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Working Party on Customs Questions
affecting Transport

Ad hoc Group of Experts on Phase II
of the TIR revision process
(24-26 June 1998)

**REPORT OF THE AD HOC GROUP OF EXPERTS
ON ITS SECOND SESSION**

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REPORT

ATTENDANCE

1. The group of experts held its second session from 24 to 26 June 1998 under the chairmanship of Mr. F. Paroissin (France).
2. The session was attended by experts from the following countries: Austria, Belarus; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Italy; Lithuania; Netherlands; Norway; Poland; Republic of Moldova; Romania; Russian Federation; Slovakia; Spain; Sweden; Switzerland; The former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Kingdom. Representatives of the European Community (EC) were also present.
3. The following intergovernmental organization was represented: World Customs Organization (WCO).
4. The following non-governmental organization was represented: International Road Transport Union (IRU).

ADOPTION OF THE AGENDA

5. The group of experts adopted the provisional agenda prepared by the secretariat (TRANS/WP.30/1998/6) with the addition of the following item:

Agenda item 3(j): Computerization of the TIR transit system.

ADOPTION OF THE REPORT OF THE FIRST SESSION

Documentation: TRANS/WP.30/1998/5 and Corr.1.

6. The group of experts adopted the report of its first session held on 2 and 3 April 1998 as contained in document TRANS/WP.30/1998/5, subject to a few modifications relating to paragraphs 29 and 31 which will be reflected in document TRANS/WP.30/1998/5/Corr.1.

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

7. The group of experts decided to continue its consideration on the basis of the results of its first session (TRANS/WP.30/1998/5 and Corr.1).

(a) Stable and well-functioning international guarantee system

Documentation: TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/180; 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 confirmed 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 and 27-30) 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.

9. The group of experts decided, however, to improve the present system by inserting into the Convention a number of key elements providing for a stable, well-functioning and transparent international guarantee system.

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

Documentation: TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1998/8; TRANS/WP.30/R.186.

10. Considering ways and means to define in the Convention the status and the functions of the international organization(s) as referred to in article 6, paragraph 2 and in annex 8, (new) paragraph 10, the group of experts confirmed that:

- (i) general provisions on the role and functions of the international organization(s) as referred to in article 6, paragraph 2 of the Convention should be inserted into the Convention;**
- (ii) national associations - not international organization(s) - remain liable vis-à-vis Customs authorities for the settlement of all Customs claims relating to national and foreign TIR Carnets;**
- (iii) the new provisions to be inserted should focus on Customs related issues;**

- (iv) the revised Convention (Phase I) provided already in annex 8,(new) article 10 for the possibility of Contracting Parties to the Convention to supervise the international guarantee system through the TIR Executive Board (TIRExB).

11. Within this framework the majority of experts agreed on the following amendment proposals to the TIR Convention:

Add a new paragraph 2 bis to article 6 to read as follows:

"2 bis. An international organization, as referred to in paragraph 2, shall be authorized by the Administrative Committee to take on responsibility for the effective functioning of an international guarantee system."

Add a new explanatory note 0.6.2 bis in Annex 6 to read as follows:

"0.6.2 bis The relationship between an international organization and its member associations shall be defined in [written] agreements on the functioning of the international guarantee system."

(c) Harmonized discharge procedures

Documentation: TRANS/WP.30/1998/5 and Corr.1; TRANS/WP.30/1997/1; TRANS/WP.30/178;
TRANS/WP.30/176; TRANS/WP.30/164; TRANS/WP.30/134.

12. The group of experts was of the view that it was neither possible nor necessary to harmonize national Customs procedures in all Contracting Parties in order to arrive at a well-functioning TIR transit regime. The objective pursued was to define and possibly standardize the provisions in the Convention relating to (a) the termination of the TIR transit procedure, i.e. the presentation of the goods, the load compartment and the TIR Carnet at the Customs office of exit (en route) or destination and (b) the completion of the required control procedures as provided for in the Convention and in national Customs regulations, with a view to arriving at clear indications as to when and under which circumstances the liability of the TIR Carnet holder vis-à-vis the Customs authorities ended.

13. The group of experts noted that the details of the discharge procedure depended to a large extent on national legislation and administrative procedures and were not prescribed in the Convention. 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, it was felt that efforts should be made at the international level to facilitate an efficient and rapid settlement of claims, particularly with regard to foreign TIR Carnets and to provide the basis for an effective risk management system by the international insurance system.

(i) Definition of the TIR discharge procedure

14. The group of experts agreed that, as a first step, the meaning of the term “discharge” (French: “décharge”; Russian: “оформление”) had to be clearly defined as identified in the following provisions (including comments) of the Convention:

	<u>TIR Handbook page No</u>	
Comment to article 8 (Information to guaranteeing associations)	41	
Article 10, paragraphs 1 and 2		44
Article 10, explanatory note 0.10	44	
Comment to article 10 (Discharge of TIR Carnets)		44
Comment to article 10 (Alternative forms of evidence)	45	
Article 11, paragraphs 1 and 2		45
Comment to article 11 (Time limits)		46
Article 17, paragraph 2	50	
Article 28		56
Article 28, explanatory note 0.28	56	
Comment to article 28 (Return of TIR Carnets)	56	
Comment to article 42 (Cooperation between Customs authorities)	61	
Comment to Annex 1 (Discharge of TIR Carnets)	73	
Comment to Annex 1 (Customs stamps on the counterfoil)	73	
Comment to Annex 1 (Alternative forms of evidence)		74

15. On the basis of these considerations, clear-cut definitions had to be prepared for inclusion into article 1 of the Convention for the following terms: “discharge/non-discharge”; “conditional/unconditional discharge”, [“partial/final discharge”], “certificate of discharge”; and “improper or fraudulently obtained certificate of discharge”. These definitions would need to take account of the different national practices and legal requirements, not covered in the Convention, which allowed for a completion of the TIR transit operation in a country or Customs Union in line with the prevailing legal and administrative provisions and procedures.

16. Participating experts were requested to provide written information on national practices to the secretariat, including experiences stemming from the use of other conventions (Kyoto, ATA or Istanbul Conventions, etc.). The offers of the experts from the Czech Republic, Turkey and the WCO to transmit proposals contributing to such definitions were appreciated.

17. The group of experts, noting a large number of inconsistencies in the terminology used, particularly in the Russian text of the Convention, requested the secretariat to undertake an authentication of the three language versions as soon as possible.

(ii) Recommended discharge procedure

18. Taking account of the experiences made with regulations on mandatory discharge procedures for TIR Carnets applicable in the European Community, the group of experts felt that the procedures outlined in the report of its first session TRANS/WP.30/1998/5, para. 22 could be a basis for recommended practices to be applied in all Contracting Parties to the Convention. The secretariat was requested to revise these procedures taking account of different national control procedures, such as the use of centralized offices or the transmission of voucher No. 1 to Customs offices of destination or exit, and additional administrative functions, such as the checking of the seals as well as the recommendation for the transmission of information for the EDI control system for TIR Carnets and the usefulness of a unique coding system applicable to Customs offices.

(iii) Recommended inquiry procedure

19. Taking account of the experiences made with regulations on prescribed inquiry procedures for TIR Carnets applicable in the European Community, the group of experts reviewed the procedure outlined in the report of its first session TRANS/WP.30/1998/5, para. 24 as 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.

20. Participating experts were requested to provide written information on national practices as well as of other elements for inclusion into such recommended practices to the secretariat for consideration by the group of experts at its next session.

(d) Reduction in the notification periods for Customs claims

21. Following an exchange of views on this subject, the group of experts felt that, for the time being, a reduction in the legal notification periods for Customs claims (article 11, paragraph 1 of the Convention) could not be recommended, mainly in view of the present administrative structures in Customs authorities and national associations and due to the fact that no additional information allowing for a better risk management of the international insurers would arise from such a reduction. The very large majority of these notifications would not be the result of an actual non-discharge, but of the lengthy administrative procedures to return and examine carnet voucher No.2 within the Customs authorities. This position could be reviewed in light of experiences yet to be made with the EDI control system for TIR Carnets which could not yet be utilized properly by Customs authorities, the new amendment proposals scheduled to come into force in early 1999 under phase I of the TIR revision process and the above recommended discharge and inquiry procedures providing, for example, for pre-notification of national associations and persons liable within three months of the discharge of the TIR Carnet.

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

Documentation: TRANS/WP.30/1998/5; TRANS/WP.30/1997/1.

22. Due to lack of time, the issue was postponed for consideration at the third session.

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

Documentation: TRANS/WP.30/1998/5; TRANS/WP.30/1998/1; TRANS/WP.30/178;
TRANS/WP.30/AC.2/37, annex 4.

23. Due to lack of time, the issue was postponed for consideration at the third session.

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

Documentation: TRANS/WP.30/1998/5.

24. Due to lack of time, the issue was postponed for consideration at the third session.

(h) Definition of the holder of TIR Carnets

Documentation: TRANS/WP.30/1998/5; TRANS/WP.30/180; TRANS/WP.30/166; TRANS/WP.30/162; TRANS/WP.30/R.149; TRANS/WP.30/R.138.

25. Due to lack of time, the issue was postponed for consideration at the third session.

(i) Revised TIR Carnet

Documentation: TRANS/WP.30/1998/5; TRANS/WP.30/180; 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.

26. Due to lack of time, the issue was postponed for consideration at the third session.

(j) Computerization of the TIR transit system

27. Due to lack of time, the issue was postponed for consideration at the third session.

**IMPLEMENTATION OF PHASE I OF THE TIR REVISION PROCESS -
IMPLEMENTATION OF NEW ANNEX 9, PART I, PARAGRAPH 1 (f)(v)**

Documentation: TRANS/WP.30/1998/7; TRANS/WP.30/AC.2/49; TRANS/WP.30/180.

28. The group of experts recalled that the Working Party, at its ninetieth session, and the TIR Administrative Committee, at its twenty-fourth session, had prepared and adopted in principle a comment on the application of the provisions of annex 9, Part I, paragraph 1 (f)(v). The Working Party had also invited the International Road Transport Union (IRU) and its member associations to transmit the draft of the new global insurance contract, in line with the adopted comment and the provisions of the revised Convention, to the secretariat for consideration by the group of experts at its second session (TRANS/WP.30/180, paras. 19-23; TRANS/WP.30/AC.2/49, paras. 18-21).

29. The group of experts, examining the insurance contract (TRANS/WP.30/1998/7), was informed that national legislation in a number of Central and Eastern European countries did not allow, as of today, that national associations become parties to an international insurance contract. Furthermore, national legislation in a number of Contracting Parties to the Convention prohibited insurance cover against intentional damages.

30. For these reasons, in preparing the draft global insurance contract, it has been proposed by the insurance experts that signature of the insurance contract is made by the insurance company and the IRU only, the latter acting for itself as well as for its associations. With a view to complying with the provisions of the revised Convention, it has also been proposed to provide national associations with a true and certified copy of the global insurance contract and with a certificate of insurance made out by the international insurers, stating the name(s) of the insurance company(ies) and the name of the beneficiary (the national association).

31. The group of experts, with the exception of the IRU, felt that some provisions of the present draft of the global insurance contract were not yet in line with the spirit and the provisions of the amended Convention (Phase I). This held true in particular true for the comment on the application of the provisions of annex 9, Part I, paragraph 1 (f)(v) adopted by the TIR Administrative Committee which stipulated that the global insurance contract is to be signed by the representatives of the international insurers, the IRU and the associations.

32. In order not to jeopardize the acceptance of the global insurance contract by some Contracting Parties once the amended Convention had come into force (probably by 17 February 1999), the group of experts proposed to the Working Party and the TIR Administrative Committee to amend this comment, as contained in document TRANS/W.30/AC.2/49, annex 2, as follows:

Add the following sentence at the end of paragraph (a):

“As long as national legislation in one of the Contracting Parties to the Convention prohibits signature by national associations as insured parties of the global insurance contract, it is exceptionally admissible, for a temporary period, that the global insurance contract may be concluded and signed by representatives of the IRU, acting on its own behalf, on behalf of its member associations and third parties, and by representatives of the international insurers only. This temporary provision does not change the responsibilities of the guaranteeing associations as stipulated in the Convention.”

The group of experts pointed out that the above amendment proposal would allow for the signature of the global insurance contract in line with national legislation either bilaterally (between the international insurers and the IRU) for a temporary period or trilaterally (between the international insurers, IRU and the national associations).

33. The group of experts pointed out that the above amendment proposal would allow for the signature of the global insurance contract in line with national legislation either bilaterally (between the international insurers and the IRU) for a temporary period or trilaterally (between the international insurers, IRU and the national associations).

34. With regard to the text of the draft insurance contract as contained in document TRANS/WP.30/1998/7, the group of experts agreed provisionally on the following modifications that would be required from a Customs point of view to bring the contract in line with the amended Convention (Phase I):

Article 3 - Purpose of the guarantee

Place provisionally the phrase: "This contract shall not cover Tobacco/Alcohol TIR Carnets" into square brackets until the group of experts had voiced an opinion of the extension of insurance coverage for this type of carnet.

Article 4 - Terms of the guarantee

Delete the reference to the TIR Convention of 1959.

35. The group of experts began its discussions on article 5 and considered the following proposal:

Article 5 - Insured limit per Carnet and per year of insurance

It was understood that the maximum insured amount per TIR Carnet could be expressed as US\$ 50,000 or in its equivalent in local currency, the exchange rate being fixed at a certain past date in time, at the time of taking into charge of the relevant TIR Carnet by Customs authorities or in any other way as agreed between the guaranteeing association and the competent authorities of a Contracting Party. Some experts reserved their views on this topics.

36. Due to lack of time, consideration of the other articles of the draft global insurance contract was postponed to the third session of the group of experts with a view to its finalization. The group of experts requested written clarifications and amendment proposals to be transmitted to the secretariat before 31 July 1998.

OTHER BUSINESS

37. The group of experts took note that its third session was scheduled to be held on 19 and 20 October 1998, prior to the ninety-first session of the Working Party (21-23 October 1998).
Deadline for submission of documentation: 31 July 1998.

ADOPTION OF THE REPORT

38. The group of experts adopted the present report on the basis of a draft prepared by the secretariat.
