



**THIRD ANNUAL MEETING
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Yerevan / Republic of Armenia, October 9-10, 2003

**ТРЕТЬЕ ЕЖЕГОДНОЕ ЗАСЕДАНИЕ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Ереван / Республика Армения, 9-10 октября 2003 г.

Technical Annex to the Basic Multilateral Agreement on Multimodal Transport

Article 1 General Provisions

This Technical Annex regulates relations between transport entities, Multimodal Transport Operators, consignors and consignees, as well as other physical and legal entities, acting on behalf of consignors, carrying goods in multimodal services, with the use of rail, sea, river, road transport and ferry connections. The Technical Annex defines rights, obligations and responsibilities of each participant of transport.

Article 2 Definitions

This Technical Annex contains the following definitions:

1. "Multimodal Transport" – transport of goods, carried out by 2 or more transport modes.
2. "Direct Multimodal Transport" - transport of goods, carried out by 2 or more transport modes, on the base of the common transport document, applicable for the whole trip.
3. "Multimodal Transport Operator" – any legal entity, irrespective of its legal form and form of ownership, transporting goods for a certain fee by two or more transport modes, ensuring safety of goods and strictly following the terms and timing, provided by Multimodal Transport Contract and other contractual obligations.
4. "Multimodal Transport Contract" - the Contract between Multimodal Transport Operator or other carrier with the goods owner (forwarder) on transport of goods by two or more transport modes.

Article 3 Purposes

1. Purposes of this Technical Annex are the following: ensure high quality services in multimodal transport, design similar requirements to multimodal transport forwarders and operators in implementing provisions of Multimodal Transport Contract, improve economic efficiency of transport of goods.

2. Multimodal transport is regulated by executive transport authorities in the Parties and other executive bodies within their jurisdiction. In accordance with international agreements, this Technical Annex and other laws and regulations in the Parties, executive transport authorities are considered to be in charge for the issue of rules of multimodal transport of goods by rail, river, sea, road transport and ferry connection, statements, instructions and other documents within their jurisdiction, containing rules of law and regulating relations in multimodal transport, which are mandatory for all legal and physical persons.

Article 4 Organization of Multimodal Transport of Goods

1. The multimodal transport procedure is regulated by the relevant codes, charters and rules, existing in the Parties for each transport mode. Multimodal transport includes:
 - a) Railway stations, available for goods transport operations;
 - b) Sea and river ports (hereinafter referred as "ports");
 - c) Truck terminals and loading bays

Ports, truck terminals and loading bays shall become parts of direct multimodal connection, from the time of sending a written message by cable or else to the relevant executive body, with further publishing the listing of such ports, truck terminals and loading bays in the guides with transport rules and tariffs of executive bodies in the Parties, applicable for the relevant transport mode.

2. During the multimodal transport of goods, loading operations shall be carried out by:

- a) Ports, when loading goods from sea and river vessels and ports' warehouses to wagons or motor-vehicles and ports, when loading goods from wagons or motor-vehicles to sea and river vessels and ports' warehouses;
- b) Railways, when loading goods from wagons and railway stations' warehouses to motor-vehicles and from motor-vehicles to wagons and railway stations' warehouses.

3. Goods and transport vehicles with goods, delivered to traffic hubs before the announced deadline for goods receipt, shall be accepted by ports from railways and road carriers without any difficulty.

Goods and transport vehicles with goods, delivered to traffic hubs after the announced deadline for goods receipt, can be handed over to ports for storage, with their prior Contract. In case that port rejects to store goods, railways and road carriers shall contact a consignor to agree further activities. Afore-mentioned situations increase delivery time of goods.

4. Handing over of goods in sealed wagons or containers shall be carried out in traffic hubs with immediate control of seals for conformity with traffic documents.

Goods, transported in multimodal communication, shall be weighed when loading goods from one transport mode to another one in traffic centers, upon request from accepting party (on track scales when handed over to railway and on trade scales - when handed over to road transport).

In case that the loading and unloading Party lacks scales, handing over shall be made in accordance with the goods weight, indicated in the traffic document (invoice, bill of lading).

Packed and piece freights, accepted for transporting in accordance with the existing standard or by weight, fixed by the consignor in each loading place, and delivered to reloading point in a good package, shall be loaded from one transport mode to another without weighting, in accordance with the number of packs, with further delivery to the consignee in the point of destination. In case of shortage or damage, handing over of goods shall be made in accordance with the weight and the actual statement with drawing up a formal act of a standard form.

When handing over goods in containers, trailers, rail tank cars and other sealed transportation vehicles, the accepting party shall check the conformity with the documents, condition of transportation vehicles and seals.

Provision of containers and their usage conditions for multimodal transport shall be regulated by agreements concluded between transport entities of each transport mode.

5. Transport of goods in direct multimodal communication is carried out on the basis of a single transport document, applicable for the whole trip.

The document, regulating transport of goods in direct multimodal communication, shall be the consignment note (bill of lading).

The consignment note (the bill of lading) shall include all data, required by all parties, involved in direct Multimodal Transport Contract.

The consignment note (the bill of lading) shall be provided in a written form, and shall contain the following data:

- a) Kind of goods and its characteristics (dangerous or perishable goods), main trademarks, necessary for the goods identification, number of bulks, total quantity;
- b) Condition of goods;
- c) Name and location of the major entity, operating multimodal transport, names of consignor and consignee, if indicated by consignor, place and date of acceptance of goods by Multimodal Transport Operator ;
- d) Goods destination;
- e) Date and time of delivery of goods to the place of destination;
- f) Place and time of issuance of the consignment note (bill of lading);
- g) Signature of the Multimodal Transport Operator or any other authorized person;
- h) Information on charges for each transport mode, if agreed with the Parties, or charges, to be paid by the consignor;
- i) Information on proposed trip, transport modes and stations of goods reloading, if available at the time of issue of the multimodal transport document;

j) Any other information, which can be included in the consignment note (bill of lading), if agreed by the parties.

6. Operation of different transport entities in the interchange nodes shall be regulated by Interchanging Agreement, 5-year term.

Elaboration and signatory of such agreements shall be regulated by the rules applied to multimodal transport.

In case of any changes for technical facilities, interchange nodes operation, contracts or treaties can be fully or partially revised before expiry date, at the suggestion of either of the Parties.

Any disputes arising from execution of Interchanging Agreements shall be resolved in accordance with existing procedure, under legislation of the Parties, at the place of origin of the grounds for a dispute.

7. Period of transport of goods and transport facilities loaded with goods in multimodal communication is defined by summing the periods of transport by each mode, basing on the rules applied for each transport mode.

In case of deviation from the total period of goods transportation in multimodal communication, the party at fault shall be liable for delay in goods delivery.

8. Goods reloading standards and regulation procedure are defined in accordance with the rule applied to multimodal transport.

Article 5

Rights and responsibilities of Multimodal Transport Operator

1. Multimodal Transport Operator has no right to refuse transport of goods to any legal or physical entity. Refusal from Multimodal Transport Operator can be justified solely in cases, stated by the legislation, existing in the Party.

2. Multimodal Transport Operator has to choose the best mode and route of transportation, unless otherwise stated in the Multimodal Transport Contract.

3. Goods should be transported by the multimodal operator within a defined standard period, unless otherwise stated in the Multimodal Transport Contract.

4. In case that transportation of goods stands to be impossible due to existing circumstances, multimodal operator should follow instructions from the goods owner (consignor). All instructions should be construed as changes in Multimodal Transport Contract with further attributing all additional expenses to the goods owner (consignor).

In case, that due to some circumstances, goods had to be sold, all revenue, excluding expenses, related to transport and selling operations, shall be attributed to the goods owner (consignor), or any other goods owner.

In case that the circumstances preventing from the goods from transport of, were caused by the multimodal operator's fault, all losses related to non-delivery or delay in delivery, shall be reimbursed by the Multimodal Transport Operator.

5. Multimodal Transport Operator has a right to retain and dispose of goods to ensure receiving of charges and other transportation payments, unless otherwise stated in Contract.

6. Insurance of Multimodal Transport Operator against any possible damage from participants of transportation process or third parties shall be compulsory. Subject of insurance can be related to the Multimodal Transport Operator's material interests, as far as it is obliged to reimburse losses, caused by its operation.

Article 6

Rights and responsibilities of consignor

1. The goods owner (consignor) has a right to claim for compensation pay, equal to goods loss, in case that the goods can not be transported within 30 days after the specified date. All losses related to delays in goods delivery, shall be reimbursed in accordance with general rules, applicable for each transport mode, unless otherwise stated by the Contract.

2. The goods owner (consignor) may instruct to change the route, destination point, consignee, suspend transportation process or make other important changes in the original Multimodal Transport Contract. Further expenses born by the multimodal operator or carrier, resulting from the a.m. changes, shall be reimbursed by the goods owner (consignor). All instructions from the goods owner (consignor) regarding changes in the multimodal transport Contract shall be made within reasonable time.

3. Consignor has to put the goods in a proper condition, for further transporting by the Multimodal Transport Operator or carrier (goods container, package, marking, etc.).

Consignor marks dangerous goods in accordance with existing regulations. When dangerous goods are designed for transportation, consignor shall inform the Multimodal Transport Operator or carriers, and if necessary, about precautionary measures.

Article 7 Responsibility of the Multimodal Transport Operator

1. Multimodal Transport Operator shall be liable as consignor against consignee for safety of goods and luggage, accepted for transportation in multimodal communication, under the relevant transport codes and statutes.

In case of any losses, defects or damage, goods are handed over with regards to its weight and actual conditions. In case of low-quality transport services, transmitting party shall draw up a commercial act.

In case that revealed loss, defects or damage of goods or luggage is referred to railways, shipping companies, ports, road transport entities or road carriers, they bear the resulted responsibility.

2. In case of failure to reload goods or transport facilities with goods in multimodal system, Multimodal Transport Operator shall be liable in accordance with existing legislation for the given transport mode.

Multimodal Transport Operator is considered to be free from property accountability in the following cases:

- a) force majeure situations, preventing from goods reloading and making impossible loading and unloading operation, emergency cases and accidents in transport entities;
- b) termination or constraints in the usual goods transportation process;
- c) compensation of under-loading occurred in the first or second part of the month, in accordance with existing standards.

3. Multimodal Transport Operator shall be liable for goods loss, damage or transportation delays, if unable to prove all necessary measures were taken to avoid such kind of situations.

Multimodal Transport Operator shall be liable for goods loss, damage or transportation delays starting from accepting goods for transportation up to its delivery to the authorized representative.

In case of invalid data in the multimodal transport document, Multimodal Transport Operator shall be liable for any losses and expenses incurred by the third party as a result of its actions.

4. In case that full or partial loss or damage of goods occurred during the transportation process, the existing legislation provides for a higher level of responsibility, rather than foreseen in a Multimodal Transport Contract. Scope of Multimodal Transport Operator's responsibility has to be defined in accordance with the existing legislation.

5. In case that the place of loss, partial loss or damage of goods is unknown, Multimodal Transport Operator's responsibility is regulated by the legislation in the Parties, applied for the stage of transportation, which provides for the highest compensation of losses, unless Multimodal Transport Operator proves to be the subject to a different law.

In any case, compensation paid by the Multimodal Transport Operator, should not exceed cost of the goods, accepted for transportation.

Article 8 Responsibility of Consignor

1. Consignor shall be liable for damage caused to the Multimodal Transport Operator, provided that it was done intentionally or imprudently. In case of transporting dangerous goods, consignor shall inform the Multimodal Transport Operator. Failing to do this, consignor shall become liable to the Multimodal Transport Operator for any possible loss, resulting from transporting such goods. In this case, such goods if necessary can be unloaded, disposed of or neutralized at any moment, with prior notification to the consignor, without any compensation.

Consignor shall be liable for losses of Multimodal Transport Operator resulting from consignor's faults (imperfect or defective package, improper information on goods, wrong address or marking, etc.). Multimodal Transport Operator shall have to prove such faults or mistakes.

2. Consignor shall be materially liable under the transport legislation in the Parties, for wrong information on goods, submitted to the Multimodal Transport Operator or failure to do this at all, as well as for possible effects from wrong data in the transport document.

Any losses at the consignor's fault, resulting from delay of transport facilities (tank cars, vessels, trucks) at reloading bays, shall have to be compensated by the consignor, in accordance with existing transport legislation.

Article 9 Claims and Disputes

1. The prescription of any claims, related to multimodal transport operations, shall be limited to 2 (two) years.

In case that the written notification with all details of the claim, is not submitted within 6 (six) months after the goods delivery or the goods is not delivered after the specified date, the prescription period shall be defined as 6 months.

Prescription starts in the following day, after delivery of goods or a part of goods by Multimodal Transport Operator. In case that goods are not delivered – it starts on the day following the last specified date for goods delivery.

2. Parties may stipulate by the relevant Contract, approved in written form, that any dispute, related to multimodal transport operation, is the subject to arbitration.

3. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:

(a) A place in a State within whose territory is situated:

(i) The principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or (ii) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or (iii) The place of taking the goods in charge for international multimodal transport or the place of delivery; or

(b) Any other place designated for that purpose in the arbitration clause or agreement.

4. Right for bringing a suit or claims against the Multimodal Transport Operator is referred to consignor or any other authorized person, consignee, indicated in the multimodal transport Contract, insurer, who has obtained a subrogation right.

The liability of the Multimodal Transport Operator shall be limited to the actual value of freight, defined in the consignor's bill or its cost declared in the railway bill, bill of lading or invoice. The loss of freight shall be proved by the commercial act, drawn up in accordance with the rules applied under the acting law of international transport of every transport mode.

All claims shall be made in written form.

Claims for losses, shortages or damage of goods, shall be submitted along with originals or certified copies, in accordance with existing procedure, including confirmations of quality and price of transported goods.

5. Claims to the Multimodal Transport Operator shall be submitted within 5 (five) months after the claiming right. This period shall apply to:

a) compensation of losses, damage or shortage of goods – the day following the date specified for goods delivery;

b) deviations from the time of execution of the Multimodal Transport Contract – the day following the expiry date of Contract, unless otherwise agreed by the Parties;

c) violation of other obligations, stipulated in the Multimodal Transport Contract – after the day, when the Parties, stipulated in p.3 Article 9 of this Technical Annex discovered or should have discovered violation of their subjective rights or any other right, secured by this Technical Annex.

Multimodal Transport Operator is obliged to consider the claim within a 30-days period after it was submitted, and inform the claiming party of allowing or dismissal of its claim.

Multimodal Transport Operator shall be entitled to consider the claim after the deadline, stipulated in this Article, should the reason for missing the deadline is proved to be reasonable.

Article 10

Final Provisions

1. All disputes related to the multimodal transport operations shall be settled in the judicial court or court of arbitration in the Parties, in accordance with their competences.

2. In judicial proceedings relating to international multimodal transport under this Technical Annex, the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:

(a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or

(b) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or

(c) The place of taking the goods in charge for international multimodal transport or the place of delivery; or

(d) Any other place designated for that purpose in the Multimodal Transport Contract and evidenced in the multimodal transport document.

3. No judicial proceedings relating to international multimodal transport under this Technical Annex may be instituted in a place not specified in paragraph 1 of this article. The provisions of this article do not constitute an obstacle to the jurisdiction of the Parties for provisional or protective measures.

4. Notwithstanding the preceding provisions of this article, an agreement made by the parties after a claim has arisen, which designates the place where the plaintiff may institute an action, shall be effective.

5. (a) Where an action has been instituted in accordance with the provisions of this article or where judgment in such an action has been delivered, no new action shall be instituted between the same parties on the same grounds unless the judgment in the first action is not enforceable in the country in which the new proceedings are instituted;

(b) For the purposes of this article neither the institution of measures to obtain enforcement of a judgment nor the removal of an action to a different court within the same country shall be considered as the starting of a new action