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Item 3 (a) (i) of the provisional agenda

ACTIVITIES AND ADMINISTRATION OF THE TIR EXECUTIVE BOARD (TIRExB)

Activities of the TIRExB

Report by the Chairperson of the TIRExB *

I. ATTENDANCE

1. The TIR Executive Board (TIRExB) held its twenty-eighth session on 26-27 January 2006 in Geneva.
2. The following members of the TIRExB were present: Mr. R. Boxström (Finland); Mr. A. Habekkh (Jordan); Mr. J. Marques (European Community); Mrs. H. Metaxa-Mariatou (Greece); Mrs. N. Rybkina (Russian Federation); Mrs. N. Rynkevich (Belarus); Mr. R. Şen (Turkey); Mr. R. Šmidl (Czech Republic). Mr. G. Grigorov (Bulgaria) was absent.
3. In accordance with Annex 8, Article 11, paragraph 5 of the Convention, the International Road Transport Union (IRU) attended the session as observer and was represented by Mr. J. Acri, Head, TIR System.

* The UNECE Transport Division has submitted the present document after the official documentation deadline.

4. At the invitation of the TIRExB and in accordance with Annex 8, Article 11, paragraph 5 of the Convention, the following experts took part in the considerations under agenda item 7 "Approval of road vehicles with sliding sheets" (paras. 17-21 below):

- Mr. Allan McKenzie of the Liaison Committee of the Body and Trailer Building Industry (CLCCR);
- Mrs. Annie Luchie (CLCCR);
- Mr. Bent Rasmussen of the EU Customs Assistance Mission (CAFAO) to Serbia and Montenegro.

5. The TIRExB noted with concern that Mr. G. Grigorov (Bulgaria) had not participated in two Board sessions in a row. In both cases, no written information had been provided about the reasons for his absence. The TIRExB mandated the TIR secretariat to contact Mr. G. Grigorov (Bulgaria) and the Bulgarian competent authorities in order to draw their attention to the responsibility of the TIRExB members to participate in its sessions.

II. ADOPTION OF THE AGENDA

6. The TIRExB adopted the agenda of the session as prepared by the TIR secretariat (TIRExB/AGE/2006/28) with the inclusion of the following issues under agenda item 15 "Other matters":

- Application of Customs escorts in the Republic of Belarus;
- Maintenance of the Register on Customs sealing devices;
- Filling-in of box 8 of the TIR Carnet.

III. ELECTION OF A CHAIRPERSON

7. The Board recalled that, according to its Rules of Procedure, a Chairman shall be elected at the first meeting each year, who shall hold office until his/her successor is elected. He/she shall be eligible for re-election. In accordance with the above provision, Mrs. Natalya Rybkina (Russian Federation) was re-elected as Chairperson for 2006.

IV. ADOPTION OF THE REPORT OF THE TWENTY-SEVENTH SESSION OF THE TIRExB

Documentation: TIRExB/REP/2005/27draft

8. The TIRExB adopted the report of its twenty-seventh session (TIRExB/REP/2005/27draft), subject to the following modifications:

Paragraph 11

Modify the paragraph to read as follows:

"11. The Board considered at length Informal document No. 19 (2005) prepared by the secretariat, containing an amendment proposal for a Fraud Report Form (FRF). The TIRExB decided to introduce a number of changes to the FRF with the aim to making it more user-friendly. An updated version of the FRF is contained in Annex 1 to this report. The Board also decided to finalize its discussion on the design of the FRF by means of a written consultation procedure and submit it to the October 2006 session of the TIR Administrative Committee for adoption. The TIRExB also felt that, meanwhile, the FRF should be translated into French and Russian and sent to the Customs administrations for provisional application."

New paragraph 12 bis

Add a new paragraph after paragraph 12 to read as follows:

"12 bis. Mr. R. Şen (Turkey) was of the view that the exclusion of a person from the TIR regime should not come into force as long as appeal procedures against the initial decision of the competent authorities to exclude the person had not been completed. The initial decision to exclude a person from the TIR regime, if followed by a suspension or cancellation of this decision as a result of the appeal procedures, could cause unjustified damages for the transport operator and his reputation and could eventually lead to his bankruptcy. In order to avoid such negative consequences, in the course of the appeal procedures the Customs authorities should only apply transitional control measures, such as physical inspection of the cargo at the border and/or Customs escorts. Therefore, Mr. R. Şen (Turkey) felt that the underlying example of best practice should be modified with the aim to reflecting such transitional measures."

New paragraph 14 bis

Add a new paragraph after paragraph 14 to read as follows:

"14 bis. The TIRExB recalled its earlier opinion that, at least, if a TIR Carnet has been accepted by a Customs office of departure on or before the final date of validity, the guarantee linked to this TIR Carnet should remain valid until the very end of the TIR transport (TIRExB/REP/2005/26, para.29). The IRU reiterated its view that any decision in this respect should finally be subject to national legislation (ibid)."

Paragraph 19

Modify the first two sentences to read as follows:

"19. The Board agreed that the TIR Convention should not be an obstacle for modern logistic practices and, therefore, "sub-contractor" transport operations should somehow be accommodated within the TIR procedure. However, the TIRExB was not in a position to come to a consensus on the issue..."

Modify the last sentence to read as follows:

"... The representative of the IRU mentioned that this aspect was also subject of debates within IRU's membership. Some rules had been developed by the IRU to cover cases where Carnets were issued to TIR Holders using subcontractors for TIR transports (as presented in Informal document No. 14 (2005))."

Paragraph 27

Modify the last sentence to read as follows:

"... In the event of infringement, the total amount of Customs duties and taxes may be claimed from the TIR Carnet holder or any other identified directly liable person."

Paragraph 28

Modify the paragraph to read as follows:

"28. In addition, the TIRExB was informed that some Contracting Parties complain that the present guarantee level is too high for typical products from their countries and leads to unjustified costs for transport operators using TIR Carnets. If the guarantee level was raised, that would inevitably lead to even more expensive TIR Carnets."

New paragraphs 28 bis and 28 ter

Add new paragraphs after paragraph 28 to read as follows:

"28 bis. The IRU indicated that the request for an increase in the guarantee level in the present circumstances was inappropriate and demonstrated that this request was a result of misinterpretation of the TIR Convention and of the aim and nature of the TIR guarantee. The IRU also pointed out that an "à la carte" guarantee level could be an open door to discrimination.

28 ter. The Board decided to revert to this issue at its future sessions and, in particular, to consider the following options:

- possible introduction of a lower guarantee level for certain countries (regions);
- possible general increase in the TIR guarantee level;
- possible introduction of a guarantee arrangement similar to the voucher system of the EU, where vouchers can be staggered on top of each other.

The IRU was invited, and accepted, to prepare a document on the possible consequences of an increase in the TIR guarantee level."

Annex 2, paragraph 5, footnote

Modify the footnote to read as follows:

" * According to the comment "Exclusion of a domestic transport operator from the TIR procedure", the Customs authorities are recommended to use the provisions of Article 38.1 against foreign transport operators guilty of a serious offence of the Customs laws. The proposed example of best practice addresses such a situation."

Annex 2, paragraph 9

Add the words "as far as possible" before "to the association of the Contracting Party where the excluded person is established or resident (issuing association)."

9. The revised text of the report of the twenty-seventh session of the Board is contained in document TIRExB/REP/2005/27.

V. HARMONIZED APPLICATION OF ANNEX 9, PART II OF THE TIR CONVENTION (CONTROLLED ACCESS TO THE TIR PROCEDURE)

Documentation: Informal document No. 1 (2006)

10. The TIRExB considered Informal document No.1 (2006), prepared by the secretariat in cooperation with the IRU, containing an example of best practice with regard to the application of Annex 9, Part II of the TIR Convention. The Board generally advocated the example, but felt that it should be elaborated further with a view to better defining the responsibilities of the competent authorities. The TIRExB invited its members to transmit written comments on the document until 1 March 2006 and requested the secretariat to update the example accordingly, in order to adopt it at the next session of the Board.

VI. POSSIBILITY OF UNDERTAKING A TIR TRANSPORT WHEN A TRACTOR UNIT DOES NOT BELONG TO THE TIR CARNET HOLDER

Documentation: Informal document No. 2 (2006)

11. The Board continued its discussion of the subject on the basis of Informal document No. 2 (2006), prepared by the secretariat. In the document, the secretariat had tried to summarize the discussion by pointing at two main approaches to address the issue of subcontractors within the framework of application of the TIR Convention: the first approach being to *de facto* accept but not to *de jure* recognize subcontractors, thus leaving all liability with the authorized TIR Carnet holder; the second being the introduction of the requirement that all subcontractors need to be authorized in accordance with the requirements of Annex 9, Part II just like any ordinary person, desiring to use the TIR system.

12. The Board clarified that the use of subcontractors is not only limited to the intermodal application of the TIR system. In fact, the phenomenon very often appears in the situation where a number of successive unimodal transporters are involved in one single TIR transport.

13. In the course of the discussion, it was pointed out that for Customs it would be convenient to be confronted with one, single Customs debtor, being the TIR Carnet holder. On the other hand, the legal provision of Article 8.7 of the TIR Convention stipulates that Customs have to require payment, so far as possible, from all persons directly liable before making a claim against the guaranteeing association. Thus, it is not possible to ignore the existence of the subcontractor.

14. Taking all these aspects into consideration, the TIRExB drew the following, tentative, conclusions in anticipation of further discussions:

- The use of subcontractors under the TIR procedure does not contradict, in principle, the provisions and the spirit of the TIR Convention;
- In case a subcontractor actually performs a TIR transport under coverage of a TIR Carnet issued to an authorized TIR Carnet holder, his position is comparable to that of a person acting on behalf of the holder. Therefore, in case of an infringement, the subcontractor might be one of the directly liable persons, as referred to in Article 8.7, in accordance with national law;
- Information on the actual subcontractor(s) should be provided in the TIR Carnet or attached to it. Certain rules should be established which would allow Customs to distinguish between the legitimate use of a subcontractor and the illegal transfer of a TIR Carnet to third parties.

15. On this basis, the TIRExB requested the secretariat to prepare a new Informal document for discussion at its forthcoming session, focussing on consequence of its tentative conclusions. The TIRExB was conscious of the fact that such informal document might need to describe issues which were not shared by all members of the Board, but considered that, due to the importance of the issue, it was required to explore and analyze all situations before being able to arrive at a consensus position.

VII. TRANSPORT OF PASSENGER CARS ON THEIR OWN WHEELS UNDER THE TIR PROCEDURE

Documentation: TIRExB/AGE/2006/28

16. The TIRExB recalled its earlier opinion that passenger cars on their own wheels should not be transported under cover of TIR Carnets, as the extension of the TIR procedure to such goods could lead to a number of negative consequences and a higher risk of fraud (TIRExB/REP/2005/27, para. 24). On the basis of the secretariat's proposal contained in the provisional agenda (TIRExB/AGE/2006/28), the Board decided to transmit to the TIR Administrative Committee for consideration and possible adoption a new Explanatory Note to Article 3 (a) (iii) of the Convention to read as follows:

"0.3 (a) (iii) The provisions of Article 3 (a) (iii) do not cover passenger cars (HS-codes 8702 and 8703) travelling by their own means."

The Board also stressed that, where appropriate, the provisions of subparagraphs (a) (i) and (a) (ii) of Article 3 remain applicable to passenger cars transported as goods.

VIII. APPROVAL OF ROAD VEHICLES WITH SLIDING SHEETS

Documentation: WP.30 Informal document No. 1 (2002)

17. The TIRExB recalled that already in 2002, shortly following the entry into force of the amendments to the TIR Convention providing for approval of vehicles with sliding sheets (curtain-siders), the Liaison Committee of the Body and Trailer Building Industry (CLCCR) pointed out that some approval authorities had approved vehicles with sliding sheets that were not in conformity with Annex 2, Article 4 of the TIR Convention (WP.30 Informal document No.1 of 2002). In this context, the Board welcomed a presentation by Mrs. A. Luchie and Mr. A. McKenzie, CLCCR, on the comparison between a TIR vehicle with sliding sheets and a standard vehicle with sliding sheets, showing fundamental differences in a number of the construction elements, such as:

- sheet overlap, distance between the tensioning straps and construction of the rail at the top of the vehicle;
- sheet overlap and horizontal opening at the bottom of the vehicle;
- sheet tensioning device.

As a result, it is possible to gain access to the load compartment of the standard vehicle without leaving obvious traces.

18. The TIRExB took note that mass-produced vehicles with sliding sheets are standard vehicles, and only a few manufacturers produce curtain-siders for TIR transports. This is due to the fact that a TIR vehicle with sliding sheets, by virtue of its construction, is some 15 % more expensive than a standard vehicle and, in addition, has a smaller side height for loading and unloading.

19. The importance of a sheet tensioning device was highlighted in a presentation by Mr. B. Rasmussen of the EU Customs Assistance Project (CAFAO) in Serbia and Montenegro. In the presentation, mainly two mass-produced tensioning devices were analyzed and found to be the most vulnerable and easily manipulated parts of a road vehicle with sliding sheets:

- in the first construction, a pivoting plate/back plate combination is used as security system. By manipulation of the rivet or bending over the pivoting plate a gap between the plates can be achieved (less than 1 cm required for the TIR wire to pass). As a result, it is possible to lift the pivoting plate, then disengage and operate the two handles which will release the tension of the sliding sheet and, finally, to get access to the load compartment. Security for this device could be significantly improved by having the pivoting device sliding between two back plates. Until such improvement is introduced by the producer, it is strongly recommended to secure the device by affixing a Customs seal.

- in the second construction, eyelets on handles serve as security system. This specific tensioning device is currently used by a number of manufacturers of trucks and trailers. However, a gap between the base-plate and the main handle (around 1 cm) allows the TIR wire to be squeezed and pass between the handle and base-plate without being damaged. The length of the TIR wire makes it possible to disengage and operate the tensioning device, release tension on the sheet and lift the tensioning bar off its base. Only 10-15 cm of TIR wire needs to be placed next to the device in order to disengage the system. The security of vehicles equipped with this tensioning device could be improved by affixing a Customs seal on each device using the holes on the handles and the base plate.

20. The TIRExB expressed its serious concern over the fact that the approval authorities in some Contracting Parties had individually approved vehicles with sliding sheets that were not Customs secure. The Board was of the view that this situation was due to lack of knowledge and training of the Customs personnel, rather than because of inadequate provisions of Annex 2 to the TIR Convention. Furthermore, the Board felt that the attention of the approval authorities should be drawn not only to vehicles with sliding sheets, but also to "normal" TIR vehicles. With a view to tackling the issue, the TIRExB decided to implement a set of measures, namely:

- raise awareness among Customs authorities by bringing the underlying issues to the attention of the Working Party (WP.30) and TIR Administrative Committee;
- in cooperation with the invited experts, prepare, translate and disseminate to approval authorities training materials, for instance, a check-list, example of best practice and a training manual;
- organize a special training seminar.

21. The TIRExB expressed its great appreciation to the Liaison Committee of the Body and Trailer Building Industry (CLCCR), the EU Customs Assistance Mission (CAFAO) to Serbia and Montenegro and personally to Mr. Allan McKenzie, Mrs. Annie Luchie and Mr. Bent Rasmussen for their excellent presentations and readiness to further contribute to the TIRExB activities.

IX. APPLICATION OF ARTICLE 40

Documentation: Informal document No.3 (2006)

22. The TIRExB welcomed Informal document No.3 (2006), prepared by the secretariat, containing an example of best practice in case of discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment. Having made some preliminary remarks, the Board felt that this example would need to be studied in detail and invited its members to transmit written comments with a view to finalizing the document at the next session.

X. TIR GUARANTEE LEVEL

Documentation: Informal document No.5 (2006)

23. The TIRExB took note of Informal document No.5 (2006) in which the IRU commented on the possible increase in the TIR guarantee level within the context of the difference in the maximum guarantee amount between the EU and other Contracting Parties. The views of the IRU could be summarized as follows:

- the TIR guarantee had not been designed to cover the full amount of export or import duties and taxes which, in case of need, may be claimed from the Holder of the TIR Carnet or any other person identified as being directly liable;
- in the vast majority of TIR operations, an amount of USD 15,000 – 20,000 would be sufficient to guarantee the duties and taxes at stake. The number of operators that could be affected by a Customs debt exceeding USD 50,000 is negligible and, due to the trend of a global decrease of taxes and duties, should even become quasi-nonexistent;
- international financial institutions are not prepared to raise the TIR guarantee coverage;
- as far as the possible introduction of a lower guarantee level for certain countries (regions) is concerned, such a regional approach would be contrary to global nature of the TIR Convention, would ruin the equilibrium and the mutual recognition of the risks and would induce inappropriate management costs, as well as potential discrimination.

24. Some TIRExB members were of the view that the present TIR guarantee level is enough and that the Convention provides for adequate additional measures to protect Customs revenue even in situations where the amount of duties and taxes due exceeds the guarantee limit. However, this opinion was not shared by some other members who argued that such additional national control measures, in particular Customs escorts, had always been subjected to criticism by the transport industry and other Contracting Parties, and that raising the guarantee level would spare the need of these measures.

25. The TIRExB recognized that no systematic information was available with regard to whether or not the current TIR guarantee level corresponds to the wishes of the Contracting Parties. The Board shortly discussed the idea to undertake an appropriate study and came to the conclusion that such a survey, if conducted, should be carefully formulated so as to avoid any unrealizable hopes that countries might have in this respect, because any decision on the issue could only be taken on the basis of public-private partnership. The TIRExB invited its members to submit, before 15 March 2006, written comments on the need and content of the possible survey concerning the TIR guarantee level and decided to revert to this issue at its next session. The Board also requested the IRU to prepare a document on the financial consequences of a general increase of the TIR guarantee limit up to the level applicable in the European Union (EURO 60,000).

XI. MONITORING OF THE FUNCTIONING OF THE TIR GUARANTEE SYSTEM

26. The Board recalled that, according to its Programme of work, the TIRExB should supervise the functioning of the TIR international guarantee system and should monitor constantly the settlement of Customs claims on the basis of information provided by national Customs authorities and the IRU. In this context, the IRU informed the Board of the following figures:

- from 1 January to 31 December 2005, the IRU received 18,517 notifications and pre-notifications sent by Customs authorities to their national Guaranteeing Associations;
- the number of pending claims on 31 December 2005 was 6,741.
- the number of claims paid in full or in part between 1 January and 31 December 2005 were 1,684, while the number of claims closed without payment were 233.

27. The Board noted that the figures submitted by the IRU do not provide for data on a country-by-country basis, which are important for the monitoring of Customs claims. In this context, TIRExB recalled the survey of national Customs administrations on Customs claims undertaken by the TIR secretariat in 2002 (TIRExB/REP/2003/17, para.28 and Informal document No. 26/Rev.1 (2002)). The Board felt that similar information on a country-by-country basis should be collected at regular intervals and requested the secretariat to prepare proposals on the content and procedure of such a survey.

XII. IMPLEMENTATION OF THE TIR PROCEDURE IN UKRAINE

28. The TIRExB recalled its earlier considerations regarding obligatory suspension of a TIR transport in Ukraine in cases where the amount of Customs duties and taxes at stake was above the TIR guarantee level (TIRExB/REP/2004/22, paras. 55-56, TIRExB/REP/2004/24, paras.17-19 and TIRExB/REP/2005/26draft, paras. 38-39). The Board took note that, in the absence of new information from the Ukrainian authorities, the secretariat had sent in January 2006 a reminder to the State Customs Administration of Ukraine.

XIII. INTERNATIONAL TIR DATABANK

Documentation: Informal document No. 4 (2006)

29. The TIRExB considered Informal document No. 4 (2006) by the secretariat, proposing to enlarge the circle of authorized ITDB-online users (at present – only TIR Customs focal points) in order to encompass Customs officers "in the field". The document also addressed the issue of how to improve the quality and timeliness of ITDB data transmitted by the Contracting Parties.

30. Taking into account that it was up to the TIR Administrative Committee to take a final decision on the matter, the TIRExB felt that Customs officers "in the field" could benefit from gaining on-line access to the ITDB for inquiry purposes. Expanding the circle of authorized users should take place step-by-step, within a transition period. The Board also requested the secretariat to continue its efforts with a view to obtaining the required ITDB data from all

countries and to regularly report to the TIRExB and the Administrative Committee on countries that do not fulfil their obligations according to the TIR Convention. Furthermore, the TIRExB considered that a large-scale use of the ITDB-online would stimulate the full and timely transmission of data by the Contracting Parties.

XIV. ACTIVITIES OF THE TIR SECRETARIAT

Computerization of the TIR procedure

31. The Board was informed of the outcome of the recent meeting of the Informal Ad hoc Expert Group on Conceptual and Technical aspects of Computerization of the TIR Procedure (Geneva, 10 and 11 November 2005). The TIRExB also took note that the Working Party (WP.30), at its forthcoming session from 31 January to 3 February 2006, would consider some new documents on the eTIR project and provide guidance for the next meeting of the Informal Ad hoc Expert Group that would take place on 7 and 8 March 2006 in Bratislava, at the invitation of the Slovak Customs Administration.

TIR seminars

32. The TIRExB was informed that the TIR secretariat, in cooperation with the IRU, conducted in November 2005 a national TIR training seminar in Almaty (Kazakhstan). The Board also took note that the secretariat was planning the following seminars in 2006:

- Regional TIR seminar for the countries of the Balkan region, 11-12 May 2006, Sofia (Bulgaria);
- Regional TIR seminar for the countries of the Middle East region, autumn 2006;
- National TIR seminars for Uzbekistan and Tajikistan in spring 2006;
- National TIR seminar for Iran in June 2006.

XV. AUDIT BY THE UN BOARD OF AUDITORS

33. The TIRExB took note of the current status with regard to the implementation of the recommendations by the UN external auditors, issued in May 2005 to the UNECE Executive Secretary. This issue would further be discussed at the forthcoming session of the TIR Administrative Committee on 2 and 3 February 2006.

XVI. OTHER MATTERS

Application of Customs escorts in the Republic of Belarus

Documentation: Informal document No. 6 (2006)

34. The TIRExB took note that, in November 2005, the State Customs Committee of the Republic of Belarus had issued a new decree No. 75 on the application of Customs escorts against transport operators whose past TIR operations have not been discharged.

Mrs. N. Rynkevich (Belarus) provided the Board with background information and clarifications concerning the decree. According to her, thanks to a number of Customs control measures, the figure on TIR infringements in Belarus had drastically decreased since 2001-2002. Decree No. 75 is a target control measure against carriers who have committed offences in the past. It does not apply to *bona fide* transport operators. Since the entry into force of the above decree, road vehicles of only 6 transport operators have been escorted.

35. The Board was of the view that the underlying decree is not in contradiction to the TIR Convention and decided not to consider further this issue, unless there would be information on problems caused by the decree. The TIRExB also invited the Belarus Customs authorities to provide the Board with the tariff rates for escorts in the Republic of Belarus.

Maintenance of the Register on Customs sealing devices

36. The TIRExB did not discuss this issue due to lack of time.

Filling-in of box 8 of the TIR Carnet

37. Mr. J. Marques (European Community) informed the Board that, apparently, there is no harmonized approach with regard to filling-in box 8 "Documents attached to the manifest" on the TIR Carnet. The TIRExB took note of this information and invited the European Community to transmit a document for consideration at the next session. The TIRExB also recalled that, according to its Programme of work for the years 2005 and 2006, the Board has to prepare an instruction on step-by-step filling-in of the TIR Carnet by the TIR Carnet holder and Customs authorities.

XVII. RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

38. The TIRExB decided that the distribution of the following documents, issued in connection with its present session, should be restricted: Informal documents Nos. 2, 4, 5 and 6 (2006).

XVIII. DATE AND PLACE OF NEXT SESSIONS

39. The TIRExB decided to hold its twenty-ninth session in Geneva on 29 and 30 May 2006, in conjunction with the 113th session of the Working Party (WP.30). The TIRExB also tentatively scheduled the thirtieth session of the Board in Geneva in conjunction with the 114th session of the Working Party (26-29 September 2006), subject to availability of meeting facilities.
