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DRAFT CONVENTION ON INTERNATIONAL CUSTOMS TRANSIT PROCEDURES
FOR THE CARRIAGE OF GOODS BY RAIL

Draft convention incorporating explanatory notes

Transmitted by the Committee of the Organization for Cooperation
between Railways (OSZhd)

GE.99-22839 (E)

DRAFT

CONVENTION ON INTERNATIONAL CUSTOMS TRANSIT PROCEDURES FOR THE
CARRIAGE OF GOODS BY RAIL USING THE SMGS CONSIGNMENT NOTE

PREAMBLE

The Contracting Parties,

Conscious of the importance of the international transport of goods by rail,

Desirous of promoting international cooperation with a view to ensuring the harmonious development of this mode of transport,

Declaring themselves in favour of simplified administrative formalities in international transport by rail, with a view to reducing, in particular, border controls,

Considering the possibility of making use to this end of railway documents as Customs documents,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Convention:

(a) The term "international Customs transit" shall mean a Customs procedure under which goods are carried across one or more frontiers from a Customs office of departure to a Customs office of destination;

(b) The term "SMGS Agreement" shall mean the Agreement on International Goods Transport, which entered into force on 1 November 1951;

(c) The term "consignment note" shall mean the SMGS Consignment Note subject to the Agreement on International Goods Transport by Rail; the Consignment Note may consist of an electronic data exchange system;

(d) The term "railway company" shall mean an undertaking carrying out direct rail or rail-and-ferry transport operations;

(e) The term "Contracting Party" shall mean a State which is party to this Convention;

(f) The term "country" shall mean any State which is a Contracting Party to this Convention;

- (g) The term "competent authorities" shall mean the Customs authority or any other authority responsible for applying this Convention;
- (h) The term "office of departure" shall mean any Customs office of a country where the international Customs transit operation begins in respect of all or part of the load;
- (i) The term "office of destination" shall mean any Customs office of a country where the international Customs transit operation ends in respect of all or part of the load;
- (j) The term "office of transit" shall mean any Customs office through which a consignment is entering or leaving the territory of a Contracting Party during an international Customs transit operation;
- (k) The term "duties and taxes" shall mean Customs duties and all other duties, taxes, fees and other charges which are collected on, or in connection with, the importation or exportation of goods, but not including fees and charges limited in amount to the approximate cost of services rendered;
- (l) The term "principal" shall mean the person which, if need be by means of an authorized representative and by means of a declaration intended to this effect, shows his willingness to carry out an international Customs transit operation;
- (m) The term "ratification" shall mean ratification, acceptance or approval;
- (n) The term "depository" shall mean the Secretary-General of the United Nations.

Article 2

Objective

The objective of this Convention is to establish an international Customs transit procedure for the carriage of goods undertaken by railway companies under cover of a consignment note.

Article 3

Scope

Each Contracting Party shall accept the consignment note used in accordance with the provisions of this Convention as a Customs transit document.

Article 4

Modification of the consignment note

The form or the contents of the consignment note may not be modified without the prior agreement of the Administrative Committee provided for in article 25 of the Convention.

Article 5

Legal value

1. A consignment note used in accordance with this Convention and identification measures taken by the competent authorities of a Contracting Party shall have the same legal effect in the other Contracting Parties as a consignment note used in accordance with the rules and identification measures taken by each Contracting Party's own competent authorities.
2. The findings of the competent authorities of one Contracting Party made when inspections are carried out under this Convention shall have the same probative force in the other Contracting Parties as findings of each Contracting Party's own competent authorities.

Article 6

Mutual assistance

1. The competent authorities of the Contracting Parties concerned shall communicate to one another, as far as their laws permit, all information available to them which might contribute to the satisfactory application of this Convention.
2. Where necessary, the competent authorities shall communicate to one another all findings, documents, reports, records of proceedings and information relating to transit operations carried out under the cover of a consignment note, and to infringements and irregularities which have occurred in the course of or in connection with such operations.

Article 7

Control of records

1. Each Contracting Party shall have the right to carry out controls regarding the correct application of this Convention.
2. In application of paragraph 1, the railway companies of each Contracting Party shall make available at their central accounting offices, to the competent authorities of the Contracting Parties within which they are established, for purposes of control, the records, notably the records of accounts between railway companies.

3. In order to allow the control as stipulated in paragraph 2, railway companies have to keep all consignment notes at the disposal of competent authorities, possibly on the basis of jointly agreed arrangements.

Article 8

Responsibilities

1. The railway company which accepts goods for carriage accompanied by a consignment note equivalent to a Customs document shall be the principal and as such be responsible to the competent authorities of the Contracting Party whose territory is entered in the course of such carriage for the proper conduct of the operation.

2. Where goods are accepted for carriage by a railway company of a third country, the railway company which takes over a consignment accompanied by a consignment note when the consignment enters the territory of that Contracting Party shall be the principal to all intents and purposes and shall be responsible to the competent authorities of the Contracting Party whose territory is entered in the course of such carriage for the proper conduct of the operation.

3. The railway companies of Contracting Parties shall be jointly and severally responsible with the railway companies referred to in paragraphs 1 and 2 to the competent authorities of those Contracting Parties for the proper conduct of transit operations entering the territories of the said Contracting Parties.

4. In accordance with the responsibilities stipulated in paragraphs 1 to 3, the railway companies are liable for the payment of duties and taxes which may become due as a result of an infringement or an irregularity committed in the course or in connection with the underlying transit operation.

Article 9

Exemption from duties and taxes

A railway company responsible for the proper conduct of a transit operation in accordance with the provisions in this Convention shall be exempted from payment of duties and taxes in relation to goods which:

(a) Have been destroyed as a result of force majeure or unforeseeable circumstances, duly established;

(b) Are recognized as missing for reasons resulting from their actual nature.

Article 10

Guarantee waiver

In the framework of the application of this Convention, the railway companies of the Contracting Parties shall be exempted from the obligation to furnish a guarantee.

Article 11

Label

1. Railway companies shall ensure that consignments carried by rail under the international Customs transit procedure in accordance with the provisions of this Convention are identified by a label bearing a pictogramme, a specimen of which is given in annex 1.
2. The labels shall be affixed to the consignment note and to the relevant railway wagon in the case of a full wagon load or to the package or packages in other cases.

Article 12

Amendment of the transport contract

Railway companies are not allowed to carry out a modified transport contract if the modification has the effect of terminating a transport operation in a country different from the one originally prescribed in the transport contract, without prior agreement of the office of departure.

Article 13

Formalities on departure

1. At the start of a transport operation the consignment note shall be produced at the office of departure together with the documents required for the purpose of completing the formalities and controls incumbent upon that office. The office of departure shall stamp the consignment note.
2. Each Contracting Party shall be able to stipulate that, under conditions which it shall determine, goods may be placed under the international Customs transit procedure without the consignment note for the goods being presented to the office of departure.

Article 14

Identification measures

As a general rule and having regard to identification measures applied by the railway company, the office of departure shall not seal the wagons or the packages.

Article 15

Waiver of formalities at the office of transit

1. No formalities under this Convention shall be carried out at the offices of transit.
2. The records provided for in article 7 shall be treated by the competent authorities as documents enabling them to check the proper conduct of transit operations.

Article 16

Formalities at destination

1. The railway company which is in charge of the transport operation in the territory of the Contracting Party responsible for the office of destination shall forward to the latter sheet 2 and an additional sheet of the consignment note.
2. The office of destination shall forthwith return sheet 2 to the railway company after stamping it and shall retain an additional sheet of the consignment note.

Article 17

Infringements and irregularities

1. Where an infringement or an irregularity is committed in the course of or in connection with the international transit procedure carried out under this Convention, the duties and taxes due, if any, must be paid in accordance with the laws and regulations of the Contracting Party in the territory of which the infringement or irregularity was committed.
2. Where it is not possible to determine the territory on which an infringement or irregularity has been committed, it shall be deemed to have been committed on the territory of the Contracting Party where it was discovered.

Article 18

Greater facilities

This Convention shall not prevent the application of greater facilities which Contracting Parties grant or may wish to grant either by unilateral provisions or by virtue of bilateral or multilateral agreements provided that such facilities do not impede the application of the provisions of this Convention.

Article 19

Electronic data exchange

The provisions of this Convention may be adapted, by means of bilateral or multilateral agreements between Contracting Parties, to allow the use of an electronic data interchange system instead of the consignment note, provided that the adaptations agreed upon do not impede the implementation of the provisions of this Convention.

CHAPTER II

EXPLANATORY NOTES

Article 20

The Explanatory Notes set out in annex 2 describe certain recommended practices and interpret certain provisions of this Convention. The Explanatory Notes constitute an integral part of the Convention. They do not modify the provisions of this Convention, but merely make their contents, meaning and scope more precise.

CHAPTER III

FINAL PROVISIONS

Article 21

Signature, ratification and accession

1. Member States of the United Nations which are Contracting Parties to the SMGS may become Contracting Parties to this Convention by:
 - (a) Signature without reservations concerning ratification;
 - (b) Depositing an instrument of ratification, after signature subject to ratification;
 - (c) Depositing an instrument of accession.
2. Any State other than those referred to in paragraph 1 of this article, to which an invitation to that effect has been addressed by the depositary at the request of the Administrative Committee, may become a Contracting Party to this Convention by acceding thereto after its entry into force.
3. This Convention shall be open for signature from to inclusive, at the United Nations Office at Geneva. Thereafter, it shall be open for accession.

Article 22

Entry into force

1. This Convention shall enter into force six months after the date on which five Contracting Parties to the SMGS Agreement have signed this Convention without reservations concerning ratification or have deposited their instruments of ratification or accession.
2. This Convention shall enter into force for all additional States referred to in paragraphs 1 and 2 six months after the date of signature without reservations concerning ratification or of deposit of instruments of ratification or accession.
3. Any instrument of ratification or accession deposited after the entry into force of an amendment to this Convention in accordance with article 27 shall be deemed to apply to this Convention as amended.
4. Any such instrument deposited after an amendment has been accepted but before it has entered into force shall be deemed to apply to this Convention as amended on the date when the amendment enters into force.

Article 23

Denunciation

1. Any Contracting Party may denounce this Convention by so notifying the depositary.
2. Denunciation shall take effect 15 months after the date of receipt by the depositary of the notification of denunciation.

Article 24

Termination

If, after the entry into force of this Convention, the number of Contracting Parties is for any period of 12 consecutive months reduced to less than 3, the Convention shall cease to have effect from the end of the 12-month period.

Article 25

Administrative Committee

1. There shall be established an Administrative Committee (hereinafter called "the Committee") to consider the operation of the present Convention, to consider any amendments proposed thereto and to consider measures to secure uniformity in the interpretation and application thereof.
2. The Contracting Parties shall be members of the Committee. The Committee may decide that the competent administration of any Contracting

Party to the SMGS which is not a Contracting Party to this Convention, or representatives of international organizations may, for questions which concern them, attend the sessions of the Committee as observers.

3. The Executive Secretary of the Economic Commission for Europe (hereinafter called the "Executive Secretary") shall provide the Committee with secretariat services.

4. The Committee shall, on the occasion of every session, elect a Chairman and a Vice-Chairman.

5. The competent administrations of the Contracting Parties shall communicate to the Executive Secretary proposals for amendments to the present Convention and the reasons therefor, together with any requests for the inclusion of items on the agenda of the sessions of the Committee. The Executive Secretary shall bring these communications to the attention of the competent administrations of the Contracting Parties and the depositary.

6. The Executive Secretary shall convene the Committee:

(a) Two years after the Convention has entered into force;
(b) Thereafter, at dates fixed by the Committee, but at least every five years;

(c) At the request of the competent administrations of at least two Contracting Parties;

(d) When a proposal for amendment of the consignment note must be submitted to the Committee in accordance with article 4 of this Convention. He shall circulate the draft agenda to the competent administrations of the Contracting Parties and to the observers referred to in paragraph 2 of this article at least six weeks before the Committee meets.

7. On the decision of the Committee taken by virtue of the provisions of paragraph 2 of this article, the Executive Secretary shall invite the competent administrations of the States and the organizations referred to in the said paragraph 2 to be represented by observers at the sessions of the Committee.

8. A quorum consisting of not less than a third of the Contracting Parties shall be required for the purpose of taking decisions.

9. Proposals shall be put to the vote. Each Contracting Party represented at the meeting shall have one vote. Proposals other than proposals for amendments shall be adopted by the Committee by a majority of the members present and voting. Proposals for amendments shall be adopted by a two-thirds majority of those present and voting.

10. Before the closure of its session the Committee shall adopt a report.

11. In the absence of relevant provisions in this article, the rules of procedure of the Economic Commission for Europe shall be applicable unless the Committee decides otherwise.

Article 26

Settlement of disputes

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall, insofar as possible, be settled by direct negotiation between them.

2. Any dispute which is not settled by direct negotiation shall be referred by the Contracting Parties in dispute to the Committee, which shall consider the dispute and make recommendations for its settlement.

3. The Contracting Parties in dispute may agree in advance to accept the recommendations of the Committee as binding.

Article 27

Amendment procedure

1. In accordance with article 25 of this Convention, the Committee may recommend amendments to this Convention.

2. The text of any amendment so recommended shall be communicated by the depositary to all Contracting Parties to this Convention and to the other signatories.

3. Except as provided for under article 28, any recommended amendment communicated in accordance with paragraph 2 of this article shall enter into force with respect to all Contracting Parties 3 months after the expiry of a period of 18 months following the date of communication of the recommended amendment if no objection to the recommended amendment has been notified during that period to the depositary by a Contracting Party.

4. If any objection to the recommended amendment has been notified to the depositary by a Contracting Party before the expiry of the period of 18 months specified in paragraph 3 of this article, the amendment shall be deemed not to have been accepted and shall have no effect.

Article 28

Special procedure for the amendment of annex 2

1. Any recommended amendment to annex 2 considered in accordance with paragraphs 1 and 2 of article 27 shall enter into force on a date to be determined by the Administrative Committee at the time of its adoption, unless, by a prior date determined by the Administrative Committee at the same time, a fifth or five of the Contracting Parties, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment. Determination by the Administrative Committee of the dates referred to in this paragraph shall be by a two-thirds majority of the members present and voting.

2. On entry into force, any amendment adopted in accordance with the procedure set out in paragraph 1 above shall replace and supersede for all Contracting Parties any previous provisions to which the amendment refers.

Article 29

Depositary

1. The Secretary-General of the United Nations is designated as the depositary of this Convention.

2. The functions of the Secretary-General of the United Nations as depositary shall be as set out in Part VII of the Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969.

3. In the event of any difference appearing between a Contracting Party and the depositary as to the performance of the latter's functions, the depositary or that Contracting Party shall bring the question to the attention of the other Contracting Parties and the signatories or, where appropriate, to the Committee.

Article 30

Registration and authentic texts

In accordance with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations.

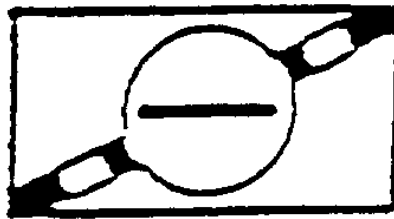
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Geneva, this, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, the six texts being equally authentic.

Annex 1

Model of the label

(in accordance with article 11)



(Black on green background)

Annex 2

Explanatory notes

(in accordance with article 20)

MAIN TEXT OF THE CONVENTION

Article 3

Whenever goods covered by an international temporary importation or admission procedure, by the transit regime provided for in the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) or by any other international transit procedure are transported wholly or for part of the journey by rail under the international Customs transit regime provided for in this Convention, the international temporary importation or admission procedure, the TIR procedure or any other international transit procedure should be suspended during the part of the journey during which the transit regime of this Convention is utilized, unless the sender whose name appears in the consignment note requests otherwise.

Article 13

1. The Customs office of departure shall stamp sheets 1, 2 and an additional sheet of the SMGS consignment note in the appropriate boxes reserved for Customs use.
2. The "stamp" (validation) must contain the name and the stamp of the Customs office of departure, the signature of the competent officer and the date of stamping.

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