

Section II

LEGAL REGULATION OF INTERNATIONAL TRANSPORTATION

Topic 6. Overview of international legal regulation of transport

1. State cooperation in the transport sector within the Eurasian continent
2. International approaches to transport regulation in New Zealand, Australia, United Kingdom, Canada and Singapore
3. Transport law

1. State cooperation in the transport sector within the Eurasian continent

The meaning of 'Common Transport Policy'.

The transport industry is difficult one to regulate. Not only are there three main sectors, inland transport, sea and air transport, each with their own special features, but there are other general factors which make the transport industry different in economic terms from other industrial sectors. The European Community Treaty recognizes these differences by referring to the 'distinctive features of transport' in Art.71 but it does not define them.

Some of these distinctive features remain relevant while others have only an historical interest. A remaining feature is the dual character of transport. On the one hand, transport is a major industry by whatever criteria it is measured: investment, employment, etc. The capital investment is huge and a large percentage of workers are employed in this industry. On the other hand, transport is an indispensable ancillary activity¹ to other industrial sectors and so levels of rates are crucial to the state's economy². The independent carriers³, in particular, occupy a central position in the market as a whole, and this requires regulation

¹ незамінна допоміжна діяльність

² мають вирішальне значення для економіки держави

³ Незалежні перевізники

since their actions can hinder international trade⁴ by discriminating as to charges between producers or between consumers⁵.

Another distinctive feature is that undertakings⁶ offering transport services vary in size and in economic power. The transport industry is characterized by undertakings of very dissimilar structure which nevertheless provide interchangeable services⁷.

Geographical factors have also had an impact on the mode of transport each member state has developed and encouraged. For example, in smaller countries such as The Netherlands, road transport has prominence because the distances are short. In Germany and France, however, the governments have promoted the railways which are more appropriate for greater distances.

Historical factors have also contributed to the distinctive features of the transport industry. First, transport measures were used as an instrument of state economic policy. Thus the development of national transport policies evolved⁸ in very different ways, depending on geographical and economic conditions and policies of the states. In the railway sector, for example, national transport policies and general economic policies went hand-in-hand. Public financing of the infrastructure was very common. For example, Italy invested heavily in its railways in order to encourage development of the southern region of the country. Similarly, the building of roads often depends on the state providing the funds. In some countries the creation of cheap transport regardless of viability⁹ was one of the methods used to promote the industrialization of a particular undeveloped region. Thus a fundamental problem is that the national transport systems of the member states have been developed to serve national needs which are disparate and do not facilitate integration¹⁰.

⁴ можуть перешкоджати розвитку міжнародної торгівлі

⁵ впливаючи на розрахунки між виробниками або між споживачами

⁶ підприємства

⁷ взаємозамінні послуги

⁸ розвивалися

⁹ незважаючи на його некупність

¹⁰ є різними та не сприяють інтеграції

Secondly, the international nature of transport inevitability¹¹ resulted in the conclusion of important international agreements to which some of the member states were parties.

The common transport policy was to be established by reformulating the policies of member states to form a single Community policy, which would lead to a supernatural transport policy. The policy was aimed at reducing or eliminating differences in the legal and economic systems of the member states: a process of harmonization. However, since the late 1980s, when the goal of an internal market by 1992 was agreed, it has become clear that the ultimate objective was the establishment of a single internal market in the free supply of transport services¹². Thus the policy is centered on the liberalization of the transport service market. This was to be achieved by the adoption of Community legislative measures rather than by the harmonization of national laws. This way, Article 3 (f) of the European Community Treaty states expressly that one of the Community's activities is the adoption of 'a common policy in the sphere of transport'.

The importance of development of transport infrastructure in the framework of legal regulation of international transportation is determined by its operation in the complex geopolitical and geo-economic realities. These issues deal with the basic international legal instruments of international transportation, relating to the transport sector. The peculiarities and disadvantages of the legal regulation of the transport and logistics activity are of great interest today.

The actual problems of connection of the modern Eurasian mechanisms of state cooperation in terms of the creation an efficient transport infrastructure can be solved by the conclusion that the latest transport initiatives of China and the countries of the Eastern Europe can effectively be implemented with a view to the future development of transport infrastructure of the Eurasian continent. Such mechanism of the Eurasian Economic Union (EAEC) and the Silk Road Economic Belt (SREB) cooperation can initiate an institutionalized international organization and

¹¹ неминучість розвитку транспортного сектору

¹² єдиний внутрішній ринок із забезпеченням вільних транспортних послуг.

promote an effective platform for the development of coordinated decisions is expected to be optimal.

The combination of these mechanisms will create a new model of economic cooperation. The construction and modernization of transcontinental transport highways seems as the basis for the practical implementation of the connection of the Eurasian integration mechanisms. Such as the mechanisms of international legal regulation of rail transport within the Eurasian continent.

This approach will help to determine the major obstacles and recommendations for the effective functioning of the railway communication, so as the actual international legal regulation of the automobile communication within the Eurasian continent and the current legal framework of the international road transport.

The existing international legal regulation of state cooperation in the transport and logistics sector within the Eurasian continent allows effective development of a modern transport infrastructure, the formation of which involves the intensification of the cooperation among European and Asian states in other fields and would stimulate economic integration of the Eurasian states.

2. International approaches to transport regulation in New Zealand, Australia, United Kingdom, Canada and Singapore

Although there are differences in the structures of the different regulatory regimes in defined countries, the stated agendas of the four countries are surprisingly similar. There appears to be a common drive towards developing transport systems that are safe, secure and environmentally responsible. Policy goals of supporting quality of life and promoting sustainability, competitiveness and innovation are present across the board.

Specific governance, policy and funding structures may be a product of the unique political cultures of each country, but the types of transportation challenges that these countries are facing are the same. Questions around how to advance

passenger interests, increase network capacity, and reduce the environmental impacts of transportation were common among the nations studied.

New Zealand's transport framework

In New Zealand there are a number of statutes governing the regulation of land, maritime and civil aviation transport.

Land Transport

The two main statutes governing land transport regulation are:

the **Land Transport Management Act 2003**; and

the **Land Transport Act 1998**.

The Land Transport Management Act's purpose is to contribute to achieving an effective, efficient and safe land transport system. It provides for the allocation of transport funding and requires the preparation of various land transport planning documents.

The Minister of Transport is responsible for issuing a government policy statement, which sets out the Government's strategic and policy goals for land transport, as well as the funding direction necessary to achieve them.

Regional councils must prepare regional land transport plans that set out the transport goals for their region. These high-level plans provide a strategic link between transport activities at a national level and those at a local level.

The New Zealand Transport Agency must prepare and adopt a national land transport programme that takes into account any relevant national or regional policy statements or plans that are in force under the Resource Management Act 1991.

The purpose of the Land Transport Act is to promote safe road user behaviour and vehicle safety. It sets out the regulatory requirements for participants in the land transport system. These requirements include:

responsibilities of participants in the land transport system;

driver licensing;

transport service licensing;

offences related to driving; and

vehicle registration.

The LTA provides the detail governing use of the transport system in practice. It allows participants to make use of the transport system in a safe and responsible way.

Civil Aviation

There are two main statutes governing civil aviation regulation. These are:

the **Civil Aviation Act 1990**, which establishes the framework for civil aviation safety, security and economic regulation in New Zealand. It also ensures that New Zealand obligations under international civil aviation agreements are implemented; and

the **Airport Authorities Act 1966**, which gives a range of functions and powers to airport authorities to establish and operate airports.

Maritime

The main statute governing maritime transport regulation is the **Maritime Transport Act 1994**, which defines the statutory powers of Maritime New Zealand. This Act is designed to consolidate and amend maritime transport law, promote safety, protect the marine environment, and enable the implementation of New Zealand's obligations under international maritime agreements.

Organisations

The key regulatory organisations for transport are:

the **Ministry of Transport**, the Government's principal transport policy adviser. It has a strategic leadership role across the transport system, acting as the Minister of Transport's agent for managing the interface with transport Crown entities;

the **New Zealand Transport Agency**, which plans and delivers national transport networks and supports local networks. It also works to improve road safety and make public transport and freight networks more effective;

KiwiRail, a State-Owned Enterprise which owns and operates New Zealand's rail transportation network and between-Island ferry service;

the **Civil Aviation Authority**, which is tasked with enforcing civil aviation safety and security standards. In addition to this role, the Civil Aviation Authority carries out aviation accident and incident investigations in conjunction with the Transport Accident Investigation Commission. The Civil Aviation Authority is also responsible for managing civilian pilot, aerodrome and aircraft licensing in New Zealand;

Airways New Zealand, a State-Owned Enterprise responsible for managing all domestic and international air traffic within New Zealand's airspace;

Maritime New Zealand, a Crown entity responsible for protecting the maritime environment within New Zealand and maintaining safety and security; and

the **Transport Accident Investigation Commission**, a standing Commission of Inquiry and an independent Crown entity, which investigates significant aviation, rail and maritime accidents. **Approach to regulation**

The Government's broad objective for transport is to develop "an effective, efficient, safe, secure, accessible and resilient transport system" that supports the growth of New Zealand's economy.

In 2011 the Minister of Transport released *Connecting New Zealand*, a summary of the Government's intended policy direction for transport over the next decade. This document outlines three main areas of focus: economic growth and productivity, value for money, and road safety.²

Connecting New Zealand sets out a number of issues which the Government sees as significant for transport in New Zealand, including population growth, an ageing population and increased demand for freight. Other issues that the Government recognises as significant include environmental protection, transport security and how to take advantage of new technologies.

New Zealand is a trading nation, which needs an efficient transport system in order to enhance its productivity and international competitiveness. In terms of mitigating the negative impacts that trends such as emissions standards or security policy could have on New Zealand's transport system, *Connecting New Zealand*

emphasises the importance of effective international relations. In particular, the report suggests that working cooperatively with other countries and developing a strong voice in international transport forums, which set international rules for transport, are key aspects of New Zealand's approach.

The Government has published a number of other strategy documents which shed light on New Zealand's policy direction for transport. These include the:

Thirty Year New Zealand Infrastructure Plan 2015 (2015), which outlines the government's long-term vision for infrastructure in New Zealand, including future challenges and opportunities in the transport sector;

New Zealand Energy Efficiency and Conservation Strategy 2011-2016 (2011), which sets out the Government's objective for "a more energy efficient transport system with a greater diversity of fuels and alternative energy technologies";

Safer Journeys (2010), which outlines the Government's road strategy to 2020. It has the central vision of creating "A safe road system increasingly free of death and serious injury"; and

Intelligent Transport Systems (ITS) Technology Action Plan 2014-18, which outlines the Government's strategic approach to encouraging and enabling intelligent transport system technologies in New Zealand.

Australia

Australia is a federation with six states and two territories. Under Australia's constitution, state and territory governments are responsible for developing efficient, safe and environmentally responsible transport infrastructure and services in urban areas. The Australian Federal Government's transport responsibilities extend to policy formation and the regulation of international and interstate air transportation, maritime transport, heavy vehicles and the national rail network.

In 2005 the Australian Government established a Regulation Taskforce to review key regulatory areas. The Taskforce found there was significant inconsistency and overlap between the regulations of the Australian Government and those of state or territory governments in terms of transport regulation.⁸ Since

then Australia has extensively reviewed its governance models for transport regulation. A National Transport Policy Framework was endorsed in 2008.⁹ This Policy Framework outlined a ‘new thinking’ approach to transport policy which reflected changing industry and operating environments with the objective of developing a seamless, coordinated transport system.

Legislative instruments

Laws relating to transport are made at three different levels of government in Australia. There are federal laws, which apply to the whole country, state and territory laws which apply to the respective state or territory, and local laws called by-laws, for each region or district.

The Australian Federal Government facilitates the provision of nationally consistent legislation and regulation regarding road-use management, such as road rules and road freight legislation, but relies on states and territories to ensure compliance with such legislation.

Ministers from the various levels of government work together on matters of common concern. As a result of intergovernmental discussions, uniform national laws have been developed in a number of areas including maritime safety and heavy vehicle regulation.

Organisations

A web of committees and organisations contribute to transport regulation in Australia. At the Commonwealth level, the main organisations are:

the **Council of Australian Governments: Transport and Infrastructure Council**, which brings together Commonwealth, State, Territory and New Zealand Ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association. Its role is to promote policy reforms that are of national significance or which need coordinated action by all Australian Governments;

the **Department of Infrastructure and Regional Development**, a department of the Australian Government which is responsible for infrastructure

planning, transport safety, land transport, maritime transport, civil aviation and airports and transport security; and

the **Australian Transport Safety Bureau** , Australia’s national transport safety investigator, which is a Commonwealth government body separate from transport regulators, policy makers and service providers. It is responsible for investigating transport-related accidents and incidents within Australia, covering air, sea and rail travel.

The Department of Infrastructure and Regional Development works closely with several mode-specific agencies within its portfolio, including:

the **National Heavy Vehicle Regulator**, which administers one set of laws for heavy vehicles under the *Heavy Vehicle National Law*;

the **Office of the National Rail Safety Regulator**, which was established to administer a nationally consistent rail safety law, the *Rail Safety National Law*;

the **Civil Aviation Safety Authority**, the government statutory authority responsible for the regulation of civil aviation; and

the **Australian Maritime Safety Authority**, which is responsible for the regulation and safety oversight of domestic commercial vessels and the management of Australia's international maritime obligations.

There are also a number of agencies which help to shape transport policy, including:

the **National Transport Commission**, an independent statutory body charged with developing regulatory and operational reform for road, rail and intermodal transport; and

Infrastructure Australia, an independent statutory body with a mandate to prioritise and progress nationally significant infrastructure.

Approach to regulation

There is ongoing debate about the ways in which Australia’s regulatory framework for transport could be improved. Below are the key features that have emerged through the review process.

Long-term, forward-looking approach

Australia is currently attempting to develop a long-term roadmap for transport reform, following suggestions that the regulatory regime lacked clear policy statements and governmental goals.

In 2009, the National Transport Commission identified a lack of coordinated and integrated long-term planning at a national level as a key productivity impediment for the transport industry. The regulatory regime was also criticised for showing a lack of alignment between regulatory cycles, which typically do not exceed five years, and infrastructure investment horizons, which generally exceed 10 to 15 years. This meant there was a risk of poor asset utilisation and under-investment over the long term.

To improve transport planning, the Australian Government has developed forward-looking strategies in a number of key areas. For instance, it has developed a Policy Framework for Intelligent Transport Systems (2011), a National Ports Strategy (2011), a National Freight Strategy (2012), and a Transport Security Outlook to 2025 (2014).

Consultation with key stakeholders

The practice of augmenting public sector expertise with the knowledge of key stakeholders in the transport industry is becoming an increasingly important feature of the Australian regulatory regime.

The National Transport Commission, in particular, has sought to shift stakeholder management from a reactive risk management approach to a more proactive and transparent two-way strategic relationship.¹⁴ The National Ports Strategy, developed by the National Transport Commission and Infrastructure Australia in 2011, specifically recognises the need for an independent panel of expert advisors, including end users, to guide implementation of the strategy. In doing so, it recognises that a 'one size fits all' approach is not appropriate.

The degree of industry consultation is still considered insufficient in certain areas. An independent review of Australia's aviation regulatory system, commissioned in 2013, found that the relationship between industry and the regulator was a cause for concern.¹⁵ It noted that that the relationship between

industry and the Civil Aviation Safety Authority has, in many cases, become adversarial. The review concluded that a more collaborative relationship, founded on mutual trust and respect, was needed to produce better safety outcomes and ensure the regulator stays in touch with rapidly advancing technology and safety practices.

Customer focussed

Australia's regulatory approach has become more customer-centric. New South Wales' Passenger Transport Bill 2014 is representative of this approach. It replaces the narrowly-focussed mode specific approach of the Passenger Transport Act 1990 with an approach that places the customer at the centre of policy and decision-making. For instance, it gives the New South Wales public transport agency powers to enter into contracts for public passenger services, regardless of the service mode. This gives transport planners greater flexibility to accommodate the needs of customers.

United Kingdom

The United Kingdom is a compact and well-connected island. However, the Government's approach to regulating transport is fragmented. This is due, in part, to historical devolvement of transport related decision-making to authorities in Scotland, Wales and Northern Ireland. Further, it is necessarily disparate because the United Kingdom's approach to transport is modal and passenger focused with power delegated to issue or sector-specific authorities which focus on issues closer to the day-to-day operations of transport, as opposed to bodies which focus purely on policy.

Legislative instruments

The main piece of transport related legislation in the United Kingdom is the Transport Act 2000. It makes most general provisions for transport and provides for a number of changes to transport infrastructure in the United Kingdom, such as the structure of the privatised railway system. There are also a number of mode and issue specific instruments, for example the Railways and Transport Safety Act 2003.

Devolution in the late 1990s has meant that some control for transport in Scotland, Wales and Northern Ireland has been transferred to local authorities through devolution legislation, with specific matters reserved for the Department for Transport. There are also regional authorities in England which have statutorily delegated control over limited matters of transport within their jurisdiction.

Organisations

The Department for Transport is responsible for the overall delivery of the government's transport policy and strategy. The Department for Transport creates the strategic framework for transport services, which are delivered through other public and private sector bodies to which the Department for Transport provides funding.

The Department for Transport makes policy for accessible transport, aviation and airports, freight, high speed rail, local transport, the maritime sector, the rail network, the road network and traffic, road safety, transport emissions and transport security.

The Department for Transport is supported by 19 agencies and public bodies. These authorities tend to have a transport mode, sector or issue on which they focus. Other bodies include the department's own executive agencies, trading funds, non-departmental public bodies, public bodies and statutory boards. These include:

the **Office of Rail and Road**, a statutory board with a combined economic and safety focus for Great Britain's railway network, operating independently of central government; and

the **Civil Aviation Authority**, which is in charge of safety and management of the United Kingdom's airspace, economic regulation of Heathrow and Gatwick airports, enforcement of consumer protection rules and enforcement of regulations and requirements relating to transporting dangerous goods by air.

There are also some private corporations which take on specific services such as London Continental Railways: a Government-owned company which

manages and develops property assets within a railway context, particularly major infrastructure projects, such as the Channel Tunnel Rail Link.

Recent developments

In the report *Transport – an engine for growth* (August 2013), the Department for Transport noted the Government's vision for the transport system. One focus of the report was on working with the private sector. This discussed privatisation and ways of driving efficiency. One initiative identified by the report was removing or improving transport regulation as part of the United Kingdom's 'Red Tape Challenge'. It is thought that this will make the United Kingdom more attractive to investors.

The report also noted a move towards greater delegation of authority to local bodies and delivery partners in England as well as more devolvement of transport decision-making in Scotland, Wales and Northern Ireland. To enable local authorities to use their delegated power effectively the Department for Transport is also moving towards longer-term funding models under which delegated authorities would have certainty over their budget for a long period of time.

Also discussed in the report was a move towards an integrated approach to transport thinking. This shows an adoption of some of the themes that came out of the 2006 Eddington Transport Study. This study suggested that the United Kingdom's transport approach was overly focused on modes, leading to a compartmentalized policy approach with coordination being rare. Following the study, longer-term cycles of planning and investment were implemented. Further, these cycles of planning and investment were aligned for all modes so that policies and programmes could be considered simultaneously. The effect of this change is to align the structural processes around decision-making rather than the modes of transport or transport related issues.

Approach to regulation

Mode specific

The Department for Transport has a mode-specific focus. It is divided into various groups, including the Rail Executive, the Roads Traffic and Local Group,

the High Speed Rail Group and the International, Security and Environment group. Policy is also compartmentalised with separate points of focus such as aviation and airports, freight, high speed rail, the maritime sector, the rail network, road network and traffic, and road safety.

This approach means that the majority of policies and regulatory initiatives emerging from the Department are practical and focus on operational issues, such as train capacity or accessibility.

Passenger/ people focused

The Department has a particular focus on passengers. This approach is unique as it focuses on the end-user rather than the supply of the service which is usually central to economic regulation. This approach could arguably be the result of the United Kingdom's mode-specific focus and authority being increasingly delegated to bodies with greater oversight of the day-to-day issues of transport.

Passenger focused policies are implemented specifically in relation to particular modes of transport. One such example is the Civil Aviation Act 2012.²¹ This Act prioritises passengers in airport regulation by motivating airports through licence conditions to deliver better facilities, provide more information to passengers and give greater incentives to airports to prepare for disruptive events. The Civil Aviation Authority is also given single overriding control of the airports economic functions to promote the interests of passengers through the operation of airport services. Following the Act becoming law the Civil Aviation Authority has engaged consumers, seeking feedback on airport regulation and licence conditions and creating a Consumer Panel from which to seek advice.

Consolidation of economic regulation and consumer standards

In relation to air and rail, the regulator sets both economic regulation and standards relating to consumer health, safety and environmental standards. This consolidation of several roles into one regulator, for rail and air respectively, could be either a benefit for effective regulation or a limitation. In expecting providers to both comply with consumer standards set by the regulator and to meet specified price caps, regulators could set price caps so as to ensure that providers can meet

their consumer obligations. Regulators can ensure that the price cap allows the service provider to make enough revenue to fund any required changes. Therefore the regulator could also have the means of ensuring that passenger-focused regulation is met. However, it could also be a limitation if the regulator does not reflect the costs of meeting consumer obligations in the price cap. Overall, it is a lot of power for one regulator to hold, which could result in focused and effective regulation if used effectively. This thought process is evident in the Civil Aviation Act 2012 which gives the Civil Aviation Authority a single overriding duty for an airport's economic functions in order to further the interests of passengers and owners of cargo in the provision of airport operation services, as noted above.

Canada

Regulating transport in Canada involves significant challenges. Canada is the world's second largest country in total area (9.985 million km²). It is divided into ten provinces and three territories. Transport must cater both to the urban environment and to remote communities. To combat this, the current transport network is based on efficient, high-capacity multimodal systems which span great distances.

Legislative instruments

During the 1980s and 1990s budget cuts meant day-to-day operation of several transport modes were privatised or transferred to local authorities through a range of legislation (detailed in Attachment 4). At the same time, Canada was following the international trend towards less-intrusive regulation. This led to the Canada Transportation Act 1996 which established the current regime and mandate of Canada's separate economic regulator, the Canadian Transportation Agency. Under this less-intrusive regime, railways and airlines have been mainly free of rate regulation. They have freedom of market entry and exit, as well as freedom to abandon operations. Airlines are regulated under international agreements but, domestically, they can operate with relatively little regulation by the government. This last incarnation of the transport regime has been described as the "least-

regulated” in Canada’s history.²² Competition and market forces are the key drivers rather than strict rules.

The Canadian Government’s department for transport, Transport Canada, is responsible for enforcing several pieces of legislation, including the Aeronautics Act, Transportation of Dangerous Goods Act, Motor Vehicle Safety Act, Canada Transportation Act, Railway Safety Act, Canada Shipping Act and the Marine Transportation Security Act. Safety and security inspectors receive delegated power and official credentials from the Minister of Transport.

Organisations

Despite being divided into ten provinces, transport policy and regulation are largely within the jurisdiction of a few bodies at the federal level. Regional offices implement country-wide strategies.

Transport Canada is governed by the Minister of Transport and primarily covers policy and programmes relating to air, marine, rail, and road transport as well as issues of safety, security, the environment and innovation. In relation to road and rail transport, under the Transportation Infrastructure Programs Directorate, Transport Canada manages federal funding for transport network infrastructure. While transport networks within a province are the responsibility of the local authority, Transport Canada is active in matters that involve cross-border flow of people and goods. Transport Canada also has a special focus on innovation which includes programmes and policies which focus on accessible transport, clean transportation, gateways and corridors, Intelligent Transport Systems, a Transport Development Centre and general innovation policy.

The Canadian Transportation Agency is an independent, quasi-judicial tribunal and economic regulator. It makes decisions and determinations on a wide range of matters involving air, rail and marine modes of transport and resolves complaints about transport services, rates, fees and charges. A decision of the Canadian Transportation Agency can be adopted as an order of the Federal Court, or of any superior court, and would become enforceable as such. In terms of

economic regulation it provides approvals, licences, permits and certificates of fitness in relation to federal air, rail and marine transport.

The Transportation Safety Board is an independent agency whose mandate is to advance transportation safety through investigating marine, pipeline, rail and air incidents. Following an investigation the Transportation Safety Board will draft an investigation report which following review, is published. The Transportation Safety Board does not assign fault or determine civil or criminal liability and its findings cannot be used in legal or disciplinary proceedings. The Transportation Safety Board can make recommendations to the government based on its findings.

Recent developments

Transport Canada is currently undergoing a review of the Transportation Act. The Act is reviewed every eight years. The final report is due 24 December 2015. The review intends to take a long term view of transport in Canada (20-30 years) and is considering emerging patterns and shifts in transport and their long term implications. Canadian Minister of Transport Lisa Raitt compared it to “connected vehicle technology ... a sort of early detection system to help alert us to key trends and issues that lie ahead”.²³ The review discussion paper highlights areas of focus which include the continuing efforts to reduce red tape where administrative and compliance burdens are undue and continuing to harmonise regulation with key trading partners.

Approach to regulation

System-wide and outcomes focused approach

In recent years Transport Canada has made a deliberate policy shift to focus regulation on a system-wide holistic approach to transport in what has been termed a “transportation system perspective”.

Previously Transport Canada’s focus was on each of the four high-level modes of transport – air, rail, marine and road. However, this has changed with transport now being viewed horizontally, with the journey of freight and passengers being followed end-to-end to ensure a seamless connection between all transport modes. This approach can be seen in Canada’s goals under the National

Framework for Strategic Gateways and Trade Corridors.²⁶ This policy aims to connect exporters and importers through a seamless, multimodal system. This multimodal approach tends to impact more upon freight policy than passenger transport. The Freight Integration and Motor Carrier Policy looks at intermodal transport development issues, identifies infrastructure needs and collaborates with provincial and territorial departments to enable this approach.

This approach goes further than simply integrating the physical infrastructure of different forms of transport, and also looks at ways in which regulation, policy and operation of transport can be assimilated to become more effective. It is thought that this approach will enable critical issues such as technology, the environment, security and safety (which are viewed as transcending mode-specific transport) to be addressed. Therefore, while some policy groups focus on specific modes of transport, others focus on multimodal, issue specific policies. A key goal here is to enable a cross-cutting approach to specific issues while also retaining the expertise to make mode-specific decisions.

Commercial focus

Canada's Transport Minister sees transport as integral to economic growth and prosperity. Regulation is viewed as a tool for enabling economic activity.²⁸ Therefore transport regulation has a strong commercial focus, with a key goal being to make Canada's transport infrastructure efficient and competitive.

One of the ways in which this is achieved is by ensuring cooperation in regulation and policy with regional and international partners as well as across government departments and the private sector. This promotes efficiency and furthers relationships with trading partners. Part of this commercially-minded approach is aimed at making Canada attractive to foreign investors through having transparency, predictability and stability in its policies and regulations.

Canada and the US have formed the Regulatory Cooperation Council to increase regulatory transparency and coordination between the two countries. One of RCC's areas of interest is transport, with the two countries looking at working together to develop regulations and standards to support the integration of

intelligent transport systems and aligning regulatory approaches towards unmanned aircraft systems. In February 2015, a Bilateral Aviation Technical Arrangement was signed between Canada and China. Under the Arrangement, Transport Canada and the Civil Aviation Authority of China are streamlining approvals for aeronautical products and parts from each other's countries. This aims to minimise redundancies, reduce costs and save time.

Domestically, this commercial approach means Transport Canada is increasingly implementing user-pays principles and focusing policies on market forces when it comes to adapting to changes in the origins and destinations of consumer and freight traffic. This commercial approach further affects other transport thinking. Administrative burdens which create economic barriers are being removed (through the Red Tape Reduction Action Plan) and transport systems which are not cost-effective are being rationalised, such as the railway, with certain tracks being abandoned to account for a lowering use of rail by passengers.

Prioritising innovation

Transport Canada sees innovation as vital to meeting the challenges of transport in the 21st century. Therefore Transport Canada is starting to ask questions about what challenges, both traditional and non-traditional, transport will be facing over the next 20-30 years and what can be done now, in terms of regulation, to prepare for these roadblocks. These challenges include urbanisation, new monetary policies, globalisation, aging population, international migration, shifting supply chains and new technologies (such as Remotely Piloted Aircraft Systems and electric cars). As another approach to innovation, Transport Canada is considering revisiting decision-making processes to allow for faster responses to change as it occurs.

Singapore

Singapore is an island City State with a total land area of 718.3 km². Due to Singapore's small geographical size and its single-level governance structure, it is often regarded as a 'special case' in terms of transport regulation. Singapore's land

use and transport strategy is designed to be space-efficient with high-density development, low land take for roads, and a large role for space-saving transport.

Legislative instruments

The basic concepts underlying the transport plans and policies for Singapore have remained constant since the 1970s. A non-statutory Concept Plan (incorporating spatial and transport planning elements) provides the development framework for Singapore within which more detailed statutory land-use plans (collectively known as the “Master Plan”) are prepared and implemented on an on-going basis.

At the strategic level, the Concept Plan provides the overall vision and broad directions that will guide development over the long term (40 to 50 years). At the local level, the Master Plan provides the detailed planning parameters that will shape actual development.

The Master Plan and the Concept Plan provide a comprehensive planning framework for sustainable development. Within this framework, key organisations work together to prepare and implement integrated land use plans and transport strategies.

Singapore has a number of statutes relating to transport, including specific acts to regulate vehicle use, aircrafts and shipping. It also has statutes which establish national modal regulators in the areas of land, marine and civil aviation transport.

Organisations

The main organisations responsible for regulating transport in Singapore are government statutory boards under the Ministry of Transport. These consist of:

the **Land Transport Authority**, which is the primary agent for land transport development and policy setting in Singapore. It plans the long-term transport needs of the city, over-seeing all road uses, including private and public transportation. The Land Transport Authority works closely with land use planners to ensure that transport systems are well planned and properly integrated with urban, residential, industrial and commercial developments;

the **Public Transport Council**, which is responsible for regulating bus and rail fares, as well as bus services. The Land Transport Authority assists the Public Transport Council in this role;

the **Maritime and Port Authority of Singapore**, which is responsible for the overall development and growth of the port of Singapore. It acts as Port Authority, Port Regulator, Port Planner and National Maritime Representative. It is also tasked with ensuring that shipping and its related activities grow in an environmentally-responsible and sustainable manner; and

the **Civil Aviation Authority of Singapore**, which has strategic and regulatory functions. Its roles are to enable the growth of the air hub and aviation industry,

oversee and promote safety in the industry, provide air navigation services, and develop Singapore as a centre of excellence for aviation knowledge and human resource development.

The Ministry also has jurisdiction over the **Air Accident Investigation Bureau**, an independent investigation authority responsible for the investigation of air accidents and serious incidents in Singapore.

With a focus on integrating land use and transport policies, the **Urban Redevelopment Authority** is also influential in transport planning. It prepares the Concept Plan and the Master Plan, which influence transport policies in Singapore.

Approach to regulation

Singapore's regulatory regime for transport has a number of key features, including a focus on comprehensive long-term plans, ensuring integration between land use and transport planning, and maximising limited space by restricting car use.

Long-term plans

Singapore uses a strategic planning approach in developing its Concept Plan to overcome some of the common problems associated with the preparation of overarching plans, such as the time needed to prepare them, the amount of detail such plans require and their lack of connection with key levers of influence over

urban development (such as infrastructure investments).²⁹ The Concept Plan lays out the vision for land and transport development over a 40-50 year horizon, and the key actions to achieve that vision. The Plan is reviewed and updated in Singapore every 10 years, to allow for more accurate planning.

Integration between land use and transport

The integration of land use and transport developments in Singapore is assisted by having two key agencies for planning and policy, namely: the Urban Redevelopment Authority for spatial development and land use, and the Land Transport Authority for all modes of transport. Rather than combining the two agencies into a single overarching agency, Singapore uses the mechanism of inter-agency committees to achieve integration (see Appendix 1, Figure 6). This works effectively in part because Singapore's Government as a whole is relatively integrated, with a relative absence of 'departmental silos'.

Another factor contributing towards integration in Singapore is the large percentage of land in government ownership. The Government uses land release strategically as a proactive means to guide the implementation of the Concept Plans. The *Land Acquisitions Act*, which allows the Government to acquire land for any use deemed to be in the public benefit, is also important. This Act allows the Government to get access to land affordably and expeditiously for transport infrastructure development.

Restrictions on car use

In Singapore, as in other countries, a preference for car use over public transport presents challenges in terms of the amount of space needed for roads. In Singapore, however, building additional roads is not seen as a viable option. Instead, Singapore has attempted to curb car use and promote public transport through specific measures such as car quotas and congestion charges.

Despite these measures, there has been a continuing growth in car ownership and use. If car ownership continues to grow it may exceed the supply of road space, leading to pressure for further road widening.³¹ Proactive management (coupled with continuous investment) is needed to make the most effective use of

available road space. Regulatory work in this area is ongoing. The Sustainable Singapore Blueprint 2015 sets out targets for increasing the length of cycling paths and rail networks, in order to encourage greater use of public transport.

Specific points of interest

Singapore has introduced a number of recent reforms to improve the safety and international competitiveness of its transport system. Two of these reforms are discussed below.

Unmanned aircraft regulations

In 2015, Singapore passed the Unmanned Aircraft (Public Safety and Security) Act. This Act amends the Air Navigation Act and the Public Order Act to regulate the operation of unmanned aircraft in Singapore in the interests of public safety and security. Following this law change, two permits – an operator permit and an activity permit – are required for flying unmanned aircraft that weigh more than 7 kilograms for any purpose. The Civil Aviation Authority of Singapore is responsible for processing the applications and coordinating with other relevant agencies where needed.

Economic regulation of airports

In 2009, Singapore passed the Civil Aviation Authority of Singapore Act to provide for the corporatisation of Changi Airport, the restructuring of Civil Aviation Authority of Singapore, and the imposition of economic controls at Changi airport. This reform was implemented following an extensive review which included study trips to airports and government regulators in Europe, Australia, New Zealand, North America and Asia, consultations with employees and stakeholders in the aviation industry and an extensive review of the Civil Aviation Authority's existing functions.

The key objectives of corporatisation were:

- to provide Changi Airport greater impetus to capitalise on new opportunities and face rising competition;

- to create a new corporatized entity with greater flexibility to attract and retain talent to compete with global airport operators; and

to enable Changi Airport to better leverage on its brand name to develop an international presence.

3. **Transport law**

Transport law (or **transportation law**) is the area of law dealing with transport. The laws can apply very broadly at a transport system level or more narrowly to transport things or activities within that system such as vehicles, things and behaviours. Transport law is generally found in two main areas:

- legislation or statutory law passed or made by elected officials like Parliaments or made by other officials under delegation
- case law decided by courts.

Legislation typically consists of statutes known as Acts and delegated legislation like regulations, orders or notices. Case law consists of judgments, findings and rulings handed down by courts.

Transport laws can apply at a global transport system-wide level. A transport system can encompass a wide range of matters which make up the system. These include -

- heavy and light rail systems including associated land, infrastructure and rolling stock which comprise trains, trams and light rail vehicles
- roads including freeways, arterial roads and paths
- vehicles including cars, trucks, buses and bicycles
- ports and waterways
- commercial ships and recreational vessels
- air transport systems and aircraft.

A transport system includes not only system infrastructure and conveyances, but also things like

- communication systems and other technologies
- strategic, business and operational plans
- schedules, timetables and ticketing systems
- safety systems

- labour components
- service components
- government decision makers like Ministers, departments, authorities, corporations, agencies and other legal persons.

The Transport Integration Act of Victoria, Australia provides an example of the use of a broad statutory formulation to circumscribe the operation of a transport law in legislative form.

Individual components can be identified from this broad transport system formulation and then regulated discreetly. For example, a bus or a car forms part of a broad transport system but are commonly regulated on an individual basis in terms of identification (registration), control of the vehicle (driver licensing and drug and blood alcohol controls), vehicle forms and fittings (vehicle standards) and other safety requirements.

Examples of transport legislation

Victoria again provides an example of a jurisdiction with a suite of transport legislation which operates both at transport system and modal or activity levels.

System level

The Transport Integration Act sets out the overall policy framework for transport in Victoria. It also establishes and sets the charters of the key government agencies which make decisions affecting the planning and operation of the State's transport system and each agency is required by the statute to have regard to the policy framework.

As a general rule, transport agencies and officials do not exist in their own right and have no existence or power without conferral from a transport law. Legislation is commonly required for this purpose. Transport decision makers and agencies established and/or empowered by the Transport Integration Act include

- key government figures such as Ministers (currently the Minister for Public Transport, the Minister for Roads and the Minister for Ports)
- a central government Department - the Department of Transport - responsible for system-wide planning, integration and coordination

- a public transport agency responsible for providing or regulating train, tram, light rail, bus and taxi services - the Director of Public Transport and soon the Public Transport Development Authority
- a road agency responsible for road construction and maintenance and vehicles and towing services regulation - the Roads Corporation (VicRoads)
- agencies responsible for discrete parts of the rail system such as land, infrastructure and other assets (Victorian Rail Track (VicTrack)) and regional services (V/Line Corporation)
- agencies responsible for ports and other waters - the Port of Melbourne Corporation, the Port of Hastings Development Authority, the Victorian Regional Channels Authority and local and other authorities
- an independent transport safety regulator (Director, Transport Safety) and independent safety investigator (the Chief Investigator, Transport Safety)
- discrete special purpose rail and road projects agencies - the Regional Rail Link Authority and the Linking Melbourne Authority.

The Transport Integration Act establishes these agencies and sets their statutory charters. The charters circumscribe the agencies' jurisdiction or power to operate in and to regulate their respective components of the transport system.

Mode or activity-based legislation

Victoria has a range of statutes which regulate transport modes and transport-related activities throughout the State. These include—

- the Road Management Act 2004
- the Road Safety Act 1986
- the Rail Management Act 1996
- the Rail Safety Act 2006
- the Bus Safety Act 2009
- the Bus Services Act 1995
- the Accident Towing Services Act 2007
- the Major Transport Projects Facilitation Act 2009
- the Port Management Act 1995

- the Marine Act 1988
- the Tourist and Heritage Railways Act 2010.

Case law and law from other sources

Areas of transport law governed by court decisions and other non transport statutes or laws include property law, contract law, torts law and specialist regulation governing the contract of carriage, and the relationship between carriers and passengers in public transport and shippers and cargo owners in shipping.