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## Developing International Logistics and Strengthening Business Co-operation

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# Developing International Logistics and Strengthening Business Co-operation

Miyuka Ohara

## Introduction

The recent technological innovation of transportation and data interchange has been considerably changing not only traditional means of transport and communication, but also conventional methods of trade, payment and insurance. Speedup, sophistication and specialization of international logistics through technological progress are gradually forcing changes in commercial flow in international transactions inherently based upon procedures and practices of a conservative nature.

Above all, the "combined", "multimodal" or "Intermodal" transportation system (hereinafter referred to as combined transport), which plays a key role in the international logistics of late, has developed the requirements of modern transport, particularly such transport as containerization, palletization and roll-on/roll-off traffic using trailers and ferries. However, concerns are becoming noticeable about incomplete legal systems of contractual relations between the combined transport and trade/payment/insurance/customs clearance.

This is because although arrangements for new legal environments relating to business activities for international logistics

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This paper will be presented as the Basic Report for general discussion of the 8th International Logistics Congress sponsored by Chinese Society of Economics of Supplies which will be held in Beijing China April 25-27, 1989. I am appointed as panel speaker of the Congress and solely responsible for preparing the paper.

This paper has been prepared by compiling a speech made by the author at the '85 International Logistics Conference held in May 1985, Tokyo, under the sponsorship of the Japan Physical Distribution Management Association, together with my various articles on international logistics for academic and organization publications, trade magazines and journals.

involving the combined transport and commercial contract are vigorously promoted, the trading, transport, banking and insurance circles engaged in international transactions are going their own ways and are not able to cope with the new trends. Thus, freight forwarders are suddenly attracting attention as main actors on the international trading scene.

Against this backdrop, I will describe new aspects of international logistics businessmen (hereinafter referred to as logistics personnel) who are expected to play a vital role in arranging environments for the combined transport as a means of efficiently promoting strategies necessary for international logistics management and to discuss idealistic business activities.

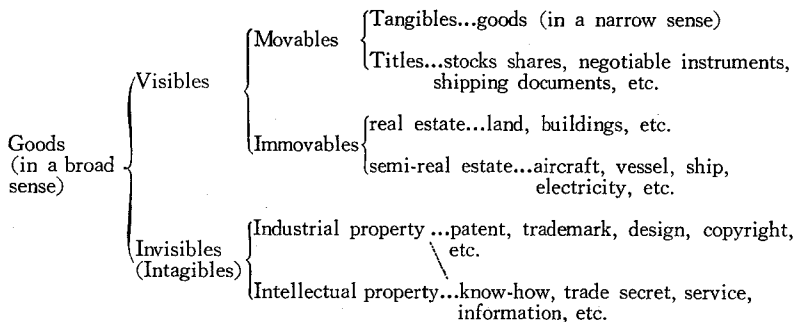
### **1. Basic Management Behaviors for Logistics Personnel to Cope with New Era**

Firstly, logistics personnel, who are required to act on the rapidly changing world political, economic and social stages, must continuously pay attention to the activities of the United Nations' specialized agencies such as IMF, IBRD, UNCTAD, UNCITRAL, IMO, ESCAP, ECE, ISO and inter-governmental organizations such as GATT, ICAO, OECD and CCC etc., Japan's politico-economic relations with China, the U.S.A., U.S.S.R., EC, etc., discussions at resource or regional meetings of OPEC, ASEAN, etc., summit meetings of industrialized countries and meetings at non-governmental organizations such as ICC, IATA and FIATA so that we can accurately predict how those activities and discussions will affect our business and foreign exchange rates, and act accordingly.

Secondly, those engaged in international logistics must deploy marketing with a new world-wide business sense. Up to now, logistics marketing has been user-oriented rather than in pursuit of profits. As profit motivation cannot be disregarded from the viewpoint of private companies, future international logistics personnel will have to tackle two tasks; pursuit of profits and consideration

for users. In addition, we must carry out logistics strategies to establish a business order based on moderate competition rather than excessive one by making appropriate costs/fees/charges and providing high quality services. we should refrain from resorting to logistics behavior to the detriment of international economic relationships.

Thirdly, technological development and transportation innovation have expanded the range of international trade from heavy and large industries, to light, small and compact one; thereby including all types of tangible and intangible goods from real estates to information and services in physical distribution.



Primary commodities, agricultural, marine and mineral products, live animals, dangerous goods, canned goods, gases and liquid products are included in goods in a narrow sense. Plants and machinery are included in a broad sense. Travelling goods, financial and insurance goods are included in services. Materials production, intermediate and consumption goods are included in a narrow-sense goods. High technology and biotechnology are included in intangibles.

For foreign trade, assisted by international logistics, complicated proceedings for export/import, supply and introduction of technology, service and information must be in compliance with the Foreign Exchange and External Trade Control Laws and Regulations, the Customs Laws, etc. It should also be noted that additional proceedings are necessary depending on the countries, involving selfrestraints, anti-dumping taxes, emergency duties, preferential duties, unitary-taxes, etc.

Fourthly, since logistics behavior for international trade is usually accomplished by legal means called contracts, logistics personnel must be legally minded on agreement of terms and conditions of business. As industrial and economic activities become diversified and more sophisticated and are carried out on a larger scale and especially because new trends based on technological innovation are considerably changing not only traditional means of transport but also methods and services for sale, payment, insurance, storage, packaging, stevedoring and cargo handling, that is to say, the long-cherished technique and practice for trade, transport, insurance and customs clearance, it is now requested that techniques and practices be reviewed. At present, acquisition, distribution and diffusion of information concerning these moves for the establishment of a new climate and order are mostly in the hands of specialists in each relevant business and industry of the world.

In practice, most customers engaged in international trade are more interested in profit-making aspects than legal aspects involving complete and precise agreements of terms and conditions for stipulating rights and liabilities as well as credits and debts between the parties concerned. However, this often leads to problems because international trade cannot be carried out by simply clarifying practical points of view. For delivery of goods, combined transport using a combination of means of transport by sea, air, rail, road and waterways must be established with contracts of cargo insurance for loss of and/or damages to the goods and liability insurance by carrier. For making and receiving payment, it is imperative for banks to achieve the necessary functions for selling/buying foreign exchange, operating documentary credits and finance quickly and smoothly. Legal arrangements for these systems are making steady progress.

Someone point out notwithstanding, that although legal climate preparations are steadily being made in the fields of international trade law, shippers who are to be followed by those legal systems are still far behind in fulfilling their functions. Under these

encouraging circumstances, those engaged in international logistics services need to become more legally minded to offer more complete and better services to these shippers.

## **2. Perspectives for New International Trade Law Order**

In recent years, moves for establishing a new order by reforming the traditional order of the social and economic establishment has vigorously been promoted both at home and abroad. Similar movements have also been noticeable in laws and regulations controlling international transactions of private/public owned enterprises. Namely, while moves are pursued for the establishment of a New International Economic Order, attempts to establish a new order in the longcherished international trade practices are also being made. These new moves are reflected in reviewing by international organizations such as the United Nations and the International Chamber of Commerce (ICC) of industrialized countries' traditional business practices prevalent in the world on the initiative of Third World.

### **(1) Works of the United Nations**

A report entitled "Progressive Development of Law of International Trade" submitted by the Secretary General to the U.N. General Assembly in 1968 first touched upon international trade techniques and practices saying, "although developing countries have not joined discussions on unification and harmonization of international trade laws they should actively participate in preparations for the establishment of new order through international bodies such as the UN, and that they should make efforts to promote the modernization of their own legal systems in order to engage in transactions with developed countries on equal terms". The report eventually led to a resolution to attach high importance to the interests of developing countries; and the United Nations Commission on International Trade Law (UNCITRAL) was founded, UNCITRAL has achieved many results as a forum of the solution of South-North legal issues is in line with UNCTAD acting as a forum for the solution of South-North economic issues.

UNCITRAL has been trying for the past twenty years to drastically change the prevailing western market economic order on the initiative of developing countries thereby embarrassing the industrial economic countries. The United Nations efforts have so far borne fruits in the form of drafts of the international conventions relating to the sale of goods, liner conference, carriage of goods by sea, multi-modal transport, commercial arbitration rules and bill of exchange, etc. Whether or not they can be put into effect draws the global attention of business circles.

## (2) ICC Achievements

The ICC is the international organization of business enterprises, chambers of commerce and economic organizations in 110 countries including developed and developing nations, aiming at the sound development of the worlds' economy and the promotion of international trade. ICC activities have been based on the notion that business practices by private enterprises and the market economy system are the most suitable means to achieve social, economic, commercial and technological progress.

Since its establishment in 1919, the ICC has been paying attention to the opinions of economic circles all over the world and reflecting them in the discussions and policies of intergovernmental organizations such as the UN, IMF, GATT, UNCTAD, UNCITRAL, OECD, ESCAP and EC etc.. The ICC has also been calling for the abolition of unnecessary international business procedures, the standardization of essential proceedings and the facilitation of complex practices thereby regulating day-to-day transaction, transport, payment and arbitration.

The ICC has already succeeded in unifying the interpretation of trade terms such as FOB and CIF in the form of Incoterms, and adopting Uniform Customs and Practice for Documentary Credits (hereinafter referred to as UCP) which are now regarded as the bible for L/C operations, the Uniform Rules for Collections (hereinafter referred to as URC) for D/P and D/A transactions, Uniform Rules for Combined Transport Documents for door-to-door transport and Arbitration Rules for the settlement of business disputes.

Those engaged in international trade use these rules in their daily business practices whether in a free market economy or planned economy nations. These rules have been undergoing amendments reflecting the consensus of economic circles in the world. The UN highly appreciates the continual revisions of the provision by maintaining that they reflect the fact that international exchanges of knowledge and experience are being carried out smoothly and efficiently. Recently, the China chamber of International Commerce (CCOIC) and ICC have decided jointly to create a working body to be called as the PRC CCOIC/ICC cooperation council.

### **3. Necessity of Putting New Rules to Wider Adoption**

Economic circles in Asia should be aware that Incoterms, UCP, and Arbitration Rules, which are of essential for international trade, have been revised according to requirements for the new era.

#### **(1) Widespread use of the 1980 Incoterms**

In both export and import, the successful results of international transactions depend on price quotation and the proper use of trade terms such as FOB and CIF for concluding contracts. It is hardly known that the Incoterms which are the international rules derived from the universal interpretation of those trade terms have had new trade terms added. The 1980 Incoterms include the new terms:

- **Delivered at Frontier (DAF):**  
To be used for transaction with the landlocked countries
- **Delivered duty paid (DDP):**  
To be used for supply and erection of plants and machinery.
- **FOB Airport (FOA):**  
To be used for transport of goods by air
- **Free Carrier (FRC):**  
Equivalent to FOB for combined transport of goods.
- **Freight/carriage paid to (DCP):**  
Equivalent to C&F for combined transport of goods.
- **Freight/carriage and insurance paid to (CIP):**



Equivalent to CIF for combined transport of goods.

With the advent of these new trade terms, the ICC adopted the 1980 Incoterms which define a total of 14 trade terms including the previously defined FOB, C&F, CIF, etc. For contracts involving erection of plants, combined transport or air freight transportation, new terms such as DDP, FRC, CIP, DCP and FOA should be used instead of FOB, CIF and so on.

## (2) Enactment of the 1980 Sales Vienna Convention

One of the most important and difficult problems for negotiating an international contract is that of a governing law, that is, the problem of which country's law should be applied to the contract. If one of the parties proposes his country's law as the law applicable to the contract, the proposal is normally rejected and a foreign law is often specified by the other party. To avoid disadvantages and embarrassments incurring from the selection of a governing law, the UN Convention on International Contract of Sale of Goods (hereinafter Vienna Convention) was adopted in 1980 as a sales law common to international transactions. The Vienna Convention was ratified by a total of 29 countries, including China, USA, France and Italy and came into force on January 1, 1988. Even though Japan has not yet ratified the Convention, it may not be free from the application of the law if its trade partner is a member country of the Convention. Since the Vienna Convention clearly recognizes that the international rules such as the Incoterms and the UCP are binding upon the parties and have priority over other laws and Vienna Convention and at the same time appreciates the autonomy of the parties concerned in a trade contract, these uniform rules should carefully be studied in advance.

## (3) Establishment of New International Transport Order

In the fields of international transport by sea and a combination of sea/land/air transportation, code of conduct for liner conference, the legal order of liability regimes in particular, had been established to be carrier oriented. However, those orders have been considerably

changing into one which is shipper oriented; thereby greatly affecting international trade and shipping practices. For example, the so-called Hague Rules of the 1924 Convention for Unification of Certain Rules relating to Bills of Lading serving as the maritime B/L law were partially revised and gave birth to the so-called 1968 Hague Visby Rules according to the today's requirements, and also the so-called Hamburg Rules of 1978 UN Convention on International Carriage of Goods by Sea were established to drastically change the prevailing order irrespective of the Hague Rule legislations. In addition, the 1980 UN Convention on International Multimodal Transport of Goods was adopted on the initiative of developing countries against the intentions of advanced shipping countries. Therefore, the present situation is extremely complicated with four laws applicable to bills of lading.

#### (4) Worldwide Adherence to UCP and URC

Documentary credits are a very widely used means of paying for goods in international trade. The 1983 UCP has greatly facilitated documentary credit practice by laying down codified rules that are applied to virtually all such transactions throughout the world.

Unlike sale of goods, operation of documentary credits are carried out provided that the stipulated documents are presented and the conditions instructed are complied with. In principle, payment, acceptance and negotiation of the draft are fulfilled in exchange for documents stipulated in the credit. Therefore, both exporter as a beneficiary and importer as an applicant for the credit must observe the following:

— An applicant must provide the issuing bank with precise and complete instructions simply and clearly according to the underlying sales contracts based on the UCP rules so that unnecessary problems can be avoided.

— A beneficiary must act faithfully as instructed in the credit. If he receives the credit but is not satisfied with the terms and conditions of the credit he should ask the importer to amend the corresponding conditions of the credit.

A collection is a means by which a creditor in one country (the seller, principal) may obtain payment from or acceptance of drafts by an account party (the buyer, drawee) in another country through the intermediary of banks. Unlike the documentary credit, it is only the buyer and not the bank, who is obliged to pay on presentation of the relevant documents.

The 1978 URC provide the only universally accepted text codifying the main rules to be applied to the above transactions.

#### **4. Present Situation of Combined Transport China-Japan**

China-Japan combined transport has been operated for the past eight years. Although demurrage and congestion of cargoes still remain unresolved as a problem which may totally be detrimental to port physical distributions in China and the Chinese inland transport system consisting of railways and roads still remain insufficient, over fifty Japanese companies are already engaged in the China-Japan combined transport under the mutual agency contracts with two Chinese organizations (SINOTRAN and PENAVICO). The interest of Japanese forwarders has enhanced as such partly because they have been encouraged by the expansion of Chinese-Japanese trade and partly because they anticipate the demand for through transportation of cargoes using containers. Their number will greatly increase as containerization in China is actively promoted in the future. While some Japanese agents have recently established joint ventures, new moves are becoming noticeable for build-up of a Chinese-Japanese combined transport system based on door-to-door services.

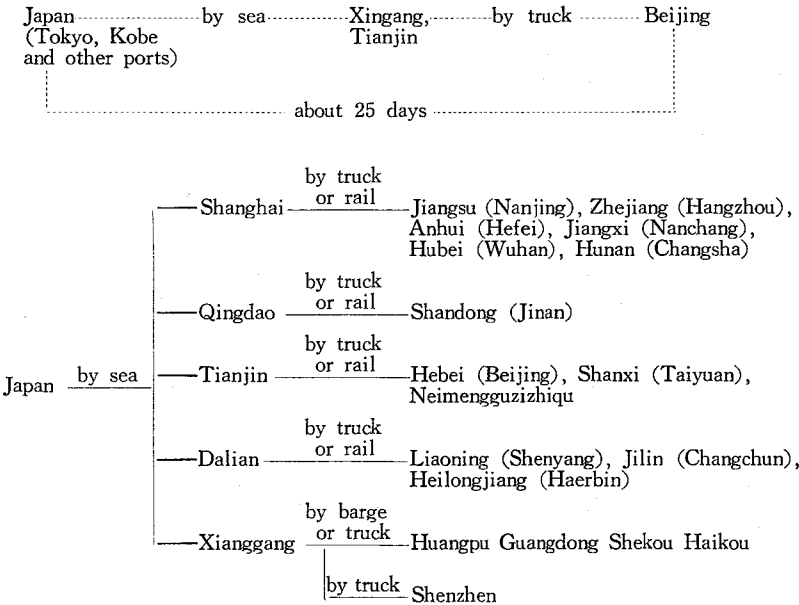
Under the current 7th Five-Year Plan of China (1986-1990), over 200 quays and wharves are expected to be constructed together with roads and rail stations. The Plan will certainly improve China's inland transportation system. By 1990,\* China plans to consolidate its integrated transportation network for annually carrying cargoes

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cf. Journal of Commerce dated March 5 of 1987.

amounting to 600 million tons (up 23.2% from 1985); using ships and barges and to increase the port capacities by 200 million tons by constructing 200 small, middle and large berths. China also plans to construct more highways and special-purpose roads and to privatize shipping and port operations. Minister of Communication and Transportation, Qian Yong Chang said that China was under negotiations with Japan's Overseas Economic Corporation Fund on the third loan of US\$260 million and that it had concluded a contract with the World Bank on an additional loan of US\$130 million.

Combined transport system bound for Beijing.



In this system, cargoes are transported by sea from Japan to Xingang, Tainjin and on land (by trucks) to Beijing. China-Japan container transport started in 1980 in a business tie-up with SINO-TRANS. Because of China's incomplete port facilities and shortage of transport conveyance equipments (such as chassis and trailers), the land transport cargoes are in many cases likely to be left alone

at container terminals. In order to improve such situations, freight forwarders are actively promoting a combined transport system by issuing through combined transport bill of lading.

Various routes have also been developed in addition to those bound for Beijing. A combined transport route leading to the North Eastern District of China has recently been developed via the Siberian railways. For the northern part of China, Kawasaki Lines is engaged in direct container shipping services for Shanghai, Mitsui O.S.K. Lines for Qingdao and Xianggang, Tianjin and Yamashita-Shinnihon Steamship for Xingang, Tianjin and Dalian. Both American Sea-Land and others and European shipping companies are operating transport services via xianggang, There are two groups of SINOTRANS (23 compamies) and PENAVICO (ten) which are participating with Japanese freight forwarders engaged in combined transport to China.

##### **5. Proposals for Economic Exchange in the Asian Regions**

The 8th International Logistics Conference,

appreciates the UN objectives of establishing a new international economic order and a new international trade legal order,

recognizes the urgency and significance of mutually exchanging knowledge and experience concerning international logistics as a means to pursue international interests common to all countries including Asian and other Third World countries,

supports that people in economic and industrial circles of all countries can strengthen friendship among nations by promoting the development of international logistics in a spirit of mutual equality,

and also maintains that the adoption of common rules deriving from various institutions of countries having different political, economic, social, cultural, religious and legal backgrounds will contribute to promoting the removal of obstacles to business practices and to the development of regional economics and the expansion of international trade,

the Conference, therefore, hereby proposes as follows:

- 1) When promoting economic exchange with Asian countries, we should note that sound economic environments can be arranged in Asia by acquiring and spreading business knowledge and experience of each country and area with equal competition among enterprises and market access used as the basic principle for the economic and social development of the Asian region.
- 2) We should examine if various international conventions and rules which have been adopted by ICC, UNCTAD and UNCITRAL can contribute to the interests and development of the Asian region.
- 3) For contracts of air freight and combined transport, we use the new trade terms such as FOA, FRC and CIP instead of FOB, C&F and CIF used for marine transport.
- 4) Freight forwarders have had their statuses improved by the adoption of the 1980 United Nations International Convention on Multimodal Transport of Goods, 1980 Incoterms, 1983 UCP, and the 1984 New USA Shipping Act. We should further promote publicity on the acceptance of transport liabilities as NVOCC.
- 5) Documentary credits should only be used as means of payment based on documents. Sellers should not commit them for practicing deception and buyers should not use them as means of finding discrepancies before making payment to sellers
- 6) If a dispute unfortunately out of international contracts, it should peacefully be settled by arbitration rather than legal proceedings. When nominating an arbitration organization, we should carefully examine whether it should be selected from its own country, the other country, a third country or the international organization.

This Conference has made several proposals concerning international logistics behaviors as a means to cope with the new business environments for the improvement of economic exchange in the Asian regions, and emphasizes that those proposals should be fully

adopted not only in Asia but also throughout, the world.

In conclusion, I sincerely hope that those proposals will help to promote understanding and recognition by people engaged in export/import as well as transport, logistics, banking, insurance, governmental administration and jurisdiction.

(October 30, 1988)