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UNECE Working Party on Intermodal Transport and Logistics

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Paris, 4 October 2006,
Agenda item 6

**RECONCILIATION AND HARMONIZATION OF CIVIL LIABILITY REGIMES
IN INTERMODAL TRANSPORT**

Note by the secretariat

1. The United Nations Economic Commission for Europe (UNECE), administering, among others, the CMR Convention, is considering since 2000 the issue of appropriate civil liability regimes for multimodal transport operations.
2. Following the organization of two “hearings” with the industry on this subject, the UNECE Working Party on Intermodal Transport and Logistics has been mandated to consider the establishment of a civil liability regime applicable to European intermodal transport, covering road, rail, inland water transport and short sea shipping. The Working Party was also requested to closely monitor and evaluate all pertinent activities in this field and to prepare, if appropriate, proposals for solutions at the pan-European level (UNECE member States cover “Europe” from Norway to Turkey and from Portugal to Kazakhstan).

3. During the UNECE hearings, experts representing the road and rail transport industries, combined transport operators as well as customers and shippers felt that the existing modal liability regimes should at least be harmonized and a single international civil liability regime governing multimodal transport operations was required. They stressed the urgent need for a reliable, predictable and cost-effective civil liability system. According to them, in case a mandatory global regime was not feasible, a regional approach should be taken to arrive at a solution in due course.
4. Experts mainly representing maritime interests, freight forwarders and insurance companies did not favor the preparation of a new mandatory legal regime covering civil liability in multimodal transport operations and were content with the various contractual solutions offered in this field.
5. However, there seemed to be general agreement that, in order to be successful, a new civil liability system for multimodal transport must be cost-effective, acceptable to the transport industry, uniform and compatible (i.e. address the issue of overlap and conflict) with existing unimodal regimes. With regard to the allocation of responsibilities between carriers and shippers the following criteria would need to be considered:
 - (a) the allocation must be conducive to the public policy aims of Governments (e.g. customer-oriented approach, trade facilitation, sustainable and safe transport, level playing field between different modes of transport, etc);
 - (b) it should have the prospect of early acceptance and uniform implementation region-wide/worldwide especially by the world's main trading nations;
 - (c) it should be as clear, simple and predictable as possible;
 - (d) it should provide for an efficient and economical distribution of risk;
 - (e) it should provide for a balanced allocation of responsibilities which recognizes the rights and obligation of both carriers and shippers;
 - (f) it should provide for coverage of transport related operations (transshipment and warehousing);
 - (g) it should include coverage of delay in delivery (when delivery times have been agreed upon and not) and consequential economic loss;
 - (h) it could provide for a certain freedom to contract, under certain conditions, different limits of liability than those provided for in the regime.
6. The UNECE Working Party felt that, taking account of the developments in the various international fora and the requirements of transport users, work should now possibly focus on developing a civil liability regime for multimodal transport based on land transport needs only, including short-sea shipping that addresses the objectives of European transport policy, particularly the promotion of combined or intermodal transport.
7. In this context, the UNECE Working Party reviewed the work pursued by the United Nations Commission on International Trade Law (UNCITRAL) on the preparation of a draft instrument on the carriage of goods wholly or partly by sea. It felt that, in addition to being extremely complicated, the present draft instrument would establish yet another layer of international - maritime based - transport law that did not address, to a large extent, the concerns of European intermodal transport operators and their clients and might come in conflict with existing European land transport legislation and well-established business practices (benchmark:

CMR and possibly COTIF/CIM). The new regime would not address either the concerns of European Governments to promote a uniform and transparent European liability regime for intermodal transport operations that ensured a level playing field among all modes.

8. Against this background, at the last session of the UNECE Working Party (Geneva, 30 March 2006), the view has been expressed that the first draft of a non-mandatory European alternative for the regulation of multimodal transport as presented under in the ISIC study (Task B “Intermodal Liability and Documentation”) seemed to be a step in the right direction (Informal document No.1 (2006).

9. This proposal would provide a simple, transparent, uniform and strict liability framework that places liability on a multimodal transport operator. A number of issues, such as the level of liability limit or the proposed opting-out facilities would still need to be reviewed in more detail in light of prevailing market conditions and government policies governing European intermodal transport. Also the question of geographical application of such a regime would still need to be considered carefully, since a large part of intermodal transport services go well beyond and take place outside the boundaries of the member States of the European Union.

10. The UNECE secretariat was mandated to monitor closely the work carried out by the European Commission in this respect and to cooperate with its services.
