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Item 12(e) of the provisional agenda

**ISSUES THAT NEED CONSIDERATION
AND REQUIRE DECISIONS BY THE COMMITTEE**

Restrictions imposed on the transit quota of road transport permits

Note by the secretariat

Summary

At its seventieth session, held in February 2008, the Inland Transport Committee (ITC) considered a proposal submitted by the Government of Turkey concerning restrictions imposed on the transit quota of road transport permits and requested the Working Party on Road Transport (SC.1) to deal with this matter and to report to it at its next session.

At its 103rd, held in Geneva from 29 to 31 October 2008, SC.1 based on a document submitted by Turkey (ECE/TRANS/SC.1/2008/5), considered the subject and requested the secretariat to prepare a document for the 71st session of ITC containing an abstract of relevant United Nations conventions on the freedom of transit, as well as on the facilitation of the international road transport.

The present document provides the required information. The Committee is invited to take these conventions into consideration when discussing the relevant item of its agenda.

Introduction

1. The Government of Turkey submitted to the seventieth session of the Inland Transport Committee (ITC) a proposal concerning restrictions imposed on the transit quota of road transport permits.
2. The Committee requested the Working Party on Road Transport (SC.1) to deal with this matter and to report to it at its present (seventy-first) session.
3. Based on a document submitted by Turkey (ECE/TRANS/SC.1/2008/5), the SC.1 considered the subject at its 103rd session held in Geneva from 29 to 31 October 2008.
4. While agreeing that transit was an important issue to be considered, the majority of delegations were of the view that SC.1 had no mandate resulting from any of the United Nations Economic Commission for Europe legal instruments or given by the Inland Transport Committee to deal with and/or to take decisions on the issue of transit quotas. Moreover, as the transit quotas are regulated bilaterally it was suggested that more effective decision and problem resolution may be found in bilateral contacts and possibly in the International Transport Forum (ITF) during negotiations on the multilateral permits.
5. As an outcome of the debate, the Working Party requested the secretariat to compile, for the seventy-first session of the ITC, an abstract of relevant articles from the United Nations conventions that cover freedom of transit as well as the facilitation of international road transport and the list of Contracting Parties thereto.
6. Facilitating international road transport is the major objective of all the legal instruments relating to road transport or border crossing facilitation concluded under the auspices of UNECE. However, the freedom of transit as such is only referred to in the Revised Consolidated Resolution on the Facilitation of International Road Transport (R.E.4) as contained in document TRANS/SC.1/2002/4/Rev.4. The provisions of R.E.4 have a recommendation character.
7. Point 1.2.1.11 of the R.E.4 recommends that “Without prejudice to other provisions of these principles, freedom of transit should be granted on major international traffic routes (E-roads in Europe, similar roads on other continents). Traffic should not be banned or subjected to such measures as transit duties, taxes (other than user charges and tolls for the use of transport infrastructures) or quotas.”
8. The present document represents the answer to the request addressed by SC.1 to the secretariat. The legal instruments from which the provisions relating to freedom of transit have been compiled are:
 - (a) the Convention and Statute on Freedom of Transit, Barcelona, 1921;
 - (b) the United Nations Convention on the Law of the Sea, Montego Bay, 1982;
 - (c) the United Nations Convention on the High Seas, Geneva, 1958;
 - (d) the United Nations Convention on Transit Trade of Land-Locked States, New York, 1965; and

(e) General Agreement on Tariffs and Trade (GATT) of the World Trade Organization.

9. The Committee might wish to take note of the present document and to invite the Contracting Parties to these transit-related legal instruments to observe and effectively implement the provisions regulating the freedom of transit.

Annex

[ENGLISH ONLY]

**CONVENTION AND STATUTE ON FREEDOM OF TRANSIT, BARCELONA,
1921 ^{1/}**

Statute on Freedom of Transit

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."

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.

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.

^{1/} The UNECE member States that are Contracting Parties to the Convention and Statute on Freedom of Transit, Barcelona, 1921, are: Albania, Austria, Belgium, Bosnia and Herzegovina, British Empire (including Newfoundland), Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, The Netherlands (including the Netherlands Indies, Surinam and Curacao), Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and Yugoslavia (former).

Article 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, MONTEGO BAY, 1982^{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 right and facilities provided for in this Part for land-locked States shall in no way infringe their legitimate interests.

Article 127

Customs duties, taxes and other charges

1. Traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic.
2. Means of transport in transit and other facilities provided for and used by land-locked States shall not be subject to taxes or charges higher than those levied for the use of means of transport of the transit State.

^{2/} **The UNECE member States that are Contracting Parties to the United Nations Convention on the Law of the Sea, Montego Bay, 1982, are:** Albania, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, European Community, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Ukraine, and United Kingdom of Great Britain and Northern Ireland.

CONVENTION ON THE HIGH SEAS, GENEVA, 1958^{3/}

Article 3

1. In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter, and in conformity with existing international conventions, accord:

(a) To the State having no sea-coast, on a basis of reciprocity, free transit through their territory; and

(b) To ships flying the flag of that State treatment equal to that accorded to their own ships, or to the ships of any other States, as regards access to seaports and the use of such ports.

2. States situated between the sea and a State having no sea-coast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal State or State of transit and the special conditions of the State having no sea-coast, all matters relating to freedom of transit and equal treatment in ports, in case such States are not already parties to existing international conventions.

CONVENTION ON TRANSIT TRADE OF LAND-LOCKED STATES, NEW YORK, 1965^{4/}

Principle III

In order to enjoy the freedom of the seas on equal terms with coastal States, States having no sea-coast should have free access to the sea. To this end States situated between the sea and a State having no sea-coast shall by common agreement with the latter and in conformity with existing international conventions accord to ships flying the flag of that State treatment equal to that accorded to their own ships or to the ships of any other State as regards access to seaports and the use of such ports.

Principle IV

In order to promote fully the economic development of the land-locked countries, the said countries should be afforded by all States, on the basis of reciprocity, free and unrestricted transit, in such a manner that they have free access to regional and international trade in all

^{3/} **The UNECE member States that are Contracting Parties to the United Nations Convention on the High Seas, Geneva, 1958, are:** Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Montenegro, Netherlands, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States of America.

^{4/} **The UNECE member States that are Contracting Parties to the United Nations Convention on Transit Trade of Land-Locked States, New York, 1965, are:** Belarus, Belgium, Croatia, Czech Republic, Denmark, Finland, Georgia, Germany, Hungary, Italy, Kazakhstan, Luxembourg, Montenegro, Netherlands, Norway, Russian Federation, San Marino, Serbia, Slovakia, Sweden, Switzerland, Turkey, Ukraine, United States of America, and Uzbekistan.

circumstances and for every type of goods. Goods in transit should not be subject to any customs duty. Means of transport in transit should not be subject to special taxes or charges higher than those levied for the use of means of transport of the transit country.

Principle V

The State of transit, while maintaining full sovereignty over its territory, shall have the right to take all indispensable measures to ensure that the exercise of the right of free and unrestricted transit shall in no way infringe its legitimate interests of any kind.

Principle VI

In order to accelerate the evolution of a universal approach to the solution of the special and particular problems of trade and development of land-locked countries in the different geographical areas, the conclusion of regional and other international agreements in this regard should be encouraged by all States.

[...]

Article 2

Freedom of transit

1. 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.
2. 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.
3. 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.
4. The Contracting States shall permit the passage of traffic in transit across their territorial waters in accordance with the principles of customary international law or applicable international conventions and with their internal regulations.

Article 3

Customs duties and special transit dues

Traffic in transit shall not be subjected by any authority within the transit State to customs duties or taxes chargeable by reason of importation or exportation nor to any special dues in respect of transit. Nevertheless on such traffic in transit there may be levied charges intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such charges must correspond as nearly as possible with the expenses they are intended to cover and, subject to that condition, the charges must be imposed in conformity with the requirement of non-discrimination laid down in article 2, paragraph 1.

WORLD TRADE ORGANIZATION ^{5/} THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

Article V

Freedom of Transit

1. 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".
2. 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.
3. 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.

^{5/} **The UNECE member States that are also members or observers of the World Trade Organization are:** Albania, Armenia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, *European Communities*, Finland, Former Yugoslav Republic of Macedonia (FYROM), France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands (for the Kingdom in Europe and for the Netherlands Antilles), Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and the United States of America. **Observer governments:** Andorra, Azerbaijan, Belarus, Bosnia and Herzegovina, Kazakhstan, Montenegro, Russian Federation, Serbia, Tajikistan, and Uzbekistan.

4. 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.

5. 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.

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

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