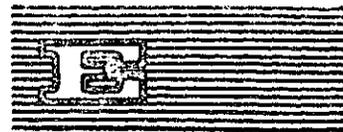


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REQUIREMENTS TO BE FULFILLED BY MULTIMODAL
TRANSPORT OPERATORS WORKING IN LATIN AMERICA

Prepared by the OAS/CEPAL
Maritime Transport Programme

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Introduction

In the second part of its third session (January 1977), the Intergovernmental Preparatory Group on a Convention on International Multimodal Transport requested the UNCTAD secretariat to prepare an information document based on the data submitted by the regional commissions on the minimum requirements to be met by multimodal transport operators (MTOs). That document should present the information in a global manner and, if possible, it should be available to the Intergovernmental Group at its fourth session. 1/

The UNCTAD secretariat invited the secretariat of CEPAL to collaborate in this task and asked it to consult with the governments of the region about the existing or planned legislative measures or regulations on the requirements to be met by MTOs.

In order to comply with this request, the secretariat of the United Nations Economic Commission for Latin America (CEPAL) prepared a questionnaire on this subject (attached as Annex 1) and sent it to the Ministers of Foreign Affairs of the Latin American and Caribbean countries with a note dated 9 June 1977.

So far, nine countries have replied to this note (Barbados, Bolivia, Brazil, Chile, El Salvador, Mexico, Panama, Peru and Uruguay), three of which - Barbados, Bolivia and El Salvador - have no legislation or regulations about multimodal transport.

The present document summarizes the information provided by the countries and includes background information which the CEPAL secretariat has on this matter. In considering this information, it should be borne in mind that there is an aspect which may make it difficult to compare the information provided by the Latin American countries with that from other regions. Thus, the first question in section III of the CEPAL questionnaire reads: "Are there any MTOs operating in your country whose services include route sections inside the country?" The question was drafted in

1/ Report of the Preparatory Group on the second part of its third session (TD/B/640; TD/B/AC.15/23), 14 March 1977.

this manner - as was the first question of section V - in order to concentrate attention on multimodal operations originating or terminating at a point within the Latin American country. That is to say, the questionnaire did not mean to refer to those multimodal operations which begin or end at a port or at a frontier of the Latin American country. There is no guarantee, however, that every country will have interpreted the questionnaire in the same way.

Although there are slight differences between the criteria whose application the Latin American countries consider to be desirable in order to regulate the activities of multimodal transport operators in their territory, it is clear from the answers to the questionnaire that there is consensus about the need for such regulation. There is the greatest interest in the region in the development of international multimodal transport, but there is also an awareness of the need to channel it in such a way as to coincide with national interests by laying down the requirements which must be satisfied by enterprises providing such services.

A. Existing provisions

International multimodal transport operators provide services in at least ten Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Panama, Peru and Venezuela.

In only three of these countries - Brazil, Mexico and Venezuela - have legal provisions been adopted to regulate multimodal transport activities, however. ^{2/} In Chile, Ecuador, Panama, Peru and Uruguay, it is planned to make provision in legislation for the legal figure

^{2/} The Brazilian legislation on containers and unit loads (Law 6288 of 11 December 1975) and the Venezuelan supreme decree on combined transport systems (Decree N^o 1628 of 15 June 1976) are reproduced in a document prepared by the OAS/CEPAL Maritime Transport Programme, Evolution of the Latin American position regarding the negotiations for a Convention on international multimodal transport (E/CEPAL/L.141). Subsequently, on 15 August 1977, the Regulations for the Brazilian Law 6288 were approved by the President of the Republic in Decree 80145.

of the multimodal transport operator or the concept of multimodal transport.

At present, only multimodal transport operators who are nationals of the country in question are operating in Brazil, Chile, Mexico and Peru. Indeed, foreign multimodal transport operators are not allowed to provide this service in Brazil and Mexico.

A licence is required for functioning as a multimodal transport operator in Brazil, while in Venezuela prospective operators must register with the Customs Administration of the Ministry of Finance, which issues the appropriate authorization. In Mexico, there is a National Register of MTOs and they require a licence in order to operate. These matters are dealt with by the Directorate-General of Tariffs, Terminals and Associated Services of the Ministry of Communications and Transport.

In Brazil, the definition of MTOs as national or not is on the basis of domicile and distribution of capital, and it is required that the enterprise should be run by Brazilians and that at least two-thirds of its registered capital, in the form of nominative shares, should belong to Brazilian citizens. In Mexico, the question of nationality depends on the nationality of the MTO itself and of its executives.

The respective legal provisions in both Brazil and Venezuela imply that only legally constituted road, rail, air or sea transport firms can function as MTOs.

In Brazil and Mexico, a requirement for the granting of the licence is that the enterprise should prove its technical and commercial suitability, in the first of these countries by demonstrating that it has sufficient operating capital and technical experience in the activity, and in the second by showing that it has suitable equipment and is solvent. In Venezuela, enterprises are obliged to deposit a guarantee sufficient to cover all obligations to the National Treasury from the point of entry of the goods into the country to their approved destination within the country.

/In Brazil

In Brazil and Mexico, MTOs are obliged to submit their tariffs for the approval of the authorities and to make them public. Furthermore, in both countries they must invoice in detail their own services and those which they subcontract. In Mexico, the services provided are subjected to inspection and supervision in order to ensure that they comply with the regulations.

B. Criteria for regulating the activities of MTOs

The following is a summary of the criteria which Brazil, Chile, Mexico, Panama, Peru and Uruguay consider it appropriate to take into account, according to their replies to the CEPAL questionnaire, in establishing regulations governing the activities of multimodal transport operators. 3/

1. All the governments consider it desirable to regulate the activities of multimodal transport operators who provide services within their countries.
2. Three governments are in favour of establishing a national register of MTOs, another considers that a licence should be required in order to operate as an MTO, and two others are in favour of adopting both measures, i.e., establishing a register and requiring a licence. All the countries consider that their respective Ministry of Transport or Ministry of Trade and Industry should be the body responsible for the process of registration or granting of licences, but one country feels that the Customs, the National Port Authority and the Department of Civil Aviation should also enter into the process.
3. All the governments except two consider that different treatment should be given to foreign MTOs as regards the national register or the granting of licences. According to one government, foreign MTOs

3/ The numbering of the replies below corresponds to that of the questions in Section V of the questionnaire. It should be noted that some countries did not answer all the questions.

should not be authorized to carry out this activity; another feels that the provision of services inside the country connected with exports should be reserved for national MTOs, a third considers that foreign MTOs should be bound by the decisions of the Cartagena Agreement and by national legislation, while a fourth takes the view that foreign MTOs should only be able to operate through a national multimodal transport operator or should be associated with a national operator, albeit holding less than 50 per cent of the registered capital, as in the case of international road transport enterprises.

4. The majority of the governments are in favour of defining MTOs as national or foreign on the basis of domicile and distribution of ownership of the capital. One government, however, would decide the matter on the basis of the nationality of the MTO as an enterprise and that of its executives, while another considers that article 8 of Annex II of the International Surface Transport Agreement between the Countries of the Southern Cone of Latin America should be applied. This article states that a substantial part of the ownership and the effective control of the enterprise should be in the hands of natural or naturalized citizens of the country of origin of the enterprise.

5. All the governments agree that foreign MTOs should be obliged to have a legal representative in the country.

6. There is also consensus that foreign MTOs should be required to associate themselves with national enterprises in order to be permitted to operate in the country. As regards the acceptable types of association, one government is in favour of joint ventures in which the majority of the capital is in the hands of the national enterprise, a second is in favour of companies representing the foreign enterprise under a contract, another is in favour of mixed enterprises under the existing laws, a fourth would be willing to accept a system of correspondentship, while a fifth considers that joint stock companies should be excluded in order to ensure compliance

/with the

with the requirement that there should be majority national capital.

7. Most of the governments consider that the following criteria would be appropriate for determining whether an enterprise is technically and commercially fitted for receiving authorization to function as an MTO: ownership of transport equipment such as vehicles, containers, pallets, etc., or of cargo terminals; scope of services offered, such as transport, preparation of documentation, execution of customs or plant health formalities, etc.; geographical coverage of its multimodal transport operations; quality of being connected with international transport and possessing proven experience as a transport firm, customs agent or international trade or transport consultant; and status of being a carrier or established transport firm. One government considers that the number of staff should also be taken into account, another that 100% of the staff should be nationals of the country, while a third feels that consideration should be given to the number and geographical distribution of the enterprise's subsidiaries and branch offices. Another of the answers states that the indicators would not be compulsory in their entirety but would assist in judging whether the MTO was sufficiently suitable from the technical and commercial point of view to justify its authorization.

8. Two governments consider that there should be four indicators for determining the financial solvency of the MTO: paid-up capital; value of assets; amount, type and coverage of insurance; and bank reports or guarantees. Another, however, feels that the paid-up capital, the value of the assets and the company's balance sheets should be considered, a fourth considers that it would be sufficient to take into account the value of the assets, and a fifth feels that it would be sufficient to evaluate the bank reports or guarantees. Another takes the view that, in addition to the indicators in question, convincing proof of participation in other enterprises of proven solvency should be demanded.

9. Two governments consider that a carrier's licence should be demanded in order to function as an MTO; a third government takes the view that it would be easier for a firm to obtain a licence to function as an MTO if it were an IATA member, a shipping agent or a customs agent, but a fourth government considers that the possession of other licences in the transport field should make it easier to obtain authorization to function as an MTO, whereas another government does not agree with this view.

10. There is consensus that it would be desirable to take measures to prevent or correct the domination of the market by a small number of MTOs which could wield monopolistic power. According to two governments, anti-monopoly legislation should be put into effect, while another takes the view that the regulations should provide for fair competition, to the exclusion of monopolistic agreements, and States should reserve the right to keep a watch on tariffs in order to prevent abuses.

11. As regards other requirements which MTOs should fulfil in order to be included in a national register or to obtain a licence, some governments consider that such requirements should be laid down in legal provisions to be established in due course by each country. One government, however, feels that uniformity and regularity of services should be required, another that the tariffs should be submitted for approval by the appropriate authorities, while a third takes the view that if it is a signatory of the Convention on International Multimodal Transport it should only grant authorization to foreign MTOs whose own countries are also signatories.

12. With one exception, all the governments feel that MTOs should submit periodic reports on their activities to governments, including, for example, information on services subcontracted by them. With regard to the information that should be required from MTOs, one government considers that this should include variations in capital, routes in service, and volumes of goods transported, by routes and

/types of

types of cargo, another feels that annual reports on their activities should be submitted to the competent authorities, while a third feels that quarterly reports should be submitted on the operations effected, types of cargo, tariffs charged, problems arising in the provision of services, delivery delays, losses and shortfalls. Another reply states that it is desirable that national legislation should specify the information to be provided and the frequency with which it must be supplied.

13 and 14. All the governments agree that MTOs should submit their tariffs to the authorities for approval.

15. All except one government agree that MTOs should make their tariffs public.

16. With one exception, it is generally agreed that MTOs should invoice their services and those that they subcontract in detail.

17. According to one government, the additional control measures over MTOs and the penalties for non-fulfilment should be specified in the legislation, while according to another MTOs should give details of the insurance included in their services, indicating the risks covered and the insurance companies providing coverage, in which insurance companies of the host country should participate. A third government considers that checks should be carried out on the services in order to ensure that they comply with the legal requirements.

Annex 1

QUESTIONNAIRE ON THE MINIMUM REQUIREMENTS TO BE MET BY MULTIMODAL TRANSPORT OPERATORS (MTOs)

Section I

Background

In compliance with the request made by the Governments of some of the Member States of the Commission that CEPAL should prepare a document on the problems connected with the licensing of multimodal transport operators (MTOs), and with UNCTAD's request for information on the requirements in force for MTOs in your country, the secretariat of CEPAL has prepared the following questionnaire on the minimum requirements to be met by MTOs and the desirability of adopting common regional rules for their licensing.

Section II

Definitions

For purposes of this questionnaire, the terms used are defined as follows:

- (1) International multimodal transport: Carriage of goods from one country to another by two or more means of transport under a single contract issued by the person or enterprise organizing the service (the multimodal transport operator (MTO)).
- (2) Multimodal transport operator (MTO): Public or private civil or juridical person who assumes responsibility for the organization and execution of international multimodal transport operations. The MTO acts as the principal, not as the agent or representative of the shipper or of the transport companies participating in multimodal operations, and assumes responsibility for the fulfilment of the contract.
- (3) Multimodal transport contract: A contract by virtue of which a multimodal transport operator undertakes, against the appropriate payment, to carry out or arrange to carry out the international multimodal transport of the goods.

Section III

Existence of multimodal transport operations in your country

1. Are there any MTOs operating in your country whose services include route sections inside the country?

Yes

No

2. Does your country cover or plan to cover the juridical figure of the MTO or the concept of multimodal transport in its legislation?

Yes

No

3. Are the MTOs operating in your country only national, or also foreign?

Only national

Only foreign

Both national and foreign

4. Is there any kind of regulation of MTO activities proper, or are they subject only to the controls exercised over commercial enterprises in general?

Regulation of
MTO activities
proper

Only regulation
of commercial
enterprises

If specific regulations exist for MTOs, please answer the questions included in sections IV and VI; otherwise, continue with sections V and VI.

Section IV

Provisions in force for regulating the activities of MTOs

1. Does some type of National Register of MTOs exist, or is some type of licence required to operate as an MTO?

Register

Licence

No

If so, what body or bodies are involved in the registration process or in the issue of licences?

2. In the National Register or the issue of licences, is different treatment given to the foreign MTO (for example the prohibition to own trucks in your country)?

Yes

No

If so, in what way is the treatment different?

3. What criteria are used in defining a national or foreign MTO?

Residence.

Distribution of ownership of capital between national and foreign persons.

Nationality of the executives.

Other criteria for defining a national or foreign MTO:

4. Must foreign MTOs have a legal representative in the country?

Yes

No

5. Does any requirement exist to the effect that foreign MTOs must enter into association with national enterprises in order to be allowed to operate in the country?

Yes

No

If so, what types of association are acceptable?

6. Are MTOs required to prove their technical and commercial capacity as a prior requisite for registration or the issue of a licence?

Yes

No

If so, what criteria are used to establish such technical and commercial capacity?

7. Are MTOs required to possess other transport licences? Does the possession of such licences make it easier to obtain a licence to operate as an MTO?

8. Does inclusion in the National Register or the issue of licences depend on the fulfilment of any other requirements?

Yes

No

If so, what are these requirements?

Please enclose copy of the text of the regulations applicable and of any legislation which is currently under study or is expected to be in force in the near future.

9. Is there any evidence that users are harmed by a dominance of the market by a few MTOs?

Yes No

If so, what measures have been or are likely to be taken to correct this situation?

10. Must MTOs submit periodical reports on their activities to the authorities, including, for example, information on the services they subcontract?

Yes No

If so, what information must they provide, and at what intervals?

11. Must MTOs register their tariffs?

Yes No

12. Must MTOs submit their tariffs to the authorities for approval?

Yes No

13. Must MTOs make their tariffs public?

Yes No

14. Must MTOs invoice their own and subcontracted services in detail?

Yes No

15. What other control measures exist for supervising the fulfilment of the requirements laid down in the regulations in force?

16. Does your Government consider it desirable to improve or expand the scope of the regulations governing the activities of MTOs operating within your country?

Yes

No

If so, please answer questions 2 to 17 of section V.

Section V

Criteria which are considered appropriate for establishing regulations governing the activities of MTOs

1. Does your Government consider it desirable to establish regulations governing the activities of MTOs operating in your country?

Yes

No

If so, please answer questions 2 to 17.

2. Would your Government be in favour of establishing some form of National Register of MTOs or requiring some type of licence to operate as an MTO?

Register

Licence

No

If so, what body or bodies should be involved in the registration process or in the issue of licences?

3. Should different treatment be given to the foreign MTO (for example, the prohibition to own trucks in your country) in the National Register or the issue of licences?

Yes

No

If so, in what way should the treatment differ?

4. What criteria should be used in defining a national or foreign MTO?

Residence.

Distribution of ownership of capital between national and foreign persons.

Nationality of the executives.

Other criteria for defining a national or foreign MTO:

5. Should foreign MTOs be required to have a legal representative in the country?

Yes

No

6. Should foreign MTOs be required to enter into association with national enterprises in order to be allowed to operate in the country?

Yes

No

If so, what types of association would be acceptable?

7. Which of the following criteria are considered appropriate in determining whether the technical and commercial capacity of an enterprise is such that it can be authorized to operate as an MTO?

- Number of workers employed.
- Number and geographical distribution of branch and subsidiary offices.
- Ownership of transport equipment such as vehicles, containers, pallets, etc.
- Ownership of cargo terminals.
- Fields covered by the services offered, e.g.: transport, preparation of documentation, customs and plant health formalities, etc.
- Geographical coverage of their multimodal transport operations.
- Links with international transport and proven experience as a carrier, customs dispatching agent, international transport or trade consultant, etc.
- Status as a carrier enterprise or an established transport company.

Other criteria considered appropriate in establishing the technical and commercial capacity of MTOs:

8. Which of the following indicators would be appropriate in establishing the financial solvency of MTOs?

- Paid-up capital.
- Value of assets.
- Amount, type and coverage of insurance.
- Credit rating or bank guarantees.

Other indicators or criteria that would be considered acceptable for establishing the financial solvency of MTOs:

9. Would it be considered appropriate to require that MTOs be in possession of other licences in the transport field? Should the possession of such licences make it easier to obtain a licence to operate as an MTO?

10. Would it be desirable to take measures to prevent or correct domination of the market by a small number of MTOs, who might exercise monopolistic powers?

Yes

No

If so, what measures would be considered appropriate?

11. Does your Government consider that there are other requirements which should be met by MTOs in order to be included in a National Register or to obtain a licence?

Yes

No

If so, please give details:

12. Should MTOs submit periodical reports on their activities to the authorities, including, for example, information on services they subcontract?

Yes

No

If so, what information should they provide, and at what intervals?

13. Should MTOs register their tariffs?

Yes

No

14. Should MTOs submit their tariffs to the authorities for approval?

Yes

No

15. Should MTOs make their tariffs public?

Yes

No

16. Should MTOs invoice their own and subcontracted services in detail?

Yes

No

17. What other control measures are considered appropriate for supervising the fulfilment of these requirements?

Section VI

Desirability of adopting common regional norms for regulating
the licensing of MTOs

Does your government consider it desirable to establish some of the requirements to be met by MTOs on the basis of common regional or sub-regional norms for extending licences or controlling the activities of MTOs?