



Central Asia Regional Economic Cooperation Program

Considerations for a “Model” Corridor-Based Transport Agreement

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Prepared by Mr. Kristiaan Bernauw, ADB Consultant, as a Reference Document for the ADB Institute Roundtable Seminar on Ways Forward for Corridor-Based Transport Facilitation Arrangements in the CAREC Region, Beijing, People’s Republic of China, 10-11 April 2012. The views expressed in this document are those of the author, and do not necessarily reflect the views of the Asian Development Bank or its Board of Governors or the governments they represent.

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I. THE CONCEPT, SCOPE, AND GOAL OF TRANSPORT FACILITATION

A. The Concept

1. Transport facilitation must be distinguished from trade and immigration policy. Transport facilitation creates the environment and instrument for efficient cross-border transport and trade. It is in principle neutral vis-à-vis the trade and immigration policy. It should not be misused as a “disguised” trade and immigration policy tool. Transport facilitation entails giving up some national sovereignty and identity but it is done on a reciprocal basis and it pursues economic benefit. It allows for escape from isolation and a move towards a globalized world. In case the expected benefit from facilitation is not in balance among the contracting countries, ways and means of set off must be found.

B. Scope

2. The scope of the transport facilitation commitment must be specified:

- (i) Mode: road (and/or others)
- (ii) Subject matter: people, goods, vehicles
- (iii) Type of operation:
 - * interstate (inbound/outbound between two countries) and transit (traversing the national territory)
 - * transport (conveyance for reward) and movement
- (iv) Corridor or territory based (see the Annex for elaboration)

C. Goal

3. The goal of transport facilitation is to avoid unnecessary loss of time, banning superfluous efforts, and saving useless expenses, thus making more effective use of production means, reducing the cost for the consumer and contributing to poverty alleviation.

II. THE PATH TO TRANSPORT FACILITATION

4. Transport facilitation is achieved by removing the restrictions on cross-border movements and by having authorities stop undertaking a number of inspections and controls. For that purpose a balance must be struck between relaxing the inspections/controls on the one hand and safeguarding the national interests in the fields of treasury, security, safety, health, economy, immigration, and the like on the other hand. However, border crossing clearance must not become a public source of income nor a tool for civil servant employment.¹

III. THE OVERARCHING GENERAL PRINCIPLES

5. Because the transport factor should not be misused as a trade policy instrument and because transport operations should not be an income-generating source for the public sector, charges should only be cost-related, i.e., covering the real expense caused.

¹ The creation of a customs union between groups of countries automatically contains important trade and transport facilitation measures by abolishing the need for customs inspection, controls, and formalities. Therefore, a customs union is conducive to transport facilitation, but it does not remove all transport facilitation barriers (e.g., ones related to security, safety, health, economy, and immigration).

6. A transport facilitation convention or agreement sets only minimum facilitation requirements. The contracting parties can do better and maintain or install a more facilitating regime.

7. No discrimination should be permissible vis-à-vis any one element of the cross-border transport operation (persons, operators, vehicles, goods) on the ground of nationality, origin, or destination.

IV. THE ELEMENTS OF A TRANSPORT FACILITATION SYSTEM

A. People

8. Long-term, multiple-entry visa should be granted to the vehicle crews to avoid the cost and effort of repeated applications. Health inspection must be aligned to the standards of the World Health Organization to avoid pretexts for denying access to the host country territory, but protect against the contamination risk.

9. Mutual recognition of driving licenses, age requirements and medical screening is required: it avoids redundant double licensing in home and host country. It requires some level of harmonization of the licensing conditions.

B. Vehicles

10. The following are important considerations regarding vehicles:

- (i) Reciprocal recognition of registration avoids redundant double registration and road tax levying.
- (ii) Mutual recognition of technical standards (e.g., dimensions, weight, axle loads) avoids vehicle modifications for the sake of compatibility with host country standards and specifications. It requires some degree of harmonization among the contracting parties so that each others' roads and bridges can accommodate each others' motor vehicles.
- (iii) Reciprocal recognition of roadworthiness inspection certificates avoids duplication of inspection.
- (iv) Mutual recognition of home country third-party motor liability insurance cover avoids duplication of insurance cover and the associated double premium cost. It requires harmonization of the minimum contents of the cover, guarantees about the solvency of the insurers, and easy access of the host country victims to compensation.
- (v) A customs temporary admission system avoids deposit of a bond per trip and per vehicle. It requires some guarantee system for the treasury in case of irregular importation of the motor vehicle in the host country.

C. Transport Operators

11. An exchange of road traffic rights allows the foreign transport operator to operate into/through the host country territory. Generally, cabotage is excluded from the exchange. A quota system (limiting the number of cross-border commercial transport operations to a maximum) may be justified in a short-run transition period. A permit system should not accompany the quota system for it is detrimental for facilitation by creating more administrative red-tape. There are ways and means other than permits to implement, enforce and police a quota system.

12. A harmonized carrier liability regime avoids competition distortion between the transport operators and forum shopping by customers.

D. Goods

13. The categories of prohibited goods (e.g., protected animals and plant species, cultural heritage objects, narcotics, weapons) or restricted goods (e.g., hazardous, perishable, oversized, overweight goods) requiring special measures should be predefined in order to avoid arbitrary pretexts to refuse the admission of some goods to the host country territory.

14. Sanitary and phytosanitary inspections must be performed in accordance with the relevant international conventions, so as to avoid pretexts for denying access to the host country territory, but at the same time to provide protection against the contamination risk.

15. A customs transit regime must be installed that avoids routine customs inspection at the border, the deposit of bonds, and customs escorts. It requires a security system by a solvent guarantor, protecting the interests of the treasury in case of irregularity (illegal importation).

E. Procedures and Documents

16. Harmonization and simplification of procedures and documents create an important gain of time, effort, and expense for the transport operators, e.g., advance and inland clearance, one-stop and single window clearance, harmonized commodity description, harmonized cargo valuation, harmonized form lay-out. At all times the reasons for being and the added value of a procedure, a document, or a requirement should be questioned.

F. Language, Measurement Units, Information and Communications Technology (ICT) Software, Currency

17. All these items should be interchangeable in order to allow the required communication.

G. Institutional Arrangements

18. Permanent bodies on the national and on the regional level are to supervise the functioning of the facilitation instrument, to record its flaws, to receive complaints by users, and to serve as a platform for discussion and conflict resolution. It is crucial that the private sector is well represented in those bodies because along with the public sector it is a stakeholder in the facilitation initiative.

H. Infrastructure, Facilities, and Equipment

19. Road, bridge, and tunnel construction standards, and road signs and signals should be harmonized to the extent of accommodating traffic of mutually allowed motor vehicles. While a minimum of infrastructure, facilities, and equipment may be necessary for efficient border crossing clearance, the goal of facilitation is to remove to the extent possible the clearance formalities from the border crossing point. Hence the goal of a facilitation agreement is rather to limit or reduce (as the case may be) the border crossing point installation than to build additional new complexes.

I. General Political-Social-Economic Environment

20. The following factors are also prerequisites for transport facilitation but cannot be achieved only for the transport sector: political stability, resolution of border conflicts, law and order, reliability of the judiciary, protection of free competition, availability of modern banking, insurance and communication systems.

21. In the transport facilitation context, the following factors are of particular importance:

- (i) protection of the safety of foreign users;
- (ii) repression of corruption; and
- (iii) transparency of legislation, regulation, procedures, and documents.

V. THE PUBLIC-PRIVATE SECTOR RELATIONSHIP

22. In a modern state of law the authorities (civil “servants”) are at the service of the users (general public) and not vice versa.

23. The private transport (and trade) sector generates the wealth, the public sector only consumes wealth (for the public good). Therefore utmost respect should be reserved to the private sector. Its involvement in the elaboration, application, and enforcement of the transport facilitation system is crucial.

24. The rights of authorities (e.g., control, inspection) are justified only by their duty to safeguard the public interest. It must constantly be kept in mind that the development, application, and enforcement of regulations should not lead their own life for the mere gratification of bureaucracy and its civil servants.

VI. INTERNATIONAL, REGIONAL, AND BILATERAL CONVENTIONS/AGREEMENTS

25. In some regions of the world, immediate accession to multilateral international conventions may be too onerous and demanding for the purpose of the immediate use that can be drawn from them in the context of regional transport facilitation. On the other hand, the adoption of multilateral international conventions offers the opportunity of access to the international market.

26. An intermediate and temporary solution may be found in the development of a tailor-made regional convention that is inspired by the regime of the multilateral international conventions, but in a “light” version. It creates the opportunity for easier transition to those multilateral international conventions regime over the long run.

27. Setting up a system of transit transport operations involving at least three different sovereign countries cannot easily be achieved on the basis of bilateral agreements. A plurilateral instrument is preferable in that case.

VII. SEPARATION OF TRANSPORT POLICY FROM OTHER INTERNATIONAL INTERESTS AND POLITICAL AMBITIONS

28. A transport facilitation instrument intends to be neutral vis-à-vis trade and immigration (and other) policies. It is recommended not to mix them in the negotiation, application, and enforcement of the transport facilitation regime.

VIII. UNREALISTIC EXPECTATIONS FROM OVERLY SOPHISTICATED ICT SYSTEMS

29. “Do not try to run before you can walk”. There is a general misconception that (all the) transport facilitation issues can be solved by installing sophisticated information and communication technology (ICT) applications. Although some well-chosen ICT applications can help advance and accelerate the facilitation process, the comprehensive systems are generally too expensive, and their installation is too time consuming, requiring too much operator training and is too fragile to operate. The transport facilitation history of the last 15 years proves that all promises made by the protagonists of such systems to solve all facilitation issues have not been met and are illusive. The message is to be skeptical.

IX. WILLINGNESS TO CHANGE NATIONAL LEGISLATION

30. While a transport facilitation convention should strive to keep the required change of national laws and regulations to the strictly required minimum, a (regional) convention entails to some extent harmonization and mutual attuning of the national bodies of law and may therefore require change of national provisions. The national bodies of law of the contracting parties may differ. Integration on a supranational level is not possible without some harmonization of the national laws.

31. A transport facilitation instrument should contain clear commitments by the contracting parties (countries) instead of vague declarations of intent.

32. A technique that is not recommended consists of referring issues not solved or agreed upon during the negotiation of the transport facilitation instrument to another instance of a later agreement or to another forum, such as a committee. Even worse is the reference of the issue to national law of the contracting countries: in this manner the transport facilitation instrument totally lacks and does not contain any facilitation effect whatsoever. In such an approach it moreover creates a source of arbitrariness, a lack of transparency, and even a cause for future conflict.

33. In addition, the required change of national law and regulations should be achieved openly through the normal legislative channels according to national law. The technique of using MOUs instead of full-fledged openly approved treaties for the sole motive of establishing an agreement in a concealed manner by sidetracking parliamentary approval should be avoided.

ANNEX: CORRIDOR OR TERRITORY-BASED APPROACH

1. A transport operator confronted with differential regimes in the same regional journey may encounter insurmountable difficulties. For the private sector user or transport operator, differential regimes may block regional transport operations (e.g., if there is no exchange of traffic rights for some segments of the regional operation) and in the best case still render them more complicated, onerous, and time-consuming (in case the facilitation level differs: e.g., if there is [only] a customs union, other facilitation aspects may not be addressed, or if a customs transit regime is missing in some country traversed or even if there a customs transit regime in place in all countries traversed, the system may differ, such as by requiring in one regime case-per-case individual security and in another regime a standing collective security).
2. For a country bordering multiple countries and being part of different regional groupings of countries, it is very difficult if not impossible to install a regime that is compatible with several differential supranational regimes. A sovereign country cannot at the same time impose different legal/regulatory regimes in its national territory. Thus, for the public sector it is very difficult if not impossible to install differential regimes in its territory in parallel.
3. **As long as there is no harmonization on the supranational level,¹ probably a corridor-based approach offers the only practically feasible solution.** This means that the facilitation regime will be specific per corridor and may differ from the regime in the rest of the national territory and on other corridors in the same countries.
4. However, unavoidable drawbacks of a corridor regime include the following: (i) networking and interconnecting of corridors is more complicated; and (ii) for interstate as opposed to transit operations, the facilitation effect is lost to a certain extent if the points of inland origin and final destination are not situated on the corridor (e.g., it may require transshipment).

¹ Such harmonization is to be supported, promoted, and stimulated by supranational agencies, donors, and sponsors through consultation and coordination.