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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)

Note: The text below is reproduced by the Secretariat in the form in which it was received from OSZhD. Changes to the previous version of the draft, also submitted by OSZhD and distributed as document TRANS/WP.30/1999/13, are indicated in bold type. Editorial changes made by the Secretariat to align the English translation on the Russian text are indicated in italics.

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 **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 which entered into force on 1 November 1951;**

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

(d) The term "railway company (**railway**)" 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 "**Customs** office of departure" shall mean any Customs office *in* a country where *an* international Customs transit operation begins in respect of all or part of *a consignment*;

(i) The term "**Customs** office of destination" shall mean any Customs office *in* a country where *an* international Customs transit operation ends in respect of all or part of *a consignment*;

(j) 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;

(k) The term "**Customs 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, but not including fees and charges limited in amount to the approximate cost of services rendered;

(l) The term "principal" shall mean *a private individual or legal entity* which, if need be by means of an authorized representative, *manifests through* a declaration *designed for this purpose* a 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 (**railways**) 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

For the 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

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. Findings *reached* by the competent authorities of one Contracting Party 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

The competent authorities of the Contracting Parties shall communicate to one another, *insofar* as their laws permit, all information available to them which might contribute to the satisfactory application of this Convention.

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. **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.**
2. **Railway companies (railways) must arrange to keep the transport documents which they have at their disposal for at least three years.**

Article 8

Responsibilities

1. A railway company (**railway**) which accepts goods for carriage **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 railway company (**railway**) which 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. In accordance with the responsibilities stipulated in paragraphs 1 to 3, the railway companies (**railways**) *shall be* liable 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 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 **deriving from their nature and characteristics, including natural wear or shrinkage under normal conditions of transport.**

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 guarantee.

Article 11

Label

Railway companies (**railways**) 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.

~~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 carriage contract

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.

Article 13

Formalities on departure

At the start of a transport operation the consignment note shall be **presented to Customs at the** office of departure together with the documents required for the purpose of completing ~~[the]~~formalities and controls.

~~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 (**railway**), **Customs at the** office of departure shall not seal ~~[the]~~wagons or ~~[the]~~ packages.

Article 15

~~Waiver of~~ Formalities at the **Customs** office of transit

*Pursuant to this Convention, no formalities shall be carried out at **Customs** offices of transit.*

The **transport documents** 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 the **Customs office of** destination

The railway company (**railway**) *carrying out* the transport operation in the **country of destination shall submit to the Customs office of destination the consignment note and an additional copy of the freight bill.**

The Customs office of destination shall forthwith return **the consignment note** to the railway company (**railway**) after stamping **sheet 2** and shall retain the *additional copy of the freight bill*.

Article 17

Infringements and irregularities

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, **Customs payments**, if any, 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.

Where it is not possible to determine the territory *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 application of the provisions of this Convention.

Article 19

Electronic exchanges of data

The provisions of this Convention may be adapted, by means of bilateral or multilateral agreements between Contracting Parties, to allow the use of a *system of electronic exchanges of data* 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. *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 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

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.

This Convention shall enter into force for all additional 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.

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.

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 denounce 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 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 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 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 therefor, 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

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.

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.

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

Article 27

Amendment procedure

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

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.

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.

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

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.

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

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

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.

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.

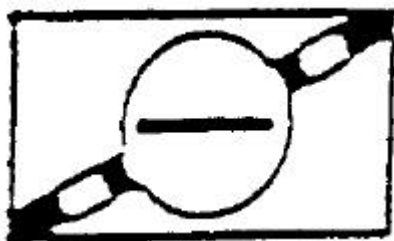
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

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

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

(Green on white 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 *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.

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.

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