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INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

(One-hundred-and-ninth session, 31 January - 4 February 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

Introduction of the HS-code into the goods manifest of the TIR Carnet

Transmitted by the European Community (EC)

A. BACKGROUND

1. During the one-hundred-and-eighth session of the Working Party, the European Community was invited to prepare a document on how the HS code is used in the context of Community transit and to highlight some of the issues that need to be considered in respect of the proposed recommendation set out in document TRANS/WP.30/2004/30 (TRANS/WP.30/216, para. 39).

B. USE OF THE HS CODE IN THE CONTEXT OF COMMUNITY TRANSIT

* The present document has been submitted after the official documentation deadline by the Transport Division due to resource constraints.

2. That which follows reflects the current legal situation. As was stated during the meeting of WP.30, the use of the HS code in the context of transit is subject to review in the light of the current plans to modernize the Community Customs Code (Regulation (EEC) 2913/1992) and in connection with developments relating to supply chain security.

3. Community rules require that box 33 ("Commodity Code") of the transit declaration shall be completed when the following conditions apply:

- Where the same person makes the transit declaration at the same time as, or following, a customs declaration which includes the commodity code; or
- Where the transit declaration covers the goods included in the list of goods "involving greater risk of fraud".

There is also a third, general condition which requires box 33 to be completed where this is required under Community legislation.

4. When box 33 has to be completed, the rules require the use of the HS code made up of at least 6 digits. In all other cases, the completion of box 33 (that is the use of the HS code) in respect of Community transit is optional.

C. ISSUES THAT NEED TO BE CONSIDERED

5. While the European Community agrees, in principle, that the use of the HS code in the context of the TIR carnet would be desirable, it believes that the proposed draft Recommendation requires careful consideration by the WP.30. As stated during the one-hundred-and-eighth session of the WP.30, the Community believes that, in particular, the issues laid down in paragraphs 6-10 below need to be considered.

6. As the main justification for the recommendation is to help the Customs authorities analyse risk, this presupposes that the declared HS code is correct. How will the correctness of the code be established? Would it be desirable or even practical for the office of departure to verify the accuracy? Or would it suffice to simply check that the HS code declared on the TIR Carnet is the same or matches the HS Code declared on, say, the export declaration?

7. What is the legal value of the HS code declared on the TIR Carnet? Would it form an integral part of the customs declaration? What would happen if it transpires that the HS code and the plain language description of the goods differ? Which description would prevail for the purposes of assessing any duties and taxes that might become due? In this context, what are the implications with regard to Article 8.6 of the TIR Convention?

8. The draft recommendation states that "very often" a TIR transport is preceded by the export procedure which would involve the use of the HS code in the export declaration. While that may be true, it is worth pointing out that, under Community rules, this equivalent requirement is limited to those cases where the "same person" makes both declarations. In the context of TIR, it is thought unlikely that the TIR carnet holder will also be the export declarant.

9. Finally, the draft recommendation states that where the HS code is not furnished, its absence shall not give rise to delays at the border nor will it be an obstacle to the acceptance of the TIR carnet. This implies that the provision of the HS code is optional and that the effect of either furnishing or not furnishing the data is neutral. This calls into question the status of the recommendation. The Community assumes that there is an expectation that recommendations of the WP.30 are to be applied and therefore sees a potential contradiction between the wording of the recommendation and what might happen in practice. In addition, does the statement that the absence of the HS code would not lead to delays etc. also apply to situations where the Customs authorities suspect that the HS code is incorrect or where it is inconsistent with the plain language description?

10. Furthermore, all the current discussions in several other fora in the field of security such as the ones in the UN on transport security and WCO on border security will certainly impact on the current discussion. Therefore, a question that should also be considered is whether these current discussions should not be linked with this new aspect in order to avoid duplication or disruption of recommendations in the area of the international transport of goods?

11. To conclude, this list of issues to be considered, which is not necessarily exhaustive, needs to be thoroughly considered by the WP.30 before proceeding with the adoption of this recommendation.
