

## Consultation Paper 1.3

### International Transport and Transit<sup>1</sup>

#### Executive Summary

Due to the many facets and potential ramifications of international transport and third-nation transit, numerous Ministries, ranging from Foreign Affairs to Interior to Transport, all play important roles. MOT's primary involvement consists of granting authorisation for foreign vehicles to enter Afghanistan. Today this requires MOT representation in selected cities in Pakistan and Iran, and soon in Tajikistan.

Inbound vehicles and drivers are allowed to enter the country after obtaining a pass from the nearest representative of MOT's Private Sector Department. It appears that this is essentially a paperwork and fee-paying exercise as there is no vehicular inspection to ensure minimum safety and technical standards are satisfied.

Outbound Afghan vehicles and drivers are also able to cross the borders, at least into Pakistan and Iran, but they must obtain authorisation in advance, both from MOT and from the country they plan to enter. Authorisations, where allowed, are issued by representatives of neighbouring nations who are based at Embassies and Consulates in Afghanistan.

TSR has discerned no significant problems or delays caused by the current procedures, either inbound or outbound. Most of the bilateral agreements examined by TSR call for reciprocity in acceptance of the vehicles and operators duly licensed in their home country. This is common practice and is reasonable. Standards need not be identical between neighbouring states as long as they are similar in terms of performance and impacts.

TSR has, however, elsewhere recommended that the Private Sector Department re-examine its approach to setting technical standards and upgrade its technical vehicle inspection for domestic licensing. In addition, some of the bilateral agreements are now quite old, and compliance may or may not be actively monitored.

#### Recommendations:

Therefore, it is recommended that MOT work jointly with the Ministry of Commerce to define precisely the status of relevant bilateral and multilateral agreements and that these be updated (to reflect the proposed new MOT standards) or re-affirmed as appropriate.

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<sup>1</sup> This paper draws, in part, on the 2003 report "Development of Framework and Legislation for Cross-Border Trade" prepared by Padeco under ADB TA AFG/3874.

Actions:

MOT should seek technical assistance (TA) to assist with undertaking the review and to define an appropriate strategy. The support is estimated to cost about USD 0.1 million. To actually implement the proposed strategy may require further TA.

## **Introduction**

The TSR mandate included an overview of agreements on and the regulation of international transit and multi-modal transport services, including dry ports and inland container depots. At present, Afghanistan has neither legislation nor regulations specifically focused on multi-modal transport services and has no formally designated dry ports or inland container depots. (See the Information Paper on Legal for the Transport Sector, 4.4.). The closest such facilities are located at Chaman on the Pakistani side of the border, opposite Spin Boldak south of Kandahar.

This consultation paper, therefore, focuses primarily on bilateral agreements and multilateral conventions and on procedures involving Afghanistan's international and transit trades and passenger flows as they relate to the role and responsibilities of the Ministry of Transport, specifically its Private Sector Department.

## **Definitions**

“International transport”, for the purposes of this paper, refers to the surface carriage of goods or people between Afghanistan and other economies, whether adjacent or accessed by transiting neighbouring nations. Such transport may be all-road or road / rail, road / water, or some combination of these modes. The Afghan portion, however, would currently be all-road.

“Transit” refers to movements between third-party nations that traverse the sovereign territory of Afghanistan. Examples include trade between Iran or Pakistan and the Central Asia Republics, e.g., Tajikistan, Turkmenistan, Uzbekistan or beyond. It also includes, via seaports in Iran or Pakistan, overseas imports to or exports from CAR states that move through Afghanistan en route. Afghanistan, of course, has a very long history as a crossroads for transit movements.

The terms “trade” and “transit trade” refer only to cargo. “Transport” and “transit transport” refer to the vehicles / means of transport employed, whether for cargo or for passengers. Trade and transit agreements frequently, but not always, cover both the trade and the transport aspects.

## **Current Situation: International Agreements**

Afghanistan, under previous regimes had bilateral agreements with both Pakistan and Iran. More recently, draft agreements with Tajikistan and Turkmenistan have been prepared. Afghanistan was also a signatory to some, but not all, international conventions that the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) defines as critical for the transport sector. Highlights of past and pending agreements are attached as Annex 1.

The current status of these agreements, however, is not clear. There are unconfirmed reports, for example, that Afghanistan subsequently abrogated its accession to the international TIR Convention and that Pakistan has abrogated the bilateral agreement with Afghanistan. Furthermore, in Afghanistan's present recovery period, the extent to which provisions of still-valid agreements are actually implemented is uncertain.

On a regional basis, ECO (Economic Co-operation Organisation) is a grouping comprised of Afghanistan, Azerbaijan, Iran, Kazakhstan, the Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan. ECO members have drafted a very comprehensive *Transit Transport Framework Agreement* that covers all required aspects of transit operations. It has yet, however, to be fully implemented.

### **Current Situation: Institutional**

Within Afghanistan itself, multiple organizations of TISA are ostensibly responsible for various aspects of cross-border trade and transport. These include, *inter alia*:

- Ministry of Commerce (Trade)
- Ministry of Finance (Customs)
- Ministry of Foreign Affairs (Treaties and protocols)
- Ministry of Interior (Security, inspection and enforcement)
- Ministry of Transport (Vehicular permits and regulation)

It can be seen that the responsibility of the Ministry of Transport (MOT), i.e., regulation of physical transport, is, albeit important, only a single function within a large jurisdictional arena. Moreover, it is the understanding of TSR that the Afghan Ministry which ordinarily takes the lead role in trade-related international discussions is Commerce rather than MOT.

### **Current Situation: Regulatory**

MOT's Private Sector Department is responsible for the regulation of the operations of all commercial vehicles including private trucks, buses and taxis within or entering Afghanistan. It exercises its writ primarily through route permission licensing, compulsory membership in unions and the enforcement of allowable tariffs. The Department employs a staff of over 800 in Kabul and in all the major provincial capitals as well as in selected cities in Pakistan (Peshawar, Quetta), Iran (Taybad) and, soon, Tajikistan.

In principle, inbound vehicles and drivers are allowed to enter Afghanistan after obtaining authorisation from the nearest representative office of the Private Sector Department. In practice, it is reported that it is often possible to collect a pass from Department representatives at the border crossing itself. Just as for domestic permits, it appears that this is essentially a paperwork and fee-paying exercise as there is apparently no vehicular inspection to ensure minimum safety and technical standards are satisfied.

Outbound Afghan vehicles and drivers are also able to cross the borders, at least into Pakistan and Iran, but must also obtain authorisation in advance, both from MOT and from the country they plan to enter. Neighbours to the north are reportedly sometimes more hesitant to permit entry due to apprehensions about drugs and weapons. Authorisations, where allowed, are issued by representatives of neighbouring countries who are based at strategic locations in Afghanistan.

TSR has discerned no significant problems or delays caused by the current procedures pertaining to vehicles, either inbound or outbound. A plethora of issues related to trade agreements, facilitation, customs clearances, security, etc., are also involved in cross-border and transit movements, but these are outside the scope of the TSR.

## **Recommendations**

Most of the bilateral agreements examined by TSR call for reciprocity in acceptance of the vehicles and operators duly licensed in their home country. This is common practice and is reasonable. Standards need not be identical between neighbouring states as long as they are similar in terms of performance and impacts.

TSR has, however, elsewhere recommended that the Private Sector Department re-examine its approach to setting technical standards and upgrade its technical vehicle inspection for domestic licensing. In addition, some of the bilateral agreements are now quite old, and compliance may or may not be actively monitored.

Therefore, it is recommended that MOT work jointly with the Ministry of Commerce to define precisely the status of relevant bilateral and multilateral agreements and that these be updated (to reflect the proposed new MOT standards) or re-affirmed as appropriate. It also appears necessary and appropriate that MOT's Private Sector Department, even when renamed and refocused as elsewhere recommended, retain a role in support of cross-border transport, including its foreign offices<sup>2</sup>.

## **Actions**

To assist with the review of the bilateral and multilateral agreement the MOT should approach a donor to finance TA. The TA should be provided by an expert in the regulation of international road transport. The purpose would be to work out a detailed strategy, including an identification of further technical assistance to implement the strategy. The TA should be for a period of 3 to 4 months at a total cost of about USD 100,000.

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<sup>2</sup> The Legal Framework Paper, 4.4, notes that consideration will eventually need to be given to drafting multi-modal transport regulations, but this is not yet a priority item.

## ANNEX 1: BILATERAL AND MULTILATERAL AGREEMENTS<sup>3</sup>

### A. *Agreement between the Government of the Islamic Republic of Pakistan and the Government of the Kingdom of Afghanistan for Regulation of Traffic in Transit (Kabul, March 2<sup>nd</sup>, 1965)*

#### Main Points:

1. Grants freedom of transit for goods and means of transport (Article 1);
2. Designates transit routes (Article 2);
3. Applies to both road and rail transportation;
4. Limits levies to cost-related charges (Article 4);
5. Adopts customs simplification measures (Article 4 and annex);
6. Exempts transit goods from customs duties;
7. Provides for institutional arrangements (Articles 8 and 11);
8. Applies non-discrimination and national treatment rule (Article 9);
9. Inserts health, morality and security exceptions with respect to permissible goods (Article 10);
10. Liberalises and deregulates international transport services market; provides for free market access and free pricing (Articles 1 – 3 and accompanying Protocol);
11. Provides for home-country licensing of road carriers (Articles 5 and 7 and accompanying Protocol); and
12. Grants drivers multiple entry visas for periods of six months ((Article 6 and accompanying Protocol).

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<sup>3</sup> Under the Vienna Convention on Succession of States in Respect of Treaties (1978), newly independent states are bound by the treaties of their predecessors only if they express their will to that effect. President Karzai has made a declaration of the continuity of the body of law and observance of international conventions that is in conformity with the Vienna Convention.

***B. Transit Agreement between the Government of the Republic of Afghanistan and the Kingdom of Iran***

Main Points:

1. Grants transit rights for passengers and cargo (Article 1);
2. Covers the means of transportation required to perform the transit operation (Article 5);
3. Commits to best effort with respect to infrastructure and facilities (Articles 3, 4 and 9);
4. Excludes cabotage (Article 6);
5. Exempts transit trade from customs duties; restricts charges to costs of services (Articles 7 and 9);
6. Exempts duties on fuel and lubricants in foreign vehicles in transit (Article 8);
7. Provides for permanent Transport and Transit Commission (Article 13);
8. Provides for Third Party Liability insurance coverage consistent with the law of the host country (Article 14);
9. Defines entry / exit points (Protocol 1); addresses customs matters (Protocol 2);
10. Specifies temporary importation regime for vehicles (Article 1);
11. Specifies a TIR regime for cargo (Article 2);
12. Recognises national and / or international drivers' licenses (Article 7); and
13. Grants drivers right to multiple entry visas for periods of six months (Article 9).

***C. Draft Transit Agreements between the Governments of Afghanistan and Tajikistan and between the Governments of Afghanistan and Turkmenistan<sup>4</sup>***

Main Points:

1. Addresses transit transportation for both cargo and passengers (Article 1);
2. Appears to also apply to vehicles (Articles 3, 8 and 9), but Article 7 raises questions on this aspect;
3. Prohibits weapons and narcotics (Articles 2 and 15);
4. Applies health and SPS restrictions (Articles 2 and 15);
5. Specifies routes (Article 4 and Addendum 1);
6. Grants exemption of transit charges other than transportation costs (Article 5);
7. Draft is unclear whether drivers' licenses are mutually recognized (see Article 8 and Addendum 2, Article 5);
8. Provides for national treatment (Articles 5 and 10);
9. Draft makes no precise commitments regarding infrastructure (see Articles 4 and 10);
10. Provides for the right (obligation?) of transport operators to establish a representative office in the host country (Article 11);
11. Provides for institutional arrangements (Article 12);
12. Addresses customs clearance procedures and refers to the TIR Convention (Addendum 2, Article 5); and
13. Grants drivers right to multiple entry visas for periods of six months (Addendum 2, Article 7).

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<sup>4</sup> Two separate draft agreements but with identical wording.

***D. Trilateral Memorandum of Understanding between the Transitional Islamic State of Afghanistan, the Islamic Republic of Iran and the Republic of India on Trade and Transit of Goods (Tehran, January 2003)***

Main Points:

1. Stresses the importance of obtaining insurance cover to facilitate transit of goods to / from Afghanistan through Iran (A7);
2. Provides for Iran and Afghanistan to open all transit routes, borders and ports to all transit of passengers and cargo (B7);
3. Includes infrastructure commitments; and
4. Designates a shipping company for transit of goods through Iran to Afghanistan (B9)  
[NOTE: It is unclear whether this last item is comprehensive or limited only for road construction activities.]

**E. Region-wide Status of Accession to Key International Conventions**

	Afghanistan	Iran	Pakistan	Tajikistan	Turkmenistan	Uzbekistan
Convention on Road Traffic, 1968		O	O	X	X	X
Convention on Road Signs and Signals, 1968		O	O	X	X	X
Customs Convention on the International Transport of Goods (TIR), 1975	O*	O		X	X	X
Customs Convention on the Temporary Import of Commercial Road Vehicles, 1956	O					X
Customs Convention on Containers , 1972						X
International Convention on the Harmonisation of Frontier Control of Goods, 1982						X
Convention on the Contract for International Carriage of Goods by Road (CMR), 1956	??			X	X	X

Source: UNESCAP

X = acceded

O = partly acceded

?? = The Ministry of Commerce reports that Afghanistan was previously a signatory, but membership may have lapsed.

\* It is alleged that the then government of Afghanistan abrogated the TIR Convention in 1978