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INLAND TRANSPORT COMMITTEE

(Sixty-seventh session, 15-17 February 2005,
agenda item 17 (c))

BORDER CROSSING FACILITATION

**Draft Convention on International Customs Transit Procedures
for the Carriage of Goods by Rail**

Note by the secretariat

A. MANDATE

1. The Committee may wish to recall that, at its sixty-third session, it had requested the Working Party on Customs Questions affecting Transport (WP.30) to continue to consider the draft Convention for the SMGS Consignment Note, that it had prepared (ECE/TRANS/136, para. 88).
2. The Working Party, at its one-hundred-and-sixth session, took note of a recommendation by the Contracting Parties of the SMGS Agreement recommending that the Working Party adopt the draft Convention without delay. The Working Party adopted the draft text of the Convention with a few modifications and submitted it for final adoption at the present session of the Committee (TRANS/WP.30/212, para. 16).
3. The Committee may wish to consider the adoption of the Convention as contained below in Section C as well as its opening for signature.

B. INTRODUCTION AND BACKGROUND

4. In November 1995, the Working Party already completed, in principle, the preparation of a Convention on International Customs Transit Procedures for the Carriage of Goods by Rail providing for the use of the CIM Consignment Note as a Customs document (TRANS/WP.30/164, paras. 59-61; TRANS/WP.30/R.141).

5. Following considerations by the Committee in 1997, it was decided to extend the scope of the draft convention also to countries applying the SMGS Agreement (ECE/TRANS/119, paras. 136-139). The Working Party, at its ninety-second session, decided to prepare, as a first step, two similar, but independent United Nations conventions, one providing for the use of the CIM Consignment Note as a Customs document in those countries applying the COTIF railway regime and another convention, providing for the use of the SMGS Consignment Note as a Customs document in the countries applying the SMGS regime. The offer of the Organization for Co-operation between Railways (OSZhD) to prepare a revised draft convention covering the SMGS countries was welcomed (TRANS/WP.30/184, paras. 68 and 69). At its ninety-sixth session in October 2000, the Working Party considered a revised draft convention prepared by an OSZhD expert group meeting (TRANS/WP.30/2000/17) covering those countries applying the SMGS Agreement (TRANS/WP.30/192, paras. 14-21).

6. The Working Party noted that this draft contained the same provisions and procedures for use of a railway Consignment Note as the draft convention finalized by the Working Party in 1995 for use of the CIM Consignment Note, i.e. similar Customs facilities for rail transit. This included far-reaching facilitation measures applicable to Customs transit procedures in rail transport, such as exemption to furnish guarantees and to provide sealing of wagons, no physical inspection of the cargo by Customs authorities and a waiver of Customs formalities during transit operations.

7. The Committee, at its sixty-third session, decided, on the basis of comments received to the two draft Conventions only to continue work on the draft Convention covering the SMGS Consignment note (ECE/TRANS/136, para. 88). On the basis of this decision the Working Party had been requested to convene an ad hoc informal expert group meeting of interested countries and international organizations to review once more the provisions of the draft convention based on the SMGS Consignment Note and to prepare a revised draft for consideration of the Working Party (TRANS/WP.30/198).

8. On 11 February 2002, an informal ad hoc Expert Group meeting on Customs Rail Transit based on the SMGS Consignment Note was held. It seemed that the amendments proposed by some Contracting Parties to the SMGS Agreement would result in considerably reduced facilitation measures compared to the provisions of the original draft prepared by the Working Party and the provisions in place for the COTIF Convention in the Common and Community transit system.

9. The Working Party, at its one-hundred-and-second session, adopted resolution No. 50 recommending the use of the SMGS Consignment Note as a Customs rail transit declaration by the Contracting Parties to the SMGS Agreement, stressing, however, that the adopted resolution was a preliminary facilitation measure (TRANS/WP.30/204, para. 23).

10. The Inland Transport Committee, at its sixty-fifth session, requested the Working Party to pursue its work towards finalizing a Convention facilitating international Customs transit rail transport on a Pan-European level in this area as soon as possible (TRANS/WP.30/152, para. 104).

11. The Working Party, at its one-hundred-and-fourth session, requested the secretariat to organize another ad hoc expert group meeting in conjunction with the one-hundred-and-fifth session of the Working Party in September 2003 with the aim of finalizing the draft Convention on international Customs transit procedures for the carriage of goods by rail covering the SMGS area. An ad hoc expert group meeting took place on 23 September 2003. The meeting reached conclusions concerning most of the provisions contained in the draft Convention. The secretariat had been requested to resolve a few questions still outstanding, in particular Article 5, para. 2 and Article 8, para. 3, with the assistance of OSZhD and UIC. Countries concerned were also invited to provide the secretariat with their proposals on the paragraphs in question. As a result, the ad hoc expert group had recommended that a revised text of the draft Convention be submitted for consideration by the Working Party at its one-hundred-and-sixth session in February 2004.

12. The Working Party, at its one-hundred-and-sixth session, adopted the text contained in Section C of the present document and submitted it for final adoption by the Committee at the present session.

13. Should the Committee adopt the draft Convention as contained in Section C, it may also wish to recommend that further harmonization of the procedures of the COTIF Convention and the SMGS Agreement with regard to rail transit should be pursued and mandate the Working Party to pursue this task.

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**C. DRAFT CONVENTION ON INTERNATIONAL CUSTOMS TRANSIT
PROCEDURES FOR THE CARRIAGE OF GOODS BY RAIL UNDER COVER OF
SMGS CONSIGNMENT NOTES**

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 the frontiers of one or more States under Customs controls 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 by Rail of 1 November 1951;
- (c) the term "Consignment Note" shall mean an SMGS Consignment Note as provided for by the SMGS; the Consignment Note may consist of a system of electronic exchanges of data;
- (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 "third country" shall mean any State which is not a Contracting Party to this Convention;

- (g) the term "competent authorities" shall mean the Customs authority or any other authority designated by a Contracting Party to monitor the implementation of this Convention;
- (h) the term "Customs office of departure" shall mean any Customs office of a country where an international Customs transit operation begins in respect of all or part of consignment;
- (j) the term "Customs office of destination" shall mean a Customs office in a country where an international Customs transit operation ends in respect of all or part of a consignment;
- (k) the term "Customs office of transit" shall mean any Customs office through which a consignment enters or leaves the territory of a Contracting Party during an international Customs transit operation. The Customs office of transit may be the same as the Customs office of destination or the Customs office of departure;
- (l) the term "payments" 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, with the exception of fees payable for specific categories of services;
- (m) the term "principal" shall mean a private individual or legal entity which, if need be by means of an authorized representative undertakes to carry out an international Customs transit operation;
- (n) the term "ratification" shall mean ratification, acceptance or approval.

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

This Convention shall apply to the carriage of goods under cover of a Consignment Note accepted by each Contracting Party and used in accordance with the provisions of this Convention as a Customs transit document.

Article 4

Modification of the Consignment Note

For the purposes of this Convention, the Consignment Note may not be modified in form or content without the prior agreement of the Administrative Committee provided for in article 25 of the Convention.

Article 5

Legal value

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.

Article 6

Mutual assistance

1. The competent authorities of the Contracting Parties shall communicate to one another, in accordance with their legislation, all information available to them, which might contribute to the satisfactory application of this Convention.
2. Where necessary, the competent authorities of the Contracting Parties 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. Transport documents (consignment notes) shall contain at least goods particulars necessary for purposes of control by competent authorities. The railway companies (railways) of each Contracting Party shall for control purposes supply the competent authorities of the Contracting Parties in which they are established with copies of the transport documents which they have at their disposal and the required number of additional copies of freight bills as documentation enabling the competent authorities to control the proper conduct of international Customs transit operations.
2. Railway companies (railways) must arrange to keep the transport documents which they have at their disposal for at least five years and in any case in accordance to national legislation.

Article 8

Responsibilities

1. A railway company (railway) which accepts goods for carriage at a point of departure under international Customs transit procedures shall be a principal and shall 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 international Customs transit operation.

2. Where a consignment is accepted for carriage from a railway company (railway) of a third country, the first railway company (railway) which subsequently takes over the consignment under international Customs transit procedures shall when that consignment enters the territory of the Contracting Parties become a principal and be responsible to the competent authorities of the Contracting Parties whose territory is entered in the course of such carriage for the proper conduct of the international Customs transit operation.

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

4. The railway companies (railways) shall be liable to the competent authorities of their countries in accordance with national legislation for any Customs payments, which may become due as a result of an infringement or irregularity committed in the course of or in connection with the underlying transit operation.

Article 9

Exemption from duties and taxes

A railway company (railway) responsible for the proper conduct of an international Customs transit operation in accordance with the provisions of this Convention shall be exempted from Customs payments in the event of the loss or destruction of goods in carriage as a result of force majeure or accident, duly established, and natural wear or shrinkage under normal conditions of transport and storage.

Article 10

Guarantee waiver

For the purposes of applying this Convention, the railway companies (railways) of the Contracting Parties shall be exempted from the obligation to furnish a financial guarantee for Customs payments to the competent authorities, unless otherwise provided for by the national legislation of the Contracting Party.

Article 11

Label

Railway companies shall ensure that when consignments are carried by rail under international Customs transit procedures in accordance with the provisions of this Convention the Consignment Note bears a special mark (stamp), a specimen of which is given in Annex 1.

Article 12

Amendment of the carriage contract

1. Railway companies (railways) shall not be permitted to modify a carriage contract without prior agreement from Customs at the point where the contract is modified.
2. Customs at the point where the contract is modified means the Customs office in whose jurisdiction the railway station where the movement of goods has been interrupted with a view to modifying the carriage contract is located.

Article 13

Formalities at the Customs office of departure

At the start of a transport operation the goods, the vehicles and the Consignment Note shall be presented to the Customs office of departure together with the documents required for the purpose of completing formalities and controls in accordance with national legislation.

Article 14

Identification means

As a general rule, and having regard to identification means applied by the railway company (railway), the Customs office of departure may decide not to seal the wagons or the packages.

Article 15

Formalities at the Customs office of transit

Pursuant to this Convention, a Consignment Note shall be used as a Customs transit document for the processing of goods at Customs offices of transit.

Article 16

Formalities at the Customs office of destination

1. Upon completion of the international Customs transit procedure, the goods and vehicles shall be submitted by the railway company (railway) to the Customs office of destination together with the consignment Note and the transport documents.
2. The Customs office of destination, having duly completed the formalities of the international Customs transit procedure, shall forthwith return the Consignment Note to the railway company (railway).

Article 17

Infringements and irregularities

1. Where an infringement or irregularity is committed in the course of or in connection with an international Customs transit procedure carried out under this Convention, any Customs payments, due, must be made 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 of the country in which an infringement or irregularity has been committed, it shall be deemed to have been committed in the territory of the Contracting Party where it was discovered.

Article 18

Additional facilities

This Convention shall not prevent the application of additional 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 proper application of the provisions of this Convention.

Article 19

Electronic exchanges of data

Contracting Parties may, on the basis of bilateral and multilateral agreements designed to expedite Customs control at Customs offices of transit, organize electronic exchanges of the data contained in the Consignment Note and transport document.

CHAPTER II

EXPLANATORY NOTES

Article 20

The Explanatory Notes set out in Annex 2 to this Convention describe certain recommended practices and interpret certain provisions of this Convention. They 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 Agreement 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 the other States referred to in article 21, 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 the 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 the Convention as amended as of the date on which the amendment enters into force.

Article 23

Denunciation

Any Contracting Party may withdraw from this Convention by so notifying the depositary. 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 three, the Convention shall cease to have effect from the end of the twelve-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 members of the Committee shall be the Contracting Parties. The Committee may decide to admit to its sessions as observers, when matters concerning them are under discussion, the competent authorities of any Contracting Party to the SMGS Agreement which is not a Contracting Party to this Convention, or representatives of international organizations.
3. The Executive Secretary of the Economic Commission for Europe (hereinafter called the "Executive Secretary") shall provide the Committee with secretarial services.
4. The Committee shall elect a Chairman and a Vice-Chairman at every session.
5. The competent authorities of the Contracting Parties shall communicate to the Executive Secretary proposals for amendments to the present Convention and the reasons therefore, together with any requests for the inclusion of items on the agenda of the Committee. The Executive Secretary shall bring these communications to the attention of the competent authorities 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 once every five years;
 - (c) at the request of the competent authorities 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 authorities 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. By decision of the Committee pursuant to paragraph 2 of this article, the Executive Secretary shall invite the competent authorities of the States and the organizations referred to in the said paragraph 2 to send observers to attend 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 proposed amendments shall be adopted by the Committee by a majority of those present and voting. Proposed 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 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 article 27, paragraphs 1 and 2, 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 shall be 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.

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

Annex 1

Specimen mark (stamp)
(in accordance with article 11)

(Green on white background)

Annex 2

Explanatory notes

(in accordance with article 20)

0. MAIN TEXT OF THE CONVENTION

0.3 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 must 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.

0.13 Article 13

1. The Customs office of departure shall stamp sheets 1, 2 and an additional sheet of the SMGS freight bill 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.
