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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport
Ad hoc Expert Group on Phase III of the TIR Revision Process

REPORT OF THE FIRST SESSION

(30 and 31 August 2004)

ATTENDANCE

1. The Ad hoc Expert Group held its first session on 30 and 31 August 2004 in Geneva.
2. The session was attended by experts from the following Contracting Parties: Belarus; Belgium; Czech Republic; Estonia; Finland; Germany; Hungary; Netherlands; Romania; Russian Federation; Sweden; Turkey; European Community (EC). Representatives of the International Road Transport Union (IRU) also participated.

ADOPTION OF THE AGENDA

Documentation: TRANS/WP.30/2004/24.

3. The Ad hoc Expert Group adopted the provisional agenda, prepared by the secretariat, in line with the mandate provided by the Working Party at its one-hundred-and-seventh session (TRANS/WP.30/214, para. 42).

ELECTION OF A CHAIRPERSON

4. Mr. G. Jacobs (Netherlands) was elected Chairman of the Ad hoc Expert Group for the year 2004.

BACKGROUND AND MANDATE

5. The Ad hoc Expert Group recalled the mandate established by the Working Party, at its one-hundred-and-seventh session, that it, based on an open-ended mandate and open to participation by all Contracting Parties and relevant organizations, should deal with the amendment proposals that had been transmitted by Contracting Parties as well as, other possible proposals for amendments of the Convention, in particular in relation to the guarantee system. As a first priority, it should consider the amendment proposals before it with a view to separating these into (a) questions of a more technical nature, which the Working Party or the TIR Executive Board (TIRExB) could deal with and (b) questions of a more strategic nature, which the Ad hoc Expert Group should consider how best to deal with.

6. The Ad hoc Expert Group also recalled that the initial idea for the session was to organize a small “brain-storming” meeting to consider the future strategy of the TIR procedure, in particular in light of existing amendment proposals.

7. The Ad hoc Expert Group also recalled the background and terms for the TIR Revision process:

- Stabilize the TIR system in the long term;
- Bring administrative and legal provisions in line with modern Customs, transportation and trade procedures;
- Introduce modern information, management and control technologies without affecting the basic philosophy of the TIR procedure;
- Pay attention to fraud in the TIR system to the extent possible, bearing in mind that such issue cannot be resolved within the TIR procedure alone.

8. The Ad hoc Expert Group finally recalled that the TIR Convention, at present, to a certain extent, is a framework Convention, which should allow for implementation at the national level, under various national legal systems. Therefore, so far, no detailed provisions have been included into the Convention based on specific national legal systems. Some experts expressed the view that, with regard to some of the amendments to the Convention, which had been adopted under phases I and II of the TIR revision process, this guiding principle seemed to have been set aside and that the question should be posed if the Convention should come back to its original form or whether further elaboration of detailed provisions should be pursued. In this context, a revision of the effectiveness of the amendments, which had been adopted in connection with phases I and II of the TIR revision process could also be considered.

9. The Ad hoc Expert Group agreed that a number of the amendment proposals before it seemed to be reactions to acute issues in the TIR procedure, in particular the functioning of the guarantee system. Bearing this in mind, the Ad hoc Expert Group decided, as a first step, to undertake an in-depth discussion of the vision with regard to the future of the TIR procedure as well as the guiding principles and overarching ideas of the Convention.

10. The Ad hoc Expert Group took note that the question of supply chain security is becoming increasingly important when considering facilitation measures, including facilitation of transit operations. Bearing this in mind, the Ad hoc Expert Group was of the view that the question of supply chain security and how this issue is linked to the TIR procedure, in particular in relation to the TIR computerization, seems important for the future applicability of the TIR Convention amongst the present Contracting Parties as well as future Contracting Parties. Therefore, it was considered relevant to include the issue in the discussion concerning a revision of the TIR Convention. It was also considered that the TIR computerization process should make provisions for the possible inclusion of supply chain security elements already at the stage of designing the system, although the competent bodies of the Convention have not finally considered this issue. Finally, it was pointed out that, on the one hand, security is already included in several areas of the Convention and the practical application and that, on the other hand, supply chain security being an issue of a political nature, is not necessarily an issue that, in all Contracting Parties to the TIR Convention, is dealt with by the same competent authorities.

11. The Ad hoc Expert Group also took note of the options at hand in relation to dealing with international agreements in general and the TIR Convention, in particular. The procedure for the present TIR revision process, including the phasing of activities, was agreed by all Contracting Parties as well as non-governmental organizations at the outset of the revision process in view of the perceived urgency of some of the issues at stake. When considering future revisions to the

Convention, the same concept of phases could be applied. Other avenues could also be considered, such as, for instance, a revision Conference or a decision by the Contracting Parties as well as other interested countries to embark on the establishment of a new Convention, bearing in mind the implications that these options would entail. Some experts were positive towards exploring all available possibilities at hand, depending on the conclusions of the discussions of the amendments. Other experts considered that in their view the Ad hoc Expert Group's mandate only includes the possibility to consider amendments within the framework of the present Convention focusing on amending the problem areas, which had been identified in the framework of an otherwise well-functioning Convention.

12. After an in-depth discussion, the Ad hoc Expert Group agreed that before deciding on the inclusion of any possible new elements in the TIR Convention it was important for the TIR Convention to be well-functioning and sustainable. Therefore, the Ad hoc Expert Group agreed to apply a step-by-step approach, first dealing with the problems that have been raised in the context of the present text of the Convention and only thereafter dealing with other issues that are not addressed by the Convention, so far. Bearing this in mind, the Ad hoc Expert Group agreed that the core of a sustainable TIR system is the well-functioning of the guarantee system. Furthermore, the Ad hoc Expert Group also agreed that the TIR procedure, as already agreed, should be computerized, as soon as possible, with the aim of serving Customs purposes. The computerized system should be fully controlled by Customs authorities, building on the necessary cooperation and partnership with industry.

13. In relation to the guarantee system, the Ad hoc Expert Group welcomed the offer by the IRU to make a presentation of the functioning of the IRU guarantee chain. The Ad hoc Expert Group invited the IRU to make such a presentation at the forthcoming session of the Working Party. The Ad hoc Expert Group requested the IRU to include explanations on both the old (up to 1995) and new (present) insurance systems and the respective advantages and disadvantages of the two systems. The IRU was also requested to include the issue of financial guarantees at the national level, which TIR Carnet holders have to furnish in order to benefit from the IRU chain of guarantee.

14. The Ad hoc Expert Group also considered that it would be important to agree on a timeframe for the amendment process. It was agreed to revert to this issue once it had been clarified which issues should be dealt with and in which framework.

CATEGORIZATION OF AMENDMENT PROPOSALS

15. The Ad hoc Expert Group, as requested by the Working Party (TRANS/WP.30/214, para. 42), considered the categorization of the amendment proposals that had been transmitted by Contracting Parties into (a) questions of a more technical nature, which the Working Party or the TIR Executive Board could deal with and (b) questions of a more strategic nature, which the Ad hoc Expert Group should consider how best to deal with.

16. The Ad hoc Expert Group decided, where appropriate or necessary, to undertake a preliminary evaluation of the various proposals at the same time, in line with point 5 of the provisional agenda of the session (TRANS/WP.30/2004/24).

17. The Ad hoc Expert Group also decided that the issues of a more strategic nature would be best dealt with as a whole, since issues addressed in one Article of the Convention could well have an impact on the other provisions of the Convention.

18. Below follows a brief summary of the outcome of the discussions of each of the amendment proposals listed according to the related provisions of the Convention, the transmitters of the proposals and the relevant documentation.

Article 4, proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

19. The Ad hoc Expert Group agreed that it was desirable to refine the text of the Article with a view to avoiding any misunderstanding of its purpose. In this context, it was agreed that the aim of the Article should be that while goods are under the TIR procedure, the payment or deposit of (a) import or export duties and taxes or (b) financial securities should be suspended. The Ad hoc Expert Group agreed that the issue was of a technical nature and the secretariat was requested to prepare a document containing a revised text for the consideration by the Working Party at one of its forthcoming sessions.

20. As a result of the discussions, it was also agreed to explore whether the term “TIR procedure” could be defined. This issue had already been discussed during Phase II of the TIR revision process without a consensus being reached. Furthermore, the Ad hoc Expert Group considered that an analysis of the terms “Customs authority”/”competent authority” seemed appropriate. The TIRExB was invited to study these two issues in further detail and to refer its considerations to the Working Party.

Title Chapter II, proposal by the European Community

Documentation: TRANS/WP.30/2004/14; Informal document 2 (2004); TRANS/WP.30/2004/25.

21. The Ad hoc Expert Group took note that the proposal contained two options: (a) to reorder the sequence of the various parts of Chapter II and to introduce distinctive subheadings or (b) to make the existing heading more generic.

22. The Ad hoc Expert Group agreed that, although the proposals could have strategic implications, they were of a technical nature. It was agreed to invite the TIRExB to study the issue in further detail and to refer its considerations to the Working Party.

Article 6.2 bis, proposals by the Chairman of WP.30, the European Community and the Russian Federation.

Documentation: TRANS/WP.30/2003/11; TRANS/WP.30/2003/22; TRANS/WP.30/2004/11; TRANS/WP.30/2004/14; TRANS/WP.30/2004/25; TRANS/WP.30/214; TRANS/WP.30/210.

23. The Ad hoc Expert Group agreed that the question was of a strategic nature and should be discussed at a later stage.

24. It was pointed out that the Convention does not contain a definition of the term “International Organization”. Some experts proposed to include the roles and responsibilities of the international organization in the Convention, which is now in the Agreement between the UNECE and the IRU.

25. The delegation of the Russian Federation considered this issue to be simple and purely technical. According to the Russian delegation, the Working Party should adopt the relevant amendment proposal already at its forthcoming session in October 2004. In this context, it was recalled that the Working Party, at its one-hundred-and-eighth session, would consider three alternative proposals concerning such an Explanatory Note, as contained in document TRANS/WP.30/2004/33. The delegation of the Russian Federation supported the wording under para. 2 (a) of the above-mentioned document.

26. The Ad hoc Expert Group considered if the proposal transmitted by the European Community to introduce an Explanatory Note could be accepted as an interim measure. Some support was expressed for this solution. The secretariat raised doubts concerning using an Explanatory Note as an interim solution to amend the Convention, because it requires the formal procedure according to Article 60 of the Convention, being an integral part of the Convention.

Article 8.5 (and 31), proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

27. The Ad hoc Expert Group agreed that the question was of a strategic nature and should be discussed at a later stage.

Article 8.7, proposals by the Chairman of WP.30 and by the European Community

Article 11, proposals by the European Community and the Russian Federation

Documentation: TRANS/WP.30/2003/22; TRANS/WP.30/2004/14; TRANS/WP.30/2004/25; TRANS/WP.30/2004/11; TRANS/WP.30/2003/11; TRANS/WP.30/210.

28. The Ad hoc Expert Group considered that the issues, which are addressed by the proposals concerning the two Articles, should be considered in their entirety and decided to deal with the proposals at the same time.

29. The Ad hoc Expert Group agreed that the questions were of a strategic nature and should be discussed at a later stage.

30. The delegation of the Russian Federation explained that their proposals were a consequence of the fact that, at present, the international organization takes, independently and according to its own procedures, decisions on Customs claims lodged by national Customs authorities against their national guaranteeing associations. The delegation of the Russian Federation was of the view that a certain consistency should be followed in this matter. If the Contracting Parties agree to the procedures elaborated and applied by the IRU in practice, the Contracting Parties still have to establish the following:

- a deadline within which the international organization is obliged to take a decision regarding each individual claim;
- a procedure of appeal against such decisions in case national competent authorities do not agree.

31. Due to the established practice, the Russian delegation considered this issue to be urgent and purely technical. It could be solved at the one-hundred-and-eighth session of the Working Party, during which, if necessary, an agreed text of the new subparagraph 2 bis of Article 11 could be adopted.

Article 28, proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

32. The Ad hoc Expert Group took note that the proposal was meant to introduce more clarity in relation to the termination of a TIR operation. However, it also noted that, so far, no specific problems, due to the lack of clarity of the present text of the Convention, had been raised. It was pointed out that the question might be related to the question of liability and therefore be a question of a more strategic nature.

33. Nevertheless, the Ad hoc Expert Group agreed that the question at root was of a technical nature and invited the TIRExB to study the issue in further detail and to refer its considerations to the Working Party.

Article 40, proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

34. The Ad hoc Expert Group agreed that the question was of a technical nature and invited the TIRExB to study the issue in further detail and to refer its considerations to the Working Party.

Article 41, proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

35. The Ad hoc Expert Group agreed that the question was of a technical nature and invited the TIRExB to study the issue in further detail and to refer its considerations to the Working Party.

Article 42 bis, Proposal by the European Community

Documentation: TRANS/WP.30/2004/14; TRANS/WP.30/2004/25.

36. The Ad hoc Expert Group took note of the view presented by the European Community that the question of proper use of TIR Carnets could be considered either in a restricted sense or in a broader sense. In the view of the European Community, the latter definition seemed to be more in line with the TIR Convention and thus, the text should be changed as proposed to ensure the “proper application of the Convention”.

37. The Ad hoc Expert Group agreed that the questions were of a strategic nature and should be discussed at a later stage.

38. The Ad hoc Expert Group also considered the issue raised by the secretariat concerning Rule 36 of the Rules of Procedure of the UNECE, which stipulates that no action in respect of any country shall be taken without the agreement of the Government of the country.

39. The Ad hoc Expert Group agreed that the question is of a technical nature and invited the TIRExB to study the issue in further detail and to refer its considerations to the Working Party.

Annex 8 and Article 13, proposals by Turkey and the secretariat

Documentation: TRANS/WP.30/AC.2/2004/4; TRANS/WP.30/2004/25; Informal document 3 (2003) (Proposal).

40. The Ad hoc Expert Group agreed that the definition of the term “levy” was of a technical nature and invited the TIRExB to study the issue in further detail and to revert to the Working Party with its conclusions.

41. The question of the collection of the “levy” seemed to be of of a strategic nature as it also relates to Article 6.2 bis and should be referred to discussion at a later stage.

PRELIMINARY EVALUATION OF AMENDMENT PROPOSALS

42. As mentioned under paragraph 16 above, the Ad hoc Expert Group decided to merge this point of the agenda with the previous point.

TIR CONTACT GROUP

43. The Working Party, at its one-hundred-and-seventh session, considered that a review of those issues that had been defined as being of a strategic nature by the Ad hoc Expert Group could be launched through a meeting of a TIR Contact Group, as it had been done in connection with Phase I of the TIR revision process.

44. The Ad hoc Expert Group considered that, for the time being, it would be more conducive to a successful outcome of the revision process to continue the discussion and analysis on the strategic issues in a smaller group than the TIR Contact Group, bearing in mind that the work of such a small group should be fully transparent and open to participation of all Contracting Parties and other relevant interested parties.

45. The Ad hoc Expert Group was of the view that a second Ad hoc Expert Group meeting should take place as soon as possible after the presentation by the IRU of the guaranteeing system at the one-hundred-and-eighth session of the Working Party. Thus, the Ad hoc Expert Group recommended that its second session should take place in November 2005 and requested the secretariat to undertake the organization of the meeting.

UNECE/IRU CONTRACT

46. The Ad hoc Expert Group took note of information provided by the secretariat that the budget for 2005 for the TIRExB and its TIR secretariat would remain the same, in line with the decision of the TIRExB. The budget information had been transmitted to the IRU who had taken note of the budget proposal.

OTHER MATTERS

47. The secretariat has, pending the approval of the Working Party, tentatively, scheduled the second session of the Ad hoc Expert Group to take place on 15 and 16 November 2004 in Geneva.
