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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport
(One-hundred-and-eleventh session, 4–7 October 2005,
agenda item 7 (b) (ii))

**CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT
OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION 1975) ***

Revision of the Convention

**Draft recommendation for the introduction of the HS-code
into the goods manifest of the TIR Carnet**

Note by the secretariat

A. BACKGROUND

1. At its one-hundred-and-tenth session, the Working Party considered document TRANS/WP.30/2005/13, containing in Annex 1 the text of a draft Recommendation on the use of the HS code prepared by the secretariat in consultation with the European Commission and the IRU and containing in Annex 2 an alternative text for a draft Recommendation prepared by the secretariat. The Working Party had an in-depth discussion of the pros and cons concerning the use of the HS-code in the context of the TIR procedure, i.e. taking into account the WCO Framework of Standards to secure and facilitate global trade. The Working Party agreed not to pursue the draft Recommendation contained in Annex 2 of document TRANS/WP.30/2005/13. The Working Party requested the secretariat, in consultation with the European Commission and

* The UNECE Transport Division has submitted the present document after the official documentation deadline

the IRU, bearing in mind the outcome of the discussions within the WCO, to revise the text of the draft Recommendation contained in Annex 1 of the said document, to clarify the issues of verification of the HS-code and the issue of liability of the operator and to transmit the revised proposal for consideration at the next session of the Working Party (TRANS/WP.30/220, para. 29).

B. WCO FRAMEWORK OF STANDARDS

2. In June 2005, the WCO Council unanimously adopted the WCO Framework of Standards to Secure and Facilitate Global Trade. The 17 standards that form an integral part of the document provide a structured and willing framework for Customs and their business partners to secure the international supply chain and facilitate the movement of legitimate goods being traded around the globe. Approximately 100 WCO Members signalled their intent to implement the Framework by depositing Declarations of Intent with the Secretariat.

3. Annex 1 of the WCO Framework includes, *inter alia*, standards for electronic submission of data to Customs. In particular, the exporter or his agent has to submit an advance electronic export Goods declaration to the Customs at export prior to the goods being loaded onto the means of transport or into the container being used for their exportation. For security purposes the Customs should not require the advance export Goods declaration to contain more than a specific set of data. As far as the goods are concerned, these data elements are:

- Tariff code number (code specifying a type of goods for Customs, transport, statistical or other regulatory purposes (generic term));
- If no code, description of goods (plain language description of the nature of a goods item sufficient to identify it for Customs, statistical or transport purposes).

The exporters have to confirm to the carrier in writing, preferably electronically, that they have submitted an advance export Goods declaration to Customs. Where the export Goods declaration was an incomplete or simplified declaration, it may have to be followed up by a supplementary declaration for other purposes such as the collection of trade statistics at a later stage as stipulated by national law.

4. In case of transit, the carrier or his agent has to submit an advance electronic cargo declaration to the Customs at export and/or at import. For maritime containerized shipments, the advance electronic cargo declaration should be lodged prior to the goods/container being loaded onto the vessel. For all other modes and shipments, it should be lodged prior to arrival of the means of transport at the Customs office at export and/or import. For security purposes, Customs should not require more than more than a specific set of data elements, including a brief cargo

description (plain language description of the cargo of a means of transport, in general terms only). The advance cargo declaration may have to be followed by a supplementary cargo declaration as stipulated by national law.

5. From the above provisions, it may be concluded that the HS code is not considered as an obligatory data element. Even in case of advance electronic export declarations it is the exporter as opposed to the carrier who is required to furnish the HS code, provided it is available.

C. FURTHER CONSIDERATIONS

Verification of the HS-code

6. According to paragraph 2 of the draft Recommendation, the Customs office of departure is requested to verify, where possible, the HS code against the export Customs declaration. Basically, here the use of the word "verify" is similar to the one in Explanatory Note 0.19: "*... to verify at least that the particulars in the goods manifest tally with those in the export documents and in the transport and other commercial documents relating to the goods...*". Thus, the Customs office of departure should check whether the HS code on the goods manifest coincides with the HS code as appeared on the export Customs declaration. It might be possible that the HS code is indicated not (or not only) on the export Customs declaration, but on other commercial or transport documents. In this case, the Customs office of departure may crosscheck the HS code with those documents as well.

Liability of the TIR Carnet holder

7. During the one-hundred-and-tenth session, some delegations as well as the IRU expressed the view that the introduction of the Recommendation should not extend the liabilities of the holder of a TIR Carnet. In this regard, the draft Recommendation seems to be clear:

- the absence of the HS code shall not lead to delays during a TIR transport, shall not be an obstacle to the acceptance of TIR Carnets, shall not be considered as an infringement of the Convention and shall not lead to any liabilities of the TIR Carnet holder;
- the same shall apply in those cases where the Customs authorities suspect that the HS code may be incorrect or where there are inconsistencies between the plain language description of the goods and the HS code.

8. However, as pointed out by the secretariat in document TRANS/WP.30/2005/13, it should be recalled that, once indicated under box 10 of the goods manifest, the HS code of the goods becomes a part of the Customs transit declaration. By signing off the vouchers of the TIR Carnet in boxes 13-15, the holder declares the information on the HS-code to be correct and complete.

This circumstance would contradict a non-committal nature of the Recommendation and may lead to extra liabilities of the TIR Carnet holder in accordance with national law.

9. To overcome this problem, the European Commission proposed to indicate the HS code of the goods under box 10 of the goods manifest on the voucher not for Customs use (yellow page). In this respect, it is worth noting that the legal status of the yellow page is not defined, as this voucher is not foreseen by Annex 1 to the TIR Convention. On the one hand, Customs authorities are not to fill-in boxes on the yellow page (to this end, even special crosses are put in the relevant boxes). On the other hand, according to the established practice, the holder also signs off the yellow page in boxes 13-15. Therefore, the question remains whether the yellow page filled-in by the holder may still be regarded as a Customs transit declaration, depending on national legislation.

10. The Working Party may wish to discuss the issues contained in the present document and reconsider the text of a draft Recommendation that is laid down in the annex. The Working Party may also wish to consider other means of providing additional information for the sustainability of the TIR transit operations.

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Annex

INTRODUCTION OF THE HS CODE OF GOODS IN THE TIR CARNET

**Recommendation adopted by the
Administrative Committee for the TIR Convention, 1975,**

on ...

The Administrative Committee,

Stressing the need for the application of effective risk management and risk assessment measures with regard to goods in transit;

Bearing in mind that a TIR transport is often preceded by an exportation declaration containing the commodity code of the goods made in accordance with the International Convention on the Harmonized Commodity Description and Coding System (the so-called HS code);

Recognizing the importance of the twin objective of identifying those goods that may pose a security risk and of facilitating the movement of other goods;

Convinced that, where access to the HS code is possible, its use in the TIR Carnet in addition to a plain language description of the goods could contribute to this objective;

Considering also that the inclusion of the HS code in the TIR Carnet would also facilitate electronic data processing;

Recognizing that relevant amendments to the TIR Convention being prepared under Phase III of the TIR revision process may take some time to enter into force;

1. Decides to recommend that TIR Carnet holders or any other persons filling-in the TIR Carnet on their behalf are to indicate the HS code of the goods under box 10 of the goods manifest [on all vouchers] [on the voucher not for Customs use (yellow page)]¹ of the TIR Carnet, in addition to a plain language description of the goods;

¹ The Working Party should, in particular, consider the two alternatives in [...] with a view to adopting the most appropriate one.

2. Urges the Customs authorities at the Customs office of departure to check, where applicable, whether the HS code shown on the goods manifest tallies with the HS code shown on the export Customs declaration and/or other commercial or transport documents.

If the TIR Carnet has been accepted by the Customs office of departure without indication of the HS code, the HS code should not be required either by subsequent Customs offices en route or by Customs offices of destination.

The absence of the HS code of the goods in the TIR Carnet shall not lead to delays during a TIR transport and shall not be an obstacle to the acceptance of TIR Carnets. The absence of the HS code shall not be considered as an infringement of the Convention and shall not lead to any liabilities of the TIR Carnet holder.

The same shall apply in those cases where the Customs authorities suspect that the HS code may be incorrect or where there are inconsistencies between the plain language description of the goods and the HS code.

Without prejudice to Article 8 paragraph 6 of the TIR Convention, the plain language description of the goods will be deemed to be correct in cases where there is an inconsistency between the plain language description and the description indicated by the HS code.

The practical application of this Recommendation shall be reviewed 12 months following the date of entry into force with a view to ensuring that it meets its objectives.

The present Recommendation will come into effect on
