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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions
affecting Transport

Ad hoc Group of Experts
on Phase II of the TIR revision process

REPORT OF THE AD HOC GROUP OF EXPERTS ON PHASE II OF THE TIR REVISION PROCESS (2 and 3 April 1998)

ATTENDANCE

1. The ad hoc group of experts held its first session on 2 and 3 April 1998 in Geneva.
2. The session was attended by experts from the following countries and Contracting Parties to the TIR Convention, 1975: Denmark; Finland; France; Germany; Hungary; Italy; Netherlands; Poland; Russian Federation; Switzerland; Turkey; European Community. Representatives of the International Road Transport Union (IRU) also participated.

ADOPTION OF THE AGENDA

Documentation: Informal document prepared by the secretariat.

3. The group of experts adopted the provisional agenda as prepared by the ECE secretariat in line with the mandate provided by the Working Party at its 89th and 90th sessions (TRANS/WP.30/178, para. 35 ; TRANS/WP.30/180, paras. 27 and 72) and by the TIR Administrative Committee at its 24th session (TRANS/WP.30/AC.2/49, paras. 33 and 34).

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ELECTION OF OFFICERS

4. Mr. F. Paroissin (France) was elected Chairman of the group of experts.

PROPOSALS FOR AMENDMENTS TO THE TIR CONVENTION, 1975 - PHASE II OF THE TIR REVISION PROCESS

5. The group of experts recalled that the Working Party, at its 89th session, had decided to consider the following elements as part of phase II of the TIR revision process:

- Stable and well-functioning international guarantee system;
- Status and functions of the international organization(s);
- Harmonized discharge procedures and alternative forms of evidence;
- Revised TIR Carnet (covering successive transport operations);
- Legal basis for an international EDI control system for TIR Carnets;
- Provisions for new emerging technologies;
- Definition of responsibilities for all parties in the TIR procedure;
- Harmonized inquiry procedures;
- Harmonization of the transit facilities under the Community/Common transit and the TIR transit regimes.

6. The Working Party had also recognized that most, if not all of these elements were interrelated and, therefore, required thorough analysis and the preparation of a consolidated document addressing all of these issues comprehensively, before the TIR Administrative Committee could adopt a second package of amendment proposals to the Convention (TRANS/WP.30/178, paras. 35 and 36).

7. The group of experts also recalled the decision of the TIR Administrative Committee, at its twenty-fourth session, to accord priority to all issues related to a revised guarantee system, to the status and functions of international organizations, to harmonized discharge procedures for TIR Carnets, to a definition of responsibilities for all parties in the TIR procedure and to a revision of the TIR Carnet (in substance and in format) (TRANS/WP.30/AC.2/49, para. 34).

(a) Stable and well-functioning international guarantee system

Documentation: TRANS/WP.30/1998/180; TRANS/WP.30/1998/1; TRANS/WP.30/178; TRANS/WP.30/R.195 and Corr.1; TRANS/WP.30/R.186; TRANS/WP.30/R.182; TRANS/WP.30/R.181; TRANS/WP.30/R.178.

8. The group of experts recalled that the Working Party had already considered the results of an ECE meeting of experts on a revised guarantee system for the TIR procedure (8-9 April 1997) (TRANS/WP.30/R.195 and Corr.1). The experts had proposed a number of concrete measures to improve the performance of the TIR guarantee system realizing that a replacement of the present centralized system by a decentralized system seemed to be neither possible nor necessary for the moment. The Working Party had also considered already some concrete proposals made by the Russian Federation to define in detail the relationship between national associations and the international organization for the settlement of payment claims (TRANS/WP.30/R.186). The Working Party had felt that, with a view to further improving transparency of the international guarantee system, the role and the responsibilities of the international organization, particularly as regards the settlements of payment claims, could be further defined.

9. The group of experts agreed that the proposals to replace the present centralized insurance system as described in document TRANS/WP.30/R.195 and Corr.1, paras. 4-9) by a decentralized system, possibly along the lines of the Community and Common Transit System applicable in the European Union and a few other countries, should not be pursued for the moment (TRANS/WP.30/R.195, paras. 27-30).

10. The group of experts decided, however, to improve the present system by addressing a number of key elements that constituted the basis for a stable and well-functioning international guarantee system.

(b) Status and functions of the international organization(s)

Documentation: TRANS/WP.30/R.186.

11. Considering proposals made earlier by the Russian Federation to improve the functioning of the international guarantee system (TRANS/WP.30/R.186), the group of experts agreed:

- that general provisions on the role and functions of the international organization(s) as defined in article 6 of the Convention should be inserted into the Convention;
- that national associations should remain liable vis-à-vis Customs authorities for the settlement of Customs claims - and not the international organization;
- that the Convention should focus on Customs related issues, i.e. in this context, on the efficient settlement of justified Customs claims;

- that the revised Convention (Phase I) already provided for the possibility of Contracting Parties to the Convention to supervise the international guarantee system through the TIR Executive Board (TIRExB).

12. The majority of experts felt that a general reference on the role and functions of the international organization, to be inserted as an explanatory note to article 6, paragraph 2, would be appropriate, since annex 8, new article 10 defining the role and functions of the TIRExB provided already in paragraph (a) for the supervision of the international guarantee system by the Contracting Parties to the Convention. Detailed provisions that might allow for only little flexibility in their application would not necessarily improve the operation of the international guarantee system, particularly as long as it was operated on the basis of international private law arrangements.

13. These experts felt that the following explanatory note would be appropriate to address this issue:

Add an explanatory note to article 6 to read as follows:

“Annex 6, Explanatory Note 0.6.2

The international organization(s) as referred to in this paragraph and subject to the provisions of annex 8, article 10, coordinate(s) the functions of national associations affiliated to it as stipulated in the Convention, in particular as they relate to access of persons to the TIR procedure, the issuance of TIR Carnets and the functioning of the international guarantee system.”

14. Some experts were, however, of the view that the international organization(s) assumed de facto a very important role in the organization and administration of the international guarantee system. Therefore, their(its) role and functions, particularly as they related to the settlement of payment claims against foreign Carnet holders, and the relationship between the international organization(s) and its member associations would need to be determined by the Contracting Parties to the Convention and prescribed in detail in the body of the Convention and possibly in a new annex thereto.

15. The experts from the Russian Federation indicated that they would transmit a new proposal at the next session of the group of experts.

16. The group of experts also agreed to insert a comment or an explanatory note to article 6 of the Convention stipulating that more than one international organization could be operating in the framework of the Convention.

(c) Harmonized discharge procedures

Documentation: TRANS/WP.30/1997/1; TRANS/WP.30/178; TRANS/WP.30/176; TRANS/WP.30/164; TRANS/WP.30/134.

17. The group of experts recalled that the Working Party had already initiated preliminary discussions on administrative and legal procedures required to ensure a valid discharge of TIR Carnets by Customs authorities. It had noted that neither the term "discharge" nor the procedure to obtain such discharge nor the administrative arrangements to verify whether a discharge had been carried out properly were defined in all respects in the Convention (TRANS/WP.30/176, paras. 32-37).

18. Taking account of these considerations, the IRU and the secretariat had jointly prepared a document proposing a number of general principles, interpretations and amendment proposals to the Convention with a view to clarifying the concept and the term "discharge" in the framework of the Convention and recommending alternative forms of evidence as proof for proper discharge (TRANS/WP.30/1997/1). The objective of these proposals was to arrive at a harmonized interpretation of the Convention with a view to minimizing the number of litigations and contested payment claims. The Working Party had been of the view that the analysis set out in the document could, in principle, be supported, but felt that the consequences arising from the unconditional discharge of TIR Carnets at the Customs office of destination or exit (en route) for the liability of the TIR Carnet holder and the guarantee organizations would need to be further examined and did not seem to be as straightforward as set out in paragraph 9 of the ECE/IRU document. In this context, the Working Party had also noted that article 11, paragraph 1, last sentence of the Convention referred to the term "certificate of discharge" in the English version, while in the French and Russian versions of the Convention only the word "discharge" was used.

19. The group of experts noted that details of the discharge procedure depended to a large extent on national legislation and administrative procedures. It also noted that the procedures for the settlement of Customs claims was basically a matter to be agreed upon between the national guaranteeing association(s) and the Customs authorities. However, with a view to facilitating an efficient and rapid settlement of claims, particularly with regard to foreign Carnets, and to facilitating risk management by the international insurance system, the group of experts felt that the term "discharge" would need to be clearly defined in the Convention and that standard, or at least harmonized, inquiry and claims procedures should be prepared and recommended for application in all Contracting Parties.

(i) Definition of discharge

20. Several experts were of the view that the term "discharge of the TIR procedure" (French: "apurement") had to be clearly separated from the term "termination of the TIR procedure" (French: "décharge"), the latter referring to the physical presentation of the goods at the Customs office of destination or exit and to their export or their transfer to another system of Customs control. As the

Convention did not separate clearly between these two terms, notifications of non-discharge by Customs authorities were sometimes not accepted by the international insurers and had to be settled in national courts.

21. The group of experts agreed to insert in article 1 of the Convention a definition of the term “discharge” as well as to review other articles of the Convention referring to the discharge procedure. It agreed to consider, as a basis for such a definition, the amendment proposals contained in document TRANS/WP.30/1997/1 in more detail at its next session.

(ii) Recommended discharge procedure

22. Taking account of the experiences made with regulations on prescribed discharge procedures for TIR Carnets applicable in the European Community, the group of experts felt that the procedure outlined below could be a basis for recommended practices to be applied in all Contracting Parties to the Convention on the understanding that other procedures, in line with the provisions and the spirit of the Convention, such as those currently in force in the Russian Federation (TRANS/WP.30/180, paras. 37 and 38; WP.30 informal document No. 2 (1998)), were also acceptable:

- (1) Customs offices processing TIR Carnets shall keep separate registers in their Customs ledgers for TIR Carnets.
- (2) The Customs office of departure or entry shall retain voucher No.1 of the TIR Carnet and, with a view to assisting in the return of voucher No. 2, shall enter in the box “For official use” of voucher No. 2 the following text: “To be returned to” followed by the name and full address of the Customs office to which voucher No. 2 must be returned. This text should, as far as possible, be inserted by means of a stamp and must be clearly legible.
- (3) The Customs office of departure or entry shall ensure that box 22 in voucher No. 1 contains the name of the Customs office of destination or exit with a view to facilitating inquiry procedures.
- (4) The Customs office of destination or exit shall detach and send without delay (within 5 working days) following the completion of the TIR operation the part of voucher No. 2 relating to boxes 18 to 28 to the Customs office designated in the box “For official use”, where applicable via a central office.
- (5) In case of several Customs offices of departure or destination, the above procedure shall apply mutatis mutandis.
- (6) In cases where the Customs office of destination or exit is different from that mentioned in voucher No. 2 of the TIR Carnet, that office shall inform the office mentioned in voucher No.2 without delay.

- (7) With a view to detecting and preventing fraud, the office of departure or entry, apart from cases of doubt, shall verify a posteriori a random proportion of 1 per thousand with a minimum of 6 documents per month of all returned vouchers No. 2.

23. Specific provisions for the transport of sensitive goods as well as on the use of the EDI control system for TIR Carnets recommended by the TIR Administrative Committee on 20 October 1995 may need to be added.

(iii) Recommended inquiry procedure

24. Taking account of the experiences made with regulations on prescribed inquiry procedures for TIR Carnets applicable in the European Community, the group of experts felt that the procedure outlined below could be a basis for recommended practices applicable in all Contracting Parties to the Convention on the understanding that other procedures in line with the provisions and the spirit of the Convention were also acceptable:

- (1) The inquiry procedure shall be initiated if
 - voucher No. 2 of the TIR Carnet is not returned to the Customs office of departure or entry within a reasonable time period;
 - voucher No. 2 of the TIR Carnet is returned within a reasonable time period, but the TIR Carnet has been discharged conditionally (with reservation) (article 11, paragraph 1).
- (2) When voucher No. 2 of a TIR Carnet is not returned to the Customs office of departure or entry within a period of three months (one month for sensitive goods as defined by the national Customs authorities) from a Customs office of destination or exit, the Customs office of departure or entry having accepted the Carnet shall send a request for information on a standard form to the office of destination or exit. In case central offices are used, these offices shall take the appropriate action.
- (3) At the same time, the relevant national guarantee association shall be informed on a standard form of the possible non-discharge of TIR Carnets (pre-notification). Such pre-notification should be accompanied by all relevant information and data allowing the association(s) and the international organization(s) to furnish relevant documentation and, if possible, alternative evidence as proof for the proper discharge of TIR Carnets.
- (4) If there is no reply to this request for information, a reminder shall be transmitted, three months later, to the supervisory authority of the said Customs office of destination or exit.

- (5) If, following three months from the transmission of the reminder, no response has been received by the Customs office of departure or entry or upon receipt of a negative response from the Customs office of destination or exit, the Customs office of departure or entry shall notify the relevant guaranteeing association and, if possible, the TIR Carnet holder of the non-discharge or the conditional discharge (with reservation) of the TIR Carnet.
 - (6) The holder of the TIR Carnet and the guaranteeing association shall have three months, starting with the day of the notification, to furnish proof of the regularity of the TIR operation in question.
 - (7) Upon receipt of information or alternative forms of evidence from the holder of the TIR Carnet and/or the guaranteeing association(s) concerning the regularity of the TIR operation in question, the Customs office of departure or entry shall inform the holder of the TIR Carnet and/or the guaranteeing association(s) within ... [to be determined] months of its decision to accept such information or alternative evidence.
 - (8) If, following the expiry of the time limit under (6), proof of regularity of the operation is not furnished, the Customs office of departure or entry shall proceed to calculate the duties, taxes and other charges on the appropriate form.
 - (9) Payment should be requested, as far as possible, from the person(s) directly liable (TIR Carnet holder, transport operator, consignee, etc.) immediately following the registration of the calculations (article 8, paragraph 7).
 - (10) In default of payment by the TIR Carnet holder, after one month a demand for payment shall be sent to the guaranteeing association which shall have three months as of the date of demand for payment to remit the sums due.
25. Recommended standard specimen forms for the inquiry notices and the reminder will need to be prepared.
26. Specific provisions for the transport of tobacco and alcohol as well as for other sensitive goods, including the establishment of an early warning system may need to be added.

(d) Reduction in the notification periods for Customs claims

Documentation: Informal document transmitted by the IRU.

27. The group of experts was of the view that a reduction in the notification periods for Customs claims (article 11, paragraph 1) could be considered in light of experiences yet to be made with the EDI control system for TIR Carnets, the new amendment proposals under phase I of the TIR revision process and the above recommended discharge and inquiry procedures. It was felt that it needed to be distinguished between the actual information on non-discharged TIR Carnets to be provided by Customs authorities through the above pre-notification (after three months) and the legal requirement for notification after one year following the date of acceptance of a TIR Carnet. On the basis of the pre-notification, the national associations and the international organization(s) could already take appropriate measures to stop at an early stage fraudulent activities and to limit, at the same time, the risk to the international guarantee chain.

(e) Alternative forms of evidence as proof for the discharge of TIR Carnets

Documentation: TRANS/WP.30/1997/1.

28. The group of experts was of the view that alternative forms of evidence as proof for the discharge of TIR Carnets other than the duly filled-in voucher No. 2 in the TIR Carnet should be accepted as an exceptional measure by Customs authorities. In addition to the duly stamped counterfoil No.2 in the TIR Carnet or a copy thereof to be provided by the IRU as contained in the comment to article 10 (1995 TIR Handbook, page 45), the group of experts considered briefly the following comment as proposed in document TRANS/WP.30/1997/1:

Comment to article 10 and to annex 1

"Customs authorities are also recommended to accept exceptionally, as alternative evidence for the proper discharge of TIR Carnets:

- any official certificate or confirmation of discharge for the same TIR operation made out by another Contracting Party following or terminating the respective transit operation or confirmation of the transfer of the goods in question to another Customs procedure or to clearance for home use) or
- the duly stamped counterfoils No. 1 or No. 2 in the TIR Carnet by such a Contracting Party or a copy thereof to be provided by the international organization referred to in article 6 of the Convention or
- the electronic information provided by an authorized international control system, such as the SAFETIR system operated by the IRU in accordance with the TIR Administrative Committee Recommendation of 20 October 1995 (in line with article 42 bis of the Convention)."

EDI control system for TIR Carnets: Implementation of the Recommendation
of 20 October 1995

Documentation: TRANS/W.30/1998/1; TRANS/WP.30/178; TRANS/WP.30/AC.2/37,
annex 4.

29. The group of experts felt that the EDI control system installed and administered by the International Road Transport Union (IRU) in cooperation with national Customs authorities could provide an important element to safeguard the international guarantee system and to reduce the amount of Customs fraud. The system was designed to work effectively in a large number of geographically diverse and distant countries and did not require cooperative arrangements among Customs authorities other than those already stipulated and foreseen in the Convention. The majority of experts felt that the present recommendation of the TIR Administrative Committee on the EDI control system for TIR Carnets should be fully implemented in all countries utilizing the TIR procedure and should be extended in the future to cover all stages in the distribution and use of TIR Carnets. Such a system would also need to be compatible with the EDI system developed for the Community and Common Transit systems.

30. The group of experts felt that, before making the application of such an expensive and difficult to operate system compulsory in all countries utilizing the TIR procedure, as proposed in document TRANS/WP.30/198/1, paras. 4 and 5, the usefulness of the provided data, particularly on stolen and discharged TIR Carnets for Customs authorities still needed to be verified.

(f) Re-introduction of the guarantee coverage for tobacco and alcohol

31. The group of experts stressed that the TIR Customs transit procedure had to cover all types of cargo to be transported. The exclusion of certain types of cargo was not in line with the objective of the Convention to facilitate international transport of goods. It was also pointed out that, with the exception of tobacco, duties and taxes for virtually all other cargoes to be transported under the TIR procedure could be covered with a guarantee in the order of US\$ 50,000 to 100,000. Also producers of merchandise could provide special guarantees for sensitive cargoes and specially reliable transport operators could be approved by Customs authorities for the transport of such goods.

(g) Definition of the holder of TIR Carnets

Documentation: TRANS/WP.30/198/180; TRANS/WP.30/166; TRANS/WP.30/162;
TRANS/WP.30/R.149; TRANS/WP.30/R.138.

32. The group of experts recalled that the Working Party had already considered preliminarily possible definitions of the holder of TIR Carnets (TRANS/WP.30/166, paras. 50-52;

TRANS/WP.30/162, paras. 49 and 50) which had not yet led to tangible results. Therefore, the Working Party had felt that this matter should be dealt with by the ad hoc expert group considering phase II of the TIR revision process. WP.30 had also discussed in 1994 and 1995 a number of definitions relating to the activities of Customs authorities and national associations which may constitute useful background information for the group of experts (TRANS/WP.30/R.149; TRANS/WP.30/R.138).

33. The group of experts agreed that the holder of the TIR Carnet needed to be defined in the Convention. At present only the term “person” was defined in article 1, paragraph (j) and such persons were required to obtain an authorization to utilize TIR Carnets in accordance with the new annex 9, Part II of the Convention.

34. Several experts were of the view that this requirement meant that all TIR Carnet holders, whether or not carrying out transport operations under cover of TIR Carnets, required authorization in line with annex 9, Part II as well as all sub-contractors operating under the TIR procedure. This view was contested by some experts who pointed out that, in their view, only the holder of the TIR Carnet assuming liability for the transport operation was required to obtain the above authorization.

35. The group of experts felt that a consensus on the applicability of annex 9, Part II was required before these provisions would come into force, possibly in early 1999, taking account of the “control aspect” of the new provisions.

36. The experts from the Russian Federation pointed out that, according to legislation in the Russian Federation, the person liable for the proper execution of the TIR procedure was always the transport operator and/or driver, not the TIR Carnet holder. For this reason, the use of sub-contractors or third parties operating in place of the TIR Carnet holder was prohibited in the Russian Federation. Similar legislation prevailed in the other States of the Commonwealth of Independent States (CIS).

37. Some experts were of the view that, in case of approval of all transport operators in accordance with annex 9, Part II of the revised Convention, Customs authorities obtained additional security with regard to the liability of transport operators. Thus, sub-contracting, which was increasingly used in today’s modern transport markets, would not necessarily increase the risk of fraudulent activities by the operators. In their view, the holders of TIR Carnets were not necessarily only transport operators, but could be freight forwarders or possibly manufacturers of goods that fulfilled the minimum conditions and requirements of the new annex 9, Part II of the Convention.

38. The experts from Denmark and the Russian Federation agreed to transmit further information on the liability concepts used in their countries to the next session.

(h) Revised TIR Carnet

Documentation: TRANS/WP.30/1998/180; TRANS/WP.30/1998/1; Informal document No.5; TRANS/WP.30/R.176; TRANS/WP.30/176; TRANS/WP.30/172; TRANS/WP.30/166.

39. The group of experts recalled that the Working Party had already considered possibilities to revise the TIR Carnet taking account of a first draft prepared jointly by the IRU and the secretariat (Informal document No.5 (1997); TRANS/WP.30/R.176). The Working Party had felt that any revised TIR Carnet should, as far as possible, be in line with the UN Lay-out key for trade documents, be of format A 4 and should allow processing in an electronic data interchange environment. Explanatory text could be removed from the vouchers of the TIR Carnet to a separate sheet (as has been done in the case of the Single Administrative Document (SAD)).

40. Due to lack of time the group of experts did not consider this matter.

OTHER MATTERS

41. The group of experts took note that its second session was scheduled to be held from 24 to 26 June 1998 in Geneva, in conjunction with the twenty-fifth session of the TIR Administrative Committee (26 June 1998).
