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**EFFICIENT TRANSPORT AND TRADE FACILITATION TO IMPROVE  
PARTICIPATION BY DEVELOPING COUNTRIES IN INTERNATIONAL  
TRADE**

Note by the UNCTAD secretariat

**Executive summary**

Trade can be a powerful force for development, growth and poverty reduction. Efficient transport and trade facilitation can significantly increase trade, thereby boosting economic growth and creating new opportunities for the poor. This note considers selected issues of improving transport efficiency and implementing trade facilitation measures, including legal issues related to trade and transport. While there is a considerable need for investment in trade-supporting physical infrastructure, there are a number of steps that can be taken to improve the productivity of existing facilities that do not require large investments. Among the most relevant steps are transport sector reform and increased use of information and communication technology. There are a number of recognized trade facilitation measures that could lower transaction costs for developing countries. This note also reviews the new security initiatives and uncertainties in the legal framework for international trade and transport. These may have a negative impact on the ability of some developing countries to continue to participate in international trade. Finally, the note contains suggestions on how developing countries could be assisted in implementing transport efficiency and trade facilitation through the provision of logistics services, and proposes the convening of an Expert Meeting in that connection.

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## INTRODUCTION

1. Improving trade environment and mechanisms must be seen in the perspective of Millennium Development Goals 1 and 8. Goal 1 is to cut poverty in half by 2015 and requires increasing economic output, productivity, investment and trade in developing countries. Goal 8 is to build a global partnership for development through an open, rule-based, predictable and non-discriminatory trading and financial system, including a commitment to good governance, development and poverty reduction—both nationally and internationally.

2. Promoting efficient transport and trade facilitation is an area offering considerable potential for productivity gains. Current trade and transport management systems have dramatically changed the way in which international trade transactions and associated transport operations are conducted. These systems make extensive use of new information technologies to monitor both transactions and operations. Their efficiency is based on networking schemes to handle information flows and improve decision-making processes. They have introduced new forms of knowledge-sharing whereby competitors become partners, and counterparts in the private and public sectors have common goals and a common vision.

3. In 1980, the estimated ratio of total freight costs to import goods value (world trade imports in 1980) amounted to 5.49 per cent for developed countries and 10.44 per cent for developing countries.<sup>1</sup> In 2000, these ratios decreased to 5.21 per cent and 8.83 per cent respectively, representing reductions of 5 per cent and 16 per cent. In other words, over a period of 20 years, improvements in trade logistics management systems have clearly led to great benefits for developing countries. This shows that high costs due to inadequate infrastructure and equipment, management inefficiencies and cumbersome administrative procedures can be reversed through the implementation of an adequate regulatory framework, containerization and more efficient management tools. It also shows that the potential for cost savings through efficiency increases is particularly important for developing countries.

4. Procedural and operational obstacles resulting from inappropriate institutional or legal frameworks appear nowadays as anachronisms. Improvement of these frameworks is required in order to allow developing countries to align their current management systems with international practices. This will provide an appropriate response to new challenges of international trade. Equally, access to and use of information technology need to be increased to levels that meet the requirements of international trade. The benefits of these improvements could be stated in terms of

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<sup>1</sup> The potential for reduction in transaction costs differs widely among regions and country characteristics. While landlocked and island developing countries on average faced transport charges of about 12 per cent of import value, the figure for developing countries in the Americas and Asia was between 7 and 8 per cent (for details see *Review of Maritime Transport, 2002*, chapter 4, table 40).

transaction time savings or cost reductions.<sup>2</sup> While the absolute level of savings may be difficult to establish, the need for improvement is real.

5. In practice, an average transaction may involve some 30 parties (traders, carriers, banks, insurers, freight forwarders, customs brokers, etc.) and require some 40 documents (many of these not just for Governments but for carriers, bonded warehouses and other components of the trade process).<sup>3</sup> Furthermore, various segments of an international trade transaction, such as sale, transport, insurance and payment, are normally supported by relevant rules and regulations. The efficient functioning of international trade therefore requires not only the proper management of supply chains, supported by appropriate transport services and infrastructure, but also an appropriate legal framework.

6. Logistics has become an important value-added service in global production and marketing of goods originating in both developed and developing countries. It has also changed the approach to production and trade and to transportation, and has thus affected both shippers and transport service suppliers. The arrangements made for transport, storage and distribution, together with the related information management, constitute the logistics strategy of enterprises engaged in international trade. This integrated approach is important to bear in mind as it allows three technically related functions and consequently types of cost, namely transport, handling/storage and administrative costs, to be combined under the heading of logistics.

7. Unless trade infrastructure is in place, countries will not benefit from negotiated preferential market access arrangements. Governments in developing countries need to give priority to their national trade and transport environment and adapt appropriate policies. These policy measures should be aimed at modernizing transport infrastructure, creating an environment to improve the productivity of existing facilities, improving the commercial capabilities of national operators, implementing trade facilitation recommendations, reviewing the legal framework, and promoting foreign investment and the transfer of knowledge.<sup>4</sup>

8. This integrated concept, which covers issues related to trade and transport services and operators, as well as to operational, institutional and legal frameworks for international trade transactions, is reflected in UNCTAD's work on trade logistics. UNCTAD thus fits into a de facto network system of international organizations dealing with similar issues related to trade facilitation. UNCTAD, as part of the High Level Committee on Programmes of the Chief Executives Board of the

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<sup>2</sup> World Bank, "The economic impact of trade facilitation measures: A development perspective in the Asia-Pacific region, 2002, [econ.worldbank.org/files/20929\\_APEC\\_TF\\_Report\\_Final.pdf](http://econ.worldbank.org/files/20929_APEC_TF_Report_Final.pdf). The report found that actions on trade facilitation, particularly improvements in ports and customs, could increase trade among APEC members by US\$ 285 billion.

<sup>3</sup> Fermin Cuya, Senior Vice President, Mattel, Inc., at the WTO Trade Facilitation Symposium, Geneva, March 1998.

<sup>4</sup> See Carole Brookins, United States Executive Director to the World Bank, opening address to the WTO Integrated Framework Mainstreaming Seminar, Geneva, 31 October 2002.

United Nations, has proposed a cooperation scheme shared by all partner agencies, now operating under the name [www.un-tradefacilitation.net](http://www.un-tradefacilitation.net).

## **EFFICIENT TRANSPORT**

### **A. Overview**

9. As world trade continues to increase at a rapid rate, so does the need for efficient, economic and environmentally sound national and international transport. With increased competition in major markets forcing business to adapt to “just-in-time” production systems, the commercial success of any export-oriented industry in developing countries depends more and more on its ability to satisfy customers in terms of cost, speed, reliability and flexibility regarding the delivery of goods. For the whole transport chain, cargo theft and threats from terrorism call for a review and strengthening of security arrangements.

10. Transport plays a major role in the logistics and service quality of the supply chains. Taking into account the complex interaction of sourcing, suppliers, manufacturers, retailers and consumers, multimodal transport is emerging as a solution for tailoring transport systems to the logistic needs of the ultimate customer. It allows the integration of a broad range of transport services in the supply chains, supported by well-functioning information and communication technology. This integration can easily provide pre- and on-carriage information exchange as well as advanced services, such as real-time information, which accelerate the information flow, make it more reliable and enhance service quality.

11. In many developing countries, inefficiencies and delays occur at interchange points (from one mode to another), at border crossings and along the national transport network. These delays result from inadequate infrastructure, inappropriate cargo-handling equipment and transport fleets, poorly trained and motivated officials, inappropriate staffing levels, poor coordination, lack of information, communication delays, limited choice of transport operator, transferring cargo from one vehicle to another at border crossings, not using containers door-to-door and cumbersome trade procedures. Removing these causes will reduce costs and delays and thus improve the trade development potential in developing countries.

### **B. Infrastructure requirements**

12. At the sixth session of the Commission on Enterprise, Business Facilitation and Development, the lack of transport and telecommunication infrastructure was identified as a major obstacle for the participation of many developing countries in global trade. Governments were encouraged to promote investment in transport, telecommunication and information technology infrastructure. The Organisation for

Economic Co-operation and Development (OECD) has recommended that in order to reap the maximum benefits from foreign direct investment (FDI), developing countries, *inter alia*, put in place and enhance the quality of relevant physical and technological infrastructure.<sup>5</sup> While FDI and official development assistance (ODA) act as valuable supplements to domestically provided capital, it is the host countries that must undertake basic efforts to invest in this infrastructure. Governments should create a sound, market-oriented framework that will set the stage for private sector investment to complement their own investment in infrastructure.

13. By 2000, trade in manufactured goods accounted for 76 per cent of world trade in value terms in that year. The majority of these goods are moving in containers, and containerized traffic is estimated to double in the next decade, with massive investment in port and inland transport facilities therefore being required in order to cope with this growth. In the 10-year period from 1990 to 1999 container moves in the ports of developing countries and territories increased from 26.4 million TEUs to 80.9 million TEUs.<sup>6</sup> The ability to use containers for door-to-door or multimodal transport provides great opportunities to reduce transport cost and time, plus the potential to increase security along the transport chain.

14. Providing modern infrastructure and transport equipment can be achieved through public-private partnerships, where the private sector provides capital and knowledge and shares the investment risk with State entities. Transport services are increasingly driven by private capital, with powerful operators operating on a global level. But infrastructure projects with limited traffic or common user facilities are unlikely to attract much interest from operators or investors. In such cases, bundling the transport infrastructure within larger projects for the export of agricultural or mineral products has provided the guarantee for the traffic volumes and managed to attract transport investments. This approach has been used in South Africa to create development corridors. South Africa is also in the process of establishing an industrial development zone of 12,000 hectares linked to a new deepwater port on the Coega River.<sup>7</sup>

15. Another important initiative for infrastructure development is the New Partnership for Africa's Development (NEPAD), which seeks to convert commitment to Africa's economic development into tangible projects. NEPAD links investment and good governance and should boost the creation of subregional and regional infrastructure.

16. There is thus a growing awareness amongst developing countries' Governments of the need to make significant investments in trade infrastructure as an

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<sup>5</sup> OECD, *Overview of foreign direct investment for development: Maximizing benefits, minimizing costs*, 2002, [www.oecd.org/pdf/M00034000/M00034678.pdf](http://www.oecd.org/pdf/M00034000/M00034678.pdf).

<sup>6</sup> UNCTAD, *Review of Maritime Transport, 2001*, UNCTAD/RMT/2001, and UNCTAD, *Review of Maritime Transport, 1991*, TD/B/CN.4/8.

<sup>7</sup> The Coega Development Corporation was established in 1999 and is wholly owned by the South African Government; see [www.coega.co.za](http://www.coega.co.za).

essential step to attract investment and develop trade necessary for economic development.

### **C. Operational aspects**

17. A recent study<sup>8</sup> in the Asia-Pacific Economic Cooperation (APEC) region found that investments in trade facilitation can significantly increase trade. According to the analysis, the factors offering the greatest potential for improvement were port logistics, customs efficiency and regulatory environment. The analysis incorporates all elements required for improving trade logistics under the heading of trade facilitation, including transport infrastructure and services. Logistics providers offer the following services: freight transportation, cargo handling, storage and warehousing, customs clearance, transport agency, container station and depot, inventory management, order processing, production planning and production control.

18. The successful development of efficient transport and logistics services depends not only on basic transport infrastructure, but, more importantly, also on the establishment of effective mechanisms to make the most efficient use of available infrastructure. The problem in many developing countries is that regulation, planning and management of the different elements of trade-supporting infrastructure are highly disjointed and without effective coordination. Better coordination amongst the various stakeholders at the national and regional levels offers considerable improvements to make better use of transport capacity.

#### **1. Transport sector reform**

19. Transport sector reform is lengthy and complex but can improve external trade competitiveness by reducing transport costs. Reform may take the form of managerial improvement measures, deregulation to encourage competition, commercialization and privatization. Commercialization requires transport organizations to operate on commercial principles. For the public sector this means that the organization must be financially self-supporting without subsidies from the Government. An increasing number of Governments are turning to the private sector for the management and operation of transport infrastructure. In August 1996, the Southern African Development Community signed a Transport Protocol<sup>9</sup> that specifically called for deregulation and private sector involvement and the streamlining and facilitation of border control.

20. Liberalization of market access in the area of shipping in the context of the World Trade Organization (WTO) is an important element of transport sector reform. Progressive liberalization of maritime auxiliary services of particular relevance to developing countries currently refers to maritime agency services, freight forwarding

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<sup>8</sup> World Bank, "The economic impact of trade facilitation measures: a development perspective in the Asia-Pacific region", 2002, [econ.worldbank.org/files/20929\\_APEC\\_TF\\_Report\\_Final.pdf](http://econ.worldbank.org/files/20929_APEC_TF_Report_Final.pdf).

<sup>9</sup> [www.satcc.org/docs/protocol.pdf](http://www.satcc.org/docs/protocol.pdf).

services, cargo handling services, storage and warehousing services, and customs clearance services. However, ongoing negotiations clearly reveal the trend towards an extension of substantive coverage to multimodal transport and logistics services, as has been proposed by a number of WTO member countries, including developing economies.<sup>10</sup> Possible commitments to open up market access to providers of auxiliary services will facilitate the changeover from a public utility to a commercial service approach in ports of all countries, not only developing ones. As in the case of shipping services, ports and auxiliary service providers that are still enjoying monopolistic positions will see these eroded and will have to face competition not only from national private sector suppliers but also from powerful multinational companies.

21. While privatization is relatively slow in the provision of transport infrastructure, it is becoming the norm in the operation of container terminals, which has resulted in a rapidly growing competitive market. Investment on a huge scale is needed and much of this investment will be provided or managed by private terminal operating companies. In the port sector, privatization often involves the granting by the port authority, acting as a landlord, of a long-term lease or concession to manage and operate transport infrastructure to a terminal operating company. For example, in June 2000 the management of the Port of Djibouti was transferred to the private sector, Dubai Port International, for a period of 20 years. One year later, this change had increased productivity, with the number of container moves per hour improved by 118 per cent, and had augmented throughput, with trans-shipment traffic up by 87 per cent and transit traffic by 14 per cent.<sup>11</sup> Apart from being a positive operational development, this example clearly reveals the potential for economic cooperation among developing countries in the field of transport.

22. The coming years will see growing competition as more and more terminal operating port authorities welcome private investment. At the same time there will be pressures by transport operators and logistics providers to offer door-to-door transport to secure cargo and increase revenue. Developing countries have to be prepared for this process in terms of negotiating assistance the WTO and also in terms of providing the necessary framework for a beneficial changeover from a public to a private/commercial service environment.<sup>12</sup>

## **2. Information and communication technology**

23. The greater use of information and communication technology by users and suppliers of transport services can lower trade transaction costs while improving the quality of services offered and can thus benefit international trade. Cargo moving in

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<sup>10</sup> Proposals for extended coverage have been put forward by the European Union, Hong Kong (China), Japan, Norway, the Republic of Korea and Singapore.

<sup>11</sup> Information supplied to the UNCTAD secretariat by the Port Authority of Djibouti.

<sup>12</sup> See UNCTAD, "Guidelines for port authorities and Governments on the privatization of port facilities", UNCTAD/SDTE/TIB/1, 1998, and World Bank Reform Tool Kit, [www.worldbank.org/html/fpd/transport/ports/toolkit.htm](http://www.worldbank.org/html/fpd/transport/ports/toolkit.htm).



some developing countries is often delayed because of missing or insufficient information, which prevents the planning of operations and delays the clearance of cargo. With the availability of high-performance computing power at low cost and the availability of the Internet, users and suppliers of transport services have been developing information systems to facilitate the flow of cargo.

24. The development of Internet sites by the carriers allows shippers from developing countries to obtain information about sailing schedules and tariffs on-line and then book cargo for shipment. The major container carriers are offering more and more services on-line. This development can reduce shippers' transaction costs and significantly decrease the time needed to arrange transport, thus helping goods reach their destination more quickly. At the same time shippers are able to track their shipment, and can therefore advise the receiver of any delays. What is particularly important for developing countries is to increase traders' access to the Internet, lower the cost of Internet connectivity and improve know-how transfer and training.

25. Equipment and cargo tracking systems using information and communication technology allow transport operators to improve the efficiency of their services. UNCTAD's Advance Cargo Information System (ACIS) programme has in particular allowed a number of railway operators in developing countries to reduce operating costs and increase the capacity of existing facilities. A set of computer applications provides information to address multimodal cargo transit and transport problems. A long-term record of transport movement data permits Governments and institutions to analyse national, subregional and regional problems and investigate alternative investment opportunities in the transport sector. ACIS has been implemented in 16 countries of Asia and Africa.

26. Port-community-based systems allow the various players in the transport chain to exchange information electronically and to share common information. This ensures that everyone has access to the same information and thus speeds up the processing of trade. In a number of ports, relevant departments (customs and the port authority) and the business community have established joint companies to develop, install and operate such systems,<sup>13</sup> which will become essential for improving security arrangements along the transport chain.

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<sup>13</sup> Examples of these companies include Portel Servicios Telemáticos (Spain), CNS Port Community Systems and Maritime Cargo Processing plc (United Kingdom), DAKOSY (Germany), SEAGHA (Belgium), PCR (Netherlands), ADEMAR2000/PROTIS2001 (France) and Portnet.com (Singapore).

## **TRADE FACILITATION**

### **A. Overview**

27. Trade facilitation aims at developing a globally accepted, consistent, transparent and predictable environment for international trade transactions. It allows technologically lagging institutions in developing countries to be raised to the level of their more advanced trading partners. It not only benefits a country's trade, but also becomes an important factor in the investment decisions of the private sector. It is based on internationally accepted customs and practices resulting from the simplification of formalities and procedures, the standardization of physical facilities and means, and the harmonization of applicable trade and transport laws and regulations.

28. The marginalization of developing countries is a reflection of their feeble industrial base, and is aggravated by problems associated with inefficient trade procedures and access to adequate international transport and support services. For manufactured goods, reliability and speed of transport can become more important than transport cost. Trade procedures and transport services form an integral part of the measures to be addressed to enable developing countries' trade and industry to participate more effectively in the globalization processes.

29. An improved administrative framework for trade transactions would particularly benefit small and medium-sized enterprises (SMEs), as these are usually at a disadvantage in coping with opaque trade procedures. Developing countries' SMEs are adversely affected by excessive trade procedures as they constitute a fixed cost element and result in reduced returns and disincentives to engage in international trade. The introduction of trade facilitation measures can thus expand trading opportunities for these companies, and help increase the number of their potential trading partners.

30. Trade facilitation is a critical element in any country's economic infrastructure. It aims at developing an environment for international trade transactions that is consistent, transparent, predictable and accepted worldwide. In an age of "just-in-time" manufacturing and distribution, such a facilitative environment for imports and exports not only benefits a country's trade, but also is increasingly an important factor in the investment decisions of the private sector.

### **B. Trade facilitation and management systems**

31. Recent initiatives at regional level, such as those adopted within APEC and the North American Free Trade Area (NAFTA), and at multilateral level, namely in the WTO, have put trade facilitation in the forefront of trade development issues. Although not a new issue for the early comers, such as the European Union or the more advanced Asian nations, this "renewed" visibility is a natural confirmation of

the virtue of their early stand, and of long-expected support for their efforts in this field from those who were previously reluctant or more passive in their attitudes. Understanding the reasons for this may lead to a better understanding of how trade facilitation, as a systemic exercise, should now be approached.

32. Three main factors have made trade facilitation an urgent matter again. Two of them have been widespread: the reduction of existing tariff barriers, and the adoption of uniform binding rules for international trade. Their consequences are well known: the first one gave non-tariff barriers more exposure and fostered analysis and proposals for remedial action; and the second one, in the search for a comprehensive coverage of all facets of trade, brought standardized trade procedures to multilateral negotiations.

33. The third factor has probably had the most substantial impact, although less recognized. It derived from the significant efficiency improvements made by trading community sectors to their management systems. Speed, quality, accuracy and delegation of decision taking to lower management levels are common nowadays in international trade and transport industries. Counterparts in public and traditional financial or banking sectors have taken more time to adapt and now have to face demands from affected parties.

### **C. Customs administration**

34. An efficient customs administration is essential for a country's good governance policy. Customs departments have wide-ranging responsibilities in the application of government policies regarding international trade, including customs clearance of imported or exported goods, revenue collection, prevention of smuggling of arms, drugs and people, and provision of statistical trade data for government analysis and planning. The International Chamber of Commerce (ICC) has made some suggestions regarding the key automated functions of a modern, efficient and effective customs administration.<sup>14</sup>

35. For a variety of reasons, many customs administrations are unable to discharge the above-mentioned responsibilities and many functions are often neglected or poorly handled. Although significant progress has been made, efficient and effective performance is not spread evenly among all administrations, or in all regions of the world. To address this issue, the World Customs Organization (WCO) provides extensive technical assistance to its members and has developed a Customs Reform and Modernization (CRM) Programme. This programme is designed to assist customs administrations in becoming more self-reliant through better use of resources, strengthening of management capabilities, and designing appropriate and efficient customs processes and procedures.<sup>15</sup>

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<sup>14</sup> ICC International Customs Guidelines (document no. 103/190), 10 July 1997.

<sup>15</sup> For details, see [www.wcoomd.org/ie/En/Past\\_Events/trade99/crme.html](http://www.wcoomd.org/ie/En/Past_Events/trade99/crme.html).

36. The implementation of a CRM Programme is usually complemented by automated systems such as UNCTAD's Automated System for Customs Data (ASYCUDA). Since 1985, ASYCUDA has been installed in over 80 developing and transition economies throughout the world. It is designed to streamline and reduce the number of customs forms and procedures, and is based on and incorporates UNECE and WCO Recommendations and Standards (including those related to the UN Layout Key), codes and other standards. The software can be adjusted to each country's customs valuation methodology and translated into its official language. The latest version of ASYCUDA includes a module for the management of transit procedures. The introduction of such systems allows staff members to be reassigned to risk assessment and security-related activities.<sup>16</sup> In March 2002 UNCTAD launched the latest release of ASYCUDA, AsycudaWorld, an Internet-based system that allows customs administrations and the trading community to participate directly in e-commerce. AsycudaWorld is founded on ASYCUDA++ and preserves the investment made by customs administrations in computerized systems, while allowing the countries to develop their e-capabilities at their own pace.

#### **D. Trade facilitation and security**

37. The terrorist attacks on 11 September 2001 illustrated the critical yet fragile nature of the international transport system. For the global economy to flourish, this system must continue to provide safe, secure, efficient and reliable services to travellers and traders in all parts of the world. At the last G8 Summit (Kananaskis, Canada, June 2002), Heads of State agreed on a set of cooperative actions to promote greater security of land, sea and air transport while facilitating the cost-effective and efficient flow of people, cargo and vehicles for legitimate economic and social purposes.

38. These security concerns may have both immediate and long-term implications for several operational aspects of international trade transactions. The implementation of the Customs–Trade Partnership Against Terrorism (C-TPAT) and the Container Security Initiative (CSI), both launched by the United States Customs Service, is currently being discussed bilaterally or in the context of international organizations such as the International Labour Organisation, the International Maritime Organization and WCO.

39. The recent security initiatives and the work by the United States Customs Service to introduce new regulations for imports into the United States will have major impacts on developing countries, particularly for containerized trade. The Customs Service rule on “Presentation of vessel cargo declaration to customs before cargo is laden aboard vessel, at foreign ports for transshipment to the United States” will come into effect on 1 February 2003.<sup>17</sup> This new rule requires all carriers to

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<sup>16</sup> For programme details, see [www.asycuda.org](http://www.asycuda.org).

<sup>17</sup> *Federal Register*, Vol. 67, No. 211, 31 October 2002, Rules and Regulations.

submit a cargo declaration for each container to be shipped to the United States 24 hours before it is loaded aboard. The nature of the cargo must be accurately described, and failure to provide the information in time may result in assessment of monetary penalties and/or delays in issuing the permit to unload. Any container identified as high risk will need to be inspected before loading.

40. This requirement increases the risk of delay in the loading of cargo and could result in congestion in loading ports. The advance notice requirement has provoked a great deal of resistance from the trading community both within the United States and internationally and could make trade more difficult for SMEs in developing countries.

41. These security initiatives may well provide the opportunity to establish a new type of risk management tool based on the concept of “facilitation intelligence”. This notion is similar to the one applied by numerous customs administrations, but its scope is wider. It aims at gathering sufficient information on trading communities to sort out “good” trade and transport operators from “bad” ones, and to facilitate operations for legitimate trade. More customs and security resources could then be assigned to the repression of illicit traffic.

42. Will the current security measures add value to the operational and institutional trading environment of developing countries in addition to increased costs? The answer depends largely on whether the necessary assistance is provided to those countries in terms of technical and financial resources and of lasting capacity to establish an autonomous, sustainable trade management infrastructure.

## **EFFICIENT TRANSPORT AND TRADE FACILITATION: LEGAL ENVIRONMENT**

### **A. Need for certainty and predictability**

43. The efficient functioning of international trade and transport largely depends on the existence of a legal framework that responds adequately to the challenges posed by technological and commercial developments and succeeds in creating certainty and predictability. A fragmented and complex legal framework creates uncertainty, which in turn increases transaction costs as it gives rise to legal and evidentiary inquiries, costly litigation and an increased need for insurance. Thus, international legal instruments pertaining to international trade and transport primarily aim at creating a consistent, transparent and predictable legal environment to facilitate trade. They provide Governments and the trading community with the necessary tools and standards to improve international trade through the harmonization of applicable laws and regulations as well as the simplification of formalities and procedures.

44. However, to achieve this objective, the relevant laws and regulations need to be kept up to date with technological and commercial developments. In recent

decades the transport of goods has undergone fundamental changes as a result of the development of new means of transportation and communication. The exponential growth of containerized transportation since its advent in the 1960s, together with technological developments improving the systems for transferring cargo between different modes, has considerably affected modern transport patterns and practices. Multimodal or door-to-door transport has become increasingly important. Shippers and consignees often prefer to deal with one party (multimodal transport operator) who arranges for the transportation of goods from door to door and assumes contractual responsibility throughout, irrespective of whether this is also the party that actually carries out the different stages of the transport.

45. Moreover, information technology is playing a significant role in the functioning and efficiency of international trade and transport services. Electronic means of communication are used to exchange information, enter into contracts, trace goods during transit, and to perform the functions of traditional transport documents in international trade.

46. To reap the maximum benefits of these developments there is a need for a supportive uniform legal framework.

## **B. Multimodal transport**

47. In spite of various attempts, there is to date no international uniform regime in force to govern liability arising from multimodal transportation. The United Nations Convention on International Multimodal Transport of Goods, which was adopted in 1980, did not attract a sufficient number of ratifications to enter into force. The UNCTAD/ICC Rules for Multimodal Transport Documents, which came into force in January 1992, are a set of standard terms designed for incorporation into commercial contracts. Owing to their contractual nature, however, they are subject to any applicable mandatory law and, as a result, are not able to provide international uniformity of regulation.

48. Thus, the current legal framework consists of a mix of international conventions designed to regulate unimodal carriage (sea, road, rail and air), diverse regional, subregional and national laws and regulations, and standard term contracts.<sup>18</sup> The lack of a global uniform regime has obliged developing countries to resort to solutions at the regional and/or subregional level, such as the laws and regulations prepared by the Andean Community, the Latin American Integration Association (ALADI), the Southern Common Market (MERCOSUR) and the Association of South-East Asian Nations (ASEAN). The proliferation of diverse regional, subregional and national laws and regulations in recent years has resulted in a trend towards further “disunification” at the international level. A study carried out by the UNCTAD secretariat revealed that although the laws and regulations adopted at the

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<sup>18</sup> Such as the FBL 1992 of the International Federation of Freight Forwarders Associations and MULTIDOC 1995 of the Baltic and International Maritime Council (BIMCO).

regional, subregional and national levels are to a certain extent based on the Multimodal Transport Convention and the UNCTAD/ICC Rules, there are significant differences on key issues such as liability, limitation of liability and time-bar. The current situation is set out in detail in the UNCTAD secretariat's report "Implementation of multimodal transport rules" (UNCTAD/SDTE/TLB/2 and Add.1).

49. Following the recommendations of an Expert Meeting convened by the UNCTAD secretariat in November 2001, the secretariat is now in the process of conducting a feasibility study to determine whether an international instrument governing liability arising from multimodal transportation would be desirable, acceptable and practicable. It is envisaged that the results of the study will be available early in 2003 and will serve to assist the deliberations of a Working Group of the United Nations Commission on International Trade Law (UNCITRAL), which recently began consideration of a Draft Instrument on Transport Law.<sup>19</sup> The Draft Instrument, which was prepared by the Comité Maritime International (CMI), is primarily designed as an instrument to govern sea-carriage, but it is proposed that it also apply to all multimodal contracts that include a sea-leg. Whether this solution would improve the present regulatory framework governing multimodal transport remains subject to debate.

50. The Draft Instrument before the UNCITRAL Working Group has significant implications for the development prospects of developing countries, particularly least developed countries. It would significantly affect the ability of developing countries to continue to participate in international trade. It adopts a new approach to risk distribution between carriers and cargo interests, with a significant shift in balance clearly favourable to carriers. Furthermore, its application to multimodal transport would seriously affect the ability of developing countries, particularly landlocked countries, to benefit from potential advantages offered by containerization and multimodal transport. It is important that developing countries be provided with the necessary negotiating assistance so that their interests are taken into consideration in the preparation of the Draft Instrument. UNCTAD's involvement in these deliberations is to be seen in this context.

### **C. Trade and transport documentation: Electronic alternatives**

51. The UNCITRAL Model Law on Electronic Commerce (1996) and the Model Law on Electronic Signatures (2001) have provided Governments with internationally acceptable rules and principles for removing legal barriers to the use of electronic means of communication in international trade at the national level. However, further

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<sup>19</sup> UNCITRAL document A/C.9/WG.III/WP.21, available on the [www.uncitral.org](http://www.uncitral.org) website. Following a request by UNCITRAL, comments on the Draft Instrument have been provided by the secretariats of UNCTAD and UNECE (UNCITRAL document A/C.9/WG.III/WP.21/Add.1), available on the [www.uncitral.org](http://www.uncitral.org) website. The UNCTAD comments, with the text of the Draft Instrument integrated for ease of reference, are also available on the [www.unctad.org](http://www.unctad.org) website (UNCTAD/SDTE/TLB/4).

uncertainties arise from the fact that early international conventions governing transport apply to paper documents and that the replacement of traditional negotiable transport documents with electronic alternatives still presents an important challenge for the transport industry.

52. The time and expense incurred in processing numerous documents, the time spent in waiting for the arrival of the paper bill of lading at the port of discharge, and the cost and liabilities arising from delivery of goods without presentation of the original bill of lading or delivery against “letters of indemnity” are examples of some of the problems which can be avoided by transition to an electronic environment. This is particularly important in relation to developing countries that wish to get their raw materials and commodities to the global market on a “just-in-time” basis. It is observed, however, that trades where the negotiable bill of lading is an essential tool in the transportation process particularly involve the developing nations. Cargoes such as rice, sugar and coffee are regularly traded “afloat”, in the same way as oil and its products. It is therefore essential that developing countries be involved in the development of electronic commerce, particularly in relation to the maritime sector.<sup>20</sup> It can be generally stated that developing countries stand to gain significantly from transition to an electronic environment. They are currently suffering from disproportionately high costs associated with the production of traditional paper documents, particularly in cases where the latter are not required for transaction purposes.

53. The Draft Instrument on Transport Law, currently under consideration within UNCITRAL, allows the use of both “electronic records” and “paper transport documents” and gives them equal legal status. If and when the Draft Instrument is adopted, it will constitute an important step in removing the legal barriers to the use of electronic transport documents and thus facilitating international trade and transport.

54. However, the work within UNCITRAL is in its preliminary stages, and it will take many years before an international instrument comes into effect. In the meantime, in accordance with the recommendations of the Commission on Enterprise, Business Facilitation and Development at its sixth session, the secretariat is conducting an inquiry into the extent of the use of negotiable transport documents in international trade and possibilities for their replacement with electronic alternatives. In this context, the questionnaire sent by the secretariat to various sectors of the industry, including operators, traders, banks and intermediaries, has generated a considerable interest and reaction. The result of the study will be made available to member States and the Commission at its next session.

55. These matters are clearly of the utmost importance and require careful consideration and attention by all, in both the public and private sectors, involved and/or interested in facilitating global international trade.

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<sup>20</sup> See document TD/B/COM.3/EM.12/2, Part II.



## THE WAY FORWARD

56. As discussed in this paper, multimodal transport and logistics services are essential for increasing the efficiency of transport, facilitating trade and reducing transaction costs. Logistics has become an important value-added service in the global production and marketing of goods originating in both developing and developed countries. It has also changed the approach to production, trade and transportation, and has thus affected both shippers and transport service providers.

57. The growth of containerization and the use of containers for door-to-door transport have facilitated the through movement of goods using different modes of transport. As stated earlier, with globalization and trade in manufactured goods, containerized traffic is expected to double in the next decade. Thus there will be a growing demand for multimodal transport and logistics services.

58. Another revolutionary process that has characterized containerization and multimodal transport can be observed in the use of information and communication technology (ICT) and systems. Sophisticated ICT based management and operating systems provide efficient cost control, optimum use of equipment and a new quality in customer relations. Use of ICT speeds up the exchange of information, provides advance information for planning, reduces information-related delays, provides greater choice for shippers and improves the quality of service. The use of this technology is necessary in order to introduce supply chain management.

59. Developing countries need to develop their capacity to provide multimodal transport and logistics services. The provision of such services requires improvement in physical, institutional and legal infrastructure and offers a potential market for trade-related and transport companies in developing countries. Strategies could involve support policies to strengthen local commercial capabilities and increase their competitiveness, removal of obstacles for national services suppliers, and measures to develop appropriate institutional frameworks allowing the creation of partnership schemes between national and regional operators and major international logistics services providers. Bilateral and regional cooperation might be considered as a first step in this direction.

60. The services to be provided by logistics operators from developing countries include freight transportation, cargo-handling, storage and warehousing, customs clearance, transport agency, container station and depot, inventory management, order processing, production planning and production control.

61. Trade facilitation is an essential development factor, particularly for developing countries. The present, post-Doha context offers an opportunity to WTO members to seek jointly the most appropriate conditions to implement measures that

will “further expedite the movement, release and clearance of goods including goods in transit”.<sup>21</sup>

62. Multilateral cooperative actions should be identified for the assessment of the potential consequences of global rulings for trade facilitation as part of the WTO trading system and the modalities of the implementation of these binding trade facilitation measures in developing countries at the national and regional levels. Possible schemes for cooperation between UNCTAD and WTO should be explored to arrive at a coherent, comprehensive and complementary implementation of technical assistance activities.

63. Assistance is required in order to provide developing countries with sustainable capacity to plan and implement national and regional trade and transport facilitation initiatives as part of their strategies for providing logistics services.

64. The above issues require in-depth consideration by all stakeholders, including shippers/cargo interests, carriers, freight forwarders, logistics operators, customs, policy makers, and transport and trade administrators. An Expert Meeting is envisaged to explore the impact of the latest developments in multimodal transport and logistics on developing countries and the conditions under which they can participate in the provision of such services.

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<sup>21</sup> Paragraph 27 of the Doha Ministerial Declaration ([www.wto.org](http://www.wto.org)).