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Activities and administration of the TIR Executive Board –

Activities of the TIR Executive Board:

Survey on customs claims

Survey on customs claims

Revision

Note by the secretariat*

I. Background and mandate

1. The TIRExB, at its fifty-fifth session, approved the final version of the survey on the TIR guarantee level and on the functioning of the TIR guarantee system and requested the secretariat to proceed with its distribution to Contracting Parties (TIRExB/REP/2013/55, paragraph 49). The secretariat prepared an on-line version of the survey and, in December 2013, sent out letters inviting countries to reply to the questionnaire via Internet. The deadline for replies was set at 31 January 2014.^{1,2}

2. At its sixty-first session, the Committee recalled that, pursuant to its mandate to supervise, inter alia, the operation of the guarantee system (Annex 8, Article 10, paragraph (a)), TIRExB, at regular intervals, conducts a survey on the status of customs claims in all TIR Contracting Parties. As part of its activities for the 2013–2014 term of office, TIRExB launched the survey for the years 2009–2012. The Committee welcomed the consolidated results of the survey as contained in document ECE/TRANS/WP.30/AC.2/2015/3 and noted, with regret, that not all Contracting Parties had responded to the survey, including

* This document has been submitted late in order to include the latest information.

¹ On 13 February 2014, the deadline was further extended to 28 February 2014 (TIRExB/REP/2013/57, para. 23).

² On 30 June 2014, TIRExB took note that Turkey had also provided reply and requested to send a reminder to the Russian Federation (TIRExB/REP/2013/59, para. 20).

some of the major users of the TIR system. It noted that the reply to the survey provided in May 2015 by Ukraine was not contained in the document. The Committee requested the secretariat to prepare a revision of the document for its next session and invited those countries that had not yet replied to do so before 31 July 2015, so that their data could also be included in the final results of the survey. The Committee recalled the importance of the survey results as a basis for the TIRExB discussions on the introduction of various guarantee levels and the use of 10 additional guarantees. The Committee agreed with the considerations of the secretariat and TIRExB and urged all Contracting Parties to respond to future surveys (ECE/TRANS/WP.30/AC.2/125, para 36).

II. Replies

3. The following 40 countries have replied to the questionnaire: Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Lithuania, the Former Yugoslav Republic of Macedonia, Malta, Montenegro, Morocco, Netherlands, Norway, Poland, Portugal, Republic of Serbia, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine. Out of the 40, 18 countries did not have claims to report.

III. Results of the survey

4. To provide a better overview of the situation in various Contracting Parties, the results are analysed separately for EU and non-EU countries. All amounts provided in national currencies have been converted into € using the exchange rates of 1 February 2014.³

A. Customs claims against national guaranteeing associations

1. EU countries

General situation (number of claims)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	76	13	56	7
2010	104	43	43	18
2011	106	17	56	33
2012	38	19	16	3
Total	324	92	171	61

General situation (amount of claims in €)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	1,125,996	192,385	822,913	115,664
2010	2,512,971	791,555	1,027,861	693,553
2011	4,105,068	448,545	1,062,431	2,321,588
2012	559,266	277,945	114,644	166,148
Total	8,303,302	1,710,430	3,027,850	3,296,953

³ Sources: United Nations Operational Rates of Exchange

Average claims

An average submitted claim amounts to € **25,627**. Average paid, withdrawn and pending claims are equal to, respectively, € **18,592**; € **17,707** and € **54,048**.

Paid claims (number)

<i>Year</i>	<i>Within 3 months</i>	<i>After 3 months</i>	<i>Total</i>
2009	3	10	13
2010	3	40	43
2011	8	9	17
2012	10	9	19
Total	24	68	92

Paid claims (amount in €)

<i>Year</i>	<i>Within 3 months</i>	<i>After 3 months</i>	<i>Total</i>
2009	26,816	165,569	192,385
2010	36,596	754,960	791,555
2011	96,039	352,506	448,545
2012	123,237	154,707	277,945
Total	282,689	1,427,742	1,710,430

Withdrawn claims

On average, 53 % of claims have been withdrawn by customs.

Comments by countries why pending claims have not been paid

- claims challenged in court.
- Appeals from the holders.

Claims that are subject to legal proceedings

52 claims in total (5 in 2009 and 15 in 2010 and 32 in 2012)

2. Non-EU countries**General situation (number of claims)**

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	29	13	15	1
2010	63	35	7	22
2011	73	46	2	25
2012	74	22	17	33
Total	239	116	41	81

General situation (amount of claims in €)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	348,162	269,053	121,839	17,619
2010	1,502,233	1,028,974	22,258	556,618
2011	1,472,786	1,025,444	0	589,079
2012	1,755,791	657,600	96,675	1,002,016
Total	5,078,973	2,981,071	240,772	2,165,332

Average claims⁴

An average submitted claim amounts to € **22,179**. Average paid, withdrawn and pending claims are equal to, respectively, € **25,699**; € **7,767** and € **26,732**.

Paid claims (number)

<i>Year</i>	<i>Within 3 months</i>	<i>After 3 months</i>	<i>Total</i>
2009	0	13	13
2010	4	31	35
2011	2	44	46
2012	17	5	22
Total	23	93	116

Paid claims (amount in €)

<i>Year</i>	<i>Within 3 months</i>	<i>After 3 months</i>	<i>Total</i>
2009	0	269,053	269,053
2010	228,196	800,778	1,028,974
2011	9,324	1,016,120	1,025,444
2012	506,413	151,188	657,600
Total	743,933	2,237,138	2,981,071

Withdrawn claims

On average, 17 % of claims have been withdrawn by customs.

Comments by countries why pending claims have not been paid

- Carrier presented evidence about finding cargo at temporary storage. This evidence is now under verification by customs authorities.
- The judicial procedures are still continuing. The national guaranteeing association generally files a lawsuit against customs when a claim for payment is sent.

Claims that are subject to legal proceedings

44 claims in total (22 in 2011 and 22 in 2012).

B. Historical pending claims

24 countries replied to the following two questions and 9 reported figures other than zero.

⁴ Excludes Switzerland (did not provide the claims' amounts)

Number of pending claims due at the end of the year in the column header that were raised in the year (or time span) indicated in the line header

Claim raised in	Pending claims at the end of...			
	2012	2011	2010	2009
2012	11			
2011	55	56		
2010	18	19	20	
2009	7	9	9	9
2008	0	0	0	1
2007	1	1	2	2
2006	0	0	0	4
2005	0	0	1	8
2004	4	4	4	4
2003	0	0	0	1
2002	4	4	4	6
2001	0	0	0	0
2000	1	1	1	2
1995-1999	0	0	0	1
1990-1994	0	0	0	0
1985-1989	0	0	0	0
1980-1984	0	0	0	0
1979 and before	0	0	0	0

Amount of pending claims due at the end of the year in the column header that were raised in the year (or time span) indicated in the line header

Claim raised in	Pending claims at the end of...			
	2012	2011	2010	2009
2012	202,611			
2011	2,876,740	2,909,440		
2010	693,553	751,239	807,025	
2009	115,664	510,545	116,107	116,107
2008	0	0	0	12,056
2007	7,716	7,716	13,482	13,482
2006	0	0	0	99,116
2005	0	0	42,925	140,795
2004	5,078	5,078	5,078	5,078
2003	0	0	0	2,704
2002	90,541	90,541	90,541	94,208
2001	0	0	0	0
2000	12,998	12,998	12,998	15,994
1995-1999	0	0	0	19,953
1990-1994	0	0	0	0
1985-1989	0	0	0	0
1980-1984	0	0	0	0
1979 and before	0	0	0	0

C. Customs claims against the persons directly liable

1. EU countries

General situation (number of claims)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	119	37	75	8
2010	101	33	50	16
2011	115	36	31	48
2012	83	45	20	18
Total	418	151	176	90

General situation (amount of claims in €)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	2,166,595	157,491	930,289	1,078,813
2010	2,461,372	385,173	1,058,820	1,064,541
2011	3,604,229	129,665	357,619	2,959,268
2012	1,044,646	366,196	281,411	397,038
Total	9,276,842	1,038,524	2,628,139	5,499,660

2. Non-EU countries

General situation (number of claims)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	42	42	0	0
2010	48	44	0	4
2011	72	46	0	26
2012	133	110	0	23
Total	295	242	0	53

General situation (amount of claims in €)

<i>Year</i>	<i>Claims lodged</i>	<i>Paid</i>	<i>Withdrawn</i>	<i>Pending</i>
2009	290,551	290,551	0	0
2010	261,884	145,881	0	116,004
2011	746,921	156,630	0	590,291
2012	2,242,108	1,445,901	0	768,221
Total	3,541,464	2,038,961	0	1,474,517

D. TIR guarantee level

1. EU countries

Current level of guarantee

€ 60'000.

Percentage of TIR operations where the amount of customs duties and taxes exceeds the established guarantee level

9 countries indicated the following percentages: 25%, 15%, 8.2%, 5–10%, 4%, less than 1%, 0.49%, 0.12% and 0.06%. 13 countries indicated that the percentage was zero or close thereto.

Percentage of claims where the amount of customs duties and taxes exceeds the established guarantee level

Only 1 country indicated a 5–10% range. 22 countries indicated that the percentage was zero.

Application of additional control measures if the guarantee level is exceeded

No: 18 countries / Yes: 6 countries.

Where applicable, which type of additional control measures do you apply?

Escorts: 3 countries. Imposing an extra national guarantee: 1 country. One country also mentioned the existence of a EUR 100,000 TIR Carnet.

Where applicable, how do you apply the control measures?

Systematically: 4 countries. Selectively: 2 countries. 2 countries mentioned that it was based on risk analysis.

Problems and suggestions related to the Guarantee level

- The cases where the duties and taxes exceed the amount of the established guarantee level (60,000 Euro) are few. Nevertheless the guarantee should cover the whole amount. It is difficult or almost impossible for the customs services to collect the required amount from the TIR Carnet holder. That is the reason why they collect it from their national association. When the amount exceeds the 60,000 Euro, they have to continue to require the payment from the TIR Carnet holder although they know from the very beginning that the holder is not willing to pay.

- TIR operators choose the TIR-system instead of the NCTS-system in the EU if they can. For example, a transport operation between Oslo, Norway and Poland requires a very high guarantee in the NCTS-system, but with a TIR Carnet the operator can avoid the higher guarantee. With a higher TIR guarantee level, using several TIR Carnets or a TIR+ system this could be avoided.

- In general no problems were reported with regard to the current guarantee level of 60,000 EUR valid in EU. In 2012 there were no cases of claims where the total amount of customs debt would exceed this guarantee level.

- The overwhelming majority of the holders of TIR Carnets processed at the customs office of departure in recent years, are of Eastern European countries or the Arab countries, in addition to the natural difficulty of communication with drivers from these territories that

are unaware that the TIR Carnet has a maximum limit of coverage, the national economic operators (who are agents of freight forwarders or customs brokers), do not provide the remaining individual guarantee for the amount not covered by the TIR Carnet due to real difficulties for reimbursement in the case of a customs debt. Thus, it would be of any interest, not only for economic operators and customs administrations, that the amount covered by the TIR guarantee, was raised to a minimum of € 100,000, since the TIR operations are usually complete trucks invoiced goods with high value, high rates of duties and maximum rate of VAT.

Problems and suggestions related to the collecting of the customs duties and taxes relating to irregular TIR operations

None.

2. Non-EU countries

Current level of guarantee

US\$ 50,000 (approx. € 36,700): 5 countries

€ 60,000: 7 countries

100,000 CHF (approx. € 82,000): 1 country

Percentage of TIR operations where the amount of customs duties and taxes exceeds the established guarantee level

The following replies were given: 10%, 1.2 %, 1%, 0.4%, 0% (6 countries) and no data (2 countries). Incomplete data for one country (only 5 out of the 16 Regional Customs Directorates provided data) does not allow calculating this percentage, but, in 2012, at least 172 TIR operations had an amount of customs duties and taxes exceeding € 60,000 (1,131,148 TIR Carnets were processed in in 2012).

Percentage of claims where the amount of customs duties and taxes exceeds the established guarantee level

The following replies were given: 0 % (10 countries) and no data (3 countries).

Application of additional control measures if the guarantee level is exceeded

Yes: 6 countries / No: 7 countries.

Where applicable, which type of additional control measures do you apply?

Escorts: 4 countries; Imposing an extra national guarantee: 1 country.

- Immediate oral or written communication between customs office of departure and customs office of destination about directing certain goods, and there is the possibility of determining customs escort if that is necessary.
- Vehicle Tracking System is mostly preferred for these TIR operations.

Where applicable, how do you apply the control measures?

Systematically: 3 countries. Selectively: 3 countries.

- From time to time.
- If there is any data of risk analysis on the goods or transporter, suspicion of smuggling, denunciation or intelligence on TIR operation, we mostly use Vehicle Tracking

System. The escort is only preferred when the customs office does not have enough VTS mobile units.

Problems and suggestions related to the guarantee level

- Since the implementation of the TIR procedure there were no customs claims or payments by the guarantors, therefore we do not have any problems regarding the TIR guarantee level
- The present TIR guarantee level is 60,000 Euro. We think that this level is convenient currently but it should be reconsidered in the coming years in compliance with the changing requirements of international trade.
- Raise the level of guarantee up to 100,000 Euro.

Problems and suggestions related to the collecting of the customs duties and taxes relating to irregular TIR operations

- As per Explanatory Note to Article 11, paragraph 2 of the TIR Convention, the customs administration should send the claim for payment to the TIR Carnet holder or the person of persons liable at least. When a claim for payment is sent to a foreign TIR Carnet holder, the notice is mostly returned because the holder is not resident at that address anymore. (If the address indicated in the TIR Carnet is not readable, we use ITDB+ to find the holder's address. All notices are sent via the Embassy/Consulate by hand.) We think that if the notice is returned, the customs administration should make a claim against the guaranteeing association immediately and the mentioned Explanatory Note should be clearer in this manner.
- The guarantee chain is reluctant to pay claims and, when it does, payments are delayed.

IV. Preliminary considerations by the secretariat

5. First of all, it should be noted that the number of respondents to the survey is regrettably lower than for the previous survey (41 countries had replied) and that significant users of the TIR system such as Iran (Islamic Republic of) and the Russian Federation did not reply. Considering the recent developments in the Russian Federation, it is unfortunate that the data on Russian claims are missing, thus biasing the results of the survey. With this in mind, the results of the survey should be taken with caution, in particular the part outside the EU.

A. Customs claims statistics and comparison with the results of previous surveys

6. The table below provides a summary comparison between the results of the 2013, 2011 and 2007 surveys. Unfortunately, in view of the absence of replies from important TIR users, the comparison of the results does not make much sense. The only figure that can be compared is the average value of a claim lodged, which almost returned to the level of the 2007 survey.

	2013 survey	2011 survey	2007 survey
Average number of lodged claims per year	141 ⁵	201	866
Average amount of lodged claims per year (€)	3,345,569 ⁴	3,630,378	22,625,657
Average number of claims paid per year	52 ⁴	91	58
Average amount of claims paid per year (€)	1,172,875 ⁴	1,705,851	853,984
Average value of lodged claim (€)	23,770	17,992	26,142
Claim rate (# of issued carnets per claim)	20,045 ⁴	14,193	3,900

B. Historical pending claims

7. The statistics on historical pending claims do not allow explaining the large number of pending claims that were reported by the IRU (i.e. more than 6000). Either a large majority of those claims have been lodged by countries that did not reply to the survey or they are actually not anymore considered as claims by customs authorities. Considering the low response rate and the fact that the IRU, further to a revision in their method for calculating pending claims, is now only reporting less pending claims (e.g. 645 in February 2014), TIRExB might want to consider if it is worth keeping those questions in future surveys.

C. TIR guarantee level

8. In most cases the guarantee level seems to be satisfactory. Only 5 countries indicate that the guarantee limit represents or will represent a problem and propose to either remove the limit or find ways to increase this level. It should be recalled that, in line with the provisions of the TIR Convention, the guarantee limit defined in the contract between the competent authorities and the guaranteeing association can go beyond the recommended amount indicated in the Explanatory Note to Article 8.3. Indeed, in many country the amount is now 60'000€ and reaches even 100,000CHF.

D. Comparison with the IRU claim statistics

9. The table below shows the differences in the total annual number of claims lodged according to the 2013 TIRExB survey and the IRU statistics (taking into account only the figures concerning countries that have replied to the 2013 TIRExB survey). Despite having informed TIR focal points of the divergence between the previous survey results and the IRU statistics as well as the changes in the methodology and tool used by the IRU for their statistics, the differences remain significant in some countries.

2009		2010		2011		2012	
<i>TIREXB</i>	<i>IRU</i>	<i>TIREXB</i>	<i>IRU</i>	<i>TIREXB</i>	<i>IRU</i>	<i>TIREXB</i>	<i>IRU</i>
105	107	167	187	179	176	112	114

⁵ Considering that important users of the TIR system did not reply to the 2013 survey, those numbers should not be compared to the results of previous surveys.

E. Other issues for consideration

10. The ratio of claims withdrawn reaches on average 38 % of the claims lodged. Considering that these claims have passed through the stages of pre-notification and notification, TIRExB may wish to consider why such a large number of claims is withdrawn by customs.

11. In the EU and outside the EU, in 74 %, respectively 80 %, of the cases, payment is made after the 3 month deadline stipulated by the TIR Convention. These numbers might actually increase in the course of time as some pending claims will eventually obtain payment one day.

V. Considerations by TIRExB

12. At its sixtieth session, the Board welcomed Informal document No. 21/Rev.1 (2014), containing an updated assessment of the results of the survey on customs claims for the period 2009–2012 presented in this document. The Board regretted that important users of the TIR system, e.g. Iran (Islamic Republic of), Russian Federation and Ukraine, had failed to submit their data (despite repeated requests), making it hard, if not impossible, for the Board to judge the outcome of the survey or to compare data with previous surveys. Considering that supervision of the operation of the guarantee system is one of its principle tasks, TIRExB urged the Chair to include in his report to the TIR Administrative Committee (AC.2) the request to Contracting Parties to reply to duly justified requests for data and any other information, thus allowing the Board to fulfil its functions as entrusted by the Convention.

13. As concerns future surveys, the Board requested the secretariat to present the results without making a difference between EU and non-EU countries and to include the full and complete replies per individual country in Annex. The Board also noted that the two questions of the survey, dedicated to identifying the origin of pending claims as reported by IRU, did not seem to provide the desired result, due to the fact that the great majority of respondents was not in a position to reply to them. Consequently, the Board decided to remove those questions from future surveys. (TIRExB/REP/2014/60, paras. 24–25).