



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/2005/27
4 October 2005

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

(One-hundred-and-eleventh session, 4–7 October 2005,
agenda item 5 (b) (ii))

**CUSTOMS CONVENTIONS ON THE TEMPORARY IMPORTATION OF PRIVATE
ROAD VEHICLES (1954) AND COMMERCIAL ROAD VEHICLES (1956) ***

Application of the Conventions

Interpretation of terms of the Conventions

**Transmitted by the International Touring Alliance/International Automobile Federation
(AIT/FIA)**

A. BACKGROUND

1. Article 13 (1954 Convention, Article 14 in the 1956 Convention) covers cases of authenticated accidents in which vehicles are badly damaged. The article states that re-exportation shall not be required, provided that (a) duties are paid; or (b) the vehicle is officially surrendered; or (c) the vehicle is destroyed under supervision.

2. At the end of Article 13 (14), paragraph 1 (c), are the words “as the Customs authorities may require”. Do these words apply to (c) only, or do Customs have the choice of (a), (b) or (c)? For example, if a vehicle is destroyed in an accident and the accident is duly authenticated by the

* The UNECE Transport Division has submitted the present document after the official documentation deadline due to planning oversight.

police, do the Customs authorities have the right to refuse official surrender under (b) and insist on the payment of duties under (a)?

3. It was brought to the attention of the Working Party at its one-hundred-and-seventh session in June 2004 that the English and French versions of the Conventions differed with regard to the placement of the words “as the Customs authorities may require”. The English version attaches this phrase to the end of sub-paragraph c) under paragraph 1. The French version attaches the phrase at the end of paragraph 1 but before the sub-paragraphs a) to c).

4. The Working Party decided to seek the view of the UN Office of Legal Affairs on this issue. The OLA subsequently stated they were “not in a position to interpret the Conventions in question.”

5. With a view to clarifying the issues, it has been proposed by the secretariat that Comments may be adopted providing non-binding views of the Contracting Parties on the interpretation of certain articles.

B. CONSIDERATIONS

6. In duly authenticated accidents, it is often the case that the vehicle is taken into the custody of the police. If the vehicle is retained by the police, i.e., not turned over to Customs, and therefore no option is available to request official surrender or supervised destruction, can the guaranteeing association still be held liable for the payment of a customs claim?

7. The Working Party, at its one-hundred-and-seventh session in June 2004, expressed the view that the Customs authorities should not have the right to claim since the custody of the vehicle by either the police or Customs authorities would be considered as abandoning it to the Exchequer.

8. Article 13.2 (14.2) states that when vehicles cannot be re-exported due to seizure, then the requirement for re-exportation is suspended for the duration of the seizure. The Conventions stipulates that a customs claim must be notified within one year of the expiry of the customs document, although this one-year deadline cannot apply to vehicles seized for lengthy periods. In such cases, at what point can a customs claim be notified? How is the termination of “seizure” defined?

9. The Working Party, at its one-hundred-and-seventh session in June 2004, expressed the view that a seizure stops all legal deadlines and the termination of seizure would require a court decision.

10. Article 13.3 (14.3) states that the Customs authorities are expected to notify the guaranteeing association of vehicles seized and advise it of the measures they intend to take. However the wording “so far as possible” weakens the obligation implied in “shall notify”. Under what circumstances would it be acceptable for the authorities not to notify the guaranteeing association of a vehicle seized and measures they intend to take?

11. The Working Party, at its one-hundred-and-seventh session in June 2004, decided to seek the view of the UN Office of Legal Affairs on this issue. The OLA subsequently stated that they were “not in a position to interpret the Conventions in question.”

12. The secretariat proposed that Explanatory Notes or comments be created to clarify this question. The Customs authorities may not know if a vehicle is in the custody of the police for example, but this information between government authorities should be exchanged if a claim arises.

13. The guaranteeing associations of the AIT and FIA are at times confronted with cases of fraud and criminal activity, where the driver or CPD holder is arrested and the vehicle confiscated. Article 28 covers fraud, contravention and abuse where proceedings can be taken and penalties imposed on the offending person. In the event of detention or imprisonment of a driver, along with the seizure or confiscation of his vehicle, can the guaranteeing association be held liable for the payment of a customs claim, even though re-exportation of the vehicle in question is impossible?

14. The Working Party, at its one-hundred-and-seventh session in June 2004, expressed the view that the requirement for re-exportation should be suspended for the duration of the seizure.

15. Article 31 refers to any breach of the provisions of the Convention, or substitution or false declaration or act that enables a person to improperly benefit from temporary importation. This article stipulates that the offender may be held liable to penalties prescribed by the laws of the country where the offence was committed. Can the guaranteeing association be held liable for the payment of such penalties?

16. The Working Party, at its one-hundred-and-seventh session in June 2004, expressed the view that the guaranteeing association could not be held liable for penalties.

17. Is there a statute of limitations, either implied in the vehicles Conventions or written into international law, on the resolution of customs claims? For example, if a customs claim is not resolved within the period of time stipulated in the Conventions and the Customs authorities make no attempt, through correspondence with the guaranteeing association, to follow up this case over the next few years, after what period of time can the claim be considered null and void?

18. The Working Party, at its one-hundred-and-seventh session in June 2004, decided to seek the view of the UN Office of Legal Affairs on this issue. The OLA subsequently stated that they were “not in a position to interpret the Conventions in question.”

19. Could the term force majeure be applied when customs claims cannot be resolved in the normal manner (i.e., within the deadlines prescribed in the Conventions) due to a break in diplomatic relations between two countries? For example, two countries sever diplomatic relations in 1990, then restore relations in 1995. Can customs claims outstanding in 1990 be considered invalid in 1995 due to force majeure?

20. The Working Party, at its one-hundred-and-seventh session in June 2004, decided to seek the view of the UN Office of Legal Affairs on this issue. The OLA subsequently stated they were “not in a position to interpret the Conventions in question.”

21. The AIT and FIA agreed to provide more details on cases where claims cannot be resolved in the normal manner due to the suspension in diplomatic relations, etc.

C. NEW ISSUE TO BE RAISED – CERTIFICATES OF LOCATION

22. The Certificate of Location, annex 4 to the 1954 and 1956 Conventions, states that “this certificate must be completed either by a consular authority of the country in which the papers should have been discharged, or by an official authority (customs, police, mayor, judicial officer, etc.) of the country in which the vehicle is examined.”

23. It is the view of the AIT and FIA that the Certificate of Location, if completed and stamped by an “official authority”, should be accepted without additional embassy endorsements or legalizations.

24. As an example, the Egyptian Customs authorities will not accept Certificates of Location stamped by the police or customs of Germany, Libya, the United Arab Emirates and other countries unless they are legalized or endorsed by an Egyptian consulate or embassy of those countries. This is not only costly and time-consuming, but the Egyptian officials abroad sometimes refuse as this does not fall within their scope of tasks.

25. The views of the Working Party on this matter would be appreciated.
