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Economic Commission for Europe**Inland Transport Committee****Working Party on Customs Questions affecting Transport****141st session**

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Item 4(b) of the provisional agenda

International Convention on the Harmonization of**Frontier Controls of Goods (1982):****Proposals for a new Annex 10 on sea ports****Proposal for a new Annex 10 on seaports****Note by the secretariat****I. Background and mandate**

1. The Administrative Committee of the Harmonization Convention (AC.3), at its tenth session in October 2014, recommended the initiation of consultations with interested stakeholders on the elaboration of a new Annex 10 to the Harmonization Convention on border crossing procedures at seaports. (see ECE/TRANS/WP.30/AC.3/20, para. 14).
2. Pursuant to informal consultations during 2014–2015, it transpired that a number of business associations and national experts welcomed the elaboration of a new Annex to the Harmonization Convention that would contribute to improving cooperation between border control agencies and private operators at sea ports. At its previous session, the Working Party on Customs Questions Affecting transport (WP.30) requested the secretariat to prepare a first draft of a possible new Annex 10, to serve as a basis for further discussions (see ECE/TRANS/WP.30/280, para. 42).
3. In line with this request, the secretariat has prepared a preliminary first draft of a new Annex 10, presented in the annex to this document, for the consideration and comments of delegations, organizations and industry representatives.

II. Existing international legal framework relevant to port procedures

4. There is not, currently, a single, international and comprehensive legal instrument dedicated exclusively to customs procedures at seaports. However, there are several international conventions and other legal instruments that either include seaports, or refer to specific aspects of port procedures. Such instruments should be taken into account in the preparation of a potential new Annex 10 to the Harmonization Convention. In the first instance, the new Annex would need to be aligned with, or at least, not contradict, existing obligations incumbent upon Port and Flag States. As a further step, Contracting Parties could, if they so wish, look into additional elements that could be addressed in the new Annex. The secretariat has compiled a non-exhaustive inventory of the key international legal instruments, together with a short summary of their content, for the information of the Working Party.

A. Revised Kyoto Convention on the Simplification and Harmonization of Customs procedures

5. It elaborates key governing principles that apply to all customs procedures including those carried out at ports. The main elements of the Convention include:

- Transparency and predictability of customs actions;
- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary customs control to ensure compliance with regulations;
- Use of risk management and audit-based controls;
- Coordinated interventions with other border agencies.

B. Convention on the Facilitation of International Maritime Traffic (FAL)

6. The main objectives of this Convention are to prevent unnecessary delays in maritime traffic, to aid cooperation between Governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. In particular, the Convention reduces the number of declarations which can be required by public authorities.

7. In its Annex, the Convention contains “Standards” and “Recommended Practices” on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo. The Convention defines standards as internationally agreed measures which are “necessary and practicable in order to facilitate international maritime traffic” and recommended practices and measures the application of which is “desirable”.

8. The Convention provides that any Contracting Party which finds it impracticable to comply with any international standard, or deems it necessary to adopt differing regulations, must inform the Secretary-General of IMO¹ of the “differences” between its

¹ International Maritime Organization

own practices and the standards in question. The same procedure applies to new or amended standards.

9. In the case of recommended practices, Contracting Parties are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord.

10. This flexible concept of standards and recommended practices, coupled with the other provisions, allows continuing progress to be made towards the formulation and adoption of uniform measures in the facilitation of international maritime traffic.

C. International Ship and Port Facility Security (ISPS) Code

11. It constitutes an amendment to the IMO Safety of Life at Sea (SOLAS) Convention (1974/1988) on minimum security arrangements for ships, ports and government agencies. Having come into force in 2004, it prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to “detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade”. Although security oriented, the Code does play a role in currently applied port procedures, including customs procedures.

12. The Code does not prescribe specific measures that each port and ship must take to ensure the safety of the facility against terrorism because of the many different types and sizes of these facilities. Instead it outlines “a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities”.

D. The Revised Arusha Declaration

13. The Arusha Declaration was initially adopted in 1993 in Arusha, Tanzania and was revised in 2003. The Revised Arusha Declaration is the focal tool and central feature of a global and effective approach to preventing corruption and increasing the level of integrity in customs. Part of its content applies to port procedures, in that it recommends that:

“Customs laws, regulations, administrative guidelines and procedures should be harmonized and simplified to the greatest extent possible so that customs formalities can proceed without undue burden. This process involves the adoption of internationally agreed conventions, other instruments and accepted standards. Customs practices should be reviewed and redeveloped to eliminate red tape and reduce unnecessary duplication. Duty rates should be moderated where possible and exemptions to standard rules be minimized. Systems and procedures should be in accordance with the revised International Convention on the Simplification and Harmonization of Customs Procedures”.

E. WCO² SAFE Framework of Standards

14. It is designed to secure revenue collections and promote trade facilitation worldwide. In 2007 a major section on the conditions and requirements for customs and Authorized Economic Operators (AEO) was added. Most major ports today operate on the basis of AEO facilities.

² World Customs Organization

F. WTO Trade Facilitation Agreement

15. The Trade Facilitation Agreement (TFA) was concluded at the Bali Ministerial Conference, as part of a wider “Bali Package”. It contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area. The WTO³ TFA also includes customs procedures at ports within its scope.

G. Policy initiatives

16. The European Commission has taken a series of measures to simplify procedures in ports, in particular by avoiding unnecessary controls by customs for the movement of goods within the internal market.

17. The EU policy framework calls for increasing the competitiveness of the maritime transport sector by allowing vessels to operate freely within the EU internal market with a minimum of red tape, including simplification and harmonization measures for maritime transport from third-country ports.

18. As part of its action plan, the Commission adopted Regulation (EU) No 177/2010 introducing streamlined procedures for the so-called “regular shipping services” (RSS) performed by authorized companies. Another part of the action plan, is the e-Maritime initiative, which aims to foster the use of advanced information technologies for the maritime transport sector by promoting interoperability and facilitating the electronic communication between the different actors involved in maritime transport. A first step to implement the e-Maritime initiative is Directive 2010/65/EU according to which ship reporting formalities shall be transmitted and exchanged electronically via National Single Windows (NSW).

III. Considerations by the Working Party

19. The Working Party is invited to consider the existing international framework in the development of a new Annex 10, in order to avoid the possibility of incompatible obligations. Delegations are, further, invited to discuss the preliminary draft prepared by the secretariat, as contained in annex, and to consult with the relevant authorities in their country as to the direction of future work on this issue.

³ World Trade Organization

**United Nations International Convention on the
Harmonization of Frontier Controls of Goods, 1982
("Harmonization Convention")**

Draft Annex 10

**Facilitation of border crossing procedures for international
maritime freight**

**Article 1
Principles**

1. This Annex, supplementing the provisions of the Convention, is intended to define the steps that need to be taken to facilitate and expedite the crossing of borders for international maritime freight.
2. The Contracting Parties shall undertake to cooperate in order to facilitate and standardize, as fully as possible, formalities and requirements in respect of documents or procedures in connection with the controls of goods carried by maritime transport.
3. The present Annex shall apply without prejudice to applicable international standards and agreements.

**Article 2
Facilitation of visa procedures for maritime crews**

1. The Contracting Parties shall endeavour to facilitate the procedures for granting visas for maritime crews engaged in international long-haul and cabotage freight in accordance with national and, where applicable, international legislation.
2. The Contracting Parties agree to regularly exchange information on best practices with regard to the facilitation of visa procedures for maritime crews.

**Article 4
International maritime transport operations**

1. In order to facilitate the international movement of goods, the Contracting Parties shall regularly inform all parties involved in international transport operations in a harmonized and coordinated manner on border control requirements for international maritime ports as well as on the actual situation in ports.
2. Contracting Parties shall endeavour to transfer, to the extent possible, all necessary control procedures to the places of departure and destination of the goods transported by sea so as to alleviate congestion at maritime ports.
3. Referring in particular to Article 7 of this Convention, priority shall be given to urgent consignments, e.g. live animals and perishable goods. In particular, the competent services and authorities at border crossing points in maritime ports in cooperation with relevant stakeholders:
 - (i) shall take the necessary measures to minimize waiting times for vessels transporting perishable foodstuffs or for vessels transporting live animals, as from their time of arrival in the port until their border, customs, sanitary-quarantine, quarantine, phytosanitary and veterinary controls;

(ii) shall ensure that the required controls mentioned under paragraph (i) are carried out as quickly as possible;

(iii) shall allow, as far as possible, the operation of the necessary refrigerating units of containers carrying perishable foodstuffs during the time of discharge of the goods, unless this is impossible as a result of the required control or discharge procedure;

(iv) shall co-operate, in particular through advance information exchange, with their counterparts in other Contracting Parties in order to accelerate procedures for perishable foodstuffs and live animals, in case these loads are subject to sanitary and veterinary inspections.

Article 5 **Facilities at maritime ports**

1. To rationalize and expedite the required formalities at maritime ports, the Contracting Parties in cooperation with relevant stakeholders shall endeavor to ensure, to the extent possible, that ports are equipped with:

(i) buildings (premises), facilities and technical equipment enabling them to carry out daily and round-the-clock controls, if this is justified and is appropriate to the volume of freight traffic;

(ii) Technical equipment allowing for phytosanitary, veterinary and other controls;

(iii) Adequate carrying and traffic capacity of ports and of hinterland transport infrastructure for the volume of traffic;

(iv) Inspection areas, as well as warehouses for the temporary storage of goods subject to customs or other forms of control, including storage of perishable foodstuffs;

(vi) Sufficient and qualified staff for all services, including customs, border and other agencies;

(vii) Information technology and communications systems that will enable the electronic exchange of advance information pertaining to the ship and its cargo for customs, as well as security purposes.

Article 6 **Controls**

The Contracting Parties:

(i) Shall endeavour to expedite required control formalities by establishing, to the extent possible, mechanisms for reciprocal recognition of some forms of control of vessels, containers and goods, provided the objectives thereof coincide;

(ii) Shall, to the extent possible, grant facilitations and simplified control procedures on the basis of risk assessment.

(iv) Without prejudice to the applicable provisions of this Convention, shall carry out inspections of transit goods only in cases where these are warranted by the actual circumstances or risks.

Article 7 **Time limits**

The Contracting Parties, in cooperation with relevant stakeholders, shall endeavour to determine time limits for technical operations involving the reception of vessels in ports, including all types of controls, and shall endeavour to reduce these time limits by

improving the technology and equipment used. The Contracting Parties shall monitor their achieved reduction in time limits.

Article 8
Documentation

1. The Contracting Parties shall ensure that shipping and accompanying documents are properly formulated in accordance with the legislation of the importing and transit countries. The Contracting Parties shall endeavour to reduce the number of documents required for import, export and transit of goods entering or leaving the port by sea or hinterland, as required.
2. In their mutual relations, the Contracting Parties shall endeavour to reduce paper documents and to simplify documentation procedures by using electronic systems for the exchange of information. The Contracting Parties shall endeavour to use electronic systems for the exchange of information as a single point of receipt and processing of the information and, as far as possible, payment of port, customs and other duties.
3. The Contracting Parties shall endeavour to provide customs authorities with advance information on goods arriving in ports.
4. The Contracting Parties shall endeavour to use uniform or harmonized transport and regulatory documents, in particular under multimodal deliveries.

Article 9
Reporting mechanism

With regard to Articles 1 to 6 of this Annex, the Executive Secretary of the Economic Commission for Europe of the United Nations (UNECE) shall carry out, every second year, a survey among Contracting Parties on progress made in the implementation of this Annex.
