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ROAD TRANSPORT: REFORM OF THE QUOTA AND ACCESS TO THE MARKET

**INTERNATIONAL ROAD FREIGHT TRANSPORT IN EUROPE - MARKET ACCESS
AND THE FUTURE OF THE LICENCE SYSTEM**

Report of the Special Advisory Group

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INTERNATIONAL ROAD FREIGHT TRANSPORT IN EUROPE: MARKET ACCESS AND THE FUTURE OF THE LICENCE SYSTEM

Mandate

A Group of Experts on International Road Transport, appointed on the initiative of the Secretary-General of the ECMT, was given the mandate to:

- examine the strengths and weaknesses of the present framework for international road transport market access;
- analyse the reasons for the success and problems encountered with quantitative restrictions on market access and, in priority, the ECMT quota;
- assess whether quantitative restrictions are needed and under what conditions they could be eliminated;
- assuming there is a perceived need for quantitative restrictions and for an ECMT quota, determine general principles for the access to the market and make proposals for setting up a balance between the ECMT quota, bilateral permits and other restrictive instruments;
- define objective criteria on which there can be a fairer allocation of this quota between Member countries.

Acknowledgments

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Introduction

The origin of the liberalisation of trade in Europe lies in the Treaty of Rome and creation of the European Economic Community. Quite logically, that same treaty provided for establishment of a common transport policy, which was also based on principles of market economics, and which was designed to remove obstacles to competition between carriers of different countries. It was on that basis that the Commission proposed creation of multilateral Community authorisations which would gradually replace bilateral agreements. The Council approved the creation of these authorisations in 1969, but it displayed great reluctance to increase their number. It was only much later, in the wake of a 1985 ruling by the Court of Justice, and ensuing White Paper setting a target date of 1st January 1993 for the creation of the Single Market, that road transport was liberalised within the Community by the creation of Community licences.

The institution, in 1973, of multilateral ECMT licences took the same approach and was a first step towards transport liberalisation on the wider scale of Conference member countries. Resolution No. 22 of 11 June 1970 reflects the deliberate choice of the Council of Ministers of Transport meeting in Florence to pursue this further¹. This area was subsequently expanded with the accession to the ECMT of the CEECs, and was followed up the expansion of the EU. It is this latter enlargement that has brought to light difficulties now weighing on the future of the ECMT system of multilateral licences.

Indeed, the enlargement of the European Union to the new countries of Central Europe extends the area within which road haulage movements are liberalised on the basis of EU licences issued in accordance with qualitative criteria relating to access to the profession of road hauler, but without any quantitative restrictions relating to market access². The geographical scope of application of ECMT multilateral licences has been automatically reduced and restricted to transport between EU Member States, older or new on the one hand, and external countries located on its eastern borders on the other, or between those external countries. Yet such transport movements account for only a small proportion of traffic compared with flows between EU Member States³.

However, there was another consequence of European integration and in particular of EU enlargement, which was that road hauliers in the EU-15 were placed in direct competition with the new acceding Member States whose direct labour costs are much lower. On the other hand, road hauliers from EU-15 unquestionably retain an advantage in access to credit for future investments, the stability of their traditional markets, predictability of the regulatory and institutional conditions and particularly in the provision

1. The Council stated that "among such concrete actions in regard to the international carriage of goods by road, priority must be given to the progressive liberalisation of road transport ...".

2. Note, however, that this liberalisation covers international transport only, and that a restriction on cabotage has been maintained temporarily.

3. There are no sufficiently reliable statistics for quantifying precisely this traffic. It is possible, however, to make the following very rough estimates: international road transport within the ECMT area is believed to amount to approximately 800 million tonnes per year; transport between European Union member states, 500 million tonnes; and transport between (the 25) European Union countries and countries farther to the east, 50 million tonnes.

of more or less sophisticated logistical services. At the same time, they have the perception of comparative disadvantage due to labour cost competition, experiencing the full competitive consequences especially in relation to traction, and refuse to face additional competition from hauliers outside the enlarged Union who, moreover, are not subject to the EU acquis⁴.

In response to pressure from these hauliers and their professional organisations, a number of governments adopted an overtly protectionist attitude to the ECMT multilateral quota system, which led them to refuse an increase in the quota. On the other hand, almost all Countries at present outside the Union, many with rapidly growing trade, believe they have never had enough licences and want to see their allocation increased.

It does not seem excessive to say that the ECMT multilateral quota system no longer supports the step by step integration of markets, which was one of its principal objectives, and that the system is facing a crisis. This is shown by a surplus of licences in the majority of Western Countries, serious shortages in most of the non EU States and is apparent in the many criticisms levelled against the system and debates over its future.

However, these criticisms and debates generally only relate to relatively minor aspects of the system, for example its working procedures, the conditions applying to the use of licences, the size of the quota, the rules for dividing up licences between States and not to the overall aims and objectives the system must meet — which would be fine if there were agreement on what these objectives actually are ... It would seem, however, that the lack of debate over objectives does not reflect the existence of a consensus; quite the opposite, the debates focus on relatively minor issues in order to conceal the profound disagreement that exists over these objectives. It is for this reason that we feel it necessary to consider these debates and criticisms in the context of a more holistic approach to the organisation of road transport within the European area.

This is not a new approach, since the document “Study to establish guiding principles for a pan-European regulatory framework”⁵, drawing on the conclusions of the 86th Ministerial Session in Bucharest, stated that “the problem of the multilateral quota has to be considered within the broader context of regulations applicable to road transport in Europe as a whole” and proposed to present “an initial discussion of the main principles that should govern road freight transport at the pan-European level.

1. The purpose of organising the transport system

Although the multilateral licences apply to road transport, the discussion of the future of this system cannot be restricted to transport. Transport is a vector for trade, which is itself linked to economic growth. This discussion therefore needs to be part of a more general analysis of the outlook for pan-European trade.

⁴. Actually these hauliers are subject to rules equivalent to those of the Union regarding driving time and rest periods (AETR agreement), used in Resolution CEMT/CM(2003)16/FINAL of 1 May 2003, and vehicle characteristics. This raises the issue of the extent to which these rules are complied with.

⁵. CEMT/CS/TR(2003)19 of 22 October 2003.

The context of the economic outlook

There can be no question of conducting an original forecasting exercise in this report. On the other hand, we can recall some of the robust results obtained by the ECMT TTI Working Group, which a number of years ago were set out in a report that still remains topical today, which was submitted to the Council of Ministers at the Session held in Lisbon on 29 and 30 May 2001⁶.

Drawing on a number of analyses conducted with reference to the European Union, and on national studies, the report formulated a “baseline” scenario expressing long-term trends identified from past observations which were sufficiently clear to be projected into the future. These main trends are as follows:

- With regard to growth in GDP, the annual rate of growth over the period 1994-2005 is around 2.3% for all the EU(15) Member States, within the lower and upper bounds of 2% to 3%. The growth rates of the 10 acceding countries vary more widely, but are generally higher. Those of the European countries which have remained outside the Union are even higher and range, over the long term (1996-2015), between the lower and upper bounds of 3% and 4%.
- With regard to growth in trade, the observation made by the report is unequivocal: “projections clearly show foreign trade (imports and exports) increasing at a faster rate than national value added (approximately twice as fast).” The report adds that these trends “often mirror a catch-up phase in the least developed countries.”
- With regard to freight transport, the report notes that elasticities, which vary widely according to type of freight, tend to grow despite the “dematerialisation” of the economy. However, the results of projections are highly dependent on the unit of measurement in which they are formulated. The rate of growth in the tonnage carried is lower than that of the economy, that is to say elasticity with regard to GDP is less than unity. In contrast, because of a sharp increase in the average length of haulage distances, growth in tonne-kilometres has an elasticity to economic activity greater than 1. However both the trends observed and the projections that can be made vary according to the type of transport. Intra-regional flows, which account for a very large share of total tonnage, show a modest increase (elasticity close to 0.5), whereas inter-regional and international flows increase at a much higher rate. With regard to international trade between Central and Eastern European countries, the report notes elasticities of between 2 and 3, which are very high.
- The report examines the trend in the modal split in depth. It notes that in the long run road haulage has benefited from productivity gains that have produced price decreases of 1% to 2% a year and a substantial increase in market share, primarily at the expense of rail. It points out that this trend is equally marked with

⁶ Pan-European Integration of Transport – A Baseline Scenario for Transport in Europe, CEMT/CM(2001)4, 4 May 2001.

regard to international and domestic transport and that it is considerably amplified if developments in Central and Eastern European countries are taken into consideration.

All these results reflect general trends and may not be immediately apparent when observing such a wide variety of individual situations. However, the report rightly stresses that “some broad trends emerge quite clearly from the analysis of the projections that are of immediate use for constructing a reference framework for transport within and, above all, between the countries of Europe [. 16 of document CEMT/CM(2001)4]”.

The report obviously stressed that the trends it observed “make no judgement as to the remedial policies put in place” (p. 6) and that the growth trend in freight transport was “regarded as one of the most critical” (p. 13), and notes that “any corrections that policy-makers might wish to introduce should be left to the alternative scenarios” (p. 13). However, it would undoubtedly be fair to say that this is probably no more than literary caution in that no vigorous policies reflecting the will to introduce “alternative” scenarios would seem to have been adopted and there are no significant changes in the trends identified by this report which could be envisaged in the short or medium term at the level of Europe, and Eastern Europe in particular.

Consequently, any discussion of the future of international freight transport, and therefore the future of the multilateral quota system, must take account of this “baseline scenario for transport in Europe”, and it is for this reason that we have recalled its main conclusions.

However, there is another element of the context of the bilateral licensing system that also needs to be taken into consideration, namely the liberalisation of trade and that of transport in the EU area.

The context for the liberalisation of trade within the European Union

The liberalisation of trade in goods and services is not a uniquely European phenomenon in that, under the aegis of the GATT and WTO, considerable efforts have been made to dismantle the tariff and non-tariff barriers to free trade. However, this roll-back was taken to a higher level within the EU area.

The literature produced by the European Union contains many texts justifying trade liberalisation or decrying the provisions and instruments of all kinds which hold such liberalisation back. The following quotation, taken from the Report from the High Level Group chaired by Wim Kok⁷, has the advantage of being very recent:

“Facilitating free movement of persons, goods, services and capital in an area without internal frontiers is a crucial mechanism that generates economic growth.

⁷. Facing the challenge – The Lisbon strategy for growth and employment. Report from the High Level Group chaired by Mr. Wim Kok, November 2004, 61 pages, http://europa.eu.int/index.fr_htm.

The internal market permits those companies and sectors that have relative competitive strengths to build on their specialist advantages and grow.

This becomes a self-reinforcing trend. Resources are used by those most capable of using them, who in turn can build up economies of scale so lowering costs and prices. There is a general uplift in real incomes, profits and innovation. Sustainable economic growth has always been associated with market opening and strong growth in trade."

This quotation simply restates the advances made by specialists in the theory of international trade and the international division of labour who, with the help of increasingly sophisticated models, are simply confirming the major principles established by Ricardo:

- It is in each country's interest to specialise in the production of goods and services in which it has a comparative advantage.
- "Rich" countries thereby become richer and "poor" countries less poor.
- International specialisation generates economies of scale which take the form of lower prices and which ultimately benefit final consumers.

These statements are rarely challenged today, although it is true that they are cold comfort to those who, in this shift towards specialisation driven by trade liberalisation, lose out in the short term. The relocation of production units to countries where labour is cheaper can take jobs away from those who used to work in the same sectors of activity in "rich" countries. Accepting liberalisation also means accepting such an outcome.

This problem emerged as soon as the Common Market was extended to the "Southern" countries, namely Greece, Spain and Portugal. It has become even more of a concern with the enlargement of the European Union from 15 to 25 Member States because of the gap in income and labour costs and despite the fact that the volume of trade between the EU-15 and new EU-10 is a low share of total EU-15 trade. Apparently this concern will undoubtedly arise -- and indeed has already arisen -- in relations between the European Union and non-Member countries further to the East. It is one of the reasons, although probably only a minor one, for the refusal to continue with the liberalisation of international transport within the framework of the ECMT, since maintaining constraints on transport is one way in which to slow the liberalisation of trade.

The context for the liberalisation of transport within the European Union

There is no point in describing the individual stages in this liberalisation process here, although it is worth remarking that the freedom of the supply of international transport services was one of the explicit goals written into the Treaty of Rome and that it should have been achieved by as early as the end of the transitional period provided for in the Treaty, that is to say December 1969; that the Member States failed to honour this commitment and that the situation was resolved by the European Court issuing an order

on 22 May 1985 censuring the Council of Ministers for failing to meet its obligations; that it is only since 1st January 1993 that the liberalisation of international road transport can be considered to have been completed⁸; that this liberalisation does not yet fully extend to the rail sector.

Simply recalling the timetable shows the extent to which progress towards the liberalisation of transport has been fraught with difficulty.

And yet the liberalisation of international transport is the logical corollary to the liberalisation of trade. Moreover, it can also be seen as an end in itself. Market economy rules apply as well to transport as they do to any other activity, and the theory of international trade relates to the production of services as much as to that of goods and can readily be applied to the production of transport services. Competition forces firms in place to improve their quality-price ratio to offer services that better meet the needs of customers and to reduce their costs; the least efficient firms are forced out of the market.

With regard to international transport in particular, liberalisation allows forwarders in “rich” countries to call on the services of hauliers from “poor” countries and thereby benefit -- and if they pass on this advantage allow their customers to benefit -- from the difference in the cost of labour. This mechanism is strengthened by the efforts made by hauliers from “rich” countries to increase their productivity in response to greater competition that is both direct (competition from hauliers in “poor” countries) and indirect (competition from hauliers from their own country who reduce their international activities and fall back on the domestic market).

While competition on the whole benefits consumers and therefore economic growth, liberalisation also has its “losers”, namely hauliers from “rich” countries and their employees. It is worth noting, however, that hauliers from “rich” countries can also reduce their losses, or even become “winners”, either by extending the practice of sub-contracting work to hauliers from “poor” countries, acquiring shareholdings in hauliers from “poor” countries, or establishing subsidiaries in those countries, in order, in the last two cases, to use the activity of their subsidiary to offset losses in the home country.

It is understandable, however, that not all hauliers from “rich” countries are able to undertake such forms of relocation and that these hauliers attempt to put pressure on their governments to slow the liberalisation process. This is clearly what is happening at present: hauliers from “rich” EU Member States are trying to restrict liberalisation between the Union and the “poor” countries on the Union’s eastern borders.

Competition has dramatically increased also for the new EU-10, and to a lesser extent for the non-EU countries. This competition is of a different nature however and is related to the level of development of logistics services and supply chain management.

⁸. With regard to internal transport, the unrestricted freedom to provide service (“cabotage”), under a Community licence, was not recognised until 1998.

The transport liberalisation policy developed within the framework of the European Union is based on a small number of principles that are worth reiterating here. The Study to establish guiding principles for a pan-European regulatory framework⁹ sought to clarify and rank the objectives of a European transport policy. It ranked economic efficiency in first place and stressed that it "... can primarily be achieved through competitive markets, i.e. markets in which enterprises offer their services freely, where prices are a factor of supply and demand, and where no party is allowed to abuse its dominant position" [p. 3 of document CEMT/CS/TR(2003)19].

It then listed three other objectives: fairness; the environment and safety; and "the application of other sovereign national functions". This latter objective, which is a bit of a "catch-all" phrase, relates to the role of the State as the guarantor of compliance with regulations and thus the authority responsible for enforcement and penalties in the event of non-compliance. It is worth noting too that, to be precise, fairness is aimed at ensuring that the same conditions of competition apply to hauliers, whether they are from different countries or carriers operating in different modes.

While accepting this list of objectives, we can nonetheless improve its presentation in order to emphasise its overall coherence. It would therefore be fair to say that European road transport policy:

- seeks to achieve efficiency through the application of market economy principles;
- within the framework of harmonised conditions of competition;
- in accordance with constraints relating to safety and the environment;
- under the aegis of the public authorities responsible for enforcing compliance with the regulations.

The guiding principles for a European transport policy, and more generally a transport policy based on market economy principles, can also be presented by recalling that, in such an economy, "laissez-faire" is not the rule. Admittedly, suppliers — in this case hauliers — can freely impress on their customers the quality of their services and the cheapness of their prices, but the efforts they must make to improve quality and lower their costs are restricted by their obligation to comply with certain rules laid down by the public authorities. The latter have not abdicated all responsibility and their role can be described under the following three headings:

1. It is the responsibility of public authorities to guarantee the fragile system of competition through specific legislation addressing two distinct areas: a ban on restrictive practices and other forms of collusion between suppliers; and a ban on the abuse of a dominant market position. The ban on dumping and selling at a loss falls into the second category.
2. It is the responsibility of public authorities to lay down standards with which producers in various sectors must comply in that producers, because they must pay a price to comply with these standards, might be tempted, under pressure

⁹. Study to establish guiding principles for a pan-European regulatory framework, Note by the Secretariat, CEMT/CS/TR(2003)19, 22 October 2003, *op. cit.*

from competitors, to neglect compliance. There are three priority areas in which the public authorities impose constraints: social security, the environment and safety. While all sectors of activity are covered by regulations in these areas and in particular EU competition rules, the regulations that apply to road haulage have a number of distinctive characteristics.

3. It is the responsibility of public authorities to ensure that the rules they adopt are complied with and therefore to enforce compliance and impose penalties on those who fail to comply.

One could add that, in respect of international transport, the role of States is to facilitate transport, and in particular to ensure the fluidity of border crossings.

These are the principles underpinning European road haulage policy, whether it be the policy set out by the European Union or the national policies adopted by most of the Member States. Sometimes these policies are challenged. But those who yearn for the time when transport markets were regulated, with governments exercising control over supply and prices, would seem to be few and far between. It is not the principles that are contested, but rather the way in which they are applied. To be more precise, main critics challenge the fact that they are not always applied and enforced with the necessary rigour to give an equal opportunity to all in the market and that States fail to meet their “sovereign” duties.

In the case of international transport, criticisms are also levelled at the lack of harmonisation competitive conditions.

The liberalisation-harmonisation dialectic

The “Study to establish guiding principles for a pan-European regulatory framework¹⁰” considered the problem of harmonising the conditions of competition in terms of fairness. It seems to us that in practice harmonisation is a condition for the efficiency of liberalisation. If the differences in rules with regard to tax, social obligations, the environment, etc., are too great and lead to major differences in costs, the firms pushed out of the market by competition will not necessarily be the least efficient ones, but rather those subject to the most constraining and expensive conditions. The competition is skewed and creates “injustices”; above all, however, it loses its reason for being, namely selection of the “fittest”.

This line of reasoning might lead us to draw the conclusion that harmonisation of the conditions of competition should accompany, if not precede, liberalisation. Yet it seems unnecessary to draw this conclusion, mainly because, given the difficulties posed by harmonisation, imposing such a condition simply postpones liberalisation indefinitely.

Those who regret or decry the lack of the harmonisation mainly point to the differences in tax regimes or in drivers’ working conditions and salaries. In this respect they accuse poor countries of “social dumping”. While this expression goes down well

¹⁰. *Op. cit.*

with the media, it is not apposite in either economic or legal terms in that dumping consists in selling a good or a service at a price below the cost of production, whereas this is not what we are talking about here. In reality, the situation that is being criticised is simply the outcome of implementing the international division of labour between countries at different levels of development, and if, as a result of the harmonisation of labour and more generally production costs, such costs were the same in all countries, then this international division of labour would have no reason to exist and there would be no point in proceeding with liberalisation! Taken to its logical extreme, this reasoning would hold that liberalisation is meaningful only if there is no harmonisation! But even if we concede that liberalisation fosters economic convergence and convergence of living standards, and thus that liberalisation is conducive to harmonisation, we deem that this is not a sufficient reason to preclude efforts to level the competitive playing field.

Many respectable arguments are thus advanced in the debate over the two approaches of prior or concomitant harmonisation versus making liberalisation a priority. But while the debate may continue, the common transport policy has settled the issue in that, despite the fact that the harmonisation achieved so far is far from perfect, the liberalisation of international road transport between EU Member States is considered to have been completed.

Provisions of international law

One last factor also militates for this approach. From a legal standpoint, it can be seen that the provisions currently governing international road transport outside the European Union would not seem consistent with the general principles and provisions contained in various international agreements of which the countries of Europe are nonetheless signatories.

Recall first that, from the point of view of European Union law, the signature of a bilateral agreement between a European Union Country and a Country outside the Union is problematic as it may not respect one of the principles of the treaty, that of non-discrimination. This is what the Court of Justice decided in its judgment of 5 November 2002 concerning bilateral agreements in air transport. Moreover, the Court argued that the Member States had taken on engagements in areas where competence had been transferred to the Community. Following these judgments the Commission asked the Council for mandates to negotiate on this subject with the United States and other Countries.

One can consider that the Court of Justice would adopt an identical position for road transport and that this would lead to recognition of the exclusive legal competence of the Union in relation to agreements on international services. However, the Commission has not indicated that it intends to deal with this issue in the immediate future.

It should be recalled that a number of agreements impose freedom of transit. Without embarking on a detailed legal analysis, it is possible to cite at least Article V of the 1994 General Agreement on Tariffs and Trade and the revised Consolidated Resolution on the Facilitation of International Road Transport (R.E. 4) adopted by UNECE in 2004:

Article V of the GATT, which was adopted in 1994 in connection with the Marrakech Agreement instituting the World Trade Organization, stipulates:

“There 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. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.”

This Article V does not refer directly to road transport; mentioning only “other modes of transport”, and there are some differences of view on the obligations that it imposes. But the WTO has confirmed that it does require states to ensure freedom of transit by road, which is incompatible with the existence of quantitative systems of authorisations.

The General Agreement on Trade in Services (GATS) however, raises another problem. It should be recalled that one of the aims of the Agreement is to promote liberalisation of trade in services. It institutes the principle that all countries are entitled to the same treatment as any other country (the “most favoured nation (mfn)” clause). Yet bilateral agreements, which by definition are based on reciprocity and grant various market access conditions (in this case, road transport permits) to the different countries, would be contrary to this principle. In addition, the GATS identifies restrictions on market access that ought not to be maintained; among them are restrictions on the number of operations and the quantity of services rendered, and thus any system of quotas on the rendering of transport services by foreigners.

The GATS does, however, allow States, at the time of their accession to the WTO, not to commit a specific industry or even if an industry is committed to impose restrictions and exemptions to the Most Favoured Nation clause. However, the validity of any such restrictions or exemptions is theoretically limited to a ten-year period.

The revised Consolidated Resolution on the Facilitation of International Road Transport (R.E. 4), adopted by UNECE in 2004, is even clearer in that it asserts:

“Without prejudice to other provisions of these principles, freedom of transit should be granted on major international traffic routes (E-roads in Europe, similar roads on other continents). Traffic should not be banned or subjected to such measures as transit duties, taxes (other than user charges and tolls for the use of transport infrastructures) or quotas.”

Thus the latter Resolution states clearly that any licensing system that is subject to quotas (whether it be bilateral or multilateral), would run counter to the principle of freedom of transit. But this merely spells out what Article V of the GATT lays down in terms that are less explicit but, in the view of specialists in international law, just as certain.

It is unlikely that States would undertake legal proceedings before the WTO to obtain compliance with the principles set forth in the GATT or the GATS. But it was necessary

for us to stress that governments, when acceding to the WTO, made commitments to principles to which they are not adhering in the realm of transport.

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It is against this background of forecasts of high rates of growth in the Eastern European countries, projections of vigorous growth in trade between these countries and EU Member States, and lastly the liberalisation of international transport within the Union that the issue of the level of ECMT multilateral quota must be viewed. And it is hard to believe that the principles on which the common transport policy is based, and whose validity is questioned by no-one, are unsuitable for use in organising relations between the same European Union and countries that are not Member States. Right within the borders of the Union but wrong outside?

However, we must recognise the fact that the situations are slightly different and that there are wide differences between costs, and labour costs in particular — even though they are not so different to those that existed between older and new Members of the Union ... Let us also take note of the fact that hauliers from long-standing EU Member States are, for the time being, facing competition from new entrants and accept that they will have their work cut out in contending with it. These arguments plead in favour of a very gradual liberalisation, which ultimately is inevitable, and one that, to the greatest extent possible, is accompanied by permanent efforts to harmonise rules and conditions.

Consequently, the problem is not to determine in which direction the multilateral quota system should evolve, but rather the pace of change and the nature of the changes.

2. Overview

The situation, disregarding transport between EU Member States, is characterised by the co-existence of two systems of very different size: the strongly dominant bilateral licence system and the ECMT multilateral quota system which accounts for less than 5% of international road haulage traffic in Europe and therefore has little weight compared with liberalised transport (within the Union) or transport covered by bilateral licences (outside the Union).

It is the multilateral quota system that is now being challenged. It is attracting criticisms that must be presented and discussed. However, in criticising the ECMT multilateral quota system, we are implying that the other solution -- bilateral licensing systems — offered a satisfactory alternative that was above reproach, which is clearly not the case.

Evaluation of the bilateral system

The system of bilateral agreements is both the oldest and the most extensive. Clearly, then, it holds out a number of advantages which can be readily recalled.

Bilateral agreements enable the two States entering into negotiations to set quantities, analyse trade needs and the resultant transport requirements, compare the strengths and weaknesses of both countries' hauliers and establish the quota and how it is shared (in most cases equally) in such a way that any differences in competitiveness would have no influence on how traffic is split. The system is therefore an instrument for the protection of national carriers when those carriers are "weak". It protects national fleets.

However, the two parties may also agree to extend the scope of negotiation so that it is no longer confined to the organisation of road transport but covers all transport problems between the two countries (such as determining air traffic rights), or even trade issues. One country might negotiate benefits for its hauliers in exchange for concessions in other areas.

Because under the bilateral agreements, quotas are negotiated annually, it is always possible, from one year to the next, to reconsider any "excessive" benefits that may have been granted to the other country and freeze any further increase of the quota: each State "keeps a handle" on the situation, whereas it is far more difficult to slow down liberalisation when decisions are taken in a collective framework.

Lastly, the bilateral system allows States to deal directly with problems, and in particular with violations, which cannot always be handled satisfactorily in a multilateral context.

These features explain why States are so attached to the bilateral system. They show why countries that are highly restrictive when it comes to increasing multilateral quotas are more generous in setting the level of bilateral quotas.

From a collective standpoint, however, the bilateral system has numerous drawbacks, some of which are the exact opposites of the reasons why States favour the system. Here, the arguments that could be made are based on the following considerations:

- Bilateral agreements preclude creation of a single international transport market, giving rise to segmented markets confined primarily to services between each pair of States. Clearly, this runs totally counter to the objective of transport efficiency: when trade is not balanced, carriers' capacity utilisation is inefficient and they must make a great many trips empty.
- The bilateral system may be discriminatory, either because it facilitates market access for hauliers from certain countries, or because it affords them tax concessions, which is contrary to the principle of non-discrimination often affirmed by the ECMT Council of Ministers.
- A shortage (or a glut) of bilateral permits shapes trade relations, which are no longer simply a matter of seeking the best product at the best price. The bilateral system has consequences not only for the efficiency of road transport, but for international trade relations as well.

- The fact that negotiations between States often inject considerations having nothing whatsoever to do with the smooth functioning of road transport into the determination of the level of bilateral quotas would suggest that neither trade relations nor transport relations are as they would be if they had resulted from liberalised markets.
- The existence of concessions outside the realm of transport prompts States to be very discreet about the actual content of the agreements they conclude. More specifically, the public content of these agreements corresponds to only part of the reality: everything not directly concerned with the actual organisation of transport, but which nonetheless played a crucial role in the signing of the agreements, remains concealed. As a result, the bilateral system is not “transparent”. While the situation has improved, it is still difficult to obtain information about the content of agreements.
- One-on-one dealings between States in bilateral negotiations do not favour “small” countries, which have difficulty defending their hauliers’ interests. A multilateral system affords them better protection.
- The cost of administering the bilateral agreements, and especially of negotiating a very large number of bilateral agreements (over a thousand) generally every year, is probably substantial.
- It is rare – even if it is theoretically possible – for bilateral agreements to be contingent on qualitative demands in the realms of safety or the environment.

A final comment could be added: if one believes, as we feel we were able to show, that the organisation of international road transport must inevitably move towards a liberalised system, it must be noted that the bilateral system alone would seem ill-suited to a policy that would consist in gradually easing restrictions.

Evaluation of the multilateral system

Criticisms of the ECMT system of multilateral agreements fall into two categories: the first are very general in scope and have less to do with the system itself than with the importance of road freight in international land transport and its consequences, while the second are aimed specifically at the system.

In the first category is the finding that international road transport, benefiting from the multilateral quota system, generates costs for the countries crossed -- costs that are not covered by the carriers. More generally, however, it is charged that the system is conducive to the spread of road freight transport on an international scale, with all the harmful effects that entails for the environment, whereas the thrust of European transport policy recommendations, if not “decoupling”, is to encourage the use of alternative modes to road freight.

Both these criticisms refer to major problems posed by freight transport. But it would seem excessive to consider that the multilateral quota system, which applies to only a

very marginal amount of traffic, contributes to an aggravation of these problems. Moreover, can it be said that the ECMT licence system encourages shipping by road? The answer is obvious if the question is reversed to ask how great a share of the international freight market road transport would lose if multilateral quotas were eliminated. As for the question of transit costs incurred by the countries crossed, the answer must be found in institution of an appropriate pricing system for the use of infrastructure.

Yet other criticisms are aimed directly at the multilateral system. They are numerous, and no doubt of unequal importance.

It should first be borne in mind that insufficient regulatory harmonisation with regard to taxes, labour conditions, safety, the environment or inadequate provision of their provisions, and so on leads to skewed competition. We have already dealt with this issue in a previous section, and we shall come back to it because, even if the generally cited line of reasoning does not persuade us of the need to refuse any and all liberalisation, the legitimate concerns of the “rich” countries and their carriers cannot be disregarded.

It should be noted, however, that there are also other reasons why hauliers from Western European countries are losing market share. It is a fact that these hauliers are afraid to venture into Eastern European countries for a variety of reasons, including the time lost crossing borders and security issues. These problems unquestionably hamper trade and fair competition, and dealing with them must therefore be a priority. Trade and Transport Facilitation, incl. customs reforms, streamlined procedures etc. should be combined with road transport liberalisation.

Another criticism stresses the fact that the system — which has been instituted gradually, in an empirical manner, with *ad hoc* responses to various objections — is complex and opaque, and thus encourages (or at least allows) abuse, and that it is costly to administer. It is true that the ECMT licence system is indeed complex, but it should be noted that it originated, in part, in the restrictions that certain States wanted to impose as derogations to liberalisation. Abuse exists, in the form of fake licences in particular, but it is not confined to multilateral quotas. As for the system’s administrative cost, it is certainly much lower than the cost of multiple bilateral agreements.

Three other criticisms would appear far more relevant:

- Diversion of licences from their intended use: licences were designed to rectify the severe disadvantage of bilateral permits, which allow only back-and-forth trips between two countries, travelling one way empty if the traffic is imbalanced¹¹. By allowing carriers to make “triangular” (and in some cases “quadrangular” or more) trips, multilateral licences were supposed to -- and they did in fact -- lead to greater rates of vehicle use and thus to more efficient transport.

¹¹. This statement is not strictly accurate, insofar as bilateral agreements may, thanks to so-called “third-country” permit, allow a carrier from country A who has made a trip to B to load a shipment in B and take it to C, and then to load another shipment in C and take it back to A. But this system, requiring the haulier to possess the three necessary licences, is highly inconvenient.

It can be seen, however, that hauliers in the Eastern European countries sometimes take a completely different approach to the use of these licences. First, ECMT licences make up for insufficiencies of bilateral permits and thus enable return trips. Above all, however, they enable these same hauliers to engage in “cabotage”¹² between European Union countries. Diverted from their original intent, multilateral quotas no longer generate competition limited to trade between EU countries and “poor” Eastern European countries, insofar as the competition has spread to transport between “rich” EU countries.

This (in fact perfectly legal) use of licences for purposes other than those for which they were created is an acknowledged fact, even if it is impossible to quantify. In all likelihood, it can only be limited, given the number of ECMT licences, and its impact on the business of national carriers in EU countries can only be marginal. The obligation to return to the home country within a specified period of time cuts back on use of the licences for unintended purposes, but other arrangements would be feasible.

- It is also claimed that users of multilateral licenses very seldom comply with the rules they are supposed to follow, in all areas, and with regard to labour and safety regulations in particular. But there is no effective enforcement system, and the “rich” countries in which violations are detected have no faith in the capacity or desire of the carriers’ home countries to impose penalties for violations that are reported to them. The same carriers continue to get licences and to commit the same violations.

It is true that it is always difficult to control foreign hauliers because of language problems, but also because of the impossibility of rapidly consulting the records needed to verify information concerning the company or the vehicle.

In addition, it can probably be said that non-compliance with the rules, when it carries a cost or even merely constitutes a hindrance, is a phenomenon that is unfortunately not limited to Eastern European carriers engaging in cabotage in Europe. But it is understandable that the situation is an irritation, and to consider that the time has come to move towards a system of improved compliance with the rules of sound competition.

- The apportionment of quotas is highly unequal and does not reflect the needs of non-EU countries which are clamouring for more licences.

While it is difficult to assess the needs of the various countries, it is clear that surveys conducted by NEA on the ECMT’s behalf show unambiguously that:

^{12.} Here the word is not being used as it is normally defined in bilateral agreements or in EU regulations, in which “cabotage” refers to domestic freight haulage within a country in which a haulier has no establishment. Here we are speaking of international transport between EU countries carried out by non-EU haulier.

- EU countries, and more particularly the EU-15 countries, consider that the number of licences available to them is either enough or more than enough, and that not all of the licences attributed to them are used.
- A very large majority of non-EU consider that the number of their licences is either insufficient or very insufficient.
- The position of the ten new EU Member States is intermediate between the above two views.

Even if some of the arguments that non-EU countries make in support of additional licences may seem tenuous, and even if one concedes that the needs would be fewer if licences were not “diverted” from their originally intended use, one can accept the fact that the current breakdown is subject to challenge.

It will be noted that this last criticism is the only one militating for an increase in ECMT licences, and thus of further liberalisation.

If criticisms of the ECMT multilateral system have to be weighed against the marginal nature of the system, some of them -- including the last three presented above -- are not unfounded. If the system is to be maintained, let alone reinforced, they have to be addressed. Further liberalisation in a calmer climate will entail changes to the system.

Before considering the options for change, however, an overall assessment of the situation is needed, bearing in mind that international transport outside the EU is based on a small number of multilateral licences and a great many bilateral ones. The system is not very liberalised, does not offer the advantages of competition, and does not fulfil the primary objective underlying the EU's entire transport policy, as well as the national transport policies of many countries *i.e.* to strive for transport efficiency. It constrains trade between countries, with the resulting consequences for growth and economic progress, and especially for the least developed countries. Insofar as liberalisation has been achieved within the Union and liberalisation projects are under way in certain regions (in south-eastern Europe and the CIS, for example), to maintain this system may be conducive to segmentation into areas between which communication will be very difficult.

For all these reasons, the system cannot help but evolve.

3. Proposals to reform how the multilateral system works

The following proposals relate solely to the multilateral system. They therefore do not purport to offer solutions to the issues raised in the overview above, such as the pricing of infrastructure use or border-crossing difficulties -- problems that are sufficiently important to warrant consideration, but which must find their solutions elsewhere.

These proposals, which for that matter should be considered only as avenues to explore, have been framed deliberately with a view towards gradual liberalisation of

transport within the ECMT area. This is a major policy choice, against which today's criticisms of the multilateral system would seem of secondary importance.

But that does not mean they should be disregarded.

On the contrary, we propose to proceed in a balanced manner that:

- First, leads to gradual increases in the quota of multilateral licences, which are destined to supplement and replace bilateral road transport permits; and,
- Second, addresses the main criticisms of how the system works now and offers greater assurance to those who fear that liberalisation equates with unbridled competition.

With regard to the first point, the objective might be for the gradual increase in the number of multilateral licences to be great enough so that by 2020 all quantitative restrictions could be lifted: there would no longer be any control over access to the international transport market, but control over access to the profession would be maintained, and possibly made stricter. More specifically, liberalisation would be concerned solely with international transport and transit; non-resident hauliers would not be allowed to engage in domestic transport (cabotage, as the term is normally used); limitations on the “diverted” use of licences (“cabotage” between EU countries) could be maintained.

The second aspect entails adopting new rules of operation to keep competition under control. But this poses the major problem already confronting the multilateral system — that of compliance with existing rules (and thus of enforcement). Solving this problem is probably a prerequisite to any change in the system.

a) *Progress with regard to compliance with the rules, and enforcement*

We have stressed the difficulty posed by controls of foreign hauliers by law enforcement officials of the countries in which those carriers operate. One solution might be to establish an international control corps which would work in co-operation with national police forces. Failing this, the ECMT would do well to adopt rules that would apply to the law enforcement agencies of each country, setting minimal control standards and emphasising the points on which controls should focus first.

It is to be hoped, then, that a better job can be done of detecting violations. But appropriate penalties must be imposed as well. The lack of faith in how compliance is enforced by the States of carriers that use multilateral licences is a major obstacle to the system's extension. In our view, the only way to eliminate that obstacle is for

responsibility for controls¹³ and penalties to be transferred to the ECMT, or to an international agency created for that purpose and operating under ECMT authority¹⁴.

Insofar as penalties will take the form of denial of licences to firms that fail to comply with the required conditions, or of revoking licences from such firms, the transfer to the ECMT of responsibility for penalties would be greatly facilitated if responsibility for issuing licences were transferred to the Conference as well.

We are aware of the fact that this would constitute a fundamental change, and one that would probably raise numerous problems, if only that of the resources that ECMT would have to be given to perform its role. We have explored this option, and in particular we considered having ECMT sell licences, either for a set price or by auction, which would introduce a market-based approach into the licence issuance mechanism. This option is an appealing one, because it would solve a number of problems, if not eliminate them (e.g. criteria for distributing licences). In contrast, it would create a number of other problems, such as the fact that the value of licences is based on their scarcity, which is not intrinsic but stems rather from the decision to limit them. Moreover, ECMT operations would become dependant on the sale of licences, at the same time that the objective would be to increase the number of licences, and thus to reduce their value, with a view towards liberalisation. In the end, then, we ruled this option out.

Similarly, we gave up on the idea of transferring licence issuing responsibility to the ECMT, which, although tempting, might run up against the desire of States to retain control. States would therefore continue to distribute licences to their hauliers, subject to rules adopted by the ECMT, and thus in compliance with the terms and qualitative requirements associated with their issuance and use.

We did, however, maintain the idea that the ECMT should wield greater responsibility in the realm of controls and sanctions. It would be up to the Conference to:

- Receive and analyse States' reports on their licence distribution procedures¹⁵;
- Receive and analyse logbooks and check that trips taken comply with the applicable rules (e.g. limits on cabotage);
- Receive information conveyed by States about violations committed within their boundaries by carriers using ECMT licences;

^{13.} Obviously, we are not referring here to any controls carried out on the road by law enforcement officers in the countries in which vehicles covered by multilateral licences travel, but rather control of documents.

^{14.} Hereinafter, each reference to "ECMT" should be construed to mean "ECMT or the international agency", depending on the choice that is made between letting the ECMT perform the missions described below or assigning them to a specially created agency.

^{15.} A State's failure to provide the required information or to distribute licences in compliance with the principles and rules adopted by the ECMT could be sanctioned by reducing the number of licences awarded to that country the following year.

- Decide to revoke licences and to blacklist carriers whose violations disqualify them from applying for new licences for a specified amount of time; and so on;
- Assist the national implementing agencies (usually the transport inspectorates) to improve their Management Information Systems (MIS) in a harmonised way and strive for better data sharing and networking.

We feel that these proposals, which must obviously be explored further, address the criticism of insufficient enforcement and penalties. They would suggest that the strengthening of rules to control competition may actually be more than “window dressing”.

b) Progress towards harmonisation

The ECMT has repeatedly raised the theme of harmonisation from two different angles.

The traditional approach, as implemented by the European Union, is to adopt identical provisions (regulations) or to arrange for the adoption of such provisions in the legislation of the countries concerned (directives). In the realm of tax harmonisation, for example, and more specifically the pricing of infrastructure use, Resolution CEMT/CM(2000)13 endorsed the principle that km-charges adjustable over time and space be gradually substituted for some taxes on vehicles and on fuel, and for Eurovignettes. The Resolution also sets forth the principle of non-discrimination in taxes and charges on international road haulage¹⁶. One could also cite an older Resolution, CEMT/CM(95)1/FINAL, which alludes to “the necessary harmonization of rules and regulations” and establishment of “high safety, environmental and technical standards... with harmonized social and fiscal provisions” and recommends “that conditions of access to the profession in the Central and Eastern European countries should be brought into line with the existing European Union Regulations”.

While efforts along these lines ought to be continued, it would not be very realistic to hope to get ECMT Member States to conclude far-reaching agreements to harmonise taxation, or to harmonise working conditions or pay. More specifically, while agreements have been made in principle, their implementation falls short of the mark.

But it is possible to take a less general, more targeted approach that would make the issuance of licences conditional upon meeting special requirements. This is what the ECMT did when it imposed special requirements concerning vehicles used and, more specifically (and in a complex manner), establishing a link between the number of licences issued to a country and certain safety- and environment-related characteristics of the vehicles covered by those licences. It would appear that the system has worked well and encouraged use of “safer and greener” vehicles.

¹⁶. The Resolution cited is based on the report CEMT/CM(2000)14/FINAL entitled “Harmonisation in Road Transport – Efficient Transport Taxes and Charges: Conclusions and Recommendations”.

But it is also conceivable that requirements could be imposed not only on the vehicles used, but on haulage firms and drivers as well.

With regard to haulage firms, it would also be conceivable to adopt provisions similar to those imposed by the European Union regarding access to the profession: only firms complying with those standards would be eligible for ECMT licences.

With regard to drivers, one option would be to require that they be employed by the firm holding the licence, and that they be covered by labour law and collective bargaining agreements setting pay in the country in which the firm is located; an example of this is the European Union's "driver attestations". Another option would be to set standards for driver training.

In these areas, the report cannot make specific recommendations, which should be the result of more extensive analysis, but it should emphasise that it is possible to move forward.

c) *Progress towards compliance with the intended purpose of multilateral licences*

We have seen that hauliers had a tendency to divert multilateral licences from their intended purpose, either by making round-trips only, or by engaging in "cabotage" across the European Union. To limit the latter practice, a solution was found, after long discussions, requiring vehicles to return to their country of registration within no less than six weeks.

This solution would appear to be effective. This also means -- and this is the negative aspect of the measure -- that it tends to lower vehicle load factors¹⁷. But the solution is challenged insofar as it indisputably creates inequalities between carriers of different countries, at the expense of countries located farthest away from the heart of Europe.

Another solution, which would not have that disadvantage, would be to require licence-holders to return to their country of registration after hauling a maximum number of loads abroad. For example, a haulier might be barred from carrying more than five loads between departure from and return to the country of registration¹⁸.

d) *Progress regarding the division of the quota amongst States*

This problem is also one of the recurring difficulties, and as yet no simple solution to it has been found. The basic principles adopted by the ECMT when bilateral licences were created had the advantage of being clear. But it is not certain that there is any close

^{17.} It is estimated that since this rule has been in effect the percentage of empty trips has increased by roughly a quarter.

^{18.} This figure of five would mean that the number of trips made by a carrier between two countries other than his own would be limited to three. But this figure is only an example, and the number of trips a carrier could make outside his home country could be explored in greater depth, based on a statistical analysis of current practice, using logbooks.

correspondence between these criteria and the transport needs of the various economies, and the statistical quality of the chosen indicators would appear to be lacking, at least in certain countries.

The solution adopted for 2004 and 2005 — requesting States that do not use all of their licences to return the unused ones for distribution to States that consider that their own needs are not covered — appears needlessly complex and at the mercy of the good will, or lack of it, of the “surplus” States.

Without criteria acceptable to everyone, conveyed through statistics acknowledged to be reliable and capable of underpinning an “objective” measure of needs, the approach can only be an empirical one. It would appear that the current situation, or an allocation that has already been adjusted, could be used as a starting point, shifting assignments on the basis of each country’s rate of licence use.

On the basis of these principles, two different types of arrangements and consequences would be possible. They are presented with figures that are only examples:

In both cases, the starting point could be based on a distinction between countries that had already belonged to the European Union (EU-15) or the European Economic Area, for which the quantity could be reduced (e.g. by 10%); the 10 new EU Members, for which the number of licences could remain the same; and non-EU countries, for which the number of licences could be increased (e.g. by 10%).

Beyond this starting point, in the first case, the number of licences for countries that distributed all the licences made available to them in a given year could see their allocation increased by, say, 10% the following year¹⁹; the number of licences for countries that did not make use of all the licences made available to them in a given year could see their following year’s allocation decreased by, say, a quarter of the percentage of unused licences²⁰.

Such a mechanism offers a solution to the problem of apportioning licences without imposing an overall quota. Clearly, at first there is a given total number of licences, but the situation varies thereafter from year to year, depending on the needs expressed, or, more precisely, the rate at which existing licences are used. There is reason to believe that the appeal of multilateral licences, as opposed to that of bilateral ones, will lead to a steady increase in the number of licences requested and obtained by EU Member and non-member States, and thus to a gradual liberalisation of transport. The pace would

¹⁹. One could therefore reason not only in terms of the redistribution of licences, but also in terms of their actual use by hauliers, which can be ascertained by analysing logbooks.

²⁰. Thus, if a country used only 80% of the licences available to its carriers, its allocation of licences would decrease by 5% the following year (i.e. by $\frac{1}{4}$ of 20%).

depend, *inter alia*, on the number of countries that consume their entire allotment, and the percentage increase awarded to them as a result²¹.

This percentage could be set either each year, as the situation evolves, which would enable the pace of liberalisation to be adjusted closely, or for a given number of consecutive years, to avoid the need for annual negotiations.

It could be considered, however, that such a provision is not satisfactory in that it does not afford full control over the pace of liberalisation. It might therefore be preferable — and this is the second option mentioned above — to alter the overall quota from year to year, *e.g.* by selecting a given rate of increase for five-year periods and making corresponding adjustments to the percentage increase in the number of licences for countries using all of their allotment²².

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The proposals concluding this third section are only avenues to be explored. Some involve changes that would not appear to raise substantive issues; others would constitute clearer departures from the current situation, and analysis of the consequences of their adoption, having only just begun, must be taken much farther.

But ways to make the system work will always be found, as long as the basic guidelines have been agreed upon. The guidelines proposed here are clear. They are based on two convictions:

It is not possible, given the economic and political context in Europe, to maintain constraints as stringent as those that result when road transport is organised primarily on the basis of bilateral licences. Moving towards liberalisation is both necessary and inevitable. This can be achieved by gradually increasing the number of multilateral licences to be substituted for bilateral ones.

Countries fearing that this liberalisation will take the form of unbridled competition and will unduly jeopardise the interests of their carriers must be given assurances that the “rules of the game”, which for that matter can be strengthened, will be complied with.

²¹ As an example, we assumed a 10% increase. This percentage is probably too low insofar as it barely exceeds the rate of increase in trade between European Union countries and countries to the east of them. It would therefore not allow any increase in the ratio of the number of multilateral licences to the number of bilateral agreements, and the percentage is therefore incompatible with the objective of a liberalisation of international transport in 2020. If that objective is to be met, the percentage should be set in a range between 10% (or even 15%) and 20%.

²² Let x_i be the percentage increase in the number of licences for country i , which is assumed to have used all of its licences, and let X be the percentage increase of the overall quota. In the first scenario, x_i is a given and X is a result. In the second scenario, X is a given and x_i is adjusted in such a way as to comply with X .

It will no doubt be difficult to strike a balance between these two concerns. But it is by seeking to strike that balance that we can hope to work our way out of a situation that today seems to be at an impasse.