

Council for Trade in Goods

SELECTIVE BIBLIOGRAPHY OF LITERATURE ON GATT ARTICLE V

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO

I. INTRODUCTION

The following selective bibliography of literature on GATT Article V has been prepared at the request of the European Communities. As indicated in the title, the listing is by no means comprehensive, but merely represents an illustrative selection of the type of research that has been carried out in this area.

Section II contains literature on Article V in a more narrow sense, while section III relates to general transit and transport issues. The references were standardized according to author¹, year, title, publisher and document number (if available).

II. GATT ARTICLE V

Almeen, Ali (1989), "Land-locked States and International law, with special reference to the role of Nepal"; South Asian Publishers Pvt.Ltd.

The paper addresses problems of land-locked countries, making special reference to the area of transit. Chapter V examines the relevant international legal framework and a number of multilateral initiatives undertaken in this area. With respect to GATT Article V, the study highlights the provision's lack of any reference to land-locked countries. The author argues that the contracting parties "regarded freedom of transit less as a rule of law of nations than as a right to be affirmed in multilateral or bilateral treaties". The study concludes that, while progress has been made in assisting land-locked countries overcome their specific (transit) problems, much remains to be done.

¹ Studies commissioned/initiated by international organisations such as UNCTAD or the World Bank are listed under the author's name, if indicated in the document. Where no particular name is given, the paper is simply referenced as an "UNCTAD" or "World Bank" document.

Cervenka, Zdenek (1973), "Land-locked Countries of Africa"; Sweden: The Scandinavian Institute of African Studies

The book contains a number of papers prepared for a seminar on "Land-locked Countries of Africa" held in Oslo in September 1972. It addresses several transit and transport issues. An article on "Land-locked African countries and the rights of access to the sea" by Alfred P. Rubin makes a reference to GATT Article V as a "positive commitment regarding freedom of transit".

Clark, Bryan (1998), "Transit and the Energy Charter Treaty: Rhetoric and Reality"; First published in the Web Journal of Current Legal Issues in association with Blackstone Press Ltd.

This paper examines the provisions of the 1994 Energy Charter Treaty (ECT), which seeks to facilitate freedom of energy transit. An analysis of how freedom of transit is currently ensured under international law leads the authors to conclude that it has never been an absolute right. Article V of the GATT is analysed in relation to Article 7 ECT, which he considers to pursue a "GATT-plus" approach, since its provisions are found to go beyond those of the GATT in terms of energy transit. The author notes that it had been questioned whether the GATT could be applied to the transit of energy and energy products, given that neither may be able to be considered a "good". He holds that "On a strict interpretation of GATT and the Barcelona Convention, it is unlikely these pre-ECT provisions encompass access to an existing pipeline or electricity grid and certainly not the building of anew pipeline." He further argues that, although Article V GATT does not expressly include the right to construct new or additional transit facilities, it could be interpreted in such a manner.

Hare, Christopher and Wong, Jarrod (1995), "A passage through India (and beyond) or a case of love thy neighbour?"; Leiden journal of international law. 8(2) 1995:311-336

The article examines the right of transit as granted under international law. Reference is made to GATT Article V as one of the multilateral treaties that support freedom of transit and evidence its "general customary international law position". The paper shows that Article V (2) of the GATT 1947 was followed in Article 33 of the 1948 Havana Charter for an International Trade Organisation, which would have addressed more specifically the land-locked countries' right of access to the sea. The authors call for an enhanced "protection of such (land-locked) states by furnishing them transit rights" and argue that "Not only must international law recognise such rights as existing in one form or another, but must also provide adequate means of securing them."

International Road Transport Union (2002), "Road Transport Transit, Trade and Tourism Facilitation, identification of existing barriers"

The document aims at raising awareness of problems with respect to road transport traffic and suggests ways to overcome them, placing special emphasis on WTO work on this matter. It compiles initial findings, conclusions, and policy proposals of earlier IRU reports, studies and position papers regarding barriers in road transit and road transport, making special reference to trade facilitation aspects. This summary background document is hoped to raise awareness of the challenges and opportunities provided by the recently launched Doha Round of Trade Negotiations, especially as regards trade facilitation and trade in services. Several problems are identified with regard to GATT Article V, which, in the authors' view, would need to be strengthened and extended.

International Road Transport Union (2003), "Principes applicables au transit international de véhicules routiers (document interne établi par le Service juridique du Secrétariat Général de l'IRU)"

The paper argues that, while shipping or railway carriage benefit from freedom of transit between the contracting parties of the 1921 Barcelona Convention, road transport lacked such a far-reaching

international law agreement. Both GATT Article V and the New York Convention of 1965 are considered to have several flaws in the way their deal with road transport. The document analyses the principles underlying GATT Article V and the New York Convention such as freedom of transit, MFN treatment or non-discrimination, and argues that they should be applied to road transport.

Moisé, Evdokia (2003), "Transparency and Simplification approaches to Border Procedures: Reflections on the Implementation of GATT Article V-Related Proposals in Selected Countries", OECD, TD/TC/WP(2002)51/FINAL

The paper discusses facilitation approaches to transit procedures, examining which of the measures suggested by WTO Members to improve or clarify GATT Article V have already been implemented at the national, regional or international level. The document shows how those proposals may be related to, or contrast with, policies and practices in various OECD and non-OECD countries and offers some initial reflections on these practices.

Pradhan, Gajendra Mani (1990), "Transit of Land-Locked countries and Nepal", Nirala Publications

The book analyzes a number of theoretical and practical aspects of the problems faced by land-locked countries in the context of international law. The author compares the Convention on Transit Trade and Land-locked States adopted by the United Nations at its 35th Planetary meetings with GATT Article V, and concludes that, unlike the Convention, Article V would not reflect the stiffened attitude of States regarding transit through their territory.

Roggkamp, Martha M. (1995), "Transit of networkbound energy: a new phenomenon?: transit examined from the Barcelona Transit Convention to the Energy Charter Treaty"; World competition: law and economics review.- 19(2) Dec. 1995: 119-146.

This article discusses several international agreements relating to transit, especially as regards networkbound energy. After analysing GATT Article V's content, the author raises the question of whether it applied to transit of energy, and more specifically, to transit of networkbound energy. He concludes that transit provisions of the GATT would also apply to transit of networkbound energy such as oil, natural gas and electricity, but reminds the reader that "Article V is considered a difficult and complex Article from which it is hazardous to try to draw conclusions".

Sinjela, A. Mpazi (1982), "Freedom of transit and the right of access for land-locked states: the evolution of principle and law"; Georgia journal of international law and comparative law.-12 (1):31-52

The article reviews the historic grounds for the claim of land-locked countries for access to the sea, referring to the 1921 Barcelona Conference, the GATT and the Havana Charter. The author highlights the fact that the geographic status of these countries places them at a severe disadvantage vis-à-vis their coastal counterparts, since their access to the sea depended upon their ability to transit through one or several other countries. In the author's view, the essential legal issue is whether land-locked countries had a right of access to and from the sea, or whether such access was merely a privilege. He notes that, although GATT Article V makes no reference to the situation of land-locked countries, it reaffirmed the principle of freedom of transit. He concludes that the granting of the widest possible rights of access was essential for landlocked countries to obtain their goal of economic development and enhanced living conditions for their peoples.

UNCTAD (2002), "Freedom of transit: obligations and implications of Article V of the General Agreement on Tariff and Trade", UNCTAD/LDC/MISC.84

This document briefly describes how WTO Members have responded to the requirements of Article V of the GATT 1994. It highlights the notable achievements made in Europe with regard to transit facilitation and freedom of transit, but also notes that development of adequate infrastructure, including upgrading of existing assets, required a degree of financing which exceeded the means of many developing countries, notably the least developed and landlocked countries. It also points out that the decline in official development assistance and inadequate private financing had negatively affected many transit systems, and recommends this trend to be reversed. Furthermore, the paper calls for greater attention to project design in order to ensure that projects implemented in developing countries and LDCs were tailor-made to the specific needs of the recipient, taking into account each country's particular level of economic development.

UNCTAD (2000), "Trade Facilitation, Transit problems for landlocked developing countries-an experience from UNCTAD"

This document briefly describes UNCTAD's contribution to alleviating the major transit problems of land-locked countries. A first part of the document covers general considerations on transit goods, addressing matters such as the transit cost disadvantage for landlocked countries and their impact on GATT Article V's objective, regional transit cooperation or the issue of legislative authority. It also gives an overview on recent recommendations and studies on transit issues in developing countries. The remaining part of the document focuses on UNCTAD's role in the search for practical solutions to the transit issues of landlocked countries through studies and information technology developments. Finally, the papers provides examples of UNCTAD's technical assistance activities regarding transit issues.

UN/ECE (1998), "Harmonization of requirements concerning international road transport and facilitation of its operation - Development of provisions on the facilitation of international road transport transmitted by the International Road Transport Union (IRU)", TRANS/SC.1/1998/6

In the context of efforts to draft a consolidated resolution on the facilitation of international road transport, GATT Article V is examined in terms of how (and to what extent) it ensures freedom of transit, non-discrimination, exemption from customs or transit duties, contribution to costs, formalities and MFN treatment.

III. GENERAL TRANSIT AND TRANSPORT ISSUES**Audigé, Michel (1995), "Maritime Transport Serving West and Central African Countries: Trends and Issues", The World Bank, SSATP Working Paper N° 16**

The paper provides an overview of trends and developments in maritime transport in the Western and Central African region. It argues that cost and quality of transport services available to African shippers, which had not followed the global trend towards cheaper, more rapid and customized services, were an important reason for Africa's declining role in world trade over the last 25 years. The author highlights the importance of ports in this process, noting that poor road conditions hindering transport between places of production and ports added to overland travel times, thereby raising the overall transaction costs. He notes that EDI had become a vital component in modern logistic chains and stresses that cumbersome customs procedures would add to the time cargo had to spend in ports, often also requiring additional payments. It is held that a possible way to improve the

competitiveness of a country's international trade was to increase the quality of international transport while minimizing associated costs. In addition, it would be essential to reduce any possible transaction cost in adapting commercial practices to international standards, and to remove any unnecessary trade barriers within the economical, social and political context of a country.

Cabanius, Philippe and Bouaphanh, Kammoune (2001), "Review of Progress in the Development of Transit Transport Systems in South-East Asia", UNCTAD, UNCTAD/LDC/110

The study analyses developments of transit transport systems in the South–East Asian region, with a special focus on Lao, identifying areas of progress as well as remaining barriers. The paper reviews existing customs procedures for transit traffic and documentation requirements for imports and exports, and examines a number of bilateral and multilateral transit transport agreements of special relevance to the region.

Castellon, René Pena (2001), "Review of recent progress in the development of transit transport systems in Latin America"; UNCTAD, UNCTAD/LDC/113

The paper gives an overview of recent developments of transportation facilities and services in the Latin American region, with a focus on the situation in Bolivia and Paraguay. It highlights problems and offers recommendations for improvement. Deficient road networks, inadequate productive investments in infrastructure, and the pace of Customs administration reforms are identified as key problems. With respect to possible improvements, the reports refers to a strengthened public-private sector partnership and a focus on education in the transport field.

Creightney, Cavelle (1991), "The Macro-Economic Framework for Transport Policy in Africa"; Brussels: Infrastructure Division Technical Department, Africa Region, The World Bank

The paper offers an overview of the overall framework under which policy makers and planners will have to address transport issues over the coming decade. It briefly outlines the key tasks for the various sub-sectors and identifies cross-cutting policy goals with clear linkages to broader development objectives.

Creightney, Cavelle (1993) "Transport and economic performance : a survey of developing countries", The World Bank, World Bank technical paper n° WTP 232

This document is the first SSATP publication which addresses the relationship between transport and economic performance and considers the implications of these linkages for sector policy. It reviews the existing literature on the linkages between transport and economic performance in developing countries and identifies some areas where policy interventions need rethinking. The paper's findings should provide the basis for developing policies which are fully aware of the role of transport and other infrastructure investments in promoting economic development.

Clark, Ximena, Dollar David and Micco, Alejandro (2002), "Maritime transport costs and port efficiency", The World Bank, Policy Research Working Paper Series ; no. WPS 2781

The paper notes that recent literature had emphasized the importance of transport costs and infrastructure in explaining trade, access to markets, and increases in per capita income. For most Latin American countries transport costs were a greater barrier to U.S. markets than import tariffs. The authors investigate the determinants of the costs of shipping to the United States using a large database (more than 300,000 observations a year) on shipments of products at the six-digit level of the Harmonized System of classification from different ports around the world. They find that distance and containerization matter and that port efficiency is an important factor. The paper argues that improving the efficiency of a port from the 25th to the 75th percentile reduced shipping costs by 12

percent. It shows that on average, having bad ports was equivalent to being 60 percent further away from markets. Inefficient ports are also shown to increase handling costs. Finally, the authors try to explain variations in port efficiency, finding that such variations are linked to excessive regulation, the prevalence of organized crime, and the general condition of the country's infrastructure.

Castro, de, Carlos F. (1996), "Trade and Transport Facilitation – Review of Current Issues and Operational Experience", The World Bank/UNCTAD, SSATP Working Paper N° 27

This joint World Bank/UNCTAD paper proposes ways to improve a country's competitiveness by increasing the quality and reducing the associated costs of international transport as well as possible transaction costs, adapting commercial practices to international standards and removing unnecessary trade barriers within the economic, social and political context of that country. The coherent implementation of these measures is held to require a trade and transport facilitation program that covered the systematic rationalization of procedures, information flows and documentation related to a country's trade and transport conditions. Efficient operation of transport modes and interface facilities through reducing physical barriers and institutional interference as well as the simplification of legal regimes is identified as necessary for improving international transport operations. The author also shows that there is a need for overall structural changes covering new trade and transport policies, particularly in the field of Customs procedures and in the use of modern trade and transport-related technology. The paper argues that governments had to understand the benefits derived from the implementation of facilitation measures, and adopt a positive attitude towards them.

Doyen, Jean H. (1991), "The macro-economic framework for transport policy in Africa" (proceedings)

This report contains the opening remarks made at the "Conference on Transport in Africa" held in Brussels in 1991. It notes that a number of factors made transport in Sub-Saharan Africa a precarious and costly undertaking: difficult terrain, low density of demand, and scarcity of human and financial resources. High costs, unreliability, and poor quality of transport services are identified as stifling efforts to put African countries back on a growth path. Institutional and regulatory reform are said to be required to build up maintenance capability, step-up resource mobilization, involve local communities, improve the functioning of the markets for transport services, restructure parastatals, and facilitate transit and documentation. The document offers an overview of the overall framework under which policy makers and planners will have to address transport issues over the coming decade. It briefly outlines the key tasks for the various sub-sectors and identifies cross-cutting policy goals with clear linkages to broader development objectives. The report argues that, in order to implement the broad policy agenda, governments will have to assume the role of enabling agents rather than direct providers of services.

Evlo, Kodjo (1995), "Transit transport systems in West and Central Africa: issues, actions and constraints", UNCTAD, UNCTAD/LDC/94

This study describes West and Central Africa's efforts to improve their transit transport systems. Section one provides an overview of the current transit transport situation in West and Central Africa and underlines that, as GATT members, they subscribe to Article V of the Agreement. Issues, actions and constraints at the country level are discussed under section II. The study concludes that, although major efforts have been made in the past to improve transit transport systems, the removal of non-physical barriers remained a major challenge. Simplification and harmonization of customs and administrative documentation and procedures are recommended as ways to achieve immediate benefits in reducing transit times and transit transport costs with modest investments.

Giorgis, Teshome Wolde (1995), "Transit transport systems for Ethiopia"; UNCTAD, UNCTAD/LDC/96

This report briefly considers Ethiopia's transit options to the sea and discusses some of the current major problems of transit traffic pertaining to the ports of Assab and Djibouti. After a brief introduction to the country's road transport networks, the paper reviews major developments in the transit area, particularly the deregulation and liberalization of the Ethiopian transport sector and some of the port use and transit service agreements that Ethiopia had concluded with its neighbours. The report then assesses all actual and potential sea ports which might be considered for use as transit ports for cargo originating in or destined for land-locked Ethiopia. Finally, it discusses the main problems of transit traffic in the Ethiopia-Red Sea Transport Corridor, underlying some of the major physical and non-physical impediments to Ethiopia's transit trade in the Corridor.

InfraAfrica (Pty) Ltd (2001), "Review of Progress in the Development of Transit Transport Systems in Eastern and Southern Africa", UNCTAD, UNCTAD/LDC/115

The report reviews the state of performance of transit transport systems in Eastern and Southern Africa and proposes measures to improve and foster strengthened transit collaboration in this region. Fragmented operations, a focus on national rather than regional benefits, lack of harmonisation and coordination, poor implementation, deficient infrastructure, insufficient information availability and sharing, the absence of performance targets and limited public/private partnerships are identified as factors which significantly affect the performance of transit transport systems. The authors offer a number of recommendations to improve the situation, such as the integrated treatment of transit transport beyond a merely national basis, the coordination and rationalization of existing transit transport initiatives, improved coordination among regional organisations, donors and governments, the development of systems for effective benchmarking and impact assessment, the establishment of fora for stakeholder consultations etc.

Lane, M.H. (1999), "The impact of customs on transport and trade facilitation"; World Bank/ UN/ESCAP

The paper holds that customs is an important agency of every government, particularly in emerging economies. For most travellers, businessmen, and importers Customs created the first impression of each country. The author argues that if Customs was slow, inept, corrupt, or failed to conform to international Customs standards, it was likely that the importer will be reluctant to trade, invest, or return. The paper notes that in many countries, Customs was the principal source of revenue for the government, accounting for 60% or more of national revenue collections. In all countries, Customs played a major role in enforcing laws at the nation's borders, protecting the health, safety, environment, and preventing the entry of contraband. The complexity and workload of Customs had grown along with world trade. In recent years, Customs had been called upon to enforce new laws regarding intellectual property, food safety, hazardous materials, cultural heritage, child labour, and trafficking in weapons and munitions. New regional and international trade agreements, designed to facilitate trade, added new requirements and complexity to Customs responsibilities. These new responsibilities and the increased workload had overwhelmed many Customs Administrations, which had tried to cope with traditional programs and responses. The paper notes that, in order to keep pace with the increases in trade and travel and the higher expectations, many Customs had turned to international organizations for guidance and support.

Muller-Jentsch, Daniel (2002), "Transport policies for the Euro-Mediterranean free-trade area: an agenda for multimodal transport reform in the Southern Mediterranean"; The World Bank, World Bank technical paper ; n° WTP 527

This study argues that the 15 European Union (EU) countries and their 12 Mediterranean Partners should complement their Euro-Mediterranean free-trade area for industrial goods with a common transport space. This would require the removal of policy-induced frictions in the region's multi-

modal transport system in order to facilitate the flow of foods, people, and investments within this emerging trade block. The purpose of this report is to identify the bottlenecks and inefficiencies that currently exist and to map out the reforms in the legal, regulatory, and institutional framework that should be implemented to address them. This includes both national and cross-border policy measures in the various modes (air, maritime, and land-based transport) as well as in transport logistics. The study compares sector performance and sector policies within the concerned countries and it benchmarks these against international best practice. It draws on policy lessons from other developing regions, such as Latin America and Eastern Europe and assesses the extent to which the policy framework of the EU Single Market in the transport sector could provide guidance for the creation of a common transport space throughout the Mediterranean region.

Narayanan, D.C.A. (1995), "Transit Transport Systems in Asia: Issues, Actions and Constraints"; UNCTAD, UNCTAD/LDC/98

The report analyses the transit transport systems of Afghanistan, Bhutan, Lao PDR, Mongolia and Nepal, highlighting specific problems and constraints encountered in this context. The author shows that these countries' heavy dependence on roads placed extra pressures on the roads and led to road deterioration. The document notes that, despite a number of efforts to upgrade these roads with support of the World Bank, the Asian Development Bank and bilateral donors, the share of the paved roads in the total network still remained relatively low compared to other developing countries, which is shown to contribute to the high transport prices of loss of import and export competitiveness. The author identifies the insufficient implementation of a number of existing bilateral transit agreements and international conventions related to transit transport as the fundamental problem in this area. The report argues that, despite a number of initiatives, such as the bilateral transit agreement between India, Nepal and Bhutan, significant weaknesses in the transit facilitation area still had to be addressed.

Nuno Limão, Anthony J. Venables (1999), "Infrastructure, Geographical Disadvantage, and Transport Costs"; The World Bank, Policy Research Working Paper 2257

Limão and Venables use three different data sets to investigate how transport depends on geography and infrastructure. Landlocked countries have high transport costs, which can be substantially reduced by improving the quality of their infrastructure and that of transit countries. Their analysis of bilateral trade data confirms the importance of infrastructure. The authors estimate the elasticity of trade flows with regard to transport costs to be high, at about -2.5. This meant that: (i) The median landlocked country had only 30 percent of the trade volume of the median coastal economy; (ii) Halving transport costs increased the volume of trade by a factor of five; (iii) Improving infrastructure from the 75th to the 50th percentile would increase trade by 50 percent. Using their results as a basic gravity model to study Sub-Saharan African trade, both internally and with the rest of the world, Limão and Venables find that infrastructure problems largely explain the relatively low levels of African trade.

Raven, John (2002), "Trade and Transport Facilitation: an audit methodology", The World Bank

The document holds that investments in basic visible transport infrastructure would never yield their full potential returns in international trade performance without parallel advances in systematically improving information generation and exchange, which underpinned and controlled every export and import movement. Such an effort had to begin with a clear understanding of the special characteristics of each country, and of each significant border entry and import point. This report offers an analytical approach to such a perception and reflects practical experience in a number of Bank missions and inquiries in a range of developing countries. The Audit examines and evaluates difficulties and obstacles presented to the cross-frontier movement of a routine consignment and its associated payment. The report is structured in the following manner: it presents an explanatory introduction; a

set of questionnaires designed to support and structure personal interviews; and a note on the analysis and interpretation of the results of these interviews and suggestions for organizing practical remedial action.

Stone, Jack I. (2001), "Infrastructure Development in Landlocked and Transit Developing Countries: Foreign Aid, Private Investment and the Transport Cost Burden of Landlocked Developing Countries", UNCTAD, UNCTAD/LDC/112

The two main objectives of this report are: (a) to examine the extent of external financial support for the main transit corridors serving landlocked countries, which by their very geographical nature lie mainly in the territory of transit neighbours; and (b) to provide an analysis of the overall size of the transport cost burden on imports facing landlocked countries in comparison with their own coastal transit neighbours. In addition to the landlocked developing countries, the paper focuses on a further selected 34 countries which are the principal coastal transit countries serving the developing landlocked countries by providing land transit corridors to ports.

UNCTAD, (2001), "Transit Systems of Landlocked and Transit Developing Countries: Recent Developments and Proposals for Future Action"; TD/B/LDC/AC.1/17

The paper notes that the high costs of international trade represented a serious constraint on the economic development of landlocked developing countries. Inadequate infrastructure hampered their competitiveness in regional and international markets. Lack of adequate government financial resources aggravated by a decline in concessional aid (both bilateral and multilateral) had opened the door to private sector capital and management expertise. Many countries had now introduced some form of private sector involvement in infrastructure. However, for many landlocked and least developed countries attracting private sector investment in infrastructure remained a major challenge owing to investor's perception of high country risk. The paper argues that a combination of private and public participation, together with the involvement of specific regional funds, local capital and increased official development assistance flows, could offer a viable solution. Donors and international financial and development agencies were invited to promote innovative technical mechanisms which could help these countries meet their infrastructure financing and management needs.

UN/ECE, (2002), "Landlocked Countries: Opportunities, Challenges, Recommendations", TRADE/2002/23

The document analyses the special situation of landlocked countries with respect to the areas of transport and transit. It looks at specific transport costs entailed by their particular geographic situation, examines their influence on economic growth and analyses fundamental legal aspects. The paper further analyses the role of governments in this process, arguing that they "should play a role as a facilitator and interfere only when necessary." It then examines the influence of landlocked status on the transition process in eastern and central European and central Asian countries through various case studies. The paper concludes with certain recommendations on how to improve the situation, covering the areas of cost reduction, legal action, infrastructure development, regional/subregional cooperation, institutional framework and capacity building and public-private cooperation.
