

UNCTAD Trust Fund for Trade Facilitation Negotiations  
Technical Note 8

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## Freedom of Transit and Regional Transit Arrangements

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### Background

International trade often requires the crossing of goods across and through territory of other States. For landlocked countries and regions, the transit across other States' territories to access international markets and transport services is an essential condition for their integration in the international economy. Therefore, the right to pass through other countries, the use of simplified and harmonized procedures, including provisions for financial Customs guarantees in transit countries, and application of efficient and rapid administrative procedures on traffic in transit, including the use of ITC are particularly important for the economic development of landlocked developing countries.

Freedom of transit as a principle<sup>1</sup> in international law is derived from the access to the Sea for landlocked countries. Goods, means of transports, and persons, should enjoy freedom of transit in order to have access to the Sea. Access to and from the Sea and passage rights across the territories of states have been the subject of various international conferences and several international conventions which form the basis for the principle of freedom of transit; commencing with the Barcelona Statute on freedom of transit (1921), Article V of the GATT 1947, the New York Convention on Transit Trade of Landlocked Countries (1965), and the United Nations Convention on the Law of the Sea (UNCLOS III) (1982).

However, the ability to enjoy freedom of transit is limited by the sovereignty of states over their territory and because of this, the question of the right to transit and the duty of the transit state to allow transit across its territory remains a contentious issue in international law. As such, the texts of the New York Convention and UNCLOS III stipulate that the exercise of the right of free and unrestricted access to the Sea shall in no way infringe the legitimate interests of the transit state. Consequently, it is understood, that whilst enjoying freedom of transit, there is also a right for the transit state to set requirements for granting access or transit rights. Such access and transit rights regulate the terms and modalities of the exercise of this freedom and are in general subject to bi- or multilateral negotiations.

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<sup>1</sup> Principles of law are distinct from rules. It is widely recognised that principles are the higher and more general norms that lay the foundations of and influence other norms, including laws. Laws are explicit and precise laws. The principle of international law, freedom of transit, and the more precise and explicit traffic rights are thus complementary norms regulating transit traffic.

## Implementation Issues

### *Traffic and access rights*

Generally speaking transit traffic rights regulate access to a territory. They are subject to negotiations between states and form part of bi, regional, or multilateral agreement on transit or cross-border transport. Such agreements define the terms and modalities of the transit traffic rights, including quotas and permits, and other technical aspects related to transit operations.

From an operational perspective, a transit operation involves goods, services, operations, vehicles or other means of transport and infrastructure. Transit must therefore comply with various national regulations, including traffic and transport laws, licenses requirements, vehicle safety, environmental laws and immigration.

### *Bilateral, regional and plurilateral agreements*

Numerous bilateral transit and transport agreements have been signed. They generally make reference to existing international practice and rules and contain provisions determining the scope of application of the freedom of transit (e.g. including or not the persons), designating transit routes (limited to certain routes or not), regulating permits/quotas, procedures and documents, visas, driving licences, cross-border cooperation, dispute settlement, technical specifications of vehicles and technical certifications, motor vehicle third-party insurance, customs transit issues, etc.

There is a recent trend in bilateral agreements to include provisions on road safety and security with a view to mitigate the risks of accidents, nuisance to population, and secure financial liability in case of accidents.

In parallel to the bilateral agreements, the trend in the recent years point towards more comprehensive solutions at the regional level with a view to establishing or enhancing integrated and harmonized transit and transport systems in view of supporting regional economic integration. These regional agreements cover some elements such as regional harmonization of Customs transit procedures and documents, regional cooperation between authorities in particular at border posts and regional Customs transit guarantee systems.

Examples of regional agreements include the ASEAN Framework Agreement on the Facilitation of Goods in Transit; the ECO Transit Transport Framework Agreement, the SADC transport protocol and SACU Memorandum of Understanding on Road transportation.

### *Transit corridor arrangements*

A complementary approach to transit agreements which has evolved during recent years is transit corridor and cluster arrangements. Although limited to a certain geographical area, they tend to be inclusive and across-the-board approaches which allow for the development of a good physical infrastructure and harmonized and simple procedures along a transit corridor between several countries, including all stake holders, public and private. The Walvis Bay corridor and the Maputo Corridor are examples of existing cross-border corridor arrangements aiming at increasing cooperation amongst corridor users and service providers.

### *General restrictions of freedom of transit*

It is recognised that based on existing international law, freedom of transit and the freedom of access to the sea can not be absolutely restricted by the transit state. Absolute restrictions are only considered lawful if they are applied on a temporary and exceptional basis – justified by war and civil unrest.

Furthermore, it is possible to restrict access for certain categories of goods on the ground of protection of public health and security (Barcelona Statute) and public moral, plant and animal diseases (New York Convention). Such restrictions on goods in transit may include traffic in weapons and drugs.

Freedom of transit also covers the means of transportation. Whilst some conventions and legal texts exhaustively list means of transports, the GATT Article V don't. It is therefore understood that states can include in the respective bilateral or regional agreements, restrictions on the means of transport enjoying freedom of transit; such as excluding inland waterways. Implicitly, this also means that transit in the GATT context, also extends to modes such as pipelines, gas lines and electricity grids.

## **References and tools available**

### *World Customs Organization (WCO)*

WCO instruments include: The Revised Kyoto Convention of the WCO on the Simplification and Harmonization of Customs Procedures (1999) Special Annex E1, Transit; and the WCO Customs Data Model. See [www.wcoomd.org](http://www.wcoomd.org).

### *UNECE instruments*

Relevant UNECE instruments and standards include: The International Convention on the Harmonisation of Frontier Controls of Goods (see [www.unece.org/trans](http://www.unece.org/trans)); the United Nations Layout Key for Trade Documents (UNLK, ISO 6422, see [www.unece.org/cefact](http://www.unece.org/cefact).); the United Nations Trade Data Elements Directory (UNTDDED, ISO 7372, see [www.unece.org/cefact](http://www.unece.org/cefact)); the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT see [www.unece.org/trade/untddid/welcome.htm](http://www.unece.org/trade/untddid/welcome.htm)); or the UN/CEFACT Single Window Recommendation 33 [www.unece.org/cefact/recommendations/rec\\_index.htm](http://www.unece.org/cefact/recommendations/rec_index.htm).

### *The International Convention on the Harmonisation of Frontier Controls of Goods*

The "Harmonization" Convention aims at facilitating the border crossing of goods by harmonizing and reducing formalities as well as the number and duration of border controls. The Convention establishes border control procedures such as customs controls, medico-sanitary inspections, veterinary inspections, phytosanitary inspections, controls of compliance with technical standards and quality controls. These procedures largely call for national cooperation and coordination of various services as well as for international cooperation between the respective border services. In particular, the Convention foresees joint controls of goods and documents through the provision of shared facilities, same opening hours and same types of services at the same border. Finally, the Convention also promotes the one-stop-shop principle for border controls. See <http://www.unece.org/trans/conventn/harmonie.pdf>

### *TIR Convention*

The TIR Convention stipulates that goods carried under the TIR procedure in approved and sealed road vehicles, or a combination of vehicles and containers, are not subject to Customs examination, unless irregularities are suspected. The Convention reduces the regular requirements of national transit procedures, while avoiding the need for physical inspection during transit, other than checking seals and the external conditions of the load compartment or container. In addition, it dispenses with the need to operate national guarantees and national systems of documentation. See [www.unece.org/trans/bcf/tir/welcome.html](http://www.unece.org/trans/bcf/tir/welcome.html).

### *ASYCUDA*

The Automated System for Customs Data (ASYCUDA) is a computerised Customs management system by UNCTAD which also handles transit. See [www.asycuda.org](http://www.asycuda.org).

### *Almaty Programme of Action*

The first UN General Assembly endorsed programme for landlocked developing countries which identifies specific actions in five priorities: fundamental transit policy issues, infrastructure development and maintenance, international trade and trade facilitation, international support measures, and implementation and review. [www.un.org/ohrls](http://www.un.org/ohrls).

### *SADC*

Southern African Development Community, Protocol on Trade 1996 and subsequent developments see [www.sadc.int](http://www.sadc.int).

### *ASEAN*

Association of Southeast Asian Nations, ASEAN Framework Agreement on the Facilitation of Goods in Transit and further developments see <http://www.aseansec.org>.

### *Community Transit*

Information on community transit issues in Europe can be found on [http://ec.europa.eu/taxation\\_customs/customs/procedural\\_aspects/transit/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/procedural_aspects/transit/index_en.htm)

### *The Global Facilitation Partnership for Transportation and Trade (GFP)*

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See [www.gfptt.org](http://www.gfptt.org).

### *UNCTAD*

Various reports are available via <http://r0.unctad.org/ttl>. See in particular the document "Regional cooperation in transit transport: Solutions for landlocked and transit developing countries", 2007, (TD/B/COM.3/EM.30/2). In order to subscribe to UNCTAD's Transport Newsletter please visit <http://extranet.unctad.org/TransportNews>.

### *Further UNCTAD Technical Notes*

Further Technical Notes are available via <http://www.unctad.org/technicalnotes>.

See in particular:

- Technical Note No. 2 (Disciplines on the levy of fees and charges)
- Technical Note No. 6 (Single national enquiry points)
- Technical Note No. 12 (Risk management for Customs control)
- Technical Note No. 13 (Simplification of trade documentation using international standards)
- Technical Note No. 14 (Border agency coordination)
- Technical Note No. 17 (Bonded Customs Transit)
- Technical Note No. 18 (Multi-Agency Working Group on Trade Facilitation)
- Technical Note No. 21 (ASYCUDA)

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