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

Note by the UNCTAD secretariat

Executive Summary

An evolving “new geography of trade” has resulted in new requirements regarding transport and trade facilitation. These were recognized in the São Paulo Consensus adopted at UNCTAD XI, which raised a number of issues in the area of transport and trade facilitation that will have a lasting impact on the development prospects of developing countries. In particular, emphasis will need to be put on specific needs in terms of providing access to global transport networks for LDCs and landlocked developing countries. Also to be highlighted are requirements resulting from recently introduced transport security measures, as well as the international regulation of liability arising from the carriage of goods. The agreement at WTO to negotiate trade facilitation implies further challenges for developing countries, which will need to prepare for the negotiations as well as for the implementation of trade facilitation measures. The UNCTAD secretariat will contribute to consensus building on the above-mentioned issues and cooperate with all relevant stakeholders in finding the most suitable instruments for developing countries to improve their effective participation in global trade through the development of efficient transport and trade facilitation solutions.

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I. INTRODUCTION

1. The São Paulo Consensus raised a number of issues in the area of transport and trade facilitation that will have a lasting impact on the development prospects of developing countries. It analyses and enumerates specific actions that UNCTAD will undertake in this area to assist developing countries in dealing with policy issues related to building productive capacity and assuring development gains from trade.¹
2. Thus, the Consensus recalls that “the development of efficient transport, communications and logistics infrastructure and services requires priority attention in developing countries” and that “particular attention is needed to mitigate challenges posed by locational handicaps of landlocked countries and small island developing States”. Regarding trade facilitation, it points out the need “to implement measures, where relevant, on the basis of internationally agreed rules, standards and recommendations” and stresses that: “Coordinated trade facilitation measures are becoming increasingly important for enhancing efficiency, reducing transaction costs and maintaining supply capacities, particularly in the light of current security considerations.” It adds: “When putting in place the procedures and equipment required to comply with security regulations, countries should combine them with trade facilitation measures to provide both a more secure and a more efficient trade environment for all international partners” (TD/412, para. 47).
3. The Consensus makes reference to the fact that the work on transport law “within the framework of the United Nations Commission on International Trade Law (UNCITRAL) needs to continue to take into account the concerns and interests of developing countries”. On the issues related to assuring development gains from trade, it also states: “Developing countries should continue to be provided with increased financial and technical assistance to continue their efforts at removing procedural and institutional bottlenecks to reduce transaction costs” (TD/412, para. 93). UNCTAD was called upon to undertake research and analysis with a view to assisting developing countries to establish an appropriate framework for policy action in the area of transport and trade facilitation, to promote the exchange of experiences on new developments and to follow current and emerging developments on security arrangements impacting on developing countries (TD/412, para. 59).
4. Based on the UNCTAD XI assessment and bearing in mind the most recent developments in transport and trade facilitation, the present document analyses some of the most pertinent issues affecting developing countries in this field. It points to transport policies aimed at strengthening developing countries’ productive and supply capacities.
5. In this context, in its first part, the document looks at issues of connectivity that are at the centre of the emerging discussion on the “new trade geography”. This is an area in which trade facilitation and transport efficiency play a crucial role. Another area of growing importance for developing countries is that of facilitating transit transport. The integration of landlocked countries into the world economy is dependent on the design and implementation of transit arrangements that provide cost-effective solutions to the problems of being landlocked, that speed up cargo flows and that entail harmonious development of both landlocked and transit developing countries. The document also briefly raises recent developments in the area of transport security, as well as progress in the development of a new international instrument for transport law.
6. The second chapter of the document deals with emerging issues in the area of trade facilitation. These issues have moved to the forefront of discussions following the adoption of the July package of the WTO, and they relate to negotiations on articles V, VIII and X of GATT.

¹ See the São Paulo Consensus and the Spirit of São Paulo (TD/412) http://www.unctad.org/en/docs/td412_en.pdf.

7. In discussing the way forward, the document deals with steps to be taken in the future on the above-mentioned issues to continue to develop suitable instruments for developing countries to improve their effective participation in global trade through the development of efficient transport and trade facilitation solutions tailored to their requirements.

II. RECENT DEVELOPMENTS IN THE AREA OF TRANSPORT

A new geography of trade and transport

8. In recent years, changing trade patterns have led to an evolving “new geography of trade”, which implies that the participation of developing countries in world trade has changed as a result of the growth of their merchandise exports and also the expansion of South-South and intra-regional trade. In particular, during the last two decades, the share of manufactured goods in developing countries’ total exports has grown from 20 per cent to 70 per cent. Such trade in manufactured goods includes a growing proportion of intra-company trade and trade in unfinished goods within global production processes, all of which increasingly require door-to-door transport services and “just in time” deliveries.

9. The emergence of this new trade geography would not have been possible without global shipping networks, port reforms and investment in transport infrastructure, as well as trade and transport facilitation. South-South trade in particular has benefited from the establishment of global shipping networks, which connect North-South and East-West shipping routes via transshipment ports. As a result, even countries that are not connected to each other through direct regular shipping services can now count on regular, albeit indirect, maritime transport connections.

10. In addition, several developing countries have today become “nodes” of international transport networks. This position within global networks generates direct income through the provision of port and logistics services. It also helps to improve the competitiveness of national and regional exports through the availability of additional international transport services. Liner shipping, and also air and land transport services from and to third countries, connect in these so-called “hub” seaports and airports, allowing local importers and exporters to benefit from additional services and economies of scale that would not have been available to them without this position as an international transport centre.

11. High trade volumes and transport efficiency mutually benefit each other. Lower transport costs promote trade, and at the same time more trade also leads to lower transport costs. Larger ships and high fixed costs in port operations are among the main reasons for economies of scale in transport costs. Hence, there exists a potentially virtual cycle, where less costly transport services lead to more trade, which in turn helps to further reduce transport costs.²

12. Whereas international transport costs are declining, and distance as a transport cost factor has seen its importance decreased, regional trade has been growing faster than interregional trade. Intra-Asian container traffic, for example, is growing faster than global container traffic, and Intra-European or intra-MERCOSUR trade has been increasing at a higher rate than trade between these two regional blocks. This trend may come as a surprise in view of the globalization of trade, yet it actually forms part of the same development towards a new geography of trade, where better transport services lead to more trade, and more trade in turn leads to better transport services, especially among countries within the same geographical region.

² UNCTAD: *Transport Newsletter*, third quarter 2004, Geneva, 2004 – http://www.unctad.org/en/docs/websdtetlb20043_en.pdf.

13. Intraregional trade growth may be initiated by lower intraregional tariffs or other causes, but transport costs and options play an important role in this trend too. As shown above, due to larger traded volumes, unit transport costs decline (economies of scale) and frequency and speed increase. Also, on a regional level, more options (road, rail, river) may become available due to regional policies and investment, or even common transport markets. All this reduces delivery times, allows for more just-in-time delivery, and thus increases the demand for goods and components from neighbouring countries. In other words, more intraregional trade leads to better and less expensive regional transport services, which in turn again lead to more intraregional trade.

14. It has to be noted, however, that not all developing regions are experiencing growing intraregional trade and, instead, still depend mostly on trade and transport services with the North. Also, in spite of the emergence and growth of global and regional transport networks, in many developing countries there still exist large areas that are not effectively connected to these networks. Foreign direct investments and export-led growth will not reach rural areas or cities with inadequate transport infrastructure and services.

15. In spite of general improvements during the last decades, on average developing countries are still paying 70 per cent more for the international transport of their imports than developed countries.³ The averages for developing countries in Africa and Oceania are even higher, reaching more than double those of developed countries, and for some landlocked LDCs the average can be up to six times as high. Apart from having to pay excessive transport costs, many of the poorest countries also suffer from low transport connectivity resulting from low frequencies, unreliable services and long transit times.

16. In fact, geographical distance may be different from economic distance. Transport connections between East and West Africa, for example, or between the east coast and the west coast of South America, are still very poor, leading to great economic distance between them. Most developing regions are still better connected to the industrialized countries than to other developing regions.

17. In conclusion, while some developing countries are benefiting from the above-mentioned “new geography of trade”, others are still confronted with insufficient access to world markets. International connectivity and the costs of transport and logistics services are emerging as increasingly relevant aspects of international trade. Whereas duties and import quotas have been decreasing, the share of international transport costs has actually risen in recent years, now surpassing the value of import duties on most exports from developing countries.

International connectivity and transit trade

18. By far the largest share of international trade continues to be carried by maritime transport, and an ever-growing proportion of the latter is being containerized and traded by way of regular liner shipping companies. Access to frequent, reliable and low-cost regular liner shipping services largely determines a country's connectivity and thus also its competitiveness in global markets.

19. Regarding access to such liner shipping services, there exist huge differences between the best and least connected countries. Excluding landlocked countries, LDCs on average are being assigned only one ninth of the liner shipping capacity of the average non-LDC, and only 1.3 per cent of the capacity of the best-connected countries.⁴ The assignment of smaller and fewer ships, lower frequencies, and inferior service levels are the result as well as the cause of lower trade

³ UNCTAD: *Review of Maritime Transport*, New York and Geneva, 2003 – http://www.unctad.org/en/docs/rmt2003&c1_en.pdf

⁴ UNCTAD calculations, based on data from *Containerization International*, www.ci-online.co.uk, September 2004.

volumes. They are also closely related to a country's inadequate national transport infrastructure and low levels of infrastructure and service quality in the country's ports.

20. The differences in international maritime connectivity are exacerbated for landlocked developing countries. Many of them are LDCs, and their overseas trade has to move through ports of neighbouring transit countries, which are themselves often developing countries or even LDCs, with low levels of connectivity to international liner shipping networks and poor port services.

21. Inadequate transit transport arrangements to and from seaports, which reduce speed, reliability and cargo tracking possibilities, thus become an additional impediment to landlocked countries' competitiveness. Today's trade environment requires ever more sophisticated transport and logistics services in respect of security, speed, reliability, information on cargo tracking, and other aspects of a quality service. Low maritime connectivity, combined with low levels of connectivity between seaports and the landlocked countries, make it practically impossible for shippers in many landlocked LDCs to make use of such quality services.

22. Dependence on transit trade should not be confused with remoteness or distance from the sea. Many large countries have regions or cities that are further away from the sea than most capitals of landlocked countries. Of course, distance has a measurable impact on transport costs, yet this is not related to the specific problems associated with transit transport.

23. The specific reasons for higher transport costs and longer delivery times for imports and exports from and to landlocked LDCs vary from place to place. They result from costs and procedures incurred at the border, and also from discrepancies in the trade and transport environment of both the landlocked and the transit countries. The most common critical issues are related to the following areas:⁵

- Different safety, environmental and other standards and regulations;
- Inadequate transport infrastructure;
- Insufficient use of ICTs;
- Visa and other requirements for drivers or crew;
- Protective practices of national transport operators;
- Risks and insurance;
- Security checkpoints;
- Lack of coordination;
- Inadequate transport documentation;
- Inadequate legal framework;
- Absence of a national Customs transit system;
- Border crossing formalities and delays;
- Transit fees.

24. Most of these specific obstacles tend to be interlinked and need to be tackled through a cooperative effort between the private and the public sector, as well as shippers and service providers from all countries concerned. The focus of the cooperative effort should be put primarily on transit transport corridor operations. Both landlocked and transit countries can benefit mutually from increased trade flows along transit transport corridors.

25. In many cases, simple practical and corridor-specific arrangements can be found that lead to win-win situations, where both the transit and the landlocked country benefit from synergies and

⁵ See "Design and implementation of transit transport arrangements", UNCTAD, TD/B/COM.3/EM.22/2, Geneva, 2004 – http://www.unctad.org/en/docs/c3em22d2_en.pdf

economies of scale in investment and transport operations. This allows the establishment of fair and cooperative conditions leading to a reduction of transit costs.

Transport security

26. The International Maritime Organization (IMO), in December 2002, adopted a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS) including the new International Ship and Port Facility Security (ISPS) Code. The Code came into force as of 1 July 2004 and its implementation is mandatory for all 148 States parties to the SOLAS Convention.⁶

27. In his speech on World Maritime Day 2004, the Secretary-General of IMO indicated: “Figures made available by IMO regularly to keep the maritime community updated on progress being made indicated that more than 86 per cent of ships and 69 per cent of port facilities had their security plans approved by 1 July 2004.”⁷ He added that “although certification is undoubtedly important, what really counts is the work that has been done on the ground: security officers appointed on ships, in companies and port facilities; training undertaken; security plans drawn up; awareness raised; and vigilance heightened.” In August 2004, IMO reported that 89.5 per cent of over 9,000 declared port facilities had had their Port Facility Security Plans approved, which was already a significant improvement from the 69 per cent reported on 1 July.⁸

28. In spite of the generally positive trend, progress in implementation has been less rapid in some regions. Almost half of the 30 countries in Africa to which the Code applies, for example, are not reporting approved port security measures to IMO. Countries in the former Soviet Union and Eastern Europe have also been relatively slow to implement the measures.⁹

29. At the European Union level, concerted efforts have been made towards ensuring a comprehensive security regime for the entire maritime logistics chain. They include the recent EU Regulation on Enhancing Ship and Port Facility Security,¹⁰ as well as a draft Directive on Enhancing Port Security.¹¹ In a publication issued in May 2004, the European Conference of Ministers of Transport suggests that: “Countries may consider extending coverage of the ISPS, now limited to port facilities and terminals, to the entire port as well as to adjacent areas where these have direct or indirect impact on the port (e.g., rail facilities, warehouses, etc.)”.¹²

30. Some issues considered in the report of the European Conference of Ministers of Transport (ECMT) are of particular relevance for developing countries. For instance, it is felt that the weak stages of the international trade supply chain are related to inland carriers and freight forwarders in the initial and final links of the chain. This directly affects countries where security measures would have to be designed and implemented from scratch. The study also notes that “there is no single system governing the international movement of containers” and that security requires “a comprehensive inter-modal framework integrating measures across the entire container transport chain.” It concludes that “whereas such a framework may exist ... covering ports and maritime

⁶ For information on various security measures see “Container security: Major initiatives and related international developments”; report by the UNCTAD secretariat, UNCTAD/SDTE/TLB/2004/1.

⁷ “IMO 2004: Focus on Maritime Security”, IMO, London, J/8670

⁸ IMO press briefing 6 August 2004, www.imo.org

⁹ Ibid.

¹⁰ Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on Enhancing Ship and Port Facility Security.

¹¹ Draft directive of the European Parliament and of the Council on Enhancing Port Security, adopted by the Commission on 10 February 2004, document 2004/0031 (COD).

¹² “Transport Security - Report on Container Transport Security Across Modes”, European Conference of Ministers of Transport, CEMT/CM (2004)22, Paris, 14 May 2004.

transport,” none of the existing or emerging initiatives¹³ addresses the container transport chain in its entirety.

31. Consequently, the present picture of multiple security-related rules and regulations adopted at national, regional and international levels is likely to become more complex. Given the lack of necessary structures and financial and managerial means in many developing countries, these new developments require close attention and further analysis so as to facilitate compliance.

Transport law

32. In the field of transport law, an important issue of continuing relevance is the international regulation of liability arising from the carriage of goods. In this context, ongoing work conducted under the auspices of UNCITRAL towards the development of a new international instrument is of particular interest.

33. It should be recalled that goods are increasingly transported by container, involving multimodal transport. At the global level, door-to-door transport often involves carriage by sea, as the large and increasing capacity of modern container vessels makes transportation of great quantities over long distances possible. Figures and forecasts on world port container throughput indicate that containerized transport has grown exponentially and that this trend is expected to continue.¹⁴ While the main providers of multimodal transport services at the global level are freight forwarders, increasingly the large liner shipping companies, which dominate much of ocean transport, are expanding their services to arrange for transportation of goods door-to-door. Both liner companies and freight forwarders acting as carriers tend to contract on standard terms, typically contained in the transport document issued by the carrier and, quite naturally, potentially favourable to the carrier. Such “contracts of adhesion” are prone to abuse by the issuing party and therefore raise public policy concerns in a field where freedom of contract normally reigns. Indeed, since the early part of the twentieth century, there has been mandatory uniform international law to ensure minimum levels of liability on the part of the sea-carrier for the protection of consignees, and particularly of third parties to the contract of carriage.

34. The Hague Rules, which introduced mandatory minimum levels of liability in exchange for certain exceptions and limitations to liability, were adopted in 1924 and gained widespread acceptance over time. However, attempts at modernizing them were only partly successful. Some States adopted the 1968 protocol to the Hague Rules and apply the so-called Hague -Visby Rules, but others continued to adhere to the original Hague Rules. In 1978 a new convention was adopted under the auspices of the UN, partly at the behest of developing countries, which considered the Hague Rules system unduly advantageous to carriers. The so-called Hamburg Rules were intended as a modern regime to replace the Hague and Visby Rules, but failed to gain universal acceptance. Although the Convention is in force, none of the major shipping nations has ratified it. As a result, three different maritime liability regimes, namely the Hague, Hague -Visby and Hamburg Rules, co-exist internationally.

35. At the same time, the significant rise of containerization and the consequent change in international transport patterns have increased the need for appropriate modern regulation. In the absence of an international regime that is both widely acceptable and adequately addresses the challenges of modern transport, a number of countries have opted for unilateral measures. Thus,

¹³ Such initiatives include, among others, the C-TPAT (Customs – Trade Partnership against Terrorism - for US trade), the BASC (Business Anti-Smuggling Coalition - for certain large shippers), the UN-ECE (under development for freight forwarders and shippers), the WCO Advanced Cargo Information guidelines and container stuffing and seal management guidelines, and the proposed EU Freight Security Directive.

¹⁴ Cf. *Multimodal transport: The feasibility of a international legal instrument*, UNCTAD/SDTE/TLB/2003/1, p.4 http://www.unctad.org/en/docs/sdtetlb20031_en.pdf

there has been an increasing proliferation of national regimes, and there is at present little international uniformity in the law relating to the carriage of goods by sea.

36. In the field of multimodal transportation, which is becoming increasingly important, the situation is much worse, as no uniform international liability regime is in force to date.¹⁵ Liability continues to be governed by existing unimodal conventions (designed for carriage of goods by sea, road, rail or air), diverse regional and national laws, and contractual agreements.¹⁶ This, of course gives rise to concern for all involved in international trade and transport. A fragmented and complex legal framework creates uncertainty, which in turn creates transaction costs, as it gives rise to legal and evidentiary enquiries, costly litigation and rising insurance costs. For developing countries, however, the concern is much greater: without a predictable legal framework, equitable access to markets and participation in international trade is much harder for small or medium -size players.

37. It is against this background that the work of UNCITRAL on the preparation of a new international instrument is of major importance. In 2002, an UNCITRAL Working Group on Transport Law commenced its deliberations on a Draft Instrument on Transport Law (document A/CN.9/WG.III/WP.21).¹⁷ The proposed instrument – now called Draft Instrument on the Carriage of Goods [Wholly or Partly] [by Sea]¹⁸ – focuses to a considerable extent on matters of liability, i.e. on the regulation of liability arising in connection with the carriage of goods. This is explained by the fact that the Draft Instrument is intended to provide a modern successor to existing international liability regimes in the field of carriage of goods by sea (i.e. the Hague, Hague-Visby and Hamburg Rules). It is important to note that, however, it is proposed that the Draft Instrument should also apply to all multimodal contracts that include a sea leg. As such, the proposed Draft Instrument represents an ambitious attempt to provide uniform regulation to govern not only contracts for the carriage of goods by sea, but also transport contracts generally. While uniform transport regulation may in principle be desirable, it appears questionable whether the approach taken, namely the extension of a maritime regime to the whole transport chain, represents the most appropriate solution.¹⁹

38. In terms of substance, text and structure, the Draft Instrument differs from the established maritime liability regimes. This gives some rise to concern, in particular as the proposed liability rules appear unduly complex, while at the same time there appears to be a new approach to risk allocation between cargo and carrier interests with a shift in favour of carriers. For developing countries in particular, it is therefore imperative that they be actively involved in the negotiations to ensure that their legitimate interests will, as much as is possible, be reflected in any potential future convention.

39. In order to assist developing countries in the ongoing work at UNCITRAL,²⁰ the UNCTAD secretariat has provided substantive written contributions to the meetings of the Working Group.²¹ More recently, the secretariat submitted a note,²² which deals with some central issues

¹⁵ The 1980 *UN Convention on International Multimodal Transport of Goods* has not attracted a sufficient number of ratifications to enter into force.

¹⁶ See *Implementation of Multimodal Transport Rules*, UNCTAD/SDTE/TLB/2 and Add.1; *Multimodal Transport: The feasibility of an international legal instrument*, UNCTAD/SDTE/TLB/2003/1, table 1.

¹⁷ For UNCITRAL working documents, see www.uncitral.org (Working Group on Transport Law).

¹⁸ For the latest text of the Draft Instrument, see UNCITRAL docs. A/CN.9/WG.III/WP.32 and WP.36.

¹⁹ See *Multimodal transport: The feasibility of a international legal instrument*, UNCTAD/SDTE/TLB/2003/1 at paras 30-37 and paras. 92-94.

²⁰ See the São Paulo Consensus (TD/412) at para. 107.

http://www.unctad.org/en/docs/td410_en.pdf

²¹ See UNCITRAL document A/CN.9/WG.III/WP.21/Add.1. The commentary has also been published as UNCTAD document UNCTAD/SDTE/TLB/4 - <http://www.unctad.org/en/docs/posdtetlbd4.en.pdf>

arising for consideration by the Working Group at its fourteenth session (Vienna, 29 November – 10 December 2004). The note focuses on two main issues, namely (a) freedom of contract, in particular the question of which contracts may be exempt from the mandatory application of the Draft Instrument, and (b) liability of the carrier for cargo loss, damage and delay.

III. RECENT DEVELOPMENTS IN THE AREA OF TRADE FACILITATION

Issues related to the WTO negotiation process on trade facilitation

40. On 1 August 2004, the General Council of the WTO reaffirmed the Ministerial Declarations and Decisions adopted at Doha and the full commitment of all Members to giving effect to them. In its Decision,²³ commonly referred to as the WTO July Package, trade facilitation is retained as the sole remaining Singapore issue. Paragraph 1(g) stipulates that “the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.” This Annex clarifies issues contained in paragraph 27 of the Doha Ministerial Declaration²⁴ and takes into account some of the major concerns of developing countries, particularly the least developed among them. It recognizes the need for special and differential (S&D) treatment beyond the granting of transition periods, taking into account countries' implementation capacities. Over and above this, the least developed countries (LDCs) will only be required to undertake commitments consistent with their development, needs and capabilities.

41. The Annex goes at length into the issue of the need for technical assistance for developing countries and LDCs. In this context, it also recognizes the technical assistance and capacity building activities of UNCTAD and requests member States to invite international organizations (specifically IMF, OECD, UNCTAD, WCO and the World Bank) to undertake collaborative efforts in the provision of technical assistance.

42. While on previous occasions the issue of support for developing countries was dealt with in relatively abstract terms, Annex D and in particular paragraphs 5 and 6 thereof contain more concrete obligations for donor countries. At the same time, the text accepts that, lacking such assistance and consequently lacking implementation capacity, developing countries may not be required to implement commitments resulting from negotiations. Support and assistance are to be extended during negotiations, as well as in the implementing phase.

Annex D of the July Package: A basis for negotiations on trade facilitation

43. Annex D of the July Package introduces the modalities for negotiations on trade facilitation. In line with paragraph 27 of the Doha Declaration, it clearly focuses the scope of the negotiations on the three GATT 1994 articles, namely Article V on “Freedom of transit”, Article VIII on “Fees and formalities connected with importation and exportation” and Article X on “Publication and administration of trade regulations”. It also highlights the need for “effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues”. It further recognizes that trade facilitation requires a cooperative effort between Customs and other appropriate national administrative authorities. It would therefore appear that trade facilitation measures would need to reflect the complexities of national governmental structures and responsibilities. This approach is relevant not only in the

²² *Carrier Liability and Freedom of Contract under the UNCITRAL Draft Instrument on Carriage of Goods [Wholly or Partly] [by Sea]*, UNCTAD/SDTE/TLB/2004/2

²³ Doha Work Programme, Decision adopted by the General Council on 1 August 2004, document WT/L/579.

²⁴ Declaration of the Fourth Session of the WTO Ministerial Conference in Doha, WT/MIN(01)/DEC/W/1, 14 November 2001.

identification of needs and priorities but also in developing the effective capacity to implement the commitments.

44. Annex D stipulates that “the results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries”, and extends this principle beyond the granting of traditional transition periods for implementing commitments, giving due consideration to the implementation capacities of these countries. In particular, it emphasizes that LDC Members “will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities”.

45. Annex D invites Members “to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries” and to “address the concerns of these countries related to cost implications of proposed measures”, recognizing that the provision of technical assistance and support for capacity building is “vital to enable them to fully participate in and benefit from the negotiations”. In this regard, the Annex commits developed country Members to provide support and assistance to help developing economies implement the commitments resulting from the negotiations. It further recognizes that “negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members” and that “in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required”. Regarding the provision of the necessary support and assistance, the Annex sets out clearly that “the commitments by developed countries to provide such support are not open-ended”.

46. Finally, the Annex addresses the need to “review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations”.

Specific proposals tabled by some WTO Members

47. The extensive work of the Council for Trade in Goods (CTG) in the area of trade facilitation, particularly after the Doha Ministerial Conference, has contributed to building a common understanding of possible ways to further expedite the movement, release and clearance of goods, including goods in transit. Various Members (particularly the proponents of WTO rules on trade facilitation) have tabled specific measures for each of the three articles.

48. These proposals have been compiled in a document prepared by the WTO secretariat²⁵ that provides an overview of how trade facilitation could be advanced through the development of appropriate WTO commitments. These measures could serve as a basis for an appropriate set of WTO commitments on trade facilitation. The list of measures presented below is in no way intended to prejudge the outcome of any negotiation that may be undertaken;

49. The proposals for clarification and improvement of articles V, VIII and X tabled in the various meetings of the WTO Council on Trade in Goods have focussed on the following issues:

- (a) Application of WTO/GATT core principles to official trade procedures: transparency (availability of information, predictability, establishment of local inquiry point, due process); non-discrimination between consignments and traders based on the application of objective criteria and controls; and the principle of “proportionality”, i.e. that control measures be both for legitimate purposes and as non-trade-restrictive as possible;

²⁵ “Review, clarification and improvement of GATT articles V, VIII and X proposals made by delegations”, WTO document G/C/W/434, Geneva, 15 November 2002. <http://docsonline.wto.org/DDFDocuments/t/g/c/w434.doc>

- (b) Adhesion and adaptation to international standards to simplify trade transactions;²⁶
- (c) Modernization and simplification of Customs and other government agency procedures. This third element covers, *inter alia* :
- (i) Simplification and reduction of trade data and documentation requirements, and their alignment with international standards;
 - (ii) Introduction of Customs automation systems (e.g. the Automated System for Customs Data, ASYCUDA);
 - (iii) Reform of customs legislation and procedures. New customs techniques such as risk assessment, post-entry audit, and simplified procedures for authorized traders with a good track record of compliance; in some cases, improved implementation of the WTO Customs Valuation Agreement. These measures are often introduced in tandem with tariff restructuring or tax reform;
 - (iv) A “single window”: establishment of the principle that submission of data or other information requirements either at export or import be one-time-only and to a single agency (normally Customs or a trade department), which will then ensure onward transmission of data to other relevant agencies;
 - (v) Streamlining of customs procedures for low -value shipments or express shipments;
 - (vi) Where automated systems are in place, introduction of remote filing and local clearance facilities: introduction by individual administrations of systems permitting the filing of customs and other documents at a location different from the port of export or arrival of the goods; electronic payment of tariffs and duties.

Needs and priorities

50. Specific proposals on needs and priorities have not been made despite the fact that the issue was an integral part of the agenda of meetings of the CTG process. This reflects the difficulties of the identification process. How could countries identify their trade facilitation needs and priorities and assess their cost implications? Needs and priorities identification can probably not take place unless technical assistance and capacity building are considered simultaneously. The process depends on the actual capacity of the countries to estimate their own requirements, as well as on the capacity of the donor community to provide financial and technical assistance in a timely manner.²⁷

²⁶ A large number of international standards and instruments of trade facilitation exist and are applied unevenly by different countries. These include:

- WCO conventions (revised Kyoto convention on the simplification and harmonisation of customs procedures, Istanbul convention on temporary admission, harmonised system convention, other conventions and recommendations on temporary importation of packing, professional equipment, scientific equipment, pedagogical material, and goods for display or use at exhibitions or fairs).
- UN standards, e.g. the UN layout key for trade documents, the 28 trade recommendations of UN-ECE/CEFACT, UN EDIFACT rules for EDI and concerning the use of codes for the representation of data elements, UN-ECOSOC Council recommendation on facilitation measures related to international trade procedures).
- UNCTAD ICT -based tools such as ASYCUDA (computer software which supports customs reform and modernisation) and ACIS (logistics software that facilitates the control of cargo movements) as well as the Columbus declaration of UNCTAD.
- IMO (Maritime) and ICAO (Civil Aviation) conventions.
- ICC (International Chamber of Commerce) documents.

²⁷ This situation was set out clearly in a document submitted by Canada in early 2003 where possible linkages between trade facilitation principles were analysed (“Measures, potential benefits and trade-related technical assistance and capacity-building – A contribution from Canada” (G/C/W/448), 10 March 2003).

Specific contributions to the WTO negotiation process

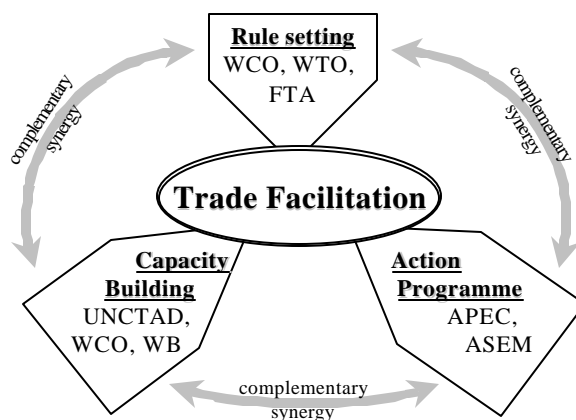
51. UNCTAD has participated regularly in the trade facilitation work of the WTO Council for Trade in Goods and focused on the provision of capacity building to assist countries in a better appreciation of the mandate in paragraph 27 of the Doha Declaration. Following a request from the UN Executive Board High-Level Committee on Programmes (HLCP), UNCTAD was co-founder of a collaborative network of multilateral agencies working on trade facilitation, which has met six times since April 2001. It is also a Core Partner of the Global Facilitation Partnership (GFP).²⁸

52. UNCTAD's own work on trade facilitation in the context of Doha covers technical assistance and knowledge dissemination activities on current implementation and development issues related to trade facilitation and the potential needs and priorities of developing countries. These activities have taken place in Geneva and in Europe, but also in East and West Africa, in Central America, and in West and South Asia.

53. Furthermore, in line with the concept of “enhanced technical assistance and capacity building”, UNCTAD has made a proposal, initially called Clear-Trade²⁹ (standing for “Community of Like-Minded Enterprises and Administrations to Release Trade”), aimed at strengthening cooperation among the different parties involved in trade facilitation at local, national, regional and global levels.

54. In June 2003, Japan presented a proposal³⁰ on the necessary architecture of international cooperation on trade facilitation, as shown in figure 1.

Figure 1: Proposed architecture of international cooperation on trade facilitation.



Source: “International Architecture on Trade Facilitation – The WTO and International Organizations and Framework”, WTO, G/C/W465, Geneva, 6 June 2003

55. Later on, other agencies including the World Bank, UNECE, OECD and WCO supported – in different ways – a cooperation mechanism aimed at providing enhanced technical assistance and capacity building that would take advantage of the specialized expertise and competence of the different organizations.

²⁸ For further information, see www.GFPTT.org

²⁹ This proposal, introduced during the UNCTAD Expert Meeting on Trade Facilitation held in November 2002, suggests possible schemes of cooperation towards coherent, comprehensive and complementary implementation of technical assistance activities. See document TD/B/COM.3/EM.17/2, para. 84.

³⁰ See G/C/W465, 6 June 2003: “International Architecture on Trade Facilitation – The WTO and International Organizations and Framework”.

IV. THE WAY FORWARD

56. This document deals with topics that have emerged as major challenges in the field of efficient transport and trade facilitation and, which, in the near future may have a significant influence on trade and development perspectives of developing countries. The question of connectivity will decisively influence the potential and scope of a new geography of trade and a consequent restructuring of trade flows.

57. It has to be noted, however, that the potential of new trade structures has not been fully realized yet. Not all developing regions are experiencing growing intra-regional or South-South trade, and countries still depend nearly exclusively on trade and transport services with the North. Also, in spite of the emergence and growth of global and regional transport networks, in many developing countries there still exist large areas that are not effectively connected to these networks. It is necessary to promote and support design and implementation of international and domestic policy measures aimed at improving connectivity through the development of adequate transport services. This is also a recognition of the fact that the costs of transport and logistics services are emerging as increasingly relevant aspects of international trade. Whereas duties and import quotas have been decreasing, the incidence of international transport costs has actually risen in recent years, now surpassing the value of import duties on most exports from developing countries.

58. Landlocked developing countries are confronted with significant constraints that affect global market access for their international trade. As a consequence, they tend to engage in less foreign trade, receive less foreign direct investment, and experience lower economic growth. The specific constraints faced by transit trade are not only related to Customs issues such as border crossings but also entail having to comply with different “sets” of trade and transport conditions in the transit country and the landlocked country. These conditions are based on laws and regulations, market access and commercial practices, infrastructure, and technologies that affect transport services or cargoes in transit. Regional integration processes need to consider solutions tailored to establish common international environments for trade and transport along transit networks. Such environments would foster regional development along transit corridors and reduce the transit costs of developing landlocked countries.

59. These solutions for the design and implementation of transit transport arrangements can best be devised through cooperation between landlocked and transit countries. To be most effective, cooperation will have to be promoted in parallel at several levels: it should bring together private and public sectors within each country; and it will have to cross national boundaries and involve all stakeholders along a given transit corridor.

60. Several recent developments concerning information technologies, multimodal transport, transport security, and trade-facilitation-related negotiations at the WTO may all have a direct and considerable impact on the efficiency of transit operations. The dynamic nature of these developments means that they will have to be closely monitored by transport providers, shippers, Governments and international organizations so as to keep transit corridor arrangements active and up to date. Working together, all parties need to focus on institutional, legal, administrative, commercial, technological and operational solutions to improve the operation of transit transport corridors as part of regional networks and in compliance with international standards and practices.

61. These issues will also need to be tackled more broadly by the international community to provide the necessary support for the active participation of developing countries in multilateral fora where they are addressed. Essential collaborative mechanisms, such as the Global

Facilitation Partnership or the United Nations Trade Facilitation Network, may prove effective, as their coordinated action is directed towards developing countries' needs.

62. The security measures adopted at the international level in the form of the ISPS code of the IMO, which entered into force on 1 July 2004, are probably too young to be properly assessed in terms of their consequences on traffic flows. In the coming months, due attention will have to be given and studies carried out to have a clearer picture of their actual impact on trade of developing countries. While the adoption of security measures in the context of an existing multilateral instrument represents broad support by the international community, their implementation might still require assistance aimed at facilitating compliance by developing countries and particularly the least developed ones among them.

63. The development of a uniform legal regime governing international transportation is of the highest importance for developing countries. Ongoing work in UNCITRAL aimed at the harmonization of liability regimes for maritime transport and related door-to-door operations will affect all international trade and transport partners, including of course developing countries. As this impact will be particularly pronounced for small and medium-size enterprises engaged in foreign trade, it is essential that developing countries, whose trading communities consist largely of SMEs, take a more active stand in these negotiations.

64. Negotiations on trade facilitation started at the WTO in mid-November 2004. The Negotiating Group on Trade Facilitation (NGTF) has taken up its work in accordance with Annex D of the July Package. Negotiations will focus on GATT Articles V on "Freedom of Transit", Article VIII on "Fees and Formalities connected with Importation and Exportation" and Article X on "Publication and Administration of Trade Regulations". The July Package also creates a concrete link between the negotiating process and the provision of technical assistance. This approach is unique in the history of WTO negotiations, as it contains concrete obligations on the part of donor countries to provide the necessary technical assistance and accepts that, lacking such assistance, developing countries may not be required to implement negotiated commitments.

65. Annex D also recognizes technical assistance and capacity building activities of international organizations including UNCTAD and invites international organizations (specifically IMF, OECD, UNCTAD, the World Bank and WCO) to undertake collaborative efforts in the provision of technical assistance.

66. The UNCTAD secretariat is prepared to respond to this invitation by providing assistance on issues within its mandate and competence. This assistance will have to relate primarily to capacity building in support of the negotiating process and to technical assistance in the implementation of negotiated commitments. On the question of capacity building, UNCTAD has already been approached by donors and beneficiaries to contribute to the negotiating process. In the longer term, technical assistance activities relating to the implementation of negotiated commitments could also extend to the modernization and automation of customs regimes and procedures. The newly developed ASYCUDAWorld system combined with coherent Customs reform programmes will provide an important tool in facilitation efforts relating to border-crossing procedures.

67. In order to rationalize the delivery of technical assistance and capacity building in the area of trade facilitation and to respond to the requests of the WTO July package for "collaborative efforts", UNCTAD is actively engaged in promoting cooperative mechanisms that involve both public and private sector institutions. The High-Level Committee on Programmes (HLCP) aims at coordination among UN institutions and related agencies, while the Global Facilitation Partnership (GFP) follows a broader approach to cooperation and involves all stakeholders in the area of trade facilitation. The combination of these institutional arrangements reflects the present

and future need to involve as wide a range of actors as possible in the efforts to support the negotiating process as well as the implementation of the results thereof.

68. These issues, particularly those related to trade facilitation, will continue to play a dominant role in the development process, additionally so in view of the ongoing negotiations at the WTO. Thus, they warrant in-depth analysis by future expert meetings of UNCTAD with a view to determining policies and strategies for maximizing their potential benefits to developing countries.