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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE
Working Party on Customs Questions
affecting Transport
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CUSTOMS CONVENTION IN THE INTERNATIONAL TRANSPORT OF GOODS UNDER COVER OF TIR CARNETS (TIR CONVENTION 1975)

Revision of the Convention

Preparation of Phase III of the TIR revision process

Revision of the TIR Carnet, including the insertion of additional data elements

Final report of the European Commission Sub-group "Data"

Transmitted by the European Community

Note: The secretariat reproduces below a communication transmitted by the European Commission.

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INTRODUCTION

1. The Sub-group 'Data' was established in December 2000 on a recommendation of the Transit Contact Group with the mandate to examine, within the context of the international exchange of data, the possibility of providing further useful data on the goods in a transit declaration.

2. The Sub-group 'Data' comprises representatives from both operators and national customs. Its members were selected to reflect various interests in the transit procedure (*i.e.* size of companies, different sectors and modes of transport, balance between Community transit and common transit countries, balance between countries of departure/transit/destination etc.). The list of members is annexed to this report.

3. The Sub-group adopted its terms of reference at its first meeting and which are annexed to this report. During the first two meetings, the Sub-group discussed the practical aspects that are connected to the supply of data without reference to the existing regulatory framework. A further two meetings were devoted to a discussion on the policy aspects of this issue. This final report summarises the Sub-group's discussions and aims to distil, as far as possible, the common viewpoint (when there is no consensus on a given topic, the different views are mentioned). It concludes with a number of recommendations that should form part of any policy considerations on adding data on goods in the transit declaration.

4. The work of the Sub-group, and its reports, must be distinguished from the report on the supply of data that the Joint Committee/Commission is required to draft, before 1 January 2003, under article 7(9) of Decision 1/2000 on Common Transit[1] and article 3 of Commission regulation 2787/2000[2].

[1] Decision no. 1/2000 of the EC-EFTA Joint Committee on Common Transit of 20 December 2000 amending the Convention of 20 May 1987 on a common transit procedure, OJ L 9, 12.1.2001.
[2] Commission regulation 2787/2000 of 15 December 2000 amending Regulation 2454/93 laying down provisions for the implementation of Council Regulation 2913/92 establishing the Community Customs Code, OJ L 330, 27.12.2000.

REPORT OF THE DISCUSSION

2.1 Defining the objectives

5. The first meeting mainly served to identify the needs of customs in respect of additional data in the transit declaration. To assist this process, a working document[3] had been drafted by the Commission services in which three objectives were put forward that might suggest new data requirements: 1) management of the guarantee and calculation of customs debt, 2) risk analysis and post importation audit, and, 3) statistics.

6. The Sub-group examined these objectives. On balance, the Sub-group reached the conclusion that the computerisation of transit would already much improve the present situation and that there was therefore no priority to identify new data for objective 3 (statistics). Another factor against pursuing the objective 3 at this stage was the already large amount of statistical data provided by the trade today. This would suggest that an assessment of the exploitation of existing statistical data, outside the scope of NCTS, should come first before a demand for more transit data was introduced.

7. Consequently, the remainder of the discussion centred on which additional data on goods in the transit declaration might be needed with respect to the objectives 1 and 2 and that could be provided without too great difficulties.

2.2 Defining the data and scope of examination

8. The Sub-group agreed to examine a limited number of data in respect of each objective. For objective 1 this was the data that constitutes the information on the elements of taxation, *i.e.* the CN/HS-code, value and quantity. For the purpose of objective 2 more data was considered: CN/HS-code, value, quantity, consignor, transporter, and consignee.

9. With respect to the data for each objective, members of the Sub-group were invited to set out their views to a number of practical questions. The questions put to operators aimed to identify where the data could be found, how operators received or could receive this data, who held this data, how operators supplied or could supply or make accessible this data to customs and what the impact of supplying the data would be in terms of cost and organisation. In addition, the operators were asked what other alternatives with regard to this data they considered viable.

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[3] TAXUD/921/2000 of 22.11.2000.

10. The questions put to customs were to identify the point in time at which this data was needed, the format in which the data should be available, the place where the data should be supplied or be accessible, and, the time period during which the data should remain available. The response on these questions is treated under point 2.4 ('horizontal aspects').

2.3 Examination of the practical aspects linked to the supply of certain data on goods in the transit declaration

11. The following summarises the examination of the practical aspects regarding the supply of data for each individual data element. Except where indicated otherwise, the results of the discussion on the CN/HS-code, value and quantity data elements are valid to both objectives 1 and 2.

CN/HS-code

12. Where customs saw a desirability for the supply of the CN/HS-code, on balance, they also favoured making a distinction between users of an individual guarantee and users of a comprehensive guarantee (see under point 2.4). Users of the comprehensive guarantee could keep the information in their administration for the purposes of calculating the reference amount, its yearly review, and for audit purposes. The detail of the goods-code considered useful by customs ranged from 4[*] to 10 digits.

13. One customs delegate emphasised that the processing of the CN/HS-code would only be useful in an electronic environment (for transit this is the NCTS) and another delegate that the structure of the messages within NCTS needed to be adapted so that the information is available to both the offices of departure and destination.

14. The Sub-Group were reminded that, in respect of the comprehensive guarantee, the principal has to monitor the use of the reference amount for each single transit operation, either on the basis of actual data or on a "flat rate" amount. Under the NCTS guarantee management subsystem, the reference amount will be charged at the level of EUR 7000 if no more pertinent data is available.

[*] It should be noted that the 4-digit requirement was mentioned with respect to objective 2 (risk analysis) and would not be useful for the calculation of a customs debt.

15. Several customs administrations did not see any need for the supply of the CN/HS-code to meet the objective 1, and, to a lesser extent also no need for this information to meet the objective 2.

16. Operators pointed out that the CN/HS-code may be found in the export declaration or is available from the person in charge of the import declaration. However, often this information is not available to the transit operator, or, is not available in the time window in which the transit operation takes place. This may be the case for a certain mode of transport (for example airlines) or be dependant on the direction of traffic (outbound -, inbound -, or through-going transit[4]) or the contractual terms.

17. Regarding a large number of outbound -, or through-going transit operations, the CN/HS-code would not be available, or available only in the form of a generic code. For inbound transit operations, the code would be(come) available in cases where the principal also declared for free circulation. However, even in this case the supply of the data at the time of the transit declaration would slow down traffic and reduce interest in using the transit procedure.

18. In inbound transit, the principal may also be responsible for the declaration for the next customs procedure (requiring a CN/HS-code) in which case he could supply the code on the transit declaration. However, in practical terms this would only be the case where (according to Incoterms) there is a contractual clause ‘delivered duty paid’ (DDP) requiring a full set of data, as opposed to the clause ‘delivered duty unpaid’ (requiring a similar set of data as for the current transit declaration). In the specific case of the express industry a CN/HS-code would not be available for any Incoterm.

19. Furthermore, the CN/HS-code may not prove to be reliable when received from third country exporters, nor when an operator assigns it on the basis of information submitted by a customer as this will introduce an element of subjective interpretation.

20. In the specific case of transport by rail, the ‘NHM’-code is used, which is similar to the CN/HS-code. The code is mandatory in the CIM-waybill as well as on the transfer TR form but this information is not always computerised.

[4] The terms outbound, inbound or through-going are used to describe, respectively, transit operations following an export declaration, transit preceding a subsequent customs procedure, and pure transit of the customs territory.

21. Other objections from operators to the supply of the CN/HS-code mainly concern the lack of facilities to process the code[**] (with further complications where these facilities are based on internationally standardised systems for the exchange of data), the large volume of individual items that would require a code, and the additional costs and investments that would be involved. This was particularly relevant to multi-item consignments such as mixed consignments and consolidated consignments. Also the point was made that activities such as forwarding multi-item consignments with a great number of articles in small quantities pose no risk and should therefore, not be burdened with a requirement to supply further data.

22. Operators, moreover, pointed out that the EU could not act in isolation by requiring a CN/HS-code or excessive data elements for transit movements, particularly for inbound and through-going movements. To do so before international agreements were in place world-wide that defined the data elements required at export, would add cost to industry in the EU, and make them less competitive. This is applied equally to the manual procedures and the NCTS.

Value

23. This information could generally be taken from the (pro forma) invoice. Invoices are normally kept in the company records for tax purposes over a number of years and are therefore open to customs inspection. However, there are important exceptions where the invoice is not available to the principal of the transit operation. This is usually the case where the principal starts the transit operation following a simplified export procedure (the information is declared later by the exporter) or is only concerned with transportation or the organisation of transportation and has no link with the customs procedures preceding or following the transit operation. Even on the import side, where the principal is also in charge of the declaration for the procedure following the transit operation it appears that the principal/declarant does not in all cases receives a full set of data. The full set would be available only on the basis of contracts with a clause 'delivered duty paid' (’DDP). In the specific case of maritime transport no data on value is made available under the transport contract due to the regulation of liability in the various Conventions.

24. Finally, all operators emphasised the commercial sensitivity of information on value and the need to ensure that this information is not passed down to the next person in the chain of transactions.

[**] Some operators would experience practical difficulties in supplying a code of more than 6-digits even if such a code is produced by the exporter in the country of dispatch.

Quantity

25. This data concerns the unit that is taken as the basis for the application of the tariff on a particular product. That means mainly the net mass but may also include other units (for example: a fixed amount per hl or piece). The data is therefore directly connected to the classification of a product under a CN/HS-code and would be inserted in boxes 41 or 47 SAD. It must be distinguished from the number and kind of packages and gross mass which are already mandatory data elements (boxes 31 and 35 SAD).

26. On balance, the view of customs favoured making a distinction between users of an individual guarantee and users of a comprehensive guarantee (see under point 2.4). Users of the comprehensive guarantee could keep the information in their administration for the purposes of calculating the reference amount, its yearly review, and for audit purposes.

27. Several customs administrations were of the opinion that this data element would be of no or little use for the purpose of objective 2 (risk analysis), at least in a paper-based system.

28. Operators indicated that data on quantity can be found in the invoice, the supply note (in simplified export procedures), the export declaration or is indicated in loading lists accompanying the transit declaration. In practice, however, the data may not be available at the time the transit declaration is made as this may depend on the character of the transit operation ('outbound', 'inbound' or 'through-going' transit[5]) and the terms of contract applicable to the goods transaction. In any case, no data would be available to the transporter or forwarding agent acting as principal and charged only with the transport of goods.

Consignor

29. This is an optional data element for transit purposes (box 2 SAD) but generally operators could supply the data without practical difficulties.

Transporter

30. The identity of the transporter may be indirectly drawn from the data elements declared in boxes 18 and 21 SAD (identity of means of transport at departure and crossing the border respectively). In the majority of cases, the data element would be available to operators.

[5] See footnote 4.

Consignee

31. This is a mandatory data requirement where the consignee is established within the Community or an EFTA country (box 8 SAD) and is optional in all other cases. The data appears to be generally available and could be supplied also in the cases where this is an optional requirement.

2.4 Horizontal aspects

Point in time when data is needed

32. The contributions from customs ranged from a general demand for data at the time the transit declaration was submitted to a modulated approach depending on the type of guarantee used or the objective pursued. Where a distinction on the basis of the guarantee was made, users of an individual guarantee would be obliged to supply the data at the time of the transit declaration. The users of a comprehensive guarantee would be allowed to keep the data available in their administration (for example where the data is used to calculate the reference amount) and the data would not necessarily need to be available at the time the declaration was submitted. With regard to the objectives, some customs administrations felt that for the purpose of risk analysis the need for data arises prior to or at the time the actual transit movement takes place, for others this analysis formed part of the customs audit of operators.

Place

33. The data would either be required by the customs office of departure, office of guarantee or could remain stored at the traders' premises depending on the status of the trader (authorised consignor, the type of guarantee used) or whether the data was used for meeting objectives 1 or 2. With regard to the objective 2 (risk analysis), some customs administrations specified that the place for the data would be within the computerised transit system (NCTS).

Format

34. Customs' views on this point reflected their position on the perceived need for further data. Those who emphasised the need for data in the transit declaration referred to the (manual/computerised) declaration standards. Where customs based the need for data for the purpose of calculating and monitoring the reference amount under the comprehensive guarantee or to carry out audits, they could accept various data formats. In this respect, the operators repeatedly underlined the absence of a single platform to communicate with national customs

authorities (interface problem) which complicated the transfer of data and increased the administrative burden.

Time limit

35. One of the questions posed to customs was for how long the data should remain available. The response showed that national time limits on taxation would need to be respected, ranging from six (UK) to 10 years (D), as well as the time limit for the communication of the customs debt (i.e. a minimum of three years from the date on which the debt was incurred).

Cost and impact

36. Almost all operators stressed the significant extra cost connected to the supply of the CN/HS-code in the form of extra staff and equipment and the adaptation to different customs platforms for the exchange of data. Also, regard should be taken of the macro-economic cost that might arise if transit became less attractive to operators who might then decide to opt for customs clearance at the border. In this regard, it was held by some customs administrations that a demand for further data should be contemplated only within a computerised environment (NCTS).

37. Another point brought under this heading was the need to protect the commercial sensitivity of data concerning the value of goods.

POLICY RECOMMENDATIONS

3.1 Introduction

38. After the inventory and discussions of the practical aspects the Sub-group set out to identify the policy issues connected to the supply of additional data in the transit declaration.

39. The Sub-group identified the economic importance of the transit regime(s) as instrument of trade facilitation. It held that its function would be undermined by additional data that risk diverting traffic away from the transit regime(s), with a consequent risk of border delays and high compliance costs for business. On the other hand, effective and efficient transit regimes translate into increased competitiveness for the European economies in the global trading environment.

40. Another important policy aspect is to understand that the position of the principal in the logistic chain poses problems in particular with regard to obtaining certain data and its accuracy due to the absence of an international agreement that guarantees the generation of accurate data at the start of the transactions in question.

41. Furthermore, it was recognised that under the transit scheme(s) simplifications are available to operators whose reliability has been verified and is monitored ('authorised traders'). This relationship of close co-operation with customs contributes to the correct use of the transit scheme(s) and should be weighted in any policy seeking to improve the control and monitoring of the transit scheme(s) through additional data requirements.

3.2 Recommendations

42. The discussions permitted the Sub-group to formulate a number of recommendations that it views as essential to any policy considerations with regard to the addition of data on goods in the transit declaration. These recommendations are the following:

1. Access to the transit scheme(s) should not be jeopardised by requiring additional data on the transit declaration without taking into account the appropriate balance between trade facilitation and customs control. As a form of trade facilitation transit should be available with a minimum of formalities.
2. Care must be taken not to undermine the purpose of the transit declaration as a 'surveillance document' by placing it on an equal footing with the import declaration by means of additional data requirements.
3. Any policy seeking additional data in the transit declaration should have due regard to the possibility that this may result in operators giving preference to border clearance and thus undermine policies to foster 'proximity' clearance of goods.
4. Authorised traders whose reliability is verified and monitored through close co-operation with customs should not be required to supply additional data on the transit declaration as their records allow full investigation after transit has taken place.
5. The requirement to supply a CN/HS-code in cases that are not already covered by law should only be contemplated on condition that an international agreement is implemented on a world-wide basis which ensures that an accurate CN/HS-code is entered at the time of the export of the goods.
6. Both computerised transit ('NCTS') and the paper-based system should be based on identical principles. The introduction of NCTS should therefore not be used to demand new data in the transit declaration.

7. As new data would engage the legal responsibility of the transit principal with respect to their accuracy, such engagement should only be considered when that accuracy could be reasonably easily achieved.
8. An evaluation of the results of the transit reform should precede a demand for new data.
9. New data requirements, in particular data on value, should respect the principle of protection of commercial secrecy.

Annex

Sub-group "Data"

Terms of reference

The sub-group 'Data' of the Transit Contact Group adopts the following terms of reference:
Mandate:

(1) To establish the needs of customs and operators for information for the management and control of transit procedures and to identify the specific data that could be provided by operators to meet those needs, taking into account the use of data-processing techniques.
(2) To identify the sources and information circuits of data as well as the persons or categories of persons suitable to provide them, taking into consideration the functioning of international trade as well as its development.
(3) To formulate recommendations with regard to the transit legislation of the Community and other relevant international instruments, such as the Conventions on common transit and TIR.
(4) To formulate recommendations on a practical level (with regard to the 'seamless' flow of data), in order to access and make use of the data required.

Organisation:

(1) The sub-group is established for the period of one year during which it will hold four sessions.
(2) The sub-group is chaired by a representative of the Commission.
(3) The Commission will organise the meetings of the sub-group (meeting room, translation of documents, interpretation, preparation of a draft agenda, etc.).
(3) The Commission will report on the findings of the sub-group in an interim report for the 6th meeting of the Transit Contact Group (planned in June 2001) and prepare a final report for the 7th meeting of the Transit Contact Group (planned in December 2001).

These terms of reference reflect and complete the draft terms of reference contained in working document XXI/1166/99 of 23 June 1999.

Members of the Sub-group 'Data'

European Associations	**Customs Administrations**
Association of European Airlines (AEA)	Belgium
Communauté des Chemins de Fer Européens (CCFE)	Czech Republic
Confederation of European Community Cigarette Manufacturers (CECCM)	Germany
Comité de Liaison Européen des Commissionnaires et Auxiliaires de Transport (CLECAT)/ International Federation of Freight Forwarders' Associations (FIATA)	France
European Community Shipowners' Associations (ECSA)	Italy
European Express Association (EEA)	Netherlands
European Shippers' Council (ESC)	Spain
The Retail, Wholesale & International Trade Representation to the European Union (EuroCommerce)	Switzerland
Freight Forward Europe (FFE)	United Kingdom
Organisation of Shipsuppliers in EC countries (OCEAN)	