level, including the applicable deadlines, for consideration by the Board at its next session.

Documentation

Informal document No. 1 (2010) (restricted)

VII. Approval of a specific construction of road vehicles

A. Request from the Estonian Customs authorities

16. The TIRExB extensively discussed the request, submitted by the Estonian Customs authorities at the Board’s fortieth session, whether the construction of a specific type of vehicle, whose floors are equipped with troughs to facilitate and secure the transport of sheet metal coils, meets the requirements of the TIR Convention, in particular the provisions of Annex 2, Article 1 (c) and (d). At its forty-first session, the Board had taken note of the diverging opinions of the German and the Estonian authorities with regard to the approval of this specific vehicle construction and expressed the view that, as the issuance of the Approval Certificate is a matter for the competent national authorities, it could occur that one competent authority would approve a certain vehicle construction whereas another one would not, possibly even with reference to the same provisions of the Convention.

17. In order to advance the issue, the TIRExB, within the framework of its general mandate to supervise the application of the Convention, had decided, to seek guidance from an expert in the field, Mr. Bent Rasmussen from the Danish Customs administration, and had invited him to attend this part of its session, in order to elaborate his findings as contained in Informal document No. 2 (2010).

¹ United Nations Economic Commission for Europe

18. The Board carefully considered Informal document No 2 (2010) and agreed with the conclusion of the expert that the vehicle concerned could only have obtained TIR approval in accordance with the provisions of Annex 2, Article 1 (c) and (d), in case it had been designed for the exclusive transport of sheet metal coils. However, because the vehicle could alternatively be used for the transport of other goods (or a combination of coils and other goods), such approval should not have been granted because the V-shaped troughs, designed to secure the coils, could, when covered with floorboard to create a level loading floor, easily hold and, thus, hide goods. In addition, the troughs could only be properly inspected from all sides after the vehicle (or part thereof) had been emptied.

19. The TIRExB further agreed with the expert that thorough inspection of the concerned vehicle at the Customs offices of departure and destination would not solve the problem. On the contrary, it would undoubtedly lead to continuous discussions between Customs authorities and hauliers as to the need of unloading the vehicle and the costs involved.

20. Finally, acknowledging the vehicle's suitability for the safe transport of sheet metal coils, the TIRExB was of the opinion that the vehicle could still be used for transports under cover of TIR by making use of the provisions concerning the transport of heavy and bulky goods (Articles 29-35 of the Convention).

21. The TIRExB requested the secretariat to convey its considerations to the Estonian and German authorities with a request to be kept informed of any further developments.

22. The TIRExB also discussed the latest trends in vehicle construction and took note of recent experiences with regard to infringements against the technical provisions of the TIR Convention. The TIRExB concluded that still too often competent authorities, when approving or inspecting vehicles for compliance with the provisions of the TIR Convention, fail to recognize the most obvious and apparent technical defects or seem to disagree on the compliance of certain vehicle constructions with the provisions of the TIR Convention. In the view of the TIRExB this clearly showed the continued and continuous need for technical training at national level.

Documentation

Informal document No. 2 (2010); Informal document Nos. 4, 14, 16 (2009)

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

23. The Board took note of Informal document No. 3 (2010) prepared by the secretariat, in which it reproduced excerpts of prior discussions by the Board on the issue of lost, stolen, invalid and invalidated TIR Carnets.

24. The Board welcomed the introduction by the IRU of its Informal document WP.30 No. 1 (2010) which had been prepared for simultaneous discussion at the 124th session of WP.30 and in which it sets out the procedures applied towards invalidation of TIR Carnets by the international guarantee chain. The TIRExB took note that it was possible to have the Customs Utility for TIR Transaction Entry – World-wide Information System for Enquiry (CUTE-Wise) database updated in less than 24 hours after occurrence of an event leading up to the invalidation of a TIR Carnet and that the database was updated three times per day. At the same time, the TIRExB noted that no updates take place during weekends, due to the absence of staff, at national associations and the international organization, to process the relevant data. However, during the weekend, Customs authorities continue to process TIR Carnets which are accepted as carrying a valid guarantee upon verification against the

available data. Conscious of the practical benefits of the act of invalidation of TIR Carnets, not just for the guarantee chain but also for national Customs administrations, the TIRExB was of the opinion that the Customs authorities at Customs offices of departure should, as a rule, not accept a TIR Carnet which, upon verification against the available data, is registered as lost, stolen, invalid or invalidated. Vice versa and in the absence of an internationally recognized mechanism, the guarantee chain will have to accept that all TIR Carnets, presented for acceptance at the Customs office of departure before the final date of validity, are valid, in accordance with the provisions of Article 9 of the Convention, as long as the Customs office of departure does not dispose of any data to the contrary. The Board reiterated that, in the absence of common rules, any dispute concerning the status of TIR Carnet invalidated by the guarantee chain, would have to be solved on a case-by-case basis in line with national laws and regulations.

25. Further to the Board's mandate to be informed by the international organization of 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 of the Convention (Annex 8, Article 10 (g) of the Convention), the TIRExB requested the IRU to provide more information on the applicable procedures and deadlines, in case national associations had taken the decision not to issue TIR Carnets to an authorized TIR Carnet holder (Annex 9, Part II, paragraph 6), for discussion at its next session.

Documentation

Informal document No. 3 (2010), Informal document WP.30 No. 1 (2010)

IX. Problems encountered by TIR Carnet holders

A. Problems encountered by foreign TIR Carnet holders in the territory of the Russian Federation and other Contracting Parties

26. The Board discussed the ongoing problems encountered by TIR Carnet holders from various countries in the territory of the Russian Federation. From correspondence between the secretariat and the Russian Customs authorities on the matter, it had transpired that the Russian authorities seem to impose escorts in all cases when the amount of import duties and taxes at risk exceeds the TIR guarantee level of EUR 60,000 and without taking into account the limited capacities of border Customs offices to organize such escorts. As a result, transport operators experience long border delays while waiting for escorts to be organized and, in this way, are de-facto forced to change from TIR to the national transit procedure and to cover the costs of required national guarantees. The TIRExB felt that these measures were against the spirit and text of the TIR Convention, in particular Article 23 and the comment thereto on the application of risk assessment, and mandated the secretariat to convey this opinion to the competent Russian authorities, inviting them to ensure full application of the provisions of the TIR Convention in their territory at all times.

X. Activities of the TIR secretariat

A. Maintenance of the International TIR Data Base and Information Technology-projects managed by the secretariat

27. The Board was informed by the secretariat that the International TIR Data Base (ITDB) contained data on 61,000 transporters out of which 41,000 were presently

authorized TIR Carnet holders. The Board also took note of the activities of the secretariat aimed at the implementation of the "ITDBonline+ project". The TIRExB noted that the secretariat expected to finalize the "ITDBonline+ project" by the end of 2010 and that the necessary documentation for the users was under preparation.

B. TIR training seminars

28. The TIRExB was informed that the secretariat had participated in a number of events where the TIR Convention had been promoted, in particular a seminar on international road transport agreements (Cairo, 25-26 October 2009), organized by the Arab Union of Land Transport, League of Arab States and IRU. The secretariat also participated in a seminar, organized by the United States Agency for International Development (USAID) and the Ministry of Transport and Communications of Tajikistan on the role and importance of UNECE Conventions for the development of Tajikistan Transport Sector on 21 October 2009.

XI. Other matters

A. World Customs Organisation e-learning course on TIR

29. The Board took note of an invitation from the World Customs Organisation (WCO) to review an e-learning course on TIR that it had developed in cooperation with IRU. The TIRExB regretted that the WCO had not consulted with the TIRExB or other competent TIR bodies at a prior moment, when such consultations could still have had a material impact on the content of the learning course, but expressed its willingness to review the course, on the understanding that its comments would actually be used to improving the course so that it would fully meet with the expectations of Customs officials when taking the course in order to get acquainted with the principles of the TIR system.²

XII. Restriction on the distribution of documents

30. The TIRExB decided that the distribution of the following documents, issued for the present session, should be restricted: Informal document Nos. 1, 2 and 4 (2010).

XIII. Date and place of next session

31. At the kind invitation of Mr. Köseoğlu (Turkey), the TIRExB decided to hold its forty-third session on 4 and 5 May 2010 in Istanbul.

² For information: at the 124th session of the WP.30, the representative of the WCO pointed out "that any amendments would need to be agreed on a consensual basis between the TIRExB, UNECE, the WCO and the IRU".