

CONTAINERS: THEIR DEFINITION AND IMPLICATIONS

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One of the largest single growth potentials for U. S. Carriers is in the area of export movement of agricultural commodities. During the period 1970 to date, the market opportunity for perishable movement has increased at least three times with only limited advantage accruing to the benefit of U. S. operators of refrigerated containers in terms of increased volumes and varieties of products handled.

This technical change was accomplished in the life of the nations faster in the mechanical and engineering sciences than in the corresponding legal structures. However, the stability of this now-uniform world system of organized distribution of goods depends on the existence of a uniform code method where the facilities used and required for this service are treated equally by all nations, all political entities, the courts, the administrations and the people.

First came international conventions under the auspices of the United Nations and the International Maritime Consultative Organization dealing with just two of the international elements, namely, technology of the equipment and customs regulation of the treatment of this equipment.

The rules of the container world deal with the dynamics of the public law basis of an international, uniform structure with specific inter-relationships between far-flung owners, shippers and governments. In nearly all nations of the world there are urgent needs for codification of public activities related to the container. In very advanced countries, such as the United States, France, Germany and Great Britain, the rules deal with standards of simplification methods for use of the containers within and between the countries.

I. DEFINITIONS

A. *DEFINITIONS UNDER INTERNATIONAL CONVENTION*

Private cooperative understanding by the ISO international agreement led to basic container rules of the United Nations. Together with the Inter-Governmental Maritime Consultative Organization (IMCO), two agreements (CCC and CSC) were promulgated in November, 1972. The first international container agreements were

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mostly in terms to emphasize practical technical configuration and safety requirements for the container. Two conventions called "Customs Convention on Containers" (1972) and the "International Convention of Safe Containers" (1972) dealt exclusively with the seven most technical questions which have hampered the further development of the international inter-modal transportation. The Customs Conventions (CCC) concentrates on four subjects:

- (1) *Technology*—The term "container" shall mean an article of transport equipment (lift-van, movable tank or other similar structure) fully or partially enclosed to constitute a compartment intended for containing goods;
- (2) *Transfer*—This term designates that the container is designed for ready handling, particularly when being transferred from one mode of transport to another;
- (3) *Facilitation*—This would indicate the container is easy to either fill or empty;
- (4) *Accessories*—The term "container" shall include the accessories and equipment appropriate for the use intended, provided that the accessories and equipment are carried with the container.

On the other hand, the Convention for Safe Containers stresses the following:

- (1) *Security*—Designed to be secured and/or readily handled, having corner fittings for these purposes;
- (2) *Size*—Of a size such that the area enclosed by the four outer bottom corners is either:
 - a. At least 14 sq. meters (150 sq. ft.) or
 - b. At least 7 sq. meters (75 sq. ft.) if it is fitted with top corner fittings;
- (3) *Definition*—The term "container" includes neither vehicles nor packaging; however, containers when carried on chassis are included.

B. DEFINITIONS UNDER U. S. MARITIME LAW

The "container" box is defined in terms of its use. There have been hundreds of mutually exclusive suggestions of the definition of the container, but the one most used seems to be that of the United States Coast Guard which coincides with the UN/IMCO Conventions of 1972 (cited *infra*):

“Container means an article of transport equipment (lift-van, portable tank, or other similar structure including normal accessories and equipment when imported with the container), other than a vehicle or conventional packaging—

- (1) Of a permanent character and accordingly strong enough to be suitable for repeated use;
- (2) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;
- (3) Fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another;
- (4) So designed as to be easy to fill and empty; and
- (5) Having an internal volume of one cubic meter (35.3 cubic feet) or more.

The fact that the definition contains the words “other than a vehicle” is important and must be dealt with.

II. Containers as Vehicles

A. Dictionary

Containers are a relatively new and certainly unique unit of transport. Due to these characteristics, the means of regulating their use are not uniform or stable. The problem confronting lawmakers is this: should this new form of transportation be regulated by contorting existing laws, or is it so important that new regulations should be established to fit the peculiarities of the container.

The purpose of the following discussion is to present definitions of “vehicle” and related transport equipment in federal and state jurisdictions as well as to investigate the applicability of particular statutes to the use of containers in motor vehicle transportation.¹ Special attention will be given to the subject of vehicle requirements, tax liability and equipment safety standards.

As a point of reference, “container” in the forthcoming analysis means:

1. As exemplary definitions are presented, it will be noted that some are quite similar, demonstrating the effect of the Uniform Vehicle Code on the definitions and regulations used by the states and federal government. Specifically note the similarity in definitions of “semitrailer” U.V.C. §1-163, “trailer” U.V.C. §1-179, and “vehicle” U.V.C. §1-184.

[A] permanent reusable article of transport equipment durably made of metal It is designed to facilitate the handling, loading, . . . carriage and unloading and delivery of large numbers of packages of goods contained within It provides a means of transferring cargo from one form of transportation, such as a ship, to another form of transportation, such as rail or truck, without the necessity of loading and unloading the individual items of cargo each time the mode of transport changes.²

Of primary significance is the fact that the containers referred to above, in order to facilitate intermodal transport, are not permanently equipped with wheels.

B. Containers Under Federal and State Jurisdiction

1. Interstate Commerce Act

Part II of the Interstate Commerce Act regulates highway motor transport engaged in interstate and foreign commerce. For the purpose of that Part, "motor vehicle" is defined as:

. . . any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property or any combination thereof determined by the [Interstate Commerce] Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail. . .³

A container can be "drawn by mechanical power and used upon the highways in the transportation of . . . property," but is it a "vehicle, machine, . . . trailer or semitrailer"? The "drawn by mechanical power . . ." segment of the definition is merely a delimiting statement used to clarify the characteristics of a vehicle, machine, etc. which are subject to the Act. Thus, the meat of the definition is not very helpful for our purposes since nothing in the act further defines "vehicle," "trailer" or "semitrailer" and these may or may not be a container.

2. Simon, *The Law of Shipping Containers*, 5 J. Maritime L. 507, 513 (1974) as cited in *Sea-Land Service, Inc. v. County of Alameda*, 12 Cal. 3d 772, 775, 528 p. 2d 56 (1974).

3. 49 U.S.C.A. §303 para. 13 (1963).

Investigation of federal case law in which "vehicle" is defined casts some light on whether Part II applies to containers.⁴ *U. S. v. One 1936 Model Ford V-8, etc.*⁵ is a case cited for its definition of "vehicle." In that case the Supreme Court pronounced the following concept:

That in or on which a person or thing is or may be carried from one place to another. A wheelbarrow, a covered wagon, a 'Rolls Royce,' the patient mule, a 'Man of War,' and possibly a Pullman car or oceanliner is a vehicle.⁶

This definition is enlightening for it apparently proposed examples of every type of vehicle. The general proposition is that a vehicle carries an item from one place to another. Could it be, then, that a box filled with something and carried from one place to another would fall within the Court's perception of vehicle? This hypothesis would be stretching the definition too far in view of the examples used in the case. A rereading of the list reveals that all the items are either self-propelled, have wheels, or in some other way are adapted to carrying objects over a medium in an efficient manner. These items, in and of themselves, display a characteristic that gives them an intrinsic purpose and usefulness. It is unlikely that the Court would have classified a wheelbarrow as a vehicle if it did not have a wheel, or a Man of War as a vehicle if it could not propel itself or at least be used as an efficient and normally desirable means of carrying objects over water.

The conclusion may be drawn that within the scope offered by the Supreme Court, a container, by itself, would not be a vehicle. It does not propel itself nor can it be used, without some form of wheel attachment, as a desirable form of transport over land. Therefore, it is not subject to Part II of the Interstate Commerce Act. Its characteristics seem to place it more within the concept of a package.

C. *Container as Package*

One important reason for the possible classification of a container as a package lies in the import-export clause of the U. S. Constitution. Pursuant to this clause, "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports

4. Whether the container would be required to display identification plates as a unit of interstate commerce would be one result of the Act's application to containers. 49 U.S.C.A. §324, (1963) and see 49 U.S.C.A. §165 para. 5(e)(6)(D)(1951).

5. 307 U. S. 219 (1938).

6. *Ibid* at 237 (citations omitted).

except what may be absolutely necessary for executing its inspection laws . . .”⁷ The leading case of *Brown v. Maryland*⁸ declared that in order to qualify for tax immunity under the clause, the imported item must be in its “original package” on the date that the local taxes are levied. However, if the items are sold, removed from the original package in which they were imported, or put to the use for which they were imported, then they are subject to local taxes since they have been injected into the stream of local commerce.⁹ Unfortunately, federal courts have yet to determine whether containers may specifically qualify as original packages.

The container as a package has received a relatively large amount of attention in relation to the limitation of liability clause found in the Carriage of Goods by Sea Act.¹⁰ Admittedly, the Act has little to do with interstate motor transport, but the definitions and tests imposed by the federal courts in this area of the law will help narrow the characterization of a container in its role in motor transportation.

The problem that arises is this: under COGSA, a shipper can collect no more than \$500 for each package that is lost or damaged in shipment and for which no higher value has been claimed in the bill of lading. If a container is to be considered a package, its loss or damage (thereby harming its contents) could well represent a loss of over \$100,000 worth of goods to the shipper.

Two theories have emerged in federal court to deal with the problem. One is promulgated by the United States Court of Appeals for the Second Circuit in *Leather's Best v. Mormaclynx*.¹¹ In that case the court found a container not to be a package within the meaning of COGSA, but rather a reusable metal container, “functionally a part of the ship,” in which the carrier caused the packaged goods to be “contained.”¹² In the later case of *Royal Typewriter v. Kulmerland*¹³ a panel of three different judges from the same court

7. U. S. Const. art I, §10, para. 2.

8. 12 Wheat 419 (1827).

9. See, e.g. *Waring v. The Mayor*, 8 Wall. 110 (1868), *Hoover & Allison Co. Co. v. evatt*, 324 U. S. 652 (1945), *Youngstown Sheet & Tube Co. v. Bowers*, 358 U.S. 534 (1959).

10. [n]either the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package . . . unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. 46 U.S.C.A. §1304(5) (1958) [hereinafter cited as COGSA].

11. 451 F. 2d 800 (2d Cir. 1971).

12. *Ibid* at 815.

13. 483 F.2d 645 (2d Cir. 1973).

of appeals assembled a different test.¹⁴ Under their “functional economies test,” or “functional package unit test,” the first question to be asked is whether the contents of the container could be shipped overseas in the manner in which they were individually packaged by the shipper. If the shipper’s packaging is not functional for overseas shipment, then the burden is on him to prove why the container is not a package for COGSA purposes. If the shipper’s package is functional, then the burden is on the carrier to prove that the parties intended the container to be a package. The Federal District Court for the Southern District of New York cited both *Leather’s Best* and *Royal in Shinki Boeki Co., Ltd. v. S.S. Pioneer Moon*,¹⁵ but it apparently used the *Leather’s Best* test. It held that tanks used to ship liquid were “not functionally a part of the ship” and therefore were packages for COGSA purposes.

The above-mentioned cases are concerned with the function of the container, either as a part of the ship (or vehicle), or as a package. The courts are ultimately trying to define the container according to its use: if it is a functional part of the ship, then it is not a package; if it works as a functional form for overseas transportation of goods, then it is a package. Unfortunately, under normal containerized shipping, both functions are fulfilled by the container. Thus, although the salient characteristics of containers have been isolated for purposes of legal analysis, no single workable guide has yet been established for the purposes of fixing liability under COGSA. The same issues, slightly modified, may be superimposed on the use of containers in motor transport: are containers merely pieces of equipment of a larger vehicle or are they independent units of transport capable of being classified and regulated as vehicles in and of themselves. As in COGSA, the answer to this question is elusive.

D. Taxation of Containers

A federal excise tax of 10% is imposed on all manufacturers of chassis and bodies for trucks, buses, trailers and semitrailers.¹⁶ The U. S. Code section that sanctions such a tax also provides that an excise tax of 8% is to be levied on all parts or accessories sold by the manufacturer, producer or importer of the bodies and chassis.¹⁷

14. Ibid at 648-49.

15. 378 F. Supp. 418, 419 (S.D.N.Y. 1974).

16. 26 U.S.C.A. §4061 (a)(1) (Supp. 1975).

17. Ibid §4061(b)(1).

Whether containers fall within the section's ambit as "bodies" has been decided in Revenue Ruling 60-185.¹⁸ This Ruling stated that "cargo-containers" which are designed for shipment of property by water, rail and highway are not taxable as trailer or semitrailer bodies even though they resemble such bodies. A later ruling held taxable containers which were primarily designed for use on highways and could only be moved by specially equipped trucks. That ruling distinguished cargo containers from highway containers as follows:

The basis for holding the 'cargo containers' nontaxable is that they are considered to be articles designed or adapted by the manufacturer for purposes predominantly other than the transportation of property on the highway, even though incidental highway use may occur.¹⁹

In light of the above rulings, it may be concluded that if the container is only used for motor transport on the highways it is subject to the excise tax of U. S. Code Section 406(a)(1).

The container may also be involved in the compilation of the federal tax levied on the use of certain highway motor vehicles.²⁰ The container, as a part of a trailer or semitrailer is not propelled by means of its own motor and therefore will not itself be subject to the tax. However, it will be used to determine the taxable gross weight of the towing vehicle which is used in combination with the trailer or semitrailer and container.²¹ This tax is payable by the person in whose name the motor vehicle (truck or truck-tractor) is registered.²²

E. Federal Motor Vehicle Safety Standards

The U. S. Code specifies safety standards for "motor vehicles" and "motor vehicle equipment."²³ To be subject to these federal standards a motor vehicle may be "any vehicle . . . drawn by mechanical power manufactured primarily for use on the public streets, roads and highways . . ." "Motor vehicle equipment includes "any system, part, or

18. Rev. Rul. 60-185, 1960-1 Cum. Bull. 412.

19. Rev. Rul. 61-159, 1961-2 Cum. Bull. 170; and see Rev. Rul. 70-54, 1970-1 Cum. Bull. 218, holding subject to the tax of §4061(a)(1), "trailer/containers" equipped with a refrigeration unit, designed primarily for highway transportation but also adaptable for rail shipment.

20. 26 U.S.C.A. §4481 (Supp. 1975).

21. 26 C.F.R. 41 4482(a) - 1(b) (1974).

22. *Ibid* §41.4481-2(a).

23. 15 U.S.C.A. §1391(3), (4) (1974).

component of a motor vehicle as originally manufactured . . . or sold . . . as any accessory or addition to the motor vehicle . . .”“ A container easily fits into one or both of the definitions and consequently is subject to federal safety standards for such things as lighting, locks, etc. Moreover, the container will have to display a label or tag certifying that the equipment conforms with safety standards.²⁴

F. Containers in State Jurisdiction

Although the container is usually an item of interstate transport, the federal laws and cases are not totally comprehensive nor do they suggest preemption in their treatment of this new means of cargo handling. The void is conceivably filled by the statutes and regulations created pursuant to the taxing and policy powers of the various states. As a sampling, the cases and statutes relating to motor vehicles in California, Florida, Kentucky and Minnesota will be analyzed in the following discussion with the perspective of how they apply to containers.

1. California

(a) *Vehicle Code Definitions*—Is a container a “vehicle” or can it be described as a trailer,” “semitrailer” or “detachable freight van”? For the purposes of the California Vehicle Code, a “vehicle” is:

a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved by human power or used exclusively upon stationary rails or tracks.²⁵

A trailer, as defined by the Vehicle Code, is a vehicle which carries property or people and is drawn by a motor vehicle. It is constructed so that “no part of its weight rests upon any other vehicle.”²⁶ The Vehicle Code definition of a semitrailer comes somewhat closer to encircling the concept of a cargo container. “A ‘semitrailer’ is a vehicle designed for carrying persons or property, used in conjunction with a motor vehicle, and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.”²⁷ Containers rest upon or are carried by other vehicles and are designed

24. Ibid §1403; see 49 C.F.R. 568.1 et. seq. (1974).

25. Cal. Veh. Code §670 (West 1971).

26. Ibid §630.

27. Ibid §550.

to carry property. The above definition of semitrailer could be cited by an agency wishing to classify a container for the purpose of motor transport regulation, but it would have difficulty in explaining how the containers, if they truly are "semitrailers," would be equipped with brakes as required by Vehicle Code Section 26302. The clear implication of the requirement for brakes on semitrailers is that they have wheels—which are not standard equipment for cargo containers.

More to the point is Section 31540 regarding regulation of tank containers. This section falls within Division 13 of the Vehicle Code which concerns towing and loading equipment. The section declares that the Department of Motor Vehicles is to adopt and enforce necessary regulations for public safety involving the transportation of "freight van or tank containers which can be removed from the running gear or chassis of a truck or trailer . . ." The regulations promulgated by the Department are limited to the loading securement and highway transportation of the freight vans or tank containers²⁸ which are defined as

. . . readily removable cargo structures which are designed to be carried on frame—or chasis—type vehicles and are not welded or permanently bolted to the running gear or chassis of the transporting vehicle.²⁹

Without more, the California Vehicle Code definition of "vehicle" or "semitrailer" could fit a container as it is used on the public highways. However, the definitive treatment of a container as "cargo structure" negates its classification as a vehicle which would subject it to various Vehicle Code restrictions and regulations.

(b) *Registration and License Fees*—Even if a container could be classified as a trailer or semitrailer, it would not be subject to registration required by the Vehicle Code.³⁰ Section 4009 states that a vehicle which is transported upon a highway, but is not touching the highway, is exempt from registration. This does not mean that the exempt vehicles float down the road, rather it provides for carriage of vehicles by other vehicles.³¹

Imposition of a vehicle license fee, levied pursuant to the Revenue

28. Cal. Admin. Code, Title 13 §§1400-1406.

29. *Ibid* §1401(a).

30. Cal. Veh. Code §4000(a) (West 1971).

31. Although the container is not subject to registration, it may be argued that it is required to display special series plates required under §5000 of the Vehicle Code. This section requires special series plates or distinguishing marks for trailers, semitrailers or vehicles which are exempt from payment of registration fees.

and Taxation Code³² is not applicable to containers. This is because the vehicles subject to the fee are those which must be registered under the Vehicle Code,³³ it being noted earlier that containers are not subject to registration. However, Section 10753 of the Revenue and Taxation Code may provide for the inclusion of the container in fixing the market value and consequent license fee of a semitrailer or trailer which uses the container for hauling purposes.

The license fee issue was discussed in *Consolidated Rock Products Co. v. Carter*.³⁴ The Court of Appeals in that case held that a self-powered cement mixing unit, easily removable from the truck chassis it was carried on, was to be included in the computation of the actual market value and license fee of the truck. The formula was permitted because the mixer and truck were considered to be a single unit of equipment. The court specifically pointed out that there had been no indication that the mixer had ever been removed or used independent of the truck. It further noted that the Department of Motor Vehicles "could have concluded" that the mixer was a "body" or "vehicle" within the intent, purpose and contemplation of the vehicle licensing statute.³⁵ What may be gleaned from the case, in light of container usage, is that containers would not be included in figuring the market value of the vehicles with which they are used if it is proven that they are periodically removed or used independent of the vehicles.

(c) *Business License and Ad Valorem Taxes (Package v. Instrumentality)*.—In *Volkswagen Pacific, Inc. v. City of Los Angeles*³⁶ (hereinafter referred to as *Volkswagen*)- the California Supreme Court wrestled with the problem of containers as "original packages." Pursuant to the import-export clause, if the containers could be considered original packages, the value of their contents would not be included in the computation of the Los Angeles city business license tax. One of the questions before the Court was whether the opening of the "sea van" and distribution of the articles inside constituted a breaking of bulk "for a sale or delivery of the separate parcels contained in it,"³⁷ such action thereby removing the articles from the

32. Cal. Rev. and Tax. Code §10751 (West 1970).

33. *Ibid* §10702.

34. 54 Cal. App. 2d 519, 129 P. 2d 455 (1942).

35. See, also, 35 Cal. Op. Atty Gen. 28 (1960), 410 cal. Op. Atty. Gen 135 (1963); but see exemption of cargo containers as "bodies" for federal excise tax purposes discussion accompanying footnotes 18-19, *supra*.

36. 7 Cal. 3d 48, 496 P. 2d 1237 (1972).

37. *Ibid* at 55, citing *F. May & Co. v. New Orleans*, 178 U. S. 496, 508-09 (1899).

exempt status of imports. The Supreme Court's thinking followed these lines:

Although the parts were shipped in sea vans, it would not follow as a matter of law that merely because an importing agent removed the parts from the vans, they then lost the constitutional protection of imported articles. Because the size of modern sea vans or 'containers' is dictated both by modern shipping technology and by the necessity of reducing the costs of shipping, the opening of such a container by an importer may not necessarily be effected 'for the sale or delivery of the separate parcels contained in it . . .,' but may instead be accomplished so that the importer can by other means of transportation divert his imports to his outlets in different interior states.³⁸

The Court, however, held the distribution of the contents of the *Volkswagen* container subject to local taxes because once the contents were removed from the container they were immediately distributed to local dealers. The thrust of the case, as it applies to a container, indicates that the container will be an "original package" when the goods that it holds are to be distributed locally, whereas, if the goods are to be diverted by other means of transportation to other outlets in different interior states, the container is simply a means of transporting the "original packages" it holds. The net result seems to be that the goods shipped in a container will not be taxed unless they are distributed for local sale or use.

*Sea-Land Service, Inc. v. County of Alameda*³⁹ (hereinafter referred to as *Sea-Land*)- was a 1974 case in which the California Supreme Court held that cargo containers were instrumentalities of interstate and foreign commerce and as such were subject to ad valorem personal property taxes levied by the County of Alameda on an "average presence" basis. By its ruling the Court nullified *Sea-Land's* contention that the containers were exempt from local taxes under the import-export clause of the U. S. Constitution. The Court announced:

The protection from state and local taxation afforded by this clause attaches to goods and commodities in the import-export stream; it does not extend to containers, which are a means of transport suitable for repeated use. The distribution was re-

38. 7 Ca. 3d 48 at 55 (citations omitted).

39. 12 Ca. 3d 772, 528 P. 2d 56 (1974).

cently recognized in *Volkswagen Pacific, Inc. v. City of Los Angeles* [*see supra*, note 38], in which we referred to containers as means of transportation and discussed the difference between the container and the separate parcels of goods contained within it.⁴⁰

The *Sea-Land* opinion characterized a container as an instrumentality of foreign and interstate commerce. In fact, the Court goes to great lengths in analogizing the container, for tax purposes, to flight equipment, railroad rolling stock, and vessels operating in inland waters.⁴¹ In footnote 1 of the decision, the following description of “cargo shipping containers” was offered:

A cargo shipping container is a permanent reusable article of transport equipment durably made of metal and equipped with doors for easy access to the goods carried inside. It is designed to facilitate the handling, loading, stowage aboard ship, carriage, unloading and delivery of large numbers of packages of goods contained within, thus minimizing the costs and risks of processing each package individually.⁴²

The Court also noted that for purposes of the case at bar, the containers were subject to a personal property tax although new Section 232 of the Revenue and Taxation Code exempted specifically defined cargo containers from the tax.⁴³ Section 232 exempts only those containers principally used for transporting cargo by ships travelling in ocean commerce. The exemption is specifically denied any cargo-carrying vehicle which is subject to the registration provisions of Section 4000 of the Vehicle Code.⁴⁴ For purposes of Section 232,

The term ‘container’ means a receptacle; (a) of a permanent character and accordingly strong enough to be suitable for repeated use; (b) specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by vessels, without intermediate reloading; (c) fitted with de-

40. *Ibid* at 789.

41. *Ibid* at 778, citing *Braniff Airways v. Nebraska Board*, 347 U.S. 590 (1954), *Pullman’s Car Co. v. Pennsylvania*, 141 U.S. 18 (1891), *Ott. v. Mississippi Barge Line*, 336 U.S. 169 (1949).

42. 12 Cal. 3d at 775, n.1, citing *Simon*, *supra* note 2, at 513.

43. 12 Cal. 3d at 777.

44. See discussion accompanying note 30, *supra*. In light of this exclusive exemption, an interesting argument based on discrimination might be made on behalf of container shippers who transport goods interstate but only by rail or truck.

vices permitting its ready handling, particularly its transfer from one mode of transport to another; (d) so designed to be easy to fill and empty; and (e) having a cubic displacement of 1,000 cubic feet or more.

The composite of the *Sea-Land* and *Volkswagen* cases is this: the container is always an instrumentality of commerce, but it may also constitute a package for varying taxation purposes. Thus, an ad valorem tax will be levied on the container while a business license tax may or may not be assessed according to the value of the goods that the container holds. The first form of tax is tested by due process principles while the second falls under the scrutiny of commerce clause standards.⁴⁵

(d) *Insurance Code*—Section 383.6 of the Insurance Code defines “motor vehicle” for the purpose of setting limits to the use of the term in motor vehicle insurance contracts. The definition includes “non-wheeled structures so made as to be capable of being moved as a compatible portion [of wheeled vehicles], or trailed behind, any motor vehicle . . .” Containers would certainly fall within the penumbra of this definition.

2. Florida

(a) *General Definitions*—Unless otherwise stated, the following definitions determine what a “vehicle,” “trailer” or “semitrailer” is for regulatory purposes in Florida.

Semitrailer.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load, rests upon or is carried by, another vehicle.

Trailer.—Any vehicle with or without motive power, . . . designed for carrying persons or property and for being drawn by a motor vehicle.

Vehicle.—Any device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.⁴⁶

45. See *Braniff Airways v. Nebraska Board*, 347 U.S. 590 at 598-99 (1954).

46. Florida Uniform Traffic Control Law, Fla. Stat. Ann. ch. 316, §316.003, subd.

All of these definitions are broad enough, on their face, to include containers. However, later in Section 316.261, it is required that all motor vehicles, trailers and semitrailers be equipped with brakes. The assumption that trailers or semitrailers can be fitted with brakes reveals the legislature's conceptualization of these means of transport, that is, wheeled vehicles. This analysis is not altogether conclusive, however, when one considers the additional definitions of "trailer" and "semitrailer" to be applied to the provisions of the Florida Motor Carriers, Freight Forwarding Act. There, the trailer and semitrailer classification "includes" vehicles with axles.⁴⁷ If the Florida legislature meant to utilize the limited, yet ordinary, concept of wheeled trailers or semitrailers in the general definitions noted at the beginning of this section, it would have included axles as it saw fit to do in the Freight Forwarding Act definitions. Since axles are not mentioned in the general definitions, the argument can be made that non-wheeled units, or containers, fall within the purview of those definitions. The safest conclusion that can be drawn from this quagmire of contradictions is that the statutory definitions do not help determine whether a container or its owner would be subject to various Florida vehicle regulations.

The Florida courts do not clarify whether a container would constitute a "vehicle" or "trailer," etc. A continually-cited case, *Gibbs v. Mayo*,⁴⁸ offered the Webster's Collegiate Dictionary definition of "vehicle" as authoritative: ". . . that in or on which a person or thing is or may be carried." Although this meaning may find broad application, the courts will consider definitions in a limited scope, taking into account public policy and the purpose that a particular statute attempts to serve.⁴⁹ Thus, the courts adopt various tests and perspectives to decide whether a specific item shall be classified as a vehicle.

(47), (59) and (64) (Supp. 1975-76).

47. Fla. Stat. Ann ch. 323, §323.01 (14), (15) (Supp. 1975-76).

48. 81 So. 2d 739, 740 (Fla. Sup. Ct. 1955).

49. In *Gibbs v. Mayo*, *ibid*, the petitioner was discharged by the Court because the information charged the petitioner with breaking and entering a "motor vehicle" rather than using the exact statutory language or its equivalent. In *Seaboard Coastline Railroad v. O'Connor*, 229 So. 2d 663 (D.C.A. Fla. 1969) a statute called for certain type vehicles to stop at railroad crossings, failure to do so resulting in a misdemeanor. The court in that case stated that such a statute is in derogation of common law and penal in nature. "As such, it must be strictly construed in favor of those it purports to regulate; and it will not be held to include anyone within its purview unless it clearly and unambiguously describes him therein." *Ibid* at 665.

(b) *Registration, Licenses and Permits*—Subject to normal reciprocity provisions among the states, every owner or person in charge of a motor vehicle, trailer or semitrailer that is operated on the highways of Florida must register the vehicle.⁵⁰ Upon registration there is a license fee that is payable annually.⁵¹ The registration and license fee provisions use as points of reference the general definitions of “trailer” and “semitrailer” logged in Section 316.003.⁵² The breadth of the definitions leaves a poignant gap in determining whether the registration of a container may be required under these statutes.

The hazy definitions also cloud permit and certificate requirements for motor carriers and freight forwarders. If the container is not a trailer or semitrailer, then the motor carrier supplying the wheels for carriage of the container will have to acquire the necessary motor carrier permits,⁵³ while the container owner, if a district entity, will have to obtain a separate permit or certificate as a freight forwarder.⁵⁴ The problems are numerous when one considers the ownership and permit variables involved in motor transport of containers, especially when the “container” is not defined for statutory purposes. The circumstances cited above can arise where both carrier and forwarder are operating intrastate in Florida. However, interstate exemptions and reciprocity⁵⁵ may remove many of the conceivable obstacles.

(c) *License and Ad Valorem Taxes*—The State of Florida levies a license tax in lieu of ad valorem taxes on motor vehicles, trailers, boats, etc.⁵⁶ It is incumbent upon the legislature to define what is a “motor vehicle” or “trailer” for tax purposes.⁵⁷ However, as pointed out above, it is uncertain whether a container could qualify as a “motor vehicle” or “trailer” pursuant to existing definitions. If containers cannot fall within the scope of the license tax, then they will be subject to ad valorem taxes as either tangible personal property or “inventory.”⁵⁸

The distribution between a trailer and property subject to ad valo-

50. Fla. Stat. Ann. ch. 320, §320.02 (Supp. 1975-76).

51. *Ibid* §320.08

52. See text accompanying footnote 46, *supra*.

53. Fla. Stat. Ann. ch. 323, §323.01 et seq. (Supp. 1975-76).

54. *Ibid* §323.51 et. eq. (1968).

55. *E.g.*, *ibid* §323.28.

56. Fla. Const. art. 7, §1(b) (1968 revision).

57. In the comment to article 7 §1(b), in *Florida Statutes Annotated*, it is noted that “[n]ow, it is possible for the legislature to define by law what the various items listed will include.”

58. Fla. Stat. Ann. ch. 192, §192.001(c), (d) (1971).

rem taxes in Florida has been considered in relation to the use of house trailers or mobile homes. For purposes of analysis the treatment of this form of "trailer" is the closest indication of how a container would be judged. A Florida Attorney General's opinion, in 1965, stated that house or other trailers not being used for general transportation purposes and not being drawn over the highways from one point to another were not motor vehicles within the purview of Article VII, section 1, of the Florida Constitution. Thus, they were not subject to license taxes, but rather were tangible personal property against which ad valorem taxes could be levied.⁵⁹ The Florida Supreme Court, considering the same type of problem, produced the following test:

[Where] to all intents and purposes, the actual primary use of such a trailer bears no reasonable relation to customary motor travel or carriage and the trailer is found to be used . . . for non-transportation purposes, the exemption [from ad valorem taxes] does not apply. The reason being that . . . a trailer loses its primary character as a unit of motor vehicle transport and serves, for example, as an apartment or residence . . .⁶⁰

The decisions indicate that if it can be shown that a container is being used for "general transportation purposes" and that its "primary character" or use is as a "unit of motor vehicle transport," the container may be exempt from ad valorem taxes and subject, instead, to license fees.

(d) *Load and Equipment Requirements*—Containers, . . . as either trailers, semitrailers, equipment, or simply "loads," will be subject to various sections of the Florida Uniform Traffic Control Law. Load-hauling requirements generally state that the load must be securely fastened to the vehicle.⁶¹ The container will also be subject to certain equipment specifications, particularly regarding width, height and length.⁶² Whether lighting requirements for clearance lamps and reflectors apply to containers is questionable since clearance lamps are to be mounted at the top of the "permanent structure" of the vehicle.⁶³ The argument may be made that since the container is an integral part of the trailer upon which it is carried, any equipment

59. Fla. Op. Atty. Gen. 065-89, Aug. 6, 1965.

60. *Palethorpe v. Thompson*, 171 So. 2d 526, 531 (Fla. Supt. Ct. 1965).

61. Fla. Stat. Ann. ch. 316, §316.198, §316.280 (Supp. 1975-76).

62. *Ibid* §316.196.

63. *Ibid* §316.225(2), §316.276.

requirements that would apply to the superstructure of a conventional box trailer would also apply to the container.

3. *Kentucky*

(a) *Definitions*—Chapter 186 of the Kentucky Revised Statutes provides guidelines and regulations according to which motor vehicles and trailers are to be registered and licensed. The licensing regulations⁶⁴ use the following definition of “vehicle” for reference:

‘Vehicle,’ . . . includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles passing over or upon said highways⁶⁵

“Motor vehicle,” for licensing purposes, includes the above definition of vehicle with the condition that such vehicles are propelled other than by muscle power.⁶⁶ Trailer registration and fees are subject to additional delineations:

‘Semitrailer’ means any vehicle designed for carrying persons or property and being drawn by a motor vehicle as is so constructed that some part of its weight and some part of its load rests upon or is carried by another vehicle.

“Trailer” is defined similarly except that no part of its weight rests upon the towing vehicle.⁶⁷

In light of the above definitions, one may conclude that containers could be considered vehicles or even motor vehicles within the meanings ascribed to those words for registration and licensing purposes. The semitrailer and trailer provisions are not as easily construed to apply to containers due to Section 189.090 (4) which, for vehicle equipment safety reasons, declares that all semitrailers and trailers be equipped with brakes. How brakes would be fitted to a sole container is not explained by the statute. Looking at the overall portent of the registration definitions, it is unlikely that containers would be made subject to registration requirements.⁶⁸

64. Ky. Rev. Stat. ch. 186, §§186.020 - 186.286 (1970-74).

65. Ibid §186.010 (7)(a).

66. Ibid §186.010 (4).

67. Ibid §186.650 (1), (2).

68. But see *Foos v. Engle*, 174 S.W. 2d 5, 9 (Ct. App. Ky. 1943). The Kentucky Court of Appeals in that case stated that if housetrailer “were dismantled from their wheels, or otherwise rendered not readily movable, and allowed to remain [so] . . . for a

(b) *Registration, Taxes and Identification*—If containers do not come within the scope of registration requirements, then registration fees are not applicable to them.⁶⁹ However, registration fees for commercial vehicles are fixed by declared gross weights of the vehicle and “any towed unit.”⁷⁰ Thus, the container as “towed unit” will be considered in computing the vehicle’s registration fees; this would seem especially true when the trailer or semitrailer is only functional when carrying containerized goods.

When a motor vehicle is registered, it is considered consent by the owner for the State to assess a property tax on the vehicle according to a standard manual prescribed by the Kentucky Department of Revenue.⁷¹ If the container does not fall within the purview of the registration requirements, it will be subject to an ad valorem tax based on the situs of the container.⁷²

(c) *Equipment*—The applicability of Kentucky vehicle equipment safety standards to containers is doubtful. Probably the most significant safety equipment for containers mounted on semitrailers or trailers would be clearance lights since the trailer would have tail lights and brakes, etc. Section 189.050 of the Kentucky Statutes states that clearance lights are necessary for horizontal dimensions; no mention is made, however, of lights designating vertical clearance. A trailer may be equipped with the right and left clearance lights since containers normally will not overlap the bed of the trailer. Thus, but for height, width and length requirements, the vehicle equipment safety standards of Kentucky will find little if any application to containers. This conclusion does not consider containers travelling in interstate commerce which will be subject to equipment standards prescribed by the federal government.⁷³

sufficient length of time to indicate that their use as a vehicle had been abandoned,” they would probably be considered residences and not vehicles. See, also, Ky. Rev. Stat. ch. 132, §132.720 and §132.750 (1970-74) re: housetrailer considered as real estate when wheels removed and unit rests on fixed foundation.

69. Even if considered trailers or semitrailers the container may escape Kentucky registration requirements if used in interstate commerce under specific conditions. Ky. Rev. Stat. ch. 281, §281.751 (1970-74). Other exemptions from registration based on use in interstate commerce or reciprocity may be found in Ky. Rev. Stat. ch. 186, §186.050(14) (a), §186.140 (1970-74).

70. Ky. Rev. Stat. ch. 186, §186.050(3) (1970-74).

71. Ky. Rev. Stat. ch. 132, §132.485(2) (1970-74).

72. Ibid §132.020 and §132.190.

73. See Ky. Rev. Stat. ch. 189, §189.659 (2) (1970-74).

4. Minnesota

(a) *General definitions*—Motor vehicles, generally, and highway traffic regulations, are respectively covered by chapters 168 and 169 of the Minnesota Statutes. For highway traffic regulation, the definition of “vehicle” is similar to the Uniform Vehicle Code rendition.⁷⁴ “Motor Vehicle,” under both chapters is basically “. . . any self-propelled vehicle . . . and any vehicle propelled or drawn by a self-propelled vehicle . . .”⁷⁵ Semitrailers and trailers are within the category of “drawn” vehicles, the distinguishing characteristic between them being that a semitrailer has a considerable part of its own weight or load resting upon the towing vehicle while the trailer holds its own weight.⁷⁶

The problem witnessed in the previous sections of this study arises again. The above definitions are certainly broad enough to envisage a container as “motor vehicle” or possibly a “semitrailer.” However, by again referring to equipment requirements, it is evident that the legislature, or rather the compilers of the Uniform Vehicle Code from which the definitions are derived, had wheeled vehicles in mind when the definitions were established. Indeed, the definition of “vehicle” that is widely used today was originally adopted for the Uniform Vehicle Code in 1926.⁷⁷ Thus, the Minnesota (as well as Kentucky, Florida and California) requirement that trailers be equipped with brakes⁷⁸ is not surprising since cargo containers were not in existence at the time the law was originally engendered.

The history of the definitions is persuasive evidence of their cognizance of containers, but the argument may be made that the broad wording found in the definitions was used in order to include new “forms” of transport as technology advanced. Thus, although containers may not be semitrailers, they still may fit within the context of “vehicle” or “motor vehicle” as expressed in the statutes. Unfortunately, Minnesota case law is lacking by which the issue could be definitively resolved.

(b) *Registration and Fees*.—Motor vehicles, consequently trailers,

74. Minn. Stat. Ann. ch. 169, §169.01, Subd. 2 (1960); Uniform Vehicle Code §1-184 (1968).

75. Minn. Stat. Ann. ch. 168, §168.011, Subd. 4 (Supp. 1975-76), ch. 169, §169.01, Subd. 3 (1960).

76. *Ibid.* ch. 168, §168.011 Subd. 14 (Supp. 1975-76); and see *ibid.* ch. 169, §169.01, Subds. 10, 11 (1960).

77. Uniform Vehicle Code Ann. §1-184, Historical Note at 18 (1968).

78. Minn. Stat. Ann. ch. 169, §169.67, §169.82 (Supp. 1975-76).

and possibly containers, are subject to registration.⁷⁹ The rate of the tax or license fee on trucks, tractors or combinations including semi-trailers is based on the total gross weight.⁸⁰ A container, as part of the functional hauling equipment of a semitrailer or truck, would be included in the gross-weight computation according to the following definition:

'Gross weight' means the actual unloaded weight of the vehicle, either truck or tractor, or the actual unloaded combined weight of a truck-tractor and semitrailer or semitrailers, or of the truck-tractor, semitrailer and one additional semitrailer, *fully equipped for service*, plus the weight of the maximum load which the applicant has elected to carry on such vehicle or combined vehicles . . .⁸¹

The license fees are deemed to be both property and highway use taxes. These fees are levied in lieu of all other taxes except so-called wheelage taxes, which may be imposed by any city in Minnesota, and gross-earnings taxes paid by certain companies.

Registration and other certification requirements for motor vehicles in Minnesota are subject to a number of reciprocal exemption provided for by statute. For example, Section 168.187, subdivision 11, allows application for proportional registration of vehicles in a fleet which travel in more states than just Minnesota.⁸²

(c) *Equipment*—The container, if considered motor vehicle equipment, is subject to the safety standards adopted by the Commissioner of Public Safety for the State of Minnesota. As a guideline for such standards, the Commissioner may refer to the federal regulations adopted pursuant to the National Traffic and Motor Vehicle Safety Act of 1966.⁸³ Containers will also be subject to Minnesota statutory limitations regarding height, length, weight and load limits.⁸⁴

79. Ibid ch. 168, §168.09 (Supp. 1975-76), ch. 169, §169.79 (Supp. 1975-76).

80. Ibid ch. 168, §168.013, Subd. 1e (effective Nov. 15, 1975).

81. Ibid §168.011, Subd. 16.

82. Ibid §168.011, Subd. 6.

83. See, also, *ibid* ?168.181(5), (6) (Supp. 1975-76), §168.221 (1960).

84. Ibid ch. 169, §169.467, §169.65 (Supp. 1975-76).

85. Ibid §169.468.

86. Ibid §169.80, §169.81, §169.83.

III. GENERAL CONCLUSIONS

A. GOVERNMENT AND SHIPPING

In 1875, the North of England Protecting and Indemnity Association, Ltd. brought out a book entitled, "Suggestions to Managing Owners and Their Captains." The large number of regulations dealing with the practical operations of ships laden with many types of commodities created an extensive body of jurisprudence and legal defenses related to the operation of ships at sea. Much of this law deals not only with seamanship but also with the carriage of goods and their safe stowage. The introduction to this book well reflects the significance of both legal and technical rules assembled in the book to assist both the ship master and the steamship company's operating department to understand problems relating to sea transportation as they existed at the time the book was written and as annotated when revised editions of the book appeared. The last paragraph of the introduction to the book deals with government and states:

"Government has been defined as 'A creeping disease' but it is generally recognized that the self government and organization of the shipping industry is the most effective instrument of its kind not only for good industrial relations but also in the wide sphere of matters affecting the trace and welfare of this country generally"

Since then, government is represented by the organization of a number of United Nations Commissions or related bodies, each of which is making significant strides in the area of world wide cooperation.

The United Nations Conference on Trade and Development, Trade and Development Board, Committee on Shipping, Sixth Session, on July 29, 1974, issued Item 9 of the Provisional Agenda by the Secretariat, entitled, "Container Standards for International Multimodal Transport." This delineates the work of a group of experts assigned the production of a document consisting mostly of technical material relating to containers and their cargo, scheduled to be completed before 1976.

B. THE UNIDROIT PLAN

In January, 1974, UNIDROIT cited its work program for the years 1975 - 1977 in a document (C.D. 53 - Doc. 3 Add 4) which specifies the work to be done. The pertinent text is herewith reproduced:

“During this decade unitization of cargo has continually increased. This new shipping and carrying technique is even gradually replacing the traditional methods on the most important world routes, not only by sea but also by land and in the air. From the viewpoint of private law, these developments have only been hitherto considered in an indirect manner, insofar as such equipment was instrumental in multimodal (combined) transport operations. Containerization was undoubtedly a promoting factor in the work of preparation of draft international instruments on international combined transport contracts, in which UNIDROIT took one of the leading parts and which is still in progress.

However, little or no attention seems to have been given on the international plane to the many private law problems to which such equipment directly gives rise: for instance, problems relating to the ownership of, and rights in rem over, such equipment, to the contracts concerning their use (leasing or hire purchase agreements) and to liability incurred in respect of other parties than those having title in goods stowed therein, i.e. relationship with the owner or operator of the vehicle that carries the unit load, with the forwarding agent acting as consolidator, etc

.

Uniform provisions could provide solutions for these problems and thereby facilitate commercial operations involving the utilization of such equipment in the transport of goods.”

The basic requirement for the control of containers as cargo transporters in international trade is in dealing with the registration of the unit with the government and the establishment of a certificate of title of the container. What we have mentioned previously from the suggestions of the North of England Protection and Indemnity Association applies to governments at large represented by the different organizations of the United Nations, and the various inter-governmental and non-governmental organizations concerned with peculiar aspects of the problems of international law in the field of transportation. In earlier centuries, the sovereign nations had not yet intervened through legislation in the regulation of trade by sea. In those days, merchants followed their own rules of conduct which were primarily derived from ancient maritime codes like the Sea Law Rhodes, Basilika, the Assizes of Jerusalem, the Rolls of Oleron, the Laws of Wisby, the Hanseatic Code, the British Admiralty's Black Book and the Consolato del Mare and many others (for detailed

account of these laws, see C. J. Colombos' "The International Law of the Sea," 6th revised edition, London, Longman's 1967).

C. AN INTERNATIONAL CONTAINER CODE

Modern container shipping regulations affecting transportation both on sea and land will have to be created so that the vehicles which carry the goods from origin to destination are under a uniform legal structure. The great event awaited in the present century is unification of the principles of the law in mass transportation to apply within one hundred and forty eight nations and the oceans between. Unification of the international civil law governing private containers is the first target required to be implemented in order to bring the regulatory rules of modern technology into the framework of today's life. The technology of the container provides through-service possibilities for at least two types of basic, fundamental mobility services. This means service on land and sea, on sea and air, or on land and air can be satisfactorily handled by any standard container, provided that the basic transportation carrier, be it a railroad car, ship or airplane, is made adaptable. Modern technology looking ahead to standardization in the transportation industry is bound to progress more and more toward completely multimodal cargo service. This technology counts on two basic events transpiring: (a) improved distribution systems of industry, agriculture and other production, (b) an expected increase in volume, practice and methods in using such types of multi-modal service. Therefore, the legal nature of the container will require that the codification of rules for this type of service be implemented uniformly world-wide. In the UNIDROIT work plan described earlier for the period of 1975 - 1977, the Institute points out that the particular subjects dealing with the civil law and private relationships which surround the container call for an extensive work plan. This, of course, is understandable since legal background requires correlation with the advances in container techniques already under way in the UNCTAD program during the same period.

The analysis of this legal background furnishes the main basic elements of unification of administrative international rules for implementation. These elements can be described as follows:

- A. Standard international registration procedures;
- B. Unification of documentation, equipment marking and recognition of the container;
- C. International protection of property rights of the container;

D. Relationships in the container service between owners and operators in effective control.

These four areas of legal activities must be clearly defined among the nations if container service is to progress. Some of these matters deal only with administrative activities, others with the law of private property. Since the containers are in service transporting between nations possessing civil law principles entirely opposed to each other, the service cannot work properly until a standard container code has been established and accepted by the nations. Acceptance will place it on a unified international legal basis. Without this occurring, however, progress will be difficult and hard to obtain.

D. INTERNATIONAL REGISTRATION AND CERTIFICATION

No one will be entitled to use the container in international trade unless it is registered under the appropriate agency of the United Nations. Internal domestic organizations can, of course, be authorized by member nations as long as a central governing control authority maintains the registration system of the United Nations in each country. How long and how far a container can operate within its own state without being registered under the international rule depends upon local practices and the administrative rules applicable thereto. Application of the original registration of any container will be made only by or on behalf of the owner or his representative filed on the appropriate form supplied by the local authority. In any case, this application must provide the authentic full name and business address of the legal owner, the name of the country, province or subdivision of residence of the owner, the description of the container, including the manufacturer, and the date of construction. In order to avoid excessive marking on the container, the registered address of the manufacturer of the container shall be deposited in the central office of registration of the nation concerned.

If a container is registered in the name of two or more natural persons or legal entities, this must be recorded since such a container is held jointly. Each co-owner will be assumed to have the absolute right to dispose of the title and interest of the container, unless contrary instructions are registered with the central control authority. If a container is owned by the government of the state or nation itself, it must be treated the same way as a privately-owned facility since in its movement outside of the national border it would be considered the same way as a privately-owned container.

Registration and certification procedures should be subject to the same container standards for international multimodal transport as published by UNCTAD and should be marked in accordance with the International Organization for Standardization (ISO). Presently, there is a description in effect called ISO 2716 - 1972 (E). There is also a code representing the names of the countries of origin, which is now still in draft form. Its number is ISO/DIS 3166.2. The code to be used for containers would be indicated by the Alpha 3 Code. This comprises a list of all national entities described in three-letter codes. For example, Switzerland is marked "CHE," and the United States is marked "USA." The identification marking code carries an owner-code which is made up of four capital letters of the Latin alphabet. The rules of that standard provide letters both for the owners and the country of origin while numbers are used for the serial number and the size and type of the code of the container.

E. UNIFORM MARKING OF CONTAINERS

The International Container Bureau (BIC) published a register of internationally-protected "Identification Alpha Codes" of container owners. It is possible that the future may call for the selection of the organization established by the BIC as a registration center for execution of the registration method herein described.

One of the most important parts of registration deals with issuance of the certificate of ownership concurrent with the actual mechanics of registering the international container. The certificate of ownership should reflect the same conditions previously mentioned as requirements for the registration. However, the certificate of ownership is a document of title in possession of the owner or his representative. It may, therefore, be transferred to a new owner in the event of a sale and would also be used in legal, civil procedures dealing with the proof of ownership of the container. In other words, the certificate of ownership must at all times coincide with the data marked on the container. To validate this, the national members of the registration and certification authorities must provide regulations to protect against false evidence of a container both in the certificate of ownership and the registration marked on the container.

The container should be marked only one time, thus avoiding costly and complicated renewal of registration as occurs with motor vehicles. Also, it would be almost impossible, as a practical matter, to return a container to an authority of origin far removed from the physical location of the container at any particular time. Therefore,

the Maritime Administration of the United States is presently developing minimum required data on each container to be affixed by the manufacturer at the time of the sale and delivery to the original owner or his representative. If this American method is finally accepted by the United Nations Convention, it would carry the code shown above, engraved into the door sill of the container. The safest place for this required identification would be to emboss this marking on the bottom, underneath the floor of the door sill. Although this is somewhat difficult to see, it is also safe against erasures which, in turn, inhibits theft or unlawful conversion of the container.

With such registration and certification being the most significant legal procedure pertaining to the container, unification of documentation, equipment marking and other visible signs of the container are then based on a permanent system safe from the problems of misuse. Unified marking probably will have two parts. One, similar to railroad cars, showing the owner's code and the registration number on both sides of the container wall. It is not important as to where these markings are attached since they are basically painted on and renewed periodically. The second part of the marking procedure is contained in the certification of the title which is a document separate from the container. What is significant is that they both (equipment and document) coincide with each other. This means that there are five places carrying the same basic data, namely the original registration embossed in the container structure, the same numbers shown on the certificate of title and again the same numbers painted on each side of the container. These numbers would then be in two *additional* places, namely filed in the international registration authority for containers under the United Nations and in the National Agency or entity of the country of origin or ownership of the container.

The centralized container document additionally should contain the certification in compliance with the present UN/IMCO conventions, the CCC and CSC, one for custom purposes and one for safety control. Additionally, quite similar to the USA UMLER data card system, the complete data of the container from the time of construction until retirement will be available as a minimum at one document center, either the UN or the national agency representing the UN control.

As far as the rights of the owner of the container are concerned, UNIDROIT most likely will establish international rules of control, proof and conventional court procedures. It is too early to have pro-

posed rules now, since the many technical requirements advanced thus far are more in the nature of regulatory bases for the protection of the several nations, and description of carrier relationships according to state law of origin. No doubt a large body of private civil law concerning the container will have to be blended into one international civil container code, acceptable to the signatory powers and adhered to by the container-control agencies of the UN, UNCTAD, IMCO and similar organizations.

F. WORLD-WIDE RULES FOR WORLD-WIDE USE

Finally, there will have to be an international code covering the required relationships and obligations of service between the container owner and his lessor or otherwise authorized user. The protective measures in law to recover the property against the many hazards implicit in moving private property must be delineated in agreements to be worked out by UNIDROIT. Recovery of property, protection against loss and spelling out contractual relationships will be handled in describing the controlled use of containers in international traffic by sea, air and rail. All the results of these experiences will form the civil law of private property pertaining to the container. Only after this code is established by the participating nations will container traffic in transport be properly regulated. To be able to service this new, world-wide container operation, these nations will require a unified, international civil container code which can be enforced in the courts of all parts of the world, with the same speed as the means of movement for this type of traffic.

Some of the positions taken by the national transport interests in international transportation negotiations have been widely criticized for their failure to take into account the views of all concerned transportation interests, including consumers, shippers, forwarders, insurers, all classes of carriers and the regulatory agencies. We believe that those having responsibility for developing policy positions for international transportation negotiations should take steps to assure that their policy is developed with a sufficiently broad base of participation, so that they protect and serve the needs of consumers, shippers and carriers.

International agreements often have served to prevent conflict that otherwise might result from unilateral national regulations of international commerce. These agreements are not designed for intermodal transportation and are now inadequate. International efforts to re-examine them are needed now. Every state can participate in that

re-examination, relying on its ability to act unilaterally if the results are not satisfactory.

G. CONTAINER CARRIAGE IN THE UNITED NATIONS UNCTAD PLAN

Non-participation has the dubious benefit of deferring the need to make decisions—at the risk of the future place of carriers and shippers in international transportation. Any international agreement made without active participation is likely to be weighted against a state or, at best, to provide only partial solutions to a problem. Given such an outcome, that state would be confronted, belatedly, with an unpleasant choice: whether to operate within the framework of an international agreement that had been developed without adequate consideration of its interests or to attempt to impose increased unilateral regulations, which could easily lead to retaliation and tend to inhibit international trade.

Thus, it appears clear that all nations should take an active part in developing international solutions to intermodal transportation problems. To do otherwise would breed needless antagonism, and might limit the ability of a nation to influence international consideration of the problems of international containerization with an adequate private law basis.

H. RULES FOR INTERNATIONAL INTERMODALITY

The less developed nations oppose attempts to preempt development of internationally-accepted rules for container carriage. UNCTAD, which is weighted heavily in their favor, has begun an examination of the problem. Also, the developing countries are suspicious, sometimes with good reason, of attempts by the more developed countries to develop and impose rules governing international economic matters.

Because the less developed nations are, at present, only marginally involved in the current rapid growth of international containerized cargo movements, UNCTAD had been less motivated to resolve problems of intermodal transportation.

But the feasibility of UNCTAD being designated the primary forum of containerization is now being determined by international consultations, which are under way by UNCTAD.

