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Facilitation of international road transport:**Quantitative restrictions imposed on international road transport of goods****Draft convention to align bilateral agreements on international road transport with the mandatory rules of multilateral instruments governing international road traffic in transit****Submitted by the Government of Republic of Turkey*****I. Background**

1. At its 103th session held from 29 to 31 October 2008, the Working Party on Road Transport (SC.1) requested the secretariat "... to compile an abstract of relevant articles from the UN conventions that cover the freedom of transit as well as the facilitation of the international road transport and the list of Contracting Parties thereto" (ECE/TRANS/SC.1/386 para. 38).

2. At its 104th session held from 19 to 21 October 2009), the Working Party on Road Transport decided to pursue its work on the subject state that: "... it was also mentioned that SC.1 was the only appropriate instance to discuss international transit transport and possibly negotiate a multilateral agreement on this subject. ...The Working Party decided to

* In accordance with the programme of work of the Inland Transport Committee for 2012–2013 (ECE/TRANS/2012/9, cluster 3, page 7) The Working Party on Road Transport (SC.1) promotes the development and facilitation of international transport by road — of goods and passengers — by harmonizing and simplifying the rules and requirements to which such transport is subject to. The present document is submitted in conformity with that mandate.

keep this item on the agenda for its next session.” (ECE/TRANS/SC.1/388, para. 60 and 61).

3. Based on this decision of SC.1, the Republic of Turkey drafted the “Draft Convention Aligning Bilateral Agreements on International Road Transport with the Mandatory Rules of Multilateral Instruments Governing International Road Transit” for consideration of SC.1 to work on it.

4. The said Draft Convention (ECE/TRANS/SC1/2010/5) was submitted to 105th session of SC.1, held from 29 September to 1 October 2010, and the Working Party decided to create a group of experts to examine it.

5. In its seventy-third session, the Inland Transport Committee decided to support the continued work of an informal group of experts to explore the issue of “quantitative restrictions imposed on international road transport of goods.”

6. In its 106th session held from 17 to 19 October 2011, the SC.1 decided to hold the first meeting of the informal expert group coinciding with the seventy-fourth session of ITC, on 29 February 2012.

II. Justification

7. In defining the possible content of such an agreement, its drafters have strictly taken into account the document (ECE/TRANS/2009/10) drawn up by the secretariat at the Working Party’s request, which presents three multilateral legal instruments of direct relevance to international road transit, i.e.:

(a) United Nations Convention on the Law of the Sea (Montego Bay Convention) of 10 December 1982;

(b) United Nations Convention on Transit Trade of Land-Locked States (New York Convention) of 8 July 1965;

(c) General Agreement on Tariffs and Trade (GATT) of 1994, as part of the Agreements of the World Trade Organization (WTO).

8. Among these three legal instruments:

The Montego Bay Convention applies to all transport modes used to carry goods into ports, including international road transport. This Convention foresees, in its Article 311, Paragraph 1, that it “... shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958.”

9. Given that except Denmark, Israel and the United States of America, all Contracting Parties to the Geneva Convention have acceded to the Montego Bay Convention, the former no longer applies to international road transit, all the more so since the three above-mentioned States are Contracting Parties to the GATT, whose rules are more extensive and supersede those of the Geneva Convention;

10. Article V of the GATT contains the most extensive provisions regarding international transit, including by road.

11. Except for:

(a) Belarus, Bosnia-Herzegovina, Montenegro and the Russian Federation, the Contracting Parties to the Montego Bay Convention are also Contracting Parties to the GATT. However, all four countries have observer status with WTO and should, in future, become WTO Members, and therefore Parties to the GATT.

(i) Given that the Montego Bay Convention “*does not preclude ... grant of greater facilities*” by a State Party, GATT Article V supersedes the Montego Bay Convention in relations between WTO Members inasmuch as the latter’s freedoms and facilities are less extensive than those foreseen in GATT Article V.

(ii) However, until they do join the WTO, the provisions of the Montego Bay Convention will continue to apply to international road transit in relations between Belarus, Bosnia-Herzegovina, Montenegro and the Russian Federation, as well as to those countries’ relations with other Contracting Parties to the Montego Bay Convention.

(b) Belarus, Kazakhstan, Montenegro, the Russian Federation, Uzbekistan and Serbia, the Contracting Parties to the New York Convention are also Contracting Parties to the GATT. Furthermore, all six countries have observer status with WTO and should, in future, become WTO Members, and therefore Parties to the GATT.

(i) Given that according to its Eighth Principle, the New York Convention raises no obstacle as regards the conclusion of transit agreements, provided that they “... do not establish a regime which is less favourable”, GATT Article V supersedes the provisions of the New York Convention inasmuch as the latter’s freedoms and facilities the latter are less extensive than those foreseen in GATT Article V.

(ii) However, until they do join the WTO, the provisions of the New York Convention will continue to apply to international road transit in relations between Belarus, Kazakhstan, Montenegro, the Russian Federation, Uzbekistan and Serbia, as well as to those countries’ relations with other Contracting Parties to the New York Convention.

12. Of the 56 UNECE member States, 43 have acceded to the GATT, 25 to the New York Convention and 43 to the Montego Bay Convention.

13. Andorra, Azerbaijan, Tajikistan and Turkmenistan are not Parties to any of the above-mentioned legal instruments.

14. Given the above, UNECE member States are members of the international road transit system specified either by the GATT, or by the New York Convention, or by the Montego Bay Convention.

15. The four above countries are not part of any multilateral international road transit system.

16. The issue is to ascertain to what extent UNECE member States already part of a multilateral road transit system are entitled to amend this – under the aegis of UNECE or otherwise – through a bilateral or multilateral agreement concluded between two or more countries (*inter se* agreements).

The appropriate answer to this is as follows:

A. General Agreement on Tariffs and Trade (GATT) 1994

17. The Agreement Establishing the World Trade Organization foresees in its Article II.2 that:

“The agreements and associated legal instruments included in Annexes 1 [including the GATT], 2 and 3 ... are integral parts of this Agreement, binding on all Members.”

18. In other words, the Agreement establishing the WTO prohibits member States from amending the instrument listed in its Article II.2, including the GATT.

19. To allow one or more WTO Members to depart from the GATT, the circumstances for the waiver have to be exceptional and the decision to waive an obligation imposed by these instruments must be approved by three quarters of WTO Members.

20. Furthermore, any such decision by the Members:

“... shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.”

21. The only exceptions to the rule arise from Article XXIV of GATT 1994, which states that:

“their provisions shall not be construed to prevent advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic, or the establishment of customs unions and free-trade areas, provided that the regulations adopted do not restrict the freedoms of third countries.”

22. Similarly, exceptional temporary circumstances allow the adoption of measures waiving the provisions of the GATT 1994, provided that they are necessary, in particular to protect public morals or public health (Articles XX and XXI).

23. Apart from the above, the provisions of the GATT 1994 must imperatively be observed by member States, and bilateral/multilateral agreements on road transit must compulsorily be in line with these provisions.

B. New York Convention

24. The New York Convention does not prohibit the conclusion of *inter se* agreements, provided that they introduce a more favourable transit system than that which it foresees. In other words, its provisions are mandatory for all signatory countries in all other cases.

25. Exceptions to this Convention are only allowed in case of emergencies endangering a Contracting State's political existence or security, or in time of war (Articles 12 and 13). However, even in such emergencies, the principle of the freedom of transit shall be observed to the utmost possible extent.

C. Montego Bay Convention

26. No reservations or exceptions may be made to this Convention unless expressly permitted. As observed above, it does not prohibit *inter se* agreements provided that they grant more extensive freedoms than those arising from the Convention.

27. Contrary to the countries belonging to an international transit system mentioned in the previous paragraph, the four countries (Andorra, Azerbaijan, Tajikistan and Turkmenistan) which are not parties to any of the above-mentioned legal instruments are free to conclude agreements between themselves and are not subject to the mandatory provisions of the transit systems in question.

28. The same applies in relations between these four countries and the rest of the world. As they are not bound by any common instrument for international transit, they are

perfectly free to agree rules for international transit, including by road, either bilaterally or multilaterally.

29. However, as UNECE members wishing to develop relations in the fields of trade and international road transport, it is in these countries' interest to base any bilateral agreements with other countries on applicable provisions governing international road transit, in particular those included in the Consolidated Resolution on the Facilitation of Road Transport (R.E.4), drawn up under the aegis of the UNECE.

30. According to common practice since the end of World War II, the territories of UNECE countries are covered by numerous bilateral and sometimes multilateral agreements on road transport. In principle, all such agreements also include provisions governing international road transit.

31. As a rule, one observes that these agreements often clash with the above-mentioned multilateral agreements on transit, and that they are generally more restrictive than the above-listed conventions.

32. Indeed, regarding transit, bilateral agreements lag behind the progress made in the framework of the above-mentioned conventions.

33. Such dualism is contrary to international law. Indeed, whenever Contracting Parties have accepted the obligation of freedom of transit and other freedoms in the framework of the above-mentioned multilateral conventions, this obligation cannot be ignored but should apply in the framework of bilateral agreements, all the more so since these conventions are mandatory for those having acceded to them.

34. Countries, Contracting Parties to the above-mentioned multilateral conventions, are increasingly aware of their rights arising from them, and of the fact that these rights are contradicted, or even infringed in bilateral relations with other countries, although the latter are parties to the same conventions.

35. No longer able to tolerate such a situation, these countries – which are often strongly dependent on transit – may apply to dispute settlement bodies so as to reassert their rights as foreseen under the multilateral conventions in question.

36. Thus, in the framework of a procedure foreseen by the WTO, the Panel - the first instance to settle disputes between WTO Members – ruled, at Panama's request (WTO document WT/DS366/R of 27 April 2009) that, in relation to Panama, Colombia had breached the freedom of transit foreseen by GATT Article V and imposed on the latter an obligation to restore it. In an incidental ruling, Colombia was granted a deadline until February 2010 to align its national regulations with the provisions of GATT Article V.

37. To date, UNECE member States have not submitted to the bodies foreseen by multilateral conventions on international transit any of their problems regarding breach of their rights to international transit by other Contracting Parties to the same international conventions.

38. It is therefore indispensable for the UNECE to take the lead in aligning bilateral agreements with these multilateral conventions, as much to save its Members from seeking justice outside UNECE as to recover part of the control over road transit which it has yielded to other international bodies.

39. In order to align the provisions of bilateral agreements with international road transit on the above-mentioned multilateral conventions, one should take into account four different legal situations.

40. Such an alignment should distinguish relationships between countries which are:

- (a) Parties to the GATT 1994;

- (b) Parties to the New York Convention;
- (c) Parties to the Montego Bay Convention;
- (d) not Parties to any of these three instruments.

41. The draft Convention below takes into account all four above-mentioned situations.

42. If a Contracting Party introduces periods of traffic restriction, its competent authorities shall endeavour to harmonize these periods with those introduced by the other Contracting Party and, if applicable, in neighboring countries and shall inform the other Contracting Party of any changes relating to such periods within a reasonable length of time.

The Contracting Parties,

43. Recognising the major importance, for their international economic relations, and in particular trade, of facilitating international road transport and harmonising related rules at international level,

44. Aware of their rights and obligations arising from accession to multilateral conventions governing the terms of international road transit,

45. Determined to observe the principles governing international road transit set out in these multilateral conventions,

46. Hereby agree to align their bilateral/multilateral agreements on road transit with the provisions of the multilateral conventions mentioned hereafter, depending on their legal status arising from accession to one or other of these conventions.

Article 1

Alignment of bilateral/multilateral agreements on international road transport with the provisions of Article V of the General Agreement on Tariffs and Trade (GATT) of 1994¹

1.1 In line with their duties and obligations arising from accession to the General Agreement on Tariffs and Trade (GATT) of 1994, the Contracting Parties hereby commit themselves to align their bilateral/multilateral agreements on international road transport with the provisions of GATT Article V.

1.2 The alignment set out in paragraph 1.1 above only applies to:

- (a) international road transit;
- (b) road vehicles registered on the territory of the other Contracting Party.

1.3 The alignment set out in paragraphs 1.1 and 1.2 above takes into account in particular the following principles of GATT Article V:

(a) Freedom of transit, as defined in Article V:1 and proclaimed in Article V:2 of the GATT, shall apply to any road traffic in transit, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, and to the movement of empty road vehicles, when this traffic or movement is only a portion of a complete journey

¹ This text applies exclusively to countries which are members of both UNECE and WTO. The wording is based on the provisions of GATT Article V and takes into account the opinion of the Panel (dispute settlement body between WTO Members) published in WTO document WT/DS366/R of 27 April 2009 clarifying the meaning of the provisions of GATT Article V.

beginning and terminating beyond the frontier of the Contracting Party across whose territory the traffic passes.

- (b) Freedom of transit requires that access be granted:
 - (i) unrestricted, in particular without any:
 - road transport quotas or authorization system;
 - obligation to trans-ship the goods from a foreign road vehicle to a domestic means of transport;
 - obligation to share the number of transport operations or volume of goods traffic with domestic carriers;
 - weekend or night traffic ban;
 - obligation for modal shift of goods or other practices obliging the modal shift of goods;
 - (ii) on the routes most convenient for transit according to the host countries' authorization.

by each Contracting Party to the road transport operations and movements of road vehicles which meet the requirements set out in paragraphs 1.2 and 1.3 (a) above.

To this end, the Contracting Parties shall take the necessary measures to ensure that transit routes constantly remain the most convenient for road transit and that their capacity is adjusted to meet the needs of road transit.

- (c) In accordance with the principle of non-discrimination (GATT Article V:2):
 - (i) freedom of transit shall be extended to the vehicles of Contracting Parties without any distinction based on:
 - the origin of the goods, provided that they originate from a GATT member State;
 - the place of departure, entry, exit or destination;
 - any circumstances relating to ownership of the goods carried or of the road vehicles.
 - (ii) each Contracting Party whose territory is used for transit purposes shall:
 - grant equal treatment and terms to the road vehicles and their goods mentioned under item (i) above, both upon admission to and during transit across its territory;
 - make no distinction between the vehicles of the other Contracting Party and domestic vehicles, provided that they enter, transit across and exit its territory for the purpose of a transport operation or unladen journey.

(d) The Contracting Parties shall organize their border control operations in cooperation with neighbouring countries to ensure that road traffic in transit is not subject "to any unnecessary delays or restrictions" (GATT Article V:3):

A restriction may be considered "unnecessary" if a Contracting Party has an alternative measure available which it could reasonably be expected to employ and which is not inconsistent with the provisions of the GATT.

- (e) In accordance with GATT Article V:3 each Contracting Party shall:

(i) refrain from imposing any charges on road traffic in transit from the other Contracting Party, i.e. from any levy which, regardless of its denomination, is collected in respect of transit traffic or affecting either the transit vehicles or goods carried, in particular for purposes of:

- funding government and/or local authority expenditure without any identifiable consideration in return for the carrier or his client;
- funding or subsidising projects and expenditure other than road-related.

(ii) only collect, under “administrative expenses entailed by transit”, amounts commensurate with expenses and charges actually incurred by its administration due to transit, excluding any tax;

(iii) only collect, under “cost of services rendered”, expenses actually incurred through services rendered to the carrier during transit, excluding any tax;

(iv) refrain from imposing any fee when collecting “charges for transportation”, the amount of which shall be commensurate with expenses actually entailed by the service required by the carrier.

[If Contracting Parties introduce greater facilities than those foreseen under this paragraph on certain selected transit routes (transit corridors), they may agree a mutual exemption of road vehicles from the collection of any user charges (road user charge and similar charges)]

(f) Each Contracting Party shall ensure that all charges and regulations imposed on road traffic in transit from and bound for the other Contracting Party are “reasonable, having regard to the conditions of the traffic” (GATT Article V:4). Any measure to apply charges and regulations to road transit shall be rational, i.e. fair and not excessive given the “conditions of the traffic.”

(g) In accordance with GATT Articles V:5 to V:6, each Contracting Party shall observe other obligations and be granted the rights set out therein.

(h) The Contracting Parties shall enjoy the exceptions set out in the provisions of GATT Articles XX, XXI and XXIV.

(i) The application of the above-mentioned principles shall not preclude the adoption by the Contracting Parties of greater facilities than those arising from said principles.

In this respect, the Contracting Parties shall consider the Revised Consolidated Resolution (R.E.4) on the Facilitation of Road Transport (UNECE document TRANS/SC.1/2002/4/Rev. 4), with a view to endeavouring to:

in relation to paragraph 1.3 (b) above

Regularly examine, within the context of existing rules and procedures, the possibility of facilitating the granting of visas for professional drivers and study the possibility of:

- simplifying and limiting the number and type of written documents required;
- reducing the time necessary to obtain a visa for drivers;
- issuing multiple-entry visas of a validity minimum one year;
- accepting the submission by recognized transport associations of applications for visas by professional drivers.

in relation to the last sentence of paragraph 1.3 (b) above

Ensure favourable conditions for transit on the sections of international transit traffic routes on their territory and, in particular, eliminate as much as possible any bottlenecks on these roads and at the State borders they cross and facilitate transit traffic flows

in relation to paragraph 1.3 (d) above

- (i) provide border installations, if possible on a joint basis, regularly taking into account developments in traffic and checking requirements;
- (ii) ensure an adequate number of border personnel with the necessary training and resources in relation to traffic requirements and to carry out their tasks;
- (iii) harmonize the opening times of border-crossings and customs posts and the activities of control authorities;
- (iv) carry out checks with minimum delays and promote, together with the authorities of neighbouring countries, coordinated checking procedures;
- (v) give the competent authorities of other States advance notice of any new requirements concerning border checks;
- (vi) reduce waiting times where delays at borders have been identified, with the overall objective of not exceeding one hour, and set targets for reducing peak waiting times;
- (vii) grant vehicles carrying perishable foodstuffs or vehicles under cover of a customs transit document, priority over other vehicles performing transport of goods, when crossing a border.

in relation to paragraph 1.3 (e) above

Regarding user charges for transit routes or tolls, only levy amounts for expenses incurred for the construction, maintenance and development of these roads. These tolls and user charges shall in general be imposed only for the highest category of road from the technical point of view (motorways, dual carriageways with similar characteristics or, where no such network exists, roads used for the international and interregional carriage of goods, i.e. "E" type roads in Europe and similar roads on other continents); where applicable, for the use of the last mentioned infrastructures, tolls and user charges may not both be imposed at the same time for a single road section.

Article 2**Alignment of bilateral agreements on international road transport with the mandatory provisions of the 1965 New York Convention on Transit Trade of Land-Locked States²**

2.1 In line with their duties and obligations arising from accession to the 1965 New York Convention on Transit Trade of Land-Locked States, the Contracting Parties hereby commit themselves to align their bilateral/multilateral agreements on transport with the provisions of the New York Convention.

² This text applies to UNECE members having acceded to the New York Convention without joining WTO (Belarus, Kazakhstan, Montenegro, Russian Federation, Serbia, Uzbekistan) as well as to reciprocal relations between these countries and other countries having ratified the New York Convention, even if the latter are simultaneously WTO members.

2.2 The alignment set out in paragraph 2.1 above takes into account in particular the following rules:

(a) in accordance with the third principle set out in the Convention Preamble, a Contracting Party having no sea-coast shall have free access to the sea in order to enjoy its freedoms on equal terms with the coastal Contracting Party/coastal Contracting Party State(s) to the Convention;³

(b) in accordance with the fourth principle set out in the Convention Preamble, the Contracting Party situated between the sea and the State having no sea-coast shall afford the latter, on the basis of reciprocity, free and unrestricted transit, in such a manner that said land-locked Contracting Party has free access to regional and international trade in all circumstances and for every type of goods].⁴

(c) in accordance with Article 2 of the Convention, freedom of transit shall apply:

(i) to international road transit performed by vehicles registered on the territory of the other Contracting Party;

(ii) on routes in use mutually acceptable for road transit to both Contracting Parties.

Furthermore, each Contracting Party shall authorize, in accordance with its laws, rules and regulations, the passage across or access to its territory of persons whose movement is necessary for traffic in transit performed by the vehicles of the other Contracting Party.

(d) free transit, as set out in the fourth principle in the Convention Preamble, shall apply, in accordance with Article 1 of the Convention, to any road traffic in transit meeting the requirements set out under item c), with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked Contracting Party and includes sea transport directly preceding or following the road transport leg;

(e) in accordance with the principle of non-discrimination set out in Article 2 of the Convention, no discrimination shall be exercised which is based on the place of origin, departure, entry, exit or destination or on any circumstances relating to ownership of the goods or road vehicles;

(f) in accordance with the fourth principle set out in the Convention Preamble:

(i) goods in transit carried by the road vehicles of the other Contracting Party shall not be subject to any customs duty by the Contracting Party whose territory is used for transit purposes;

(ii) means of transport registered on the territory of a Contracting Party and used for transit shall not be subject, by the Contracting Party whose territory is used for transit purposes, to special taxes or charges higher than those levied for the use of domestic means of transport.

(g) in accordance with Article 3 of the Convention, the Contracting Party whose territory is used for transit purposes may subject traffic in transit to charges intended solely to defray expenses of supervision and administration entailed by such transit. The rate of

³ Delete as appropriate.

⁴ Delete this paragraph if inapplicable.

any such charges must correspond as nearly as possible with the expenses they are intended to cover and, subject to that condition, the charges must be imposed in conformity with the requirement of non-discrimination laid down in item e).

(h) in accordance with Article 4 of the Convention, the Contracting Parties shall apply to traffic in transit, using routes:

- (i) operated or administered by the State;
- (ii) operated or administered by firms or individuals, in cases in which the tariffs or charges are fixed or subject to control by the Contracting State, and for the use of which tariffs or charges are levied.

Tariffs or charges which, having regard to the conditions of the traffic and to considerations of commercial competition, are reasonable as regards both their rates and the method of their application.

These tariffs or charges shall be so fixed as to facilitate traffic in transit as much as possible, and shall not be higher than the tariffs or charges applied by Contracting Parties for the transport through their territory of goods of countries with access to the sea.

(i) in accordance with Article 5 of the Convention, the Contracting Parties, if necessary in cooperation with other Contracting Party States to the Convention, shall:

- (i) apply administrative and customs measures permitting the carrying out of free, uninterrupted and continuous traffic in transit performed by the road vehicles of the other Contracting Party;
- (ii) use simplified documentation and expeditious methods in regard to customs, transport and other administrative procedures relating to traffic in transit for the whole transit journey on their territory.

(j) in accordance with Article 7 of the Convention, the Contracting Parties shall:

- (i) take, except in cases of *force majeure*, all measures to avoid delays in or restrictions on traffic in transit;
- (ii) should delays or other difficulties occur in traffic in transit, co-operate with the other Contracting Party and, if applicable, with other Contracting States towards their expeditious elimination.

(k) in accordance with Articles 11, 12 and 13 of the Convention, each Contracting Party shall enjoy the exceptions mentioned therein. However, even in case of emergencies mentioned by the Convention, the principle of freedom of transit shall be observed to the utmost possible extent;

(l) in accordance with the other provisions of the Convention, each Contracting Party shall observe other obligations and be granted the rights set out therein;

(m) in accordance with Article 9 of the Convention, application of the above-mentioned principles shall not preclude the adoption by the Contracting States concerned of greater facilities than those arising from said principles;

In this respect, the Contracting Parties shall consider Article V of the GATT and the Revised Consolidated Resolution (R.E.4) on the Facilitation of Road Transport (UNECE document TRANS/SC.1/2002/4/Rev. 4), with a view to endeavouring to:

in relation to the rules of unrestricted transit as set out by the fourth principle in the Convention Preamble:

Eliminate in particular (GATT Article V):

- any quota or authorization system;
- any obligation⁵ to trans-ship the goods from the road vehicle of a Contracting Party to a means of transport of the other Contracting Party;
- any obligation⁶ to share the number of transport operations or volume of goods traffic with domestic carriers;
- any weekend or night traffic ban;
- any obligation for modal shift of goods or any practices obliging the modal shift of goods;

in relation to item (c) above

Ensure favourable conditions for transit on the sections of international transit traffic routes on their territory, eliminate any bottlenecks on these roads and at the State borders they cross and facilitate transit traffic flows (Consolidated Resolution).

in relation to the last paragraph in item (c) above

Regularly examine (Consolidated Resolution), within the context of existing rules and procedures, the possibility of facilitating the granting of visas for professional drivers and study the possibility of:

- simplifying and limiting the number and type of written documents required;
- reducing the time necessary to obtain a visa for drivers;
- issuing multiple-entry visas of a validity **minimum** one year;
- accepting the submission by recognized transport associations of applications for visas by professional drivers.

in relation to items (g) and (h) above

Regarding user charges for transit routes or tolls, only levy (Consolidated Resolution) amounts for expenses incurred for the construction, maintenance and development of these roads. These tolls and user charges shall in general be imposed only for the highest category of road from the technical point of view (motorways, dual carriageways with similar characteristics or, where no such network exists, roads used for the international and interregional carriage of goods (“E” type roads in Europe and similar roads on other continents); where applicable, for the use of the last mentioned infrastructures, tolls and user charges may not both be imposed at the same time for a single road section.

in relation to items (i) and (j) above

- (i) provide border installations (Consolidated Resolution), if possible on a joint basis, regularly taking into account developments in traffic and checking requirements;
- (ii) ensure an adequate number of border personnel with the necessary training and resources in relation to traffic requirements and to carry out their tasks;
- (iii) harmonize the opening times of border-crossings and customs posts and the activities of control authorities;

⁵ If such an obligation exists.

⁶ If such an obligation exists.

- (iv) carry out checks with minimum delays and promote, together with the authorities of neighbouring countries, coordinated checking procedures;
- (v) give the competent authorities of the other Contracting Party advance notice of any new requirements concerning border checks;
- (vi) reduce waiting times where delays at borders have been identified, with the overall objective of not exceeding one hour, and set targets for reducing peak waiting times;
- (vii) grant vehicles carrying perishable foodstuffs or vehicles under cover of a customs transit document, priority over other vehicles performing transport of goods, when crossing a border.

Article 3

Alignment of bilateral agreements on international road transport with the mandatory provisions of articles 124-132 of the 1982 United Nations Convention on the Law of the Sea (Montego Bay Convention)⁷

3.1 In line with their duties and obligations arising from accession to the 1982 United Nations Convention on the Law of the Sea (Montego Bay Convention), the Contracting Parties hereby commit themselves to align their bilateral/multilateral agreements on transport with the relevant provisions of the Convention, and in particular with its Articles 124 -132.

3.2 The alignment set out in paragraph 3.1 above takes into account in particular the following rules:

(a) in accordance with Article 125 of the Convention, the land-locked Contracting Party shall have the right of access to and from the sea. To this end, it shall enjoy freedom of transit through the territory of the other Contracting Party subject to the other Articles in the Convention;

(b) in accordance with Article 124 of the Convention, freedom of transit applies to the transit:

- (i) of goods;
- (ii) of road vehicles registered on the territory of a Contracting Party;
- (iii) of persons with their baggage, provided that their movement is required by traffic in transit across the territory of the other Contracting Party, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey which begins or terminates within the territory of the land-locked Contracting Party.

(c) in accordance with Article 127 of the Convention:

- (i) traffic in transit shall not be subject to any customs duties, taxes or other charges except charges levied for specific services rendered in connection with such traffic;

⁷ This text applies to UNECE members having acceded to the Montego Bay Convention without joining WTO (Belarus, Bosnia-Herzegovina, Montenegro, Russian Federation) as well as to reciprocal relations between these countries and other countries having ratified the Montego Bay Convention, even if the latter are simultaneously WTO members.

(ii) means of transport in transit and other facilities provided for and used by the land-locked Contracting Party shall not be subject, on the territory of the other Contracting Party, to taxes or charges higher than those levied for the use of the latter's own means of transport.

(d) in accordance with Article 130 of the Convention, the Contracting Party whose territory is used for transit purposes shall take all appropriate measures to avoid delays or other difficulties of a technical nature in traffic in transit. Should such delays or difficulties occur, the competent authorities of both Contracting Parties shall cooperate towards their expeditious elimination;

(e) in accordance with the other provisions of the Convention, each Contracting Party shall observe other obligations and be granted the rights set out therein;

(f) in accordance with Article 132 of the Convention, application of the above-mentioned principles shall not preclude the adoption by the Contracting Parties of greater facilities than those arising from said principles;

In this respect, the Contracting Parties shall consider Article V of the GATT and the Revised Consolidated Resolution (R.E.4) on the Facilitation of Road Transport (UNECE document TRANS/SC.1/2002/4/Rev. 4), with a view to endeavouring to:

in relation to the terms and modalities for exercising freedom of transit mentioned in Article 125 of the Convention:

Eliminate in particular (GATT Article V):

- any quota or licensing system;
- any obligation⁸ to trans-ship the goods from the road vehicle of a Contracting Party to a means of transport of the other Contracting Party;
- any obligation⁹ to share the number of transport operations or volume of goods traffic with domestic carriers;
- any weekend or night traffic ban;
- any obligation for modal shift of goods or any practices obliging the modal shift of goods.

in relation to paragraph 3.2 (b) (iii) above

Regularly examine (Consolidated Resolution), within the context of existing rules and procedures, the possibility of facilitating the granting of visas for professional drivers and study the possibility of:

- simplifying and limiting the number and type of written documents required;
- reducing the time necessary to obtain a visa for drivers;
- issuing multiple-entry visas of a validity **minimum** one year;
- accepting the submission by recognized transport associations of applications for visas by professional drivers.

⁸ If such an obligation exists.

⁹ If such an obligation exists.

in relation to paragraph 3.2 (c) (i) above

Regarding user charges for transit routes or tolls, only levy (Consolidated Resolution) amounts for expenses incurred for the construction, maintenance and development of these roads. These tolls and user charges shall in general be imposed only for the highest category of road from the technical point of view (motorways, dual carriageways with similar characteristics or, where no such network exists, roads used for the international and interregional carriage of goods ("E" type roads in Europe and similar roads on other continents); where applicable, for the use of the last mentioned infrastructures, tolls and user charges may not both be imposed at the same time for a single road section.

in relation to paragraph 3.2 (ii) above

(a) provide border installations (Consolidated Resolution), if possible on a joint basis, regularly taking into account developments in traffic and checking requirements;

(b) ensure an adequate number of border personnel with the necessary training and resources in relation to traffic requirements and to carry out their tasks;

(c) harmonize the opening times of border-crossings and customs posts and the activities of control authorities;

(d) carry out checks with minimum delays and promote, together with the authorities of neighbouring countries, coordinated checking procedures;

(e) give the competent authorities of the other Contracting Party advance notice of any new requirements concerning border checks;

(f) reduce waiting times where delays at borders have been identified, with the overall objective of not exceeding one hour, and set targets for reducing peak waiting times;

(g) grant vehicles carrying perishable foodstuffs or vehicles under cover of a customs transit document, priority over other vehicles performing transport of goods, when crossing a border.

Article 4**Alignment of bilateral agreements on international road transport with the Consolidated Resolution on the Facilitation of Road Transport (R.E.4)¹⁰**

4.1 The Contracting Parties having accepted the Consolidated Resolution on the Facilitation of Road Transport (R.E.4) drawn up under the aegis of UNECE hereby commit themselves to align their bilateral/multilateral agreements on road transit with the provisions of this Resolution.

4.2 The alignment set out in paragraph 4.1 above takes into account in particular the following rules of the Consolidated Resolution:

(a) without prejudice to other provisions set out in the principles of the Consolidated Resolution, freedom of transit shall be granted by each Contracting Party:

(i) to vehicles registered on the territory of the other Contracting Party; and

¹⁰ This text may apply to reciprocal relations between countries which have acceded neither to the WTO, nor to the New York Convention, nor to the Montego Bay Convention, as well as to relationships between these countries and those which have acceded to said international instruments.

(ii) on major international traffic routes, in particular E-roads in Europe/similar roads on other continents¹¹ (item 1.2.1.11 of the Consolidated Resolution). “Transit” means transport of goods by road through the territory of one of the Contracting Parties which is neither the country of loading nor of unloading of the goods (item 4.1.5).

(b) Contracting Parties shall ensure favourable conditions for transit on the sections of major international traffic routes on their territory, eliminate any bottlenecks on these roads and at the State borders they cross and facilitate transit traffic flows (item 1.2.1.15);

(c) transit traffic shall not be banned or subjected by the Contracting Parties to such measures as transit duties, taxes (other than user charges and tolls for the use of transport infrastructures), quotas (1.2.1.11) or an authorization (4.2.2);

(d) user charges or tolls as defined in items 1.1.1.5 and 1.1.1.6 may be levied for expenses incurred by a country for road construction, maintenance and development. These tolls and user charges shall in general be imposed only for the highest category of road from the technical point of view (for example, motorways, dual carriageways with similar characteristics or, where no such network exists, roads used for the international and interregional carriage of goods (“E” type roads); where applicable, for the use of the last mentioned infrastructures, tolls and user charges may not both be imposed at the same time for a single road section (1.2.1.7);

(e) in order to reduce border waiting times for formalities and checks, the Contracting Parties shall endeavour (1.2.1.5) to:

(i) provide border installations, if possible on a joint basis, regularly taking into account developments in traffic and checking requirements;

(ii) ensure an adequate number of border personnel with the necessary training and resources in relation to traffic requirements and to carry out their tasks;

(iii) harmonize the opening times of border-crossings and customs posts and the activities of control authorities;

(iv) carry out checks with minimum delays and promote, together with the authorities of neighbouring countries, coordinated checking procedures;

(v) give the competent authorities of the other Contracting Party advance notice of any new requirements concerning border checks;

(vi) reduce waiting times where delays at borders have been identified, with the overall objective of not exceeding one hour, and set targets for reducing peak waiting times;

(vii) grant vehicles carrying perishable foodstuffs or vehicles under cover of a customs transit document, priority over other vehicles performing transport of goods, when crossing a border.

(f) the Contracting Parties shall regularly examine, within the context of existing rules and procedures, the possibility of facilitating the granting of visas for professional drivers and study the possibility (1.2.1.6) of:

(i) simplifying and limiting the number and type of written documents required;

(ii) reducing the time necessary to obtain a visa for drivers;

¹¹ Delete as appropriate.

- (iii) issuing multiple-entry visas of a validity **minimum** one year;
- (iv) accepting the submission by recognized transport associations of applications for visas by professional drivers.

(g) the Contracting Parties shall apply the principle of non-discrimination by refraining from making distinctions based on the nationality or the place of business of the carrier and the origin or destination of the vehicles, particularly in respect of tax provisions, inspections and sanctions (1.2.1.1);

(h) a Contracting Party grants facilities on its territory to the carriers of the other Contracting Party, if its own carriers benefit from equivalent facilities when they travel on the latter's territory (1.2.1.2);

Contracting Parties reserve the right to withhold certain provisions from carriers licensed in the other Contracting Party if the latter does not apply the principle of reciprocity (1.2.1.3);

(i) each Contracting Party may, provided that no distinction is made between the road vehicles of the other Contracting Party and the road vehicles of other countries having accepted the principles of the Consolidated Resolution and that such rights are not abused, exercise the following rights (1.2.1.14):

(i) temporarily suspend, on specific sections of major international traffic routes on its territory, the right of transit of road vehicles, provided that such suspension be indispensable to the safeguarding of the country's public order, security or public health;

(ii) temporarily introduce, on specific sections of major international traffic routes on its territory, any traffic diversions as necessary to road construction and maintenance or dictated by exceptional circumstances resulting from the road traffic situation;

(iii) decide on an appropriate timing or specific route to be followed by oversized or overweight transport operations and by vehicles carrying dangerous goods;

(j) if a Contracting Party introduces periods of traffic restriction, its competent authorities shall endeavour to harmonize these periods with those introduced by the other Contracting party and, if applicable, in neighbouring countries and shall inform the other Contracting Party of any changes relating to such periods within a reasonable length of time.

Article 5

Final Provisions
