

The Law of Intermodal Transportation: What It Was, What It Is, What It Should Be

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I. INTRODUCTION

The United States has assumed a position of world leadership in its efforts to reduce or eliminate tariff barriers, trade inhibition eliminextent practicable, dom

estic impediments in the field of transportation so as to optimize the unobstructed transit of commodities between inland origins and overseas destinations and between overseas origins and inland destinations. The U. S. also has concluded formal and informal bilateral and multilateral agreements designed to minimize the barriers which obstruct the free flow of commerce between nations, and to minimize domestic restraints on transnational commercial activity. As a result of these efforts, we are witnessing a spectacular increase in the importation and exportation of goods.

These overwhelming increases in foreign trade have been brought about, in part, by a diminution in transport inhibitions. In a circular fashion, the present reexamination of the existing legal framework in the field of transportation is, to a certain extent, attributable to these massive increases in foreign commercial activity and the

¹ The foreign policy of the United States on m
aintained at its optimum level if the movement of capital was unimpeded or uninhibited.
Dempsey, *Legal and Economic Incentives for Foreign Direct Investment in the Southeastern United States*,
9 Vand. J. Transnat'l L. 247, 252-53 (1976).

concomitant demands for an efficient and economical transportation network which have inevitably arisen therefrom.² It is this contemporary evaluation of traditional legal and technological concepts in the field of international transportation to which this essay is addressed.

In our era of rapidly diminishing impediments to the free flow of capital, goods, technology, and services between nations, transnational commercial activity has become extremely important to our national economy. New frontiers are being broken as raw materials and manufactured products move more freely between nations which have heretofore shared little in culture, history, religion, race, or economic and political philosophy. Certainly, governmental initiatives designed to eliminate trade inhibitions are responsible for much of this growth. Tariff walls are crumbling. The world economy is prospering. The interdependencies that flourish between members of the world community as a result of bilateral and multilateral trade agreements enhance the possibility of achieving long-term political stability, economic growth, and global peace. It has become the position of the United States that increased international economic cooperation will inevitably lead to increased political toleration and peaceful coexistence.

Innovations in the field of tran4fact BMCBT/TT i2iw 12 0 0 12 90.0001 515.e7Tf0 Tc 0 Tw 12 0 0f0

and stabilize transport costs.⁴ By the late 1970s, containerized trailer-on-flatcar [TOFC] movements represented 7.2 percent of tonnage moved by rail;⁵ it was anticipated that air/motor through movements would exceed 6.5 million billion-ton miles during this period, a growth rate of approximately six percent.⁶ Moreover, there are a number of recent developments that may cause this trend to accelerate.⁷ By the late 1990s, rail

hours per container in handling. At a direct labor rate of \$7 per man-hour, containerization saves over \$13 on each ton of cargo loaded for labor alone.

(2) U.S. trade in containerable commodities has been increasing steadily in the past 5 years. Containerable imports increased by

Aeronautics Board [CAB],¹¹ and the Federal Maritime Commission [FMC].¹² Prior to its sunset in 1996, the ICC was by far the largest of the three, regulating the surface transportation of over 18,000 railroads, motor carriers, pipelines, domestic water carriers, brokers, and freight forwarders. Prior to its sunset in 1985, the CAB had jurisdiction over the transportation of direct air carriers (airlines) and indirect air carriers (e.g., air freight forwarders) operating within, to, and from the United States.¹³ More than eighty domestic air carriers were subject to the jurisdiction of the CAB.¹⁴ The FMC regulated all United States flag and foreign flag carriers operating in foreign commerce, and United States carriers serving Alaska and Hawaii. Almost forty domestic maritime carriers were subject to regulation by the FMC.¹⁵ Today, the agency holds jurisdiction over ocean transportation, in domestic-offshore and foreign commerce, by vessel operators, non-vessel operators [NVOs], and independent ocean freight forwarders.¹⁶

THE NATIONAL TRANSPORTATION POLICY

In 1887 Congress promulgated the Act to Regulate Commerce,¹⁷ creating the ICC and affording to it the primary responsibility to prevent and correct rate discriminations by railroads. It was not until the Transportation Act of 1920,¹⁸ however, that Congress articulated a specific declaration of policy for the agency. That Act required the ICC “to promote, encourage and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.”¹⁹ After 1920, the scope of Interstate and foreign commerce subject to the jurisdiction of the ICC expanded dramatically. For example, the Motor Carrier Act of 1935²⁰ brought for-hire common and contract motor carriers within the

¹¹ Prior to its sunset in 1985, the Civil Aeronautics Board (CAB) regulated air carriers under the Federal Aviation Act of 1958, 49 U.S. C. §§ 1301-1542 (1970). The regulation of air transportation by the CAB was instituted in 1938 under the Civil Aeronautics Act of 1938, ch. 601, 52 Stat. 973. For an excellent analysis of the historical development o

(b) The regulation of air transportation in such a manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.²⁵

Similarly, the Merchant Marine Act of 1936²⁶ emphasized that the FMC should concern itself with but a single mode of transportation:

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) com

must, within the terms of [its] statutory mandate, take precedence over the more narrow interests of those carriers directly subject to the Interstate Commerce Act.”²⁸ The ICC recognized that “[t]he shipping public must have available not only a ready choice of all modes of carriage, but also a workable flexibility which will enable them to utilize to the fullest the inherent advantages of each mode in coordinated movements of single shipments.”²⁹ The ICC was subject to a unique statutory directive to protect the competition among the different modes of transportation subject to its regulation. It could maintain the rates of one carrier to protect the traffic of another if necessary to protect an “inherent advantage” of the latter.³⁰

Within this multi-agency network, the emergence of the container revolution and the growth of foreign trade created a need for efficiency and cooperation among the Federal regulatory bodies.³¹

²⁸ Emery Air Freight Corp., 339 I.C.C. 17, 35 (1971) (freight forwarder application).

²⁹ Investigation into Limitations of Carrier Service on C.O.D. and Freight-Collect Shipments, 343 I.C.C. 692, 729 (1973).

³⁰ Baumol & Walton, *Full Costing, Competition and Regulatory Pra*

FACILITATING THE CONTAINER REVOLUTION

Containerization, which has undergone an enormous growth in recent decades, represents an expeditious, economical, and efficient means of facilitating intermodal transportation. In its simplest form, it involves the shipment of freight as a unit from origin to ultimate destination in vans or boxes.³² The typical containerized export movement, for example, might involve (a) the loading of widgets by their manufacturer into a single van-type container, (b) the movement of the container by motor carrier from the manufacturer's inland domicile to the port facilities of Savannah, (c) the placement at

containers, and are therefore able to provide coordinated movements in conjunction with surface carriers.³⁶

Containerization has had a profound im

The ICC frequently acknowledged that containerization is a progressive innovation which facilitates the intermodal coordination of operations and the efficiency and economy of transportation, and should therefore be encouraged.⁴⁴ Thus, where a public need existed which cannot adequately be satisfied by existing transportation services, authority was granted for the transportation of empty containers between port cities and inland points.⁴⁵ The grant of authority to transport empty containers along with loaded containers obviated the necessity of deadheading containers in return movements to seaports and maximized the efficiency and economy of such operations by permitting the free transfer of containers from interior breakbulk to stuffing points.⁴⁶ The grant of authority in such circumstances frequently had the effect of advancing the development of intermodal maritime-land operations consonant with the Commission's declared policies.

In summary, prior to deregulation U.S. economic regulation of transportation in foreign commerce was divided among three separate regulatory agencies. The ICC had jurisdiction over some 18,000 rail, motor, and water carriers, brokers, e4oi 4812 0 12 312.62i[5d wat2c3hC1

Board regulated domestic and international direct air carriers (airlines) and indirect air carriers (e.g., air freight forwarders).⁴⁸ Then as now, the Federal Maritime Commission had jurisdiction over common carriers operating United States and foreign flag vessels [VOs, or maritime carriers] and non-vessel operators [NVOs, or ocean freight forwarders].⁴⁹ The inevitable legal problems that arose as a result of this overlapping jurisdiction stimulated quasi-judicial and quasi-legislative activity in each of the three agencies.

Of these three agencies, the ICC was charged by Congress with a unique statutory directive to promote the coordination of all modes of transportation, even those not subject to its jurisdiction.⁵⁰ Thus, it was recognized that the development of a coordinated system of transportation must take precedence over the more narrow interests of those carriers directly subject to ICC jurisdiction.⁵¹ Similarly, the ICC noted that the public must have available not only a multip

Similarly, in *AAA Transfer, Inc., Ext. – Cargo Containers*,⁵⁸ the ICC recognized the following characteristics of containerized transportation:

The benefits to be derived from the utilization of intermodal transportation of freight in containers include reduc1.912 1f

FOREIGN COMMERCE REGULATION AND THE LAND BRIDGE EXEMPTION

Pursuant to the Interstate Commerce Act,⁶⁴ the ICC had jurisdiction over the transportation of passengers and property by motor carriers engaged in foreign commerce. Foreign commerce was defined by section 203(a)(11) of the ICA as

Commerce, whether such commerce moves wholly by motor vehicle, or partly by motor vehicle and partly by rail, express, or water, (A) between any place in the United States and any place in a foreign country, or between places in the United States through a

The land bridge exemption was consistent with article V of the General Agreement on Tariff and Trade [GATT],⁶⁷ which provides, inter alia, that “[t]here shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties.” The exemption was also alluded to in m

carriers.³ The purpose of Congress' general prohibition on dual authority, as upheld by the Supreme Court,⁴ was to protect motor carriers from domination by their more powerful competitors, the railroads.⁵ As the ICC explained: "The ma

In an important opinion rendered in the fall of 1986, *International Brotherhood of Teamsters v. ICC (Teamsters I)*

opinion, on grounds that there were other unresolved issues appropriate for remand. But in light of the supervening legislation, it reversed those portions of its decision relevant to section 11344 (c).²¹ Nonetheless, the two decisions appear to revive the “special

flatcar, or TOFC/COFC) service,

administrative deregulation or, failing that, a sunset of the Interstate Commerce Commission.

SUNSET OF THE INTERSTATE COMMERCE COMMISSION; EMERGENCE OF THE SURFACE TRANSPORTATION BOARD

Several pieces of legislation whittled away at the jurisdiction of the Interstate Commerce Commission, ultimately leading to its sunset. The Motor Carrier Act of 1980, the Staggers Rail Act of 1980, and the Bus Regulatory Reform Act of 1982, all diminished the ICC's jurisdiction. The Surface Freight Forwarder Deregulation Act of 1986 deregulated freight forwarders. 29 5FN4.7553 584.765 Freight f8 1iht f8 1iht f8 1 1..0006

Executive Branch, and that therefore a cabinet-level Department of Transportation should be created.⁸⁵ The bill creating the DOT was signed on October 15, 1966, and the agency was established on April 1, 1967, with Alan S. Boyd as the first Secretary of Transportation.⁸⁶

The DOT essentially was created from an amalgamation of several pre-existing governmental agencies. From the Interstate Commerce Commission was transferred the Bureau of Railroad Safety (which formed a part of the Federal Railroad Administration [FRA]), and the Bureau of Vehicle Safety (which formed a part of the Federal Highway Administration [FHWA]). The independent Federal Aviation Agency (which had earlier been split off from the Civil Aeronautics Board) became DOT's Federal Aviation Administration. The Commerce Department gave DOT the St. Lawrence Seaway Development Corporation, surrendered to the FHWA the National Highway Safety Bureau, and gave the FRA the Office of Groundspeed Transportation. The Treasury Department gave it the Coast Guard. The Department of Interior gave the FRA the Alaska Railroad. A new quasi-independent agency, the National Transportation Safety Board, was also housed within DOT.⁸⁷

III. INTERMODAL TRANSPORT LAW: WHAT IT IS

THE INTERMODAL SURFACE TRANSPORTATION EFF

the public's desire for mobility. Concerns over congestion, sprawl and pollution, all of which defied political jurisdictional boundaries, emerged as political issues. Congress also recognized that the separate and isolated modal networks were not linked together well. Seamless connectivity between modes might well allow Americans to enjoy the inherent advantages of all modes.

The Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA] established new national priorities in areas of economic progress, cleaner air, energy conservation and social equity, requiring that the intermodal transportation system be “economically efficient and environmentally sound . . .” as well as “energy efficient”⁹⁰ In the legislation, Congress declared that it is in the “national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution.”⁹¹

Significantly, the Intermodal Surface Transportation Efficiency Act of 1991 was the first highway bill in the nation's history to have expunged the word “highway” from its title. This legislation provided enhanced flexibility for State and local governments to redirect highway funds to accommodate other modes and modal connections.⁹² In ISTEA's legislative history, Congress concluded:

An intermodal transportation system . . . to enhance efficiency will be the key to meeting the economic, energy and environmental challenges of the coming decades. The nation will not be able to meet all of those demands through continued reliance on separate, isolated modes of transportation.

Development of an intermodal transportation system will result in increased productivity growth the nation needs to compete in the global economy of the 21st Century. We can no longer rely on a transportation system designed for the 1950s to provide the support for American industry to compete in the international marketplace.⁹³

By placing the word “intermodal” (as opposed to the historical “highway” term) in the title of the bill, Congress sought “to bring the need for intermodalism to the forefront of the nation's transportation and economic debate.”⁹⁴ ISTEA authorized \$156

⁹⁰ designed fe

billion for fiscal years 1992-1997, but not just for highways. It shifted Federal transportation policy from traditional highway funding for automobiles to a system which creates intermodal systems that include highways, rail and mass transit in a comprehensive system, with seamless connectivity between modes.⁹⁵ ISTEA enhanced State and local governmental flexibility in redirecting highway funds to accommodate other modes and pay for transit and carpool projects, as well as bicycle and pedestrian facilities, research and development, and wetland loss mitigation.⁹⁶ It created flexible guidelines that cut across traditional boundaries in allowing expenditures on highways, transit and non-traditional areas (e.g., vehicle emission inspection and maintenance).⁹⁷ According to DOT, "This flexibility will help State and local officials to choose the best mix of projects to address air quality without being influenced by rigid Federal funding categories or different matching ratios that favor one mode over the other."⁹⁸

ISTEA discouraged continued reliance on the automobile and expanded highways while encouraging the seamless movement of people and goods between modes of transportation.⁹⁹ For example, the Federal match for new or expanded facilities to be available for single-occupancy vehicles is reduced to 75% (compared with an 80% Federal match on other highway projects).¹⁰⁰ The transit match is increased to 80% to achieve parity in matching ratios between the modes.¹⁰¹

ISTEA also gave Metropolitan Planning Organizations [MPOs] expanded funding for planning purposes and authority to select projects for funding, thereby significantly expanding their jurisdiction by authorizing MPOs to allocate Federal highway funds. Under ISTEA, the MPO, in consultation with the State, selects all Federal highway, transit and alternative transportation projects to be implemented within its boundaries, except for projects undertaken on the National Highway System.¹⁰²

1. Support the economic vitality of the metropolitan area, particularly by enhancing global competitiveness, productivity, and efficiency;
2. Increase the safety and security of the transportation system for motorized and nonmotorized users;
3. Increase the accessibility and mobility options available to people and freight;
4. Protect and enhance the environment, promote energy conservation, and improve the quality of life;
5. *Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;*
6. Promote efficient system management and operation; and
7. Emphasize the preservation of the existing system.¹⁰⁹

FEDERAL POLICIES PROMOTING INTERMODAL TRANSPORTATION

Congress has declared that among the transportation policies of the United States is “to encourage and promote development of a national intermodal transportation system . . . to move people and goods in an energy-efficient manner, provide the foundation for improved productivity growth, strengthen the Nation’s ability to compete in the global economy, and obtain the optimum yield from the Nation’s transportation resources.”¹¹⁰ Congress created the U.S. Department of Transportation to “make easier the development and improvement of coordinated transportation service”¹¹¹ The Secretary of Transportation is required to coordinate Federal policy on intermodal transportation, and promote creation and maintenance of an efficient U.S. intermodal transportation system.¹¹² He is also obliged to consult with the heads of other Federal agencies to establish policies “consistent with maintaining a coordinated transportation system”¹¹³ The Secretary is required to “encourage the development and use of intermodal transport, using containers constructed to facilitate economical, safe, and expeditious handling of containerized cargo without intermediate reloading which such cargo is transported over land, air and sea areas.”¹¹⁴

Among the aviation statutes is a recognition that it is the policy of the United States “to develop a national intermodal transportation system that transports passengers and property in an efficient manner.”¹¹⁵ Congress has declared that “A national intermodal transportation system is a coor

All DOT employees are required to be given a copy of the National Intermodal Transportation System Policy, and it is required to be posted prominently in all offices of the Department.¹²⁹

In the Amtrak Reform and Accountability Act of 1997, Congress declared that “intercity rail passenger service is an essential component of a national intermodal passenger transportation system” and that Amtrak and intercity bus providers should work together to “develop coordinated intermodal relationships promoting seamless transportation services which enhance travel options and increase operating efficiencies.”¹³⁰

Congressional policies governing the Surface Transportation Board require that it “ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States”¹³¹ In overseeing these modes, the STB must “recognize and preserve the inherent advantages of each mode of transportation”,¹³² and must “promote intermodal transportation.”¹³³

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was required to engage in formalized planning of two types -- a 20-year long-range plan, and a short-term Transportation Improvement Program, covering transportation projects to be implemented over at least a three-year period.¹³⁸ The TIP must be updated at least every two years.

Thus, beginning in 1991, MPOs were transformed from advisory institutions, into institutions that actually have direct influence over the distribution of money -- from

available to U.S.-flag merchant vessels.¹⁵¹ Emergency Preparedness statutes and Executive Orders issued thereunder require the Secretary of Transportation to be prepared to provide direction to all modes of transport in national security emergencies, including intermodal transportation systems.¹⁵² Working with the Secretary of Defense, the Secretary of Transportation is required to establish an Emergency Preparedness Program. The transportation resources to be made available thereunder include “intermodal systems and equipment”, as well as “intermodal and management services”.¹⁵³

INFRASTRUCTURE TO FACILITATE INTERMODALISM

intermodal equipment or facilities,¹⁶² or to preserve or enhance intermodal service to small communities or rural areas.¹⁶³

DOT may provide up to 50% of the costs incurred by a public agency for high-speed rail corridor planning.¹⁶⁴ Among the eligible corridor planning activities are intermodal terminals.¹⁶⁵ Amtrak was given eminent domain power to build an intermodal transportation terminal at Washington, D.C.'s Union Station.¹⁶⁶

The Federal Aviation Act requires that public airports accepting AIP funding agree that all revenue generated by the airport be used exclusively for the capital or operating costs of the airport, the local airport system, or facilities owned or operated by the airport directly and substantially related to the air transportation of persons or property.¹⁶⁷ The question has arisen whether airport funds spent on building or operating transit or rail lines or stations are to be owned or operated by the airport and directly and substantially related to the air transportation of passengers.

Federal Aviation Administration regulations provide that airport access projects must preserve or enhance the capacity, safety or security of the national air transportation system, reduce noise, or provide an opportunity for enhanced competition between carriers.¹⁶⁸ Such projects must also be for exclusive use of the airport patrons and employees, be constructed on airport-owned land or rights of way, and be connected to the nearest public access of sufficient capacity.¹⁶⁹ The Federal Aviation Administration [FAA] insisted that AIP funds be limited to landside expenditures, "which encompasses the area from the airport boundary where the general public enters the airport property to the point where the public leaves the terminal building to board the aircraft. Typical eligible landside deve

Road and the E, J and Z subway lines to Manhattan at Jamaica Station, and to Howard Beach.¹⁷² The FAA concluded that PFC expenditures on the JFK rail link would satisfy the statutory and regulatory requirements by alleviating ground congestion on airport roadways and terminal frontages, by enhancing the efficient movement of airport employees, by freeing up capacity on the roadways for additional passengers, and by improving the airport's connection to the regional transportation network. It found, "Where ground access is shown to be a limiting factor to an airport's growth, a project to enhance ground access may qualify as preserving or enhancing capacity of the national air transportation system."¹⁷³ The FAA found that the rail line would enable an additional 3.35 million passengers to use JFK annually by the year 2013, and "therefore must be construed to have a substantial capacity enhancement effect on JFK, as measured in air passengers accommodated by the airport."¹⁷⁴ The FAA concluded that the rail link would "serve to preserve or enhance the capacity of JFK and the national air transportation system"¹⁷⁵ The \$3 per ticket Passenger Facility Charge would generate about \$45-50 million a year, enabling the airport to pay off the cost of the line in 20 years.¹⁷⁶

Rail lines at Atlanta, Chicago, Cleveland and Washington, D.C./P AMCID 11 BDCines9.5601 Tm(n

The coordination of U.S. government research on intermodal transportation is to be done by the Director of the DOT Office of Intermodalism. He is also required to provide technical assistance to

includes the “integration of high-speed ground transportation with other modes of transportation.”¹⁹⁶

- In its advanced vehicle technologies program, the Secretary is to encourage and promote the research, development and deployment of technologies that will use technological advances in multimodal vehicles.¹⁹⁷
- Within 60 days of promulgation of ISTEA in 1991, the Secretary of Transportation was required to commission a study by the National Academy of Public Administration to study options for organizing DOT to improve intermodal coordination among surface-related agencies.¹⁹⁸
- Congress also mandated a study assessing existing data and data collection needs with respect to the movement of loaded containers and trailers in intermodal transportation in violation of Federal and State vehicle weight laws, and how those intermodal movements compare with other overweight domestic highway freight movements.¹⁹⁹
- Within 180 days after promulgation of the National Highway System Designation Act of 1995, the Secretary of Transportation was required to submit modifications to the National Highway System proposed by a State that consist of connectors to major ports, airports, international border crossings, public transit facilities, Interstate bus terminals, and rail and other intermodal transportation facilities.²⁰⁰
- Within two years of the enactment of the requirement for an intermodal freight connectors study in 1998,²⁰¹ the Secretary of Transportation was to have reviewed the conditions of connectors in the National Highway System that serve airports, seaports and other intermodal freight facilities designed to facilitate the efficient movement of freight between transport modes, to identify impediments to improving connectors serving intermodal facilities, and make recommendations for improvement thereof.
- The Secretary is also directed to conduct a comprehensive program to accelerate the integration of intelligent transportation systems, funding projects, inter alia, that will serve as models to improve and increa

- A comprehensive study on waterway improvements by the Army Corps of Engineers including an appraisal of improvements needed to optimize the system and its intermodal characteristics.²⁰⁵

The Federal Maritime Commission is required to investigate whether any laws or activities of foreign governments or foreign carriers providing maritime-related services (including intermodal operations) in a foreign country adversely affects U.S. carriers in oceanborne trade.²⁰⁶

REGULATION

Under the Interstate Commerce Act, the Surface Transportation Board (formerly the Interstate Comm

		Transit	Federal Transit Administration
Federal Maritime Commission	Ocean Carriers	Sea Ports	Army Corps of Engineers, Federal Maritime Administration
Surface Transportation Board	Inland Water Carriers	Canals, Inland Waterways	Army Corps of Engineers
Federal Energy Regulatory Commission	Pipelines		

The DOT has established a special unit within the Office of the Secretary to facilitate intermodal connections. Congress in 1991 passed the Intermodal Surface Transportation Efficiency Act to facilitate intermodal transportation, requiring the establishment of an Office of Intermodalism within DOT,²¹⁷ as well as an Intermodal Transportation Advisory Board consisting of the Secretary and the Administrators of the FHWA, FAA, Maritime Administration, FRA, and FTA.²¹⁸ ISTEA also created funding flexibility enabling more highway dollars to be allocated to non-highway projects. In the Clinton Administration, the Department created a “One DOT” policy and logo in an effort to better focus the agency on its central mission – to create a unified, seamless, efficient, economical and environmentally benign intermodal system.

But creating a unified approach to transportation issues was among the principal reasons for creation of the DOT in 1966. More than three decades later, it remains largely an unfulfilled dream. Jurisdictional turf battles and bureaucratic inertia inevitably inhibit seamless connections. If DOT is to fulfill its promise to build a seamless intermodal system, it could begin by dividing itself into two divisions -- a passenger division, and a freight division -- for these are more appropriate distinctions than modal distinctions. Ideally, Congress would divide its oversight and appropriations committees along similar lines. Undoubtedly, this would require coordination between the passenger and freight divisions in areas of highway, airport and rail infrastructure planning and development, so the divisions would have to work together on these issues. But the movement of a passenger from an automobile to an airport to a train to a transit vehicle is an intermodal movement which requires seamlessness; a container movement from a truck to an ocean vessel, to a rail car, to a truck requires the same. Unified funding and planning would encourage the creation of such seamlessness. Moreover, all regulatory functions now held by DOT, the STB, and the FMC should be consolidated in an independent Intermodal Transportation Commission so that the legal and regulatory requirements remain uniform between modes.

THE NEED FOR LEGAL HARMONIZATION

disputes; unions are organized along craft lines; agreements continue in effect even after their expiration date.²²¹ In contrast, the labor-management relations of other modes are regulated by the National Labor Relations Board; unions are organized geographically.²²² Efficiency would be significantly enhanced if multimodal companies could look to a single set of laws governing labor issues.

THE NEED FOR INTERMODAL PLANNING IN ALL LARGE TRANSPORTATION PROJECTS

In the National Environmental Policy Act of 1969, Congress developed a streamlined process for considering environmental concerns in all major federal projects. In a situation where a federal or federally-funded activity will significantly affect the quality of the human environment, an Environmental Impact Statement must be prepared. Comprehensive federal environmental regulation began with the National Environmental Policy Act of 1969,²²³ (signed into law on January 1, 1970), which established the Environmental Protection Agency [EPA], and required that an environmental assessment [EA], and environmental impact statement [EIS] be prepared, the latter for any “major federal action significantly affecting the quality of the human environment.” The EA determines whether potential impacts are significant, explores alternatives and mitigation measures, and provides essential information as to whether an EIS must be prepared. The EA focus attention on potential mitigation measures during the planning process, at a time when they can be incorporated without significant disruption.²²⁴ If the governmental agency concludes that there are no significant adverse environmental impacts, or that with appro 304.698 409.56 424.68 Tm(224)TjETEMC/P A CID 12 BDCBT/u3ep

State Highway Departments, no matter what they are called. One way to incorporate intermodal considerations into all major transportation projects is to require the preparation of an “Intermodal Impact Statement” in the planning process of all major federal transportation projects. Thus, no major new highways would be built without consideration of access to transit lines, seaports and airports. No new airport projects would be built without consideration of access of modal alternatives other than the automobile. As in environmental regulation, it would not mean that a project could not be built without intermodal facilitation; it would mean that no major project could be built unless intermodal facilitation had been considered. That would require many governmental institutions to plough new, and fertile, ground. In so doing, many more projects would be made intermodal in design.

V. CONCLUSIONS

As the gateways to an increasingly global market, transportation corridors are the arteries through which we and everything we consume flow. Transportation networks stimulate trillions of dollars in trade, commerce, and tourism. In a global economy, they enable specialization in the production of goods and services which, under the law of comparative advantage, stimulates broader economic growth.

By shrinking the planet, transportation am06 w7608 Tm(a)Tj120.0028 Tw 7598.56nde71ki2se w760

stimulation—is vastly larger than the prices paid directly by passengers or shippers. Transportation creates and transports wealth far in excess of its own facial value. In other words, the tacit benefits of economic stimulation created by transportation networks far exceeds its costs.

In this sense, transportation has profound externalities, both positive and negative. For example, a city with abundant airline, motor carrier and railroad networks radiating from it like the spokes of a wheel, enjoys a wide economic catchment area stimulating trade, commerce and wealth for its citi

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believes in the freedoms of the commons. Freedom in a commons brings ruin to all.²²⁹

The city streets are commons, drivers are herdsmen, and the automobiles themselves are cattle. Every additional automobile on the street brings the owner enhanced satisfaction of his desire for mobility. According to Hardin, “Ruin is the destination toward which all men rush, each pursuing his own best interest in a freedom that believes in the freedoms of the commons.”²³⁰

Hardin’s main thesis is not about the economic decline of herdsmen, but of the negative externality of another sort—pollution. He says:

Law and regulation must serve the needs of commerce for predictability of rules which make commercial sense, facilitate efficient transactions, and do not burden commerce. To that end, streamlining of regulatory responsibilities and rules across modes will do much to promote the seamless intermodalism for which the nation should strive. Only in this way can the enlightened policies fostering seamless intermodalism embraced by Congress be implemented.