

III. TRANSPORT FACILITATION AND SUBREGIONAL LEGAL INSTRUMENTS

Introduction

The ongoing process of globalization and the increasing social, cultural and economic interaction among economies in Asia have revived the interest of both public and private sectors in transportation as an essential activity supporting development and integration.

International transport basically means movement of goods and people into and/or across sovereign countries with different laws, rules, and procedures relating to Customs, immigration and transport. To be “international”, transport needs to be facilitated, which may require significant adjustments or changes in these national or local laws, rules, procedures and standards, aiming to harmonize them.

In many parts of Asia goods are still transshipped (loading or unloading) at the border for onward transportation or, if foreign vehicles are allowed to move across national borders, they do so within a limited quota of special permits. These have a negative impact on trade development and implicitly on the economies of the countries concerned.

The above mentioned realities demonstrate the need for a harmonized legal regime on international transport facilitation in the ESCAP region. Accession to and effective implementation of international legal instruments is proven to be the best way of achieving this objective. However Subregional Transport Facilitation Agreements (STFA) can be valuable stepping stones towards harmonization at regional level provided they do not contain provisions contradicting the international legal instruments. Reversely, the subregional legal instruments can play a role in the implementation of international legal instruments, by establishing detailed rules or instructions for implementation. These types of agreements are normally concluded in the framework of subregional bodies, entities, initiatives and may thus underpin the economic philosophies of their member States.

The initiative to negotiate a STFA on transport facilitation is usually taken with the aim of changing the transit transport legal environment based on national laws and regulations to one which would make transit/traffic rights subject to more favorable terms and conditions adopted under the STFA.

While transport facilitation is their *raison d’etre*, STFAs can also address particular interests and needs in the particular sub-regions. For example, where economic integration is already in place, STFAs can be designed to further promote economic and social cooperation and integration.

The best known STFAs in ESCAP region, under negotiation, in process of ratification or in force are the following:

- Framework Agreement on Facilitation of Goods in Transit (1998), Framework Agreement on Multimodal Transport (2005), Agreement on the Recognition of Commercial Vehicle Inspection Certificates for Goods Vehicles and Public Service Vehicles issued by ASEAN Member Countries (1998) and Agreement on the recognition of domestic driving licences issued by ASEAN countries (1985), in the framework of the Association of Southeast Asian Nations (ASEAN)
- Transit Transport Framework Agreement (1998) in the framework of the Economic Cooperation Organization (ECO)

- Basic Multilateral Agreement on International Transport for the Development of the Europe-the Caucasus-Asia Corridor (1998)- TRACECA Agreement to which Armenia, Azerbaijan, *Bulgaria*, Georgia, Kazakhstan, Kyrgyzstan, *Moldova*, *Romania*, Tajikistan, Turkey, *Ukraine*, and Uzbekistan are Parties (countries in *italics* are not members of ESCAP)
- Agreement between the Kingdom of Cambodia, the People’s Republic of China, the Lao People’s Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, for facilitation of cross border transport of goods and people (CBTA) in the framework of the Greater Mekong Subregion (GMS)
- Agreement on coordinated policy for the formulation and development of transport corridors (2005), in the framework of the Euro-Asian Economic Cooperation (EURASEC)
- Agreement on transit procedures through the territory of CIS member States (1999), in the framework of the Community of Independent States (CSI)
- Draft Agreement among the Governments of the Shanghai Cooperation Organization (SCO) member States on Facilitation of International Road Transport

Guidelines on drafting and negotiating STFAs

The guidelines below are designed to provide policy makers with a clear view on the coverage, scope, contents and sequence of a typical STFA. The guidelines acknowledge the specificities of the different subregions and that each subregional agreement will have to take into account the particular features of the subregion and the interests of the parties to the agreement. Notwithstanding the above it is hoped that the information contained herein would provide a common framework to be used by drafters of such subregional legal instruments. This would save time and resources and would provide a basis for fruitful negotiation and effective results.

A. Typical Elements of Subregional Legal Instruments

The sections and sub-sections composing a STFA should basically be the same, irrespective of the subregion concerned, and they should answer countries’ concerns of clarity and simplicity in view of facilitating the effective implementation of the agreement.

1. Preamble

The Preamble of multilateral agreements usually contains the affirmation of the political will and commitment of the participants in the agreement to cooperate towards the achievement of the strategic goals therein. The Preamble may include an enumeration of the Contracting Parties to the agreement. While remaining concise, the Preamble may also refer to the reasons that lead to the conclusion of the agreement and may mention the legal basis for it. For example, in case of a subregional entity created by virtue of a Treaty in which one article provides for the establishment of an integrated transport system in the subregion, that article may be quoted in the preamble of the STFA.

2. Definitions and Abbreviations

For purposes of clarity and to ensure a good level of understanding by all the stakeholders including users of the STFA, all the terms used in the agreement should be explained at the beginning of the documents. With a view to improve the level of harmonization it is highly desirable that definitions are the same as in the relevant international legal instruments on transport facilitation.

3. Objectives, Strategic Goals, Purposes, Aims, General Provisions

Under this section the STFA embodies the spirit of the legal instrument and as such provides valuable guidance in interpreting the subsequent mandatory provisions. The section should contain the main key policy objectives of the agreement; depending on the specific or more general area addressed by it and without being exhaustive, the strategic objectives of the STFA might be one or several of the following:

1. The sub-regional economic integration of the countries concerned through development of economic relations, trade and transport communications;
2. The establishment of an effective, efficient, integrated and harmonized transport system in the sub-region, to facilitate the movement of goods, luggage and passengers. This might also refer to the harmonization of transport policies and legal frameworks in the field of transport, including the creation of an environment enabling fair competition between transport operators or between different modes of transport;
3. The facilitation of transit transport of goods, through simplification and harmonization of transport, trade and Customs regulations. This might also refer to cooperation and coordinated efforts to avoid the incidence of Customs fraud and tax evasion;
4. The promotion of trade within and beyond the sub-region and improvement of access to international freight markets;
5. The harmonization and standardization of technical characteristics of infrastructure (road, rail) and equipment (vehicle dimensions, pollution standards);

In case of a comprehensive STFA, dealing with all/several modes of transport, there may be a statement of the strategic goals under this section and there may also be “modal” objectives under the sections concerning each mode of transport.

STFAs may have as objective to detail the implementation of international legal instruments to which the countries in the subregion are Contracting Parties. They can also be used as vehicles for the accession to international legal instruments. In this case, the STFA would simply reproduce the substantive provisions of the international legal instrument concerned, with as few adaptations as possible, and would detail the implementation measures.

4. Scope, Ambit, Area, Participation, Sectoral Coverage

This section should indicate the areas and activities that are subjects of the STFA. Where there are issues on which no consensus can be reached in terms of harmonizing them through the STFA, the section should nonetheless state that those issues are not covered by the agreement and clarify the legal position regarding them, for example by stating that they remain subject to domestic legislation.

In case it has not been done in the Preamble, the section might also indicate who are the participants in the agreement (usually, in a STFA they are determined on geographical grounds).

In a subregional agreement covering transport facilitation, the most common indications in such a section could be: international transport/transit of goods and/or passengers by one/several mode(s) of transport, including/excluding cross-border procedures such as Customs, veterinary or phyto-sanitary procedures.

5. Specific Provisions

This section should contain all the provisions necessary to regulate the relations between the Contracting Parties on the given subject or in the area dealt with by the STFA. The present guidelines focus on the provisions relating to international land transport facilitation that might be included in the section.

(a) The Right of Transit

The right of transit is vital to participation in international trade as it facilitates access to international markets. This fundamental principle has been defined by several United Nations legal instruments and by the World Trade Organization's General Agreement on Tariffs and Trade (GATT). While the legal principle has acquired universal acceptance, the issue at stake is the negotiation of the precise terms and conditions under which the right of transit would be granted. In order to best promote the application of the legal principle of freedom of transit it is desirable that this section of the STFA contains the same definition of the right of transit as in the most applicable international legal instrument. The section may indicate if the freedom of transit applies to goods and/or passengers and/or luggage in international traffic and may also contain specific conditions for transit in the subregion covered by the STFA.

The section should state clearly in which situations the freedom of transit can be refused. Some examples in this respect might include passengers whose admission is forbidden, goods of which the importation is prohibited either on grounds of public health or security, or as a precaution against diseases of animals or plants, cases of infringement of intellectual property or unfair competition.

For easy reference, the definitions of the right of transit as contained in the most relevant United Nations and WTO legal instruments are given in the box below.

i) United Nations' Convention and Statute on Freedom of Transit, Barcelona, 1921

(1) Article 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the State across whose territory the transit takes place. Traffic of this nature is termed in this Statute "traffic in transit."

(2) Article 2

Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport. In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

ii) United Nations' Convention on Transit Trade of Land-locked States, New York, 1965

(1) Article 1

For the purpose of this Convention,

[...]

(b) the term " traffic in transit " means the passage of goods including unaccompanied baggage across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage. The trans-shipment, warehousing, breaking bulk, and change in the mode of transport of such goods as well as the assembly, disassembly or reassembly of machinery and bulky goods shall not render the passage of goods outside the definition of " traffic in transit " provided that any such operation is undertaken solely for the convenience of transportation. Nothing in this paragraph shall be construed as imposing an obligation on any Contracting State to establish or permit the establishment of permanent facilities on its territory for such assembly, disassembly or reassembly;

[...]

iii) United Nations' Convention on the Law of the Sea, Montego Bay, 1982

(1) Article 124

- Use of terms

For the purposes of this Convention:

[...]

- "traffic in transit" means transit of persons, baggage, goods and means of transport across the territory of one or more transit States, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked States;

[...]

(2) Article 125

Right of access to and from the sea and freedom of transit

(1) Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.

(2) The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.

(3) Transit States, in the exercise of their full sovereignty over their territory shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part [of the Convention] for land-locked States shall in no way infringe their legitimate interests.

iv) The World Trade Organization's General Agreement on Tariffs and Trade

(1) Article V

Freedom of Transit

- Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".
- There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

[...]

(b) Designation of Transit Routes

Granting the freedom of transit on all the transport routes is highly desirable; however, Governments have the right to allow the international transport/transit through their countries on a limited number of routes and such a restriction should be included in this specific section of the STFA. The section may also state the willingness/commitment/decision of the participants in the STFA to make, whenever possible, the following facilities available for traffic in transit along the designated roads, against payment, to the rates that apply to the nationals of the country in which the facilities are used:

- First aid services and other assistance in case of accidents;
- Repair facilities in case of break-down of vehicles;
- Fuel filling stations;
- Post and telecommunication offices;
- Facilities for loading, unloading, break bulk (where necessary);
- Storage areas and building, and
- Restaurants and stopover rest facilities.

If further developments are to be considered and in order to make amendments easier, the list of the designated transit routes may be included in an Annex to the STFA. The selection of the routes should be made after careful assessment of the status of infrastructure, the actual or potential volumes of transport/trade on those routes, the status of the border crossing points on the routes and their capacity to process international transport in transit.

Allowing international transit on selected routes and Customs offices only, proved to be useful in some countries immediately after they joined an international transit system (e.g. the TIR system) because this way of implementing the system helped stakeholders to gain self-confidence before expanding the use of the system to the whole country.

The section may also contain indications on the technical parameters/ design standards of the designated routes. Logically, these parameters should comply with those of the regional transport infrastructure networks in order to ensure interconnectivity and interoperability. In the ESCAP region the road and railways infrastructure parameters/standards are established in the Intergovernmental Agreements on the Asian Highway and Trans-Asian Railway Networks respectively.

(c) Facilitation of International Road Transport

i) Harmonization of Traffic Rules and Regulations, Signs and Signals

Globalization made easier the task of harmonizing traffic rules and regulations as well as the signing/signaling. International trade developed within and between regions, more and more borders have been gradually open allowing goods and passengers to move across them. Land transportation modes and especially road transport were obliged to adapt to these dynamic developments; the first area where harmonization for facilitation was needed concerned the road traffic rules and regulations including signs and signals. In general the harmonization process started with accession to and implementation of the United Nations Convention on Road Traffic of 1949 and its Protocol on Road Signs and Signals. The process was further refined through implementation of the Convention on Road Traffic, 1968, and the Convention on Road Signs and Signals, 1968.

As road traffic increases in the ESCAP region, the need for more elaborate and harmonized traffic regulations will certainly increase. A section of a STFA covering harmonization of traffic rules and regulation and road signs and signals may therefore state the willingness/commitment/decision of the participants to apply rules complying with the provisions of the most relevant international legal instruments namely the Convention on Road Traffic, 1968, and the Convention on Road Signs and Signals, 1968.

Even if drafting subregional specific rules, signs and signals might seem easier in terms of finding a consensus in a short negotiating time, this approach should be avoided as it may negatively impact on the efforts for regional integration, jeopardizing them.

ii) Harmonization of Technical Requirements for Vehicles

When technical standards differ from one country to the other, access of foreign vehicles may be denied or they can be obliged to pay extra charges. The harmonization of technical standards is therefore a critical factor for the facilitation of international transport/transit and implicitly of trade. For a variety of good reasons, notably to promote harmonization, enhance road safety, prevent accelerated road damage and mitigate environmental degradation, this section of the STFA may set out minimum requirements and standards for vehicles performing international transport/transit operations.

(1) Mutual Recognition of Weighing Certificates

Very often, vehicles in international traffic are weighed at (almost) each border and charged accordingly, increasing costs and producing delays of transport operations. In other parts of the world, model certificates of weighing have been established after negotiations and the Contracting Parties endeavor to recognize them mutually. This section of the STFA

may state the willingness/commitment/decision of the participants either to recognize each other's certificates or to adopt a Standard/Model Certificate of Weighing and recognize the initial weighing at the origin all along the journey of the vehicle. A model that could be used has been negotiated in the framework of the United Nations International Convention on the Harmonization of Frontier Controls of Goods ("Harmonization" Convention), 1982 and is contained in Annex III-1 to these guidelines.

(2) Mutual Recognition of Technical Inspection Certificates

Checks on motor vehicles mechanical condition to ensure their safe operation on the roads is a routine activity of the competent authorities. Besides being useful, this activity can also be misused, generating delays and additional costs for the transport operators. Vehicles in international traffic/transit in a country other than their own are particularly vulnerable especially in cases where standards are not harmonized and/or legislation is not transparent. To remove this potential obstacle to the seamless movement of goods and passengers across borders, this section of the STFA may state the willingness/commitment/decision of the participants either to recognize each other's technical inspection certificates or to adopt a Standard/Model Certificate of Technical Inspection and recognize the initial inspection in the country of registration of the vehicle. Such an approach would allow vehicles in international traffic which present valid inspection certificates not be subjected to inspection in the countries of transit and destination. A model that could be used has been negotiated in the framework of the United Nations International Convention on the Harmonization of Frontier Controls of Goods ("Harmonization" Convention), 1982 and is contained in Annex III-2 to these guidelines.

iii) Motor Vehicle Third-Party Insurance

Taking into account the significant impact road incidents/accidents have on State budgets and on private expenditure, national legislations in many countries consider driving without motor vehicle liability insurance an offence punishable by fine and/or imprisonment. The obligation to hold a valid insurance policy also applies to foreign vehicles. In cases where insurance policies are not recognized and accepted internationally, having to take insurance cover in the country of registration, as well as in each country of transit and destination greatly adds to the transit costs. Establishing insurance schemes is not exclusive to STFAs; however third-party insurance is extremely important for transport facilitation, necessitating establishment of well functioning schemes including under the framework of transport-related agreements if the Parties so agree.

This section of the STFA may state the willingness/commitment/decision of the participants to participate in an existing insurance scheme or to establish a scheme of compulsory motor vehicle insurance at subregional level, grouping insurance companies in the sub-region. In this latter case, negotiations and subsequent operationalization of motor vehicle third-party liability insurance schemes should include both public and private sectors. Governments and the sub-regional insurance companies will have to coordinate the necessary measures and actions needed to establish the system. A possible example of motor vehicle third-party liability insurance scheme to be used as basis by drafters of STFAs could be the Green Card System.

The Green Card System

The Green Card System was introduced on 1st January 1953 under the aegis of the United Nations Economic Commission for Europe and is managed by the Council of Bureaux, a body established in London in 1949 and which relocated in Brussels, Belgium, since 2006.

The Green Card System is primarily a European System. It presently includes most, but not all European countries, west of the Urals and the Caspian Sea and countries bordering the Mediterranean Sea.

The Green Card is equivalent to the national Motor Insurance Certificates of each and all of the Countries which a motorist visits. As such it is accepted without any obstacle or cost by the authorities of all countries for which the individual Green Card is valid. The Green Card certifies that the visiting motorist has at least the minimum compulsory Third Party insurance cover required by the laws of the countries visited. Motorists should obtain Green Cards from the Insurer who has issued their motor insurance policy.

The objectives of the Green Card System are:

- to ensure that Third Party victims of road traffic accidents do not suffer from the fact that injuries or damage sustained by them were caused by a visiting motorist rather than a motorist resident in the same country.
- to avoid the need for motorists to obtain insurance cover at each of the frontiers of the countries which they visit.

These objectives are achieved through the activities of the Green Card Bureaux established by the national legislation in each of the 44 countries participating in the System. All Green Card Bureaux operate with the recognition and approval of their Governments. National bureaux cooperate on the basis of the Internal Regulations signed bilaterally between each of them.

Each Green Card Bureau has two functions:

- as a "Bureau of the country of the accident", it has responsibility in accordance with national legal provisions for Compulsory Third Party Motor Insurance for the handling and settlement of claims arising from accidents caused by visiting motorists.
- as a "Guaranteeing Bureau" it guarantees certificates of Motor Insurance - ("Green Cards") which are issued by its member insurance companies to their policy holders.

Source: www.cobx.org

iv) Mutual Recognition of Driving Licenses

The mutual recognition of driving licenses is essential for the international transport/transit to be facilitated, representing, at the same time, a considerable challenge. Some of the main issues to be considered and answered to are: level of knowledge acquired by drivers in the instruction process, ability of drivers to understand local languages in the countries of transit and to read signs and warnings so as to avoid accidents, capability of the

police in the countries of transit to verify the validity of foreign driving licenses, the format of the driving license and its content.

This section of the STFA may state the willingness/commitment/decision of the participants either to recognize each other's driving licenses or to establish an international, subregionally accepted driving license. Irrespective of the solution chosen, the details such as minimum conditions for issuance of driving licenses at national level, allowing for their mutual recognition at subregional level and/or minimum requirements for the issue and validity of the international driving license may be contained in an Annex and/or Protocol to the STFA.

Drafters of this section could use as reference the United Nations Convention on Road Traffic of 1968 and the Consolidated Resolution on Road Traffic (RE1) as they contain detailed provisions on all the aspects relating to the driving license such as, but not limited to minimum requirements for professional driving instruction (concerning driving instructors), guidelines for professional driving instruction (scope of tuition), guidelines for the methods of professional tuition, recommendations for professional drivers of vehicles of categories C, D and E (training programme).

v) Road Transport Permits

Liberalizing transport in the subregion should be the final objective of any intergovernmental agreement covering transport facilitation issues, especially in subregions where economic integration is the key goal. However, not all countries are prepared to open their markets and allow free competition between national and foreign transport operators.

Road transport permits/authorizations/licenses are the basic documents attesting traffic/transit rights; they must be presented for inspection when road vehicles cross national borders. In order to facilitate international road transport/transit this section of the STFA should establish a mechanism to provide a sufficient number of permits and should define valid and transparent criteria for their issuance to transport operators. The section may also indicate the types of operations that are excluded from the permits system, such as the cabotage (cabotage is defined as a road transport operation where goods are loaded and unloaded at two separate points within one country by a vehicle, which is registered in another country). The details of the operation of the permit system may be contained in an Annex and/or Protocol to the STFA, which would also allow for timely adaptation or amendment, depending on the markets' trends and transport-related developments.

The European Conference of Ministers of Transport (ECMT) operates a multilateral permit scheme for journeys between its member countries.

**Guide for Government Officials and Carriers on the Use of the ECMT Multilateral
Quota, 2006**
-abstract-

Preamble

Ever since it was set up in 1953, the European Conference of Ministers of Transport (ECMT) has always sought to facilitate international inland transport and integrate the markets concerned. Its multilateral quota of transport licenses, introduced on 1 January 1974, was seen by the Council of Ministers as a practical step towards the gradual liberalization of road freight transport, which could only be achieved in conjunction with joined efforts of member States towards the harmonization of the terms of competition both between road hauliers from different countries and between modes of transport.

By introducing standards regarding noise and exhaust emissions for the “green” lorry and even stricter emission standards as well as safety requirements for the “greener and safe” lorry and for the "EURO3 safe" and “EURO4 safe” lorry, the multilateral quota also promotes the use of environment friendly and safe vehicles and thus contributes to ensuring sustainable mobility. The multilateral character of the licenses also serves to rationalize the use of vehicles by reducing the number of empty runs.
[...]

1. Definitions

The definitions of the terms in heavy type are as follows:

- (a) **ECMT**: the European Conference of Ministers of Transport, an intergovernmental organization set up in 1953.
- (b) **Member country**: country participating in the quota system.
[...]
- (c) **Third country**: country which is not a Member of the ECMT quota system.
[...]
- (d) **License**: permit which is valid for a number of journeys defined under paragraph 3.18 within a specific period of time between Member countries and accompanied by a duly completed logbook.
[...]
- (e) **Multilateral character**: the possibility of using the license for runs between Member countries, other than the country of registration of the transport company.
[...]
- (f) **Basic quota**: quota allocated to a Member country.
- (g) **Quota**: the number of licenses made available every year to an ECMT Member country. The principles for the calculation of this quota are set up by the Council of Ministers.
[...]

2. Issuing and limits of ECMT licenses

- (a) ECMT licenses are multilateral licenses for the international carriage of goods by road for hire or reward by transport undertakings established in an ECMT Member country, on the basis of a quota system, the transport operations being performed:
 - between ECMT Member countries and

- . in transit through the territory of one or several ECMT Member country(ies) by vehicles registered in an ECMT Member country.
- (b) The licenses are not valid for transport operations between a Member country and a Third country. [...]
- (c) ECMT licenses are valid if transport is transiting through a third country [...]
- (d) There are annual licenses, colored green, valid for a calendar year (1st January-31 December) and short-term licenses, valid 30 days, colored yellow and stamped “short-term licenses”.
- (e) ECMT licenses and logbooks are delivered to a road transport undertaking by the competent Authority of the country in which they are established, Member of ECMT, according to the provisions and criteria set out by this country.
- (f) ECMT licenses are issued, depending on national criteria, to road transport undertakings duly authorized to operate by the competent Authority of the country in which they are established. Licenses do not indicate the vehicle's registration number.
[...]

3. Extent of and limits to the validity of licenses

- (a) ECMT Member countries recognize the validity of licenses issued by another Member country and used in conformity with the provisions set out herein, subject to any restrictions referred to below.
[...]

Source: www.cemt.org

vi) Transit Charges and Other Financial Obligations

High transit charges are one of the most often mentioned barriers to trade. International transport/transit can only fulfill its role as support to development if the balance is ensured between the interest of the users (in this case, transport operators) and the infrastructure managers. Usually, the balance is ensured through payment by the transport operators of infrastructure user charges; in exchange, the infrastructure owners/managers provide them with an infrastructure of good quality allowing transport to be performed safely, in due time and at an affordable price. Infrastructure charges as well as administrative charges and fees should cover the actual service rendered and reflect the real impact of transport on the infrastructure.

In order to facilitate international transport/transit and implicitly trade, participants in a STFA may state in this section their willingness/commitment/decision to harmonize charging policies, to define standard elements for the calculation of costs as to moderate transit charges and to ensure a correlation between the level of the taxes and the actual services rendered in the countries transited. They should also refer in the section to their commitment to ensure the transparency of taxes and charges and to make them public, as well as to take measures or at least endeavor to simplify the methods of payment, including through the use of modern technologies.

Drafters and negotiators of this section of the STFA may use as reference the relevant provisions of United Nations and WTO relevant international legal instruments.

1. *United Nations' Convention and Statute on Freedom of Transit, Barcelona, 1921*

Article 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes such dues may be reduced or even abolished on account of differences in the cost of supervision.

2. *United Nations' Convention on Transit Trade of Land-locked States, New York, 1965*

Article 2

- Freedom of transit shall be granted under the terms of this Convention for traffic in transit and means of transport. Subject to the other provisions of this Convention, the measures taken by Contracting States for regulating and forwarding traffic across their territory shall facilitate traffic in transit on routes in use mutually acceptable for transit to the Contracting States concerned. Consistent with the terms of this Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to the ownership of the goods or the ownership, place of registration or flag of vessels, land vehicles or other means of transport used.
- The rules governing the use of means of transport, when they pass across part or the whole of the territory of another Contracting State, shall be established by common agreement among the Contracting States concerned, with due regard to the multilateral international conventions to which these States are parties.
- Each Contracting State shall authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit.
- [...]

3. *United Nations' Convention on the Law of the Sea, Montego Bay, 1982*

Article 125

Right of access to and from the sea and freedom of transit

- Land-locked States shall have the right of access to and from the sea for the purpose of exercising the rights provided for in this Convention including those relating to the freedom of the high seas and the common heritage of mankind. To this end, land-locked States shall enjoy freedom of transit through the territory of transit States by all means of transport.
- The terms and modalities for exercising freedom of transit shall be agreed between the land-locked States and transit States concerned through bilateral, subregional or regional agreements.
- Transit States, in the exercise of their full sovereignty over their territory shall have the right to take all measures necessary to ensure that the rights and facilities provided for in this Part [of the Convention] for land-locked States shall in no way infringe their legitimate interests.

4. *The World Trade Organization's General Agreement on Tariffs and Trade*

Article V

[...]

- Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable Customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from Customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
- All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
- With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
- [...]

(d) Facilitation of Border Crossing

Studies made by reputable organizations including the ESCAP clearly demonstrate that the highest incidence of delay in international transport/transit is recorded at border-crossings.

The numerous and different inspections and controls of people (passport/visa, driving licenses, foreign currency, Customs, health), vehicles (registration, road worthiness, weights and dimensions, insurance) and goods (Customs, quality, phytosanitary, veterinary) call for a change of mentality and approach, improved physical facilities and equipment and better trained hence more efficient manpower.

This section of the STFA should contain a general statement of the participants such as "Contracting Parties to the present agreement undertake to do their utmost to answer the requirements of improved regional trade and economic integration, through efficient transport facilitation". The general statement may also refer to the major objectives to be gradually achieved such as performing joint controls for the beginning, then continuing by enabling single-stop and single-window inspections to be performed. Deadlines or at least attempted deadlines could also be included in the general statement.

Several sub-sections could be included to cover the main activities at border-crossings that contribute to the facilitation of international transport/transit; each sub-section may contain statements on the objectives to be achieved in the respective area, as suggested below.

i) Physical Infrastructure Facilities

This sub-section may include a list of designated border-crossings where international transport/transit operations would be facilitated through appropriate type and level of physical infrastructure, facilities and equipment. It may also state the willingness/commitment/decision of the participants to gradually provide adequate facilities at other posts. Even if, at the time the agreement is negotiated, shared facilities at the border may not be a

realistic or practical option for a variety of factors, including, financial, physical and political reasons, this should be envisaged and stated as a measure to further progress facilitation.

ii) Harmonization and Simplification of Customs Procedures

Traditionally, when goods cross the territory of one or more countries in transit, the Customs authorities in each country impose the use of national transit documents and apply national controls and procedures. These vary from country to country, and frequently include inspection of the goods at each national border and national arrangements (control document and guarantee) to secure State's revenues from potential duties and taxes due in the transit country. These measures, if applied in each successive country, can lead to considerable costs, delay and interference with international transport/transit.

This sub-section of the STFA is very important as it may state the willingness/commitment/decision of the participants to simplify and harmonize their Customs control procedures, aiming to facilitate international transport/transit operations and implicitly trade. Depending on the preparedness of the participants, the STFA may also refer in the sub-section to specific measures to be undertaken to this end, such as, but not limited to:

- undertaking Customs controls based on Risk Management techniques;
- performing Customs procedures at inland offices rather than at borders in case of countries of origin and destination;
- limiting the number of documents and reducing procedures and formalities required for transit traffic;
- aligning documents by adopting the international standards and tools, such as those developed by the United Nations and WCO. For example, the United Nations Layout Key for Trade Documents, United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT), United Nations electronic Trade Documents (UNeDocs) and WCO Data Model;
- joining an existing international transit system or establishing a subregional one;
- eliminating any documents and formal requirements which may no longer serve important purposes;
- providing for special, expeditious, treatment in case of transports of special cargoes such as dangerous goods, livestock and perishable goods.

Modalities for joint controls by neighboring authorities as well as for coordinating controls at national level between the various competent authorities might also be included in this sub-section.

The most relevant international legal instruments that can be used as reference in drafting and negotiating this sub-section are:

- the International Convention on the Harmonization of Frontier Control of Goods, 1982 (the "Harmonization" Convention);
- the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975 (the TIR Convention);
- the Customs Convention on Containers, 1972 and
- the International Convention on the Simplification and Harmonization of Customs Procedures, 1973, as amended (revised Kyoto Convention).

iii) Temporary Admission

As a measure to facilitate international transport/transit and implicitly trade, the temporary admission (of goods and means of transport) should be granted with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character. This sub-section of the STFA may establish the conditions under which temporary admission of goods and means of transport can be granted. Ideally the participants in the STFA should envisage a simple procedure without payment of import duties and taxes and without depositing a Customs guarantee bond, subject to re-exportation.

As an alternative and depending on their preparedness to facilitate international transport the sub-section may include a commitment of the participants in the STFA to reduce to a minimum the Customs formalities required in connection with the facilities provided for in the STFA and to promptly publish all regulations concerning such formalities.

The most relevant international legal instruments that can be used as reference in drafting and negotiating this sub-section are:

- The Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956;
- the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975 (the TIR Convention);
- the Customs Convention on Containers, 1972 and
- the Convention on Temporary Admission, 1990 (Istanbul Convention).

iv) Customs transit

Customs transit regimes based on a single document and covered by international guarantee have given a major boost to international transport/transit and implicitly trade wherever such systems have been put in place and their functioning was well organized. Such a sub-section in the STFA may state the willingness/commitment/decision of the participants to join an existing international transit system or to establish a subregional one. While consensus and putting in place a small scale transit system at subregional level might seem easier to achieve, participants in the STFA should consider integration at regional and global levels as their ultimate goal. To this end, even if they decide to put in place and operate a subregional transit system, the characteristics of the system should be such as to make future implementation of a wider system possible. The sub-section may only include the basic principles of the organization and functioning of the transit system; its details may be contained in an Annex/Protocol to the STFA.

The most relevant international legal instruments that can be used as reference in drafting and negotiating this sub-section are:

- The Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956;
- the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975 (the TIR Convention);
- the Customs Convention on Containers, 1972 and
- the Convention on Temporary Admission, 1990 (Istanbul Convention).

v) Customs cooperation

With increased movements of goods in international transport/transit, accompanied by numerous documents (Customs declaration, bills of lading, Consignment Note, packing list,

cargo insurance), Customs cooperation is at least necessary if not essential to check the authenticity of documents, prevent and suppress fraud and other crimes as well as to coordinate Risk Management-based controls.

This sub-section of the STFA provides a valuable opportunity for including ways of interacting among Customs administrations. Including, in the sub-section, specific means of cooperation such as exchange of information and documentation, use of modern Customs techniques, can only result in increased mutual confidence and awareness of the fact that simplified Customs procedures are not mutually exclusive, but they can facilitate transport and implicitly trade and at the same time afford more effective Customs control and revenues' protection.

The most relevant international legal instruments that can be used as reference in drafting and negotiating this sub-section are:

- the International Convention on the Harmonization of Frontier Control of Goods, 1982 (the "Harmonization" Convention) and
- the International Convention on the Simplification and Harmonization of Customs Procedures, 1973, as amended (revised Kyoto Convention).

vi) Immigration control

Visa procurement for transport professionals, particularly for drivers and crew, is one of the most important elements to facilitate international transport/transit operations. With increased economic integration, trade expansion and interaction of people, the facilitation of visa procurement should be recognized in this sub-section of the STFA as an important facilitation issue. The participants in the STFA should at least encourage their competent authorities to regularly examine possibilities to facilitate the granting of visas for professionals engaged in international transport operations aiming at simplifying the formalities, limiting the number of substantiating documents, reducing the time required to obtain visas and issuing multiple entry visas valid for one year, without prejudice to other existing agreements. The mutual abolishment of visas may be included in this sub-section as an ultimate goal of the STFA and as an element of subregional integration.

vii) Sanitary and phytosanitary control

The protection of human, animal and plant health through mitigating risks of infection is a basic responsibility of Governments. Sometimes the threat of infection can be used as an obstacle to the movement of people and goods across national borders. This sub-section of the STFA should state the willingness/commitment/decision of the participants in the STFA to harmonize their standards and procedures for sanitary and phytosanitary controls with a view to reduce the prospect of using sanitary and phytosanitary measures as a transport and trade barrier. As a stepping stone until harmonization is reached, the sub-section may also state that the laws, rules, regulations and procedures relating to sanitary and phytosanitary control in force in each of the Contracting Parties should be made available to all interested stakeholders.

The most relevant international legal instruments that can be used as reference in drafting and negotiating this sub-section are:

- the International Convention on the Harmonization of Frontier Control of Goods, 1982 (the "Harmonization" Convention) and
- the International Convention on the Simplification and Harmonization of Customs Procedures, 1973, as amended (revised Kyoto Convention)

viii) Police control

Although usually the role of the police is not a specific subject of the STFA, it is implicit whenever mention is made of enforcement of rules and regulations concerning traffic, signs and signals, driving licenses, motor insurance, vehicle inspection and transport permits/licenses. Harmonization in all these areas would facilitate international transport/transit by eliminating incompatibilities between national legislations and hence removing (or at least limiting) the areas where police would intervene and sanction. This sub-section of the STFA may re-affirm the willingness/commitment/decision of the participants in the agreement to work towards harmonization of standards and practices applying to international transport/transit and mutual recognition of the documents concerning the means of transport, their crew, the goods and the passengers. In this context the sub-section may also state the commitment of the participants to eliminate discriminatory and unfair practices including with respect to controls performed by police.

(e) Financing International Transport/Transit Facilitation

Some STFAs, not too numerous, may contain provisions related to the financing of the objectives established in the STFA. Should this be the case, there are two main possibilities which might be included in such a section, namely:

- the participants in the STFA decide to establish a subregional Fund to finance the objectives agreed upon. In such a case, the section may state the basic principles on which the Fund will be established. Details on the level of the contributions, how will be the funds managed/invested etc. could make the object of a separate subregional agreement, between the most appropriate competent authorities of each country;
- the participants decide on a list of priorities among the objectives agreed upon in the STFA, to be financed by the national budget of each of them. In such a case, this section should contain a statement/commitment of the participants to allocate funds with priority for the realization of the objectives agreed in the STFA. This section may also include a commitment of the participants that they will submit to potential investors/donors with priority the objectives agreed in the STFA.

The relations between the public and private sectors have positively changed during the years and these developments have been reflected in the refinement of the concept of Public-Private Partnership. Many countries in the ESCAP region have changed policies, adopted legislation and created an enabling environment for the participation of the private sector in the financing of projects that were, traditionally, financed by the State budget, including transport infrastructure. This section of the STFA could, therefore, reflect the decision of the participants to encourage the participation of the private sector in financing the objectives of the agreement.

(f) Institutional Arrangements, Implementation and Monitoring Mechanisms

STFAs are complex legal instruments which evidence regional cooperative arrangements that normally cover a wide range of areas and activities directly or indirectly connected to transport facilitation. Commitments by States under the framework of these instruments may involve large-scale investments for the construction or reconstruction of infrastructure, and the undertaking of programmes for modernization of national legislation, institutions and practices. If all these commitments were to be implemented in a coherent and consistent way, the establishment of effective institutional arrangements in STFAs becomes a determinant factor. This section may state the intention of the participants in the STFA to

establish structures for the implementation and monitoring of the agreement in a coherent manner at subregional level.

i) Inter-Governmental Structures

The most common structures for the implementation and monitoring of a STFA are as follows:

- a ministerial body, including the highest ranking officials empowered by their respective Governments to make decisions on the issues pertaining to the agreement;
- a body including senior officials, mandated by their respective Governments to discuss, negotiate and preliminary agree on matters to be decided upon by the ministerial body;
- expert groups mandated by their respective Governments to study specific activities, propose solutions to problems and identify measures to increase effectiveness and efficiency in implementing the agreement.

This sub-section may define the intergovernmental structures as agreed by the participants in the STFA. It may also include the basic principles and conditions for their functioning. Other details such as the Terms of Reference and the Rules of Procedure of the bodies may be included in the STFA as an Annex/Protocol.

ii) National Structures for Implementation and Monitoring

The complexity and multilateral nature of STFAs require effective inter-agency cooperation and consultation prior to concluding the agreement but especially for its proper implementation afterwards. The implementation of the specific activities contained in the agreement is the task of the ministries competent for each of these activities, but coordination is needed to ensure achievement of the strategic objectives of the STFA. Ideally, the monitoring of the implementation of such agreements should be done in the framework of national coordination mechanisms such as National Trade and Transport Facilitation Committees. Even if it remains a national competency, the establishment of national coordinating structures may be referred to in this sub-section of the STFA, for example by encouraging participants to establish such mechanisms if they have not done so.

iii) Secretariat Support

It is obvious that the general monitoring of the implementation of the STFA is based on developments in each of the areas covered by the agreement, reported by each of the countries participating in the agreement. The meetings of the structures established through the STFA have to be prepared and serviced. To this end, this sub-section may provide for the following options:

- in case the STFA is signed by countries that are members of a subregional economic integration grouping which has its own secretariat, the existing secretariat could also service the STFA's structures. The sub-section should clearly state the tasks and responsibilities of the secretariat in servicing the STFA;
- in case the STFA is signed by countries that are not members of a subregional economic integration grouping, a possibility would be that one country offers to host the secretariat of the STFA, permanently or for a limited duration, with full financing by the host country or with shared financing among the participants. The sub-section should clearly reflect all the conditions for the establishment and functioning of the secretariat as well as its tasks and responsibilities in servicing the STFA;

- in case the STFA is signed by countries that are not members of a subregional economic integration grouping and if no country offers to host the secretariat, the meetings under the agreement could be serviced on a rotating basis by each of the countries convening the meetings. The sub-section should clearly reflect all the conditions for servicing the STFA.

iv) Participation of Non-Governmental Organization

Although STFAs are inter-governmental in character, private entities representative for the sectors covered by the agreement might be involved in their implementation as they are directly interested in the results of it. Transport services providers, insurers, banks, forwarders, importers and exporters play a major role in international transport/transit and facilitation is beneficial to them. This sub-section may therefore indicate the willingness/commitment/decision of the participants in the STFA to include non-governmental organizations in their institutional structures, both at international and national levels.

6. Final Provisions

This section should normally contain provisions aimed at clarifying all the aspects relating to the implementation of the STFA, such as but not limited to:

- membership and registration with the Secretary-General of the United Nations;
- transparency and availability of national legislations and regulations;
- dispute settlement arrangements;
- rules regarding the amendment of the STFA including its Annexes and/or Protocols;
- national law and observance of the STFA;
- harmonization based on international legal instruments;
- entry into force;
- authentic text of the STFA and interpretation of STFAs authenticated in two or more languages.

The international legal instrument that may be used as reference for this section when drafting and negotiating a STFA is the Vienna Convention on the Law of Treaties, 1969.

(a) Membership and Registration with the Secretary-General of the United Nations

STFAs are multilateral international legal instruments and most of them are open to accession by any State or open to other States on condition that there is consent from the original Contracting Parties. These principles as well as the need for registration of the agreement with the Secretary-General of the United Nations should be included in this sub-section of the STFA.

<p>Charter of the United Nations Chapter XVI</p>
<p>Miscellaneous Provisions Article 102</p>
<p>(a) Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.</p>
<p>(b) No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may</p>

invoke that treaty or agreement before any organ of the United Nations.

Article 103

- (a) In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

(b) Transparency and Availability of National Legislations and Regulations

Effective facilitation of international transport/transit and implicitly trade requires stakeholders to be aware of the rules and regulations in force in the countries of origin, transit and destination, in order to comply with them. This sub-section should include provisions to this effect. For example, the sub-section may reflect the commitment/decision of the participants in the STFA to ensure transparency of their respective laws, regulations and administrative procedures and may also provide that such documents be made available in the official language(s) of the agreement.

(c) Dispute Settlement Arrangements

This sub-section is normally meant to provide for seamless operation and sustainability of the STFA. Its content should be clear and unambiguous in order to define the rights and obligations of the Contracting Parties, including the procedures for the pursuit of claims in case of dispute. Traditionally, in order to ensure consensus but also to avoid costly and time consuming procedures, States in the ESCAP region would do their utmost to avoid arbitrations and court proceedings and instead seriously seek to resolve their differences through consultations. Most of the STFAs envisage thus that participants will seek to resolve their disputes, claims or differences arising from the interpretation or implementation of the agreements through consultations. However, this sub-section may also indicate other means, more specific, for dispute settlement such as negotiations in the intergovernmental structures established under the STFA, appointing arbitrators or even having final recourse to the International Court of Justice at The Hague.

(d) Rules Regarding Amendment

This sub-section should state the rules for amending the STFA itself as well as its Annexes and/or Protocols. The procedures to amend the body of the agreement are usually more complicated as they require approval by the highest national instances in each of the Contracting Parties. Ideally, the sub-section should provide for simplified procedures for amendment of Annexes and/or Protocols, in order to keep the STFA abreast with new developments in the areas covered by it and to make its implementation as effective and efficient as possible.

(e) National Law and Observance of the STFA

This sub-section may state that once bound by the STFA no party may invoke the provisions of its national law as justification for its failure to observe/implement the agreement.

(f) Harmonization Based on International Legal Instruments

This sub-section should state the willingness/commitment/decision of the participants to accede to and implement the international legal instruments relevant for the area(s) dealt with by the STFA, in order to achieve a fully harmonized legal regime on transport facilitation at subregional, regional and global levels.

(g) Entry into Force

This sub-section should provide for the manner and date of entry into force of the STFA, as negotiated/agreed by the participants. It may also contain special indications for instance that when the consent of a State to be bound by the agreement is established on a date after it has come into force, the STFA enters into force for that State on that date, unless the treaty otherwise provides.

The provisions of a STFA regulating the authentication of its text, the establishment of the consent of participants to be bound by the agreement, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the STFA, apply from the time of the adoption of its text.

(h) Interpretation of Treaties Authenticated in Two or More Languages

Usually, STFAs are authenticated in one language but it is not unusual for a STFA to be authenticated in two or more languages. In this case the terms used in the agreement are presumed to have the same meaning in each authentic text. This sub-section should clearly state that when a STFA has been authenticated in two or more languages, the text is equally authoritative in each language, unless the agreement provides or the parties agree that, in case of divergence, a particular text shall prevail.

B. Facilitation of International Railway Transport

The role of international railway transport/transit is well established in many of the STFAs, even though it is less regulated in the STFAs compared to road transport. The main reasons for this are that on one hand the conditions for international railway transport/transit are usually negotiated between the railway administrations of the countries in the subregion. On the other hand the two specialized intergovernmental organizations, namely the Intergovernmental Organization for International Carriage by Rail (OTIF) and the Organization for the Co-operation of Railways (OSZhD) deal, among others, with facilitation issues. By their nature, the documents issued by the two organizations could be assimilated to subregional agreements, covering specific areas and activities of international railway transport/transit operations. However, should participants in a STFA envisage to include railway transport in the agreement, the main issues to be considered and agreed upon might be the following:

- facilitating the procedures for granting of visas for locomotive crews, refrigerated unit crews, persons accompanying freight shipments and staff at border (transfer) stations engaged in international rail transport in accordance with national best practice for all visa applicants;
- observing minimum requirements for border (transfer) stations open to international rail freight traffic:
 - (a) Designation of inter-change stations;
 - (b) Border (transfer) stations to be properly equipped to carry out daily and round-the-clock controls, including phytosanitary, veterinary and other controls where appropriate and adequate for the volume of traffic;
 - (c) Equipment, facilities, information technology and communications systems must be available to enable the exchange in advance of information;
 - (d) Sufficient qualified staff of the railway, Customs, border and other agencies must be on hand at border (transfer) stations to cope with the freight volumes involved;

- (e) Ability to accept and use technical approval and inspection data.
- ensuring reciprocal recognition of all forms of control of rolling stock, containers, piggyback semi-trailers and goods, provided the objectives thereof coincide;
- carrying out Customs controls relying on the principle of selection on the basis of risk evaluation and management;
- adopting a common Consignment Note;
- carrying out simplified controls at border (transfer) stations, moving certain forms of control to the station of departure and destination in accordance with the legislation of the Contracting Parties;
- not performing inspections of transit goods if reliable information on the goods has been provided and if they are contained in a properly closed and sealed rolling stock unit, container, piggyback semi-trailer or wagon.

C. Facilitation of Other Modes of Transport

Road transport is the mode of transport with the most dynamic development and irreplaceable for door-to-door transports; nevertheless other modes of transport have significant potential for development in the ESCAP region. ESCAP adopted the vision of an international integrated intermodal transport and logistics system for the region; subregional agreements aimed at facilitating international transport could be important stepping stones towards achieving this vision.

1. Multimodal Transport

The definition of the term “international multimodal transport” is provided in article 1 of the United Nations Convention on International Multimodal Transport of Goods of 1980, which reads as follows:

“International multimodal transport” means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country”.

The development of new transportation techniques, such as containerization and other means of unitization of goods in the 1960s, introduced a significant need for modification of commercial and traditional legal approaches to transport. Goods stowed in a container could be transported by different means of transport, such as ships, railway wagons, road vehicles or aircrafts, from the point of origin to the final place of destination, without being unpacked for sorting or verification when being transferred from one means of transport to another. Gradually, more and more operators took responsibility for the whole transport chain under one single transport contract. Shippers/consignees needed to pursue one single operator, in the event of loss of, or damage to, the goods involved in multimodal transport, who would be responsible for the overall transport, rather than against several unimodal carriers involved. There was a need for an international legal framework for multimodal transport of goods. (UNCTAD/SDTE/TLB/2)

At the heart of combined, intermodal or multimodal transport¹⁰ is the container, trailer or other form of unitization of goods. There are however two major obstacles to the efficient implementation of such multimodal transport systems. The first relates to the availability of suitable infrastructure to transfer unit loads between transport modes as well as the availability of suitable rolling stock to carry the unit loads. The second relates to the need for an international legal framework that facilitates the multimodal transport of goods.

The intrinsic benefit of containers and other forms of unit loads to shippers and consignees is that goods can be loaded in a single unit and carried by more than one mode of transport. Historically however, mandatory international conventions and/or national laws have been developed for each of the different modes of transport (for example, Hague Rules, Hague/Visby Rules and Hamburg Rules for sea transport, CMR for road transport, CIM and SMGS for rail transport). Each of these instruments establishes different levels and limitations of liability, different documents and different periods of time within which claims can be made. In the event of loss, damage and/or delay there is therefore a need to ascertain at what stage in the event occurred. Claims are complicated further if the stage cannot be identified, if loss or damage occurred gradually over a number of stages or if it occurred in the course of providing services ancillary to transport (for example warehousing). In principle, the shipper or consignee is little concerned with these issues and is looking towards one contract, one document and one responsible party.

In view of rising concerns over pollution, congestion, safety and rising energy prices, intermodal transport will become a key focus of transport policy in the ESCAP region, with railways forming the centrepiece of these policies.

STFAs could be stepping stones in the development, in the ESCAP region, of suitable infrastructures to transfer unit loads between transport modes as well as suitable rolling stock to carry the unit loads. STFAs could also contribute to defining legal regimes on multimodal transport addressing the need to recognize multimodal transport operators and provide suitable liability regimes. Another issue which might be dealt with in a STFA is the lack of common standards guiding the operation of freight forwarders, multimodal transport operators and logistics service providers. Such a STFA could provide for sharing of the knowledge and experiences of the private sector in the subregion as well as for appropriate capacity-building programmes that would lead to improved professionalism and skills within the industry.

There are not many international legal instruments which could be used as reference when drafting and negotiating a STFA including facilitation of multimodal transport; however the United Nations Convention on International Multimodal Transport of Goods, 1980 (“MT Convention”, not yet entered into force) and UNCTAD/ICC Rules for Multimodal Transport Documents, ICC Publication No. 481 could be useful in this respect.

¹⁰ Current definitions of these concepts consider intermodal transport to be a subset of multimodal transport and combined transport to be a subset of intermodal transport. In intermodal transport goods are moved in one and the same loading unit or a vehicle, a condition not required for multimodal transport. In combined transport goods are also moved in one and the same loading unit or a vehicle however the major part of the journey is by rail, inland waterway or sea with any initial and/or final leg carried out by road being as short as possible.

2. Inland Waterway Transport (IWT)

The integration of IWT into the multimodal transport system is at an initial stage in most countries of the ESCAP region. However, it has been observed that container traffic on large rivers in some countries of the region has grown rapidly in connection with seaports situated on lower sections of the rivers. Other countries have shown interest for development of multimodal transport along their inland waterways. A number of domestic and international large rivers in the region currently used for IWT run long distances in parallel with existing routes of the Asian Highway (AH) or the Trans-Asian Railway (TAR). There are also other navigable rivers near the existing routes of the AH or the TAR which have great physical and economic potential for incorporation into the regional transport network. At both national and subregional levels, international transport using inland waterways could be encouraged by taking the following measures, which might be included in a STFA covering facilitation of international transport using inland waterways:

(a) Technical measures

- Definition of adequate multimodal standards for waterway design, in particular regarding vertical clearance (12.4 m over main routes) and lock width (12.6 m on main routes). For other waterways, the vertical clearance should be roughly equal to the width of the design vessel. Special attention should be paid to canals, where the clearance should be commensurate with that over the average water level found on the route;
- Removal of bottlenecks and building of missing links wherever economically feasible;
- Maintaining multimodal waterways, so as to guarantee a standard 1.45 m draught on smaller routes and 2.45 m on main routes;
- Setting up Inland Container Depots (ICD) by the side of potentially navigable rivers;
- Locating inland Customs offices to riparian multimodal terminals;
- Ensuring GSM and DGPS coverage along waterways;
- Encouraging use of EDI between harbor Customs and IWT container operators for advance clearance in order to save time in port and recoup part of the extra time spent inland;
- Organizing River information services (RIS) accessible from onboard ships by EDI, WAP or the Internet;
- To speed up river development, organize daily feedback of depth information from vessels en route, and daily update of RIS. This will cut the amount of signaling and marking to the strictest minimum without compromising safety, which is essential for the reliability and final success of a container line.

(b) Political measures

- Enlist IWT authorities and operators within the national transport and/or trade facilitation committee;
- Authorize night navigation in order to reduce transit time;
- Authorize IWT operators to become Multimodal Transport Operators (MTO);
- Negotiate with seaport authorities and port workers in order for environment-friendly river transport to be accepted and encouraged for moving containers inland;
- Authorize and encourage overside handling of containers and their direct waterway connection with the hinterland;

- Encourage IWT shuttles between anchorages or mouths of ports and upstream ICDs, for instance by banning road transit of containers through big cities;
- Encourage combined transport operations, for instance by accepting higher load limits for trucks operating in and out of intermodal container depots;
- Guarantee law and order on waterway route so that reliability of IWT is at its normal level, i.e. higher than rail or road transport;
- Finance or subsidize capital costs of establishing riverine intermodal container depots;
- Finance or subsidize operating costs of IWT container services on the grounds that they are less harmful to the environment and incur five times less external cost to the community for each container carried.

STFA could additionally focus on human resources development and advisory services. Human resources development for the IWT sector may be tailored to meet the requirements for integration of IWT within overall transport systems. Some of the issues of human resources development could be policy and strategy for IWT development, planning and financing of IWT systems, legislation of IWT, organization of intermodal transport, and modernization of IWT systems.

3. Maritime Ports and Facilities

With few exceptions, the maritime port sector is sparingly dealt with in the existing STFAs. Should there be a need for such an agreement at subregional level, the following specific provisions might be included therein:

- Contracting Parties with sea ports to provide, within their capacities, the necessary port facilities to other Contracting Parties (especially for landlocked countries) at ports open to foreign vessels and at costs and conditions not exceeding the standard tariffs paid by other foreign users;
- Contracting Parties to adopt within the limits of their respective national legislation, all appropriate measures to facilitate commercial maritime transport, to prevent unproductive delays to vessels and to expedite and simplify as much as possible the carrying out of Customs formalities required in ports;
- Contracting Parties to endeavor granting each other's vessels favorable treatment (better terms in respect to the levying of charges and port duties) in their ports that are open to foreign commerce and navigation;
- Contracting Parties to endeavor granting each other's vessels and crew national treatment.

The most relevant international legal instrument that can be used as a reference when drafting and negotiating a STFA covering maritime ports and facilities in international transport are:

- the Convention on Facilitation of International Maritime Traffic (FAL Convention), 1965
- United Nations' Convention on the Law of the Sea, 1982;
- United Nations' Convention on Transit Trade of Land-locked States, 1965.

D. Other Forms of Subregional Cooperation

From 1991 to 1997, European countries worked together to define a Pan-European Transport network. To this end, three major transport conferences were organized in 1991, 1994 and 1997 respectively.

The *first Pan-European Transport Conference* was held in Prague in 1991 and adopted a Declaration, sponsored by the European Commission, ECMT and UNECE, on an “all European transport policy”. The Declaration stated, among others, that “An efficient all-European transport system should be developed pursuant to the principles of market economy and fair competition by means of an integrated European transport concept which is well adapted to the objectives of social, environmental and energy policies as well as to safety requirements and which is liberated from unnecessary restrictions, like certain load conditions, or certain technical and administrative barriers”.

The *second Pan-European Transport Conference* held in Crete, Greece, in 1994 endorsed the “Progress Report towards Indicated Guidelines for further Development of Pan-European Transport Infrastructure”; the report was largely based on the Prague Declaration. In this Progress Report, nine multimodal Pan-European transport links were identified as being of European interest and were considered to be a basis for future work on transport infrastructure development in Central and Eastern Europe. The nine corridors, numbered from I to IX, consist of a set of eight road and rail links (which total 18000 km for both modes) and one waterway link, the river Danube-Corridor VII (other inland waterways, airports and ports were not included in the Corridor concept).

The work on the initial nine corridors has advanced well over three years (until the 3rd Pan-European Conference) during which many positive developments have been realized: all participants have signed Memoranda of Understanding (MoU) for the development of each of the nine corridors, and Steering Committees and technical secretariats have been established for each of them. The *third Pan-European Transport Conference*, held in Helsinki in June 1997, adopted the establishment of a new corridor (Corridor X). Working on the basis of MoUs brought countries along the corridor closer and supported coherence and consistency in the development of both infrastructure and operation/use of the corridor. The MoUs were not legally binding but based on voluntary commitment of the participants, usually the Ministries of Transport in the countries along the corridor. The Draft Memorandum of Understanding for the Pan-European Transport Corridor VII (river Danube) is given as an example in Annex III – 3.

Countries in the ESCAP region could benefit of the above mentioned experience and cooperate along international transport corridors, building on the Asian Highway and Trans-Asian Railway networks. International transport and implicitly trade would be facilitated at an accelerated pace by the development and operationalization of the corridors.