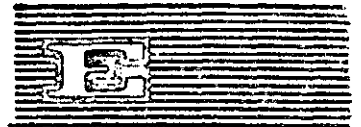


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THE TIR CONVENTION IN THE LIGHT OF THE NEEDS OF THE
SOUTHERN CONE COUNTRIES

CONTENTS

	<u>Page</u>
PREFACE	1
I. INTRODUCTION	2
II. CUSTOMS TRANSIT IN LATIN AMERICA AND THE EUROPEAN INSTITUTIONAL EXPERIENCE	3
III. FACETS OF INTERNATIONAL CUSTOMS TRANSIT	4
IV. TIR	6
1. Physical security	8
2. Financial security	9
Diagram: The TIR Guarantee System and Governing Agreements	10
3. Customs transit document: the TIR carnet	12
4. TIR operations	12
(a) TIR operations in a country of departure	13
(b) TIR operations in a country of transit	13
(c) TIR operations in a country of destination	14
Annex I: Steps required for the entry into effect of the TIR Convention	17

PREFACE

The legislation of all Latin American countries contains provisions which regulate the movement of goods in transit through its national customs territory from a customs office of departure in another country to an office of destination in a third country. As there has been very little harmonization of customs transit procedures, documents or standards on a regional basis, to all intents and purposes there is one customs transit policy per country, resulting in as many documents and control systems.

Due to a growing recognition on the part of Latin America's Southern Cone countries of the need for simplification and harmonization of customs transit documents and control systems, the Ninth Meeting of Ministers of Public Works and Transport of the Southern Cone Countries, held in June 1979, unanimously adopted a resolution granting authority to the Republic of Argentina to convene a meeting of governmental delegates from such countries to study the desirability of adhering to the 1975 Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention). In compliance with this resolution, a meeting of government transport and customs officials and representatives of various international organizations and transport enterprises was convened from 27 to 29 June 1979 in Buenos Aires, Argentina.

As part of the Final Act of this meeting, a work programme was approved which should lead to the adoption and effective implementation of the TIR Convention. This work programme provides, inter alia, that during October and November 1979 seminars will be held in each of the seven Southern Cone countries to analyse the TIR Convention and the conditions under which it will be utilized. It is in an effort to assist the Southern Cone countries with such analysis that the CEPAL Secretariat has prepared this study.

I. INTRODUCTION

In the past, the transport of general cargo in relatively small non-uniform units - packing cases, kegs, boxes, cartons, bags, etc. - permitted the application of traditional frontier customs inspection procedures to all units moving by road, without unduly delaying the overall movement of the cargo. However, with the advent of large-scale trade among countries of the Latin American region and the small but growing use of new transport techniques and technologies - such as large sealed unit loads - these traditional customs procedures have posed two important questions for national customs authorities: first, what amount of control over goods is necessary to protect national revenues; and second, what is the value of facilitating the free movement of goods in transit? While answers to these questions may appear compatible, such is not always the case. For example, the parties concerned with a transit shipment are interested in the speedy dispatch of the goods to their destination without undue interruptions and delays, in particular those caused by customs formalities. On the other hand, customs authorities are responsible for taking precautionary measures - including inspections of goods in transit - to protect national revenues.

While there are some limited exceptions, the aforementioned questions posed by international transport for national customs transit regimes have generally been answered on an ad hoc basis by customs administrations of Latin American countries in the light of their respective customs regulations.

Although modern technology has increased the speed with which goods may be transported, this benefit has been diminished by the number and diversity of national customs transit requirements. Latin American governments are faced with the need to adapt national customs transit systems so as to facilitate intra-regional as well as extra-regional transport. However, as long as the large number of different transit requirements exist, the crossing of frontiers will be a complicated operation and a source of delays for customs officials and users alike. As the independent and often conflicting customs transit systems employed by each Latin American country cannot effectively promote the rapid and efficient movement of goods nor provide the needed basis for harmonization of international customs transit procedures, it would seem

/advisable that

advisable that such countries should carefully investigate the benefits that could be derived from the adoption of an international customs transit system.

Taking into account the difficulties that originate as a consequence of the different customs transit procedures applied by each country, in 1976 the LAFTA Technical Expert Group on Customs drafted a project entitled "Common Standards of Customs Transit" and a model declaration for goods subject to these standards. These common standards were subsequently approved at the meeting of national customs directors of the LAFTA countries and are currently awaiting adoption by the LAFTA Permanent Committee. As these standards are merely recommended, guidelines for national legislatures in the preparation of rules for customs transit, they have had until now only a limited impact upon the harmonization of national customs régimes. Moreover, they do not provide for a guarantee system for national customs authorities to assure the payment of import or export duties that may be required for goods wrongfully entering or leaving a country.

II. CUSTOMS TRANSIT IN LATIN AMERICA AND THE EUROPEAN INSTITUTIONAL EXPERIENCE

As foreign trade among the European nations began many years before significant volumes of goods were transported to other continents, customs transit among those nations has been the subject of extensive international co-operation. For example, the idea of freedom of river navigation for international trade was formulated as early as 1792, and by 1868 the Convention on the Navigation of the Rhine established freedom of transit for goods transported on that river. With the adoption of intra-regional transport agreements throughout Europe in the nineteenth century, the principles of free transit on rivers, canals and overland gradually became established as it was increasingly recognized that freedom of transit was necessary for the development of commerce and industry. By the end of the nineteenth century, for example, transit duties in respect of European intra-regional trade had virtually disappeared. Based in part upon these European

/antecedents, the

antecedents, the League of Nations prepared in 1921 the first international convention concerning freedom of transit - the Convention and Statute on Freedom of Transit.

In Latin America, in contrast, due to colonial trade commitments, the foreign trade of the region began with the exportation of agricultural products and raw materials to the more industrialized regions of the world. As many of the roads, railways and port facilities were constructed for extra-regional commercial intercourse, the Latin American countries lacked the necessary interconnecting routes which would allow reciprocal trade.

Following many decades of effort, Latin America now possesses a reasonably complete network of highways and rail connexions between countries. Thanks to this overland transport network, increasing industrialization of the Latin American economies, and the formation of such regional organizations as LAFTA, SIECA and the Cartagena Agreement, the volume of intra-regional trade has shown continued growth in recent years. While the early low trade levels did not place undue burdens on existing national customs transit régimes, the increase in intra-regional trade has clearly demonstrated the weaknesses and inadequacies of these régimes. Consequently, since the Latin American nations have only just begun to formulate the bases for international customs transit agreements and related business practices that have been developing in Europe for more than a century, it would seem advisable that the European experience be studied carefully.

III. FACETS OF INTERNATIONAL CUSTOMS TRANSIT

While there are many aspects of Latin American customs transit that merit careful investigation when adopting an international customs transit régime, some of the more important for this discussion are (i) customs transit procedures; (ii) co-operation between customs administrations; (iii) provision of guarantees for any customs duties, charges or taxes payable on the goods; (iv) physical security measures for the goods; and (v) customs transit documentation.

/Although customs

Although customs transit procedures in the countries of original shipment of goods and of final destination might seem to be matters of only domestic concern, such is not the case. The facilitation of customs transit largely depends not only upon what was done in the country of departure but also upon its acceptability to other countries. If reliable and adequate information concerning goods in transit and their journey has been gathered in the country of departure and incorporated in appropriate documents, and if proper checks of the goods and physical security measures have been taken, the task of the customs administrations in the transit and final destination countries can be simplified.

The amount of time goods remain in customs transit depends to a certain extent not only upon customs procedures but also upon co-operation between national customs administrations to assure that, for example, the location and hours of operation for customs offices do not create obstacles to the in-transit movement of goods. Further, if goods must be unloaded for customs inspection at a destination country's frontier customs office, reloaded for transport to the consignee and again unloaded for delivery, substantial amounts must be added to the sales price of such goods to cover not only the cost of these intermediate unloading and loading operations but also extra insurance costs due to increased risks of breakage and pilferage.

The optimum practice, therefore, is for the goods to be inspected by customs at the time and place of loading into the unit, officially sealed, and inspected again only at the place of final destination, where the customs seals are broken and the units are unloaded. In these circumstances, customs transit clearance as the goods pass through one or more national frontiers should be based upon the documents and a visual inspection of the seals. Only if customs officers suspect an irregularity or if the seals have been tampered with or broken should an inspection of the goods be undertaken.

When national customs authorities agree to suspend payment of duties and taxes for goods in transit they generally require two forms of security: first, physical security measures are required to ensure that the goods reach the customs office of destination, and second, financial security is required

/from the

from the party responsible for the transit operation to meet possible duties and taxes should the goods wrongfully enter a transit country's economy. These two forms of security permit a country not only to assess the exact prejudice to national revenue, should the goods wrongfully enter its economy, but also obtain the payment normally required for such importation.

The purpose of a customs transit document is to give a listing of the goods in transit, provide evidence that the required physical and financial security measures have been taken in respect of such goods, and indicate the persons or institutions responsible in the event of any wrongful importation. This document and a visual inspection of the seals should generally provide customs authorities with all necessary information for a decision as to whether the goods in question are to be allowed to pass through its national territory.

IV. TIR

To facilitate the international transport of goods which have to pass through a number of customs territories, arrangements have been made under various international agreements for the contracting States to apply standard procedures for the treatment of goods in customs transit. One such arrangement, the 1959 Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), was formulated in Europe in the years following the end of the Second World War. As the network of railroads in Europe, at that time, was largely destroyed or unusable, trucks and the existing road system were employed as a means by which intra-European transport needs might be met. The intensive post-war use of road transport in Europe immediately demonstrated, however, that traditional frontier customs office controls, inspections and administrative formalities were obstacles to the rapid and efficient movement of goods and road transport equipment.

The United Nations Economic Commission for Europe (ECE), recognizing these obstacles to the intra-European movement of goods and road transport equipment, formulated in 1949 a draft convention to permit the simplification
/and acceleration

and acceleration of frontier customs formalities which later became the TIR Convention of 1959. After many years of experience with intra-European TIR operations, the ECE, in close collaboration with the International Road Transport Union (IRU) - the organization which administers the TIR Convention - prepared the 1975 TIR Convention which extends the TIR system to, inter alia, multimodal transport and permits non-European States to become contracting parties.

It must be understood at the outset that while a customs transit régime such as TIR can simplify and speed up the movement of goods passing through one or more customs offices, customs transit regulations are but one of the many requirements that must be complied with in order to carry out the international transport of goods. Other requirements deal with matters such as permission for a trucking company of one country to provide services in another and for its trucks and crews to enter and leave a country, other customs documentation formalities, insurance requirements for transport equipment, goods and crew, transport equipment registration requirements, and documentary requirements for special or dangerous goods.

While there are many aspects of customs transit that should be given careful investigation when studying TIR for possible application to Latin American trade, some of the more important for this discussion may be outlined as follows:

1. Physical security measures for customs transit
 - (a) Transport equipment approval requirements
 - (i) Load compartments of road vehicles - fixed and sheeted
 - (ii) Containers
 - (b) Customs seals for transit operations
 - (i) Requirements for the use of customs seals
 - (ii) Security over customs seals
 - (iii) Acceptability of customs seals to other contracting parties.
2. Financial security measures for customs transit
 - (a) Types of guarantee associations
 - (b) The TIR guarantee system and the agreements covering it
 - (c) Liability for customs duties, taxes and default interest, and subrogation rights
 - (d) Liability limits and non-TIR liability of carriers.

3. Customs transit document: TIR carnet
 - (a) Listing of goods
 - (b) Evidence that physical and financial security measures have been taken
 - (c) Period of validity of the TIR carnet
 - (d) TIR operations
 - (i) Country of departure
 - (ii) Country of transit
 - (iii) Country of destination.

1. Physical security

The physical security measures for unit loads are divided by TIR into two parts: first, transport equipment approval requirements; and second, customs seals for transit operations.

At the outset it should be emphasized that Annexes 2, 3 and 7, concerning approval of road vehicles and containers for use in TIR operations, are related only to the physical security of the load compartment of such road vehicles and containers. Although there are different approval requirements for the cargo carrying spaces of road vehicles and containers, the same basic approval principles are applicable to both. Such principles provide first, that the load compartments must contain no concealed spaces where goods may be hidden, and second, that all spaces capable of holding goods must be readily accessible for customs inspection.

The approval requirements implementing these principles, while detailed and strict, are flexible in the sense that they provide for three types of load compartments - fixed and sheeted load compartments for use on road vehicles, and containers. This flexibility permits a transport enterprise to select the type of load compartment - fixed, sheeted or container - best suited for its needs. For example, countries of the Latin American region might find, upon adopting TIR, that of the three types of load compartments permitted, the sheeted structure for road vehicles is the least expensive and most rapid manner in which TIR can be implemented.

/As TIR

As TIR does not define a "customs seal" nor provide for security over customs seals that may be used in TIR operations, these areas are controlled by each contracting party's national legislation. This does not mean that TIR makes no provision with regard to customs seals, however. TIR avoids conflicts with differing national laws concerning, for example, what constitutes a customs seal by providing only for the use of national seals in a customs transit operation. TIR Annexes 2 and 7, on approval requirements for road vehicles and containers for use in customs transit operations, both state that national customs seals must satisfy the same two requirements: first, that no goods can be removed from, or introduced into, the sealed part of the road vehicle or container without leaving obvious traces of tampering with or breaking of the customs seal, and second, that customs seals can be simply and effectively affixed to road vehicles and containers.

With regard to the acceptability of customs seals among contracting parties, Article 22 of TIR imposes on the contracting parties the obligation not only to accept each other's seals but also to grant the same legal protection as is accorded to their own national seals. However, this provision does not prevent successive contracting parties from adding their own seals to unit loads in transit. For example, a transit country which does not have confidence in the customs seals of a departure country may simply add its own customs seals to the unit load. Thus, if a contracting party does not exercise adequate controls over the use and/or availability of its own customs seals, it is entirely an internal matter for that country and should not impede the functioning of the TIR Convention nor the movement of sealed unit loads through various national territories.

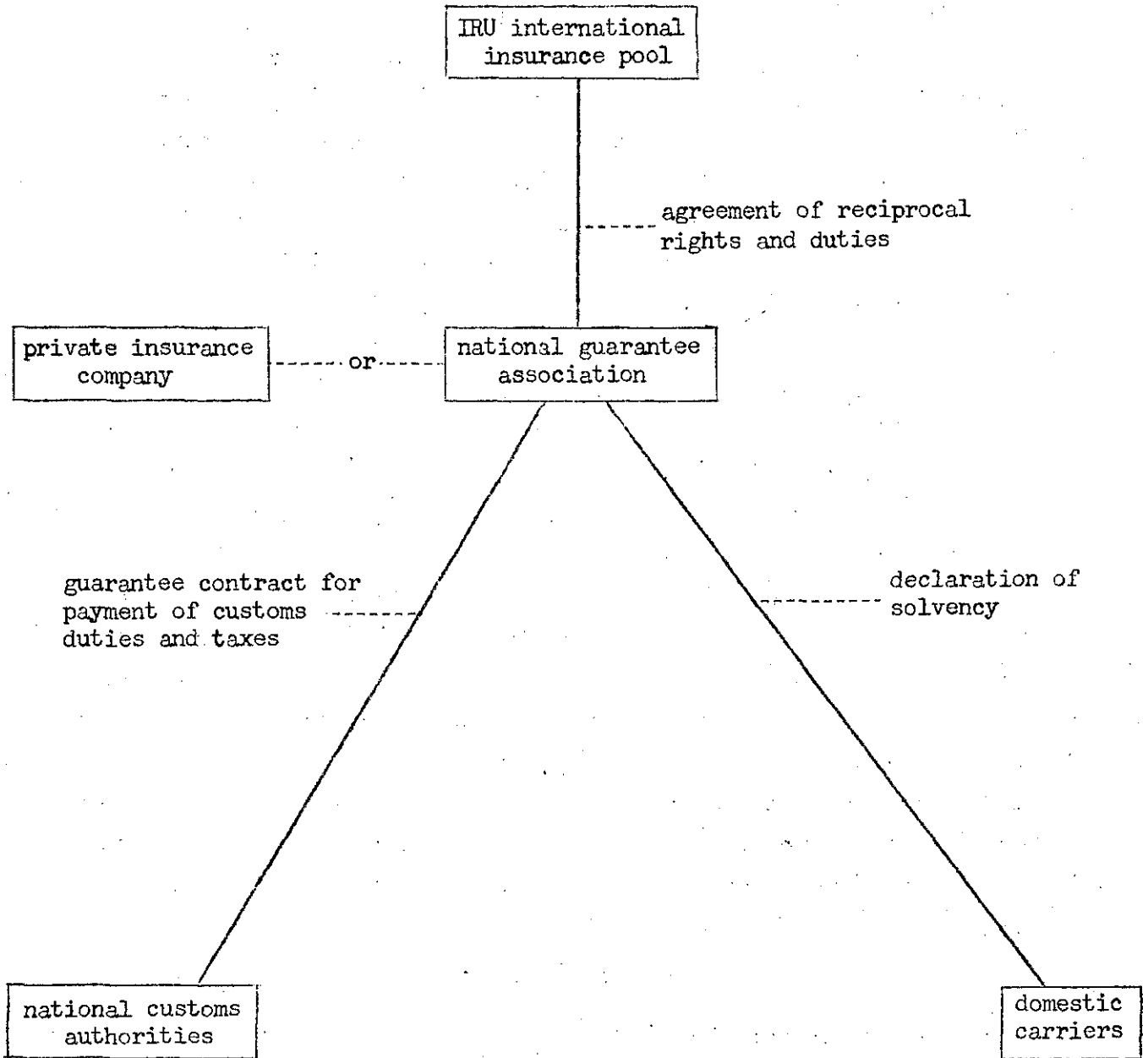
2. Financial security

A guarantee association is defined in Article 1 of TIR as "an association approved by the Customs authorities of a Contracting Party to act as surety for persons using the TIR procedure". This broad definition gives each signatory country the necessary freedom to establish the type of guarantee association most suited to its individual transport environment and needs.

Nonetheless, national guarantee associations are required to enter into agreements, as indicated in the following diagrammatical presentation, with

/THE TIR

THE TIR GUARANTEE
SYSTEM AND GOVERNING AGREEMENTS



the IRU international insurance pool, their own national customs authorities, and domestic carriers wishing to make use of TIR. These agreements not only eliminate the need for each contracting party to adopt enabling legislation governing the relationship between its guarantee association and other organizations and persons in the TIR guarantee system but also ensure the efficient functioning of that system.

A national guarantee association does not relieve persons from payment of duties, taxes and penalties for the wrongful introduction or removal of goods into or from a sealed load compartment during a TIR operation. Paragraph 7 of Article 8 provides that "competent authorities shall so far as possible require payment from the person or persons directly liable before making a claim against the guaranteeing association". For example, if goods are wrongfully introduced into or removed from a sealed load compartment during a TIR operation, customs authorities have three sources from which they can obtain the required duties and taxes: first, from the carrier; second, if the carrier does not make the required payment, for whatever reason, from the appropriate national guarantee association; and third, in default of both the carrier and the national guarantee association, from the international insurance pool. Additionally, a national guarantee association making payments on behalf of a carrier is not barred from instituting some form of subrogation action against the wrongdoer to recover the payment made.

The liability exposure of the TIR guarantee system is limited by the following three factors. First, according to paragraph 5 of Article 8, the liability of a guarantee association extends only to goods contained in the sealed load compartment of a road vehicle or container. For example, if a wrongful importation or exportation of goods was not accomplished by use of the sealed load compartment of a road vehicle or container during a TIR operation, the customs authorities will be limited to the remedies provided by national laws.

Second, according to paragraph 1 of Article 8, the liability of a guarantee association is limited to "import or export duties and taxes, together with any default interest". Carriers therefore remain totally responsible for any penalties imposed by customs laws and regulations of the
/country in

country in which a wrongful importation or exportation has occurred. Finally, Annex 6 recommends that national customs authorities should select a guarantee amount of US\$ 50 000 per TIR carnet, which is the amount normally adopted by these authorities of contracting parties for the liability exposure of guarantee associations.

3. Customs transit document: the TIR carnet

Article 3 requires that customs transit operations covered by TIR must use a TIR carnet that conforms to the model laid down in the convention. The reason for a specific document requirement is that the TIR carnet unites information concerning the goods in transit and the physical and financial security measures taken in respect of such goods and transport equipment. Once this information has been incorporated into the TIR carnet, the customs authorities of transit countries have before them documentary evidence that the relevant provisions of TIR have been complied with.

While the 1971 Customs Convention on the International Transit of Goods (ITI Convention) makes use of a guarantee whose validity is limited only by time, and not to specific loads or consignments of goods, the validity of the TIR guarantee is equal in duration to that of the TIR carnet. Article 17 provides that the validity of the TIR carnet is limited by two factors: first, a carnet is valid for only one journey; and second, a separate carnet must be made out for each road vehicle, container, or combination of road vehicles or containers. Thus, once the TIR carnet has been issued it is valid for only one journey of a particular road vehicle, container, or combination of road vehicles or containers. Such limited validity of the TIR carnet and guarantee has the distinct advantage of assuring the contracting parties greater control over customs transit operations and permitting a more precise estimation of the overall liability of guarantee associations at any moment.

4. TIR operations

While the TIR system, per se, can greatly simplify customs transit operations, there are a number of supporting institutions to be created or modified and personnel to be trained by both the adopting countries and the participating carriers. Adopting countries must, inter alia, establish their guarantee systems and national associations for vehicle and container approval,

/designate customs

designate customs offices through which TIR traffic may pass and train their customs officials in TIR operations. Likewise, carriers must obtain approval of the vehicles and containers which will be used in TIR operations, execute agreements of solvency with national guarantee associations, train their personnel in TIR operations and purchase TIR carnets from national guarantee associations. Once these steps have been completed by both adopting countries and participating carriers, TIR operations can begin.

(a) TIR operations in a country of departure

An otherwise qualified carrier wishing to make use of the TIR customs transit system for international transport must complete a TIR carnet for the goods to be transported and present the goods, TIR carnet and vehicle at a TIR designated customs office of departure. Customs officials at this customs office will inspect the goods and verify that the TIR carnet includes all the goods which are in the load compartment and has been otherwise correctly completed. Upon completion of this inspection and verification, a customs official will place national customs seals on the load compartment of the vehicle and record the placement of these seals in the TIR carnet. A customs official will then sign and stamp a TIR carnet coupon and remove the attached page from the carnet. The vehicle can now initiate its journey to the frontier customs office of the departure country.

Upon reaching this office, the driver will present the vehicle, TIR carnet and goods to the customs officials. These officials will review the TIR carnet and seals placed on the load compartment at the customs office of departure. If the customs seals are found to be in the state indicated in the TIR carnet, customs officials will sign and stamp a TIR carnet coupon and remove the corresponding page from the carnet. The page of the TIR carnet removed by the latter customs official will be sent to the former for comparison and other statistical record keeping purposes, and as the TIR requirements for a departure country have now been satisfied, the vehicle can continue its journey.

(b) TIR operations in a country of transit

When the vehicle arrives at the frontier customs office of a transit country, the driver will present it, the goods and the TIR carnet to the customs officials, who will review the carnet and the seals placed on the

/load compartment

load compartment by customs officials in the country of departure. Article 5 provides that while goods under TIR procedures are in customs transit, they shall not as a general rule be subjected to examination at customs offices en route unless an irregularity is suspected. Nonetheless, customs authorities may, if control requirements make it necessary, add their own seals to those of the country of departure. If the customs seals are found to be in the state indicated in the TIR carnet or additional seals are placed on the load compartment, customs officials will note the addition of seals in the carnet, sign and stamp a TIR carnet coupon, and remove the corresponding page. The vehicle can now continue its journey to the departure frontier customs office of the transit country.

Upon arrival at this customs office, the driver will present the vehicle, goods and TIR carnet to the customs officials, who will review the TIR carnet and seals placed on the load compartment by the customs officials in the country of departure. If the customs seals are found to be in the state indicated in the TIR carnet, the officials will sign and stamp a TIR carnet coupon and remove the corresponding page, which will be sent to the customs authorities of the country of departure for comparison and statistical purposes. As the TIR requirements for the transit country have now been satisfied, the vehicle can leave the country and continue its journey.

(c) TIR operations in a country of destination

Once the vehicle has reached the frontier customs office of the destination country, the driver will present the vehicle, TIR carnet and goods to the customs officials, who will review the TIR carnet and the seals placed on the load compartment at the customs office of departure. If the customs seals are found to be in the state indicated in the TIR carnet, the customs officials will sign and stamp a TIR carnet coupon and remove the corresponding page. The vehicle can now continue its journey to the final customs office of the destination country.

Customs officials at the final customs office of the destination country will inspect the goods and verify that all goods listed in the TIR carnet are in the load compartment and that the carnet has been correctly completed. A customs official will then sign and stamp a TIR carnet coupon and remove

/the corresponding

the corresponding page, which will be sent to the customs authorities of the country of departure for comparison and statistical purposes.

As the TIR customs transit operation has now been completed, the customs authorities of the destination country can discharge the applicable TIR carnet either conditionally or unconditionally. Where a discharge is conditional it must be based on occurrences related to the TIR operation itself, and such occurrences must be clearly indicated on the TIR carnet. An unconditional discharge of a TIR carnet means that the customs authorities can no longer make claims for payment from the guarantee association, unless such discharge was obtained in an improper or fraudulent manner. Where a TIR carnet has not been discharged or has been discharged conditionally, the customs or other competent authorities must make a claim for payment thereon within one year from the date the TIR carnet was received by them, or within two years if the discharge was obtained in an improper or fraudulent manner.

Annex I

STEPS REQUIRED FOR THE ENTRY INTO EFFECT OF THE TIR CONVENTION

On the part of the central government:

After acceding to the TIR Convention each Contracting Party must:

- (a) Establish an organization or authorize an organization such as a national association of carriers, to set up a national guarantee system;
- (b) Establish commissions to approve vehicles, containers and semi-trailers;
- (c) For its part, the national customs authority of each Contracting Party must:
 - (1) Designate customs offices for execution of operations under the TIR Convention;
 - (2) Conclude a contract with the national guarantee system to cover any customs duties and taxes that may be payable;
 - (3) Train the officials of the customs offices.

For its part, the association that receives authorization to establish a national guarantee system must:

- (a) Set up a national guarantee system and conclude between that system and:
 - (1) The national customs authority, a guarantee contract covering any duties and taxes that may be payable;
 - (2) A consortium of the Contracting Parties' guarantee associations, an agreement concerning reciprocal rights and duties (Chain Guarantee);
 - (3) The carriers, a declaration of solvency by each carrier desiring to avail itself of the TIR system.
- (b) Operate the national guarantee system and, particularly:
 - (1) Buy the TIR carnet;
 - (2) Sell the TIR carnet to the carriers.

Carriers wishing to use the TIR Convention must:

- (a) Modify vehicles, containers and semi-trailers so that they meet the technical specifications of the TIR Convention;

/(b) Obtain

- (b) Obtain approval of vehicles, containers and semi-trailers from the relevant national commission;
- (c) Make a declaration of solvency to the national guarantee system;
- (d) Buy the TIR carnet from the national guarantee system;
- (e) Train their drivers in accordance with the procedures and requirements of the TIR Convention.