

The European Union's TACIS TRACECA programme
for Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey,
Turkmenistan, Ukraine, Uzbekistan

Common Legal Basis for Transit Transportation Project

**for Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan,
Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey,
Turkmenistan, Ukraine, Uzbekistan**

Completion Report

October 2004

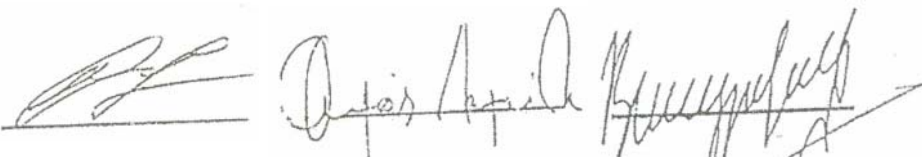


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REPORT COVER PAGE

Project Title	: Common Legal Basis for Transit Transportation		
Contract Number	: 2002/027-526		
Countries	: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.		
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Date of report: October 2004

Reporting period: November 2002 – October 2004

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Contents

1	PROJECT SYNOPSIS - CONTRACT NO 2002/027-526	3
2	SUMMARY OF THE PROJECT PROGRESS SINCE THE START	5
3	PROJECT PROGRESS IN FINAL PROJECT PERIOD	8
3.1	PROMOTING RATIFICATION OF INTERNATIONAL TREATIES	8
3.2	NEW TECHNICAL ANNEXES TO MLA	9
3.3	HARMONIZATION OF ROAD VEHICLE TECHNICAL STANDARDS	9
3.4	LEGAL ADVICE AND ASSISTANCE TO THE PERMANENT SECRETARIAT	10
3.5	TRACECA VISA	10
3.6	STRATEGY OF IGC TRACECA FOR DEVELOPMENT OF THE TRANSPORT CORRIDOR EUROPE-CAUCASUS- ASIA (TRACECA) FOR THE PERIOD OF 2005-2010.	11
3.7	TRACECA INDUSTRIAL ADVISORY PANEL	11
3.8	PROJECT'S EXTERNAL RELATIONS	12
	PROJECT PROGRESS REPORT	13
	RESOURCE UTILISATION REPORT	14
	OUTPUT PERFORMANCE REPORT	15
4	OVERALL REPORT ON THE TOTAL PROJECT	16
4.1	NATIONAL LEGAL WORKING GROUPS	16
4.2	CATALOGUE OF BILATERAL AND MULTILATERAL TRANSPORT TRANSIT AGREEMENTS	16
4.3	PROMOTING RATIFICATION OF INTERNATIONAL TRANSPORT AND TRADE TREATIES	17
4.4	MANAGEMENT DEVELOPMENT AND TRAINING	18
4.5	NEW TECHNICAL ANNEXES TO MLA	19
4.6	HARMONIZATION OF TECHNICAL STANDARDS FOR ROAD VEHICLES	19
4.7	ELABORATION ON ROAD HAULAGE PERMITS AND QUOTA SYSTEM	20
4.8	ADVICE AND ASSISTANCE TO THE PS	20
4.9	TRACECA VISA	22
4.10	STRATEGY OF IGC TRACECA FOR DEVELOPMENT OF THE TRANSPORT CORRIDOR EUROPE-CAUCASUS- ASIA (TRACECA) FOR THE PERIOD OF 2005-2010.	22
	PROJECT COMPLETION REPORT	24
	OUTPUT PERFORMANCE SUMMARY	25
5	LESSONS LEARNT AND RECOMMENDATIONS	26

1 Project Synopsis - Contract No 2002/027-526

Wider Objectives: To perceive legal barriers and to remove the same through harmonization of national transit transport legislation by means of enhancing transparency and efficiency, achieving consolidation of competition and free market practices and bringing TRACECA countries closer to relevant EU transport policy.

Specific Project Objectives: To provide the TRACECA States with the necessary elements for organising a common legal basis for transit traffic in each state by proposing accession to the relevant priority international conventions and treaties, drafting and promoting adoption of a multimodal transit law/Protocol(s) of amendment, additions or new annexes to the MLA.

Outputs: The following outputs will be provided:

- National Legal Working Groups (NLWG) established and efficient operation ensured
- Bilateral and multilateral transport transit agreements collected, catalogued and analysed
- Ratification of identified recommended conventions and other treaties promoted and implementation facilitated by means of, *inter alia*, management development and training
- Guide to International conventions and agreements for transport operators and traders elaborated
- Training program for IGC NLWGs conducted
- Draft New Technical Annex(es) to the MLA
 - on multimodal transit transport
 - on TRACECA investments
 - on freight forwarding operations
- TRACECA road haulage permit and quota system elaborated
- Modern technical vehicle standards: needs studied, regulative innovations recommended
- Legal assistance to the IGC Permanent Secretariat provided throughout the project duration
- Financial support to the National Secretaries of the Parties of the MLA, General Secretary and Executive Secretary of the PS IGC TRACECA and two multilateral legal working groups (MLWGs)
- Introduction of the TRACECA Visa
- IGC TRACECA Strategy on development of the Transport Corridor Europe-Caucasus-Asia (TRACECA) for the period 2005-2010 drafted and proposed

Activities:

- Establishment of regional offices in Bucharest, Baky and Tashkent
- Establishment of sub-office in Tbilisi
- In close co-operation with the on-going TRACECA Projects, Permanent Secretariat and National Commissions, setting up and arrangement for proper functioning of National Legal Working Groups (NLWG) and promotion of meetings of the Multilateral Legal Working Groups (MLWGs)
- Compilation of catalogue of bilateral and multilateral transport transit agreements applicable to TRACECA states, analysing their impact on the MLA and recommending appropriate action to adapt or modify them where they are in conflict with it.
- To assist TRACECA states to accede to and implement priority international conventions, also by means of management development and training. In respect of each recommended Convention:
 - familiarisation with operational situation in every country
 - review and report on the difficulties being experienced with implementation in each newly adhering state;
 - help counterparts to overcome any problems which can be resolved through technical assistance;
 - investigate the opportunities for wider availability of commercial insurance in respect of cargoes and carrier liability;
 - prepare a list of recommendations for future action especially where inadequate investment in infrastructure or manpower is impeding implementation.
- Management Development and Training
 - Compilation of a Guide to International Conventions and Agreements for transport operators and traders including:
 - List of annotated proposed international agreements;

- an explanatory section on the MLA and its annexes, amendments and additions thereto;
- an explanatory section on international permit and quota systems in road transport;
- recommendations in the frame of Trade and Transport Facilitation
- Development and conduct of training program for NLWGs
- Drafting of new Technical Annex(es) to the MLA
 - on multimodal transit transport using material compatible with the UNCTAD/ICC Rules and FIATA FBL and codes of practice as devised by the TRACECA Legal Framework project
 - on TRACECA investments
 - on freight forwarding operations
- In close co-operation with the Permanent Secretariat and the LWGs at National level, assessing of the feasibility of introducing a regional system of road haulage permits and quotas and drafting relevant amendments to the Technical Annex on Road Transport to MLA
- Facilitation of harmonization of technical standards for road freight vehicle construction-and-use that could be incorporated within the road transport Annex to the MLA and phased in over a period of years. Also to suggest how EU standards on Operator Licensing and Drivers' hours could be adapted for use in the region, building on the work recently completed by the International Road Transport Facilitation project.
- As part of legal assistance to the IGC Permanent Secretariat:
 - drafting new Statute of the Permanent Secretariat and the Rules of Procedure of IGC TRACECA
 - legal advise on accession to the MLA for the potential candidates
 - assisting in the preparation of any legal documents considered necessary to implement recommended changes in accordance with the international practices at the regional level and similar assistance to National Commissions through NLWGs preparing proposals for submission to Ministers or Parliament
 - advising to current parallel projects
- Financial Support to the General Secretary, Executive Secretary and National Secretaries, including monthly indemnities, travelling and office expenses, and two working groups for the period October 1st 2003 to July 1st 2004.
- TRACECA Visa: elaboration of new technical annex to the MLA on international customs procedures under SMGS railway bill and introduction of amendments and additions to the MLA and Technical Annex thereto on free issue of visas, abolishment of mortgages in transit of goods by railways, and application of 0-rate VAT on railway transport services in international and transit transportation
- Elaboration of IGC TRACECA strategy on development of the Transport Corridor Europe-Caucasus-Asia (TRACECA) for the period 2005-2010.

Target Group: Ministries of Transport or Cabinet of Ministers of beneficiary countries/President's Office.

Beneficiaries: TRACECA National Commissions and IGC TRACECA Permanent Secretariat

Inputs: Technical Assistance will include:

International expertise:

- 440 man/days Team leader;
- 440 man/days long-term senior experts;
- 658 man/days short-term senior experts.

Local expertise:

- 1080 man/days long-term junior experts;
- 1068 man/days short-term local senior experts.

Setting up of at least three regional offices (Baku, Tashkent and Bucharest) and a sub-office in Tbilisi.

Project starting date: November 21, 2002

Project duration: 24 months

Draft Completion Report October 2004

2 Summary of the project progress since the start

The project started off on the 21st of November 2002, a day after the Contract was signed.

On the same date, the kick-off meeting in Brussels took place. This meeting was attended by Mr. Efstathios Dalamangas, Task Manager of the TRACECA Program and Mr. Thomas Lamnidis, the Project Team Leader.

The decisions of the meeting and recommendations of the Task Manager were duly implemented: the local experts were recruited in Baky (basic office), Tashkent, Tbilisi and Bucharest. The offices have been sufficiently equipped and are fully operable to date. The kick-off meeting in Baku was held by the international experts of the Project in the Permanent Secretariat of the IGC TRACECA on December 3, 2002.

Co-ordination was established with ongoing projects “The TRACECA Co-ordination Team”, the “Harmonization of Border Crossing Procedures”, “Unified Policy for Transit Fees and Tariffs” and the “Capacity Development for Senior Transport Officials”. From August 2004 the project coordinated its activities with Trade Facilitation and Institutional Support Project, in part of activities to be followed-up by the TFIS from CLBTT project.

The National Legal Working Groups have been established in all (12) TRACECA member states, except for Turkmenistan, and official nominations were made by mid July 2003. The Terms of Reference for the NLWGs, including funding provisions was finalized and obtained approval of the Task Manager on 9th October 2003. Further to that, in compliance with ToR provisions, a list of specific tasks, including monitoring scheme and evaluation criteria was developed, approved by the Task Manager and distributed to the Parties. Please see Annex 1 for the Monitoring and Evaluation Indicators, which includes the list of tasks. In accordance with the ToR, a series of regular NLWGs workshops took place in the TRACECA countries, which are reported herein. A series of visits (34 in total) of the Project Coordinator and Team Leader were made to participate in workshops (64 in total) in all Project beneficiary countries.

The task of promotion of ratification and implementation of international conventions, also by means of (1) delivery of training sessions, which is at the same time is an execution of management development and training task, (2) development and publication of Legal Guide and (3) conduct of presentations, also by means of obtaining consent of the Parties to the Basic Agreement to recommend (by means of IGC decision) 4 international conventions in the field of international transport.

The Contractor has investigated the opportunities for wider availability of commercial insurance in respect of cargoes and carrier liability. Project findings and recommended actions are contained hereinafter.

The range of legal instruments, drafted, proposed and submitted for consideration of the NLWGs and the PS during the Project period have been implemented by:

(1) the Decision of the III IGC TRACECA Meeting¹, which committed the Parties to (i) application of VAT zero-rate on railway transport services on international and transit railway connection, including transportation, forwarding, loading/unloading and storage services; (ii) interdict application of customs deposits, bank guarantees, financial risk insurance policies and railway guarantees for transit of goods by railway transport; (iii) ensure free issuance of visas for persons transporting and/or accompanying humanitarian goods and reconstruction materials to Afghanistan through TRACECA corridor,

(2) the recommendation of the Working Group of Legal Experts (Working Group Meeting of National Secretaries and Legal Experts, October 6-8, 2004, held in Baky), to submit to the next IGC Meeting for adoption the Draft Protocol on Amendments to the Basic Agreement, which covers the introduction of amendments/additions to the (i) Technical Annex to the Basic Agreement on Road Transport, (ii) Technical Annex to the Basic Agreement on Customs Documentation and Procedures, and also introduction of new Technical Annexes on: (iii) Jointly financing system of the PS IGC TRACECA², (iv) Multimodal Transportation, (v) TRACECA Investments, (vi) Freight Forwarding operations. Please see Annexes 2, 5 and 6 for the final documents of the WG Meeting.

Drafting the Technical Annexes on TRACECA Investments and Freight Forwarding Operations was undertaken by the Contractor as an additional activity upon requests received from the countries.

The Contractor has compiled a catalogue of bilateral and multilateral transport agreements and, having analysed their impact, has developed the Legal Guide to International Conventions and Agreements for transport operators and traders, which has covered: list of annotated proposed international agreements; an explanatory section on the MLA and its annexes, amendments and additions thereto; an explanatory section on international permit and quota systems in road transport; recommendations in the frame of Trade and Transport Facilitation. The Legal Guide is distributed along with the Project Completion Report on CDs.

The Contactor has investigated into the need for harmonization of technical standards for road freight vehicle construction-and-use and also how EU standards on Operator Licensing and Drivers' hours could be adapted for use in the region. The findings and recommendations are contained hereinafter.

From the project start and till now the Project Team assisted PS IGC TRACECA in (1) preparation for the Working Group Meeting of National Secretaries and legal Experts held in Baky on 23-24 January 2003; (2) preparation for the Working Group Meeting of National Secretaries and legal Experts held in Tashkent on 22-23 May 2003; (3) preparation for the Working Groups Meeting of National Secretaries and Legal Experts on October 8 in Yerevan, and the III Annual Meeting of IGC TRACECA in Yerevan, October 9-10, 2003; (4) preparation for the Meeting of the Heads of Railways, Ports and Shipping Companies of TRACECA member states, 17-18th July; (5) active involvement of the project Co-ordinator in negotiating and formalization of joining of Iran, Afghanistan and Pakistan to the Basic Agreement, (6) participation in the Meeting of the PS held in Almaty 21-22 April 2004, (7) preparation for and participation of the PS Meeting of the National Secretaries and Legal Experts, October 6-8, 2004, Baky (List of participants, **Annex 4**).

¹ Azerbaijan has implemented (ratified in March 2003) this Decision of the II IGC TRACECA Meeting (Tashkent) even before it was finally adopted by the III IGC TRACECA Meeting.

² Proposed and drafted by the PS

In the first phase the Project experts drafted the Rules of Procedures of the IGC TRACECA and the Statute of the Permanent Secretariat, and conducted the meetings of legal experts (items 1,2,3 in the above paragraph), which resulted into relevant final decision of the III IGC TRACECA Meeting, where it was adopted by the Parties.

The management development and training task embraced three sub-activities: (1) development of Legal Guide for transport operators; (2) training, in the framework of NLWGs workshops and (3) delivery of presentations during the three seminars held jointly with Capacity Development for Senior Transport Officials Project (Almaty, Tashkent).

The Contractor was requested by PS to prepare a draft of the Strategy of the IGC TRACECA for the development of transport networks of international transport corridor “Europe-Caucasus-Asia” (TRACECA) for 2005-2010. The draft was primarily submitted to the III Annual Meeting of IGC TRACECA and approved as basis for further review by the Parties, reviewed by the Contractor thereafter and submitted to the Meeting of the National Secretaries and Experts of the MFAs, October 6-8, 2004, Baky. The Meeting approved the Draft (Annex 7) and recommended to the IGC TRACECA (Annex 2, Minutes of the Meeting) for its adoption at the next Annual Conference.

The Contractor has also used the facility of the NLWGs to introduce two amendments to the MLA, its Articles 5 and 6 relating to international transportations regime applied under the Basic Agreement, which would facilitate trade and transport along the corridor. The October Meeting of the PS has approved the Draft Protocol on amendments to these articles of the Basic Agreement and recommended to IGC for adoption at its next Annual Conference.

In this context, all previous and relevant TRACECA projects have been reviewed and their recommendations, as well as proposals, comments and recommendations of the Parties to the Basic Agreement were taken on board to a large extent.

As evidenced by the previous and the present reports, all of the outputs described in the Project Synopsis have been delivered by now. However, the set of documents recommended by the Consultant to be implemented by the TRACECA countries, approved by the Parties in general, will wait for high-level endorsement by the next IGC TRACECA Annual Meeting, which will take place after the project terminates.

The Contractor, having used the facilities of the NLWGs and the WG Meeting in the Permanent Secretariat, October 6-8, 2004, obtained preliminary approval of these drafts for submission to the next IGC Conference. See Annex 2 for Decisions and Recommendations of the PS IGC TRACECA Working Group Meeting (Item 8).

3 Project progress in final project period

3.1 Promoting ratification of international treaties

1. To help creating a common regional policy, the Parties are to join international conventions. The Article 2 of the Technical Annex on Customs Documentation Procedures gives a list of int'l conventions recommended for accession. The PS Working Group Meeting held in Baky, October 6-8 2004, recommended to the IGC to enlarge the list by 4 other (by means of introducing additions to the said Technical Annex): International Convention on the Simplification and Harmonization of Custom Procedures (as amended) done at Kyoto , 18 May 1973; Convention on custom treatment of pools containers used in International transport, done at Geneva on 21 January 1994; Agreement concerning the establishing of global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, done at Geneva, on 24 June 1998; United Nation Convention on the Liability of Operators of Transport terminals in International Trade, done at Vienna, 12 April 1991.

2. The Contractor has investigated into possibilities of wider availability of commercial insurance in the TRACECA countries and made conclusions and recommendations contained in the Discussion paper (Annex 9). The insurance coverage is about protection of interests of insurers from eligible pretensions, claimed to the Insured based upon: provisions of the relevant international legal acts, national legislation applicable to the territory of the insured services or the eligible jurisdiction governing the claims received by the Insured in connection with the insured accident, conditions of any other agreement approved by the Insurer.

At the same time the insurance premiums are directly related to the final transportation cost. National legislations of most of TRACECA countries, prevent foreign insurers from selling their services directly to the clients, allowing access to foreign or international insurance services only through insurance alliances, which eventually, increases the insurance costs and, consequently, the transportation costs. It is recommended that the Governments revise their policies, which are presently addressing protection of local insurer's market, and allow for participation of the foreign insuring companies, which would meet certain established criteria, like network of agencies available worldwide, premium limits, etc...

Until quite recently freight transport carrier liability systems developed along unimodal line, notably maritime, air, road transport and railways. This reflected the way freight was mainly moved – on a unimodal basis. In terms of TRACECA this embraces the liability conditions and limits imposed by the applicable international agreements and conventions. Namely, the CMR (1956) for road, SMGS (1951) and COTIF/CIM (1980) for rail, Hague (1924, amended by Visby 1968) for marine transport and Convention on the liability of operators of transport terminals in international trade (1991).

Recently freight is more seen as part of a transport supply chain which often involves multimodal transport.

Clause 6, Article 5 of the Draft Technical Annex on Multimodal Transport, recommended to the Parties for adoption, provides for compulsory Insurance of Multimodal Transport.

There are two extreme liability regimes that might be used with multimodal transport:

- the network (or chameleon) liability system whereby the existing mandatory rules governing unimodal carriage will apply when 'loss, damage or delay' occurs on that particular mode; and
- the uniform liability system whereby the same rules apply throughout the duration of the contract whichever mode is used.

The Draft TA on multimodal transport provides for the uniform liability regime, quote from Clause 3, Article 7: "Multimodal Transport Operator shall be liable for loss, damage of goods or delayed transportation, starting from the moment of accepting goods for transportation and till the moment of delivery of goods to the authorized representative".

3.2 New Technical Annexes to MLA

Now that the Basic Agreement, along with other institutional reforms which were in place since 1998, forced the member states to strive for better access for all transport service providers registered in the area, the next step would be to provide regulative basis for modern efficient transport services, such as multimodal transportation, and also to ensure sound legal operational environment for the freight forwarders.

The present regulative framework consists of a complex array of international conventions designed to regulate unimodal carriage, diverse regional/subregional agreements, national laws and standard term contracts. Consequently, both the conditions and limits of liability vary from case to case, remaining to be unpredictable.

To mitigate this, the Parties to the Basic agreement considered:

(a) the draft Technical Annex to the Basic Agreement on *Multimodal Transportation*, which offers an *international uniform regime* to govern liability for loss, damage or delay arising from *multimodal transport*, which presently does not exist,

and

(b) the draft Technical Annex to the Basic Agreement on *Freight Forwarding Operations*, which ensures fair distribution of rights and liabilities of the participants of a transportation contract executed by a freight forwarding company.

The Draft Technical Annex on Multimodal Transportations (**Annex 5**, Appendix 4 to Common Protocol) was discussed by the Meeting of Legal Experts held within the Meeting of the National Secretaries of the Permanent Secretariat of IGC TRACECA held in Baky, October 6-8, 2004. The Draft was agreed conceptually and with regard to its format. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

With regard to the Draft Technical Annex on Freight Forwarding Activities (**Annex 5**, Appendix 6 to Common Protocol), it was agreed by the same Meeting to add the article on Definitions and to incorporate the provisions stipulating the liability of the freight forwarding contracts/operations participants, regulated by the international conventions. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

The Final Decisions and Recommendations (**Annex 2**), which resumed the Meeting of the PS, state that both Drafts will be submitted to the next Annual IGC TRACECA Conference for their approval after being finally considered by the Parties.

3.3 Harmonization of road vehicle technical standards

The task is split up into: (1) study of needs and (2) recommendation of regulative innovations for road freight vehicle construction-and-use, so that they are aligned with the rules applicable to vehicles used internationally in the TRACECA region more closely with the standards set by UN-ECE. A sub-objective would be to suggest how EU standards on operator licensing and driver's hours of work could be adapted for use in the region.

Having studied the needs, the Contractor formulated its recommendations as described in Annex 5 to the Project Progress Report III. The Contractor expected to receive a feedback in commentaries from the NLWGs upon the distribution of the Progress Report. The proposals are still being considered by the competent agencies involved in technical surveillance of the road transport fleets in the Parties. It is anticipated that by the project end the Parties will revert with appropriate comments, which could be used in the future for formulation of a Draft Technical Annex to the Basic Agreement.

3.4 Legal Advice and Assistance to the Permanent Secretariat

1) As pointed out in the preceding Report, together with the PS IGC TRACECA, the Project Team provided follow-up to the implementation of the signed Protocol on amendments and additions to the Basic Agreement, (application of customs deposits, bank guarantees, financial risk insurance policies and railway guarantees for transit of goods by railway transport and free issuance of visas for persons transporting and/or accompanying humanitarian goods and reconstruction materials to Afghanistan through TRACECA).

2) active involvement of the project experts (Project Coordinator in particular) in negotiating and formalization of joining of Iran, Afghanistan and Pakistan to the TRACECA Corridor by signing its Basic Agreement.

3) The Project team advised on the current parallel projects (Capacity Development for Senior Transport Officials, Trade Facilitation and Institutional Support, which started off in August, 2004).

4) The project also rendered its country facilities to agree upon the harmonization of approach of the countries to all modification proposed by the EU Consultants.

The Contractor also followed-up the modifications proposed to the articles 5 and Clause 2 Article 6 of the MLA. These are meant to increase competitiveness of the international transportation and widen the aerial of coverage of the article 6 of the MLA, Preferential Terms and Tariffs, and, yet, to provide for unanimous interpretation of the Basic Agreement.

5) The results of these activities are summarized in the Appendix 6 to the Decisions and Recommendations of the PS Working Group Meeting of the National Secretaries and Legal Experts, October 6-8, 2004 (**Annex 6** to this Report).

6) The Meeting of the Legal Experts from Ministries of Foreign Affairs and Ministries of Transport was chaired by the Project Team Leader and moderated by the Project Coordinator.

To sum up, the Meeting has formulated and considered drafts of: 1 Common Protocol; 2 texts of proposed additions to the Technical Annexes to the Basic Agreement on Customs Procedures and Documentation, on International Road Transport, 3 drafts of Technical Annexes to the Basic Agreement on Multimodal Transport, Freight Forwarding Activities and TRACECA Investments (**Annex 5** – Common Protocol and appendices); 1 specific Protocol on amendments to Articles 5 and 6, the Basic Agreement – at the Meeting of legal experts, while the meeting of National Secretaries³ has considered, revised and agreed upon the Draft IGC TRACECA Strategy (**Annex 6**). See 3.6 for details.

3.5 TRACECA Visa

The NLWGs were charged with task to: (1) follow-up and facilitate the implementation of the introduced system in the countries which fully endorsed the Protocol on amendments to the Basic

³ This PS Meeting was held in two parallel sessions – the meeting of National secretaries and the Meeting of legal experts.

Agreement; (2) facilitate harmonization of the internal regulations in the countries which endorsed the protocol with reservations due to discrepancies with national law (i.e. Georgia). The Consultant made its expertise available upon particular requests.

The Project finalized the discussions on simplification and harmonization of administrative procedures on border crossing rules (second phase of TRACECA Visa).

The CIS Countries are using now diversified formats of transport documents and the procedures for filing data hamper the movement of goods along the Corridor and also prevent from efficient control over the freight flows. It is anticipated that a certain level of harmonization of international transport law applied shall be soon achieved by means of the drafts developed and proposed to the Parties for high level endorsement. The next step would be to prepare a model set of trade and transport documents based on international standards. It would be also recommendable that the Parties adopt an addition to the Technical Annex on Customs and Documentary procedures to the Basic Agreement with documents completion guidelines based on international standards.

The Contractor proposed that the Drafts of TAs on multimodal transport and freight forwarding activities (Annex 5, Appendixes 4,6) in combination with freight transit documents to be elaborated on the basis of UN ECE CEFAC-developed electronic forms (e-docs), are followed by the Parties upon the Project completion as second phase of implementation of TRACECA Visa concept.

The Contractor recommends to the PS IGC TRACECA that, if the above Drafts of TAs are signed by the Parties, the next project provides for elaboration and adoption by the Parties to MLA a unified transit document.

3.6 Strategy of IGC TRACECA for development of the Transport Corridor Europe-Caucasus- Asia (TRACECA) for the period of 2005-2010.

In accordance with Final Resolutions the draft strategy for development of the Transport Corridor TRACECA for the period of 2005-2010 was adopted for further elaboration (Final Resolutions of 3rd IGC TRACECA Annual Meeting, Decision 12).

This Draft was exposed to discussion and revision by the Project Team, the PS, the NSs and NLWG taking into account the proposals, comments and recommendations of the Parties to the Basic Agreement received earlier.

Having incorporated the comments of the Parties, the revised Draft Strategy (Appendix 5 to the Recommendations and Decisions of the WG Meeting, **Annex 7**) was submitted to the Meeting of the Working Group of the PS IGC TRACECA on 7th October 2004.

The Meeting participants expressed their full support of the Draft Strategy Paper of the IGC TRACECA for transport corridor Europe – Caucasus – Asia development for the period of 2005-2010. The Parties' representatives made a decision to submit the agreed Draft Strategy Paper to the European Commission for comments and consequently to present it for approval by the Intergovernmental Commission TRACECA at the next Annual Meeting. Please refer to the Decisions and Recommendations, Annex 2.

3.7 TRACECA Industrial Advisory Panel

Using the floor of the WG Meeting held in the PS on 6-8 October 2004, the Contractor presented its concept of the IAP. Now, that the Permanent Secretariat IGC TRACECA with its developed structure of permanent representations of the PS IGC TRACECA, headed by the National Secretaries, is seeking to obtain self-financing (relevant decision was made during the latest WG meeting, see **Annexe 2**), the Contractor assumes that the establishment of IAP would significantly add to the self-sustainability of the whole structure.

It is recommended that the facilities of the Trade Facilitation and Institutional Support Project and the PS used to finalize the discussions of the IAP concept within the project term.

The Concept paper attached (**Annex 8**).

3.8 Project's External Relations

During the reported period experts of the project have attended/organized meetings, amongst others, with the following persons and organizations:

A. National Secretaries of the Parties to the Basic Agreement

B. State Officials:

Mr. S. Krol, Deputy Minister of Transport of Ukraine; Mr. Barry Cable, UN ESCAP, Director of Transport and Tourism Division; Mr. L. Kostichenko, President of Association of International Road Transport; Mr. E. Kazantzev, Coordination Transport Committee, Chairman of Executive Committee; Richard Lax, EC Delegation to Georgia, Alia Baidebekova, EC Delegation to Kazakhstan.

C. Freight Forwarding Companies:

TRANSRAIL, Mr. Hans Reinard, Managing Director; SILK ROAD, Herhard Perssdorf, General Director.

D. Monitoring

PROJECT PROGRESS REPORT

Project title: Common Legal Basis for Transit Transportation	Project number: 2002/027-526	Beneficiary countries: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.	Page: 1 of 1											
Planning period: May 2002 – October 2004	Prepared on: October 2004	EC Consultant: Lamnidis & Associates												
Project objectives: To provide the TRACECA States with the necessary elements for organising a common legal basis for transit traffic in each state by proposing accession to the relevant priority international Conventions, drafting and promoting adoption of a multimodal transit law/Protocol(s) of amendment, additions or annexes to the MLA.														
ACTIVITIES IMPLEMENTED	TIME FRAME 2003/2004						INPUTS							
	Months						PERSONNEL				EQUIPMENT & FURNITURE		OTHER	
	June	July	Aug	Sep	Oct	Nov	INTERNATIONAL Planned	Utilised	LOCAL Planned	Utilised	Planned	Utilised	Planned	Utilised
Promoting ratification of international treaties:								30		190	Use of existing equipment and furniture either provided by TRACECA facilities or bought by the Project during 1 st Period	Use of existing equipment and furniture either provided by TRACECA facilities or bought by the Project during 1 st Period	Expenses for secretarial support travels etc	Expenses for secretarial support travels etc
a. investigate for wider availability of commercial insurance in respect of cargoes & carrier liability;														
b. prepare a list of recommendations for future action														
Drafting and follow-up on new Technical Annex(es) to the MLA on:								55		140				
a. multimodal transit transport														
b. TRACECA investments														
c. freight forwarding operations														
Modern technical vehicle standards:								30		60				
a. regulative innovations recommended														
As part of legal assistance to the IGC PS:								45		70				
a. assisting in preparation of legal documents														
b. advising to current parallel projects														
TRACECA Visa								40		80				
Elaboration of a strategy for development of TRACECA 2004-2008								40		90				
TOTAL								240		650				

RESOURCE UTILISATION REPORT

Project title: Common Legal Basis for Transit Transportation	Project number: 2002/027-526	Beneficiary countries: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.		Page: 1 of 1	
Planning period: May 2004 – November 2004	Prepared on: October 2004	EC Consultant: Lamnidis & Associates			
Project objectives: To provide the TRACECA States with the necessary elements for organising a common legal basis for transit traffic in each state by proposing accession to the relevant priority international Conventions, drafting and promoting adoption of a multimodal transit law/Protocol(s) of amendment, additions or annexes to the MLA.					
RESOURCES/INPUTS	TOTAL PLANNED	PERIOD PLANNED 19.05.2004 – 21.11.2004	PERIOD REALISED 20.11.2002 – 19.05.2004	TOTAL REALISED	AVAILABLE FOR REMAINDER
PERSONNEL					
Long-term international experts					
Team Leader	440	72	368	440	0
Senior expert	440	72	368	440	0
Short-term international expert					
Senior experts	658	96	562	658	0
Local experts					
Senior experts	1.080	258	822	1.080	0
Junior experts	1.068	392	676	1.068	0
Sub-total	3.686*	890	2.796	3.686	0
FEES & ACCOMODATION EXP.					
For P.S. and N.S.	182.700	0	182.700	182.700	0
WORKING GROUP					
Equipment and Material	30.000	0	36.713	36.713	-6.713
Sub-total	25.000	0	25.604	25.604	-604
Sub-total	237.700	0	245.016	245.016	-7.316
OTHER INPUTS					
Sub-total	562.300	149.123	412.255	561.378	3.342
Sub-total	562.300	149.123	412.255	561.378	3.342
Sub-total	800.000	149.123	657.272	806.395	-3.975

*Addendum (as per addendum June 2004)



OUTPUT PERFORMANCE REPORT

Project title: Common Legal Basis for Transit Transportation		Project number: 2002/027-526	Beneficiary countries: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.	Page: 1 of 1
Prepared on: October 2004		EC Consultant: Lamnidis & Associates		
Output results	Deviation original plan	Reason for deviation	Comment on constrains & assumptions	
NLWGs established and efficient operation ensured by 07/2003	10%	Delayed nomination of candidates of a NLWG by the authorities of some of the Parties (please refer to PR I)	Commitment of the NLWG to cooperate	
Recommended conventions identified, advised to the Parties by 10/2003 and agreed for inclusion into MLA through PS IGC TRACECA WG Meeting, 10/ 2004	0%	No deviation	Commitment of the governments of the Parties to the MLA	
Guide for international conventions and agreements devised by 11/2003, published in 10/2004	0%	No deviation	No constrains	
Training Program for NLWGs developed and partly delivered by 11/2003; fully delivered by 06/2004	0%	No deviation	No constrains	
New Technical Annex(es) to the MLA on:				
a. multimodal transit transport - drafted & approved by 10/2003	0%	No deviation	No constrains	
b. TRACECA investments - drafted & approved by 10/2003				
c. freight forwarders activities – drafted & approved by 10/2004				
Modern technical vehicle standards: needs studied by 10/2003; recommendations made by 06/2004	15%	Delayed establishment of the NLWGs, which caused delayed supply of information from the Parties	Sufficient data supply from NLWGs	
Legal assistance to the IGC Permanent Secretariat provided	0%	No deviation	No constrains	
Financial Support provided, installments fully made by 07/2003	0%	No deviation	No constrains	
TRACECA Visa introduced by the approval of IGC by 10/2003	0%	No deviation	No constrains	
Strategy for development of TRACECA 2004-2008 drafted by 10/2003; approved as final draft by 10/2004	0%	No deviation	No constrains	

4 Overall report on the total project

4.1 National Legal Working Groups

By November 2003 the National Legal Working Groups have been established in all (12) TRACECA member states, except for Turkmenistan, and official nominations were made by mid July 2003. The Terms of Reference for the NLWGs, including funding provisions was finalized and obtained approval of the Task Manager on 9th October 2003. Further to that, in compliance with ToR provisions, a list of specific tasks, including monitoring scheme and evaluation criteria was developed, approved by the Task Manager and distributed to the Parties. Please see **Annex 1** for the Monitoring and Evaluation Indicators, which includes the list of tasks. A series of visits of the Project Coordinator and Team Leader were made to participate in the first workshops in Astana, Tashkent, Kishinev, Kiev, Baky, Yerevan.

Throughout the Project duration, the NLWGs assisted the respective Parties to the MLA and the Project's Team in correct perception of legal barriers and removal of the same through harmonization of national transit transport legislation. For this purpose, the NLWGs use their expertise to (1) analyse existing legislation and collect required data/information, followed by dedicated reporting, and also to (2) draft legal acts, propose and promote amendments/addendum or new technical annexes to the MLA in order to raise competitive capacity of the transport corridor Europe-Caucasus-Asia (TRACECA) to the MLA and current legislation (3) propose actions on further efficient implementation of the MLA, etc.

Compliant with plans outlined by the *Inception Report*, the Contractor ensured that the NLWGs include, where possible, officers from the Presidential Apparatus, from the Ministry of Foreign Affairs, their relevant departments, from the Ministry of Transport or equivalents, from the Ministry of Foreign Economic Relations or equivalents, from the Ministry of Justice and from Freight Forwarding Associations and National Road Transport Associations. As outlined in the IR, the NLWG met at approximately monthly intervals and their members were involved in all project activities.

The conduct of the NLWG workshops was financed from the project funds. **64** meetings were held, including **34** attended by the Project Team Leader, Project Coordinator and/or Project experts. The outputs of every workshop were documented and forwarded to the Contractor.

Following completion of the project the national LWGs should remain in place with the dual task and status of continuing input to the work of the IGC and Permanent Secretariat and constituting the LWG of the National Commissions of IGC TRACECA.

4.2 Catalogue of bilateral and multilateral transport transit agreements

Bilateral and multilateral transport transit agreements have been collected, catalogued and analysed for their impact on the Basic Agreement.

Using this data, the Contractor (1) reported earlier on the violations of the Basic Agreement (See PR I, II); (2) proposed 28 amendments and additions и 4 drafts of new technical annexes to the Basic Multilateral Agreement; (3) developed and distributed the Legal Guide to International Conventions and Agreements for transport operators and traders.

To provide for the better access to this data collected, a web-page should be arranged providing for easy on-line access to all relevant agreements with regular update of information.

4.3 Promoting ratification of international transport and trade treaties

As outlined in the Inception Report, in co-operation with the national LWGs, the Contractor promoted at national level the ratification of the international agreements, identified as necessary to be ratified in the Legal Guide to International Agreements.

This task evolved into: (1) phased implementation of the following specific tasks, identified in the ToR:

- a. review and report on the difficulties being experienced with implementation of ratified international conventions;
- b. practical recommendations on specific problems;
- c. investigation of the opportunities for wider availability of commercial insurance in respect of cargoes and carrier liability;
- d. preparation of recommendations for future action,

and

(2) a number of specific phased activities (identification, selection, seminars and trainings) promoting acceptance by the countries of other international instruments, the list of which will be added to the Article 2 of the Basic Agreement.

The first unit of tasks resumed into a number of recommendations on (a) liability regimes as a basis for harmonizing insurance conditions and (b) investments solutions. With respect to widening insurance opportunities for carriers, it is recommended that the Parties first of all agree to a common liability regime for participants of the multimodal transport operations, and then find a common solution for insurance arrangements using “uniform liability regime” as described in 3.1. The investment solutions have been offered by the Contractor in the Draft Technical Annex on TRACECA Investments, as described below, under 4.3.

The second unit was performed by conduct of Training for National Legal Working Groups. The training included the following components: (a) briefing on liability regimes imposed by the international conventions recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes and international instruments, proposed for accession through supplementing the clause 1 of Article 2 “International Conventions” of the Basic Agreement, and (b) interpretation of the provisions of the Basic Agreement, review of the facts found by the Contractor, recommended actions to mitigate current /to avoid further violations.

This resumed into approval by the PS Working Group Meeting to enlarge a list of int’l conventions recommended for accession, in Article 2 of the Technical Annex on Customs Documentation Procedures by 4: International Convention on the Simplification and Harmonization of Custom Procedures (as amended) done at Kyoto , 18 May 1973; Convention on custom treatment of pools containers used in International transport, done at Geneva on 21 January 1994; Agreement concerning the establishing of global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, done at Geneva, on 24 June 1998; United Nation Convention on the Liability of Operators of Transport terminals in International Trade, done at Vienna, 12 April 1991. (**Annex 5**, Appendix 1 to the Common Protocol).

4.4 Management Development and Training

The task was completed by two correlated activities described below.

A. Legal Guide

The Contractor has compiled a draft of the Legal Guide which included the followings:

- List of annotated proposed international agreements;
- Explanatory section on the MLA and its annexes, amendments and additions thereto;
- Explanatory section on international permit and quota systems in road transport;
- Recommendations in the frame of Trade and Transport Facilitation

The Draft Legal Guide was distributed to the NSs for commentaries. No commentaries, which would require incorporation of changes, have been received, and the Legal Guide will be distributed along with this Report on CDs.

B. Development and conduct of Training for National Legal Working Groups

The training included the following components:

- Briefing on liability regimes imposed by the international conventions recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes and international instruments, proposed for accession through supplementing the clause 1 of Article 2 "International Conventions" of the Basic Agreement in relation to trade facilitation measures and carriers liability insurance.
- Interpretation of provisions of the Basic Agreement. Review of the facts found by the Contractor, recommended actions to mitigate current /to avoid further violations.

Special emphasis was given to ensure common understanding of a problem.

Each component was delivered in two stages moving forward along with the work plan of the NLWGs.

From 18 to 23 April in Almaty the Capacity Development for Senior Transport Officials has held a seminar for the level A of the transport officials, which was attended by over 60 participants from different state institutions and organizations of the TRACECA countries, operating international transportations. The seminar was also attended by all the TRACECA National Secretaries.

This seminar was held jointly by the two projects. The CLBTT Project experts have delivered two presentations:

- the one dedicated to the issues of Trade and Transport Facilitation
- the second one was dedicated to the ideas of development of the IGC TRACECA.

The seminar attendees, many of whom were members of NLWG, heard the recommendations of the CLBTT project experts (28 amendments and additions и 4 drafts of new technical annexes to the Basic Multilateral Agreement).

Similar discussions took place in Tashkent from 7 June 2004 to 17 June 2004 at the seminar (level B), organized by the CDSTO Project management, where the CLBTT Project experts arranged a review of all the proposed amends and additions to the Basic Agreement, 28 in total.

4.5 New Technical Annexes to MLA

As envisaged in the Inception phase, the Contractor finalized negotiations within the national LWGs of the main legal instruments (Protocols on amendments and additions to the Basic Agreement, particularly those introducing new technical annexes), having them presented to the multilateral Legal Working Group, held by the PS IGC TRACECA in Baky, October 6-8, 2004.

1. The Meeting discussed the *Draft Technical Annex on Multimodal Transportations (Annex 5, Appendix 3 to Common Protocol)*, the document was agreed conceptually and with regard to its format. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

This Draft Technical Annex offers an *international uniform regime* to govern liability for loss, damage or delay arising from *multimodal transport*, which presently does not exist.

2. The Draft Technical Annex on *TRACECA Investments (Annex 5, Appendix 5 to Common Protocol)* proposed by the experts of the CLBTT project, was exposed to article-by-article discussion on the basis of the proposed draft of the NLWG Romania. The Meeting has elaborated and adopted this Draft as final for recommendation to the IGC TRACECA Conference.

This Draft Technical Annex on TRACECA Investments, along with subsequent proposals on Dispute Settlement Mechanism, TRACECA Guarantee Trust Fund and TRACECA Advisory Panel (**Annex 8, Concept Paper**) are meant to attract the financial inflow for development of transport infrastructure in the TRACECA region.

3. With regards to the *Draft Technical Annex on Freight Forwarding Activities (Appendix 6 to Common Protocol)*, it was agreed to add the article on Definitions and to incorporate the provisions stipulating the liability of the freight forwarding contracts/operations participants, regulated by the international conventions. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

This Draft Technical Annex on Freight Forwarding Activities, which is also considered by the Parties along with other newly developed drafts, ensures fair distribution of rights and liabilities of the participants of a transportation contract executed by a freight forwarding company.

4.6 Harmonization of Technical Standards for Road Vehicles

The task was split into: (1) study of needs and (2) recommendation of regulative innovations for road freight vehicle construction-and-use, so that they are aligned with the rules applicable to vehicles used internationally in the TRACECA region more closely with the standards set by UN-ECE. A sub-objective would be to suggest how EU standards on operator licensing and driver's hours of work could be adapted for use in the region.

Having studied the needs, the Contractor formulated its recommendations as described in Annex 5 to the Project Progress Report III. The Contractor expected to receive a feedback in commentaries from the NLWGs upon the distribution of the Progress Report. The proposals are still being considered by the competent agencies involved in technical surveillance of the road transport fleets in the Parties. It is anticipated that by the project end the Parties will revert with appropriate comments, which could be used in the future for formulation of a Draft Technical Annex to the Basic Agreement.

4.7 Elaboration on road haulage permits and quota system

As planned in the Project Inception phase, feasibility of introducing a regional system of road haulage permits and quotas. Relevant amendments to the Technical Annex on International Road Transport to the Basic Agreement were drafted and proposed for consideration by the Parties.

The proposed Draft Protocol on amendments defines the TRACECA Permit, the quotas, the issuing authority/procedure and facilitates the access to the market and transit procedures was submitted to the III Annual Conference of IGC TRACECA. It remained unsigned mainly because of unwillingness of the Parties to MLA to delegate administration of quota distribution to the PS IGC TRACECA.

The WG Meeting of the PS IGC TRACECA has re-considered this Draft and formulated in a form acceptable to all the Parties. (Please see list of Participants, Working Group Final Documents). The Draft (Appendix 1 to the Common Protocol) will be submitted to the next IGC TRACECA Annual Meeting with recommendation for its endorsement.

4.8 Advice and assistance to the PS

The III Annual Meeting of the IGC TRACECA held on 9-10 October 2003 was a milestone to the overall project activities. It adopted 12 final decisions, out of which 8 were proposed by/with participation of the CLBTT project:

Decision 2 - Rules of Procedure of the IGC TRACECA and Statute of the Permanent Secretariat of the IGC TRACECA. These two documents laid legal ground for sustainable development of the IGC TRACECA as an institution with its operative organs of Permanent Secretariat, National Representations headed by the National Secretaries.

Decision 3 - Establishment of the IGC TRACECA Working Group (Council) of the Heads of Railways, Ports and Shipping Companies. The IGC Annual Meeting approved establishment of the IGC TRACECA Working Group (Council) of Heads of Railways, Ports and Shipping Companies as a coordinating body of the main infrastructure and transport operators of TRACECA countries.

Decision 4 – Signatory of the Protocol on Amendments to the Basic Multilateral Agreement (TRACECA Visa). This includes provisions on the SMGS railway bill, application of 0-VAT rate on railway services and non-application of customs deposits, bank guarantees, financial risk insurance policies, railway guarantees for transit of goods by railway transport.

Decision 5 – adoption as a base of Draft Protocol on Amendments to the Technical Annexes on International Road Transport and Customs Documentation Procedures.

Decision 7 – to recommend to the Parties to agree on the draft Technical Annex on Multimodal Transportations in the shortest possible time for further signing of the Protocol on Amendments to the Basic Agreement.

Decision 8 - Adopt as a base the Draft Technical Annex on TRACECA Investment and recommend to the Parties to agree on the draft in the shortest possible time for further signing of the Protocol on Amendments to the Basic Agreement.

Decision 9 – to recommend to agree on the Draft Protocol on Amendments to the Technical Annexes on Customs Documentation Procedures in the shortest possible time for its further signing at the next Annual Meeting of the IGC TRACECA. It is thus proposed to the Parties to join 4 int'l conventions, which would facilitate access to int'l market of transport services.

Decision 12 – to adopt the draft Strategy of IGC for development of the transport corridor Europe – Caucasus – Asia for the period 2005-2010 for further elaboration of its final version and recommend

the Parties to supplement the presented proposals to the TRACECA Action Plan 2004-2006 with new proposals by the end of 2003 for its further approval.

Throughout the reported period the Project Team continued to provide advice and technical assistance to the PS IGC TRACECA in (1) preparation for the Working Group Meeting of National Secretaries and legal Experts held in Baky on 23-24 January 2003; (2) preparation for the Working Group Meeting of National Secretaries and legal Experts held in Tashkent on 22-23 May 2003; (3) preparation for the Working Groups Meeting of National Secretaries and Legal Experts on October 8, 2003 and the III Annual Meeting of IGC TRACECA October 9-10, 2003; (4) preparation for the Meeting of the Heads of Railways, Ports and Shipping Companies of TRACECA member states, 17-18th July 2003; (5) involvement in negotiating and formalization of joining of Iran, Pakistan and Afghanistan to the TRACECA Corridor by signing its Basic Agreement; (6) participation in the Meeting of the PS held in Almaty 21-22 April 2004, (7) preparation for and conduct of (in part of the Meeting of Legal Experts) the PS Meeting of the National Secretaries and Experts of the MFAs, October 6-8, 2004, Baky.

Please See the Agenda of the Meeting of Legal Experts, 6-8 October, 2004, **Annex 3** and **Annex 4** for the list of submissions prepared by the Project for the WG Meeting.

The Meeting of the Legal Experts from Ministries of Foreign Affairs and Ministries of Transport was chaired by the Project Team Leader and moderated by the Project Coordinator.

The Meeting decided to agree to the proposal of the representative of Romania on the Protocol on Amendments to the Basic Agreement, which covers the introduction of amendments/additions to the (i) Technical Annex to the MLA on Road Transport, (ii) Technical Annex to the MLA on Customs Documentation and Procedures, and also introduction of new Technical Annexes on: (iii) Jointly financing system of the PS IGC TRACECA, (iv) Multimodal Transportation, (v) TRACECA Investments, (vi) Freight Forwarding operations.

Having made few amendments to the proposed draft, the meeting recommended it for adoption by the next IGC TRACECA Conference, after incorporation of the comments

With regard to the Technical Annex on International Road Transport, the Meeting considered two final documents of the Annual Conference of IGC TRACECA, Yerevan (Final Decision 7, being the proposal of the PS, and Final Decision 8, being the proposal of the Turkish Party), combined the proposals contained therein and recommended that the Parties agree upon the amendments to the Basic Agreement, contained in the Appendix 1 to the Common Protocol (Annex..., PS WG Meeting Final Documents).

With regard to the Technical Annex on Customs and Documentation Procedures, the meeting has duly considered FD 7, FD 8 and FD 13 of the III Annual Meeting of IGC TRACECA. With changes to the texts contained therein, and with due consideration of the corrections introduced by the representative of Romania (on the names and listing of international conventions recommended for accession), the Meeting agreed to recommend to the IGC TRACECA to adopt the amendments to the Basic Agreement, contained in the Appendix 2 to Common Protocol (Annex..., PS WG Meeting Final Documents).

The Meeting has considered the Draft Protocol on Amendments to the Basic Agreement (Appendix ii), Articles 5 and Clause 2, Article 6, formulated upon the proposals of the experts of the CLBTT Project circulated to the Parties in May, 2004. The meeting has found the innovations timely and expedient for the development of the international transport along the corridor and recommends it for subsequent consideration and approval within the national authorities in the Parties.

The Draft Technical Annex on Multimodal Transportations (Appendix 3) was discussed, the document was agreed conceptually and with regard to its format. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

The Draft Technical Annex on TRACECA Investments (Appendix 4) proposed by the experts of the CLBTT project, was exposed to article-by-article discussion on the basis of the proposed draft of the NLWG Romania. The Meeting has elaborated and adopted this Draft as final for recommendation to the IGC TRACECA Conference.

With regards to the Draft Technical Annex on Freight Forwarding Activities (Appendix 5), it was agreed to add the article on Definitions and to incorporate the provisions stipulating the liability of the freight forwarding contracts/operations participants, regulated by the international conventions. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities.

4.9 TRACECA Visa

The NLWGs were charged with task to: (1) follow-up and facilitate the implementation of the introduced system in the countries which fully endorsed the Protocol on amendments to the Basic Agreement; (2) facilitate harmonization of the internal regulations in the countries which endorsed the protocol with reservations due to discrepancies with national law (i.e. Georgia). The Consultant made its expertise available upon particular requests.

The Project finalized the discussions on simplification and harmonization of administrative procedures on border crossing rules (second phase of TRACECA Visa) by Decision of the III IGC TRACECA Meeting on signatory of the Protocol on Amendments to the Basic Multilateral Agreement. This includes provisions on the SMGS railway bill, application of 0-VAT rate on railway services and non-application of customs deposits, bank guarantees, financial risk insurance policies, and railway guarantees for transit of goods by railway transport. The Protocol was approved in Tashkent II Annual Meeting and came into effect only in Azerbaijan from 13 May 2003.

Related Project activity (through established NLWG): Turkey officially applied for participation in SMGS agreement, to enable signatory and efficient implementation of the above Protocol. Kazakhstan declared about withdrawal of reservation to the Tech Annex on Int'l Railways Transport to MLA. Ukraine initiated amendment to the national transit law to provide for consistency with the Protocol. Uzbekistan has signed the Protocol by end 2004.

4.10 Strategy of IGC TRACECA for development of the Transport Corridor Europe-Caucasus- Asia (TRACECA) for the period of 2005-2010.

In accordance with the Recommendations and Decisions of Working Groups of the National Secretaries and Legal Experts held in Tashkent on May 22-23, the new Strategy of development of the Transport Corridor Europe-Caucasus- Asia (TRACECA) for the period of 2004-2008 was included to the agenda of the III IGC TRACECA Annual Meeting.

On the request of PS IGC TRACECA and based on the Recommendations and Decisions of Tashkent Working Group Meeting of National Secretaries and Legal Experts, the Contractor has prepared new Strategy of development of the Transport Corridor Europe-Caucasus-Asia (TRACECA) for the period of 2004-2008. 40 days before Yerevan Conference the PS IGC TRACECA sent this draft strategy concept to all Parties of MLA and NSs for their further comments. No comments or observations were received on this document except minor observation from Azerbaijan before its submission to the consideration of Working Groups of the National Secretaries and Legal Experts on October 8, 2003. During the NSs' meeting the Project Coordinator made a presentation of the draft strategy paper. After being discussed by NSs the draft strategy paper was submitted for the consideration of IGC TRACECA.

In pursue of the Decision 12 of the Final Resolutions of the III Annual Meeting of IGC TRACECA, the Contractor submitted for consideration of the Parties the draft strategy named “The Main strategic directions of Intergovernmental Commission of TRACECA in the development of transport networks of international transport corridor “Europe-Caucasus-Asia” (TRACECA) for 2005-2010”. Proposals, comments and recommendations of the Parties were taken on board.

The Draft (**Annex 7**) was revised again and submitted to the PS WG Meeting held on 6-8 October, 2004.

The Meeting participants expressed their full support of the Draft Strategy Paper of the IGC TRACECA for transport corridor Europe – Caucasus – Asia development for the period of 2005-2010 presented by the Permanent Secretariat jointly with the CLBTT experts. The Parties’ representatives made a decision to submit the agreed Draft Strategy Paper to the European Commission for comments and consequently to present it for approval by the Intergovernmental Commission TRACECA.

PROJECT COMPLETION REPORT

Project title: Common Legal Basis for Transit Transportation	Project number: 2002/027-526	Beneficiary countries: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.	Page: 1 of 1	
Reporting period: November 2002 – October 2004	Prepared on: October 2004	EC Consultant: Lamnidis & Associates		
Project objectives: To provide the TRACECA States with the necessary elements for organising a common legal basis for transit traffic in each state by proposing accession to the relevant priority international Conventions, drafting and promoting adoption of a multimodal transit law/Protocol(s) of amendment, additions or annexes to the MLA.				
REPORTING PERIOD	MAIN ACTIVITIES UNDERTAKEN	EC CONSULTANT	INPUTS UTILISED	
			MATERIALS AND EQUIPMENT	OTHER
20/11/2002 – 19/11/2004	1. National Legal Working Groups & National Legal Workshops	65	Use of existing equipment and furniture provided by TRACECA facilities or bought by the Project	Expenses for secretarial support, travels, e.t.c.
	2. Promoting ratification of international treaties	149		
	3. Management development and training	184		
	4. Drafting and follow-up on new Technical Annexes	195		
	5. Modern technical vehicle standards	77		
	6. Advise and assistance to the IGC and PS and NS	623		
	7. TRACECA Visa	135		
	8. Elaboration of a strategy for development of TRACECA	110		
TOTAL		1.538		

OUTPUT PERFORMANCE SUMMARY

Project title: Common Legal Basis for Transit Transportation		Project number: 2002/027-526	Beneficiary countries: Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.	Page: 1 of 1
Prepared on: October 2004			EC Consultant: Lamnidis & Associates	
Output results	Deviation original plan	Reason for deviation	Comment on constrains & assumptions	
NLWGs established and efficient operation ensured by 07/2003	10%	Delayed nomination of candidates of a NLWG by the authorities of some of the Parties (please refer to PR I)	Commitment of the NLWG to cooperate	
Recommended conventions identified, advised to the Parties by 10/2003 and agreed for inclusion into MLA through PS IGC TRACECA WG Meeting, 10/ 2004	0%	No deviation	Commitment of the governments of the Parties to the MLA	
Guide for international conventions and agreements devised by 11/2003, published in 10/2004	0%	No deviation	No constrains	
Training Program for NLWGs developed and partly delivered by 11/2003; fully delivered by 06/2004	0%	No deviation	No constrains	
New Technical Annex(es) to the MLA on:				
a. multimodal transit transport - drafted & approved by 10/2003	0%	No deviation	No constrains	
b. TRACECA investments - drafted & approved by 10/2003				
c. freight forwarders activities – drafted & approved by 10/2004				
Modern technical vehicle standards: needs studied by 10/2003; recommendations made by 06/2004	15%	Delayed establishment of the NLWGs, which caused delayed supply of information from the Parties	Sufficient data supply from NLWGs	
Legal assistance to the IGC Permanent Secretariat provided	0%	No deviation	No constrains	
Financial Support provided, installments fully made by 07/2003	0%	No deviation	No constrains	
TRACECA Visa introduced by the approval of IGC by 10/2003	0%	No deviation	No constrains	
Strategy for development of TRACECA 2004-2008 drafted by 10/2003; approved as final draft by 10/2004	0%	No deviation	No constrains	

5 Lessons learnt and recommendations

How planning was carried out & How it was realized

The project activities progressively moved through three interconnected phases: (1) inception and setting-up (six months); (2) drawing-up and negotiation (twelve months); (3) adoption and implementation phase (six months).

As the project specific objectives is “to provide the TRACECA States with the necessary elements for organising a common legal basis for transit traffic in each state by proposing accession to the relevant priority international conventions and treaties, drafting and promoting adoption of a multimodal transit law/Protocol(s) of amendment, additions or new annexes to the MLA”, the core task was to propose to the Parties of the Basic Agreement a number of legal instruments, which would facilitate transport and trade along the TRACECA corridor.

This was carried out as collection of the necessary information by means of the Trade Facilitation NLWGs established in every country and in the first phase, drafting the protocols on amendments and additions in the second phase and submitting these to the multilateral legal working group meeting in the third phase, and submitting these to the multilateral legal working group meeting in the frame of NS WG Meeting.

A supplementary task was to help institutional strengthening of the PS IGC TRACECA as part of legal advice and assistance to the PS. This was completed by drafting and negotiating the Rules of Procedure of the IGC TRACECA and the Statute of the Permanent Secretariat IGC TRACECA during the first phase and adopting it by the IGC Meeting in the second phase.

With a general purpose of trade and transport facilitation, during the inception phase the Contractor proposed an alteration of a task to draft a uniform multimodal transit model law to drafting additions/amendments and new technical annexes on multimodal transport to the Basic Agreement, which seemed to be a more efficient way of unification of regulations in the field of multimodal transportation.

The full range of project activities was carried out in accordance with Timetable of Activities outlined in the Project Proposal.

In addition to those enlisted in the Timetable, the Contractor undertook to draft and propose several other instruments, which contribute to the improvement of operational environment in the field of transport in particular and the economies of the countries along the Corridor in general: (1) Strategy of the IGC TRACECA for the development of transport corridor Europe-the Caucasus-Asia for 2005-2010; (2) new technical annex on TRACECA Investments; (3) new technical annex on freight forwarding operations. These have been elaborated upon requests of the parties and the PS (in case of Strategy), within the scope of time and expertise allocated to the project activities initially.

How intended target groups were reached

The target groups – the ministries of transport or cabinets of ministers of beneficiary countries been reached through the establishment of the NLWGs, where the Contactor ensured representation from the ministries of foreign affairs, the ministries of transport, the ministries of justice and other appropriate authorities. According to the NLWG ToR, the nominated representatives should hold a position within their organisation whereby they can discuss the proposals with senior Government officials within their authority, if they are not already senior officials, and should be in a position to promote necessary implementation.

What major external factors played a crucial role in the project achievements actually realized

Effectively, the project achievements built upon cooperative or non-cooperative attitude of the beneficiaries and project partners. To the extent that particular project tasks have been completed, the project received a positive response from all of the beneficiaries and the PS. These reflected in the outcome of the WG Group Meeting held in the PS on October 6-8 2004.

On part of the existing operational environment, such factor, as diversity of regulative systems applied to transport relations and different availability of funds, should be recognized as the one hindering a common legal platform for further development, to be easily agreed by all the participants.

Recommendations what may go beyond the scope of the project (e.g. as regards similar projects/sectors and for follow-up measures required) may be included as well.

To provide for follow-up of the main project outputs, the legal instruments proposed to the Parties of the Basic Agreement, should be promoted by the Trade Facilitation NLWGs, the PS, with assistance of the TFIS Project. In part of unification of regulations applied to the multimodal transport operations, the proposed draft technical annex should be followed by the recommendation to use a uniform multimodal way bill developed using the UNeDocs format.

Annex 1

Monitoring and Evaluation Indicators

Trade Facilitation National Legal Working Groups - Monitoring and Evaluation Indicators

Description of Tasks	Aze	Arm	Bul	Geo	Kaz	Kyr	Mol	Rom	Taj	Tur	Ukr	Uzb	Reference	Category
Road													Road	
Review and collection													ToR 3.1	ST
Identification of violations													ToR 3.2	LT
Proposals/recommendations													ToR 3.3, 3.4	LT
Consideration of Protocol TRACECA Permit System														ST
Decision-making on necessity of TA to MLA on road vehicle tech. standards ¹													PO PR, 5	ST
Consideration of Protocol Liberalization of road transport and Charging policy														LT
Rail													Rail	
Review and collection													ToR 3.1	ST
Identification of violations													ToR 3.2	LT
Proposals/recommendations													ToR 3.3, 3.4	LT
Consideration ² of Protocol (Tash Conf) SMGS 0-VAT rate														ST
Maritime³													Maritime	
Review and collection													ToR 3.1	ST
Identification of violations													ToR 3.2	LT
Proposals/recommendations													ToR 3.3, 3.4	LT
Multimodal													Multimodal	
Review and Report on implementation of AP, I														ST
Review and collection													ToR 3.1	ST
Identification of violations													ToR 3.2	LT
Proposals/recommendations													ToR 3.3, 3.4	LT
Consideration of Protocol TA on Multimodal Transport														LT
Customs Procedures⁴													Customs Procedures	
Review and collection													ToR 3.1	ST
Identification of violations													ToR 3.2	LT
Proposals/recommendations													ToR 3.3, 3.4	LT
Consideration of Protocol (Tash Conf) – in part of TRACECA Visa ⁵														ST
Protocol on Transit Facilitation to TA on Customs Doc. Procedures														LT
Protocol on International Conventions														LT
Transport Investments													Transport Investments	
Consideration of Protocol on TRACECA Investments														LT

List of Abbreviations:

ToR - Terms of Reference of National Legal Working Groups
ToR (A) - Annex to ToR NLWGs
TA - Technical Annex
NS - National Secretary
L - Letter of General Secretary PS IGC TRACECA Feb-5-03
PR - Progress Report
PO PR/IR - Plan of Operations of Progress/Inception Report
IR - Inception Report
LT - Long Term Task
ST - Short Term Task
AP - Baky Action Program on Multimodal Transport to Protocol of the Meeting of Heads of Railways, Ports and Shipping Companies (17-18 July, 2003)
Protocol - 6 Protocols on Amendments to the Basic

The Legend:

No report received	
Report not compliant	
Partial compliance	
Full compliance with recommendations of Project Team and PS	

¹Decision is to be made in view of Minsk Convention on weights and dimensions of transport vehicles for CIS, 1999

²Task shall become applicable only if the Protocol is not signed in Yerevan in October 2003

³Special attention must be paid to the Tri-partite Agreement between Ukraine, Bulgaria and Georgia on railway ferry connection operation, 1999

⁴This tasks shall be carried out in cooperation with HBCP Project and Customs Working Groups created under this Project

⁵Task shall become applicable only if the Protocol is not signed in Yerevan in October 2003

Annex 2

Recommendations and Decisions of the PS WG Meeting, October 6-8, 2004



**MEETING OF THE PERMANENT SECRETARIAT
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 6-8, 2004

**ЗАСЕДАНИЕ ПОСТОЯННОГО СЕКРЕТАРИАТА
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку / Азербайджанская Республика, 6-8 октября 2004 г.

RECOMMENDATIONS AND DECISIONS

The Meeting of the Permanent Secretariat of the Intergovernmental Commission TRACECA (PS IGC TRACECA) held on October 6-8, 2004 in Baky, the Republic of Azerbaijan, was attended by the PS managers, permanent representatives of the PS in the MLA Parties (National Secretaries) / plenipotentiaries, legal experts on behalf of the Ministries of Foreign Affairs / Ministries of Transport of TRACECA participating countries, the European Commission representatives and experts of the current TRACECA projects "Trade Facilitation and Institutional Support" and "Common Legal Basis for Transit Transportations".

Deputy Prime Minister of the Republic of Azerbaijan, Mr. Abid Sharifov, Deputy Prime Minister and Minister of Transport and Communications of the Republic of Bulgaria, Mr. Nikolay Vassilev, as well as Counselor of the European Commission, International Relations Directorate, Mr. Stefano di Cara, Principal Administrator of the EuropeAid Cooperation Office, the European Commission, responsible for TRACECA Programme, Mr. Efsthios Dalamangas, Task Manager of Transport and Energy Projects, Mr. Athanasios Boitsios attended the opening session of the Permanent Secretariat as the official guests and addressed the meeting with the welcoming speeches.

The Participants to the PS Meeting discussed the issues in accordance with the agenda attached hereto.

(Appendix 1)

The list of the Meeting participants is attached hereto.

(Appendix 2)

The Meeting adopted the following **recommendations and decisions**:

1. Presentation of the project «Trade Facilitation and Institutional Support»

The team-leader of the «Trade Facilitation and Institutional Support» project made a presentation of a new project started within the framework of the TRACECA Programme. The TRACECA Parties representatives - the Meeting participants voiced their support for the project implementation.

2. Statement of the PS Executive Secretary

Ambassador Extraordinary and Plenipotentiary, Zviad Kvachantiradze informed the meeting on his intention to resign from the position of the Executive Secretary of the PS IGC TRACECA till the end of the current year. The notification on that point will be sent to the Chairman of the IGC TRACECA.

3. On the implementation of the Final Resolutions of the Third Annual Meeting of the IGC TRACECA

- on payment of the membership fees by the Parties into the budget of the PS IGC TRACECA

It was noted that 8 out of the 12 MLA Parties had fulfilled their obligations concerning co-financing of the PS IGC TRACECA budget for the year of 2004. The Meeting participants were informed that the Republic of Armenia would fulfill its financial obligations till the end of the year. The representatives of the Republics of Kyrgyzstan and Tajikistan also assured the meeting that their countries would meet their financial obligations. The position of Kazakhstan is under consideration. The MLA Parties expressed their gratitude to the Government of the Republic of Azerbaijan for transferring an additional amount of 20,000 Euro to the account of the Permanent Secretariat.

CLBTT – Completion Report – October 2004 – Annex 2 – Recommendations and Decisions of the PS WG Meeting, October 6-8, 2004

- on joint financing of the PS IGC TRACECA for the years of 2005-2006

After presentation on the PS annual budget, the meeting participants came to the unanimous conclusion that the budget taking into account the running costs of the PS and its representations in the Parties, expenditures for organizing and holding of the working groups and the annual meeting of the IGC TRACECA, as well as the required investments of the IGC TRACECA, should make 600,000 Euro in order for the PS IGC TRACECA to fully comply with its tasks and obligations. The Parties participation in financing should be based on the equal shares payment principle by each Party to the MLA. The Parties contributions to the PS budget for 2005 should be kept at the level of 7,000 Euro by each MLA Party, which will make 84,000 Euro. In 2006 the PS IGC TRACECA should become fully self-financed. The Parties requested the European Commission and the managers of the "Trade Facilitation and Institutional Support" project to utilize if possible the funds envisaged by the project to support the activities of the PS IGC TRACECA for repayment of the costs of 2005. The permanent representatives of the PS in the MLA Parties addressed their request to the Chairman of the IGC TRACECA and the Secretary General of the PS IGC TRACECA to send their statements to the IGC TRACECA member-states and to do their utmost to ensure membership fees payment by the Parties for 2005.

These agreements are included into the separate Protocol (**Appendix 3**).

- on the draft Agreement on Joint Financing of the PS IGC TRACECA

Having achieved preliminary agreement on the text of the Draft Agreement on Joint Financing of the PS IGC TRACECA, the Parties representatives made a decision to charge the PS with elaborating of several articles of the Agreement taking into account the subsequent comments and sending it for coordination.

- on ratification of the Protocol on amendments to the MLA

The PS permanent representatives in the MLA Parties informed about the course of the fulfillment of ratification procedures concerning the Protocol on making amendments to the MLA, which was signed at the Third Meeting of the IGC TRACECA. Currently the Protocol has been ratified by Azerbaijan and Bulgaria. In other countries this document is at different stages of preparation for ratification.

- on new MLA member-states willing to join the Agreement

The Secretary General informed the meeting that the Ministry of Foreign Affairs of the Republic of Azerbaijan had received the official statements of 10 member-countries on joining the MLA by Afghanistan. The representative of the Republic of Moldova informed the participants to the Meeting that the official statement of Moldova had been sent through the Embassy of the Republic of Azerbaijan in Ukraine, the representative of Turkey assured that corresponding diplomatic note would be sent in the near future.

Most of the countries had already spoken in favour of Iran and Pakistan joining the MLA.

The PS recommends the countries to accelerate this process to obtain the opportunity to invite the representatives of the newly joined countries to the next meeting of the IGC TRACECA.

4. TRACECA projects. Action Plan

Principal Administrator of the Europe-Aid Cooperation Office, the European Commission, responsible for TRACECA Programme, Mr. Dalamangas informed the meeting that the European Commission had approved financing of the projects included in the Action Plan of 2003. One of them, the "Trade Facilitation and Institutional Support" project started its implementation in September 2004, three more projects will start in the beginning of 2005.

Mr. Dalamangas also emphasized the importance of the Parties' cooperation with the team-leader of the "Trade Facilitation and Institutional Support" project for identification of the projects for 2005-2006.

5. Presentation of TRACECA Industrial Advisory Panel

The team-leader of the "Common Legal Basis for Transit Transportations" project, Mr. Lamnidis presented a concept of establishment of the TRACECA industrial advisory panel (**Appendix 4**) to the Meeting participants. The document developed by the project was submitted to the Parties' representatives for further elaboration of its action plan in cooperation with the PS and it will be the subject for approval by the Intergovernmental Commission.

6. On Strategy of the transport corridor Europe – Caucasus – Asia development for 2005-2010

The Meeting participants expressed their full support of the Draft Strategy Paper of the IGC TRACECA for transport corridor Europe – Caucasus – Asia development for the period of 2005-2010 (**Appendix 5**) presented by the Permanent Secretariat jointly with the CLBTT experts. The Parties' representatives made a decision to submit the agreed Draft Strategy Paper to the European Commission for comments and subsequently to present it for approval by the Intergovernmental Commission TRACECA.

7. On preparation of the Fourth Annual Meeting of the IGC TRACECA

The permanent PS representative in Azerbaijan, Mr. Akif Mustafayev informed that the following meeting of the IGC TRACECA would be held in April 2005 in Baky. Specific dates of the meeting would be agreed additionally.

8. Meeting of the Legal Working Group

Simultaneously with the Permanent Secretariat Meeting there was held the Legal Working Group, which worked out the drafts Protocols on amendments to the MLA as well as new Technical Annexes.

Mr. Thomas Lamnidis, the team-leader of the "Common Legal Basis for Transit Transportations" project informed the meeting on the results of the legal experts activities included in the Minutes (**Appendix 6**) and that these documents were subject to submission to the IGC for final approval.

9. Miscellaneous

In his speech at the opening session Mr. Dalamangas informed that in view of accounting procedures for the funds provided by the European Commission for the PS' support it is required to re-nominate the National Secretaries for the purpose of submitting to Brussels till December 15, 2004 the official confirmations of their nominations being in force.

Romania and Bulgaria were presented at the Meeting by their plenipotentiaries. The EC representatives and the Secretary General expressed their regret because of the absence of the representative of the Republic of Armenia at this meeting.

The meeting participants supported the proposal of the Permanent representative of the PS in Moldova, Mr. Eduard Biryukov on developing a new TRACECA map, which would include new routes and new MLA member states.

The permanent representative of the PS in Turkey proposed to hold the following meeting of the PS in the city of Istanbul.

The Permanent Secretariat will provide any materials of the meeting to the PS' Permanent Representatives in the participant countries on request.

The present Recommendations and Decisions have been prepared in accordance with the accepted practice on finalizing of the meeting on the basis of documentary notes.

Lyudmila Trenkova

Secretary General of the PS IGC TRACECA

Annex 3

**Agenda of the Working Group Meeting of the PS
IGC TRACECA, October 6-8, 2004,
List of Participants,
Minutes of the Meeting of the Legal Experts**



**MEETING OF THE PERMANENT SECRETARIAT
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 6-8, 2004

**ЗАСЕДАНИЕ ПОСТОЯННОГО СЕКРЕТАРИАТА
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку / Азербайджанская Республика, 6-8 октября 2004 г.

AGENDA

Participants:

Permanent Representatives of the PS; Secretary General; Representatives of the EC; Consultants of the TFIS

Purpose of the Meeting:

Drafting of Recommendations for the 4th Annual Meeting of the IGC TRACECA on developments in the Parties with regards to the decisions of the III IGC TRACECA Annual Conference (October 2003) and about other issues, according to the present agenda

1. Presentation of the new Trade Facilitation and Institutional Support Project

Joint discussion
(EC representatives and consultants)

2. Statement of the Executive Secretary

3. Current state of implementation of the Final Resolutions of the Third Annual Meeting of IGC TRACECA (October, 2003)

- Reports on contribution of the Parties to the co-financing of the PS in 2004 (Secretary General, EC and PS representatives);
 - Co-financing of the PS in 2005; (Secretary General, EC and PS representatives);
- Information on procedure of internal coordination of Draft Agreement between the governments of the Parties to the Basic Agreement on System of Joint Financing of the PS IGC TRACECA (Reports of the PS representatives);
- State of ratification / internal legislative procedures of the Protocol on Amendments to the MLA, signed at the Third Conference of IGC TRACECA (Reports of the PS' representatives)
- On new MLA member-states willing to join the Agreement (Afghanistan / Iran / Pakistan)
(Reports of the Secretary General and PS representatives)

4. TRACECA Projects. Action Plan

(Reports of the EC representatives and consultants)

5. Presentation of the TRACECA Industrial Advisory Panel

(Concept by the CLBTT Project)

6. Elaboration of the Draft Strategy Paper of the IGC TRACECA for transport corridor Europe – the Caucasus – Asia development for the period 2005-2010

(Discussion: PS representatives and consultants);

7. Preparation for the Fourth Annual Meeting of IGC TRACECA:

- Tentative dates of the Meeting (Report of the representative of Azerbaijan);
- Discussion of the Draft Agenda (Proposals);
- Overview of draft list of participants (new members, invitees etc.);

8. Miscellaneous

- About TRACECA website;
- Overview of the forthcoming PS meeting



**MEETING OF THE PERMANENT SECRETARIAT
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 6-8, 2004

**ЗАСЕДАНИЕ ПОСТОЯННОГО СЕКРЕТАРИАТА
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку/ Азербайджанская Республика, 6-8 октября 2004 г.

LIST OF PARTICIPANTS

Ms. Lyudmila Trenkova	Secretary General of the PS IGC TRACECA
Mr. Zviad Kvatchantiradze	Executive Secretary of the PS IGC TRACECA
Mr. Stefano di Cara	Policy Officer of the European Commission, International Relations Directorate
Mr. Efstathios Dalamangas	Principal Administrator, responsible for TRACECA;
Mr. Athanasios Boitsios	Task Manager of Transport and Energy Projects
Mr. Bodo Roessig	Team Leader of "Trade Facilitation and Institutional Support" project
Mrs. Angelika Zwicky	Supervisor of the PSecretariat of IGC TRACECA
Mr. Thomas Lamnidis	Team Leader of "Common Legal Basis for Transit Transportation" project
Mr. Vadim Turzeladze	Regional Coordinator of "Common Legal Basis for Transit Transportation" project

Permanent Representatives – National Secretaries – of the Permanent Secretariat of IGC TRACECA in the Parties to the MLA:

Republic of Armenia	not represented
Republic of Azerbaijan	Mr. Akif Mustafayev
Republic of Bulgaria (Authorized Representative)	Mrs. Albenia Peeva
Georgia	Mr. George Gogiashvili
Republic of Kazakhstan	Mr. Yerzhan Suleymenov
Kyrgyz Republic	Mr. Suleyman Zakirov
Republic of Moldova	Mr. Eduard Biryukov
Romania (Authorized Representative)	Mrs. Aurelia-Irina Popescu
Republic of Tajikistan	Mr. Solih Mouminov
Republic of Turkey	Mr. Baris Tozar
Ukraine	Mr. Yuri Tertyshnik
Republic of Uzbekistan	Mr. Olimjon Buranov

CLBTT – Completion Report – October 2004 – Annex 3 – Agenda of the Working Group
Meeting of the PS IGC TRACECA, October 6-8, 2004, List of Participants, Minutes of the
Meeting of the Legal Experts

Representatives of the Ministries of Foreign Affairs in the Parties to MLA:

Republic of Armenia	not represented
Republic of Azerbaijan	Mr. Elshan Baloglanov
Republic of Bulgaria	Mr. Khristo Maslarov (representative of MoT)
Georgia	not represented
Republic of Kazakhstan	not represented
Kyrgyz Republic	Mr. Ayden Beyshebayeva
Republic of Moldova	Mr. Gheorghe Aparece
Romania	Mr. Anghel Constantin
Republic of Tajikistan	not represented
Republic of Turkey	Mr. Izzet Isik (representative of MoT)
Ukraine	Mrs. Eugenia Sherkunova
Republic of Uzbekistan	

Minutes of meeting of the Legal Working Group Baku, 7- 8 October 2004

Attendees/Countries Represented by the experts of MFA and MoT:

Azerbaijan, Bulgaria¹, Kyrgyzstan, Georgia, Moldova, Romania, Turkey, Ukraine², Uzbekistan

Chairman: Thomas Lamnidis, Team Leader of the CLBTT Project

Moderator: Vadim Turdzeldze, Coordinator of the CLBTT Project

Participants: Arina Komarova, Ana Maria Tutea, legal experts of the CLBTT Project

The Legal Working Group reviewed and discussed the following documents considering all the recommendations and proposals received from the National Legal Working Groups and reformulated them on the basis of consensus in order to be submitted to the Parties and the Permanent Secretariat for their final consideration before their submission to the next IGC Conference.

It has been agreed to formulate a separate protocol on the amendments to the Basic Agreement. The articles 5, clause 2 and article 6 of the Basic Agreement have been reviewed by the Working Group (**Appendix 6.1**).

It has been agreed to formulate one Common Protocol (**Appendix 6.2**) for the 4 new technical annexes, and for the amendments and additions to the technical annexes on 1) international road transport and 2) customs and documentation procedures.

Regarding the Technical Annex on International Road Transport, the Working Group combined the 2 proposed documents on its amendments of the IGC Yerevan Conference in one document (**Appendix 6.3**).

Regarding the Technical Annex on Customs and Documentation Procedures, the Working Group reconsidered the amendments and changes proposed at IGC Yerevan Conference and formulated one text with the reviewed amendments (**Appendix 6.4**).

The draft of the new Technical Annex on Multimodal Transportation has been discussed, reviewed and accepted by the Working Group (**Appendix 6.5**).

The Draft of the new Technical Annex on TRACECA Investments has been reviewed article by article, has been amended and considerably improved, on the basis of the Romanian draft proposal. The Working Group agreed in details on the above-mentioned draft (**Appendix 6.6**).

With regards to the Draft Technical Annex on Freight Forwarding Activities, it was agreed to add the article on Definitions and to incorporate the provisions stipulating the liability of the freight forwarding contracts/operations participants, regulated by the international conventions. It was agreed that the Annex should refer to the rules applicable to multimodal transportations issued by the national authorities (**Appendix 6.7**).

The Working Group is submitting the above-referred appendixes to the National Secretaries and Permanent Secretariat to incorporate in their recommendation for the next IGC Conference.

According to their sovereign right, the Parties to the MLA, if they consider appropriate, will further elaborate with their national authorities, the proposals of the Working Group prior to the submission of the final draft to the next IGC Annual Meeting.

¹ The representative of Bulgaria was present only for discussions on Draft Technical Annexes on Multimodal Transport and TRACECA Investments.

² The representative of Ukraine was not present for the discussions on the Draft Technical Annex on TRACECA Investments

Annex 4

Agenda of the Meeting of Legal Experts of the PS WG Meeting, October 6-8, 2004



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 6-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г.Баку / Азербайджанская Республика, 6-8 октября 2004 г.

AGENDA

Participants:

Representatives of the Ministries of Foreign Affairs of the Parties and Consultants CLBTT

Purpose of the Meeting:

Drafting of Recommendations for the 4th Annual Meeting of the IGC TRACECA on developments in the Parties with regards to the following decisions of the III IGC TRACECA Annual Conference (October 2003) and newly submitted Draft Technical Annex and Draft Protocol on Amendments to the MLA.

1. FD 5: on Draft Protocol on Amendments to the Technical Annexes **on International Road Transport and Customs Documentation Procedures** (Amendment: 3 IGC/FinDoc 7)
2. FD 6: the Draft Protocol on Amendments to the Technical Annexes **on International Road Transport** of the Basic Multilateral Agreement (Amendment: 3 IGC/FinDoc 8)
3. FD 7: the Draft Protocol on Amendments to the Basic Multilateral Agreement on **Multimodal Transportations** (Amendment: 3 IGC/FinDoc 10).
4. Draft Annex to the MLA on **freight forwarding** operations, circulated to the Parties in November 2003
5. **Amendments to articles 5 and clause 2 article 6** (on preferential terms) of the MLA, proposed to the Parties on 12 May 2004.
6. FD 8: on the Draft Technical Annex on **TRACECA Investment** (Amendment: 3 IGC/Fin Doc 12)
7. FD 9: on the Draft **Strategy Paper** of the IGC TRACECA for transport corridor Europe – the Caucasus – Asia development for the period 2005-2010 (Amendment: 3 IGC/FinDoc 14)

Annex 5

Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the Permanent Secretariat)



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 7-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**COMMON PROTOCOL
(ON AMENDMENTS TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL
TRANSPORT FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

The States Participants to the Basic Multilateral Agreement on International Transport for Development of the Europe-Caucasus-Asia Corridor signed in Baku, at 8 September 1998, hereinafter referred to as "Basic Agreement", under auspices of Intergovernmental Commission "TRACECA", hereinafter referred to as IGC TRACECA";

Recognizing that secure transport routes to world markets will be important to the future prosperity of the Parties;

Expressing their aspiration to fruitful and mutually beneficial economic and trade cooperation;

Aware of the fact that account must be taken of all the legal technical, commercial, environmental and financial factors in reaching decisions on transit transportation in cooperation with other interested States, as well as with local and foreign companies investing on their territory;

Respecting market economy rules in the transport sector, such as the rules and regulations applicable in EU countries and wishing to contribute to the development of international rules and practices governing transit transport activities;

Conscious of the fact that states have an important role to play in reducing investment and transit risks, by forming integrated transport systems as well as through the facilitation of bilateral or multilateral and mutually beneficial relations achieving peace, security and economic progress;

Considering that the protection, promotion and treatment of foreign investment and investors, according to internationally acceptable standards and complying with the rules of international economic law constitute appropriate measures to develop the transport sector;

Conscious of the adverse environmental consequences such investment might have;

Determined to establish common rules and mechanisms safeguarding the effective operation of various transportation systems in accordance with the practices and usages in force in the international transport industry, and taking into consideration the provisions and principles of the Basic Multilateral Agreement;

Taking into consideration the Final Resolutions of the 3rd Conference (Annual Meeting) of the Intergovernmental Commission TRACECA, adopted in Yerevan, at 10 October 2003,

Acting on the grounds of the Article 10 ("Technical Annexes") and Article 11 ("Presentation of Amendments and Additions") of the Basic Agreement,

have agreed the following:

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

Article 1
Presentation of Amendments and Additions
to the Technical Annexes to the Basic Agreement

1. **"Technical Annex to the Basic Agreement on International Road Transport"** will be amended and added with text from Annex 1 to this Protocol.
2. **"Technical Annex to the Basic Agreement on Customs and Documentation Procedures"** will be amended and added with text from Annex 2 to this Protocol.

Article 2
Introduction of new Technical Annexes to the Basic Agreement

The Basic Agreement will be complemented with new Technical Annexes, as following:

- **Technical Annex to Basic Agreement on the joint financing of the Permanent Secretariat of Intergovernmental Commission TRACECA (PS IGC TRACECA)**", with text from Annex 3 to this Protocol;
- **" Technical Annex to Basic Agreement on Multimodal Transport"**, with text from Annex 4 to this Protocol;
- **" Technical Annex to Basic Agreement on TRACECA investments "**, with text from Annex 5 to this Protocol;
- **" Technical Annex to Basic Agreement on freight forwarding"**, with text from Annex 6 to this Protocol;

Article 3
Presentation of Amendments and Additions

1. This Protocol and Annexes 1 to 6 hereto are integrate part of the Basic Agreement.
2. This Protocol and Annexes 1-6 hereto can be amended or added according to procedure established in Article 11 of the Basic Agreement

Article 4
Depository

1. Depository of this Protocol shall be the Republic of Azerbaijan, as Depository of the Basic Agreement in accordance with the provisions of article 15 of the Basic Agreement.
2. Depository will send the certified copies of the Protocol and Annexes 1 to 6 to the States who signed it.

Article 5
Entry into force

This Protocol comes into force in accordance with Articles 11 ("Presentation of Amendments and Additions") and Article 13 ("Entry into force") of the *Basic Agreement*.

Done at the 4th Conference (Annual Meeting) of the Intergovernmental Commission TRACECA on the Transport Corridor Europe - the Caucasus - Asia at on in one original copy in the English and Russian languages, both of them being equally authentic,

In witness whereof, the undersigned, being duly authorized Heads of Delegations have signed this Protocol.

For the Republic of Armenia

For the Republic of Moldova

For the Republic of Azerbaijan

For Romania

For the Republic of Bulgaria

For the Republic of Tajikistan

For Georgia

For the Republic of Turkey

For the Republic of Kazakhstan

For Ukraine

For the Kyrgyz Republic

For the Republic of Uzbekistan

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baku / Republic of Azerbaijan, October 7-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**ANNEX 1 TO THE COMMON PROTOCOL
(ON AMENDMENTS TO THE TECHNICAL ANNEX ON INTERNATIONAL ROAD TRANSPORT
TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL TRANSPORT
FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

1. To make the following additions to the “Technical Annex” on International Road Transport:

1.1 Supplement the Article 2 “Definitions” with new clauses stipulated as follows:

9. The term «TRACECA permit» means a multilateral permit, valid for an unlimited number of journeys between Parties and for the period of one year, issued to a Carrier (specific individual or a legal entity) for a specific motor vehicle to effect international transport of goods by road and approved by a Party to the Basic Agreement.

10. The term “Quota” means the number of permits available for a Party to the Basic Agreement, which are allocated and issued by the Permanent Secretariat in close collaboration with the competent authorities of the Parties and approved by the Intergovernmental Commission.

1.2 Supplement the Article 3 “Access to the Market” with new clauses, stipulated as follows:

“3. Each Party acknowledges the TRACECA permit issued in accordance with the provisions of this Technical Annex as a permit document for a motor vehicle to enter, depart and transit via the Parties’ territories. The TRACECA permit holder is entitled to effect back loading on the territory of the Parties in line with the national legislation of the Parties.

4. The TRACECA permit system functions on the basis of a quota system, providing for transport between the Parties to the “Basic Agreement” in transit via the territories of one or several Parties to the “Basic Agreement” by motor vehicles registered in a Party to the “Basic Agreement”;

5. A Carrier from one Party is not permitted to transport goods between two points located on the territory of any other Party (cabotage).

6. During international transit transport of goods on the territories of the Parties using the TRACECA permit a motor vehicle shall be exempted from taxes, duties and other payments irrespective of their names and origin excluding trip payment across toll-roads, tunnels and bridges.

7. Permits and other documents required in accordance with the provisions of this Technical Annex shall be available in the motor vehicle they pertain to and shall be produced at the request of competent authorities.”

8. The Parties shall establish gradually free market access for international road transport in line with the relevant principles prevailing in the European Union.

9. Recognising that free market access, as provided for in clause 8, will be a longer term objective in some of the Parties, in a first phase, the Parties shall establish a quota-free regime for bilateral and transit road transport of goods. Permits may still be required for administrative and statistical purposes. Third country (triangular) and cabotage transport operations are excluded from the above quota-free regime.

10. The established quota regime shall not prejudice the benefits already derived from bilateral agreements, which are in force between the Parties as far as free-of-charge permits are concerned.

2. To supplement the Technical Annex with a new Article stipulated as follows:

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

Article 6
Charging Policies

1. The Parties agree to take all appropriate steps towards rationalisation and gradual convergence of charging policies for international road transport of goods by taking account of the principles of cost-relatedness, non-discrimination and transparency.
2. The Parties shall ensure that tolls and any other forms of user charges may not be imposed at the same time for the use of the same road section. Such charges imposed on carriers shall be based on internationally recognised standard elements for the calculation of costs of road transport as well as on units (tonne-km). The respective charges shall be payable in local currency or in an international currency.



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA
Baku / Republic of Azerbaijan, October 7-8, 2004**

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.**

**ANNEX 2 TO THE COMMON PROTOCOL
(ON AMENDMENTS TO THE TECHNICAL ANNEX ON
CUSTOMS PROCEDURES AND DOCUMENTATION
TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL TRANSPORT
FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

To make the following additions to the “Technical Annex” on Customs and Documentation Procedures

1. Supplement the Article 2, clause 1, “International Conventions” with new sub-clause with the following content :

d. International Convention on the Simplification and Harmonization of Custom Procedures (as amended) done at Kyoto , 18 May 1973

e. Convention on custom treatment of pools containers used in International transport, done at Geneva on 21 January 1994

f. Agreement concerning the establishing of global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles, done at Geneva, on 24 June 1998

g. United Nation Convention on the Liability of Operators of Transport terminals in International Trade, done at Vienna, 12 April 1991.

2. Supplement the Article 3 “Customs Control” with new clauses stipulated as follows:

“3. Provided that the conditions laid down in the customs transit procedure used for the transit operation are fulfilled to the satisfaction of the customs authorities, goods in international transport including transit:

a. shall not, as a general rule, be subject to customs examination during the journey except to the extent necessary to ensure compliance with rules and regulations which the customs are responsible for enforcing. Flowing from this, the customs authorities shall normally restrict themselves to the control of customs seals and other security measures at points of entry and exit;

b. shall not be subject to any customs formalities or requirements additional to those of the customs transit regime used for the transit operation.”

3. Supplement the Technical Annex with a new Article stipulated as follows:

“Article 5
Transit Facilitation

In order to facilitate the transit of goods, the Party shall:

1) If it is the country of shipment, as far as practicable, take all measures to ensure the completeness and accuracy of the information required for the subsequent transit operations;

2) If it is the country of destination:

a) Take all necessary measures to ensure that goods in customs transit shall be cleared, as a rule, at the customs office of destination of the goods;

b) Endeavour to carry out the clearance of goods at a place as near as is possible to the place of final destination of the goods.”



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 7-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**ANNEX 4 TO COMMON PROTOCOL
(ON AMENDMENTS TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL
TRANSPORT FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

**Technical Annex to the Basic Multilateral Agreement
on Multimodal Transport**

**Article 1
General Provisions**

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

**Article 2
Definitions**

This Technical Annex contains the following definitions:

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

**Article 3
Purposes**

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

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

Article 4 Organization of Multimodal Transport of Goods

1. The multimodal transport procedure is regulated by the relevant codes, charters and rules, existing in the Parties for each transport mode. Multimodal transport includes:

- a) Railway stations, available for goods transport operations;
- b) Sea and river ports (hereinafter referred as "ports");
- c) Truck terminals and loading bays

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

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

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

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

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

Afore-mentioned situations increase delivery time of goods.

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

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

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

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

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

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

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

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

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

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

- a) Date and place of issue of the consignment note (bill of lading),
- b) The name and address of the consignor,
- c) The name and address of the consignee
- d) The name and address of the Multimodal transport Operator,
- e) The signature of the Multimodal Transport Operator or the authorized person;
- f) Place and date of acceptance of goods by the Multimodal Transport Operator

- g) The place of the delivery of goods
- h) The date of the delivery of goods
- i) The trade description of goods and its characteristics (as dangerous or perusable goods), the marks, numbers, quantity and kind of packages; in case of unpacked goods, the number of goods or the phase of "bulk"
- j) information on charges for each transport mode, if agreed with the parties, or charges to be paid by the consignor
- k) information on the transport modes, dates and place of goods reloading
- l) any other information which can be included in the consignment note (bill of landing), if agreed by the Parties

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

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

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

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

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

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

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

Article 5

Rights and responsibilities of Multimodal Transport Operator

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

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

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

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

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

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

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

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

Article 6

Rights and responsibilities of consignor

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

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

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

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

Article 7 Responsibility of the Multimodal Transport Operator

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

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

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

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

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

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

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

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

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

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

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

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

Article 8 Responsibility of Consignor

1. Consignor shall be liable for damage caused to the Multimodal Transport Operator, provided that it was done intentionally or imprudently. In case of transporting dangerous goods, consignor shall inform the Multimodal Transport Operator. Failing to do this, consignor shall become liable to the Multimodal Transport Operator for any possible loss, resulting from
CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

transporting such goods. In this case, such goods if necessary can be unloaded, disposed of or neutralized at any moment, with prior notification to the consignor, without any compensation.

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

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

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

Article 9 Claims and Disputes

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

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

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

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

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

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

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

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

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

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

All claims shall be made in written form.

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

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

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

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

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

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

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

Article 10 Final Provisions

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

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

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

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

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

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

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

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

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

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



MEETING OF THE LEGAL WORKING GROUP
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ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**ANNEX 5 TO COMMON PROTOCOL
(ON AMENDMENTS TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL
TRANSPORT FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

Technical Annex on TRACECA Investment to the Basic Agreement

**Article 1
General Provisions**

1. The provisions of this Technical Annex shall regulate the TRACECA Investment
 - a. bilateral, multilateral between the Parties;
 - b. in transit, through the territories of the Parties
2. The present Technical Annex sets out the necessary framework in terms of procedures, rights and obligations of the Parties for the implementation of its scope of application, as well as for the protection of any third parties operating within the institutional framework established the Basic Agreement and its Protocols and Technical Annexes.

Titles in the present Technical Annex are intended solely for ease of reference and should not be construed as affecting the interpretation of the provisions of this Technical Annex.

**Article 2
Definitions and titles**

For the purpose of the present Technical Annex:

1. “ **Participating Parties**” means the Parties to the Basic Agreement on whose territory a TRACECA Route is established pursuant to the present Technical Annex;
2. “**Specific Protocol or Specific Protocols**” means any interstate agreement or agreements concluded by two or more Parties in the framework and in implementation of this Technical Annex in compliance with the principles and provisions of the Basic Agreement and the procedures set out in the present Technical Annex to be annexed to the Basic Agreement;
3. „**Construction**” means the building of new infrastructure facilities concerning road transport, railway transport, water transport, air transport and pipelines as well as any new parts of such infrastructure facilities;
4. A “**TRACECA Route**” means an integrated Interstate Transportation System crossing the territories of more than one State; it can be defined:
 - Either by specific transportation means and facilities constituting the said Interstate Transportation System;

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

- Or/and specific modes of transportation envisaged for the establishment of the said Interstate Transportation System;
- Or/and by specific goods transported through the said Interstate Transportation System.

A TRACECA Route shall be established each time by means of an interstate agreement between at least two Parties signatories of the Basic Agreement and the present Technical Annex.

The incorporation of such interstate agreements into the national legislation of the Participating Parties and their implementation shall be pursued in accordance with the national legislation of those Parties;

5. "TRACECA Investment" means any project relating to:

- The rehabilitation of existing infrastructure facilities, including the revitalization and/or reconstruction and/or refurbishment and/or expansion and/or modification of any existing infrastructure facility or any existing part of such a facility.
- The construction of new infrastructure facilities or any new part of an existing infrastructure facility.
- The operation of infrastructure facilities as resulting from either rehabilitation or construction activities.
- Any preliminary stages in terms of planning in view of activities, as set out above.
- Any investment on the territories of the Parties that, due to its contribution to the economic development of the Parties and its contribution to the increase of the movement of goods across a concrete TRACECA Route as described in Article 2 of the present Technical Annex;

6. "TRACECA Investment Committee", described in Article 12 of the present Technical Annex means the committee consisting of authorized representatives of all the Participating Parties to a TRACECA Route, empowered to monitor in the name and on behalf of such Parties, the implementation of their decision to establish one or more TRACECA Routes and to make recommendations on the coordination of all the steps measures and common actions to be taken by the government of each Party within its territory necessary to ensure the security and protection of the infrastructure facilities of the transport system(s) established pursuant to this Technical Annex, against events such as natural disasters, earthquakes, radioactive or chemical contamination, civil riots, acts of terrorism or sabotage, criminal damage and other events of similar nature;

7. "TRACECA Economic Interest Grouping", hereinafter TEIG, means an association of legal entities, based in at least two Parties to the Basic Agreement. The TEIG has a legal personality itself and aims at the facilitation of the financial and commercial activities of its members;

8. "Guarantee Trust Fund" means a mechanism covering any non-calculated risks emerging along a TRACECA Route, especially those risks covered under the **"Convention Establishing the Multilateral Investment Guarantee Agency"**, adopted at Seoul at 11 October 1985, hereinafter **"MIGA Convention"** ;

9. "Integrated form of project implementation" means form of cooperation selected by the Parties for the establishment of an Interstate Transportation System (TRACECA Route) which entrusts a single legal entity or a group of legal entities, with two or more separate functions, as described in Article 10 of the present Technical Annex or any other form of integration;

10. "Maintenance" means the technical activities necessary to preserve the infrastructure facilities of a TRACECA Route or any part of facility of an Interstate Transportation System in good functional order, for the purpose for which such a system is intended, in accordance with applicable technical, safety and environmental standards;

11. "Maintenance Entity" means a legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the function of Maintenance of an Interstate Transportation System (TRACECA Route) ;

12 "Operation" means the activities which are necessary for the continuous uninterrupted, proper and efficient functioning of the TRACECA Route (s) in accordance with applicable rules and regulations, as well as international Conventions and Treaties in force;

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

13 “Operation entity” means a legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the operation of a TRACECA Route;

14. „Authorized Entities” concerned referred to in Articles 6 and 9 of the present Technical Annex, means the Authorized Competent Entities described in Article 17 of the present Technical Annex;

15. “Practices or Usages”, referred to in the Preamble of the Protocol to the Basic Agreement which introduces the present Technical Annex and in Article 6 of the the present Technical Annex, means the forms and manners of conducting specific technical, commercial and financial activities within a specific industry or market established through common use and applied by professionals operating within the same industry or market;

16. “Project” means the planning for and undertaking to carry out a specific activity or activities within the framework of a TRACECA Route established under the present Technical Annex;

17. ”Project Management” is the mobilization of a multi-disciplinary team required for the implementation of the overall Project of the Rehabilitation or Construction of a TRACECA Route, or any infrastructure facility or part of it, overseeing and coordinating activities related to engineering, procurement, technical monitoring and supervision, Construction management and commissioning of such a Project within the applicable objective of time schedule, quality and costs;

18. “Project Management Entity” is the legal entity or a group of legal entities established or selected pursuant to the present Technical Annex in order to undertake the function of Project Management;

19. “The Project Management Entity” and **“the Operation Entity”** might be two different entities, acting in two different phases of the Project implementation and Operation, according to the provisions of the present Technical Annex, unless the dual function of Project Management (before the completion date) and Project Operation (after the completion date) is entrusted to a single legal entity or a group of legal entities under the terms of Article 9 paragraph 2 of the present Technical Annex;

20. “Rehabilitation” means the revitalization, reconstruction, refurbishment, expansion or modification of any Interstate Transportation System or Transport Infrastructure facility or any existing part of such transport infrastructure facility.

Article 3 General Commitment

The Parties will cooperate, within the framework of the Basic Agreement, its Protocols and Technical Annexes and the present Technical Annex, in order to establish, under mutually acceptable terms and conditions, one or more TRACECA Route (s), by means of the Rehabilitation of the existing infrastructure facilities, the Construction, where appropriate, of new infrastructure facilities, the purchase of various transportation means and the Operation and Maintenance of these transportation facilities, under commonly accepted international practices and rules.

Article 4 Scope of application

1. For the purposes of Article 3 of the present Technical Annex, the Parties agreed to undertake or to pursue bilateral and/or multilateral negotiations with other Parties in order to determine by Specific Protocol(s) which existing transportation infrastructure facilities will be part of a TRACECA Route, which transportation means, to which goods, products and/or passengers the TRACECA Route rules will apply, when crossing their territory, as well as which infrastructure facilities and means they wish to be used as parts of one or more TRACECA Route to be established, maintained and operated pursuant to Basic Agreement, its Protocol and Technical Annexes and the present Technical Annex and which new infrastructure facilities they accept to be constructed, operated and maintained on their territory as parts of the aforementioned TRACECA Route (s).

CLBTT – Completion Report – October 2004 – Annex 5 – Draft Common Protocol on Amendments to the Basic Agreement, 5 Appendices (excluding Appendix 03 on the System of joint financing of the PS)

2. Without prejudice to the establishment of interconnections between two or more TRACECA Routes established pursuant the present Technical Annex, such TRACECA Routes could be considered as separate Projects, to be designed, financed, rehabilitated, constructed, operated and maintained in accordance with different technical, commercial, financial and environmental considerations. Each Party may agree with (an)other Party(ies) to establish more than one TRACECA Route.

3. For the purpose of assisting the increase of the movement of goods, products and/or passengers, the Parties, participants in a TRACECA Route, agree to undertake the obligation to protect the TRACECA investment connected with a concrete TRACECA Route within their internal legal order, even if the TRACECA investment is placed on the territory of another Party, participant in that TRACECA Route. This means that every party, participating in a TRACECA Route undertakes the obligation not to deteriorate the conditions of transportation of any investment, that is considered as a TRACECA investment, unless this deterioration is directly connected with the real increase of costs for the said transportation.

Article 5 **Interstate agreements for TRACECA Routes** **and TRACECA Investment provisions.**

1. Every interstate agreement creating a concrete TRACECA Route should include as a minimum the following (a part of the usual provision of any interstate agreement):

- Concrete description of the Route in terms of infrastructure facilities transportation means, goods or other specifications that could include.
- List of international conventions, treaties or agreements, under which agreement full enforceability exists
- brief description of TRACECA investments for the concrete TRACECA Route (infrastructure projects) and related TRACECA investments, for which the state and interstate performance Guarantee is in force
- monitoring system of the operability of the TRACECA Route and appointment of the TRACECA Investment Committee hat is responsible among other obligations for the Monitoring of the TRACECA Route.

2. Any interstate agreement could envisage the creation of a Guarantee Trust Fund, on the basis of a Specific Protocol, if deemed necessary.

Article 6 **Operation**

1. Without prejudice to Article 10 of the the present Technical Annex, paragraph 2 and taken into consideration the need to provide for rules ensuring efficient functioning of any TRACECA Route established pursuant to the Basic Agreement and the present Technical Annex, the Operation of such TRACECA Route, if agreed by the Participating Parties to that concrete TRACECA Route, may be assigned to one Operation Entity, to be established or selected according to the principles, rules and procedures, which will be negotiated and agreed upon by the Participating Parties and, as appropriate, by the Authorized Entities concerned.

2. The Operation Entity could enter into an Operation Agreement with the Participating Parties and, as appropriate, with the Authorized Entities concerned, describing the principles and rules according to which the TRACECA Route established by these Parties shall be operated.

3. Without prejudice to Article 10 of the present Technical Annex and, unless otherwise expressly provided for in a Specific Protocol for the establishment of a TRACECA Route, one or more Operation Entity(s) may only provide transport services to transporters, forwarders and generally clients of the transportation means and transportation infrastructure facilities under specific transport agreements, following international standards and Usages of the transport industry.

4. The Operation Entity could have the form of a TEIG.

Article 7 Rehabilitation and Construction

1. Unless otherwise expressly provided for in the present Technical Annex, each Participating Party in implementing the decision of two or more Participating Parties relating to the establishment of one or more TRACECA Routes, maintains the right to rehabilitate the existing transportation infrastructure facilities, that are part of the TRACECA Route, which is crossing its territory, pursuant to the national legislation, rules and regulations in force in said Party.

2. The provisions of Paragraph 1 of the present Article do not preclude the right of a Party to enter into a different arrangement with other Participating Parties, in view of rehabilitating and constructing the transportation infrastructure facilities of a TRACECA Route which is crossing their territories. To this effect, two or more Parties may decide to assign the Design, Rehabilitation and Construction of the works lying within their territories to a legal entity or to group of legal entities established or selected as the Participating Parties may jointly decide.

3. In order to ensure the technical consistency and operational efficiency of one or more transportation infrastructure facilities that are part of a TRACECA Route to be established between two or more Participating Parties, such Participating Parties agree to apply, when contracting out, as per Paragraph 1 and 2 of the present Article, the Rehabilitation and Construction of the national parts of one or more TRACECA Routes, commonly agreed technical specifications which are internationally recognized by the transport industry.

4. The Rehabilitation and/or Construction Entity could have the form of TEIG.

Article 8 Maintenance

1. The provisions of Article 7 of the present Technical Annex similarly apply to the Maintenance of the rehabilitated or newly constructed transportation infrastructure facilities which are part of a TRACECA Route established pursuant to the present Technical Annex.

2. Subject to the provision of Article 6, paragraph 1 of the the present Technical Annex, when an Operation Entity operates that transportation infrastructure facilities which are part of a TRACECA Route established pursuant to the present Technical Annex and should the Maintenance of such facilities be assigned to a legal entity or a group of legal entities, other than the Operation Entity as described in Article 6 of the the present Technical Annex, the legal entity, or the group of legal entities, responsible for the Maintenance of such transportation infrastructure facilities shall operate under the control and supervision of the Operation Entity, as the Maintenance Agreement, to be made by virtue of this Article, and the Operation Agreement, provided for in Article 6 paragraph 2 of the the present Technical Annex, shall expressly provides.

3. The Maintenance Entity could have the form of TEIG.

Article 9 Project Management

1. In implementing their decision to establish a TRACECA Route, pursuant to the present Technical Annex the Participating Parties and as appropriate, the Authorized Entities concerned, if they so agree, may decide to assign the overall responsibility of the feasibility study, design and supervision of a Rehabilitation and Construction of such a transportation infrastructure facility to a Project Management Entity to be established or selected by the Participating Parties and, as appropriate, by the Authorized Entities concerned, according to mutually acceptable principles, rules and procedures which will be negotiated and agreed upon by the Participating Parties and, as appropriate, by the Authorized Entities concerned.

2. Without prejudice to the provisions of Article 10, paragraph 2 of the present Technical Annex nothing precludes the Participating Parties and, as appropriate, the Authorized Entities concerned, from assigning the function of the Project Management Entity to the Operation Entity described in Article 4 paragraph 1 of the present Technical Annex.

3. The Project Management Entity could have the form of TEIG.

Article 10 **Integrated Forms of Project Implementation**

1. Taking into consideration the specific technical, commercial and financial requirements for the establishment of a TRACECA Route pursuant to the present Technical Annex, the Participating Parties might agree to assign two or more functions among those contemplated separately in Articles 6 to 9 of the present Technical Annex, to a single legal entity, or a group of legal entities, to be established or selected by the participating Parties as more specifically described in:

- a) Article 7, paragraph 2, in combination with Article 8 paragraph 1, for the functions of Rehabilitation / Construction and Maintenance.
- b) Article 6, paragraph 1, in combination with Article 8 paragraph 2, for the functions of Maintenance and Operation.
- c) Article 6, paragraph 1, in combination with Article 9 Paragraph 2, for the functions of Project management and operation.
- d) Article 9, Paragraph 2, in combination with Article 8 Paragraph 2, for the functions of Project Management, Operation and Maintenance.

2. The Parties may adopt any other integrated form of Project Implementation, included in, but not limited to the integrated Operation of the TRACECA Route (s) and its transportation means and infrastructure facilities, in order to implement their own decision to establish one or more TRACECA Route (s) pursuant to the present Technical Annex.

3. The integrated form of Project Implementation could have the form of a TEIG.

Article 11 **TEIG**

1. Members of a TEIG can be state or private companies established under the national legislation of states, parties to the Basic Agreement. At least two of the TEIG members shall have their central management or principal activities on the territory of their respective State, Parties to the Basic Agreement.

2. The management of a TEIG may be exercised by one or more persons. A TEIG cannot manage nor control the individual activities of its members nor act as a holding company.

3. The assets of a TEIG, if any, are contributed by its members. A TEIG itself may not be a profit-making organization. Any possible profits of that TEIG are deemed to be profits of its members and are distributed to its members according to their ratio of participation.

4. The members of a TEIG contribute to the coverage of expenses of the said TEIG according to their participation, but are jointly and wholly liable as regards their obligations to the said TEIG.

5. A TEIG has a relatively loose structure, and grants a legal personality and a minimum structure to a de facto co-operation of its members. The exact institutional structure of a TEIG is decided in the form of a Technical Annex on the basis of a specific agreement between the Parties to the Basic Agreement.

Article 12 **Issues relating to the exclusive jurisdiction to the Parties**

1. In implementing the decision to establish one or more TRACECA Route (s) pursuant to the present Technical Annex, the Participating Parties shall establish by separate specific Protocol (interstate agreement) the rules governing issues relating to the application by each Participating Party of its exclusive jurisdiction over its territory, as well as over the natural and legal persons operating within such territory, concerning issues including but not limited to social security and

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labor legislation, Construction regulations, licensing procedures, safety and health regulations, fiscal and customs issues and environmental protection legislation, relating to the Design, Financing, Rehabilitation, Construction, Maintenance and Operation of the transportation infrastructure facilities, which are placed on their own territory, of a TRACECA Route established pursuant to the present Technical Annex.

2. Unless otherwise expressly provided for in the Basic Agreement and the present Technical Annex, no party will modify its national legislation to the extent that such legislation will impair the conditions of Design, Financing, Rehabilitation, Construction, Maintenance and operation of a TRACECA Route established pursuant to the present Technical Annex, after the present Technical Annex and an Interstate Agreement establishing a TRACECA Route enters into force. In case of inconsistency between the provisions of the present Technical Annex establishing a TRACECA Route and the national legislation of the Participating Parties, the provisions of this Technical Annex and the interstate agreement shall prevail.

3. The Parties shall cooperate in order to establish by each Specific Protocol (interstate agreement) establishing a TRACECA Route, an authorized TRACECA Investment Committee (Subcommittee (s) of the IGC) which will be empowered to monitor, in the name and on behalf of Participating Parties the implementation of their decision to establish that concrete TRACECA Route established pursuant to the present Technical Annex.

4. The Parties shall cooperate in order to create, on the basis of the same Specific Protocol (interstate agreement) establishing a concrete TRACECA Route, the TRACECA Investment Committee which will make recommendations regarding the coordination of all the steps, measures and common actions to be taken by the Government of each Participating Parties within its territory, necessary to ensure the security and the protection of the transportation infrastructure facilities of this concrete TRACECA Route, against events such as natural disasters, earthquakes, radioactive and chemical contamination, civil riots, acts of terrorism or sabotage, criminal damage and other events of similar nature. Such events, as well as the functions and powers of the TRACECA Investment Committee, shall be determined by the Participating Parties, on a mutually acceptable basis for each concrete TRACECA Route established pursuant to the present Technical Annex.

5. The Specific Protocol(s) (interstate agreements) creating a concrete TRACECA Route(s) pursuant to the present Technical Annex, shall constitute an integral part of this Technical Annex and shall be in force only for the Parties that have signed these Specific Protocol(s)(interstate agreement).

Article 13 Protection of the Environment

In implementing the present Technical Annex, the Parties agree to develop tighter intergovernmental cooperation with a view to creating common institution(s) acting in accordance with international rules, such as those enunciated in Kyoto Protocol to the United Nations Framework Convention on Climate Change, signed in Kyoto, on 11th of December 1997, taking into account local environmental conditions, and to implement common policies safeguarding the environment against any harmful effect caused by the Rehabilitation, Construction or Operation of transportation means or infrastructure facilities of a TRACECA Route established pursuant to the present Technical Annex.

Article 14 Implementation in the National Legal Orders

1. The Parties shall take all the appropriate measures in order to incorporate and implement the provisions of the present Technical Annex in their National Legal Orders.

2. Where the present Technical Annex or the Basic Agreement provides for or implies the conclusion of a separate Protocol or Technical Annexes, to the Basic Agreement such Protocol (s) or Technical Annexes shall be negotiated and agreed upon by the Participating Parties, taking into consideration the specific requirements of any concrete TRACECA Route to be established pursuant to this Technical Annex. The incorporation and implementation of such Protocol(s) in the

Internal Legal Orders of the Participating Parties shall be pursued in accordance with the relevant constitutional and legislative provisions of said Parties.

3. A Party may not involve the provisions of its Internal Legal Order as justification for its failure to perform its obligations under the Basic Agreement, the present Technical Annex and the Specific Protocol(s) (interstate agreement) creating concrete TRACECA Route(s).

Article 15 State and Interstate Performance Guarantee

Each Party guarantees the proper and timely execution of its obligations arising out of the Basic Agreement its Technical Annexes, as well as the present Technical Annex and Specific Protocol(s) (interstate agreements) creating concrete TRACECA Routes vis-à-vis all the other Participating Parties in the Basic Agreement or the other Participating Parties to a Specific Protocol creating a TRACECA Route. Each Party provides the same guarantee to any third Party, Natural Person or Legal Entity entering to an Agreement or Contract with this Party for the design, Rehabilitation, Construction, financing, Operation and Maintenance of Transportation Infrastructure Facilities and Operation of various transportation means or users of the above mentioned Infrastructure facilities and means that are part of a TRACECA Route established pursuant to the present Technical Annex.

Article 16 Settlement of Disputes On Interstate Agreement for the creation of TRACECA Route

Any disputes arising between the Parties relating to a concrete TRACECA Route and any dispute arising between a Party and a third party relating to the interpretation and implementation of the above mentioned agreements and/or any contract or agreement which is made between a Party and the said third party for the implementation of a TRACECA Route, or directly connected with its Operation, shall be settled in accordance with the rules provided for in that interstate agreement that creates the concrete TRACECA Route.

Article 17 Authorized Competent Entities

1. Each Party shall designate and notify to the other Parties the authority, which will be responsible, according to its national legislation, for the implementation of the interstate agreement under the present Technical Annex.

2. The Parties accept and guarantee the obligations undertaken by these entities for the implementation of the present Technical Annex and the Specific Protocol(s) creating a concrete TRACECA Route(s) as their own obligations.



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**

Baky / Republic of Azerbaijan, October 7-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**

г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**ANNEX 6 TO COMMON PROTOCOL
(ON AMENDMENTS TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL
TRANSPORT FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR)**

**Technical Annex to the Basic Multilateral Agreement
on Freight Forwarding Operations**

Chapter 1. General Rules

Article 1. Subject of Regulation of the Technical Annex

1. The Present Technical Annex determines the procedure of freight forwarding activity - the process of services and organization of transportation of goods by any mode of transport, and the processing of transport, customs and other documentation required for the realization of the transportation of goods (hereinafter called freight forwarding services).

The conditions of the freight forwarding contract (hereinafter known as the contract), which are not stipulated by the present Technical Annex, are determined by the Parties of the contract (the freight forwarding agent and client) in accordance with existing domestic legislation of the MLA Parties.

2. The rules of present Technical Annex do not cover forwarding activities in the field of mail service.

Article 2. Definitions

Definitions used in the Technical Annex have the following meanings:

- a) "freight forwarding activity" – a kind of the specialized activity on rendering the freight forwarding services, carried out by the freight forwarding agent under the transport expedition contract;
- b) "freight forwarding services" - a type of service for organization and performance of delivery of cargoes (passengers) in accordance with transport expedition contract;
- c) "freight forwarding agent" – the legal or physical person rendering freight forwarding service in accordance with transport expedition contract;
- d) "the transport agent" – the legal or physical person rendering freight forwarding service and working on behalf of the client on this basis of transport expedition contract;
- e) "transport agency service" – the freight forwarding activity which is carried out by transport agents;
- f) "client" - the legal or physical person who independently or through his representative working on behalf of him concludes transport expeditions contract with the freight forwarding agent or transport agent;
- g) "consignor" - the legal or physical person on behalf of him or by his request the shipment is made;

- h) "consignee" - the legal or physical person on behalf of him or by his request the reception of cargo is made;
- i) "cargo" – goods , materials, substances, products, or any other property of consignor, accepted by freight forwarding agent or his representative for delivery;
- j) "carrier" - the legal or physical person who undertakes to deliver the cargo entrusted to him to the destination and hand over it to consignee or to his representative;
- k) "the transport document" - the document certifying the transport contract, acceptance of cargo by freight forwarding agent, and also his obligations to deliver a cargo to the destination;
- l) "vehicle" – special adaptation (device) for transportation of cargoes and passengers as they are defined by transport glossaries of Eurostate, and UN ECE;
- m) "terminal" – a complex of non-production constructions intended for interaction of varios types of transport for delivery of cargoes (passengers), reloading and other operations on management of freight traffics;
- n) "the freight forwarding enterprise" – the legal person registered which renders freight forwarding services.

Article 3. Rules of freight forwarding activity

1. The rules of freight forwarding activity shall be approved by the Governments of the MLA Parties.
2. Following are determined by the rules of freight forwarding activity:
 - A List of freight forwarding documents (documentation confirming the conclusion of freight forwarding contract);
 - A Quality requirement for the freight forwarding services provided;
 - A Procedure for freight forwarding services.

Chapter 2. The Rights and Duties of the Freight Forwarding Agent and Client

Clause 4. The rights of the freight forwarding agent and client

1. The freight forwarding agent (hereinafter called the agent) has the right to deviate from the instructions of the client for the interests of the client and himself. This deviation is allowed if the agent can not ask the client's preliminary consent for his action in accordance with contract, or the agent is not able to receive the client's consent for his inquiry within a day.

In case the instructions of the client are inaccurate or incomplete or do not correspond to the contract conditions, and agent, in any circumstances, could not specify the instructions of the client, he proceeds to execute his service within the interest of the client.

2. If it is not stipulated differently in the contract, the agent has the right to choose or to change a type and route of transport, and also types of consequence transport means for the interests of the client. In this case, in accordance with the contract, the agent is obliged immediately to notify the client on the changes made according to the present article.

3. In accordance with the conditions of the contract the agent has a right to keep a cargo at his disposal until compensation of his expenses incurred within the interest of the client or until

client's guarantee to compensate his expenses. In this case the client pays all other charges connected with the retention of cargo.

In any cases stipulated by present article the client shall be responsible for any damage arising out retention of cargo.

4. The agent has the right not to precede his duties under contract before client's presentation of all necessary documents, and also information on character of goods and means of transportation and all other information necessary for performance of agent's duties. In case of presentation of incomplete information the agent is obliged to request the client the necessary additional data in accordance with established procedure of the contract.

5. The agent has the right to check reliability of the necessary documents, submitted by the client, and also information on character of cargo, about transportation and other information necessary for the performance of agent's duties in accordance the contract.

6. The client has the right:

- to choose a route of cargo and type of transport;
- to require the agent, if it is defined by the contract, to provide an information on the process of cargo transportation;
- to instruct the agent in accordance with the contract.

Clause 5. Duties of the freight forwarding agent

1. The agent is obliged to provide his service in accordance with the contract.

2. In case there is no opportunity of preliminary inquiry about deviation from the instructions of the client or if an answer to such inquiry is not received by the agent within a day, the agent is obliged to notify the client on the deviations, as soon as the notice will become possible, in the order determined by the contract.

3. The agent providing his services to the client's personal, family, or other needs, not connected with client's business activity, is obliged to provide, on the request of the client, information on the Legislation of MLA Parties on the consumer rights' protection.

4. While acceptance of cargo the agent is obliged to submit to the client the freight forwarding document, and original contracts concluded by the agent on behalf of client in accordance with the freight forwarding contract and on the basis of power of attorney.

5. The agent does not have a right to conclude on behalf of client insurance contract of cargo, if it is not agreed by contract.

Article 6. Duties of the Client

1. The client is obliged to provide the agent with full, correct and reliable information on the character of cargo, transport conditions, and all other information required for the performance of agent's duties in accordance with contract. The client should also provide all other documents required for customs, sanitary and other kind of government control of cargo.

2. In accordance with contract procedure the client should pay the agent's remuneration and cover his other expenses incurred within the interest of the client.

Chapter 3. Responsibilities of the agent and client

Article 7. General base of responsibility

1. For non performance or improper performance of duties under the contract and this Technical Annex the agent and client shall be liable on the base and in the amount which are defined in accordance with international conventions applied in the MLA Parties and present Technical Annex.

In case if the agent proves that breach of his responsibilities is caused by improper performance of forwarding agreement the liability in front of the client who signed forwarding agreement is defined on base of rules under which the relevant forwarder shall be liable for the agent.

3. During performance of forwarding service which is connected with international transportation of goods and with the use of respective forwarding documents, the limit of agent's liability for non performance or improper performance of duties under the freight forwarding contract shall not excess 666,67 unit of account per place or per single transportation (666,67 units per place or per other unit of shipment) except the responsibilities of the agent stipulated in point 2, Clause 9 of present Technical Annex.

For the purpose of present Technical Annex during performance of forwarding service which is connected with international transportation of goods the unit of account shall mean the special drawing right (SDR) which is defined by International Monetary Fund. The value of currency of payment in special drawing rights (SDR) is calculated in accordance with the method of value determination used by International Monetary Fund for corresponding date of operation and transactions. Based on currency value in SDR, the currency convertibility is applied at the rate of court decision date or at the rate of other date which is defined by the Agreements of Parties.

4. The rules of liability limitation under paragraph 3 of present Article and paragraph 2 of Article 7 of this present Technical Annex shall not be applied if the agent proves that lost, non-delivery or damage of cargo is not caused because of his intentional or careless act or negligence.

5. In case of single sided termination of the contract the client or agent shall cover all expenses of the other side which is caused by the termination of contract, and also bear a penalty equal to 10% of all expenses of the client or agent.

Article 8. Basis and degree of responsibilities of the agent for lost, non-delivery or damage of cargo

1. The agent shall be responsible for compensation of real cost of lost, non-delivery or damage of cargo from its acceptance until its delivery to the consignee as indicated in the contract or to any authorized person. If agent is not able to prove that lost, non-delivery or damage of cargo is caused by those conditions, which were out of his control, or he could not prevent these conditions then the amount of his compensation shall be in the following amount:

1) for the lost or non-delivery of cargo accepted for delivery with defined cost, in amount of defined or missing part's cost of cargo;

2) for the lost or non-delivery of cargo accepted for delivery without defined cost, in the amount of real cost (documentary proved) of cargo or its missing part's cost;

3) for the damage of cargo accepted for delivery with defined cost in the decreased amount of cost and in case of non-recovery of damaged cargo in the full amount of cost;

4) for the damage of cargo accepted without defined cost in the decreased amount of (documentary proved) real cost of cargo and in case of non-recovery of cargo in amount of (documentary proved) real cost of cargo.

2. During performance of international freight forwarding service the responsibility of the agent for lost, non-delivery or damage of cargo, defined by present Article, shall not exceed two unit of special payment for each kilogram of lost, non-delivered or damaged cargo if more compensation is not paid by third party who is responsible for the agent.

3. The freight forwarding contract may stipulate that along with compensation of real cost of cargo for its lost, non-delivery or damage the agent should return all remunerations, which is not included to the cost of cargo, in the proportional amount to the cost of lost, non-delivered or damaged cargo.

4. Besides of compensation and repayment of remuneration to the client in the amount defined by present article the agent shall pay the cost of lost profit arising out of lost, non-delivery or damage of cargo and because of his fault.

5. During performance of international freight forwarding service cost of lost profit is fully covered but not more than that amount, which is defined by present Technical Annex.

6. Real cost of cargo (documentary proved) is determined based on cargo cost indicated in the agreement or seller's receipt. In the absence of these documents the cost is determined on the price of the same kind of goods at the place of delivery on the date of voluntary payment and if payment is not made voluntarily then on the date of court decision.

7. The cargo is considered to be lost if it is not delivered within the thirty days after the delivery date defined by freight forwarding contract. If delivery date is not defined in the contract then within a

reasonable time necessary for the delivery of cargo counted from the acceptance date. The cargo, which is already delivered but not handed over to the consignee or to any other authorized person indicated in the contract because of non-payment of remuneration, shall not be considered to be lost if the agent notified the client on the performance of freight forwarding service as required by the contract.

Article 9. Notification of lost, non-delivery and damage of cargo

1. During handing over of cargo, the consignee, as defined by contract, or any other authorized person fails to notify the agent in written on the lost, non-delivery or damage of cargo and did not indicate the character of non-delivery or damage then it shall be considered that they received a cargo without any defect (damage) if it is not proved to be otherwise.

2. If lost, non-delivery or damage of cargo is not determined during acceptance of cargo then notification shall be made not later than thirty calendar days from acceptance date. The date of notification shall be a date of its receipt by agent.

Article 10. Basis and limit of responsibilities of the agent for breach of contract execution date under the contract

1. The agent recovers the losses of the client caused by due date breach of the contract, if other way is not envisaged by given contract and the agent does not prove that the due date breach occurred because of Force Majeure or because of the client.

2. By the freight forwarding contract, if the client is a person using agent services for personal, family, or other needs, non-connected with the business activities of the client, and if there is a due date breach, the agent pays the client forfeit for each day (24 hours. Not full day is counted as a full 24 hours day), or hour (if the deadline is shown in hours). The forfeit is paid in the amount of 3 percent, and not more than 80 percent of remuneration owed to the client, also recovers the losses caused by due date breach by the freight forwarding contract if the agent does not prove that the due date breach occurred because of insuperability of the task or because of the client.

Article 11. Basis and limit of responsibilities of the client for the agent

1. The client is liable for the damages caused to the agent by his default on non-providing the information required by present Technical Annex.

In case if client's groundlessness refusal to pay the expenses of the agent incurred during performance of his contract obligations is proved then the client pays a penalty in the amount of 10 percent of total agent's expenses including full amount of all expenses.

2. The client is responsible for the late payment of agent's remuneration and expenses incurred within the interests of the client in the amount of 0.1 percent of agent's remuneration and expenses for each delayed day, but not more than the full amount of remuneration and expenses incurred within the interests of the client.

3.

Article 12. Agreement on change of responsibility limit of the agent

1. Higher responsibility of the agent in comparison with responsibility shown in the present Technical Annex or international agreements applied in the MLA Parties may be agreed in the freight forwarding contract.

2. The agreement on elimination or decreasing of agent's liability shall not be allowed.

Chapter 4. Complain and claim

Article 13. Complain and Claim against the agent

1. Before submission of claim under the contract it is required to submit complain to the agent except submission of claim against freight forwarding service performed for personal, family or other needs non-connected with client's business activity.

2. The consignee, as defined by contract, the client or his authorized person and also insurer has a right for complain and claim.

3. Claims are made in written form. The claim for lost, non-delivery and damaged cargo shall be accompanied with documents proving the right for claim and original or certified copies of other documents confirming the quantity and cost of cargo.

4. Claims to the agent shall be made within six month from the date when claim right is raised.

This date is counted for:

- compensation of lost, non-delivery or damage of cargo from the date when the cargo was supposed to be delivered;
- compensation for the breach of contract execution date which is calculated from the date after last contract execution date if it is not defined by Parties;
- breach of other contract requirements from the date when person indicated in paragraph 2 of present article knew or were supposed to know about these breaches.

5. The agent should review the client' claim and should notify him in written on claims settlement or rejection within thirty days from its acceptance date.

In case of partial settlement or rejection of claim the agent should indicate in the notification his arguments for this decision. In this case all documents submitted with the claim shall be returned to the client.

6. The agent has a right to accept any claims after deadline of its submission, which is established by present article if claim deadline passed because of good reason.

Article 14. Limitation of action

For any claim under the freight forwarding contract the limitation of action is one year. This date is counted from the date when the right for claim begins.

Annex 6

Protocol on amendments to the Basic Agreement



**MEETING OF THE LEGAL WORKING GROUP
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**
Baky / Republic of Azerbaijan, October 7-8, 2004

**ЗАСЕДАНИЕ ЮРИДИЧЕСКОЙ РАБОЧЕЙ ГРУППЫ
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**
г. Баку/ Азербайджанская Республика, 7-8 октября 2004 г.

**PROTOCOL
ON AMENDMENTS TO THE BASIC MULTILATERAL AGREEMENT ON INTERNATIONAL
TRANSPORT FOR DEVELOPMENT OF THE EUROPE- THE CAUCASUS-ASIA CORRIDOR**

In accordance with Article 11 (Presentation of Amendments and Additions) of the Basic Multilateral Agreement on International Transport for Development of the Europe – Caucasus - Asia Corridor and, having duly considered the Final Decisions and Recommendations of the Meeting of the Permanent Secretariat of the Intergovernmental Commission TRACECA on the transport corridor Europe - Caucasus – Asia, held in October 6-8, 2003, it was agreed:

1 - to amend the Article 5 of the Basic Multilateral Agreement on International Transport for Development of the Europe – Caucasus - Asia Corridor, to read: “Taxes, duties and other payments, irrespective of their names and origin shall not be imposed for transportation as referred to in Article 1 of the Basic Agreement, except payments for transport and customs services, services related to transport, as well as payments for use of transport infrastructure.”

2- to amend Clause 2 of the Article 6 of the Basic Multilateral Agreement on International Transport for Development of the Europe – Caucasus - Asia Corridor, to read: “The Parties have agreed that should preferential terms and tariffs be established between two Parties or between a Party/Parties with a third country/countries, for types of transport referred to in Article 1 of the Basic Agreement, no less preferential terms and tariffs will be applicable for all Parties to the Basic Agreement”.

This Protocol comes into force in accordance with Articles 11 (“Presentation of Amendments and Additions” and 13 (“Entry into force”) of the Basic Multilateral Agreement on International Transport for the Development of the Europe- the Caucasus-Asia Corridor.

Done at the 4th Annual Meeting of the Intergovernmental Commission TRACECA at on in one original copy in the English and Russian languages, both of them being equally authentic.

In witness whereof, the undersigned, being duly authorized Heads of Delegations have signed this Protocol.

For the Republic of Armenia

For the Republic of Moldova

For the Republic of Azerbaijan

For Romania

For the Republic of Bulgaria

For the Republic of Tajikistan

For Georgia

For the Republic of Turkey

For the Republic of Kazakhstan

For Ukraine

For the Kyrgyz Republic

For the Republic of Uzbekistan

Annex 7

Final Draft Strategy of the IGC TRACECA on Development of the International Transport Corridor Europe-the Caucasus-Asia (TRACECA)



**MEETING OF THE PERMANENT SECRETARIAT
OF THE INTERGOVERNMENTAL COMMISSION TRACECA**

Baky / Republic of Azerbaijan, October 6-8, 2004

**ЗАСЕДАНИЕ ПОСТОЯННОГО СЕКРЕТАРИАТА
МЕЖПРАВИТЕЛЬСТВЕННОЙ КОМИССИИ ТРАСЕКА**

г. Баку / Азербайджанская Республика, 6-8 октября 2004 г.

Strategy of the Intergovernmental Commission of TRACECA for development of the international transport corridor “Europe-Caucasus-Asia” (TRACECA) for 2005-2010

The analysis of forecasting the main lines of world economy development evidences that major financial, commodity and information flows of the XXI century will be focused in the triangle the USA-Europe-Asia.

In this context the most important task of countries, who signed Basic Multilateral Agreement on international transport for development of the transport corridor “Europe-Caucasus-Asia” on September 8, 1998 at the historic summit in Baky, consists in taking advantage in full measure of their geopolitical locations and economic opportunities through the development of transport networks across the international transport corridor Europe-Caucasus-Asia “TRACECA” that has been officially acknowledged by the leading international institutions (European Commission, EEC UN, ESCAP UN and ECMT) as the natural transit bridge between Europe and Asia.

Today the trade turnover between Asia and Europe exceeds 3 trillion US Dollars a year and the share of transport expenses in this turnover is more than 200 billion US Dollars.

This fact shows that the existing trade triangle US-Europe-Asia is not a virtual reality, and MLA member-states are actually situated on the high road linking Europe and Asia.

Taking into account the geographic situation of TRACECA countries in the context of trade relations development between Europe and Asia, and also the location of major manufacturers of goods in Asia and consumers in Europe, the rise of freight flows on one hand and logical reverse freight flow on the other hand we can make practically logical conclusion – freight movement (delivery) through international transport corridor “Europe-Caucasus-Asia” TRACECA (East-West-East) looks much more attractive in comparison with any other existing alternative routes.

After signature of “Basic Multilateral Agreement on international transport for the development of the Europe-Caucasus-Asia corridor” the member states have created the legal basis for the organization of international transit traffic on a more improved level.

Of great importance is the fact that the TRACECA transport networks pass along the territories of MLA countries that are rich in mineral resources and energy supply with further prospective development. These regions have not so far lost well-trained competent human resources. Transit development in these countries will undoubtedly contribute to the growth of production, population employment in the regions. Whichever political, economic changes would happen the chosen, developed and tested by experience transport corridor TRACECA with its wide network will remain a stabilizing long-term factor, creating favourable investment climate and positively influencing to the globalisation of regional and interregional integration processes.

As proven fact of above mentioned, in August 2003 the Governments of Islamic Republic of Iran and Afghanistan and in January 2004 – Pakistan, submitted official applications to the Ministry of Foreign Affairs of Azerbaijan, as depositary country, for the accession to the Basic Multilateral Agreement. The wills of these countries were officially presented during the meeting of Intergovernmental Commission of TRACECA in Yerevan on October 9-10, 2003. The participants of Third IGC TRACECA meeting supported the initiation of Governments of Iran and Afghanistan. This fact once more proves that the TRACECA transport corridor with its broad transport network exists, functions and moreover widens like “oil slick”.

CLBTT – Completion Report – October 2004 – Annex 7 – Final Draft Strategy of the IGC TRACECA on Development of the International Transport Corridor Europe-the Caucasus-Asia (TRACECA)

Taking into account fast development of telecommunication and information processes in the XXI century which at the same time brings about electronic trade development through the world-wide Internet it should be pointed out that in this context the role of transport sharply grows. But there is another factor that could play an important role: due to the electronic sales growth there will arise the problem of increasing the rates and improving service of the ordered goods and freight delivery. The demands for high-speed technologies of freight deliveries will most likely be satisfied by air, road and railway transport. In this respect we will have to examine a great number of factors: freight delivery rates, the distance that a carrier (operator) should cover, mode of transport. It should be stressed that in the market of transport services there will be brought to the forefront a transit aspect, new shorter transport routes, corresponding level of transit transportation and attractive competitive tariff, i.e. the "commercial triangle" well-known in transit transportation (Time-Service-Tariff). Nevertheless, sea transport will prospectively keep its positions on the transoceanic routes. Moreover, it should be pointed out that some transnational shipping companies are carrying out the investigations and negotiations with the shipbuilders on the issues of container vessels construction of new generation (10 000-12 000 TEU and more).

The creation and development of any transport corridor (route) with relevant transport links does not mean the efforts of one separate country transport specialists only. Allocation and movement of transit freight flows in the international transport corridor is organized and it functions in multifactor systems of coordinates.

The establishment and development of international transit corridor of TRACECA and its transport networks with its transport networks is on the one hand necessary to protect the newly independent states in the region from domination over communicational and transport flows by any country, on the other hand – to provide a guaranteed continuous outlet of the energy supplies of the Caspian Sea and the Caspian region on the whole into the international markets.

It is important to note that the main political and economic factors with utmost key influence to the regional contouring of the Parties to the MLA during integration processes of globalisation of the modern world are followings:

- Maintaining stable economic growth of GDP not less than 8-10% per year.
- Increasing investments into the economy because reinvestments and the inflow of foreign investments are very small and do not correspond to the demands of these countries.
- Suspending the outflow of capital from the countries, because shortage of capital does not allow countries to pursue concentrated investment policy.
- Building-up technology sphere.
- Conducting coordinated policy between government structures of MLA countries and IGC TRACECA for the purposes of harmonization of the legal basis for the functioning of international transport corridor Europe – Caucasus – Asia (TRACECA).

For the achievement of this large-scale task solution, which is attraction of additional freight flow to the TRACECA transport network, the considerable modernization of transport complexes will be required.

In order to create attractive investment environment by decreasing at the maximum any non-commercial risks or non-calculated risks, it is necessary to find common approach, in particular common legal formula, finding solutions for the questions of the legal basis in force and the investments guarantees needed for further development of international transport corridor "Europe-Caucasus-Asia".

The estimated volume of investments for the TACIS countries needed for stage wise modernization and development of transport infrastructures and complexes will approximately exceed 50 billion US Dollars. In comparison for the purposes of solving the similar tasks China, has spent more than 30 billion US Dollars for the last eight years.

At the same time the history of TRACECA countries shows that it is too difficult to carry out large-scale modernization of transport infrastructure using only internal financial resources and loans of International Financial Institutions.

Taking into account the above said, considering the problems of infrastructure modernization in these countries as the whole and not only the problem of one transport mode or several related modes in a separate country, solution of which directly proportionally brings to the increase of competitiveness and transit transportation, it is necessary for the Intergovernmental Commission of

CLBTT – Completion Report – October 2004 – Annex 7 – Final Draft Strategy of the IGC TRACECA on Development of the International Transport Corridor Europe-the Caucasus-Asia (TRACECA)

TRACECA to define the following strategic important tasks in near future (2005 - 2010) required for the development of transport networks of international transport corridor "Europe-Caucasus-Asia":

1. Inclusion of transit program into the national priorities and creation of its legal basis with the aim to implement coordinated state transit ideology.
2. Creation and development, in close cooperation with IGC TRACECA and relevant state structures and bodies of MLA countries, single, coordinated program (action plan) for the development of transport corridor TRACECA and its transport networks the main of which will be the trade and transport facilitation. Together with the development and deepening of regional and interregional relations they also should serve for strategic interests and domestic needs of these countries;
3. Reduction of the tax burden on the transport infrastructure development projects being of strategic importance for the country from the point of view of tax imposing first of all of the value-added tax and customs fees;
4. Greater allocation of financial resources from international grants and loans for the development and reconstruction of transport and communication infrastructures;
5. Adoption of reasonable measures for the protection of concerned transport companies, ship owners, ports, railways and other objects of transport infrastructure participating in transit transportation process;
6. Implementation and improvement of modern and more flexible form of investment attraction, which is practically proved and used in many countries of the world. With this purpose within the framework of IGC TRACECA it is necessary to create and develop:
 - Modern forms of concession of the transport infrastructure objects with active participation of private investors;
 - Free/special economic zones for more efficient trade and transport facilitation;
 - Transport logistic centres (modules) to decrease costs of transportation by organizing transportation with optimum ways;
 - TRACECA Guarantee Trust Fund to mitigate non-calculated risks for any transport investment or transportation;
 - TRACECA Economic Interest Grouping which could be a legal form of implementing high cost investment and (or) transport projects;
 - TRACECA Industrial Advisory Forum (Panel) bringing the industries next to the IGC TRACECA for better improvement of its tasks and take an advantage from world wide experience;
 - Settlement of Disputes to solve any potential dispute between the transport players according to the requirements of a globalised market.
7. Creation and development of basis for the freight and carrier liability, operators and stevedore companies' insurance.
8. Creation and elaboration of Single Transport System of TRACECA with the purpose of obtaining conditions for free movement of goods, services and labour, - for better economic regional cooperation;
9. Development of international cooperation in the field of transit transport first with the countries which are due to their geopolitical position prefer the transit traffic through TRACECA corridor.
10. Implementation of active and adequate PR activity in the area of trade and transport facilitation in order to reach more transparency and overcome the existing negative image of MLA countries, like a "black whole", concerning the safety of transit freights.

Pragmatic attitude and rational solution of these tasks will drastically influence the geopolitical activity of MLA countries and has a chance to become one of the factors stimulating the development of not only the trade and transport but also the globalisation of regional and interregional integration processes for the purpose to achieve long-term political stability.

Annex 8

Concept Paper TRACECA Industrial Advisory Panel (IAP)

CONCEPT PAPER For the creation of the TRACECA Industrial Advisory Panel

An Industrial Advisory Panel could be a forum for the development of ideas, techniques and practices in view of the TRACECA future.

The well-developed industry worldwide can be an useful tool for the development of the TRACECA trade-transport-investment chain.

The interest of the industry to participate into the elaboration of the TRACECA transport system could be the driving force to attract investors and increase the TRACECA efficiency.

I. ARGUMENTS

The IGC is required to express its general support for the idea of establishing an **Industry Advisory Panel (IAP)** with the aim of strengthening the dialogue between TRACECA countries and the business community.

The IGC is invited to consider the approach of establishing an IAP and to provide guidelines on this issue.

In particular, IGC is invited to authorize the setting up of a “**Preparatory Group**” which would assist in preparing the ground for the decision on the IAP’s establishment of the next IGC Conference.

We consider that this “Preparatory Group” could be assisted by National Secretaries.

The National Secretaries could elaborate proposals for *the structure, the status* of the IAP and *its relation* with the IGC Permanent Secretariat in close cooperation with the CLBTT Project and Trade Facilitation and Institutional Support Project.

The establishment of the IAP creates a number of questions concerning the composition of the Panel, its potential areas of activity, its methods of working and the implications upon the possible budget .

This note outlines the envisaged role and function of the IAP and the process of establishment a Preparatory Group.

II. PREPARATORY GROUP

OBJECTIVE AND MANDATE

The main purpose of the Preparatory Group would be :

- 1) to seek further clarification on the possible role and function of the IAP from an industry perspective,
- 2) to develop draft terms of reference for its activities and
- 3) to assist in the compilation of a list of candidates for formal IAP membership.

The Preparatory Group will bring together the views of business experts on setting up of the IAP and its *modus operandi*. It could considerably contribute to preparing the IGC Decision concerning the final establishment of the IAP.

More specifically, the task of the Preparatory Group would be:

- To identify areas of common interest in the TRACECA process, in which the IAP could usefully cooperate with member states.
- To develop a proposal concerning the possible working methods of the IAP, including its interaction with member states; and

- To assist in the establishment of a list of candidates for membership in the IAP taking into account the following **selection criteria**:
 1. Representation of companies engaged in different sectors in the Trade and Transportation chains, from the production of goods up to the financing of big infrastructure projects, including all activities that are referred in the Basic Agreement. Representation of companies with significant cross-border and international activities in the TRACECA area along with companies active mostly in their home country.
 2. Representation by type of company, i.e. major companies, independents, government controlled companies.
 3. Representation of international transport business association: FIATA, etc.
 4. Representation in terms of geographical location in the TRACECA area.

The Preparatory Group would be asked to express its opinions and suggestions also in other issues, such as the nomination procedures for IAP members and the budget implications of the establishment of the IAP.

COMPOSITION

Members of the Preparatory Group (PG) should be individuals of high standing level and be active in the industry and their areas of expertise with a dynamic interest in transport policy as well as areas in investment financing, trade, transit of any type which could be well used in international transport affairs.

As a practical matter, preference would be given to representatives with experience and involvement in the TRACECA process.

Members of the PG will be appointed by the IGC according to its rules and procedures.

For practical reasons, the PG would have to be kept relatively small (approximately 5-8 business representatives, 2-3 staff members of the Permanent Secretariat of IGC, 2-3 experts of the EU TRACECA ongoing projects).

An special effort should be acquired in setting up a representative group which should reflect the diversity of trade and transport sector in the TRACECA countries.

The Permanent Secretariat will take part in the Preparatory Group in order to ensure a proper flow of information between industry representatives and member states and to focus the debates and advisory discussions in the Preparatory Group on those issues, in respect of which member states see a particular need for clarification.

OPERATIONAL PROCEDURE

The IGC will select the CV and will analyze the eligible experts that should be members of the IAP.

The members of IAP will appoint a Chairman, which has the most experience and managerial skills and knowledge of international transport.

The Chairman will be charged to supervise the whole activity of the IAP and contact the Permanent Secretariat of the IGC for any initiative proposed within the IAP.

The IAP will meet 4 times per year. Before any meeting, the members of the IAP needs to draft the package of material that should be discussed during the meeting and present it to the IGC at least one month before the meeting.

The IAP would be informed by the IGC of any decision that has been taken and the participating states of TRACECA are free to make proposals to the IAP through the National Secretaries.

The IAP will be present at any IGC Conference and will cooperate with the Permanent Secretariat in this respect.

Annex 9

Discussion paper on Insurance

INSURANCE IN THE SUPPLY CHAIN.

The transport supply chain has four principal stakeholders, viz.: shipper, freight forwarder, carrier(s), and insurer (both cargo and carrier liability insurance). Beyond these 4 are further stakeholders, including terminal operators, warehouse operators, track (i.e. infrastructure) providers and intermediaries in the insurance world (insurance brokers and agents, etc.).

Sufficient insurance of cross-border freight transportations remains to be rarely offered and used. Except for purely economic reasons, one should not oversee lack of understanding of the insurance mechanisms.

The correct perception of what does insurance mean in terms of freight transport needs a clear understanding of the legal environment of each group of the mentioned stakeholders of the supply chain. Of course, only those legal aspects of the environment will be discussed, which have an immediate impact on the arrangement of insurance.

Each stakeholder has to make sure his "goods" or interest is realized or, at least, shielded in most efficient way. This explains why the shipper or consignor shall insure the cargo and the forwarder and the carrier shall insure their liability.

Of course, in case there is no insurer in the chain, that the only remedy is litigation for recourse. However, it is the least efficient in terms of time and cost consumption.

CARGO INSURANCE

It is effectively in the interests of the goods owner to insure the cargo-related risks. It may be the consignor or the consignee, depending on the moment of transfer of risk, which, in its turn, depends on the agreed conditions of delivery contract. The explanation of Incoterms briefed below serves the purpose of depicting such possible conditions.

It has to be, however, underlined that Incoterms has, in a legal sense, a nature of recommendation only, which becomes binding upon the counterparts as any law would, only when explicitly referred to in an individual contract.

Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes and litigation with all the waste of time and money that this entails. In order to remedy these problems the International Chamber of Commerce first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as «Incoterms 1936». Amendments and additions were later made in 1953, 1967, 1976, 1980, 1990 and presently in 2000 in order to bring the rules in line with current international trade practices.

It should be stressed that the scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold. It appears that two particular misconceptions about Incoterms are very common. First, Incoterms are frequently misunderstood as applying to the contract of carriage rather than to the contract of sale. Second, they are sometimes wrongly assumed to provide for all the duties which parties may wish to include in a contract of sale.

As has always been underlined by ICC, Incoterms deal only with the relation between sellers and buyers under the contract of sale, and, moreover, only do so in some very distinct respects.

While it is essential for exporters and importers to consider the very practical relationship between the various contracts needed to perform an international sales transaction - where not only the contract of sale is required, but also contracts of carriage, insurance and financing - Incoterms relate to only one of these contracts, namely the contract of sale.

13 basic terms of Incoterms are grouped into 4.

Group E (shipment) «Ex works» means that the seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle. This term thus

represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller's premises. However, if the parties wish the seller to be responsible for the loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit wording to this effect in the contract of sale. The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered. The buyer must bear all risks of loss of or damage to the goods.

- from the time they have been delivered in accordance; and
- from the agreed date or the expiry date of any period fixed for taking delivery which arise because he fails to give notice, provided, however, that the goods have been duly appropriated to the contract, that is to say clearly set aside or otherwise identified as the contract goods.

Group F (main delivery unpaid)

FCA «Free Carrier» It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller's premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading. This term may be used irrespective of the mode of transport, including multimodal transport. «Carrier» means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes. If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation **to deliver the goods when they are delivered to that person.**

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods

- from the time they have been delivered; and
- from the agreed date or the expiry date of any agreed period for delivery which arise either because he fails to nominate the carrier or another person, or because the carrier or the party nominated by the buyer fails to take the goods into his charge at the agreed time, or because the buyer fails to give appropriate notice, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

FAS («Free Alongside Ship») means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export. However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale. This term can be used only for sea or inland waterway transport.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods

- from the time they have been delivered; and
- from the agreed date or the expiry date of the agreed period for delivery which arise because he fails to give notice, or because the vessel nominated by him fails to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

FOB «Free on Board» means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term should be used.

The seller must bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the named port of shipment.

The buyer must bear all risks of loss of or damage to the goods

- from the time they have passed the ship's rail at the named port of shipment; and
- from the agreed date or the expiry date of the agreed period for delivery which arise because he fails to give notice, or because the vessel nominated by him fails to arrive on time, or is unable to take the goods, or closes for cargo earlier than the time notified, provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

Group C

CFR «Cost and Freight» means that the seller delivers when the goods pass the ship's rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. The CFR term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CPT term should be used.

The seller must bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment.

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the port of shipment. The buyer must, should he fail to give notice bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

CIF «Cost, Insurance and Freight» means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export. This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CIP term should be used.

The seller must bear all risks of loss of or damage to the goods until such time as they have passed the ship's rail at the port of shipment.

The buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the port of shipment. The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the period fixed for shipment provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

CPT

«Carriage paid to...» means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

«Carrier» means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export. This term may be used irrespective of the mode of transport including multimodal transport.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to give notice, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

CIP «Carriage and Insurance paid to...» means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

«Carrier» means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CIP term requires the seller to clear the goods for export. This term may be used irrespective of the mode of transport including multimodal transport.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered..

The buyer must, should he fail to give notice, bear all risks of the goods from the agreed date or the expiry date of the period fixed for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

Group D

DAF «Delivered at Frontier» means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term «frontier» may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term. However, if the parties wish the seller to be responsible for the unloading of the goods from the arriving means of transport and to bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale.

This term may be used irrespective of the mode of transport when goods are to be delivered at a land frontier.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

DES «Delivered Ex Ship» means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

DEQ - «Delivered Ex Quay» means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf).The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import.

If the parties wish to include in the seller's obligations all or part of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on discharging from a vessel onto the quay (wharf) in the port of destination.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

DDU « Delivered duty unpaid» means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods thereto, other

than, where applicable, any «duty» (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such «duty» has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

However, if the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom as well as some of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to fulfil his obligations, bear all additional risks of loss of or damage to the goods incurred thereby.

The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

DDP «Delivered duty paid» means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable, any «duty» (which term includes the responsibility for and the risk of the carrying out of customs formalities and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination.

Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation. This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

However, if the parties wish to exclude from the seller's obligations some of the costs payable upon import of the goods (such as value-added tax: VAT), this should be made clear by adding explicit wording to this effect in the contract of sale.

The seller must bear all risks of loss of or damage to the goods until such time as they have been delivered.

The buyer must bear all risks of loss of or damage to the goods from the time they have been delivered.

The buyer must, should he fail to fulfil his obligations, bear all additional risks of loss of or damage to the goods incurred thereby.

The buyer must, should he fail to give notice, bear all risks of loss of or damage to the goods from the agreed date or the expiry date of the agreed period for delivery provided, however, that the goods have been duly appropriated to the contract, that is to say, clearly set aside or otherwise identified as the contract goods.

Most of the insurers, in line with world practice, offer insurance policies classified as per the risks coverage.

The insurance contract can be concluded on the basis of one of the following conditions:

1. *"All risks" (AR)*. In accordance with the insurance contract concluded on this condition the insured accidents are:

- a) damage, total destruction or loss of the whole cargo or any part thereof, having arisen from all perils
- b) expenses and contributions allowed in general average, which the Insured is obliged to bear;
- c) all necessary and properly incurred expenses for salvage of the cargo, and also for minimizing the loss and ascertaining its extent, if the loss is indemnified under the terms of insurance;

2. *"With Particular Average" (WPA)*. In accordance with the insurance contract concluded on this condition, the insured accidents are:

- a) damage to, total destruction or loss of the whole cargo or any part thereof, caused by fire, lightning, storm, whirlwind and other natural disasters, wreck or collision of vessels, aircraft or other conveyances, or their impact against any fixed or floating objects, grounding of a vessel, collapse of bridges, explosion, damage to a vessel by ice, wetting by overboard water, and also due to measures taken for salvage or extinction of fire;
- b) loss of cargo due to a missing carrying conveyance;
- c) damage to, total destruction or loss of the whole cargo or any part thereof, as a result of accidents during loading, stowage, discharge of the cargo and in taking in fuel by the vessel;
- d) expenses and contributions allowed in general average, which the Insured is obliged to bear;

e) all necessary and properly incurred expenses for salvage of the cargo, and also for minimizing the loss and ascertaining its extent, if the loss is indemnified under the terms of insurance;

3. "Free From Particular Average" (FPA).

In accordance with the insurance contract, concluded on this condition, the insured accidents are:

a) total destruction or loss of the whole cargo, or any part thereof, caused by fire, lightning, storm, whirlwind and other natural disasters, wreck or collision of vessels, aircraft or other conveyances, or their impact against any fixed or floating objects, grounding of a vessel, collapse of bridges, explosion, damage to a vessel by ice, wetting by overboard water, and also due to measures taken for salvage or extinction of fire;

b) loss of cargo due to a missing carrying conveyance;

c) total destruction or loss of the whole cargo or any part thereof, as a result of accidents during loading, stowage, discharge of the cargo and in taking in fuel by the vessel;

d) damage to cargo caused by wreck or collision of vessels, aircraft or other conveyances, or their impact against any fixed or floating objects (including ice), grounding of a vessel, fire or explosion on shipboard, aircraft or other conveyance;

e) expenses and contributions allowed in general average, which the Insured is obliged to bear;

f) all necessary and properly incurred expenses for salvage of the cargo, and also for minimizing the loss and ascertaining its extent, if the loss is indemnified under the terms of insurance.

Exceptions from the above mentioned risks, not covered by the insurance contract may vary. However, here are the most typical cases, when the insured accidents are not considered damage to, destruction or loss of the cargo, loss of anticipated profit, costs of commission, freight and other expenses connected with carriage of the cargo having occurred due to:

a) warlike operations or warlike measures of any nature and consequences thereof, damage or destruction caused by mines, torpedoes, bombs and other instruments of war, actions of pirates, and also in consequence of civil war, civil commotion and strikes, confiscation, requisition, arrest or destruction of the cargoes by order of military or civil authorities;

b) direct or indirect effect of nuclear explosion, radiation or radioactive contamination connected with any application of an atomic energy and utilization of fissile materials;

c) malice or gross negligence of the Insured or Beneficiary, or their representatives, and also consequence of infringement by any of the said persons of the established rules of shipment, delivery and storage of cargoes;

d) effect of temperature, of the air in hold or of specific properties and natural characteristics of the cargo, including shrinkage;

e) improper packing or corking of the cargoes and shipment of the cargoes in damaged condition;

f) fire or explosion in consequence of loading of explosive or spontaneously igniting substances and objects, with knowledge of the Insured or Beneficiary, or their representatives, but without knowledge of the Insurer;

g) shortage of the cargo while the outer packing is intact;

h) damage to the cargo caused by worms, rodents and insects;

i) delay in delivery of cargoes and fall in prices; neither are indemnified any other indirect losses incurred by the Insured, except when under insurance conditions such losses are subject to reimbursement in general average.

The liability under the insurance contract commences from the moment when the cargo is taken for carriage from a warehouse at the place of shipment, and continues during the whole carriage (including reloadings and transshipments as well as storage in warehouses at the places of reloading and transshipment) up to the moment, when the cargo is delivered into a warehouse of the consignee or other final warehouse at the place of destination specified in the insurance contract, but not exceeding the term stipulated by the particular insurance contract after discharge of the cargo from an oversea vessel at the final port of discharge, except as otherwise provided by the terms and conditions of the insurance contract.

Particularly, the terms and conditions of the insurance contract can stipulate that it is in force during storage of the cargo in the warehouses at the place of departure, awaiting loading and/or at the point of destination after discharge.

Some shippers rely entirely on the carrier's liability to cover any loss/damage. Others insure the cargoes moved with "all risk" cargo insurance. Cargo insurance allows the shippers to insure the value of the goods above the base level(s) provided by the carrier(s) and, because the insurer is

responsible for pursuing claims, to reduce their administrative burden in the event of a claim. Compared to liability insurers, cargo insurers tend to be quicker at paying claims thus helping the cashflow of the shipper. However cargo insurance comes at a price, ie the premium.

Carrier Liability Insurance

The insurance coverage is about protection of interests of insurers from eligible pretensions, claimed to the Insured based upon: provisions of the relevant international legal acts, national legislation applicable to the territory of the insured services or the eligible jurisdiction governing the claims received by the Insured in connection with the insured accident, conditions of any other agreement approved by the Insurer.

The insured liability limit may be either case-made or a long term for a fixed period

Insurance premium factors:

Liability limits

Cargo nomenclature

Transportation zones

Rates of losses

Trip turnover

Fleet quality and quantity and other technical conditions being risk factors.

Carrier liability regimes are modal-based, this is true even for network liability regimes, such as UNCTAD/ICC, which aims to facilitate intermodal transport. Certainly, friction costs of carrier liability vary for different types of journey depending particularly on consignment (cargo) value, journey length and the level of risk. It is worthy to mention here that UNCTAD/ICC Model Rules, which are based on the network principle, have filled a gap in intermodal transport liability left by the failure of the 1980 UN Convention on Multimodal Transportation of Goods to attract sufficient support and as a consequence failed to enter into force.

Whilst this was not adopted in its original form it has been followed by the emergence of regimes such as the UNCTAD/ICC Rules, 1992 and the FIATA FBL model, 1996 that are based on a network of the unimodal liability regimes. However, even these network liability regimes are plagued by uncertainty – the actual liability depends on the ability to identify the mode and/or place within the transport supply chain where loss/damage occurred.

The policies normally offered to the freight forwarders, would cover only those transport operations, performed by the carriers with insured liabilities.

Until quite recently freight transport carrier liability systems developed along unimodal line, notably maritime, air, road transport and railways. This reflected the way freight was mainly moved – on a unimodal basis. In terms of TRACECA this embraces the liability conditions and limits imposed by the applicable international agreements and conventions. Namely, the CMR (1956) for road, SMGS (1951) and COTIF/CIM (1980) for rail, Hague (1924, amended by Visby 1968) for marine transport and Convention on the liability of operators of transport terminals in international trade (1991). More recently freight is increasingly seen as part of a transport supply chain which often involves intermodal transport.

Freight Forwarders

75 % of all transport operations worldwide are performed by the freight forwarding companies. FIATA (Federation Internationale des Associations de Transitaires et Assimiles) is non-governmental, unique in its scale, association, which, since 1926 defends interests of freight forwarders in 152 countries. Most of the national freight forwarding associations of the countries of TRACECA are full members to FIATA.

In the context of carrier liability, it is important to differentiate those freight forwarders who act as a principal and those who are not. The key issue is how many counter parties will the shipper have.

In some EU countries, such as Austria and Germany, freight forwarders have no option but to act as principal due to recent changes in the law, e.g. Transport Law Reform Act, 1998, in Germany. Freight forwarders tend to act as principal and provides the shipper with a single contract. Freight forwarders who act as principal are intermodal transport operators (ITO) and in effect are carriers. In theory these freight forwarders will decide on the mode(s) to be used. However, in practice some shippers also specify the mode(s) to be used or not used when using the service of a freight forwarder who acts as principal. Some freight forwarders act as agent, ie effectively providing an out-sourcing service to the shipper to choose the best combination of modes to move the freight – for a multi-leg journey the shipper would end up with a series of contracts.

Where a shipper decides on the mode(s) used, the key issue is whether it will be a unimodal or intermodal journey. While the carrier liability terms and conditions of say the road mode are different from those of the rail mode, uncertainty of the liability is only applicable in the case of intermodal transport. In the case where an intermodal transport operator is used the shipper will benefit from having to deal with only one counter party, ie the intermodal transport operator, should something go wrong. However, intermodal transport operators by and large employ a liability regime, such as FIATA FBL, which is based on the network principle and hence the limit of liability is not pre-determined – it will vary depending on where, and whether, the source of damage or loss is identified. Where the shipper employs several unimodal carriers to form an intermodal transport chain it is his responsibility to deal with the carriers in order to ascertain who is responsible for the loss/damage.

Freight forwarders often carry out a wide range of functions organising and sometimes executing the movement of a consignment. From a liability point of view the distinction between forwarder and carrier is important. Similarly the distinction between a forwarder acting as agent (for cargo interests) or as principal has implications for the liability regime which is relevant. German Law (the beginning of the fourth chapter of the German Commercial Code - HGB) defines a forwarding contract as 'one in which the freight forwarder is bound to organise the carriage of the goods'. This 'organisation' includes the 'conception phase' (deciding the mode of transport and the route), the 'performance phase' (selecting the carrier, agreeing the carriage, storage and freight forwarding contracts and giving the carrier information and instructions) and the 'subsequent phase' involving the securing of any claims for damages by the consignor. In German law duties which fall outside the core of the freight forwarder's duties include insuring the cargo, packing it, marking it and organising customs clearance. However the freight forwarder can be liable for organising contracts to fulfil these services.

A freight forwarder has a choice of whether to prepare a contract in his own name or in the name of his principal (cargo interests). In the first case the forwarder is the principal and in the latter an agent. Where the freight forwarder acts (in part) as a carrier, or organises the collection of cargo from different sources onto the same vehicle, then the legal implication is that the freight forwarder assumes the rights and duties of the carrier.

Another distinction that is sometimes drawn is that, when freight-forwarding costs are agreed at a fixed rate, the freight forwarder is treated as a carrier.

In some legal systems a third party exists between the freight forwarder and the carrier. Known as the *commissionnaire de transport* in French and Belgian law and *transportondernemer* in Dutch law, he is a contractual carrier who subcontracts the whole carriage to a carrier. The role is now of limited relevance except in France.

In recent years traditional carriers have sometimes extended their activities to other links in a multimodal chain. A sea carrier may offer door-to-door carriage, either by subcontracting to a land carrier or developing his own facilities. In such cases the operator is referred to as a multimodal transport operator (MTO) or combined transport operator (CTO). Another intermediary (between the shipper and the operator of a ship) is the non-vessel-operating common carrier (NVOCC). It may occur that the MTO or CTO still contracts with a freight forwarder rather than the shipper.

There are two extreme liability regimes that might be used with multimodal transport:

- the network (or chameleon) liability system whereby the existing mandatory rules governing unimodal carriage will apply when 'loss, damage or delay' occurs on that particular mode; and

- the uniform liability system whereby the same rules apply throughout the duration of the contract whichever mode is used.

In practice under a network system the carrier still has considerable flexibility in establishing new rules and exemptions – for those stages where no mandatory rules exist (warehousing, inland water for instance) and for non-localised damage (when the leg of the transport where damage occurred cannot be determined). Consequently because of these modifications reference is made to a modified network system.

Attempts to develop a compromise between the two extremes led first to model rules drafted by the International Chamber of Commerce (ICC) in the 1970s, followed by the 1980 UN Multimodal Convention which aimed for a uniform liability system. The Convention still remains inoperative. In 1992 the UNCTAD with the ICC (International Chamber of Commerce) set up rules, which integrate the unimodal liability regimes into a network of rules, for governing the liability of moving goods by intermodal means. These UNCTAD/ICC rules are embodied in the FIATA FBL model by the International Association of Freight Forwarding Associations. The FIATA FBL or the national variances, eg BIFA in the UK, are widely adopted by freight forwarders. The BIMCO (Baltic and International Maritime Council) Multidoc 95, which is also based on a network structure, is quite widely used in the Scandinavian region, although the level of usage is believed to be way below that of the FIATA FBL^{2,3}.

INTERIM CONCLUSIONS

- It is obvious that insurance has to become widely available and used by both the carriers and the shippers to mitigate risks should the unexpected happen.
- At the same time the propensity of shippers to buy cargo insurance would, to a great extent, depend on the accessibility of the premium rates.
- The premium rates, in its turn, to a great extent, on the risk factors and the limits of the liability imposed onto the carrier or MTO.
- Harmonisation of conditions, such as *uniform liability limit* for all modes, to facilitate intermodal transport, could yield savings in transportation costs.
- The UNCTAD/ICC Model Rules, which are based on the network principle, have filled a gap in intermodal transport liability left by the failure of the 1980 UN Convention on Multimodal Transportation of Goods to attract sufficient support and as a consequence failed to enter into force.

Interim recommendations

- The insurance has to become more widely available to the railway carriers
- More time and effort should be invested on harmonization of conditions of carrier liability to secure the potential reduction in friction costs (including settlement of claims)
- The EC and many other international institutions, e.g. UN/ECE, OECD and UNCITRAL, are currently pursuing further development in carrier liabilities for multimodal transport and it will be sensible for the IGC TRACECA to work with the various institutions
- To encourage TRACECA countries to include national level operations - warehousing, terminal, infrastructure – as part of the process to create harmonization across the transport supply chain from end to end.



Published October 2004

This publication has been produced with the assistance of the European Union.
The contents of this publication is the sole responsibility of
Lamnidis & Associates and can in no way be taken to reflect the views of the European Union.

The European Union's Tacis TRACECA programme
for Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey,
Turkmenistan, Ukraine, Uzbekistan

Common Legal Basis for Transit Transportation Project

for Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan,
Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey,
Turkmenistan, Ukraine, Uzbekistan

Legal Guide

May 2004



This project is funded by
the European Union



A project implemented by
Lamnidis & Associates

Contents

SECTION I: INTRODUCTION	2
SECTION II: INTERNATIONAL CONVENTIONS PROPOSED BY THE PROJECT. COMMENTARIES	5
AGREEMENT CONCERNING THE ESTABLISHMENT OF GLOBAL TECHNICAL REGULATIONS FOR WHEELED VEHICLES, EQUIPMENT AND PARTS WHICH CAN BE FITTED AND / OR BE USED IN WHEELED VEHICLES (1998).....	9
CONVENTION ON THE CONTRACT FOR THE INTERNATIONAL CARRIAGE OF GOODS BY ROAD (CMR) (GENEVA, 19 MAY 1956).....	10
CONVENTION ON CUSTOMS TREATMENT OF POOLS CONTAINERS USED IN INTERNATIONAL TRANSPORT (1994)	11
INTERNATIONAL CONVENTION ON THE HARMONIZATION OF FRONTIER CONTROLS OF GOODS, 1982	12
CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (1991)	13
CONVENTION ON ROAD TRAFFIC (VIENNA, 8 NOVEMBER 1968)	14
CUSTOMS CONVENTION ON THE INTERNATIONAL TRANSPORT OF GOODS UNDER COVER OF TIR GARNETS (TIR CONVENTION) (GENEVA, 14 NOVEMBER 1975).....	14
INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES, 1974, AS AMENDED.....	15
CUSTOMS CONVENTION ON CONTAINERS (GENEVA, 2 DECEMBER 1972).....	16
CUSTOMS CONVENTION ON THE TEMPORARY IMPORTATION OF COMMERCIAL VEHICLES (GENEVA, 18 MAY 1956).....	16
SECTION III: COMMENTARY TO THE BASIC MULTILATERAL AGREEMENT	17
SECTION IV: EXPLANATION TO INTERNATIONAL PERMIT AND QUOTA SYSTEMS IN ROAD TRANSPORT.....	23
SECTION V: TRADE AND TRANSPORT FACILITATION RECOMMENDATIONS.....	26
PROVISIONS RELATING TO OFFICIAL PROCEDURES AND CONTROLS	27
1. <i>Provisions relating to exports</i>	27
1.1 Customs	27
1.2 Official documents.....	28
2. <i>Provisions relating to imports</i>	28
2.1 Customs	28
2.2 Official documents.....	32
3. <i>Provisions relating to transit</i>	34
3.1 Customs	34
3.2 Health and Safety.....	35
3.3 Security	36
4. <i>Measures relating to transshipment of goods</i>	36
4.1 Customs	36
4.2 Security	37
5. <i>Provisions relating to transport and transport equipment</i>	38
5.1 Multimodal transport.....	38

Section I: Introduction



Trade and transport facilitation, being the main task of the Basic Multilateral Agreement, is a diverse and challenging issue with huge potential benefits for both business and governments on the national, regional and international levels. It cuts across a wide range of areas such as government regulations and controls, business efficiency, transportation, information and communication technologies (ICT) and the financial sector. Trade facilitation can have a dynamic effect on competitiveness and market integration. Further, the use of modern transport inventory techniques, such as just-in-time, the increasing use of air cargo, and the emergence of global supply chains and e-commerce have all made transparency and speed at international borders essential in order to compete effectively in the global economy. It is, therefore, necessary to ensure that a trade facilitation strategy is well integrated into national and regional trade policy and economic development plans. The long-term objective would be to establish an internationally integrated trade facilitation structure and supporting network with a major input from the United Nations agencies and the European Commission, and based on agreed international standards and instruments. The international action plan would serve to guide national governments in developing trade and transport facilitation plans.

Although work on trade facilitation has been ongoing for over half a century at UNECE and other trade related organizations, the inclusion of the issue in the WTO Doha Ministerial Declaration and the increased international attention to security, has brought the subject into sharper political focus.

Lately TRACECA countries have made substantial efforts in adopting major international transport and transit conventions, including the TIR Convention. It is, however, not enough to sign and ratify Conventions, implementing them is even more important. Thus, for the TIR regime to work, certain institutional requirements have to be met. Complying with the construction requirements for vehicles or maintaining tachographs is difficult and it will take time, capacity building, and the money, to make these conventions operational. Another area that requires urgent attention is a region-wide effort to harmonize existing regulations and rules. As described earlier, the TRACECA CLBTT project includes such a component. It is obvious that harmonized rules, with regard to axle-load, transit charges, customs regulations, insurance and the introduction of IT would lower transport and transit cost and time considerably.

WTO has been promoting Trade Facilitation since the First WTO Ministerial Conference in Singapore in 1996. WTO explains Trade Facilitation as follows: "the simplification and harmonization of international trade procedures for collecting, presenting, communicating and processing data required for more efficient movement of goods in international trade".

expenses related to the simplification of, in particular, trade and transport documentation, are heavy and amount from 5 to 7% of the cost of delivered goods. In 1996, on mandate of the Forum of Asia-Pacific Economic Cooperation (APEC), results from effective simplification were considered. The studies showed that positive results from simplification of customs formalities supercede the effect from liberalization deriving from decrease of tariffs. As for instance, in the countries of APEC, a real simplification could provide approximately 0,26% of the real GDP (about 45billion USD), while the effect of liberalization would make 0,14% (about 23 billion USD).

It is also worthy mentioning a fact that, as of today, the share of transport expense in the costs of delivered goods, in the countries of post-soviet area, varies from 15% to 25% (in the countries of Western and Eastern Europe, up to 10%).

Trade Facilitation benefit to the economy

More efficient procedures and lower transaction costs provide significant benefits to the economy in both static and dynamic ways by:

Increasing trade in goods and services;

Promoting competition, thus enhancing efficiency in the use of resources, encouraging technology transfer and the realization of productivity gains;

Increasing the incentive for international investment, contributing to economic growth and higher living standards.

Trade Facilitation benefit to the public sector

Trade Facilitation can bring benefits to the public sector through more efficient implementation of customs and related regulations. This could involve, for example, a reduction in paperwork or in numbers of customs officials in ports of entry. Greater efficiency may also reduce possibilities for traders to avoid fees (Including through arbitrary collection and possible corruption) and this increase public revenue collected

from customs procedures and from tariffs. It could also reduce the cost of new procedures that may be felt necessary, e.g. to respond to security concerns.

Trade Facilitation, notably customs reform, directly improves tax returns by enabling effective collection of import duties. Customs revenue is still often the major contributor to national budgets in several countries, but as studies and national experiences have shown, there is a correlation between those countries with the greatest dependence on (high) import duties as a source of revenue and systematic tax evasion, fraud and under-collection. Developing countries, with a combination of high import duties and non-modernized customs, thus face the greatest haemorrhaging of revenues. Reforming customs procedures, notable through automation, harmonization of information requirements and risk-assessment methods allows for comprehensive, correct and prompt duty calculation and tax collection; with obvious benefits for the public purse.

It is clear that there is growing interest in trade facilitation at the global level. The World Trade Organization (WTO) now accepts the fact that this term is used to refer to a wide range of different subject areas and indeed, the concept of trade facilitation as such, was first introduced within that organization.

At the regional level, there is also an evident and urgent need for additional measures to facilitate trade and business activity in TRACECA region. Most importantly, special emphasis should be placed on standards and regulations relating to the modernization and most rational liberalization of tariff policy, and harmonization of administrative and customs systems throughout the territories of the Parties to MLA.

This greater interest in trade facilitation is also attributable to new opportunities that have been opened up by the current technological revolution. By making it possible to use electronic media for the immediate global transmission of trade information and for instantaneous international business transactions, this revolution is enhancing the economic processes of globalisation throughout the world.

To sum up, the context discussed lays within following three factors of the steady economic development, based on attraction of investments through decrease of operational risks: **liberalization of import tariffs, liberalization of transport policy** along with **simplification and unification of administrative and control procedures**. Special emphasis is paid to simultaneous conduct of these two processes. Yet, along with these, it is absolutely required to establish institutional basis for better investment environment, which would immediately intensify investors activity.

Section II: International conventions proposed by the Project. Commentaries



This part of the Legal Guide has to do with the task of promoting ratification of international transport and trade treaties. Following issues and concerns have been raised while considering methods of task performance.

Encouraging states to participate in multilateral agreements

It goes without saying that the countries of TRACECA have progressed significantly in participation to the multilateral transport treaties since becoming sovereign bodies in 1991. At the same time, it is beyond dispute that measures to promote wider and faster participation in multilateral treaties will both complement and reinforce any project that is aimed at ensuring greater compliance with those same treaties.

Accessing an international treaty remains to be an easiest and the most effective way of providing legal grounds for the area of concern. On the other hand, a multilateral treaty is normally administered by a global structure, which, under certain pre-conditions might be helpful in facilitating its implementation. The will of a signatory countries authorities should not be, however, underestimated, as such assistance does not come “in one pack” with a treaty, but should be sought.

Lack of sufficient resources to prepare implementing legislation

In many national legal systems, at least certain of the rules of international law that are binding upon the State automatically become part of national law without the necessity for any further action on the part of State institutions. In most systems, though, further institutional action is needed in order to create new national laws, which will ensure that the State’s international obligations are implemented.

Many States have very limited resources or expertise at their disposal for the purpose of preparing legislation to implement their international obligations. Situations may consequently arise in which a State’s international obligations are not properly implemented, or are even not implemented at all, with the result that individuals and corporations are not accorded the rights and benefits for which international law provides.

An international law being misapplied or not applied at all

Just because a national legal system contains rules which are designed to ensure the implementation of the State’s obligations under international law does not mean that those obligations will be complied with. Those rules of national law need themselves to be observed. In particular, they need to be implemented in a manner that is consistent with the State’s international obligations.

For this to occur, it is important that those who administer and apply the law particularly, the judiciary — and those who give advice on the application of the law typically, lawyers — are familiar with international law and know how to research, understand and work in that field.

Informing the general public about international law and about means of recourse against violations of this law

The best guarantee of the application of international law is a general public which is informed about at least the most significant of the rules of international law that have been developed for their benefit. The general public should, therefore, have readily available to it the necessary information to be able to advocate and secure its proper implementation. Electronic communications are increasingly facilitating the realization of this objective.

Encouraging acceptance of dispute resolution mechanisms

Under general international law, there is no duty upon States to refer disputes to any particular method of settlement, in particular, to settlement by a third party or body. Some treaties provide for a compulsory third-party dispute settlement mechanism. However, in many cases, States parties are only bound to accept resolution of their disputes through that method if, in addition to ratifying the treaty, they have specifically accepted the obligation to resolve their disputes in that way. In other cases, they must ratify a separate protocol, in case of TRACECA countries, the Technical Annex to the MLA, in order to be so bound.

Treaty provisions of this type are often not accepted and such protocols not ratified. If disputes arise concerning the application and implementation of the treaty, States are consequently able to avoid

impartial third-party evaluation of their conduct in terms of the applicable rules of international law. Those rules may then fail to be implemented.

Two blocks of international agreements, which may help the TRACECA countries to boost trade and transport in the region, are discussed herein.

The one embraces international legal Instruments recommended by the UN ESCAP Resolution 48/11 on road and rail transport modes in relation to facilitation measures, with briefing of purposes, major obligations, (if ratified) and recommendations on:

- Convention on Road Traffic of 1968, and the Convention on Road Signs and Signals of 1968
- Customs Convention on the International transport of Goods under Cover of TIR Carnets (TIR Convention) of 1975
- Customs Convention on the Temporary Importation of Commercial Road Vehicles of 1956
- Customs Convention on Containers of 1972
- International Convention on the Harmonization of Frontier Control of Goods of 1982
- Convention on the Contract for the International Carriage of Goods by Road (CMR) of 1956, and

And the other (2) International instruments, proposed for accession through supplementing the clause 1 of Article 2 “International Conventions” of the Technical Annex on Customs Documentation Procedures to MLA, with briefing on purposes, major obligations and the appropriateness (why proposed by the Contractor) of:

- International Convention on the simplification and harmonization of customs procedures 1974, as amended;
- Convention on customs treatment of pull containers used in international transit 1994;
- Agreement concerning the establishing of global technical regulations for wheeled vehicles 1998;
- The UN Convention on Liability of Operators of Transport Terminals in International Trade 1991.

An overall objective of this activity is to ensure similar understanding and to work out a common program of actions to help remedy the deficiencies related to insufficient performance of the countries in the field of international transport law, within the framework of the Project’s activities.

International Transport Agreements and Conventions (status as of 15 May 2004)

TRACECA countries	Azerbaijan	Armenia	Bulgaria	Georgia	Kazakhstan	Kyrgyzstan	Moldova	Romania	Tajikistan	Turkmenistan	Turkey	Uzbekistan	Ukraine
Transport Agreements and Conventions													
MLA recommended Conventions													
TIR Convention, 1975	+	+	+	+	+	+	+	+	+	+	+	+	+
International Convention on the Harmonization of Frontier Controls of Goods, 1982	+	+	+	+		+		+				+	+
Customs Convention on Containers, 1972			+	+				+			+	+	+
UNESCAP Resolution 48/11 recommended													
Convention on Road Traffic, 1968	+		+	+	+		+	+	+	+		+	+
Convention on Road Signs and Signals, 1968			+	+	+			+	+	+		+	+
TIR Convention, 1975	+	+	+	+	+	+	+	+	+	+	+	+	+
Customs Convention on the Temporary Importation of Commercial Road Vehicles, 1956	+		+			+		+				+	
Customs Convention on Containers, 1972			+	+				+			+	+	+
International Convention on the Harmonization of Frontier Controls of Goods, 1982	+	+	+	+		+		+				+	+
Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956			+	+	+	+	+	+	+	+	+	+	
CLBTT Protocol recommendations to MLA													
International Convention on the simplification and harmonization of customs procedures 1974, as amended													
Convention on Customs Treatment of Pool Containers Used in International Transport, 1994												+	
Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, 1998	+							+			+		
Convention on the liability of operators of transport terminals in international trade, 1991				+									

+ – ratification, accession, definite signature;
S – signature.

Agreement concerning the establishment of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and / or be used in wheeled vehicles (1998)

Purposes:

To establish a global process by which Contracting Parties from all regions of the world can, using transparent procedures, jointly develop global technical regulations for achievement of higher levels of safety, environmental protection, energy efficiency, and anti - theft performance of wheeled vehicles, equipment and parts which can be fitted and / or be used on wheeled vehicles, ensuring that due and objective consideration is given to the existing technical regulations of Contracting Parties, and to the UN / ECE Regulations

and

to reduce technical barriers to international trade through harmonizing existing technical regulations of Contracting Parties, and UN/ECE Regulations, and developing new global technical regulations governing safety, environmental protection, energy efficiency and anti -theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles, consistent with the achievement of high levels of safety and environment protection and the other above-stated purposes; and

Major Obligations of the Contracting Parties:

- To apply this Agreement in parallel with the 1958 Agreement, without affecting the institutional autonomy of either Agreement;
- The representatives of Contracting Parties shall constitute the Executive Committee of this Agreement and shall meet at least annually in that capacity;
- To implement the Agreement, including the setting of priorities for activity under this Agreement;
- A Contracting Party that votes in favour of establishing a global technical regulation through either (1) harmonization of existing regulations; or (2) establishing new technical regulation in the Global Registry, or (3) amending established global technical regulation, shall be obligated to submit the technical Regulation to the process used by that Contracting Party to adopt such a technical Regulation into its own laws or regulations and shall seek to make a final decision expeditiously;
- To use the global technical regulations established under this Agreement as a basis for their technical regulations.

Consequences and benefits or Why do we need it?

The Agreement **benefits the economies** of the Contracting States as it reduces technical barriers to international trade through harmonizing existing technical regulations of Contracting Parties, and UN/ECE Regulations, and developing new global technical regulations governing safety, environmental protection, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles, consistent with the achievement of high levels of safety and environment protection and other purposes stated in the Convention.

Convention on the contract for the international carriage of goods by road (CMR) (Geneva, 19 May 1956)

Purpose of the Convention

To standardize the conditions governing the contract for the international carriage of goods by road, particularly with respect to the documents used for such carriage and to the carrier's liability.

Major obligations of Contracting Parties

To ensure that the Convention is applied to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a Contracting Party.

Convention on customs treatment of pools containers used in international transport (1994)

Purposes:

To enhance the efficient use of containers in international transport, by facilitating administrative procedures, in order to provide for a reduced transport of empty units and preventing that not the same containers, which have been previously imported or exported, have to be exported or imported again.

Major Obligations of the Contracting Parties:

- To grant admission to pools containers, without payment of import duties and taxes, free of import prohibitions or restrictions of an economic character, without limitations as to use in internal traffic and without requiring, on their importation and exportation, customs documents and security, provided that the following conditions are complied with:

- containers have been previously exported or will be subsequently re-exported, or that an equal number of containers of the same type have been previously exported or will subsequently be re-exported;

- Under the agreement setting up the Pool, the Pool members:

exchange among themselves containers in the course of international transport of goods;
keep records, for each type of container, in the course of international transport of goods;
undertake to deliver to one another the number of containers of each type necessary to offset, over periods of 12 months, the outstanding balances of the accounts so kept, so as to ensure a balance for each Pool member between the number of containers of each type which he has placed at the disposal of the Pool and the number of Pool containers of these same types at his disposal in the territory of the Contracting Party in which he is established. The competent Customs authorities of that Contracting Party may extend the period of 12 months.

- Communicate to other Contracting Parties, on demand and in so far as their laws permit, the information required to implement the provisions of this Convention.

- Decide whether containers placed at the disposal of the Pool by any Pool member established in its territory shall meet the conditions contained in its legislation concerning admission and unrestricted use in internal traffic on its territory.

Consequences and benefits or Why do we need it?

With this Convention containers are no more considered to be merchandises in international trade, a further step after those taken by the Container Convention of 1972. Particularly the international movement of empty containers is then reduced, since others than those, who have imported or exported them, also can use them.

International convention on the harmonization of frontier controls of goods, 1982

Purposes:

The Convention aims at facilitation of international movement of goods by reducing the requirements for completing formalities as well as the number and duration of controls applied to all goods being imported or exported or in transit, when being moved across one or more maritime, air or inland frontiers.

Major Obligations of the Contracting Parties:

- To establish national and international coordination of control¹ procedures and of their methods of application covering all relevant border control authorities;
- To provide adequate recourses at border stations, which means that they have to be provided with:
 - qualified personnel in sufficient numbers consistent with traffic requirements;
 - equipment and facilities suitable for inspection, taking into account the mode of transport, the goods to be checked and traffic requirements;
 - official instructions to officers for acting in accordance with international agreements and with current national provisions
- To provide relevant information to other Contracting Parties on their request
- To provide simple and speedy treatment of goods in transit, especially when carried in containers
- To establish cooperation with adjacent countries to facilitate passage of the goods:
- endeavour to arrange for the joint control of goods and documents, through the provision of shared facilities;
- endeavour to ensure that the following correspond:
 - opening hours of frontier posts,
 - the control services operating there,
 - the categories of goods
 - the modes of transport, and
 - the international Customs transit procedures accepted or in use there

Consequences and benefits or Why do we need it?

Harmonization of border controls shall **benefit border control authorities** and **the national economy**, as it contributes to a better use of scarce manpower and technical resources at border stations. The Convention provides a framework for national authorities to cooperate. It also provides the basis for the conclusion of bilateral agreements on concrete measures, which can contribute to a better flow of goods in international transport to the benefit of the national economy. It will also **benefit transport industry** through improved coordination of border crossing procedures of adjacent states, which speeds up the crossing of frontiers by transport vehicles and reduces waiting time. The cooperation of the various control and inspection services involved (medico-sanitary, veterinary, etc.) and the abolition of non-essential procedures, particularly for transit traffic, could facilitate international transport considerably.

¹ The Convention applies to all control services at border crossing points of the Contracting Parties: customs, medico-sanitary, veterinary, phytosanitary inspections, control of compliance with technical standards, quality control measures.

Convention on the liability of operators of transport terminals in international trade (1991)

Purposes:

To eliminate or reduce the deficiencies in the legal regimes applicable with regard to the international carriage of goods, in part of transport-related services, by establishing uniform rules concerning liability for loss of, damage to or delay in handling over such goods while they are in the charge of operators of transport terminals and are not covered by the laws of carriage arising out of conventions applicable to the various modes of transport.

Major Obligations of the Contracting Parties:

- To ensure that the provisions of the Conventions are applied to every operator of transport terminal, who falls, in accordance with the rules of the private international law, under the regulation of the present Convention, performing in the course of his business² the transport-related services³ with respect to goods involved in international carriage⁴ in an area under his control or in respect of which he has a right of access or use⁵.
- To apply the provisions of the Convention in respect of goods taken in charge by the operator on or after the date of entry into force of this Convention in respect of that State
- To ensure that the defences and limits of liability provided for in the Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise
- To ensure that the Provisions of the Convention are applied with respect to: special rules on dangerous goods; rights of operator to enjoy security in goods; limitation of actions of two years
- To ensure recognition of a contract concluded by an operator or any other document issued by the operator pursuant to the Convention, being null and void to the extent it derogates, directly or indirectly, from the provisions of this Convention
- To provide uniformity to the application of Convention within the State

Consequences and benefits or Why do we need it?

The solution adopted by the Convention bear in mind the legitimate interests of cargo owners, carriers and terminal operators. The Convention **benefits cargo owners** in that it provides a certain and balanced legal regime for obtaining compensation from the operator. The Convention also **benefits carriers** when goods are damaged by the terminal operator during the period in which the carrier is responsible for the goods – in case of recourse action. . Improvement and harmonization of liability rules brought about by the Convention also **benefits terminal operators**. The Convention provides a modern legal regime appropriate to the developing practices in terminal operations. Rules on documentation are liberal and harmonized, and they allow the operator to make use of electronic data interchange (EDI). Among other rules in the interest of the terminal operator are those establishing rather low financial limits of liability and those giving the operator a right of retention over goods for costs and claims due to the operator.

² The Convention applies only if the transport-related services constitute a commercial activity of an enterprise. The **applicability** of the Convention is determined on the basis of the transport-related services such enterprises perform, irrespective of the name or designation of the enterprise. However a person is not considered an operator whenever he is a carrier under applicable rules of law governing carriage.

³ For the purposes of this Convention **transport-related services** include such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing – typically performed by the operator, a commercial enterprise which handles goods before, during or after the carriage of goods.

⁴ **International carriage** means that the places of departure and destination must be “identified” as being located in different States already at the time when the goods are taken in charge by the operator.

⁵ The **scope of application** includes the performance of various transport-related services even if no safekeeping is involved.

Convention on road traffic (Vienna, 8 November 1968)

Purpose of the Convention

To facilitate international road traffic and to increase road safety through the adoption of uniform traffic rules.

Major Obligations of Contracting Parties

- (1) To take appropriate measures to ensure that the rules of the road conform in substance to the provisions of the Convention (no penalty required).
- (2) To take appropriate measures to ensure that the rules concerning the technical requirements to be satisfied by motor vehicles and trailers conform to the Convention.
- (3) To admit to the territories in international traffic motor vehicles, trailers, etc, which fulfil the conditions laid down in the Convention and whose drivers fulfil the conditions laid down in the Convention.
- (4) To communicate to any other Contracting Party which requests the information necessary to determine the identity of the person in whose name a motor vehicle or a trailer is registered if the vehicle has been involved in an accident.
- (5) To ensure that any measures which Contracting Parties have taken or may take either unilaterally or under bilateral or multilateral agreements to facilitate international road traffic conform to the object of the Convention.

Customs convention on the international transport of goods under cover of TIR carnets (TIR Convention) (Geneva, 14 November 1975)

Purpose of the Convention

To facilitate the international carriage of goods by road vehicle by simplifying and harmonizing administrative formalities in the field of international transport, in particular at frontiers.

Major obligations of Contracting Parties

- (1) To allow goods carried under the TIR procedure to be transported without the payment or deposit of import or export duties and taxes at Customs office en route
- (2) To cause to be published the list of the Customs offices of departure, Customs offices en route and Customs offices of destination approved by it for accomplishing TIR operations.
- (3) To consult other Contracting Parties to agree upon corresponding frontier and upon their opening hours.
- (4) To communicate to other Contracting Parties, on request information necessary for implementing the provisions of the Convention, and particularly information relating to the approval of road vehicles or containers and to the technical characteristics of their design.

International convention on the simplification and harmonization of customs procedures, 1974, as amended

Purposes:

To contribute effectively to the development of international trade and exchanges by simplifying and harmonizing Customs procedures and practices and by fostering international co-operation without compromising appropriate standards of Customs control,

Major Obligations of the Contracting Parties:

- To promote the simplification and harmonization of Customs procedures and, to that end, to conform, in accordance with the provisions of this Convention, to the Standards, Transitional Standards and Recommended Practices in the Annexes to the Convention.

- To notify reservations to recommended practices in the specific annexes/chapters accepted to the depositary, review the reservations every 3 years, inform the depositary if reservations are to be continued

- To apply, in particular, the following principles:
the implementation of programmes aimed at continuously modernizing Customs procedures and practices and thus enhancing efficiency and effectiveness,
the application of Customs procedures and practices in a predictable, consistent and transparent manner,
the provision to interested parties of all the necessary information regarding Customs laws, regulations, administrative guidelines, procedures and practices,
the adoption of modern techniques such as risk management and audit-based controls, and the maximum practicable use of information technology,
co-operation wherever appropriate with other national authorities, other Customs administrations and the trading communities,
the implementation of relevant international standards,
the provision to affected parties of easily accessible processes of administrative and judicial review,

Consequences and benefits or Why do we need it?

The Convention constitutes a model for Administrations according to which they should aim and if they are applied, demonstrate, that this administration has done everything necessary to serve its country, its people and international commerce in achieving the tasks of a modern customs Administration.

Benefits to the National Economy

Principles of Kyoto aimed at faster clearance of goods, which in its turn: lowers cost of imported goods, lowers cost of production, increases economic competitiveness of national goods in the world market, attracts international trade and investment, lowers cost to consumers, increases national revenue.

Benefits to the Customs Administrations

Application of Kyoto principles results in: more efficient use of customs resources, faster, predictable and efficient customs clearance, enhanced customs control, increased trade facilitation.

Benefits to the Trading Community

Transparent procedures, greater facilities for compliant traders, lower business costs, enhanced competitiveness, clear information concerning rights and obligations.

Customs convention on containers (Geneva, 2 December 1972)

Purpose of the Convention

To develop and facilitate international carriage by container.

Major obligations of Contracting Parties

- (1) To grant temporary admission to containers fulfilling the requirements laid down in the Convention, whether loaded with goods or not, which shall be re-exported within three months (with possible extension) from the date of importation.
- (2) To grant temporary admission to accessories and equipment of temporary admitted containers.
- (3) To communicate to one another, on request, the information necessary for implementing the provisions of the Convention, and more particularly information relating to the approval of containers and to the technical characteristics of their design.

Customs convention on the temporary importation of commercial vehicles (Geneva, 18 May 1956)

Purpose of the Convention

To apply provisions similar to that of the Customs Convention on the Temporary Importation of Private Road Vehicles (New York, 4 June 1954), so far as possible, to the temporary importation of commercial road vehicles and, in particular, to provide for the use, for those vehicles, of the Customs documents prescribed for private road vehicles in order to facilitate international movement of goods.

Major obligations of Contracting Parties

- (1) To grant temporary admission without payment of import duties and import taxes and free of import prohibitions and restrictions, subject to re-exportation and to the other conditions laid in the Convention, to vehicles imported and used in international road traffic for commercial use.
- (2) To allow the driver and other member of the crew of the vehicle to import temporarily a reasonable quantity of personal effects.
- (3) To admit the fuel in the ordinary supply tanks of vehicles without payment of import duties and import taxes and free of import prohibitions and **restrictions**.
- (4) To admit component parts for the repair of particular vehicle already temporarily imported without payment of import duties and import taxes and **free of import prohibitions and restrictions**.
- (5) To endeavour not to introduce Customs procedures which might have the effect of impeding the development of international commercial road traffic.
- (6) To endeavour to place Customs offices and posts close together and to keep them open during the same hours in order to expedite Customs procedures **contiguous**.

Section III: Commentary to the Basic Multilateral Agreement



Basic Agreement. The Background.

The process of newly trade-and-economical relations' establishing in the post USSR environment made the issue on the latest relations between the East and the West be actively negotiated. The core of the interests has been focused on the Southern Caucasus and Central Asia. These regions are known to be rich in energetic and other strategic resources. Vast reserves of oil and gas, precious metals and rare ferrous metals make them to be considered as rather important geopolitical factor for international relations. Besides, there are inter-crossing networks of the biggest communications from the East to the West and back located there. These territories present a kind of boundary zone between two civilizations: East and West. It is a junction of concern of the European Union, the USA, Russia, China, Iran, Pakistan, Turkey and Japan.

Not only nowadays, but also in the past, interests of different States were concentrated onto these regions, as the Great Silk road used to get stretched along here, being a transcontinental network of routes, and connecting antique European and Chinese civilizations.

Great Silk Road routs crossed territories of various ideologies, religions and economical development levels. It's noticeable, that in spite of numerous changing in the rout, generally speaking, this main road has survived and a thin silk thread was securely connecting expanses and times, encouraging closeness and mutual enriching of the cultures and civilizations throughout many centuries. It was not only just a caravan highway with its complex networks used for trade transactions, but the one, where diplomatic treaties and military leagues were launched. And namely, for this reason, which is rather logic, at the end of XX-th century the necessity of providing a 'fresh breathing' to this ancient rout is being discussed again. The implementation of this project has been concerned by the European Union, the USA, China, Japan, Central and the South-Eastern Asian countries. At the time being apart of Eastern Europe countries, Southern Caucasus and Central Asia, as well as Turkey, Iran, Afghanistan are involved in the process of Great Silk road rehabilitation. Moreover, many experts incline to think, that the rehabilitation of the Great Silk road within historical parameters is still possible in spite of existing conflicts, including extreme ones.

Even in the Soviet times, especially in the peak of Perestroika, the idea of the Great Silk road rehabilitation was popular and actual, as many Caucasian and Asian leaders foreseen some geopolitical point and economical perspectives there.

In this connection, it's necessary to emphasize that European Union plays an invaluable role when initiates TRACECA interstate program being the only donor of it.

The implementation of TRACECA (Transport Corridor of Europe-Caucasus-Asia) Program was launched at the Conference held in Brussels in May, 1993 with participation of ministers of trade and transport from 8 countries (Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan). The Conference resumed by adopting Brussels Declaration, which gave start to introduction of interregional program of technical facilitation, the TRACECA, financed by the EU for the development of transport corridor from Europe crossing the Black Sea, South Caucasus and Caspian Sea with exit to the countries of Central Asia.

Later on, from 1996 to 1998, Ukraine, Mongolia and Moldova have joined the program. In March 2000, during the First Meeting of Intergovernmental Commission of TRACECA held in Tbilisi, Bulgaria, Romania and Turkey officially addressed the European Commission with request to join the TRACECA program. Iran and Afghanistan officially advised about their intention to join TRACECA in August 2003, which was welcomed by the program participants at the III IGC TRACECA Conference held in Yerevan 2003. In 2004 Pakistan also officially advised about its intention to join TRACECA.

It needs to be emphasised that the European Union proposed this corridor as a complementary route, which should become an addition to the existing ones.

This project corresponds to the global strategy of the European Union towards the participating countries and pursues the following targets:

- supporting of political and economical sovereignty of the Republics through providing larger possibilities in order to access European and World markets using alternative transport routs
- promoting further regional cooperation between TRACECA Program member-states
- enhancing towards actual operation of TRACECA projects, which could be a kind of catalyst for attraction of loans provided by International Financial Institutions and private investors

- o rendering assistance in terms of optimum integration of TRACECA (Europe-Caucasus-Asia) International Transport Corridor into Trans-European Transport Networks (TEN's).

Along with this, It should be stressed that since 2001 various Departments of the European commission from one hand and member-states from another have been holding an intensive consultations in terms of TRACECA and PETrA merging, and as result of such merging the TRACECA corridor should become an extension to the IX corridor of the Trans-European Transport Networks.

Since 1993-94 throughout 2003-2004, under aegis of TRACECA Intergovernmental Program there were 53 projects (39 out them were technical and 14 – investment) were activated with the total value of 111 605 000 euros. It is necessary to emphasize, that more than half of the total budget was used for investment projects' implementation, which makes TRACECA Program more attractive and creates a favourable investing climate.

At the present moment, TRACECA member-states possess multi-compound networks and sea ports at the international level externally-oriented and well-organized internally along their territories. It means, that transit transportation development across TRACECA countries does not require new internal corridors or additional transport passes into the neighbouring countries. It is also necessary to stress, that for these countries it is not necessary to attract huge investments to develop actually existing transport corridor and its networks. Such corridor – TRACECA - is existing and operating. Considerable expertise has been gained in the field of organization of international transportations of cargoes of any categories.

Taking into consideration, that in post USSR society at the present time the trade turnover unquestionably tends to grow both for TRACECA states and World Community from one side, and Asia and Europe from the other, which exceeds now 3 trillions USD, where more than 200 billion USD are referred to transport expenses. On September 9, 1998 in Baku TRACECA member-states signed the Basic Multilateral Agreement on international transport for development of Europe-Caucasus-Asia corridor as well as for dynamic and progressive development and interregional economic relations extension in the field of transport and trade. The principal and main target of the given Agreement is the harmonization of international legal security for transit transportations within the context of international trade facilitation.

After signing the Basic Multilateral Agreement at the historical summit in Baku on September 9, 1998, the legal basic principals for international transportations organization on more qualitative level were elaborated. Another circumstance, which extremely important is: TRACECA transport networks are crossing the states rich in minerals and energetic resources which are perspective to be extracted and used in the future.

International transport Development and particularly the transit through these states will definitely facilitate further industrial and social employment development in these regions. No matter what political or economical changes take place in the future, such selected, developed and practically proved international transport TRACECA corridor remains a long-term stabilizing factor creating a favourable investment climate, which, in its turn, positively influences on integrating processes' globalisation.

The Permanent Secretary established within the format of the Basic Multilateral Agreement as an Expectative Body is taking an active part in monitoring of the MLA Provisions' implementation.

Legal aspect

The Basic Agreement represents a *multilateral international treaty*, which provided *sufficient legal framework* for *international cooperation* of the 12 signatory countries *in the field of international transport operations*, binding them with *legal obligations* from one hand and leaving enough space for *sovereign will* of each participating State.

The experience of 6 years since it came into effect demonstrated both strong commitment of the Parties to pursue its goals and, unfortunately, lack of understanding of the importance of the "*pacta sunt servanda*" attitude, fundamental principle of international law. The facts of violations of the Basic Agreement have constantly been revealed by the current Project expertise, the National Legal Working Groups established in all the Parties and major transport operators⁶.

⁶ Pls. see CLBTT Project Progress Reports I, II.

As the operational environment along the corridor and outside of it evolved, new challenges emerged to provide for sustainable development of the international transportations market for TRACECA countries. We've tried to analyse comparatively the framework for international transport development laid by the existing provisions, the challenges of the time and feasible actions to be undertaken by the member states.

Challenge 1

Facilitation of Trade and Movement of Goods

Provision in Effect

a. As the article 3 puts it, the objectives of the Basic Agreement are, amongst others, *to facilitate international transport of goods and passengers and international transport of hydrocarbons*. The article 4, however, which specifies facilitation measures to be undertaken by the Parties with regards to *international transport*, restricts its measures to the *transit* facilitation only. Furthermore, article 5 frees off taxes and duties imposed on transport *in transit*.

b. Amongst international regimes regulating multilateral relations the Parties picked up the preferential one, which is applied through article 6, clause 2, meaning that the Parties enjoy and render to each other preferences, on parity basis, with regard to terms and tariffs applied to international transport.

Field for Action

a. The above shows the discrepancy between the scope of objective declared in Article 3 and the facilitation measures applied through the provisions of the Basic Agreement. Namely, the provisions throughout the Agreement do not cover international transport as described in its Articles 1 and 2, but speak on transit issue only.

To mitigate this, which is obviously a deficiency, the provisions of the Basic Agreement should be harmonized to speak about international transportation as defined in itself.

b. A significant step forward would be to switch from the selected "preferential treatment" (Article 6) regime to the "favourable treatment" regime⁷, which would allow the Parties to enjoy and to render to another Party, favourable treatment and tariffs established between a Party and a third country, if any.

To sum, up: it is very much recommendable that the Parties (1) harmonize the provisions of the basic Agreement to regulate the international transport as defined in itself; (2) widen the regime applied to benefit from preferential terms and tariffs applied by/to third countries to/by TRACECA member states.

Challenge 2

Allocation of the Most Effective and Efficient Transport Services

Provision in Effect

At the time the Basic Agreement was drafted the main assumption was lack of freedom for shippers to hire transport services providers, having the choice restricted to those only, who had access to the market. Article 3, "a", of the Basic Agreement, puts it as its main objective, *to develop economic relations, trade and transport communication in the regions of Europe, the Black Sea, the Caucasus, the Caspian Sea and Asia*. However, the Agreement contains very little or no at all provisions, which would ensure free access to the markets of the TRACECA region. In terms of services of a particular mode of transport, it remains to be regulated on the basis of specific permit systems.

Field for Action

Now that the Basic Agreement, along with other institutional reforms which were in place since 1998, forced the member states to strive for better access for all transport service providers registered in the area, the next step would be to provide legal basis for modern efficient transport services, such as multimodal transportation, and also to ensure sound legal operational environment for the freight

⁷ It is also known as "most favored nation regime"

forwarders. Development of insurance services (freight and operator liability insurance), to be made widely available for transport operators, transport services providers (terminal operators, stevedore companies, etc.) and shippers constitute an integral part of this task.

The draft Technical Annex to the Basic Agreement on Multimodal transportation, which is now discussed by the Parties, offers an international uniform regime to govern liability for loss, damage or delay arising from multimodal transport, which presently does not exist.

The draft Technical Annex to the Basic Agreement on Freight Forwarders, which is also considered by the Parties along with other newly developed drafts, ensures fair distribution of rights and liabilities of the participants of a transportation contract executed by a freight forwarding company.

Challenge 3

Rationalization of the Transport Sector

Provisions in Effect

It is also an objective of the Basic Agreement (Article 3 "f"), *to create equal conditions of competition between different types of transport*. The presumption is that once the access to the market is free, regional competition would boost, which would cause increased service levels and competitive prices, thus enhancing the transport sector.

Field for Action

Trade links within the region are still impeded by unnecessary obstacles such as permit systems and high road user charges. The proposed permit and quota system could facilitate movement of goods by road transport along the TRACECA corridor. The proposed TRACECA multilateral permit system suggests that:

- permits would be issued for a period of one year;
- permits would be issued to a Carrier (specific individual or legal entity), registered in the TRACECA member state, assigned to a specific motor vehicle, which would ensure responsibility of a particular vehicle owner;
- allocation of quotas administered by the PS IGC TRACECA on the basis of criteria agreed by the countries;
- a permit holder would be exempted from taxes, duties and other payments irrespective of their names and origin excluding trip payment across toll-roads, tunnels and bridges.

Challenge 4

Improved Investment Climate for Local and Foreign Investors

Provision in Effect

One of the decisive arguments not to invest in a country is the lack of legal security with regard to international transport within the area. It is assumed that, as Parties are bound with the Agreement, investing manufacturers and the traders can be certain that their products can be transported in and out of the area of the agreements, within a certain time frame, against reasonable costs. The Agreement, however, did not and also could not than, provide for specific mechanisms defending the rights of potential investors.

Field for Action

This may become a fact, if, given the framework, the Parties will develop a comprehensive and harmonized set of arrangements of regional scale, focused on: elimination or mitigation of a significant part of country risks (non-commercial risks), creating a legal basis for carrier liability and cargo insurance; adoption of multilateral legal instruments providing for establishment of investment institutions for potential funding of transport infrastructure rehabilitation and modernization (Draft Technical Annex to the Basic Agreement on TRACECA Investments, Settlement of Disputes Mechanism, TRACECA Guarantee Trust Fund, Economic Interest Grouping of the TRACECA Industrial Panel).

Challenge 5

Stronger Position to Pursue and Strengthen Regional Transit Policies

Provision in Effect

The regional character of the Basic Agreement implies existence of a regional policy of the TRACECA member states towards third countries.

Field for Action

There are obviously two aspect of the issue: to develop a common policy to be applied within TRACECA region and a strategy of external relations with third countries.



Section IV: Explanation to international permit and quota systems in road transport



At present road carriers registered in the TRACECA member countries enjoy two systems of obtaining permits enabling them to transport goods internationally through the territories of the TRACECA corridor and outside of it. These are the ECMT quota distribution system and bi-lateral agreements, which allocate mutual quotas on a parity basis.

The ECMT multilateral quota of transport licenses was introduced on 1 January 1974 after a trial period of three years. It was seen by the Council of Ministers as a practical step towards the gradual liberalisation of road freight transport, which could only be achieved in conjunction with the harmonisation of the terms of competition both between road haulers 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 and safe" lorry later, the multilateral quota also promotes the use of environment friendly and safe vehicles and thus contributes to ensuring sustainable mobility.

The multilateral⁸ character of the licenses also serves to rationalize the use of vehicles by reducing the number of empty runs.

The results of the study favour a further increase of the current quota:

From the opinions of governments, associations and haulers it can be concluded that there seems to be support to increase the current quota, especially from the side of the transport industry.

The market share of transport carried out with ECMT licences in the CEE-WE market of 12.3% indicates that the ECMT system plays an important role in the liberalisation of the European transport market without disturbing the separate markets too much, since the CEE share in the WE market is estimated at 1.6% and the WE share in the CEE market is estimated at 6.8%.

The ECMT system with a focus on environmental friendly vehicles has been successful and is widely supported by governments and the industry.

The importance of the ECMT system for the European transport market is further proven by the positive effect on the efficiency of fleets, the important economic value for haulers, and the positive effects on transport and trade.

The unintended side effects of the ECMT system, which allows haulers to use the ECMT licences only for third country transport without regularly returning to the home country, is not seen as an important problem

The assumption that the ECMT system facilitates unfair competition is not supported by governments, associations and haulers.

Distribution practices should be reviewed by both governments and the industry:

Although in CEE countries co-operation between governments and associations regarding the distribution of ECMT licences is more common, there seems to be a need for more influence. This is in contrast to the situation in WE. An exchange of experiences to identify best practices could be considered.

The use of a minimum fleet size as one of the criteria for the distribution of licences should be reconsidered, given the structure of the industry.

On the basis of the use of ECMT licences the number of third country and bilateral trips could be a better criterion than the number of third country trips only.

Especially in CEE countries some effort should be considered to take away the general feeling that not every hauler has equal chances to obtain ECMT licences.

⁸ Multilateral character: the possibility of using the license for runs between Member countries, other than the country of registration of the transport company.

A minimum and maximum price level could be considered to deal with the very big differences in prices of ECMT licences between countries.

However, not all of the TRACECA member states joined the ECMT multilateral quota system. None of the Central Asia countries are members to it. On the one hand, *the ratio of fleet meeting the ECMT technical requirements remains to be low there, and, on the other hand, these states prefer to make use of entry fees collected from every vehicle crossing the border, beyond the agreed bi-lateral quota, arbitrary imposing entry fees on the carries.* In addition, one should imagine that the update of information on the availability of quoted permits at border is hampered by the underdeveloped information systems.

Needless to mention how the above *complicates trade flow between and to/from countries of this region.*

Designed to mitigate the above negative effects, *the Protocol on amendments to the Basic Multilateral Agreement*, submitted for consideration by the countries on IGC III Annual Meeting (October, 2003), which was *developed basing upon the well-established ECMT system and with due regard to the specific conditions of the region, remained unsigned.*

The countries still prefer to make use of bi-lateral agreements, in spite of the obvious deficiency and inflexibility of the quotas issued to the carriers.

The amendments contained therein meant to introduce the TRACECA multilateral permit system, where:
permits would be issued for a period of one year;
permits would be issued to a Carrier (specific individual or legal entity), registered in the TRACECA member state, assigned to a specific motor vehicle, which would ensure responsibility of a particular vehicle owner;
allocation of quotas administered by the PS IGC TRACECA on the basis of criteria agreed by the countries;
a permit holder would be exempted from taxes, duties and other payments irrespective of their names and origin excluding trip payment across toll-roads, tunnels and bridges.

Now, that the countries expressed their reluctant attitude towards adoption of the proposed permit systems, a feasible way out could be found in *introduction of permit-free system.*

Section V: Trade and Transport Facilitation Recommendations



Provisions relating to official procedures and controls

1. Provisions relating to exports

1.1 Customs

WCO, Revised Kyoto Convention, General Annex, Chapter 6 Standard 2. "Customs control shall be limited to that necessary to ensure compliance with the Customs law."

(See also 1973 Kyoto Convention, Annex C.1 Standard 15.)

Evidence of arrival abroad not normally required

WCO, Revised Kyoto Convention, Specific Annex C, Chapter 1 Standard 3. "The Customs shall not require evidence of the arrival of the goods abroad as a matter of course."

WCO, Revised Kyoto Convention, Guidelines to Specific Annex C, Chapter 1, Part 4. on Formalities to be completed under the normal procedure. "When evidence not otherwise available must be furnished, Customs in the country of export would normally accept a statement supplied by the consignee who received the goods and certified by Customs in the country of destination."

(See also 1973 Kyoto Convention, Annex C.1 Standard 21 and Note.)

Acceptance of goods declarations at inland offices

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 1. "The Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade."

(See also 1973 Kyoto Convention, Annex C.1 Standard 4.)

Periodic export declarations

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Transitional Standard 32.

"For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for :

- release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration;
 - clearance of the goods at the declarant's premises or another place authorized by the Customs;
- and, in addition, to the extent possible, other special procedures such as:
- allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;
 - use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;
- allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration."

(See also Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 7.3.1. on Periodic Goods declaration.)

(See also 1973 Kyoto Convention, Annex C.1 Standard 14 and Note.)

No export delay for minor information omission

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 40. "Goods declared shall be released as soon as the Customs have examined them or decided not to examine them, provided that:

- no offence has been found;
- the import or export licence or any other documents required have been acquired;
- all permits relating to the procedure concerned have been acquired; and
- any duties and taxes have been paid or that appropriate action has been taken to ensure their collection."

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 41. “If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.”

(See also 1973 Kyoto Convention, Annex C.1 Recommended Practice 20.)

1.2 Official documents

Number of copies of export declaration

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 15. “The Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary.”

(See also 1973 Kyoto Convention, Annex C.1 Recommended Practice 12.)

2. Provisions relating to imports

2.1 Customs

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 25. “National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.”

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 24 and Note.)

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 34 “When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.”

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 33.)

Expeditious clearance of goods

UN/CEFACT, Recommendation No. 13 “The Working Party

“Being aware that the Customs Co-operation Council has sought in International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) (revised June 1999), and especially in the General Annex to encourage Customs authorities to grant special facilities for the expeditious clearance of goods; it is recommended that Governments to take note of the provisions contained in the Kyoto Convention and especially in the General Annex and to examine the possibility of introducing them into their national legislation”.

Immediate release to importer’s premises

UN/CEFACT, Recommendation No. 13 “The Working Party “..Recalling that in some countries special procedures have been introduced whereby detailed physical inspection of goods and presentation of the formal evidence at the point of importation are no longer required, allowing approved importers to take the goods directly to their own premises, sometimes on a deferred payment basis, on condition that:

-“the goods may be inspected;

-“the Import Declaration and satisfactory supporting evidence is made available when required;

-“such information is retained for later verification; and

-“security of payment and responsibility for the goods are assured;

“... ”

“Recommends to Governments to take account of the developments referred to above with a view to the further promotion of all steps which would facilitate international trade procedures;”

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Transitional Standard 32

“For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for :

- release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration;

- clearance of the goods at the declarant's premises or another place authorized by the Customs; and, in addition, to the extent possible, other special procedures such as :
 - allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;
 - use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;
 - allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration."

Customs to give information on clearance procedure

WCO, Revised Kyoto Convention, General Annex, Chapter 9 Standard 1. "The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person."

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 65.)

WCO, Recommendation of the Customs Co-operation Council (WCO) concerning the use of World Wide Web sites by Customs Administrations " RECOMMENDS that Members of the Council and members of the United Nations Organization or its specialized agencies, and Customs or Economic Unions, should implement a Customs World Wide Web site for their administration,

FURTHER RECOMMENDS that Members of the Council and members of the United Nations Organization or its specialized agencies, and Customs or Economic Unions, should make available on Customs administration web, sites, where practical or feasible, the data content as specified in the Annex to this Recommendation."

Customs to supply information to assist completion of goods declaration

WCO, Revised Kyoto Convention, General Annex, Chapter 9 Standard 4. "At the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law."

WCO, Revised Kyoto Convention, General Annex, Chapter 9 Standard 5. "The Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of."

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 10.)

Inward processing use of equivalent domestic goods

WCO, Revised Kyoto Convention, Specific Annex F, Chapter 1 Recommended Practice 25. "The products obtained from the treatment of equivalent goods should be deemed to be compensating products for the purposes of this Chapter (setting-off with equivalent goods)."

WCO, Revised Kyoto Convention, Specific Annex F, Chapter 1 Recommended Practice 26. "When setting-off with equivalent goods is allowed, the Customs should permit the exportation of compensating products prior to the importation of goods for inward processing."

(See also 1973 Kyoto Convention, Annex E.6 Recommended Practice 43 and Note.)

Temporary importation of special handling equipment

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Recommended Practice 7. "Special equipment for the loading, unloading, handling and protection of cargo, whether or not it is capable of being used separately from the means of transport for commercial use, which is imported with the means of transport for commercial use and is intended to be re-exported therewith, should be allowed to be brought temporarily into a Customs territory conditionally relieved from payment of import duties and taxes."

Revised Kyoto Convention, Guidelines to Specific Annex J, Chapter 3, Part 5. on Temporary admission of parts and equipment. "Some Customs administrations allow temporary admission of this equipment on the condition that it is used only in the immediate vicinity of the means of transport for commercial use, for example within an airport or on shore at ports of call.

Normally a separate security or temporary admission document is not required for this equipment."

(See also 1973 Kyoto Convention, Annex A.3 Standard 10 and Note.)

Limited Customs control of imported goods

WCO, Revised Kyoto Convention, General Annex, Chapter 6 Standard 2. "Customs control shall be limited to that necessary to ensure compliance with the Customs law."

(See also 1973 Kyoto Convention, Annex A.1 Standard 9.)

General security for goods in temporary store

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 5. "When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory."

(See also 1973 Kyoto Convention, Annex A.2 Standard 8.)

No security if Customs control temporary store

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 4. "Where national legislation provides, the Customs shall not require security when they are satisfied that an obligation to the Customs will be fulfilled."

(See also 1973 Kyoto Convention, Annex A.2 Recommended Practice 10.)

No duty on goods destroyed in temporary store

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 44. "When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:

- when at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;

- when such goods are destroyed or irrecoverably lost by accident or force major, provided that such destruction or loss is duly established to the satisfaction of the Customs;

- on shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.

Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state."

(See also 1973 Kyoto Convention, Annex A.1 Standard 21.)

Limit for temporary storage

WCO, Revised Kyoto Convention, Specific Annex A, Chapter 2 Standard 9. "Where national legislation lays down a time limit for temporary storage, the time allowed shall be sufficient to enable the importer to complete the necessary formalities to place the goods under another Customs procedure."

(See also 1973 Kyoto Convention, Annex A.2 Standard 14.)

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Recommended Practice 10. "At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend the period initially fixed."

(See also 1973 Kyoto Convention, Annex A.2 Recommended Practice 15)

Responsibilities and rights of declarant

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 8. "The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes."

(See also 1973 Kyoto Convention, Annex B.1 Standard 8.)

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 9. “Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs: (a) to inspect the goods; and (b) to draw samples.”

(See also 1973 Kyoto Convention, Annex B.1 Standard 8.)

Customs to give information on clearance procedure

WCO, Revised Kyoto Convention, General Annex, Chapter 9 Standard 1. “The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.”

(See also 1973 Kyoto Convention Annex B.1 Standard 65.)

No separate declaration for samples taken

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 10. “The Customs shall not require a separate Goods declaration in respect of samples allowed to be drawn under Customs supervision, provided that such samples are included in the Goods declaration concerning the relevant consignment.”

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 9.)

Periodic home use declarations

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Transitional Standard 32.

“For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for:

- release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration;
- clearance of the goods at the declarant's premises or another place authorized by the Customs; and in addition, to the extent possible, other special procedures such as:
- allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;
- use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;
- allowing the lodgement of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.”

(See also Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 7.3.1. on Periodic Goods declaration.)

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 25 and Note.)

Prompt examination of goods

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 33. “When the Customs decide that goods declared shall be examined, this examination shall take place as soon as possible after the Goods declaration has been registered.”

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 8. on Examination and sampling of the goods. “This Standard (General Annex, Chapter 3 Standard 33) sets out a key principle that when Customs decides that goods should be examined, they are required to carry out the examination without any delay. The use of the term “when” implies that all goods that are declared should not be examined as a matter of course. It is linked to Standard 6.4 (General Annex, Chapter 6 Standard 4) which states that the decision to examine goods should be based on risk-assessment techniques. This will ensure the goods are released as quickly as possible, even when Customs decides to examine them. The decision whether or not to examine the goods should be made as early as possible. In some cases Customs may make this decision as soon as the Goods declaration is registered.”

(See also 1973 Kyoto Convention, Annex B.1 Standard 32.)

Limited Customs control

WCO, Revised Kyoto Convention, General Annex, Chapter 6 Standard 2. "Customs control shall be limited to that necessary to ensure compliance with the Customs law."

WCO, Revised Kyoto Convention, General Annex, Chapter 6 Standard 4. "The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination."

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 6, Part 5. on Principles of Customs control. "Customs controls should therefore be kept to the minimum necessary to meet the main objectives and should be carried out on a selective basis using risk management techniques to the greatest extent possible."

(See also 1973 Kyoto Convention, Annex B.1 Standard 38 and Note.)

Clearance by summary examination whenever possible

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 8. on Examination and sampling of the goods. "The examination of goods can be either summary or detailed. In a summary examination Customs carries out some or all of the following checks:

- count the packages;
- compare marks and numbers to that on the declaration or invoices;
- verify that the goods are the same as those described on the declaration.

A summary examination may be considered sufficient where goods of the same description are imported or exported frequently by the same person and this person is known by Customs to be reliable; where the accuracy of the particulars given in the Goods declaration can be checked against the supporting documents or against other evidence; or where the import or export duties and taxes involved are low."

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 39.)

Detailed examination by selective methods

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 8. on Examination and sampling of the goods. "A detailed examination is warranted when Customs is not satisfied about the accuracy of the particulars in the Goods declaration or in the supporting documents. Likewise, goods liable to substantial import or export duties and taxes may be routinely subjected to closer examination. A detailed examination usually involves:

- thorough inspection of the goods to determine as accurately as possible their composition;
- verification of the quantity;
- verification of the tariff classification;
- verification of the value; and
- where necessary, verification of the origin of the goods.

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 40 and Note.)

Provisional declaration if all data not available

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 13. "Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period."

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 12 and Note.)

2.2 Official documents

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 11. "The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key.

For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology."

(See also 1973 Kyoto Convention, Annex B.1 Note 2 to Standard 11.)

Number of copies of goods declaration

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 15. “The Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary.”

(See also 1973 Kyoto Convention, Annex B.1 Recommended Practice 13.)

No unnecessary certification of origin

WCO, Revised Kyoto Convention, Specific Annex K, Chapter 2 Recommended Practice 2. “Documentary evidence of origin should be required only when it is necessary for the application of preferential Customs duties, of economic or trade measures adopted unilaterally or under bilateral or multilateral agreements or of measures adopted for reasons of health or public order.”

(See also 1973 Kyoto Convention, Annex D.2 Standard 2.)

Acceptance of declaration of origin

WCO, Revised Kyoto Convention, Specific Annex K, Chapter 2 Recommended Practice 12. “Where documentary evidence of origin is required, a declaration of origin should be accepted in the following cases:

(a) goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than USD 500;

(b) commercial consignments the aggregate value of which does not exceed an amount, which shall not be, less than USD 300.

Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.”

(See also 1973 Kyoto Convention, Annex D.2 Recommended Practice 12.)

Information on origin requirements

WCO, Revised Kyoto Convention, General Annex, Chapter 9 Standard 1. “The Customs shall ensure that all relevant information of general application pertaining to Customs law is readily available to any interested person.”

(See also 1973 Kyoto Convention, Annex D.2 Standard 14.)

Alignment of certificates of origin

WCO, Revised Kyoto Convention, Specific Annex K, Chapter 2 Recommended Practice 6. “When revising present forms or preparing new forms of certificates of origin, Contracting Parties should use the model form in Appendix I to this Chapter, in accordance with the Notes in Appendix II, and having regard to the Rules in Appendix III.

(See also 1973 Kyoto Convention, Annex D.2 Recommended Practice 6 and Note.)

3. Provisions relating to transit

3.1 Customs

Limitation of inspection

UN/ECE, International Convention on the Harmonization of Frontier Control of Goods, 1982, Article 10. "The Contracting Parties shall, wherever possible, provide simple and speedy treatment for goods in transit, especially for those travelling under cover of an international Customs transit procedure, by limiting their inspections to cases where these are warranted by the actual circumstances or risks."

UN/ECE, TIR Convention, Article 5

"1. Goods carried under the TIR procedure in sealed road vehicles, combinations of vehicles or containers shall not as a general rule be subjected to examination at Customs offices en route.

"2. However to prevent abuses, Customs authorities may in exceptional cases, and particularly when irregularity is suspected, carry out an examination of the goods at such offices."

Exemption from Customs duties

UN/ECE, TIR Convention, Article 4. "Goods carried under the TIR procedure shall not be subjected to the payment or deposit of import or export duties and taxes at Customs offices en route."

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Standard 3. "Goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished."
(See also 1973 Kyoto Convention, Annex E.1 Standard 4.)

Flat rate bonds for transit goods

UN/ECE, Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), 1975, Article 8(3). "Each Contracting Party shall determine the maximum sum per TIR carnet, which may be claimed from the guaranteeing association.

"Note: - Customs authorities are recommended to limit to a sum equal to USD 50,000 per TIR Carnet the maximum amount which may be claimed from the guaranteeing association. In the case of transport of alcohol and tobacco Customs authorities are recommended to increase the maximum amount which may be claimed from the guaranteeing association to a sum equal to USD 200,000.

No routine calculation of duty on transit goods

UN/ECE, Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), 1975, Article 8 (3) and 8 (6). "Each Contracting Party shall determine the maximum sum per TIR carnet, which may be claimed from the guaranteeing association.

"For the purpose of determining the duties and taxes..., the particulars of the goods as entered in the TIR carnet shall, in the absence of evidence to the contrary, be assumed to be correct."

TIR transit regime valid for all modes of transport

UN/ECE, Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), 1975, Article 2. "This Convention shall apply to the transport of goods... in containers... provided that some portion of the journey between the beginning and the end of the TIR operation is made by road."

Normally no escort of goods

UN/ECE, TIR Convention, Article 23. "The Customs authorities shall not
"- require road vehicles, combination of vehicles or containers to be escorted at the carrier's expense on the territory of their country ... except in special cases"

No duty on transit goods accidentally lost or destroyed

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 44. "When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:

- when at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;
- when such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;
- on shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.

Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state."

WCO, Revised Kyoto Convention, General Annex, Chapter 2 Definition of "repayment" "repayment" means the refund, in whole or in part, of duties and taxes paid on goods and the remission, in whole or in part, of duties and taxes where payment has not been made."

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 11.1. on Repayment or remission of duties and taxes. "When partial relief of duties and taxes has been granted on imported goods on the condition that they are re-exported or used for specific purposes, the repayment or remission may be limited to that part of the duties and taxes which was not levied."

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 4, Part 2.3. on Repayment. "Goods may be damaged, destroyed or irrecoverably lost, by accident or through force majeure. This may also happen while they are still under Customs control (in transit, in bonded warehouses or under temporary admission procedures). In these instances, for reasons of equity, the duties and taxes already charged might be refunded in whole or in part."

(See also 1973 Kyoto Convention, Annex E.1 Standard 30 and Note.)

No escort of goods in transit or itinerary

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Standard 15. "Only when they consider such a measure to be indispensable shall the Customs:

- (a) require goods to follow a prescribed itinerary; or
- (b) require goods to be transported under Customs escort."

(See also 1973 Kyoto Convention, Annex E.1 Standard 23.)

Commercial or transport document as descriptive part of transit declaration

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Standard 6. "Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for Customs transit and this acceptance shall be noted on the document."

(See also 1973 Kyoto Convention, Annex E.1 Recommended Practice 13.)

No unnecessary delays or restrictions

WTO, General Agreement on Tariffs and Trade, Article V (3). "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."

3.2 Health and Safety

No medicosanitary inspection for goods in transit if no contamination risk

UN/ECE, International Convention on the Harmonization of Frontier Control of Goods, 1982, Annex 2, Article 4. "Within the framework of Conventions in force the Contracting Parties shall, as far as possible, dispense with the medicosanitary inspection of goods in transit in those circumstances where there is no risk of contamination."

No veterinary inspection for animal products in transit if no contamination risk

UN/ECE, International Convention on the Harmonization of Frontier Control of Goods, 1982, Annex 3, Article 5. "Within the framework of conventions in force the Contracting Parties shall, as far as possible, dispense with the veterinary inspection of animal products in transit in those circumstances where there is no risk of contamination."

No phytosanitary inspection for goods in transit if no contamination risk

UN/ECE, International Convention on the Harmonization of Frontier Control of Goods, 1982, Annex 4, Article 5. “Within the framework of conventions in force the Contracting Parties shall, as far as possible, dispense with the phytosanitary inspection of goods in transit unless such measures are necessary for the protection of their own plants.”

3.3 Security

Declarant to choose form of security

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 1. “National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.”

(See also 1973 Kyoto Convention, Annex E.1 Standard 14.)

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 3. “Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the Customs.”

(See also 1973 Kyoto Convention, Annex, E.1 Recommended Practice 15.)

General security for several transit operations

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 5. “When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the Customs territory.”

(See also 1973 Kyoto Convention, Annex E.1 Standard 17.)

On completion, discharge of security without delay

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 7. “Where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled.”

(See also 1973 Kyoto Convention, Annex E.1 Standard 28.)

4. Measures relating to transshipment of goods

4.1 Customs

No duty on transhipped goods

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 2 Standard 2. “Goods admitted to transshipment shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with.”

(See also 1973 Kyoto Convention, Annex E.2 Standard 3.)

No duty on destroyed transshipment goods

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 44. “When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:

- when at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;
- when such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;
- on shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.

Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state.”

(See also 1973 Kyoto Convention, Annex E.2 Standard 24.)

Reduced duty if goods damaged and not exported

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 44. "When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:

- when, at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;
- when such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;
- on shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.

Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state."

WCO, Revised Kyoto Convention, General Annex, Chapter 2 Definition of "repayment" "repayment" means the refund, in whole or in part, of duties and taxes paid on goods and the remission, in whole or in part, of duties and taxes where payment has not been made."

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 3, Part 11.1. on Repayment or remission of duties and taxes. "When partial relief of duties and taxes has been granted on imported goods on the condition that they are re-exported or used for specific purposes, the repayment or remission may be limited to that part of the duties and taxes which was not levied."

WCO, Revised Kyoto Convention, Guidelines to the General Annex, Chapter 4, Part 2.3. on Repayment . "Goods may be damaged, destroyed or irrecoverably lost, by accident or through force majeure. This may also happen while they are still under Customs control (in transit, in bonded warehouses or under temporary admission procedures). In these instances, for reasons of equity, the duties and taxes already charged might be refunded in whole or in part."

(See also 1973 Kyoto Convention, Annex E.2 Standard 24 and Note.)

Normally no examination of transshipments

WCO, Revised Kyoto Convention, General Annex, Chapter 6 Standard 2. "Customs control shall be limited to that necessary to ensure compliance with the Customs law."

(See also 1973 Kyoto Convention, Annex E.2 Recommended Practice 16.)

Normally no escort of transshipments

WCO, 1973 Kyoto Convention, Annex E.2 Standard 18. "Only when they consider such a measure to be indispensable shall the Customs authorities:

- "(a) Require goods to follow a prescribed itinerary; or
- 1. "(b) Require goods to be transported under escort."

4.2 Security

Declarant to choose form of security

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 1. "National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided."

(See also 1973 Kyoto Convention, Annex E.2 Standard 11.)

WCO, Revised Kyoto Convention, General Annex, Chapter 5, Standard 3. "Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the Customs."

(See also 1973 Kyoto Convention, Annex, E.2 Recommended Practice 12.)

General security for regular transshipments

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 5. "When security is required to ensure that the obligations arising from a Customs procedure will be fulfilled, the Customs shall accept a

general security, in particular from declarants who regularly declare goods at different offices in the Customs territory."

(See also 1973 Kyoto Convention, Annex E.2 Standard 14.)

WCO, Revised Kyoto Convention, General Annex, Chapter 5 Standard 6. "Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable."

(See also 1973 Kyoto Convention, Annex E.2 Recommended Practice 15.)

5. Provisions relating to transport and transport equipment

5.1 Multimodal transport

Use of blank-back forms

UN/CEFACT, Recommendation No. 12, paragraph 15. "The 1983 revision of the ICC's Uniform Customs and Practice for Documentary Credits (UCP 400) Articles 25 (b (ii)) and 26 (b (ii)) specifically encouraged the use of bills of lading and combined transport documents which indicated "...some or all of the conditions of carriage by reference to a source or document other than the transport document itself (short form/blank back transport document)". The current revision, UCP 500, emphasizes banking acceptance of a bill of lading, a multimodal transport document or a non-negotiable sea waybill which:

"appears to contain all the terms and conditions of carriage or only some of such terms and conditions by reference to a source or document other than the transport document (short form/blank back transport documents)."

It also stresses that:

"banks will not examine the contents of such terms and conditions."(ICC Document 470 - 37/104 dated 1992.09.17) (It has to be borne in mind that in certain jurisdictions it is necessary to have evidence that the consignee is duly aware of the full terms and conditions to which the short form makes reference. The use of the short form for a series of shipments may need explicit acceptance on the part of the consignee.)

Use of codes for modes of transport

UN/CEFACT, Recommendation No. 19. "The Working Party.....recommends that the code structure described should be applied whenever there is a need for a coded representation for indicating mode of transport for purposes of international trade."

Layout Key for Standard Consignment Instructions

UN/CEFACT, Recommendation No. 22, "Recommends that the layout key appended to the present recommendation be used as a basis for the design of standard consignment instructions intended to convey instructions from either a seller/consignor or a buyer/consignee to a freight forwarder, carrier or his agent, or other provider of service, enabling the movement of goods and associated activities."

Undocumented temporary importation of vehicles or containers containing goods under TIR

UN/ECE, TIR Convention, Article 15. "No special Customs document shall be required in respect of the temporary importation of a road vehicle, combination of vehicles or container carrying goods under cover of the TIR procedure. No guarantee shall be required for the road vehicle or combination of vehicles or container."

Acceptance of foreign Customs seals on containers

UN/ECE, TIR Convention, Article 22

"1. As a general rule and except when they examine the goods in accordance with article 5, paragraph 2, (i.e. when irregularity is suspected), the Customs authorities of the Customs offices en route of each of the Contracting Parties shall accept the Customs seals of other Contracting Parties, provided that they are intact. The said Customs authorities may, however, if control requirements make it necessary, add their own seals.

"2. The Customs seals thus accepted by a Contracting Party shall have in the territory of that Contracting Party the benefit of the same legal protection as is accorded to the national seals."

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Recommended Practice 17. "Customs seals and identification marks affixed by foreign Customs should be accepted for the purposes of the Customs transit operation unless :

- they are considered not to be sufficient;
- they are not secure; or
- the Customs proceed to an examination of the goods.

When foreign Customs seals and fastenings have been accepted in a Customs territory, they should be afforded the same legal protection in that territory as national seals and fastenings.”

(See also 1973 Kyoto Convention, Annex E.1 Recommended Practice 26.)

Minimum Customs formalities for means of transport

WCO, Revised Kyoto Convention, General Annex, Chapter 1 Standard 2. “The conditions to be fulfilled and Customs formalities to be accomplished for procedures and practices in this Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible.”

(See also 1973 Kyoto Convention, Annex A.3 Standard 3.)

Temporary importation of means of transport

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Recommended Practice 3. “Means of transport for commercial use, whether loaded or not, should be allowed to be brought temporarily into a Customs territory conditionally relieved from payment of import duties and taxes, provided that such means of transport for commercial use are not used for internal transport in the Customs territory of the country of temporary admission. They must be intended for re-exportation without having undergone any change except normal depreciation due to their use, normal consumption of lubricants and fuel and necessary repairs.”

(See also 1973 Kyoto Convention, Annex A.3 Standard 6.)

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Standard 4. “The Customs shall require security or a temporary admission document for means of transport for commercial use duly registered abroad only when they consider it essential for the purposes of Customs control.”

(See also 1973 Kyoto Convention, Annex A.3 Recommended Practice 7.)

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Standard 5. “Where the Customs fix a time limit for the re-exportation of means of transport for commercial use, they shall take into account all the circumstances of the transport operations intended.”

(See also 1973 Kyoto Convention, Annex A.3 Standard 8.)

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Recommended Practice 6. “At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.”

(See also 1973 Kyoto Convention, Annex A.3 Recommended Practice 9.)

Duty on destroyed or damaged means of transport

WCO, Revised Kyoto Convention, General Annex, Chapter 3 Standard 44. “When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offence has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:

- when at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;
- when such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;
- on shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.

Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state.”

(See also 1973 Kyoto Convention, Annex A.3 Standard 33.)

No prior authentication of means of transport documents

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Standard 11. "No documents to be produced to or lodged with the Customs in connection with the arrival of means of transport for commercial use shall be required to be legalized, verified, authenticated or previously dealt with by any representatives abroad of the country into which means of transport for commercial use arrive."

(See also 1973 Kyoto Convention, Annex A.3 Standard 25.)

(See also I.28 on the abolition of consular formalities.)

Reduced number of copies of declaration of arrival

WCO, Revised Kyoto Convention, Specific Annex J, Chapter 3 Standard 10. "The Customs shall reduce, as far as possible, the number of copies of the declaration of arrival required to be submitted to them."

(See also 1973 Kyoto Convention, Annex A.3 Standard 21.)

Use of foreign containers in internal traffic

WCO, Customs Convention on Containers, 1972, Article 9. "Contracting Parties shall permit containers granted temporary admission under the terms of the (present) Convention to be used for the carriage of goods in internal traffic, in which case each Contracting Party shall be entitled to impose one or more of the conditions set out in Annex 3.

"(i.e.: (a) the journey shall bring the container by a reasonably direct route to, or nearer to, the place where export cargo is to be loaded or from where the container is to be exported empty;

"(b) the container will be used only once in internal traffic before re-exported.)"

Acceptance of foreign containers for temporary admission

WCO, Customs Convention on Containers, 1972, Article 3

"1. Subject to the conditions laid down in articles 4 to 9, each Contracting Party shall grant temporary admission to containers, whether loaded with goods or not.

"2. Each Contracting Party reserves the right not to grant temporary admission to containers which have been the subject of purchase, hire-purchase, lease or a contract of a similar nature, concluded by a person resident or established in its territory."

Temporary admission for replacement parts for containers

WCO, Customs Convention on Containers, 1972, Article 10. "Temporary admission shall be granted to component parts intended for the repair of temporarily admitted containers."

Temporary admission for accessories and equipment for containers

WCO, Customs Convention on Containers, 1972, Article 11. "The Contracting Parties agree to grant temporary admission to accessories and equipment of temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or imported separately to be re-exported with a container."

Undocumented temporary importation of foreign containers

WCO, Customs Convention on Containers, 1972, Article 6. "... containers temporarily imported under the terms of the present Convention shall be granted temporary admission without the production of Customs

documents being required on their importation and re-exportation and without the furnishing of a form of security."

Acceptance of approved foreign containers

WCO, Revised Kyoto Convention, Specific Annex E, Chapter 1 Standard 10. "When a consignment is conveyed in a transport-unit and Customs sealing is required, the Customs seals shall be affixed to the transport-unit itself provided that the transport-unit is so constructed and equipped that:

- (a) Customs seals can be simply and effectively affixed to it;
- (b) no goods can be removed from or introduced into the sealed part of the transport-unit without leaving visible traces of tampering or without breaking the Customs seal;
- (c) it contains no concealed spaces where goods may be hidden; and
- (d) all spaces capable of holding goods are readily accessible for Customs inspection.

The Customs shall decide whether transport-units are secure for the purposes of Customs transit."

WCO, Revised Kyoto Convention, Guidelines to Specific Annex E, Chapter 1, Part 6.4. on Fitting out and approval of the transport-unit. “..There are several international agreements that contain details of transport-units approved for the transport of goods under Customs seal. Some of these international agreements are the Customs Convention on Containers, done at Geneva on 18 May 1956, the Customs Convention on the international transport of goods under cover of TIR carnets, done at Geneva on 15 January 1959, the Unité technique des chemins de fer, concluded at Berne in May 1886 (1960 edition), and the Regulations of the Central Rhine Commission concerning the sealing of Rhine navigation vessels (21 November 1963 version).

Transport-units may also be approved in the future pursuant to new agreements that could supersede those listed above. Furthermore, additional arrangements for approval can be made by administrations through bilateral or multilateral agreement for transport-units to be used for Customs transit solely within their territories, such as containers having an internal volume of less than one-cubic metre but which in all other respects qualify for Customs treatment as containers.”

(See also 1973 Kyoto Convention, Annex E.1 Note to Standard 21.)

Published May 2004

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