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ENGLISH ONLY

**ADMINISTRATIVE COMMITTEE
FOR THE TIR CONVENTION, 1975**

TIR Executive Board (TIRExB)

**REPORT OF THE THIRTY-SECOND SESSION
OF THE TIR EXECUTIVE BOARD (TIRExB)**

(29 and 30 March 2007)

ATTENDANCE

1. The TIR Executive Board (TIRExB) held its thirty-second session on 29 and 30 March 2007 in Geneva.
2. The following members of the TIRExB were present: Mr. S. Baghirov (Azerbaijan), Mrs. A. Dubielak (Poland), Mr. H. Köseoğlu (Turkey), Mr. H. Lindström (Finland), Mr. V. Luhovets (Ukraine), Mr. V. Milošević (Serbia), Mrs. J. Popiolek (European Commission), Mrs. N. Rybkina (Russian Federation), Mr. R. Šmidl (Czech Republic).
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.

OPENING STATEMENT

4. The meeting was opened by Mr. J. Capel Ferrer, Director, UNECE Transport Division, who congratulated the participants on their recent election as TIRExB members and wished the Board a successful term. He underlined the important role that the TIRExB plays in the framework of the TIR Convention through enhancing cooperation among competent authorities and supervising the application of the TIR Convention. He recalled the main tasks of the Board according to its Terms of Reference, in particular, supervision of the operation of the TIR guarantee system, supervision of the centralized printing and distribution of TIR Carnets by the IRU and monitoring the price of the TIR Carnet. The importance of these activities had been highlighted by the UN audit bodies to provide the necessary transparency and accountability in the TIR system. Mr. J. Capel Ferrer also highlighted other functions of

the TIRExB, such as settlement of disputes, combating fraud and providing support in the application of the TIR procedure with a view to ensuring the sustainability of the Convention, including the maintenance of the delicate balance between the public and private partners. According to Mr. J. Capel Ferrer, the public-private partnership, being one of the foundations of the TIR Convention, requires that both sides demonstrate responsibility and flexibility to ensure the continued success of the TIR Convention and to provide real value to all users.

5. Mr. J. Capel Ferrer assured the TIRExB of the UNECE's commitment to the sustainability of the TIR Convention and of the full support that the UNECE and the TIR secretariat would provide to the Board's activities. In this context, Mr. J. Capel Ferrer informed the TIRExB that Mr. Poul Hansen would leave his position as TIR secretary due to his move to another UN organization. Until a final replacement had been found, his responsibilities would be performed by Mr. Robert Nowak of the UNECE Transport Division. The TIRExB members were invited to extend their support to Mr. R. Nowak and to the TIR secretariat during this transition period.

6. The TIRExB thanked Mr. P. Hansen for many years of fruitful cooperation and welcomed Mr. R. Nowak.

ADOPTION OF THE AGENDA

7. The TIRExB adopted the agenda of the session as prepared by the secretariat (TIRExB/AGE/2007/32). The Board also noted that the Chairperson and the IRU would provide additional information under agenda item 8 (a) "Flaws in the Customs clearance of TIR Carnets at the Customs office of departure".

ELECTION OF A CHAIRMAN

8. 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 Chairperson for 2007.

ADOPTION OF THE REPORT OF THE THIRTY-FIRST SESSION OF THE TIRExB

Documentation: TIRExB/REP/2007/31draft.

9. The TIRExB adopted the report of its thirty-first session (TIRExB/REP/2007/31draft), subject to the following modifications:

Paragraph 10

Modify the paragraph to read as follows:

"10. The Board stressed that the structure of the listing of lost and invalidated TIR Carnets should be kept as simple as possible with a view to giving a clear-cut indication to Customs officials "in the field" whether or not they should accept a specific TIR Carnet. The TIRExB was of the view that the Contracting Parties, through the UNECE Working Party on Customs Questions affecting Transport as well as the TIR Administrative Committee, should also be informed of the principles laid down in Informal document No.5 (2005) and in Informal document No.3 (2007). To this end, the Board invited the IRU to prepare a new document and, possibly, a presentation for consideration at one of the future WP.30/AC.2 sessions."

Paragraph 13

Modify the paragraph to read as follows:

"13. The IRU was of the view that the above or a similar comment might also apply to open platforms used for the transport of containers or heavy/bulky goods and the TIRExB decided to consider this issue at its next session."

10. The revised text of the report of the thirty-first session of the Board is contained in document TIRExB/REP/2007/31.

PROGRAMME OF WORK FOR 2007 AND 2008

Documentation: TIRExB/AGE/2007/32 (annex), Informal document No.2 (2007).

11. The TIRExB adopted its programme of work for 2007 and 2008, as contained in Annex 1 to the present report.

12. With regard to monitoring of the price of TIR Carnets at national level (item 9 of the programme), the IRU pointed out that the "ex-national association" price of TIR Carnets was a result of many factors and that the IRU did not and would not collect this information. The IRU also questioned under which legal basis the UN or the UNECE or the TIRExB would be entitled to collect and keep record of prices at national level and act as economical and or competition control bodies. The Board was of the view that the mandate is contained in the TIR Convention, but decided to study this issue further.

TRACTOR UNITS IN THE FRAMEWORK OF THE TIR CONVENTION

Documentation: TIRExB/REP/2007/31draft, Informal document No.1 (2007).

13. The TIRExB recalled the new draft comment to Article 15, paragraph 1 of the Convention, which was endorsed at the previous session (TIRExB/REP/2007/31draft, para.12), with a view to facilitating Customs treatment of tractor units carrying out TIR transports. The Board discussed whether this comment should be extended to cover open platforms used for transport of containers or heavy/bulky goods, but decided not to pursue this idea for the time being. The Board agreed to submit the draft comment to the TIR Administrative Committee for consideration and possible adoption. The TIRExB also believed that the underlying issue was of particular importance to multimodal transport operations and decided to discuss this matter at one of its future sessions. In addition, the Board noted that the example of the TIR Carnet duly filled-in, as contained in Chapter 7 of the TIR Handbook, would need to be updated so as to include not only semi-trailer, but also tractor unit registration numbers.

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

Documentation: Informal document No.4 (2007).

14. The TIRExB considered Informal document No. 4 (2007), in which the secretariat provided a summary of the discussions by the Board over the past two years, with a view to allowing the Board to reassess how to focus its deliberations on the issue.

15. The TIRExB took note that in several countries authorized TIR Carnet holders conclude agreements with subcontractors in line with national law. Depending on national law, in such situations the liability may remain with the authorized TIR Carnet holder or could be transferred to the subcontractor. Some members of the Board stated that the flexibility of the application in accordance with national law would be lost if the concept of subcontractor were formally introduced into the text of the Convention and the conditions of Annex 9, Part II applied on an equal footing to both authorized TIR Carnet holders and subcontractors. On the other hand, some members argued that, due to the introduction of the authorization process for operators, the TIR system's status had been reinforced as a reliable and secure transit system. Allowing the TIR system to be used by non-authorized subcontractors would counter all the efforts, undertaken over the last decade, to ensure the long-term sustainability of the TIR system. Elaborating on this aspect, the TIRExB considered whether it would make sense to develop a separate, less stringent, set of criteria for subcontractors. It was decided, for the time being, not to further pursue this idea, because such an additional authorization mechanism might be difficult to monitor.

16. To continue its deliberations on the issue, the TIRExB decided to obtain more information on the application of the concept of subcontractor at the national level, including the relevant provisions on liability. To this end, the secretariat was requested to prepare for the forthcoming session of the Board a short survey for distribution among national Customs TIR Focal points and national associations. The TIRExB requested the secretariat, when preparing the survey, to take into account a TIRExB survey of 1999, which, inter alia, provided information that 14 out of 39 responding countries allowed TIR operations to be carried out by persons other than the TIR Carnet holder (See AC.2/WP.30 Informal document No. 5 of 1999).

APPLICATION OF ARTICLES 39 AND 40

Documentation: TIRExB/REP/2007/31 draft, Informal document No.3 (2006)/Rev.3.

17. The TIRExB further discussed best practices concerning the application of Articles 39 and 40 in case of discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment (Informal document No.3 (2006)/Rev.3). The Board recalled that, at the previous session, one TIRExB member was not in a position to accept practical situation No. 2 (application of Article 40) as it did not seem to comply with recent rulings by the European Court of Justice. In this context, the Board welcomed a short summary of the related court cases (C-238/02 jointly with C-246-02 of 4 March 2004 and C-195/03 of 3 March 2005) prepared by the secretariat. The TIRExB pointed out substantial differences between the Customs infringements which constituted the basis for the court cases and the example of best practice under consideration, such as:

- all infringements were committed not within the TIR procedure, but in the framework of the European Union Customs transit regime;
- all cases involved smuggling of goods which were concealed from Customs controls;
- all infringements involved, most likely, some form of malicious intent on the part of the transport operator.

18. Therefore, the TIRExB was of the view that the decisions by the European Court of Justice did not seem to be relevant for the application of Article 40 of the TIR Convention and for practical situation No.2, as laid down in Informal document No.3 (2006)/Rev.3. To highlight the distinction with the court cases, the Board complemented the example of best practice with remarks stressing that none of the described practical situations involved smuggling and deliberate breaches of the TIR Convention by the TIR Carnet holder. Finally, the TIRExB adopted the example of best practice on the application of Articles 39 and 40, as contained in Annex 2 to the present report, and decided to submit it to the TIR Administrative Committee for consideration.

PROPER USE OF THE TIR CARNET

Flaws in the Customs clearance of TIR Carnets at the Customs office of departure

19. The TIRExB was informed of serious flaws in the filling-in and clearance of TIR Carnets at departure, in particular, putting a Customs stamp in box 16 of the vouchers instead of box 17 and acceptance of an expired TIR Carnet. The Board expressed its deep concern over these facts and requested the secretariat to contact the Customs administrations concerned with a view to rectifying the situation.

20. The TIRExB also noted rare mistakes in the stitching of TIR Carnets at the printing house, when one page with a different reference number (usually next consecutive number) was included into a TIR Carnet. Such occasions created considerable difficulties for the Customs authorities and made discharge of the relevant TIR operations almost impossible, as respective vouchers No.1 and No.2 had different reference numbers.

New Customs fraud pattern

21. The Board was informed of a sophisticated scheme of documentary fraud that involved a number of countries and several Customs procedures (exportation, EU common transit, storage at a Customs-bonded warehouse, TIR procedure and importation). In the course of a transaction, commercial and transport documents, such as invoices, packing lists and CMR consignment notes, were repeatedly replaced to falsify the goods description and their commercial value. A falsified invoice was also attached to the TIR Carnet used for the last leg of the journey. The goods manifest on the TIR Carnet contained no goods description, but only reference to the attached documents. Moreover, the said documents were stapled to the TIR Carnet in such a way that they could easily be substituted without leaving obvious traces. All these manipulations led to significant Customs undervaluation and to evasion of Customs payments.

22. The TIRExB appreciated being informed about this fraud technique and encouraged all Contracting Parties to exchange information on Customs fraud by means of the so-called Fraud Report Form (FRF), with a view to developing efficient risk management tools. It was highlighted that in the underlying situation the consignor was an off-shore company and that the TIR Carnet was opened not in the country of exportation, but in a transit country. Many Customs administrations, in their risk management profiles, consider such situations to be a possible indication of fraud. The Board believed that an incomplete filling-in of the goods manifest of the TIR Carnet could also be an early warning signal.

23. The TIRExB held an in-depth discussion on how to combat fraudulent activities based on the above or similar patterns. The IRU stated that attaching the export Customs declaration to the TIR Carnet or, at least, indicating the export declaration number in the TIR Carnet

could provide a solution. However, some other members argued that the export declaration contains sensitive commercial information and can be misused. Instead, they advocated mutual assistance and closer cooperation among Customs administrations. The TIRExB pointed out the crucial role of the Customs office of departure in ensuring the proper filling-in of the TIR Carnet and the stapling and stamping of the attached documents. However, as the practice had shown, this function was always ignored. The Board was of the opinion that all Customs authorities should be reminded of their responsibilities according to the TIR Convention and reiterated the importance of preparing best practices with regard to the use of the TIR Carnet (see para.24 below).

24. The IRU contributed to the discussion by pointing out that, for the time being, Contracting Parties encounter two general types of fraudulent activities: (i) documentary fraud which might spread in countries where no strict controls are carried out with regard to road vehicles and (ii) violent crimes (hijacking trucks, thefts, robberies) in countries where it is more difficult to commit Customs fraud by using false or incorrect documents. In this context, the IRU recalled effective measures taken against thefts/robberies of trucks and goods under cover of a TIR Carnet in one Contracting Party in 2002-2003 (for details, see Informal document No.7 (2004)).

Best practices with regard to the use of the TIR Carnet

Documentation: Informal document No.5 (2007).

25. The TIRExB took note of a first draft instruction how to fill-in the TIR Carnet as well as of an example of best practices on the use of the TIR Carnet by the Customs offices of departure, destination and en route (Informal document No.5 (2007)). This extensive document was made available shortly before the session, so the Board decided to revert to this issue at the next session and invited its members to study the document and submit their comments, if any, to the secretariat by 15 May 2007.

APPLICATION OF THE TIR PROCEDURE IN ITALY

26. The TIRExB recalled information that Turkish operators had experienced problems when picking up semi-trailers in the port of Trieste, destined for Spain, as a consequence of the limited availability of East-West permits (TIRExB/REP/2006/29, paras. 28 and 29). The Board discussed Informal document No. 6 (2007), containing a letter by the Italian Customs of 21 February 2007 on the application of the TIR procedure in Italy. The Italian Customs explained that the issue of permits was a matter under primary responsibility of the Ministry of Transport. In recognition of the signalled problems, the number of permits for 2006 and 2007 had been increased.

27. In a reaction, the Turkish member of the Board confirmed that the number of East-West permits had indeed increased from 4,000 to 5,500 per year, but that this number still was largely insufficient to meet the requests from Turkish operators for at least 25,000 East-West transports per year. He stressed that the reasons given by the Italian Customs Administration were not essential even though it was recommended that the right prescribing the route should be used only when it was essential. In addition, he wanted more clarification about ad-hoc authorization. He maintained the view that the Italian Customs in prescribing the East-West route, despite the absence of sufficient permits, inappropriately applied the provisions of Article 20 of the TIR Convention. The TIRExB took note of the letter by the Italian Customs and the comments thereto by the Turkish member of the Board, and invited the Turkish authorities to further elaborate the issue in a letter to the TIR secretariat, which it would retransmit to the Italian competent authorities for further clarification.

ACTIVITIES OF THE TIR SECRETARIAT

Follow-up actions to the previous decisions by the TIRExB

28. The TIRExB was informed about the activities conducted by the secretariat as a follow-up to the previous decisions by the Board, in particular, about the preparation of an on-line version of the survey on the TIR guarantee level and on the functioning of the TIR guarantee system (TIRExB/REP/2007/31, para.14).

ITDB

29. The TIRExB took note of the situation with regard to the transmission of data to the ITDB as well as of efforts undertaken by the secretariat to increase the response rate. Taking into account that some Contracting Parties to the Convention did not have authorized TIR operators, information from only four countries was still missing. The Board also noted that the ISO country code for Serbia would change as of 1 April 2007.

TIR events

30. The TIRExB was informed of the outcome of the International Conference on the Contribution of the TIR System to the Security of Trade and Transport (Moscow, 13 and 14 March). The Board also took note of an informal meeting of experts (Belgrade, 7 and 8 March 2007) in the framework of the Ad hoc Expert Group on Conceptual and Technical Aspects of Computerization which updated the second chapter of the Reference Model of the Computerization of the TIR procedure, containing the so-called "eBusiness Requirements", with a view to submitting it to the next session of the Ad hoc Expert Group (Geneva, 12 June 2007). The TIRExB was of the view that the issue of the current status of computerization of the TIR procedure should be a recurrent item on the Board's agenda.

OTHER MATTERS

31. The TIRExB was briefly informed of problems experienced by TIR operators in two countries and invited the IRU to submit a document for consideration at the next session.

RESTRICTION ON THE DISTRIBUTION OF DOCUMENTS

32. The TIRExB decided that the distribution of the following document, issued in connection with its present session, should be restricted: Informal document No. 4 (2007).

DATE AND PLACE OF NEXT SESSIONS

33. The TIRExB decided to hold its thirty-third session in Geneva on 11 June 2007, in conjunction with the 116th session of the Working Party on Customs Questions affecting Transport (WP.30).

Annex 1

PROGRAMME OF WORK OF THE TIR EXECUTIVE BOARD (TIREXB) FOR THE YEARS 2007 AND 2008

1. Introduction

With a view to improving transparency among the TIR bodies, at the beginning of each two-year period of its mandate the TIRExB develops a work programme and presents it to the TIR Administrative Committee (AC.2) for endorsement. The Chairman periodically reports to AC.2 on its activities and the results achieved within the work programme.

The programme below is not exhaustive, the TIRExB is sufficiently flexible to enable itself to consider any unforeseen issue that might arise. In particular, the Board treats requests by Contracting Parties as a matter of priority. Furthermore, the programme does not include some ongoing activities carried out by the TIR secretariat, which do not require the direct involvement of the Board (e.g. maintenance of the ITDB, etc).

2. Overall aims

Supervision of and support in the application of the TIR Convention at the national and international levels (Article 1 bis of Annex 8 to the Convention)

2.1. Ongoing activities

(1) To study specific measures (both legal and practical) to combat fraud resulting from the misuse of the TIR procedure.

Outputs expected in 2007 and 2008:

- Identification of possible weaknesses in the legal basis of the TIR Convention which could make it prone to fraud.
- Monitoring and promotion of the use of the so-called Fraud Report Form (FRF) as a mechanism aimed at the early identification of fraud in order to define the appropriate responses to prevent and combat such fraud.

(2) To facilitate the exchange of information between competent authorities of Contracting Parties, national guaranteeing associations, IRU and other Governmental and non-governmental organisations. To co-ordinate and foster the exchange of intelligence and other information among competent authorities of Contracting Parties.

Outputs expected in 2007 and 2008:

- Elaborate adequate instruments and find measures to improve international co-operation among Contracting Parties to the TIR Convention and their national associations, and the international organization in order to prevent and combat fraud.
- Taking into account the views of other international governmental and non-governmental bodies, and in consultation with the IRU, develop and disseminate guidelines concerning the use of risk analysis, and the identification of fraud prevention measures.
- On the basis of information provided by the TIR international guarantee chain, study the situation with regard to the new trends of fraud, the notifications of non-discharge and TIR infringements as a contribution to an "early-warning system" for identification and prevention of fraud.

(3) To supervise the national Customs control measures introduced in the framework of the TIR Convention.

Outputs expected in 2007 and 2008:

- Identify national Customs control measures introduced in Contracting Parties to the TIR Convention and check their conformity with the provisions of the TIR Convention.
- Address the respective national authorities in order to modify or abolish measures which are in contradiction to the TIR Convention.

(4) To supervise the functioning of the TIR international guarantee system.

Outputs expected in 2007 and 2008:

- Monitor constantly the settlement of Customs claims, on the basis of information provided by national Customs authorities and the IRU.

(5) To contribute to the computerization of the TIR procedure.

Outputs expected in 2007 and 2008:

- Encourage TIRExB members to participate, as national representatives, in the activities undertaken by ad-hoc expert groups on the computerization of the TIR procedure.
- With the consent of the TIR Administrative Committee, offer good offices to the ad-hoc expert groups on general Customs policy issues.
- Promote the ITDB as one of future e-TIR components.

- Monitor and further enhance on-line use of the ITDB, taking into account the need to ensure an adequate level of protection against unauthorized access.

(6) To support training activities on the application of the TIR Convention, mainly in Contracting Parties where difficulties are experienced or might be expected in this area.

Outputs expected in 2007 and 2008:

- Organize, possibly in co-operation with the IRU, and substantially contribute to regional and national workshops and seminars on the application of the TIR Convention.
- Update and distribute the TIR Handbook in the official UN languages.
- Prepare and distribute, also via Internet, training material on the application of the TIR Convention.

(7) To facilitate the settlement of disputes between Contracting Parties, associations, insurance companies and international organisations without prejudice to Article 57.

Output expected in 2007 and 2008:

- Analyse and monitor disputes referred to the Board and make recommendations (if necessary) to facilitate their settlement.

(8) To monitor the application of the EDI control system for TIR Carnets.

Outputs expected in 2007 and 2008:

- Continue activities, in co-operation with IRU, towards the full implementation of an international EDI control system for TIR Carnets, as foreseen by Annex 10 to the TIR Convention.
- Monitor performance and give feedback to the Contracting Parties.
- Study how the EDI control system for TIR Carnets is being used by the national issuing associations for the purposes of fraud prevention.

(9) To supervise the centralized printing and distribution of the TIR Carnets, including the monitoring of the price of TIR Carnets.

Outputs expected in 2007 and 2008:

- Monitor the annual numbers of TIR Carnets distributed to various Contracting Parties, broken down by type (i.e., 4-, 6-, 14- or 20-voucher TIR Carnets).
- Monitor the price of TIR Carnets at international level (i.e., ex-IRU price) on the basis of information to be reported by IRU annually or when modified.

- Study all the relevant issues concerning the price of TIR Carnets at the "ex-national association" level.
- Approve any proposed modifications to the TIR Carnet layout in advance of its introduction and distribution.

(10) To maintain the central record for dissemination to Contracting Parties of information 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.

Output expected in 2007 and 2008:

- Study information provided by IRU, identifying the common rules and procedures prescribed for the issue of TIR Carnets by associations.

(11) To provide support on the application of specific provisions of the TIR Convention.

Output expected in 2007 and 2008:

- On request, draft recommendations and/or examples of best practice on the application of specific provisions of the TIR Convention.

2.2. Activities of a limited duration

(12) Preparation of best practices on the application of Articles 39 and 40 of the TIR Convention.

Outputs expected in 2007:

- Draft an example of best practice on the application of Article 39 and 40 in case of discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the road vehicle and submit to the TIR Administrative Committee for adoption.

(13) Preparation of best practices regarding the use of the TIR Carnet.

Outputs expected in 2007-2008:

- Prepare an instruction on step-by-step filling-in of the TIR Carnet by the TIR Carnet holder and Customs authorities.
- Prepare an example of best practices on the use of the TIR Carnet by the Customs offices of departure, destination and en route.

(14) Preparation of a comment on Customs treatment of tractor units carrying out TIR transports.

Outputs expected in 2007-2008:

- Prepare a comment to Article 15, paragraph 1 on Customs clearance of tractor units carrying out TIR transports and submit to the TIR Administrative Committee for adoption.
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Annex 2

EXAMPLE OF BEST PRACTICE WITH REGARD TO DISCREPANCIES BETWEEN THE PARTICULARS ON THE GOODS MANIFEST OF THE TIR CARNET AND THE ACTUAL CONTENT OF THE LOAD COMPARTMENT

1. At departure, when the holder of the TIR Carnet signs off boxes 13-15 of vouchers No.1 and No.2 of the TIR Carnet, he takes on the responsibility for the correctness of data on the goods manifest. In addition, in line with Article 19 and the Explanatory Note therein, the Customs office of departure has to apply strict controls with a view to ensuring the accuracy of the goods manifest. This idea is stressed in the comment to Article 19 "Inspection at the office of departure: "...for the TIR system to operate smoothly it is essential that the Customs inspection at the office of departure should be stringent and complete, since the functioning of the TIR procedure depends upon it".
2. Nevertheless, the Customs authorities en route and at destination might reveal discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment. In such situations, before considering those facts as infringements committed by the holder of the TIR Carnet, the Customs authorities should take into due account the provisions of Articles 39 and 40 of the TIR Convention:

Article 39

When TIR operations are accepted as being otherwise in order:

1. ...
2. **Likewise, discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual contents of a road vehicle, combination of vehicles or container shall not be considered as infringements of the Convention by the holder of the TIR Carnet when evidence is produced to the satisfaction of the competent authorities that these discrepancies were not due to mistakes committed knowingly or through negligence at the time when the goods were loaded or dispatched or when the manifest was made out.**

Explanatory Note to Article 39

0.39 The expression "mistakes committed through negligence" is to be taken to mean acts which, although not committed deliberately and in full knowledge of the facts, are due to a failure to take reasonable and necessary steps to ensure the accuracy of the facts in any particular case.

Article 40

The Customs administrations of the countries of departure and of destination shall not consider the holder of the TIR Carnet responsible for the discrepancies which may be discovered in those countries, when the discrepancies in fact relate to the Customs procedures which preceded or followed a TIR transport and in which the holder was not involved.

3. Therefore, when deciding on the possible responsibility of the TIR Carnet holder in such situations, the Customs authorities are first to investigate the following issues:

- May the TIR transport be accepted as being otherwise in order (preamble to Article 39)? In particular, have the Customs seals remained intact?
- Have these discrepancies been due to mistakes committed by the holder knowingly or through negligence (Article 39, paragraph 2)?
- Do these discrepancies relate to the Customs procedures which preceded or followed the TIR transport and in which the holder was not involved (Article 40)?

4. As underlined in Article 39, paragraph 2 and Explanatory Note 0.39, when filling-in the TIR Carnet, the holder is supposed to take reasonable and necessary steps to ensure the accuracy of the facts in any particular case. This responsibility of the holder is also based on the provisions of the CMR Convention¹ to which most TIR countries are also Contracting Parties. According to Article 8, paragraph 1 of the CMR Convention,

"1. On taking over the goods, the carrier shall check:

- (a) The accuracy of the statements in the consignment note as to the number of packages and their marks and numbers, and**
- (b) The apparent condition of the goods and their packaging."**

5. However, there may be situations where the holder is not in a position or not allowed to do so. For example, if the holder takes over a sealed non-TIR container at a seaport and starts a TIR transport, he is probably not able to check the goods and has to rely on accompanying documents (bill of lading, packing list, etc.) only. Under those circumstances, the holder is strongly advised to make a reservation on the CMR consignment note, as provided for in Article 8, paragraph 2 of the CMR Convention:

¹ Convention on the Contract for the International Carriage of Goods by Road (CMR), of 19 May 1956

"2. Where the carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph 1 (a) of this article, he shall enter his reservations in the consignment note together with the grounds on which they are based..."

6. According to Article 39, paragraph 2 of the TIR Convention, in case of discrepancies, the holder has to prove to the competent authorities that these discrepancies were not due to mistakes committed knowingly or through negligence at the time when the manifest was made out. In other words, the holder should prove that he was not in a position to verify the particulars on the goods manifest. According to Article 39, paragraph 2, it is up to the Customs authorities to accept or decline the holder's explanations or evidence. In case of prohibited goods, it should also be borne in mind that specific provisions of national legislation may become applicable, as mentioned in Article 47.

7. In many situations, the TIR procedure is preceded by export formalities where an export cargo declaration is made out. Therefore, the particulars of the goods, as they appear on the TIR Carnet, should correspond to the data from the export cargo declaration. If in doubt about the particulars on the goods manifest of the TIR Carnet, a Customs office en route and the Customs office of destination may send an enquiry to the Customs office of departure or to the exporter. In line with Article 42 of the TIR Convention, on receipt of such a request, the Customs office of departure must furnish the inquirer with all the available information regarding the TIR transport in question, in particular, a copy of the export goods declaration. To facilitate inquiry procedures, it is recommended that the office of departure, where possible, should indicate the number of the export goods declaration under box "For official use" on all vouchers of the TIR Carnet.

8. In the case of discrepancies, the responsibilities of the TIR Carnet holder could be two-fold:

- liability for payment of Customs duties and taxes for the missing goods, if any. If the holder or any other person directly liable fails to pay the sums due, the Customs have the right to request payment from the national guaranteeing association;
- responsibility in terms of administrative/penal law, in particular, fines and/or other pecuniary sanctions. It should be noted that the guarantee of the national guaranteeing association does not cover this component of the holder's responsibilities.

9. Discrepancies between the particulars on the goods manifest of the TIR Carnet and the actual content of the load compartment do not necessarily imply that some goods have been taken out from or added to the sealed load compartment illegally, put into circulation and that the Customs duties and taxes are due. It may well happen that the transport operator has fulfilled his responsibilities and delivered all the goods with the Customs seals intact, but that a mistake was made in the goods manifest of the TIR Carnet before the beginning of the TIR

transport. Therefore, the Customs authorities concerned have to prove that these goods have indeed been illegally withdrawn from Customs control on the territory of their country.

10. The applicability of Articles 39 and 40 is highlighted in five practical situations below. For each example, the Customs seals have remained intact, the road vehicle contains no places of concealment and no evidences of smuggling have been found.

Situation 1 (Article 39)

A TIR truck (a tractor unit and a semi-trailer) arrived at the Customs office of destination with no traces of tampering with the Customs seals. The load was packed in carton boxes and correctly described on the goods manifest, but there were fewer boxes in the load compartment than indicated: 95 instead of 100. The driver argued that he had picked up the already sealed semi-trailer at a port where it had arrived by ferry. For this reason, the driver was not in a position to check the accuracy of the goods manifest and made a corresponding reservation on the CMR consignment note. The Customs office of destination certified termination of the TIR operation with reservation, started an inquiry procedure and got in touch with the sender of the goods who confirmed in writing that the missing packages were not loaded at departure by his fault. On this basis, the Customs office came to the conclusion that the inaccuracy in the goods manifest could not be considered as a holder's "mistake committed knowingly or through negligence". In line with Article 39, paragraph 2, the holder of the TIR Carnet was released from responsibility.

Situation 2 (Article 39)

A TIR truck arrived at the Customs office of destination with no traces of tampering with Customs seals. The load was packed in carton boxes and correctly described on the goods manifest, but there were fewer boxes in the load compartment than indicated: 98 instead of 100. According to the driver, he had overlooked this fact. The Customs office of destination was not satisfied with the driver's explanations and believed that he should have monitored the stuffing of his vehicle and should have counted the boxes. The Customs office considered this case as "a mistake committed through negligence" and imposed a fine on the transport operator for non-authentic declaring. At the same time, the Customs authorities found no evidences that 2 missing boxes had disappeared on the territory of the country of destination. For this reason, the office of destination made a reservation in the TIR Carnet about the missing boxes, but raised no claim for Customs duties and taxes.

Situation 3 (Articles 39 and 40)

A TIR truck arrived at the Customs office of destination with intact Customs seals. The load, including the number of boxes, was correctly described on the goods manifest. However, behind the boxes, next to the front wall of the semi-trailer, the Customs authorities

discovered some pieces of furniture which were mentioned neither on the TIR Carnet nor on the CMR consignment note. The driver (vehicle's owner, at the same time) explained that he had bought this furniture for private purposes in the country of departure, and that the consignor was not aware of this fact. The driver felt that the furniture was personal, rather than commercial cargo, and that, therefore, there was no need to indicate the furniture in the goods manifest which should correspond to the CMR consignment note and to the export goods declaration lodged by the consignor. The Customs office of destination did not share this view, fined the driver for non-authentic declaring and instructed him to declare the furniture for importation on his own behalf. In the above situation, neither the exemptions of Article 39 nor of Article 40 apply to the holder of the TIR Carnet.

Situation 4 (Article 40)

A TIR truck arrived at the Customs office of destination with intact Customs seals. The load was packed in carton boxes and described as "computer accessories: cases"² in the TIR Carnet. The Customs office of destination certified termination of the TIR operation without reservation and put the goods under temporary storage in a warehouse. Following that, the importer started clearance procedures, lodged an import cargo declaration and paid Customs duties and taxes. Before final clearance, the Customs office decided to proceed with examination of the goods and discovered that, in fact, these were not only computer cases, but complete personal computers³ with a much higher level of taxation. The importer faced charges of non-authentic declaration and evasion of Customs payments. He argued that he based his import declaration on the goods manifest of the TIR Carnet and, therefore, that was the holder of the TIR Carnet who should be held liable for this infringement. However, in the underlying situation the holder had fulfilled its obligations and presented the sealed goods, vehicle and related documents at destination, although with the incorrect goods description. The infringement in the form of non-authentic declaration and evasion of Customs payments was essentially linked with the subsequent import procedure. Thus, in line with Article 40, the holder should not be considered responsible for the infringement.

Situation 5 (Article 40)

In the country of departure, there existed restrictions (tariff and non-tariff) for the exportation of raw materials, including copper. At the same time, no such restrictions were imposed on articles made of copper. At the Customs office of departure, the exporter lodged an export cargo declaration where the goods were declared as "copper bushings". Following export formalities, the goods were sealed and placed under the TIR procedure. In both TIR Carnet and CMR consignment note, the goods description coincided with the one from the export declaration. The TIR truck arrived at the Customs office of exit (en route) with intact

² HS code 847330

³ HS code 847120

Customs seals. Nevertheless, the Customs office of exit decided to make physical inspection of the goods suspecting that the goods description was deliberately falsified in order to avoid the applicable export restrictions. A technical expertise proved that the articles could not be used as bushings and were actually foundry products (copper billets). Thus, the goods should have been declared as "raw copper". The exporter faced charges of non-authentic declaration, evasion of Customs payments and breaching export regulations. As the underlying infringement was essentially linked to the preceding export procedure, the holder of the TIR Carnet was not considered responsible, in line with Article 40.
