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**Economic Commission for Europe**

**Inland Transport Committee**

**Working Party on Customs Questions  
affecting Transport**

**139th session**

Geneva, 3–6 February 2015

Item 4(c)(i) of the provisional agenda

**Customs Convention on the International Transport  
Of Goods under Cover of TIR Carnets:**

**Application of the Convention –**

**New developments in the application of the  
Convention**

**Administrative Committee for the TIR  
Convention, 1975**

**Sixtieth session**

Geneva, 5 February 2015

Item 4(a)(i) of the provisional agenda

**Activities and Administration of the TIR Executive  
Board: Report by the Chair of the TIR Executive  
Board**

**Customs Convention on the International Transport of  
Goods under Cover of TIR Carnets**

**Assessment by the TIR Executive Board**

**I. Introduction**

1. At its sixty-first session (3-4 December 2014), the TIR Executive Board (TIRExB), in accordance with its mandate, considered the measure introduced by the State Fiscal Service (SFS) of Ukraine, to no longer accept, temporarily, TIR Carnets issued by the Association of International Road Carriers (ASMAP) of the Russian Federation. TIRExB also considered the developments relating to the implementation of the TIR Convention on the territory of the Russian Federation. Upon finalization of the report of its sixty-first session on 2 February 2015, TIRExB confirmed its request to the secretariat to publish the assessment of the Board as an excerpt from the report in the form of an informal document for the next session of the Working Party on Customs Questions Affecting Transport (WP.30), as well as for the next session of the TIR Administrative Committee (AC.2). The Board also requested that its findings, as contained in the report, be published on the TIR website and transmitted to the competent authorities of the Russian Federation and Ukraine. The extract of the report of TIRExB at its sixty-first session is reproduced as Annex to the present document.

## **II. Considerations by the Working Party and the TIR Administrative Committee**

2. WP.30 and the TIR Administrative Committee are invited to take note of the assessment of TIRExB and to consider providing further guidance to the TIRExB and the secretariat.

## Annex

### Agenda Item V

#### **Settlement of disputes between Contracting Parties, associations, insurance companies and international organizations**

The State Fiscal Service (SFS) of Ukraine, has instructed customs offices, as of 2 October 2014, to no longer accept, temporarily, TIR Carnets issued by the Association of International Road Carriers (ASMAP) of the Russian Federation. TIRExB discussed this measure on the basis of Informal document No. 31 (2014) prepared by the secretariat and providing a preliminary assessment of the situation at hand, together with copies of a letter by Mr. Makarenko, Deputy Chairman of SFS of 15 October 2014 to Mrs. Molnar, Director Transport division of UNECE, and her letter of reply of 30 October 2014.

In a first reply, Mr. Timofeef (representing SFS Ukraine) stated that the purpose for his presence was to properly introduce the measure to TIRExB rather than justifying its reasons. The measure to no longer accept TIR Carnets issued by ASMAP of the Russian Federation neither as guarantee document nor as customs declaration had been taken by SFS pursuant to the order of the cabinet of Ministers of Ukraine (dated 12 September 2014), at the advice of the Interdepartmental Commission under the Ministry of Economic Development and Trade and had been accepted by all governmental agencies. Mr. Timofeef also emphasized that the above measures were temporary and might be revised or cancelled as soon as the Russian Federation would accept the guarantee for all TIR Carnets issued by ASMAP of Ukraine, i.e. as soon as the Russian Federation would again fulfill the provisions of Article 6, paragraph 2 and Annex 9, Part 1, paragraph 3 (iv) of the TIR Convention with respect to Ukraine as a Contracting Party to the TIR Convention. The measure, according to their interpretation, was justified by Articles 60 and 62 of the Vienna Convention on the Law of Treaties (VCLT).

Although ultimately based on the provisions of VCLT, the main reasoning of the Ukrainian authorities, in their view, was that ASMAP of the Russian Federation no longer fulfilled the criteria of being an authorized association in accordance with Article 6, paragraph 2 and Annex 9, Part 1, paragraph 3 (iv) of the Convention. The restrictions placed by the Federal Customs Service (FCS) of the Russian Federation negatively impact ASMAP of the Russian Federation to perform its duties under its agreement with FCS and, by extension, also under the provisions of the TIR Convention. This inability to perform should, according to the Ukrainian authorities, result in the termination of the agreement and the revocation of the authorization to act as guarantor, in accordance with Annex 9, Part I, Article 5.

The Board regretted that the measure had not been communicated by the competent national authorities of Ukraine in accordance with the provisions of Article 42 bis of the Convention for examination at a moment when the Board's considerations could still have been taken into account. At the same time, the Board recalled that, at its sixtieth session, Mr. Somka (Ukraine) had informed the Board that the Ukrainian government was considering the adoption of the above mentioned measure (see ECE/TRANS/WP.30/AC.2/2015/2, para. 8). The Board reiterated its position, formulated at its fifty-eighth session, that, in general, as long as the authorization and agreement are intact, customs authorities of other Contracting Parties should respect their international

commitments under the Convention and accept TIR Carnets issued by foreign associations (see ECE/TRANS/WP.30/AC.2/2014/9, para. 15). In addition, various TIRExB members expressed the view that the status of a national guaranteeing association is strictly under the jurisdiction and competence of the Contracting Party in which the association is established. At the same time, the TIR Convention does not contain any provision giving authorities of other Contracting Parties competence to assess the validity of any authorization granted outside its jurisdiction. Mr. Timofeef and Mr. Somka expressed the view that, in the context of the TIR Convention, the only criterion for competent national authorities to authorize a national guaranteeing association to issue TIR Carnets and to act as guarantor should be the full and unconditional compliance with all conditions and requirements as defined by the Convention, in particular by Article 6 and Annex 9. Consequently, any failure to comply with the conditions and requirements set forth by the TIR Convention should lead to the revocation of the association's authorization.

The Board took due account of the position of SFS that its actions are a direct result of and a reaction to the violation of the provisions of the TIR Convention by the Russian Federation since September 2013. This violation by one Contracting Party to the TIR Convention negatively impacts the interests of all other Contracting Parties.

Under this agenda item, TIRExB considered that the situation in the Russian Federation should also be discussed. The Board took note of the communication of 25 November 2014 by FCS to ASMAP of the Russian Federation, informing of the extension of the existing guarantee agreement until 28 February 2015. While welcoming this information, TIRExB reiterated that FCS continues to implement measures that contradict the provisions of the TIR Convention and that lead to severe restrictions on the use of TIR Carnets in all regions and almost all customs offices of the Russian Federation (see for more details ECE/TRANS/WP.30/AC.2/2014/2, ECE/TRANS/WP.30/AC.2/2014/3, ECE/TRANS/WP.30/AC.2/2014/7, ECE/TRANS/EP.30/AC.2/2014/8, ECE/TRANS/WP.30/AC.2/2014/9, ECE/TRANS/WP.30/AC.2/2015/1 and ECE/TRANS/WP.30/AC.2/2015/2). TIRExB reiterated its appeal to the Russian government to restore the proper functioning of the TIR system on the whole territory of the Russian Federation by lifting, without further delay, the restrictions imposed on TIR Carnet holders. In this context, TIRExB recalled the, as yet unfulfilled, commitment of FCS, made at the 138th session of the Working Party on Customs Questions affecting Transport (WP.30), to provide, by 15 November 2014, more information on the actual situation, for distribution to Contracting Parties to the TIR Convention. The Board noted, with regret, that an invitation to FCS to participate in the current session of the Board had remained unanswered.

As a conclusion under this agenda item, the Board expressed the view that the measure introduced by the competent authorities of Ukraine is in contradiction with the provisions of Articles 3, paragraph (b), 4 and 6 of the Convention. At the same time, while taking note that the Ukrainian authorities founded the measure on the application of the VCLT, and, in particular, its Articles 60 and 62, TIRExB was of the opinion that any assessment to that extent would exceed the mandate of the Board.

Mr. Somka (Ukraine) disagreed with the conclusion of the Board, emphasizing that, in the view of the Ukrainian authorities, the examination by TIRExB should not be based on the application of the TIR Convention only but should also include other relevant international treaties, such as, but not limited to, the VCLT.

The Board requested the secretariat to publish the part of the report related to this agenda item on the TIRExB website as well as to send it to the customs administrations of the Russian Federation and Ukraine.