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**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT
OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION 1975)**

Application of the Convention

Functions and roles of the TIRExB, the TIR secretariat and the IRU

Preliminary suggestions of the Chairman of WP.30

Transmitted by the Chairman of WP.30

Note: The secretariat reproduces below a communication transmitted by the Chairman of WP.30.

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A. INTRODUCTION

1. The TIR system is at the moment under severe pressure. As WP.30 is aware, the suspension of one of the Contracting Parties by the international organization (International Road Transport Union (IRU)) was avoided at the last moment due to the intense pressure applied by at least one of the other Contracting Parties. Although the details of the compromise have not been made public, part of the compromise would seem to be that, next to the settlement of the claims of the past and in

the future, clear guidelines would be set out in which all the relevant matters under the TIR Convention would be laid down.

2. Points to note:

- (a) It is assumed that the TIRExB is a valuable body whose role is extensively laid down in the Convention and whose continued existence is necessary.
- (b) With that in mind, it is not proposed to review the role and functioning of the TIRExB in the sense of contemplating on this matter an amendment to the TIR Convention.
- (c) Rather it is proposed to clarify the role and functioning of the TIRExB on the premise that its effectiveness and efficiency can be improved.
- (d) It must be recognized that the international organization is a key and very important partner. The TIRExB needs to play its part in creating and maintaining the appropriate environment so that the international organization's commercial activities, in particular the proper functioning of the guarantee system, may develop in an atmosphere of mutual respect and trust.
- (e) This discussion document does not address the matter of exactly drafting guidance to the international organization in order to clarify its role. It contains a number of suggestions taking into account that such clarification will be necessary in due course and it would seem appropriate for it to be incorporated into the international organization's authorization granted under Article 6.2bis of the TIR Convention.

3. In this document, some ideas are outlined, on the basis of which the Working Party and the Administrative Committee could have a discussion upon the roles and responsibilities of all parties involved in the TIR system.

B. ROLES AND RESPONSIBILITIES OF THE DIFFERENT PARTIES INVOLVED IN THE TIR SYSTEM

4. In accordance with article 52 of the Convention is the TIR Convention, an international treaty concluded between United Nations Member States (mentioned in the Convention as Contracting Parties). The Contracting Parties have signed the Convention.

Contracting Parties

5. The role of the Contracting Parties is:
- (a) to appoint Customs offices of departure, en route and of destination;
 - (b) to authorize associations to issue TIR Carnets, either directly or through corresponding associations, and to act as guarantors as long as the minimum conditions and requirements are complied with (Article 6, paragraph 1);
 - (c) that the competent authority shall, when payment of sums becomes due, as far as possible, require payment from the person or persons directly liable, before making a claim against the guaranteeing association (Article 8, paragraph 7)
To put the articles in a more logical order, article 8, paragraph 7 should be placed before article 8, paragraph 1. This is a very important provision. In all cases, the competent authorities should do their utmost to find the directly liable person(s) and require payment from them firstly, as this is the only way to keep the TIR system payable. However, in all cases the guaranteeing association is and stays jointly and severally liable (article 8, paragraph 1);
 - (d) to determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association (article 8, paragraph 3). In most cases this is US\$ 50,000 for a normal carnet and US\$ 200,000 for a carnet for alcohol or tobacco;
 - (e) to send information to the TIRExB;
 - (f) to notify and to claim the payment of duties and taxes, where a TIR operation has not been discharged, confirm article 11;
 - (g) to give the national guaranteeing association the right to object and appeal the non-discharge of a TIR Carnet, in accordance with the national law of the Customs Administration concerned, in cases where the holder is not or is not capable of doing so. It is obvious that this appeal will postpone the recovery;
 - (h) to exclude, temporarily or permanently, persons guilty of a serious offence against customs law or regulations applicable to the international transport of goods (article 38);
 - (i) to take, in close cooperation with the associations, all necessary measures to ensure the proper use of TIR Carnets (article 42 bis).

Administrative Committee

6. The composition, functions and rules of procedure of the Administrative Committee are set out in Annex 8 (article 58 bis). The Contracting Parties are members. This Committee may decide that others attend the sessions as observer. This decision is taken for the international organization, mentioned in article 6, paragraph 2 bis of the Convention. In practice, this means that the IRU may attend the meetings of the AC.2 as an observer.

7. The role of the Administrative Committee is laid down in article 1 bis of Annex 8. It shall:

- (a) consider any proposed amendment to the Convention in accordance with article 59, paragraphs 1 and 2;
- (b) monitor the application of the Convention and shall examine any measure taken by Contracting Parties, associations and international organizations under the Convention and their conformity therewith;
- (c) supervise and provide support in the application of the Convention at the national and international levels through the TIR Executive Board;
- (d) authorize the international organization, as referred to in Article 6, paragraph 2 and 2 bis.

TIR Executive Board (TIRExB)

8. In accordance with article 58 ter, the Administrative Committee shall establish a TIR Executive Board as a subsidiary body which will, on its behalf, fulfil the tasks entrusted to it by the Convention and by the Administrative Committee. Its composition, functions and rules of procedure are set out in Annex 8.

- (a) It follows that the legislation envisages the TIRExB having an active and authoritative role;
- (b) Recent events have shown that the greatest threat to the well-being of the TIR Convention is the increased level of fraud affecting TIR transport operations and finding means to reduce this level of fraud must be the overriding priority for the TIRExB, in order to ensure the long term sustainability of the TIR system;
- (c) Any clarification of the TIRExB's role and function should NOT be subject to any pre-conditions designed to protect the interests of any particular party;

- (d) The clarification of the TIRExB's role and function can be stated in generic terms, supplemented with some specific examples based on the tasks set out in Annex 8, Article 10 of the TIR Convention.

C. ROLE AND FUNCTIONING OF THE TIREXB – CLARIFICATION

9. General statement of the guiding principles:

(a) What is TIRExB's role: technical or strategic?

- (i) TIRExB should not be an exclusively technical body;
- (ii) The individual members should bring to the TIRExB their personal experience, wisdom and awareness to enable both the technical and strategic consideration of the issue under consideration;
- (iii) The role of the Chair is vital to ensure that this balance is maintained.

(b) Status of TIRExB "decisions"

- (i) TIRExB must, out of necessity, give its opinion on how the TIR Convention should be applied, and inevitably this will involve an interpretation of the Convention;
- (ii) However, TIRExB cannot give legally binding interpretations of the Convention; this is the sole preserve of the AC.2;
- (iii) Accordingly TIRExB can only make recommendations (for change) or give its opinion.

(c) Status of TIRExB documentation

- (i) Documents prepared by the TIRExB, or on its request by the TIR secretariat, are working documents and are to be so endorsed;
- (ii) In principle all TIRExB documents should be "open" documents and the classification "restricted" should not be applied;
- (iii) It follows from para. 2 above that the content of all TIRExB working documents are not legally binding nor can they be regarded as representing the position of the AC.2. Each document should be annotated accordingly;

- (iv) However, commercially sensitive documents or information are to be treated with appropriate discretion.
- (d) Organization of work
 - (i) At the beginning of each 2-year term, the TIRExB will develop a prioritized, yet flexible, work programme;
 - (ii) This work programme will ensure that the TIRExB's energies are focused on its prime functions;
 - (iii) The Chairman will periodically report on the Work Programme to the AC.2.

I. Annex 8, article 10 (a):

“to supervise the application of the Convention.....”

10. The TIRExB does not have the means nor the resources to ensure the application of the Convention. The TIRExB can only seek assurance that the Convention is being applied correctly. This can be achieved by a number of means, including sampling, the issue of questionnaires and by conducting selected field visits, etc. Each TIRExB should, at the outset of each 2-year term, develop a prioritized Work Programme and submit the Work Programme to AC.2 for its approval. The Work Programme would be used to gain the assurance that the Convention is being applied correctly or, should that not be the case, to identify areas of concern, and this would include the following measures:

- The conformity of vehicles
- The authorization of national associations
- The conformity of the termination and discharge procedures
- The identification, prosecution and payment request from persons liable
- The application of Article 38 and the second part of Annex 9 of the Convention.
- The implementation of amendments to the Convention
- The conformity of the three official languages of the Convention and its Annexes
- The conformity of new measures taken by any Contracting Party as per Article 42 bis.

11. This list is not exhaustive. In any event, the Work Programme needs to be sufficiently flexible to enable the TIRExB to consider any unforeseen issues that might arise.

“including the operation of the guarantee system.....”

12. To fulfil this responsibility, the TIRExB will need assurance that the guarantee system is secure and functioning properly. The smooth operation of the guarantee system is absolutely vital to the system. To this end, the TIRExB shall examine and question (where necessary) the global guarantee contract, the national deed of guarantees and the annual guarantee certificates. TIRExB shall also require the international organization to furnish, on an annual basis, global details of the number of claims lodged, those paid and those that are “pending”.

“and fulfil the functions entrusted to it by the Administrative Committee;”

13. It is assumed that any instructions from the Administrative Committee will be specific as to the actions required by the TIRExB. The Chair of TIRExB will report progress against the Work Programme. This report will be given orally to the AC.2 on each occasion that the Committee is convened.

II. Annex 8, article 10 (b):

“supervise the centralized printing and distribution to the associations of TIR Carnets which may be performed by an agreed international organization as referred to in article 6”;

14. Given that the task of printing and distributing the TIR carnets has been assigned to the international organization, the essential role of the TIRExB is to ensure that the carnet is in conformity with the requirements of the Convention. This is to be achieved by approving any modifications, etc. to the carnet in advance of the carnet being distributed. When unforeseen difficulties with the carnet arise, the TIRExB shall also seek assurances from the international organization that measures are in hand to deal with the problem.

III. Annex 8, article 10 (c):

“coordinate and foster the exchange of intelligence and other information among competent authorities of Contracting Parties”;

15. There are two discreet functions here. The TIRExB will foster the exchange of intelligence etc by actively encouraging the competent authorities to share knowledge and experiences. This can be achieved by means of seeking information and by creating the right environment where the authorities would feel comfortable in furnishing such information. The second function is to coordinate the exchange of information etc. actually furnished. This requires the TIRExB to be the depository and disseminator of information, etc. received from the authorities. This information will include reports on new trends and methods of fraud as well as examples of best practice.

IV. Annex 8, article 10 (d):

“coordinate and foster the exchange of information between competent authorities of Contracting Parties, associations and international organizations”;

16. As with para. C above, the TIRExB’s role is to encourage the exchange of information. This information will be wide ranging, including such matters as the operation and application of SafeTIR, examples of best practice and examples of concerns. Depending on the subject matter, the TIRExB will either deal with the issue itself or will refer the matter to the TIR secretariat for resolution.

V. Annex 8, article 10 (e):

“facilitate the settlement of disputes between Contracting Parties, associations, insurance companies and international organizations without prejudice to article 57 on the settlement of disputes”;

17. The key word is “facilitate”. This means that the TIRExB will use its good offices to mediate, where appropriate, to help resolve any dispute. To this end, the TIRExB will use its influence and contribute its collective thinking and experience in order to resolve the dispute in hand. How the TIRExB will achieve this depends on the particular circumstances of the dispute; for example, on occasions it might be appropriate to bring the parties together to discuss the matter, while for others a more “hands off” approach would be appropriate. While the TIRExB will give its views on the dispute, it has no arbitration role. It should avoid intervening in matters that are subject to (or proper to) the judicial process of national courts.

VI. Annex 8 article 10 (f):

“support the training of personnel of Customs authorities and other interested parties concerned with the TIR procedure”;

18. The key word is “support”. It is not the TIRExB’s role to supplant the responsibility of the competent authorities to train their officials nor is it to finance this training. The TIRExB’s function is to stimulate the identification of training needs and to support the efforts of others to train/educate their people involved in TIR.

VII. Annex 8 article 10 (g):

“maintain a central record for the dissemination to Contracting Parties of information to be provided by the international organizations as referred to in article 6, on 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”;

19. This information is to be held for reference purposes and it is not necessary to clarify what TIRExB's function should be regarding the dissemination of the information.

VIII. Annex 8 article 10 (h):

“monitor the price of the TIR carnet”;

20. This function is linked to the supervision of the operation of the guarantee system (para. A) and the distribution of the carnet (para B). Given the twin facts that the TIR carnet is an integral part of the guarantee system and that the international organization is the only international organization authorized to issue carnets, the TIRExB has a legitimate interest in monitoring the price levied by the international organization for each type of carnet. It follows that the TIRExB's responsibility extends beyond simply noting the price of the carnets. While the TIRExB does not have an auditing role, in the sense that it has no interest in the carnet pricing structure, it nevertheless needs to take an interest in any significant price increase should this put the guarantee system at risk. The TIRExB will exercise this particular responsibility with prudence and sensitivity.

D. TIR SECRETARY

21. In accordance with article 2 of Annex 8, the Secretary-General of the United Nations shall provide the Administrative Committee with secretarial services.

The TIR Secretary will attend the sessions of the TIR Executive Board (article 9, paragraph 2 of Annex 8).

22. In accordance with article 12 of Annex 8, the TIR Secretary shall be a member of the secretariat of the United Nations Economic Commission for Europe and shall execute the decisions of the TIRExB.

23. The TIR Secretary shall be assisted by a TIR secretariat, the size of which shall be determined by the Administrative Committee.

E. THE ROLE OF THE (NATIONAL) GUARANTEEING ASSOCIATION IS:

(a) to issue TIR Carnets only to persons who fulfil the minimum conditions and requirements (Article 6, paragraph 4 and Annex 9, part II) and whose access to the TIR Procedure has not been refused by the competent authorities of Contracting Parties in which the person is resident or established (Article 6, paragraph 3);

- (b) to issue TIR Carnets on the basis of a risk management based system. This means that unknown parties can only buy one carnet, and only after having been shown to be trustworthy, they will be able to buy more carnets at the same time;
- (c) to act as guarantor (Article 6, paragraph 1). This guarantee should also cover the liabilities incurred by foreign associations affiliated to the same international organization as that to which it is itself affiliated (Article 6, paragraph 2);
- (d) to undertake to pay import or export duties and taxes, together with any default interest, due under Customs laws and regulations of the country in which an irregularity has been noted in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums (Article 8, paragraph 1);
- (e) to make use of the right to object and appeal the non-discharge of TIR carnets;
- (f) to take, in close cooperation with the competent authorities, all necessary measures to ensure the proper use of TIR Carnets (Article 42 bis).

F. THE ROLE AND RESPONSIBILITY OF THE INTERNATIONAL ORGANIZATION IS:

- (a) to take on responsibility for the effective organization and functioning of an international guarantee system provided that it accepts this responsibility (Article 6, paragraph 2 bis).
It is proposed to redraft Article 6, paragraph 2 bis as follows: Subject to the acceptance of the responsibility for the effective organization and functioning of an international guarantee system, an international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee.

24. The following items could be added:

- to provide certified copies of the global guarantee contract and proof of guarantee coverage
- to take all reasonable steps to reduce the risk of counterfeiting TIR carnets
- to take the appropriate corrective action in cases where faults or deficiencies with the TIR carnets are detected
- to provide information on the rules and procedures prescribed for the issue of TIR carnets by associations
- to provide, on a yearly basis, global details of claims lodged, paid and pending of each Contracting Party
- to provide statistics and data on the number of TIR carnets delivered to each Contracting Party
- to fully participate in cases where TIRExB are called on to facilitate a dispute
- to provide full information to the TIRExB when requested on the understanding that this request does not infringe legislation concerning confidentiality and data protection, etc.
- to provide TIRExB with details of the price of each type of carnet; the price of the carnet should be based on risk analyses
- to ensure that problems, particularly those involving fraudulent activity, encountered by the industry with regard to the application of the Convention, are brought to the attention of the TIRExB
- to manage an electronic control system and to inform the TIRExB without delay of any irregularities in the discharge procedures
- to provide statistics and data on Contracting Parties' performance with regard to an electronic control system
- to continually seek to improve/enhance an electronic control system in order to improve its effectiveness as an anti-fraud tool
- available for having regular informal meetings with the TIR secretariat and other key organizations concerned with TIR
- offering its good offices and experience to support the training of interested parties, i.e. national associations.

G. NON-DISCHARGE OF TIR CARNETS

25. According to the Convention, the parties involved in a TIR operation are: The Customs or competent authorities, the national guaranteeing organization and the Carnet holder.

26. When a TIR Carnet has not been discharged, Customs has to notify the guaranteeing association and the holder of the carnet and, when the person or persons directly liable do not pay,

Customs will claim payment from the guaranteeing association. Within this relationship (between Customs, the national guaranteeing association and the Carnet holder) the correctness of a non-discharge TIR Carnet should be concluded. On the basis of national law, the Carnet holder has the right to object and to appeal the non-discharge of the TIR Carnet. The guaranteeing association does not have the right to object and appeal (in the same way), not even in cases where the holder did not make use of this right.

27. The international organization is not a part of the relationship between Customs, guaranteeing association and Carnet holder. So the Customs authorities should not be concerned with the relation between the national guaranteeing association and the international organization.

H. FINANCE OF TIR EXECUTIVE BOARD AND TIR SECRETARIAT

28. In accordance with article 13 of Annex 8 of the Convention, the operations of the TIRExB and the TIR secretariat shall be financed, until such time as alternative sources are obtained, through a levy on each TIR Carnet distributed by the international organization as referred to in article 6.

29. It has been laid down in an explanatory note that it is the intention that the operations of the TIRExB and the TIR Secretariat will be financed by the regular budget of the United Nations. As long as this is not yet arranged, the levy on each TIR Carnet will be the financial source. The international organization collects this levy and has to pay it to the UN secretariat. Although this measure was foreseen for a period of two years (entered into force in April 2000), it was also foreseen that it did not preclude a prolongation of this way of financing. The IRU proposed in April 2000 to the Administrative Committee “... to continue the central printing and distribution of TIR Carnets for a period of 5 years as of the year 2001 and to finance, as long as its expenses are not covered by the Regular Budget of the United Nations, the operation of the TIRExB and the TIR secretariat”. This was approved by the Administrative Committee at its spring session in 2000 (TRANS/WP.30/AC.2/57, paras. 29 and 30). The amount of the levy and the procedure for its collection shall be determined by the Administrative Committee following consultations with the international organization, as referred to in article 6.
