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## Economic and Social Commission for Asia and the Pacific Committee on Transport

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### **Proposed structure of an intergovernmental agreement on dry ports**

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### **Note by the secretariat**

#### *Summary*

The Bangkok Declaration on Transport Development in Asia, adopted by the Forum of Asian Ministers of Transport at its first session, held in Bangkok from 14 to 18 December 2009, requested the secretariat to assist regional members and associate members in their efforts to provide connectivity and integration of the Asian Highway network, the Trans-Asian Railway network and other transport modes by working towards the development of an intergovernmental agreement on dry ports. Subsequently, the Declaration was endorsed by the Commission in its resolution 66/4 of 19 May 2010.

The present document provides a background to the formulation of an intergovernmental agreement on dry ports and outlines the proposed structure of such an agreement.

The Committee may wish to review the proposed structure of the agreement and provide guidance on the format, contents and future process of negotiation among member countries.

## I. Introduction

1. The importance of integrating the Asian Highway and Trans-Asian Railway through some form of “dry port” has long been recognized by ESCAP member countries. The first formal articulation by the Commission was at its forty-eighth session, in 1992, when it endorsed the integrated project on Asian land transport infrastructure development (ALTID) comprising the Asian Highway, Trans-Asian Railway and land transport facilitation. This project laid down as one of its criteria for formulating road and rail routes that they include connections to “major inland container terminals and depots.”

2. The Ministerial Conference on Infrastructure, held in Seoul in November 2001, extended the scope of the ALTID project when it called for “an integrated regional transport network for Asia covering all transport modes, including railway, roads, water transport, ports, freight terminals and airports”.<sup>1</sup>

3. While the terms “major inland container terminals and depots” and “freight terminals” were used in the ALTID project and the Seoul Conference, respectively, the term “dry ports” was not introduced until the Ministerial Conference on Transport, held in Busan, Republic of Korea, in November 2006. The Conference noted that the Asian Highway and Trans-Asian Railway networks were the major building blocks in the development of an international integrated intermodal transport and logistics system as a long-term vision for the development of the transport sector<sup>2</sup> and expressed its conviction that “dry ports” played an important role in the development of an international integrated intermodal system and had the potential to become centres for economic development, particularly in landlocked countries and wider domestic hinterlands.”<sup>3</sup>

4. The importance of dry ports in such a system was re-emphasized at the first session of the Forum of Asian Ministers of Transport, held in Bangkok in December 2009, and in Commission resolution 66/4 of 19 May 2010 on the implementation of the Bangkok Declaration on Transport Development in Asia, in which the Executive Secretary was requested “to bring about connectivity and integration of the Asian Highway network, the Trans-Asian Railway network and other transport modes by working towards the development of an intergovernmental agreement on dry ports”.

5. The present document considers the content of such an agreement and proposes a structure within which an agreement could be drafted.

## II. Formalization of dry ports in the regional transport network

6. Experience gained from the successful implementation of the Asian Highway and Trans-Asian Railway agreements<sup>4,5</sup> shows that formalizing the components of a transport network through related intergovernmental

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<sup>1</sup> See E/ESCAP/1249, chap. IV, annex, sect. 1.3, output No. 1.

<sup>2</sup> See E/ESCAP/63/13, chap. V, annex.

<sup>3</sup> See E/ESCAP/63/13, chap. V.

<sup>4</sup> United Nations, *Treaty Series*, vol. 2323, No. 41607.

<sup>5</sup> Commission resolution 62/4 of 12 April 2006, annex.

agreements has: (a) promoted the development of transport infrastructure in a coordinated manner by attracting strong commitment from member States; (b) increased financing from international financial institutions and bilateral donors; and (c) enhanced collaboration with the private sector.

7. Building on this success, the formalization of a regional network of dry ports through an intergovernmental agreement would (a) promote the international recognition of dry ports; (b) facilitate infrastructure investment; and (c) improve the efficiency of operational services through a more harmonized approach to the development and operation of dry ports in the region.

8. An intergovernmental agreement on dry ports, together with the existing agreements on the Asian Highway and Trans-Asian Railway networks, would further advance progress towards the realization of an international integrated intermodal transport and logistics system.

9. At the regional and subregional levels, an intergovernmental agreement on dry ports will enable member States to recognize dry ports in other countries. It would then be possible to consign goods and clear customs using a bill of lading that nominates a dry port as the origin or destination. This leads to more efficient and cost-effective transport that enables dry ports to better capture business and investment opportunities.

10. At the national level, an intergovernmental agreement on dry ports will enable countries to better appreciate the importance of strategically located dry ports and will assist in the advocacy of policies that promote and facilitate the development of these facilities. An agreement will also create a better understanding of the minimum technical and operational requirement for a dry port, thereby assisting in the designing and development of these facilities.

### **III. Proposed structure of an intergovernmental agreement on dry ports**

11. It is proposed that the structure of the intergovernmental agreement on dry ports be similar to the intergovernmental agreements on the Asian Highway and Trans-Asian Railway networks, which were negotiated by member countries under the auspices of ESCAP.

12. Both agreements contain a preamble followed by three/four substantive articles. The remaining articles are largely procedural and similar to those found in many other conventions. Both agreements also have annexes. The first annex in both of them defines the networks in broad terms and lists the routes. In the Intergovernmental Agreement on the Asian Highway Network, annexes II and III outline the standards and signage, respectively; in the Intergovernmental Agreement on the Trans-Asian Railway Network, Annex II lays down guiding principles for technical characteristics.

13. For the dry port agreement, three substantive articles are proposed: (a) "Definition of dry ports of international importance" will define dry ports of international importance and related terms used in the agreement; (b) "Identification of dry ports of international importance" will refer to annex I, which will contain a list of dry ports of international importance in member countries; and (c) "Development of dry ports of international

importance” will refer to annex II, which will contain “functional requirements and classification of dry ports” and annex III, which will contain “guiding principles for the development and operation of dry ports.”

14. The drafting of the intergovernmental agreement may draw upon other international transport agreements, such as the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC)<sup>6</sup> and its Protocol on Combined Transport on Inland Waterways (17 January 1997), to the extent that they are relevant.

15. In addition, the Eurasian Economic Community (EurAsEC) has developed a strategy for the establishment and development of a system of international logistics centres for the period 2009-2020, which can be used as a reference in considering the functional requirements of dry ports.

16. The remaining articles of the proposed agreement on dry ports will be largely procedural and similar to those found in many international agreements and conventions, including those pertaining to the Asian Highway and Trans-Asian Railway networks.

17. The proposed structure of the agreement is contained in the annex.

#### **IV. Proposed plan for the development of an intergovernmental agreement on dry ports**

18. Following guidance from the Committee, the secretariat will prepare a working draft of an intergovernmental agreement on dry ports in collaboration with the Office of Legal Affairs at United Nations Headquarters. Subsequently, a series of subregional meetings will be organized for negotiations on the working draft. A revised draft of the agreement reflecting the outcome of the subregional negotiations will be prepared and then tabled for further negotiation and adoption at an intergovernmental meeting. If adopted, the agreement could be opened for signature during the sixty-ninth session of the Commission, in 2013. The table below outlines the tentative plan for the development of the agreement.

<i>Activities</i>	<i>Tentative dates</i>
1. Develop a working draft of an agreement	May 2011
2. Convene subregional negotiation meetings	June 2011- March 2012
3. Convene regional intergovernmental meeting to adopt the agreement	September 2012
4. Open agreement for signature	April/May 2013

#### **V. Issues for consideration**

19. The proposed structure of the intergovernmental agreement on dry ports is submitted for the Committee’s review. The Committee may wish to provide the secretariat with guidance on the format and contents as well as the proposed plan for its development.

20. The Committee may also wish to encourage member countries to identify existing dry ports of international importance and other locations at

<sup>6</sup> United Nations, *Treaty Series*, Vol. 1746, No. 30382.

which fully operational dry ports could be developed and to provide that information to the secretariat so that a list of dry ports can be developed for inclusion as annex I to the agreement.

21. The Committee may further wish to encourage member countries to participate actively in the drafting process and in the planned negotiation meetings.

## **Annex**

### **Proposed structure of an intergovernmental agreement on dry ports<sup>a</sup>**

#### **Preamble**

The preamble will contain suitable text expressing the desire of the Parties to develop dry ports of international importance in order to enhance international trade and regional cooperation among member countries. (AH and TAR preamble)

#### **I. Definition of dry ports of international importance**

This article will define the term “dry ports of international importance” and related terms used in the agreement. (TAR 1)

#### **II. Identification of dry ports of international importance**

This article will refer to annex I, which will contain a list of dry ports of international importance that will be part of a coordinated plan to be adopted by Parties for the development of dry ports in member countries. (AH 2 and TAR 2)

#### **III. Development of dry ports of international importance**

This article will propose that dry ports should be brought in line with the contents of annexes II and III of the agreement (AH 3 and TAR 3):

(a) Annex II will contain a description of the main functions, facilities and service requirements of dry ports and a scheme for classifying dry ports on the basis of their functions, facilities and services;

(b) Annex III of the agreement will contain guiding principles for the development and operation of dry ports of international importance.

#### **IV. Procedure for signing and becoming a Party**

This article will lay down the procedure for signing and becoming a Party to the agreement. (TAR 4)

#### **V. Entry into force**

This article will define how and when the agreement will come into force, including the minimum number of the Parties required for its entry into force. (AH 6 and TAR 5)

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<sup>a</sup> Where appropriate, references to articles in the Intergovernmental Agreement on the Asian Highway Network (AH) and the Intergovernmental Agreement on the Trans-Asian Railway Network (TAR) containing similar potential text are shown in parentheses.

## **VI. Working group on dry ports**

This article will establish a working group on dry ports to administer the implementation of the agreement as well as the frequency of the meetings of the group and the procedure for calling a special meeting. (AH 7 and TAR 6)

## **VII. Procedures for amending the main text**

This article will specify the procedures for amending the main text of the agreement, including the articles of the agreement that can be amended, the manner in which requests for amendments are to be received, the body responsible for considering the proposed amendment, the circulation of proposals, the voting required for adoption of the amendment (such as agreement of all parties, simple majority or two-thirds majority) and communications relating to amendments. (AH 8 and TAR 7)

## **VIII. Procedure for amending the annexes**

These articles will specify the procedures for amending annexes to the agreement, for proposing amendments and for circulating proposals, as well as the process for adoption and communications related to amendment of the annexes. In the intergovernmental agreements on the Asian Highway and Trans-Asian Railway networks, there were two articles: one for Annex I and one for the remaining annexes. (AH 9 and 10, and TAR 8 and 9)

## **IX. Reservations**

This article will specify the circumstances (if any) under which reservations may be made. (AH 11 and TAR 10)

## **X. Withdrawal**

This article will specify the procedure for withdrawing from the agreement and when that withdrawal would come into effect. (AH 12 and TAR 11)

## **XI. Suspension of validity**

This article will specify in suitable terms the conditions under which the validity of the agreement shall be suspended and when it shall again become operative. (TAR 12)

## **XII. Settlement of disputes**

This article will specify the procedure for dispute resolution. (AH 14 and TAR 13)

## **XIII. Limits to the application**

This article will specify in suitable terms the limits to the application of the agreement. (AH 15 and TAR 14)

#### **XIV. Notifications and communications by the depositary**

This article will specify in suitable terms the manner in which the depositary shall notify the Parties and any other States of actions related to the agreement. (AH 16) (It should be noted that the Intergovernmental Agreement on the Trans-Asian Railway Network contains no such article, as the functions of the depositary are set out in Part VII of the Vienna Convention on the Law on Treaties, of 23 May 1969).

#### **XV. Relationship between the annexes and the agreement**

This article will define the relationship between the agreement and annexes to the agreement. (AH 17 and TAR 15)

#### **XVI. Secretariat**

This article will define the secretariat of the agreement. (AH 18 and TAR 16)

#### **XVII. Depositary**

This article will define the depositary of the agreement. (AH 19 and TAR 17)

#### **XVIII. Annexes**

##### **A. Annex I: Dry ports of international importance**

This annex will contain a list of dry ports of international importance proposed by member countries.

##### **B. Annex II: Functional requirements and classification of dry ports**

This annex will contain a description of the main functions, facilities and service requirements of dry ports as well as a scheme for classifying dry ports on the basis of their functions, facilities and services. The classification scheme could have four levels: Class I (highest), Class II, Class III, Class IV (minimum). It is envisaged that a customs clearance function could be a minimum requirement. It is also envisaged that the wording in the annex would be general in nature and contain such text as “Parties shall make every possible effort to progressively upgrade dry ports to higher classes by adding functions, facilities and services as required”.

##### **C. Annex III: Guiding principles for the development and operation of dry ports**

This annex will articulate the principles that should guide the development and operation of dry ports of international importance. This may include references to import and export process flows, standard designs or layouts and operational requirements, such as the equipment necessary to handle 20/40 ft containers, customs clearance time and issuance of bills of lading. It is envisaged that the wording here would also be general in nature, such as “Parties shall make every possible effort to follow the provisions of the guiding principles for the development and operation of dry ports”.