

**TRADE AND AGRICULTURE DIRECTORATE  
TRADE COMMITTEE**

**Working Party of the Trade Committee**

**OECD EXPERTS MEETINGS ON TRANSPORT AND DISTRIBUTION SERVICES  
TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX**

**Highlights of Discussions during the meetings held 15-17 November 2010**

*The attached report is for the INFORMATION of the Working Party of the Trade Committee and for the experts having attended the 15-17 November 2010 meetings. It draws on background material provided by Julian Arkell.*

*The experts meetings launched the new phase of the STRI project with expansion of its coverage to the transport and distribution sectors.*

*Link to the Programme of Work: This document corresponds to the output results on the Services Trade Restrictiveness Index (2009-10 PWB output area 3.1.2.1.1).*

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## OECD EXPERTS MEETINGS ON TRANSPORT AND DISTRIBUTION SERVICES

### TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX

**Paris, 15-17 November 2010**

1. The OECD Experts Meetings on Transport and Distribution Services took place in Paris on 15-17 November 2010. About 40 people attended each meeting, including experts from academia, the private sector, and international organisations, particularly the World Bank, the WTO, and several UN agencies. Delegates from OECD member countries were also present. Jan Hoffmann from the Trade Facilitation Section at UNCTAD and John Dawson from the University of Edinburgh chaired the meetings on transport and distribution, respectively.
2. The meetings are part of a broad project ongoing in the OECD Trade and Agricultural Directorate aimed at quantifying barriers to trade in services by developing trade restrictiveness indices (STRI). Three pilot sectors, telecommunications, business services and construction were initially studied, while transport and distribution are among the sectors chosen for the next phase of the project. The objective of the meetings was to launch this new phase of the work by bringing together experts from different stakeholders to share knowledge and ideas on key issues in these services, including driving forces, main impediments and their impact on trade and other measures of economic performance.
3. The transport meeting started with in-depth discussions on each of the following sectors: air, maritime, and land transport, followed by a session on the transport and logistics supply chain. Each session began with background presentations by academics and experts followed by panels of discussants, made up largely of practitioners. The meeting on distribution covered retail and wholesale services for both food and non-food. It started with the presentation of an OECD background paper on retail services and was also followed by panels of experts and practitioners, who shared their views on the regulatory constraints affecting trade in these services.
4. Following the session on air, maritime and land transport, an interactive session was organised with break out groups where each group was asked their views on possible barriers to trade in these different transport services. Each group had a chair who reported to the final plenary session.
5. The agendas for the meetings can be found in the annex to this report, along with the list of participants. Background papers and presentations can be downloaded from <http://www.oecd.org/trade/stri>. This report highlights the presentations and discussions in the meetings, including the break-out groups held on transport. For further details, readers are encouraged to turn to the papers and presentations available on the website.

## II. TRANSPORT SERVICES

### Introduction

#### *Welcome remarks by Raed Safadi, Deputy Director, Trade and Agriculture Directorate*

6. Mr. Safadi made introductory interventions at the start of the transport services sector meeting, and again on the distribution sector. He mentioned that the transport meeting is part of the broad STRI project, a large ongoing initiative in the Directorate aimed at quantifying restrictions to trade in services. The central aim is the creation of a set of indicators that would measure the overall stance of a country's services economy. Such indices could be used by national authorities to inform decisions on where to focus reform and as an instrument to identify the trade effects of regulations. The meeting represents a first opportunity to elicit the participation of sectoral experts in the project. Further input will be sought in the next phases of the work, including on the sectoral papers on transport services to be prepared by the OECD, as well as on the expert judgment exercise to assess the relative restrictiveness of different measures.

#### *Setting the scene by the Chair, Jan Hoffmann, Trade Facilitation Section, UNCTAD*

7. Mr. Hoffmann provided an overall introduction to the meeting, including in relation to the topic and speakers in the different sessions, and on the aim and content of the break-out group discussions, which aimed at providing a more intimate setting for sharing views among different stakeholders on restrictions to trade in transport. He characterised transport services as both a traded commodity and a transactions cost in international trade. Statistics on the role that transport plays in international trade showed the relative importance of different transport modes, indicating that maritime transport remains the predominant mode in international shipping by volume (a share of around 90%).

8. More specific sectoral remarks were made in the context of maritime transport services. In particular, three distinct roles of maritime transport policy were identified: to promote trade (help meeting demand), to create maritime business (foster supply) and to reduce externalities, e.g. in relation to pollution control. The long term picture for the global liner shipping network appears to be mixed. On the positive side, larger ships and a higher total carrying capacity can cater for the growing global trade in manufactured goods, and economies of scale help to reduce costs. On the other hand, the larger ships pose a challenge to smaller ports for the necessary investments in infrastructure. Ship owners in different countries use a variety of "open registers", among which the Panamanian's and Liberia's flags figure prominently.

9. Mr. Hoffmann then discussed existing indicators in the transport and logistics sectors, focusing on an assessment of the similarities between the World Bank's Logistics Performance Index (LPI) and UNCTAD's Liner Shipping Connectivity Index (LSCI). He also commended efforts to employ these and other indicators on trade impact analysis but cautioned on the possibility of reverse causality: better regulation and infrastructure can lead to higher trade, but increases in the latter may also bring about improvements in the former.

### Session I. Trade in air transport services

#### Speakers

#### *Air passenger services: Christopher Findlay, University of Adelaide*

10. Mr. Findlay began with an overview of the air passenger sector and outlined how trade takes place in these services, entailing the movement of both consumers and producers to foreign markets. He

argued that while a mixture of modes of supply would represent the most efficient way of providing these services cross-border, the existing regulatory framework set out in bilateral air services agreements effectively prevents it, particularly rules which qualify airlines for market access (so-called ownership or withholding restrictions). Comparative advantage and home town benefits (such as knowledge of locations to visit) are among the main drivers of trade.

11. Air transport services comprise a range of different activities beyond flying operations, from aircraft maintenance and repair, to air ticket selling and marketing or catering. Although the airline industry has often achieved high rates of traffic growth, this has not translated into high rates of profitability, with generally low profit margins and in some years heavy losses. This has been the case especially in recent years in part as a consequence of major external events, as well as other supply-side factors, such as higher fuel prices and the advent of low-cost-carriers (LCCs).

12. Mr. Findlay classified barriers to trade in aviation into restrictions to entry and price, and restrictions to firm operations; both largely stem from the system of bilateral air services agreements. The former category, in addition to pricing restrictions, includes designation of domestic carriers, recognition of foreign carriers, rules on capacity as well as access to infrastructure and complementary services. Barriers to operations relate to network design options (*e.g.* cabotage as provided for in bilateral agreements), restrictions on supply chain design and on ancillary services, such as repair and maintenance, marketing and landing places. Alliances are a way for airlines to circumvent regulatory constraints in bilateral agreements.

13. Mr. Findlay was also of the view that impediments to trade are all the policies which are more restrictive than necessary to address market failures, and can apply to both foreign and domestic suppliers. The effects of these restrictions are in principle to raise profits for airlines, bringing about higher prices, and costs. He then highlighted that the purpose of research in this area is to identify the welfare impact of easing restrictions to trade in these services, through consumer and producer welfare effects. Policy impact studies are continuing to emerge, particularly on the effects of restrictions on trade flows, through the widely used gravity model.

***Air cargo services: Massimo Geloso Grosso, University of Sciences Po***

14. Mr. Geloso Grosso first introduced trends in air cargo focusing on the Asia Pacific region, as well as its evolving characteristics. The sector is of growing importance as a facilitator of international trade; according to IATA air cargo currently represents around 35% of the value of world trade. Air cargo is at the core of developments in advanced manufacturing characterised by internationally fragmented production and just-in-time supply management. Modern manufacturing, coupled with technology advances, have also led to a reorganisation of the industry into integrated, ground-linked structures. Another key feature of air cargo, which differentiates it from passenger services, is the “unidirectional” nature of air cargo flows, making second or third stop necessary in order to ensure the profitability of routes.

15. With respect to regulation, there are two broad types of measures affecting trade in air cargo. First, like passengers services, the sector is affected by the bilateral air services regime. However, it would seem that the regime accorded to cargo flights is more liberal and that different categories of providers are affected to different degrees. The second broad set of regulations relates to other impediments affecting the operations of cargo firms. These include foreign equity limits, typically complementing ownership restrictions contained in bilateral agreements, airport curfews, restrictions on ancillary services (*e.g.* cargo handling), as well as lengthy and costly customs procedures. An analysis based on existing sources reveals that, although some progress has been made, restrictions remain prevalent in APEC economies.

16. Mr. Geloso Grosso then presented empirical evidence on the link between a more liberal air cargo regime and increased bilateral merchandise trade in the Asia Pacific region. Using the gravity model and employing the Air Liberalisation Index (ALI) developed by the WTO Secretariat, the analysis finds support for two hypotheses. First, more liberal air services policies are positively, significantly and robustly associated with higher bilateral trade in merchandise. The results also show that air transport policy matters more for some sectors than for others. A particularly strong relationship is found between bilateral liberalisation and trade in manufactured goods, time sensitive products, and parts and components. Finally, there is evidence of restrictiveness for individual measures, which can provide initial insights for the OECD project.

***Airport and navigation services: Kenneth Button, George Mason University***

17. Mr. Button characterised the aviation industry as being constituted by three broad elements: airlines, airports and air navigation systems. The sector is significant in terms of trade value, with a focus on high value and low weight goods, as well as passengers, and represents an important intermediate good for the conduct of international trade of both goods and services (*e.g.* tourism). While he reiterated the point that airlines' margins have been low, he showed that profits have been higher for other providers in the industry, including airports, leasing companies and catering services (in addition to manufacturers of planes and jet engines).

18. As noted by the previous speakers, the sector has been traditionally subject to extensive economic regulations (market entry, pricing, etc.) and, more recently, to tight social regulation (*e.g.* environment and security). Following a few theoretical remarks on the impact of liberalising international air services, conferring in most cases gains to trading partners, Mr. Button focused his remarks on the features and regulations of airports and air navigation systems. Airports are important multimodal interexchange points, with a large share of revenues stemming from airside charges (more important in developing countries) and from commercial services (more significant in developed economies with limited passenger growth). Air navigation entails a diverse range of technical systems, involving important economies of scale.

19. The major constraints to trade arise from the ownership and operation of airports and air navigation systems, featuring a multiplicity of ownership models with different degrees of competition and private sector participation. Restrictions on ancillary services such as ground handling, storage and warehousing can also affect ground transportation connections, constraining the provision of door-to-door, integrated services. Finally, air navigation with a diverse range of technical systems can create disruption, and air control centres may not be efficiently organised between national air spaces, again increasing costs. Any upgrading of such systems, though, needs to be piecemeal so as not to disrupt traffic or endanger safety.

**Panellists**

***Glyn Hughes, IATA***

20. Mr. Hughes provided some initial facts on IATA and on the air cargo industry, before discussing the presentations made by the speakers. IATA represents the interests of the industry at the global level, with some 230 members comprising 95% of international traffic. IATA's cargo agenda is becoming more important in light of its increasing significance as a facilitator of international trade and as a critical supply chain transport mode, particularly for high value and time sensitive goods. Among the challenges for air cargo are trade flow imbalances, pressure on infrastructure and tight security compliance. Trade facilitation, particularly the need to modernise customs procedures through e-freight programmes, is also important.

21. Mr. Hughes reiterated that although the general traffic trend has been one of growth, in parallel with expansion in merchandise trade, the industry has not registered high profits. He then picked up on some of the points made by the presenters, particularly on the importance of the speed and reliability of air cargo for modern manufacturing and just-in-time production, and on the barriers to trade in these services stemming from both bilateral agreements and domestic measures affecting the operations of cargo providers. He stressed that policies should only be seen as barriers when they are more restrictive than necessary to address market failures.

***Narjess Teyssier, ICAO***

22. Ms. Teyssier introduced the air transport sector noting that it carries some 2.3 billion passengers each year and 9 million tonnes of cargo. Demand for aviation is driven by several factors, including globalisation, falling air fares, liberalisation trends and higher disposable incomes. The sector has been growing faster than GDP over the past three decades or so, and world traffic is forecast to continue to grow at an annual average rate of 5% to 2030, driven by the North American and Chinese markets. Important developments in recent years have been the formation of global airline alliances, with the three major groupings (One World, Star Alliance and Skyteam) accounting for more than 60% of global traffic, and the emergence of low-cost carriers.

23. The primary vehicle of aviation liberalisation are the so-called “open skies” agreements, which relax restrictions primarily on a bilateral basis. Over 170 such agreements have been signed so far, many of which have been signed by the US with aviation partners (ICAO has developed a dataset with original texts of some 2000 agreements). Among the more liberal provisions in open skies agreement is the provision of 7<sup>th</sup> freedom rights for all-cargo services. Other forms of liberalisation include regional liberalisation (e.g. the Yamoussoukro Declaration) and negotiations involving groups of states (e.g. the EU-US Air Transport Agreement). ICAO members are also exploring a multilateral agreement to ease ownership and control rules to facilitate airline access to international capital markets.

***Discussion***

24. Several participants pointed out that data may be difficult to gather in some areas of air transport. This is particularly the case for air cargo, where it is for instance difficult to distinguish cargo carried in the belly holds of passenger aircraft from that transported by all-cargo flights. Other challenges include the inability to discern from existing statistics the proportion of traffic carried by charter flights and by integrated express carriers. The rising phenomenon of low-cost-carriers is generally missing from existing trade data but will need to be taken into account as well.

25. With respect to restrictions to trade in aviation, several points made during the presentations were reiterated, including the importance of sovereign rights over national skies and the range of restrictions stemming from these, and impediments to factor movement, particularly capital and labour. Infrastructure constraints at airports, and services that implement that infrastructure also play a significant role. Other relevant policy areas for trade in air transport include competition policy (or lack thereof) and trade facilitation, particularly for the timely delivery of goods through customs.

**Session II. Presentation of available indicators of restrictiveness in transport**

**The World Bank’s Services Trade Restrictiveness Index and the WTO Air Liberalisation Index**

***Ingo Borchert, World Bank***

26. Mr. Borchert introduced the World Bank services trade restrictiveness project, which aims at measuring services policies and to quantify their impact on trade and other measures of economic

performance. A services policy restrictiveness database has been developed covering 102 countries, of which 24 from OECD, and six distinct services sectors (including transport and distribution services). The policy focus is on discriminatory regulations, including those in relation to market entry, ownership and license procedures, and the database has been for the most part cross-validated by governments. The trade restrictiveness indices are calculated using expert judgment scoring, which places the measures into a five level scale (0 25 50 75 100), then aggregated using modal and sectoral weights. Difficulties encountered by the authors include subjectivity and non-additivity across sectors and modes of delivery.

27. Mr. Borchert then provided several examples on the effects of restrictions on economic performance, showing that higher STRI scores are associated with fewer airlines serving a country, as well as with lower availability of competitively priced logistics services and with poorer quality logistics services. The link between services reform and other areas was also highlighted, in particular trade facilitation and competition policy, as anticompetitive practices may have a greater impact on shipping prices than restrictive governmental policies. Finally, the importance of cooperation at the international level to achieve reform was raised, since transport regulation tends to be bilateral, and unilateral efforts may not be sufficient to bring about meaningful change.

***Pierre Latrille and Antonia Carzaniga, WTO***

28. As part of the second review of the WTO Air Transport Annex, the Secretariat has prepared the Quantitative Air Services Agreements Review (QUASAR). The principal aim is to provide a broad and consistent assessment of the openness and volume of air transport exchanges, based on two sets of data: regulations contained in air services agreements and international passenger traffic data. The analysis identifies the market access features of more than 2000 bilateral agreements, drawing from information contained in the World Air Services Agreement (WASA) database published by ICAO in 2005. With respect to traffic, the statistics used are scheduled air passenger traffic data by city pair, which are provided by IATA. Although not a perfect match for the underlying regulatory regimes, IATA data represent the most complete existing traffic data.

29. The study complements the documentation on regulatory provisions contained in the WASA database by incorporating information about the degree of openness of regulations, and then uses this information to construct an index of liberalisation that can be compared across agreements. The Air Liberalisation Index (ALI) is calculated by selecting the provisions of bilateral agreements deemed to be particularly important for market access and assigning a score between zero and 8 to each restriction. Zero indicates the most restrictive measure and eight the least restrictive. The ALI is the sum of obtainable points by bilateral agreement, and ranges between zero for very restrictive agreements and 50 for very liberal ones. The process has been undertaken by the WTO Secretariat in consultation with a group of aviation experts.

30. The WTO QUASAR then combines the information on restrictions with the traffic data obtained from IATA to measure the fraction of trade covered in different agreements. Most notably, the findings show that traffic remains highly concentrated, with 100 agreements covering two-thirds of the total QUASAR traffic. Also, on the basis of the key provisions identified in the analysis, seven types of “standard” agreements are identified, which could in principle replace over 70% of bilateral agreements contained in QUASAR. Suggestions on areas for further work include improvement of regulatory data, including with a better focus on air cargo and on plurilateral agreements, and a better assessment of the costs and benefits of liberalisation for different stakeholders.



## ***Discussion***

31. During the discussion, experts raised the question of statistics for transport, mentioning some of the challenges in their collection, including the high costs of certain data and difficulties in locating the text of certain bilateral agreements. Participants offered help in collecting and exchanging data. For transport overall, modes 1 and 3 appear to be most important, so the focus of the STRI should be on these modes. The possibility of deriving weights by mode of supply for the construction of the indicators was also discussed. Some experts further pointed out the need to distinguish between trade creating and trade restricting regulations for the purpose of the STRI, and reiterated the important role that some measures play in addressing market failures.

## **Session III. Trade in maritime services**

### **Speakers**

#### ***Maritime shipping services, Pierre Latrille, WTO***

32. Mr. Latrille began his intervention providing an overview of the evolving characteristics and regulatory landscape of maritime transport. Maritime shipping covers the transportation of passengers (ferries and cruises) and freight, which is in turn divided into liner (scheduled carriage of modular containers) and bulk (single cargoes in large volumes). The sector has been subject to considerable reforms over the years, developing from a much protected industry to a fairly liberal one. Nowadays, ships can be built, owned, flagged and manned internationally. Traditional governmental restrictions in shipping such as cargo reservations have been losing relevance, though some areas such as cabotage remain restricted. In addition, restrictions can be found in ports in the form of barriers to competition stemming from the specific type of port model (from public sector provision to different forms of private sector participation).

33. Negotiations on maritime services in the context of the GATS were extended following the Uruguay Round but could not be completed successfully. This resulted in a suspension of the most-favoured-nation (MFN) obligation for the sector and in existing commitments limited to those Members willing to make them unilaterally. Negotiations have resumed on the basis of existing offers on several pillars, particularly maritime shipping, auxiliary and port services. So far, however, only 17 members have tabled offers containing elements of maritime services, a process which has been complicated by overlapping classifications for the sector.

34. Mr. Latrille then stressed the importance of improving data for research on maritime services. Better economic and trade statistics are needed, for instance in relation to the size of fleets, maritime trade in volume and value, and on maritime containers. Efforts to enhance the collection of regulatory data would be very helpful as well, particularly with respect to flags and privileges attached to them, as well as on shipping and shore or port activities.

#### ***Maritime port services, Michel Donner, Independent Consultant***

35. Mr. Donner introduced the role of port services as an enabler of international trade. The sector is pretty concentrated, with the top 20 global operators handling 70% of total world port throughput in 2007. Port services feature network characteristics and are typically considered as strategic, which explains the important role the public sector plays in their provision, be it the central government or local municipalities. Trade in these services takes place through commercial establishment, typically through concessions or other forms of public-private partnerships, and its feasibility is dependent on the type of port model in place.

36. A variety of ownership and operational structures have emerged with regard to port management, the provision of infrastructure and the supply of services, depending on the degree of private sector participation. In recent years, there has been a gradual movement from the public service model to the landlord model (where the public sector owns the infrastructure and the private sector provides services on a long-term basis through *e.g.* concessions). Only a few countries have adopted the private service port model, which transfers land, infrastructure, and management and regulatory functions to the private sector. Mr. Donner concluded his remarks providing several examples where access to port services has been denied to foreign providers, including in China, India and the US.

### **Panellists**

#### ***Les Ward, Transport Canada***

37. Mr. Ward focused his remarks on maritime transport in the context of the multilateral trading system. The significance of binding specific commitments under the GATS is that they can provide legal certainty and predictability for foreign investors. The core elements of commitments in the areas of market access need to be complemented by disciplines on domestic regulation and transparency. The main barrier for market access continues to be the national ownership and operation of ports and port services. There are also restrictions on local representatives and agents, joint venture requirements and fiscal regulations (not specific to transport). Mr. Ward suggested that specific commitments and obligations under the GATS follow a model schedule, and that an attempt be made to cover private restrictions, which are typically non-transparent.

#### ***Herman De Meester, European Community Shipowners' Association***

38. Mr. De Meester introduced the European shipping industry as a key player in trade between different continents, representing around one quarter of the world fleet. Global trade carried by sea accounts for some 80-90% of the total, while in Europe up to 41% is seaborne trade. Maritime shipping is largely an international, cross-border industry, with its different segments of liner and bulk shipping featuring considerable differences. In particular, the former is more tightly regulated. In general, however, the maritime shipping sector has experienced significant liberalisation over the years and markets are currently *de facto* open. Many of the remaining obstacles to trade are operational and procedural in nature, and the industry could significantly benefit from improvements in transparency and overall legal certainty. Negotiations in multilateral and regional fora have so far failed to achieve meaningful progress in the sector.

#### ***Jan Fritz Hansen, Danish Shipowners' Association***

39. Mr. Hansen introduced the Danish Shipowners' Association as representing Denmark's shipping industry in several matters, including on trade issues. Danish shipowners carry a considerable share of world shipping trade, and are thus keen advocates of free trade. With maritime shipping having been considerably liberalised over the years, though with a few important restrictions remaining in place (*e.g.* impediments to coastal trade), the debate has moved inland, particularly on ports. Some key issues for the industry include ownership, control and operation of ports, flag discrimination and certain tax policies. Other impediments can stem from unnecessarily burdensome security and environmental regulations, as well as procedural measures and red tape. Mr. Hansen supported efforts by the OECD to analyse the effects of impediments on industry performance.

### ***Discussion***

40. Participants reiterated the importance of maritime services for international trade, with shipping costs representing a considerable share of the total market value of goods. The sector comprises a range of

activities and different segments are regulated to varying degrees. Maritime shipping services are the most liberal form of transport, with traditional trade restrictive measures such as cargo reservation schemes having been for the most part liberalised. Some specific impediments, *e.g.* on cabotage, remain in place, and domestic regulations have been gaining importance, particularly competition policy, security and environmental protection. The debate about liberalisation of the sector has also moved inland, especially to ensure openness and competition in ports and auxiliary services. In view of these various dimensions that can affect maritime transport, a holistic approach to the measurement of restrictions will be needed.

#### **Session IV. Trade in land transport services**

##### **Speakers**

##### ***Road transport services: Peter Krausz, International Road Transport Union***

41. Mr. Krausz stressed that road transport is an important driving force for trade, particularly as it is an integral part of the logistics chain and facilitates the provision of door-to-door services. The sector is also significant in terms of labour, with road freight alone employing in Europe some 3 million workers, and accounting for a large share of land transport (over 70% in 2007). Not surprisingly, a major constraint in the sector are borders, through overly burdensome and uncoordinated regulation causing significant delays *en route* and in border crossing. Lifting borders in Europe, for instance, had a very significant impact on the industry and beyond: it led to savings for traders of around 5 billion Euros per year and allowed for more integrated services and just-in-time production.

42. Regulation in road transport is needed to meet a variety of public policy objectives, such as safety or security. However, the sector appears to be overly regulated, with several layers of measures arising from multilateral conventions, regional regulation, bilateral transport agreements and national legislation. The predominant modes of supply in the sector are modes 1 and 3, with the former being affected primarily by the bilateral agreements and the latter by national legislation. Particularly restrictive for market access is the bilateral system of quotas and permits which, if liberalised, could bring about significant gains, in terms of efficiency increases and reduced costs and bureaucracy.

43. Mr. Krausz then provided a few thoughts on how to measure impediments to trade in these services. Several indicators are available against which performance could be assessed, including TIR (transports internationaux routiers) traffic, the average number of TIR carnets issued yearly, as well as waiting time at borders. He further mentioned initiatives ongoing in the WTO and the World Bank aimed at establishing a typology of bilateral road transport agreements, but drew attention on the challenges posed by poor data in the sector.

##### ***Rail transport services: Jean-Pierre Lehrmann, Union Internationale des Chemins de Fer (UIC)***

44. Mr. Lehrmann began his intervention pointing out that although rail had in the past been losing relevance to other transport modes, in recent years the sector has become more important to carry both cargo and passengers. The recent economic crisis, however, had a severe impact on the sector. Much of the work of the UIC is currently focused on facilitating trade in rail transport services between Europe and Asia. This requires heavy infrastructure investment in building new tracks through a range of countries; yet, much of this vast area is landlocked and not well developed so rail has the potential to considerably increase trade through land transport.

45. Critical to achieving these objectives are efforts to enhance compatibility of legal systems, regulations on financing (*e.g.* in relation to prices and legal provisions), and infrastructure. Diverging rail legal systems, such as COTIF (Convention concerning International Carriage by Rail) and SMGS (Agreement on International Goods Transport by Rail), increase costs and are time consuming. Ultimately,

there needs to be a uniform law for rail in the EU, and divergences in regional systems need to be diminished so as to allow for interoperability of rail between the EU and Asia. Efforts to enhance transparency and predictability, including with respect to legal documents and procedural issues, are also needed.

## **Panellists**

### ***Frank Joost, EC DG Mobility and Transport***

46. Mr. Joost reiterated the point made earlier that rail transport has been gaining momentum in recent years and that several recent investments in the sector have been successful, for example line infrastructure and terminals. Cross-border flows should be encouraged, particularly in relation to cargo which remains the most important segment. Major impediments to trade in the sector include border-crossing procedures, such as authorisation of wagons, lack of interoperability and overly burdensome liability insurance. State dominance represents another prominent constraint in the sector, with often up to 100% of rail being state held. Lack of rules and incentives to foster competition by incumbents can also act as impediments, as can labour legislation and unions.

### ***Steve Perkins and Elene Shatberashvili, International Transport Forum (ITF)***

47. The focus of ITF's work in the coming years will be on seamless, multimodal transport, covering a broad range of themes, including institutional questions, advances in technology and legal facilitation. Data on exports from major trading parties to China carried by both air and maritime shipping show that, while the trend has been upward, the recent global economic crisis had a major impact on trade. This has also been the case for road and rail traffic. The cost of barriers to trade in road transport and logistics services can be significant, for example through waiting times at borders, or additional trips because backhauls or cabotage are illegal.

48. Restrictions to trade in land transport services are put in place either for standard political economy factors or to meet social objectives, such as environmental protection. Liberalisation can take place in various forms with different levels of ambition, from easing quotas and other measures contained in bilateral agreements to different multilateral structures. The ultimate goal would be to achieve full liberalisation with roadside enforcement of customs, safety and environmental regulation.

### ***Peter Sierat, Transport en Logistiek Nederland***

49. Mr. Sierat mentioned that road transport is an important sector in the Netherlands, accounting for a considerable share of GDP and employment, and stressed the crucial role of the sector for multi-modal, logistics services. Demographic changes and other factors are likely to have a significant impact on the industry, with estimates showing that an additional 50,000 truck drivers will be needed within the next five years. Prominent barriers to trade in road transport include lack of cabotage rights, restrictions on express services and weekend bans. Beyond policy measures, lack of or limited infrastructure (e.g. parking especially for new large trucks) also acts a hindrance.

## ***Discussion***

50. Experts stressed the importance of developing long corridors or infrastructure and include major emerging economies such as China and Russia. Among prominent regulatory impediments, participants reiterated the importance of harmonising legal regimes in rail, with some commending efforts made in this area by China. Related to this, the question was raised of multiple institutions for managing the infrastructure, which can create inefficiencies. Some countries, such as Australia, have been successful

with a single infrastructure manager for all carriers. Taxation regimes are also relevant, as is access to the driving profession, particularly language training and working conditions for immigrant drivers.

## **Session VI.<sup>1</sup> The way forward: door to door services**

### **Speakers**

#### ***Carlos Grau Tanner, Global Express Association***

51. Mr. Grau Tanner provided an overview of the global express sector, indicating that it is a large and growing industry (with 7% annual growth between 2003 and 2008), and it is also truly international with operations in over 220 countries. Express carriers (*e.g.* FedEx and UPS) provide as one entity the different components of door-to-door services. To achieve higher speed and reliability, they use dedicated multimodal transport networks, owning and operating their own aircraft and trucks. Express carriers thus create their own supply chain, which advances in technology (*e.g.* real-time booking and tracking) allow to securely control. High value items are among the products typically carried by the express industry, as part of global production chains and just-in-time supply management.

52. The preferred mode of delivery for express carriers is mode 3, as door-to-door services require the establishment of a commercial presence. In addition, express services are multimodal, so links among various services sectors, such as trucking and warehousing, are essential. The key policy barriers affecting trade in these services take the form of national regulation, particularly licensing regimes in relation to postal services, FDI restrictions and notably inefficient customs. With respect to the latter, several trade facilitating measures were identified by the industry, including advances in electronic processing.

#### ***Robert Keen, International Freight Association***

53. Mr. Keen introduced freight forwarders as intermediaries between several transport modes and the end customer, also acting as the interface with regulatory authorities. Freight forwarders contract with transport providers for the carriage of goods and buy block space on their equipment (*e.g.* aircraft), consolidate shipments, and deliver the goods to consignees through contracting with ground transportation services. Operational problems for freight forwarders can arise from diverging technical standards for equipment, particularly specific types of containers. A prominent obstacle to trade for the industry are heightened security measures in several countries, including the recently-introduced US requirements for 100% container screening on inward consignments. The industry is of the view that for demonstrated dependable providers, random screening should be sufficient.

#### ***Jean Francois Arvis, World Bank***

54. Mr. Arvis gave a presentation on logistics services, providing an assessment of what matters for their performance and how that can be measured. Following a brief introduction of factors that can affect the performance of logistics services throughout the supply chain (particularly infrastructure constraints, market structure and regulation), he focused his remarks on opportunities and challenges of developing indicators in this field. The latter can be broadly divided into indicators of outcome, such as the World Bank's LPI, of policy inputs like the STRI, and others (*e.g.* on red tape).

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1. In Session V participants were divided in break-out group aimed at facilitating discussions on barriers to trade in the different transport sectors, see below.

55. Important issues to consider in the creation of indices for logistics services include the need to disentangle what matters for trade by sub-sector of transport and the distinction between bilateral and national regulation (with the former being most relevant in aviation and road transport). Rather the STRI needs to be simple and focused on policy inputs that matter for logistics performance. These include regulation on entry and market access (such as financial and professional requirements), operational standards that impact quality and market structure, and bottlenecks arising from cross border regulatory differences. In addition, difficulties in data collection need to be taken into account, as is the importance of regulation to meet social objectives.

56. The World Bank work on logistics services focuses on three main pillars: infrastructure, trade facilitation (particularly in relation to customs) and logistics services, where there remain significant gaps. In addition to several indicators on outcomes and inputs, such as the LPI and the STRI, work is also ongoing in cooperation with the WTO on analysing bilateral trucking agreements. Finally, potentially useful information on regulation and performance can be found in the “toolkit series”, for example on ports.<sup>2</sup>

***Eva Molnar, UN Economic Commission for Europe (UNECE)***

57. An important aim of UNECE is to work towards the harmonisation of frontier controls and assess the impact of regional trade blocks on international transport. UNECE is considering sustainability, safety and improvements to the modal split between road and rail, and also studying pricing and the impact of new technology. The objective is to contribute to unblocking the international regulatory framework related to infrastructure pricing and financing, and enhance efforts to address governance (corruption). A key issue relates to the establishment of appropriate transport institutions necessary for policy implementation, and to ensure price competitiveness and quality, and that there is no monopoly capture.

58. Measuring these factors for the purpose of developing meaningful indicators to which governments can relate is a challenging task. A core element should be the participation in supply chains. It is hoped that soon agreement on the so-called CMR electronic consignment note on the international carriage of goods by road will be ratified.<sup>3</sup> Other issues include difficulties to classify services, MFN in the sector (in light of the bilateral nature of the international regulatory framework) and transit rights. Trade facilitation is another important aspect, including the performance of border agencies, which is being studied at UNECE in order to develop a tool for governments on measures that could improve customs efficiency.

***Discussion***

59. The ensuing discussion focused on the elements of a successful indicator for services trade restrictiveness. Participants stressed that such an indicator should be simple, straightforward and a tool to which both politicians and the public at large can relate to. Although simple in its presentation, the index should be complex and well researched, illustrating that even though it is necessarily selective about the measures covered, it needs to be representative of the regulatory regimes in place affecting trade. A comparison was made with other available indicators, particularly GDP and the consumer price index. The latter for example, uses a small basket of goods and services compared to the total spectrum of goods and services that people generally buy. Yet, it is a very useful indicator.

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2. Available at: <http://rru.worldbank.org/Toolkits/>.

3. CMR stands for the UN Convention on the Contract for the International Carriage of Goods by Road, signed in May 1956. It relates to various legal issues on carriage by road.

60. The question of input versus output indicators and the relationship between the two was also raised. The input, or policy indicator, should subsequently be tested against indicators of economic performance to analyse whether indeed policy creates economic inefficiencies. It is necessary to distinguish the potential effect of policy versus other factors, such as infrastructure or market structure. Related to this, the importance of the underlying data on which indicators are built was highlighted. The database should be a product on its own, which is transparent and allows stakeholders who so wish to create their own indicators from the underlying details.

61. Several participants expressed their interest in remaining involved in the OECD project as it evolves. On next steps, the Secretariat mentioned that it will pay careful attention not to duplicate work already going on in this area and to work closely with the other relevant institutions. The immediate next step will be to produce a list of measures to be included in the OECD indicators for further consultation with experts, whose input will also be solicited subsequently to provide expert judgment on the relative restrictiveness of different measures.

## **Session V. Highlights from discussions on trade barriers in transport in the breakout groups**

### ***Group 1: Air transport***

*Participants: Kenneth Button, Antonia Carzaniga, Christopher Findlay, Amanda Horan, Glyn Hughes (Chair), Hyunsoo Yun, Massimo Geloso Grosso and Frederic Gonzales*

#### ***Introduction***

62. Air transport is one of the most heavily regulated transport sectors. Restrictions to trade in these services are primarily of a bilateral nature and a challenge for the STRI project will be to adequately take this into account.

#### ***Barriers***

- **Airspace sovereignty.** Includes the predominance of restrictive bilateral air services agreements versus open skies, the extent to which air traffic freedoms are granted, as well as restrictions on the airlines allowed to operate bilateral routes, the tariffs, and the number and frequency of flights.
- **Factor mobility and control.** Impediments on the movement of labour and capital, *e.g.* carrier ownership rules, CEO nationality restrictions, crew controls on international services, non harmonised air traffic control (ATC) training requirements leading to non transferable resources.
- **Slot management.** Allocation through “grandfathering” versus auctions, availability of secondary slot trading programmes, night restrictions (for all-cargo flights).
- **Financial and institutional regulation.** Existence of national carrier subsidies (direct or indirect), bankruptcy protection, taxation (corporate or environmental), and competition and merger legislation.
- **Infrastructure constraints.** Compatible and streamlined ATC systems, services managing airport facilities (*e.g.* cargo terminals), security programmes for cargo and passengers (often measured by flight delays).

### **Group 2: Maritime transport**

*Participants: Dale Andrew, Ingo Borchert, Michel Donner (Chair), Jan Hoffmann, Pierre Latrille, Iza Lejarraga, and Les Ward*

#### **Introduction**

63. Maritime transport is considered the most liberal transport sector (though little progress has been achieved in making binding commitments on it in the GATS); most remaining restrictions to foreign participation are found in port and other auxiliary services.

#### **Barriers**

- **Most prominent restrictions.** Nationality requirements (e.g. for flag, crew, establishment), restrictions on access to and use of port services, compulsory pilotage (permits), restrictions on local representatives, joint venture requirements, and discriminatory and non-transparent licensing regimes.
- **Public policy measures.** Several impediments stem from national security measures, as well as very complex environmental regulations, including in relation to climate change. When these are applied in a discriminatory manner against foreign providers, they would need to be reflected in the STRI.
- **Other measures.** Competition policy, taxes, and transparency issues, would also need to be captured in the database.
- **References.** Experts referred to a list of restrictiveness measures on maritime transport services contained in TD/TC/WP(98)35, and concurred that the set of measures contained in this list was comprehensive and relevant. It was suggested that this would be a good starting point for the Secretariat to develop the STRI database for the sector.

#### **Methodology**

64. Many existing restrictions in maritime transport services do not stem from government regulations, but may result from private sector practices (e.g. cooperative and potentially anti-competitive arrangements among carriers). Hence, the question was raised as to how to address such practices. Another critical point discussed is how to deal with dormant regulations that prevail in the maritime sector, as overall what is on the books is much more restrictive than the applied measures. While markets are *de facto* open, this may not be reflected through the current *de jure* approach of the STRI.

### **Group 3: Land transport**

*Participants: Mercedes Rubio Dominguez, Anthony Halley, Frank Joost, Jari Kauppila, Peter Krausz, Eva Molnar (Chair), Jean-Pierre Lehrmann, Peter Siera and Elene Shatberashvili*

#### **Introduction**

65. Land transport is composed of road and rail. As for air transport services, barriers to the international provision of road transport are mostly bilateral. Rail is a network infrastructure sector, giving rise to issues of natural monopoly, public provision and the need to ensure competition, including through access to bottleneck rail facilities.



*Barriers in the road sector*

- **Multiple layers of regulations:** the multiplicity of regulatory systems affecting road transport, *i.e.* national, bilateral, regional and multilateral, creates uncertainty and increases costs for business.
- **The bilateral system:** Core restrictions are contained in thousands of bilateral agreements, taking the form of quotas, permits and other measures.
- **Access to the profession:** Mode 4 measures relating to drivers, including licensing and related issues, can be a hindrance.
- **Social regulations:** These can impact trade if perceived to be overly restrictive, for example traffic bans and environmental measures.

*Barriers in rail*

- **State ownership and dominant operator.** Competition may be prevented when state ownership extends to services, in addition to the rail infrastructure, or where incumbents do not allow entry of new providers through non-discriminatory access to the infrastructure.
- **Subsidies and support.** Discriminatory and non-transparent governmental subsidies to local providers can affect the international provision of rail services.
- **Lack or limited competition law and adequate institutions.** In light of the inherently non-competitive characteristics of rail, it is important to establish appropriate competition law, which needs to be implemented by independent, adequately trained and staffed competition authorities. Divergence of rail legislation across countries can also lead to uncertainty and higher costs.

66. Finally, experts identified border issues and trade facilitation affecting the timely delivery of goods as a key concern in both segments.

*Group 4: Multimodal transport*

*Participants: Pierre Cariou (Chair), Batshur Shuree Gootiiz, Atsushi Kuwabara, Rainer Lanz, Hildegunn Kyvik Nordås, Christina Roy and Carlos Grau Tanner*

*Introduction*

67. Express services are typically taking the modes of air and road freight transport, but not shipping and rail.

*Barriers*

- **Restricting the logistics chain.** Since speed and reliability are key to the provision of integrated services, providers attempt to own the entire logistics chain. Hence, regulations affecting the control of the logistics chain can make a country less attractive. For instance, absence of a law on multimodal transport might be seen as restrictive, as it can prevent diversifying in different transport functions for the provision of integrated services.

- **Licensing.** In some countries, express service providers are treated like postal firms, needing a postal licence. The latter may be more difficult to obtain since postal services are usually heavily regulated, and are typically former monopolies.
- **Competition law.** Ensuring competition and the functioning of the competition law is another important consideration, including as a result of the overlap with postal service providers.
- **Border barriers.** Lengthy and costly customs procedures are seen as a very significant issue by express providers. In addition, there should be transparency in processing times so as to allow for informed business decisions.

### III. DISTRIBUTION SERVICES

#### Introduction

##### *Setting the scene by the Chair, John Dawson, University of Edinburgh*

68. Following initial introductory remarks by Mr. Safadi, Deputy Director of the OECD Trade and Agricultural Directorate, Mr. Dawson opened the meeting with remarks on both recent developments in distribution services and on barriers to trade in the sector. The past decade has seen a rapid increase in the international presence of large retailers, who operate in large networks, in a wide range of countries and with different formats. The sector has also become increasingly concentrated, with the 100 biggest firms accounting for 25% of the global retail market, and the largest 25 some 15%. Also noteworthy is dynamic innovation in the sector, the growing importance of e-commerce and the fact that international wholesaling remains significant in many sectors.

69. Regulatory barriers to trade in distribution services entail a complex mix of policies, which need to be seen in the context of rapid evolution of the sector. It is important to distinguish between barriers affecting entry of firms as opposed to those affecting their performance, growth and exit. Restrictions in other related sectors, particularly maritime transport, postal and integrated express services, also have an impact on distribution.

#### Session I. Distribution services (Food)

##### *Presentation of the OECD Distribution Services paper by Neil Wrigley, University of Southampton*

70. Mr. Wrigley gave a broad overview of the distribution sector in the OECD paper. These services account for a large share of GDP and employment in many countries, with the majority of these contributions provided for by retailing. In particular, food and fast moving consumer goods sold through grocery outlets provide the largest element of total sales. The sector has experienced significant changes since the 1980s, notably a high degree of concentration which led to some of the largest firms in national economies, progressively increasing their bargaining power with suppliers. Also important has been the growth of “lean retailing”, entailing integrated logistics and supply chain management methods, which underpinned just-in-time systems allowing for substantial reductions in retailer inventory holdings.

71. Another prominent development has been rapid acceleration of FDI flows in retail primarily from large OECD countries to emerging economies. This has been driven by several factors, including mature and often tightly regulated markets at home, longer-term growth prospects in emerging economies, and an attempt to achieve economies of scale. With respect to the latter, there is evidence suggesting that both international sales, and average number of countries where large retailers operate, have been increasing over time. The process of internationalisation has also been facilitated by liberalisation trends in many emerging economies, and widespread adoption of ICT allowing for better management of large, dispersed operations. Advanced sourcing strategies and related local impacts have also been at the centre of debates on FDI in retail.

72. As regards trade restrictions, Mr. Wrigley classified them into two broad types: the first involving institutional, cultural and organisational impediments, and the second regulatory barriers. With respect to the latter, restrictions on market entry and foreign ownership, as well as barriers to competition appear to be the most important. Examples include foreign equity restrictions, minimum capital requirements and differential application of competition rules. Other prominent impediments can take the form of land and zoning regulations, restrictions on retail formats and store opening hours. Barriers to e-retailing are also growing in importance as a reflection of the significant development of this market, for example taxation

of products sold over the internet. Finally, there is a need to distinguish between trade restrictions and regulations aiming at ensuring competitive markets or addressing other sources of market failure.

### **Panellists**

#### ***Jean Bergevin, EC Internal Market and Services***

73. Mr. Bergevin introduced the retail sector noting its role as a facilitator of international trade, and stressing the need to ensure that it remains a gateway and not a gatekeeper to different EU member countries. Local markets need to be maintained, with green and sustainable supply chains developed and quality upheld, not just price competition. The efficiency of retail services depends on other services, including logistics, payment services and notably IT services, with retail being the largest commercial IT user in the EU. All modes of service delivery are relevant for retailing, including consumption abroad, as 35% of citizens in the EU are estimated to reside in cross-border regions. The movement of people, particularly of white collar workers, is also important. The significance of commercial establishment has been somewhat diminished with the expansion of e-retailing.

74. When examining restrictions to trade in retail services, it is important to consider the whole retail value added chain. Among the most important barriers are limitations on land planning and authorisations (including economic needs tests), inadequate enforcement of competition rules, commercial communications regulations (e.g. advertising) and different product labelling requirements. Restrictions on cross-border transactions are also relevant, particularly for e-commerce. Different labour laws and collective agreements act as further constraints. Finally, a holistic approach must take account of the fact that the distribution sector is an intensive user of other services.

#### ***Adam Hemphill, Walmart Stores***

75. Mr. Hemphill began his intervention with an overview of Walmart's international operations, indicating that the company is present in 15 countries, with the largest number of outlets in North America, followed by Central and South America, and Asia. Expansion of operations in foreign markets has taken the form of establishment of new stores and to a lesser extent through acquisitions. Walmart mainly recruits skilled workers locally, while providing training for key managers in the US, so as to spread the broader corporate knowledge into those markets. When screening possible new markets, in addition to assessing the potential for value creation, the firm takes into consideration market structure and regulatory barriers, including the transparency and predictability of such measures.

76. The discussion on impediments to trade focused on the case of China. Several core barriers were in place before China entered the WTO, including geographical restrictions, opaque licensing and approval processes, and discriminatory laws and regulations in general. Remaining impediments take the form of sales restrictions, difficult zoning and approval processes, discriminatory capital requirements and restrictions on e-commerce. Furthermore, different barriers can be found in other countries, notably bans on FDI in retail, investment caps, and restrictions and regulations applying to goods, such as tariffs and sanitary and phytosanitary standards.

#### ***Marc Jansen, Dutch Food Retail Association***

77. Mr. Jansen began with a few remarks on the evolution of the retail sector from "box movers", logistics services until the 90s to today's upstream involvement with own brands. The sector is an integral part of the food chain and is subject to intense competition, with low margins and high volumes. Good global practices introduced by the industry include the bar coding system, food quality and hygiene standards, and the global social compliance programme, which is aimed at harmonising existing efforts by business to improve working conditions in global supply chains.

78. Retailers face a wide range of restrictions and new forms of protectionism where servicing foreign markets. These can arise from regulations on cross-border sourcing, mandatory returns of items for recycling (such as seven times for each bottle), detailed labelling and varying tax policies. Quality, food safety and veterinary standards may also act as impediments and so can price monitoring and the different evaluation of unfair or illegal practices. Another hindrance is lack of a single financial market resulting in territorial fee restrictions by payment card companies. Manufacturers have also in certain cases restricted retailers' operations by arbitrarily dividing up the international market reserving geographical areas to their chosen partners.

***Matthew Reisman, US International Trade Commission***

79. Mr. Reisman explained the role of the USITC as an independent federal agency charged with advising the President and Congress on market developments and trade issues. The Commission is developing a large database of non-tariff measures affecting retail, covering some 74 countries and using both primary and secondary research. Surveys and firms' interviewing are among the approaches employed to assess how measures are applied and whether they form impediments or are opaque. An initial assessment is made of broader entry factors, such as market attractiveness, the quality of infrastructure and general business and trade regulations; and of entry methods, for instance pointing out that cross-border retailing is rare among US companies, though a few do have e-commerce sales in countries where they have no physical presence.

80. Restrictions more specific to retail services are classified into entry barriers and those affecting the operations of firms. The former covers foreign equity limits, screening, access to land and zoning regulations, while the latter includes promotional restrictions, price controls, sourcing requirements and shop opening hours. Barriers to the movement of people, such as nationality, residency or requirements on length of stay for service providers are also part of restrictions on operations. Mr. Reisman closed providing suggestions on issues to consider for the development of the STRI, such as an appropriate weighting scheme, and on incorporating broader factors such as transparency and market concentration issues.

***Discussion***

81. Experts reiterated the importance of speed to market for modern retailing, an example of which is food sourcing, as part of just-in-time supply management. Retailers are significant users of other services including, transport and logistics as well as insurance services, so insights into these interfaces are needed. E-retailing has also been a prominent development as have been private labels, in particular since they have allowed SMEs to compete with large international retailers in some markets.

82. Notable restrictions to trade in distribution include local sourcing requirements, specific investment measures, such as burdensome registration requirements for franchising, and product reservations (e.g. pharmaceutical products). E-commerce can be affected by varying postal, copyright and video streaming regulatory differences across countries. In the related transport sector, cabotage rules mean that many trucks have to return home empty which increases costs. The Chair concluded that it will be important to assess both horizontal and vertical issues and transparency, as well as to separate out measures that discriminate against foreign providers from those affecting local firms as well.

## **Session II. Presentation of available indicators of restrictiveness in distribution**

### **The World Bank's Services Trade Restrictiveness Index and the USITC Database on Non-tariff Measures in retail services**

*Batshur Gootiz and Ingo Borchert, World Bank*

83. For the distribution sector, the World Bank also has a database of measures obtained from surveys and public sources in 102 countries, of which 24 are OECD Members and the rest developing and emerging countries. The focus has been on commercial presence in retailing. As for transport, the World Bank's database for distribution contains primarily discriminatory measures, including both restrictions on entry (*e.g.* foreign equity participation, legal form and licenses) and on firms' operations (*e.g.* multi-brand stores, the location of outlets and the movement of people). The administrative and institutional environment, such as the existence of a regulatory authority, are also part of the survey.

84. As for transport, the World Bank STRI is calculated using expert judgment scoring, with a five level scale (0 25 50 75 100). Although inevitably subjective, the implicit weights used are flexible. A comparison of levels of restrictiveness in different sectors reveals that retailing is a relatively open sector, and the OECD region is among the most liberal, with Gulf countries being the most restrictive. The results also show that explicit entry restrictions are few, while barriers to firm operations are the most important. Administrative and institutional impediments (*e.g.* no right to appeal regulatory decisions) also play a role.

85. Several questions for discussion were raised, including on how to measure unequal enforcement of regulations and the degree of transparency affecting predictability. Informal retailing has not been taken into account so far. Another question relates to the importance of going beyond trade restrictions and examine potential infrastructure issues, as well studying the entire supply chain and networks. Future work by the World Bank in this area will include an analysis of how policy matters for trade.

*Richard Brown, USITC*

86. Mr. Brown provided further detail on the USITC non-tariff measures database as it relates to retail services. The purpose of the database is to advise on measures to be targeted in FTAs or more generally on constraints faced by US exporters. The sources used include primary ones, particularly information drawn from US agency offices abroad, and some secondary sources, such as data gathered from OECD, the World Bank and the UN. The database covers a large number of countries (74) and a wide range of measures affecting entry and operations, including in relation to the movement of people. An attempt to create a hierarchy of restrictions has been made according to how much measures contribute to the variance in the data, using principal components analysis.

87. Mr. Brown provided a demonstration of how to search measures in the database according to several criteria, including type of measure, source, relevant mode of supply and whether the regulation is discriminatory. Access to the database will be open for experts and researchers wishing to develop their own indices of restrictiveness building on the underlying data. The USITC will soon attempt to measure the cost to US consumers of retail sector impediments.

### ***Discussion***

88. The discussion focused on different aspects of trade barriers in the sector that need to be taken into account. These include the way in which barriers affect both suppliers and consumers and the distinction between horizontal and vertical measures. The effect of barriers on large and small markets may vary too, so market size must be taken into account. The Chair also noted the trend towards re-regulation. An important objective of the STRI should be to help private companies in their assessment of whether to

enter a foreign market. The combination of the transport and retail sectors databases should further allow an evaluation of the total supply chain, which can be particularly helpful as a reflection of current market realities and integrated services.

### **Session III. Distribution services (Non-Food)**

#### **Panellists**

#### ***Martin Roy, WTO Secretariat***

89. Mr. Roy placed the discussion of trade in distribution services in the WTO context, explaining that the GATS classification (W/120) defines the different retailing categories on the basis of the goods sold, not the types of stores. W/120 covers the sale of goods only, including through e-commerce and direct selling away from fixed locations. Despite the economic importance of the distribution sector and its relevance for goods trade, only a few WTO members (54) have made commitments in these services. Characteristics of the commitments include product exclusions or monopolies (*e.g.* pharmaceuticals and certain food products), “unbound” mode 1 (relevant for e-commerce), and restrictions to commercial establishment and to the movement of people. Limited progress has been achieved in the current round, with only 17 offers having been tabled to date on retail.

90. The specific barriers mentioned by members in their schedules of commitments include, in the context of mode 3, foreign equity limits, exclusive rights and other quantitative restrictions (alongside economic needs tests), as well as joint venture requirements and discriminatory measures related to the acquisition or rent of land. There can also be discrimination against e-commerce, the movement of personnel, and direct selling or franchising. Retailers can further be affected by restrictions imposed on related sectors (*e.g.* transport and express delivery), and non-transparent or burdensome planning and zoning regulations. Other impediments can take the form of limits on shopping hours, barriers on trade in goods and competition policy issues.

#### ***Ralph Kamphöner, EuroCommerce***

91. EuroCommerce represents the interests of retailers and wholesalers in 31 European countries and has agreed on a one-voice position for open markets at home and abroad, so as to meet the rapid changes in consumer demand. For the latter, products must be available at the right time, in the right locations and at the right prices, while at the same time meeting growing ethical, social and environmental concerns. The main modes of service delivery for distribution services are the establishment of a commercial presence, increasingly linked with global supply chains, and cross-border trade, particularly through e-commerce. Important criteria for selecting international markets include market size and trade restrictions in place, and the focus for European retailers has been in recent years on emerging markets, particularly in Asia.

92. Mr. Kamphöner highlighted several specific restrictions to trade in retail. Prominent examples are barriers to foreign ownership, economic needs tests, as well as impediments on real estate ownership and on location and store size. Issues concerning prices are also important, and so are limitations on opening hours, specific e-commerce restrictions and impediments on the movement of people, particularly intra-corporate transferees. Lack of transparency acts as a further hindrance. All routes to reform need to be pursued, though the negative list approach adopted in some bilateral or regional agreements would be preferable.

#### ***Matthew Bennett, UK Office of Fair Trading***

93. Mr. Bennett’s presentation focused on issues of competition and fair business practices in distribution services. The aim of competition policy is to ensure consumers get the benefits of competition

and firms are able to compete in markets without distortions. In general, firms should be allowed to pick their business partners. However, in some cases (particularly when companies have significant market power), certain types of agreements may harm competition. Issues revolve around exclusivity clauses, supplier dominance and any upstream foreclosure for access to consumers, or downstream restrictions imposed on small retailers. Colluders must demonstrate that possible efficiency gains stemming from such practices outweigh any harm in a market.

94. In the context of the EU, Article 101 of the competition legislation covers horizontal agreements between competitors and vertical agreements between suppliers and retailers and its provisions form part of the regulations of member states. It also sets out the operation of block exemptions for markets where there is less than a 30% share, *i.e.* the rule for assessing influence on a market. Upstream firms are typically allowed to set maximum prices which reduce double margins, but they cannot set minimum prices because the presumption is that this increases prices. This situation varies from that in the US where the rule of reason is relied on.

95. In the EU, suppliers can choose exclusive distributors, but may not prevent consumers from approaching whom they like. Whereas, for example, France is allowed to restrain sales from French distributors to shoppers in the UK, it cannot restrain sales from French distributors to UK shoppers visiting France. Similarly, while suppliers may include objective criteria that rule out the Internet (*i.e.* need to physically display goods), they cannot reserve the Internet for themselves by refusing all others. The STRI project will have to assess how to measure approaches to competition which vary between countries and that remain subject to debate by economists, such as the rule of reason compared with the prohibition of retail price maintenance.

#### ***Antoine de Riedmatten, Deloitte***

96. Mr. Riedmatten introduced a survey of large retailers by Deloitte, which has been carried out for ten years. It has revealed how shopping tourism has surpassed that for culture, and that the old adage “location, location, location” has been blurred by the Internet. Urban congestion is increasingly dictating the type of store, as are local societal demand characteristics. Retailers aim to balance risk across different country markets as there can be failures following initial entry. The top 25 firms have achieved 10% annual growth by spreading abroad and the bigger firms appear to be the more profitable. Retailers can only expand internationally from a strong presence in their local market, and with sufficient financial strength to invest heavily in foreign countries.

97. Franchising can be a means for firms to increase the pace of presence abroad and retain control over the brand. China appears to be the modern Eldorado with consumption increasing as a result of a growing middle class, and the perceived desire of consumers to follow the Western life style. Some of the appealing Chinese markets are apparel, perfumes, and luxury goods in general. Following entry into the WTO in 2004, the regulatory environment has somewhat improved in China (though less so in other large emerging economies such as India).

#### ***Discussion***

98. Several sectoral specific issues were raised. For starters, it was reiterated that scale can be very important as buying power can be passed on in the form of lower prices to consumers, as long as downstream competition is maintained. Royalties based on sales in different markets can raise the issue of which law applies to the contracts, and where arbitration can be held. Counterfeiting and copyright protection are also significant issues. The immediate next step is to draft a list of measures for inclusion in the STRI to discuss with OECD members and experts, which will serve for the subsequent data collection. The Secretariat will continue to draw on outside expertise as the project develops.



## **ANNEX 1. MEETING AGENDAS**

### **OECD EXPERTS MEETING ON TRANSPORT SERVICES**

#### **TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX**

**OECD Headquarters**

**Paris, 15-16 November 2010**

#### **Background**

The Trade and Agriculture Directorate of the OECD has launched a project that aims at quantifying barriers to trade in services by developing services trade restrictiveness indices (STRI). Three pilot sectors, telecommunication, business services and construction were initially chosen, while the new sectors are transport, distribution and audiovisual services.

Transport includes air, maritime, rail and road services. A host of restrictions on market access, national treatment and other regulatory measures affect the cost of foreign transport services suppliers to enter and service a foreign market. The STRI project aims at aggregating such restrictions into one index for each sector and mode of supply. In order to do so, expert advice is required for the selection of the measures to be included in the indices.

#### **Purpose of meeting**

The objective of the meeting is to bring together experts from the private sector, governments, international organisations and academia to share knowledge and ideas on key reform issues in transport services, including driving forces, main impediments, and impact on trade and other measures of economic performance. In particular, the meeting is to provide background information for future development of STRIs for the transport sector and to inform policy analysis and policy recommendations regarding individual transport sectors against the backdrop of a holistic understanding of the transport chain.

#### **Organisation of the meeting**

The meeting will start with in-depth discussions on each of the following sectors: air, maritime, and land transport, followed by a session on the transport and logistics supply chain. In turn, air transport consists of air passengers, air cargo and airports; maritime transport of cargo shipping and ports; and land transport of road and rail. Each session begins with background presentations by academics and experts followed by panels of discussants, made up largely of practitioners.

Following the session on air, maritime and land transport, an interactive session will be organised with break out groups where each group will be asked their views on possible barriers to trade in the different transport services. Each group will have a chair who will report to the final plenary session.

Background material for the meeting will include analytical work on the subject undertaken by sectoral experts from their recent research.

**Questions to be covered:**

- What are the most important driving forces for trade in these services sectors?
- What is the preferred mode of supply to foreign markets (cross-border supply, commercial presence, or supply by natural persons)?
- Does the preferred mode of supply differ between markets? If so, why?
- Are modes of supply linked in a way that supply in one mode is impossible without the other? For instance does cross-border supply have to be supported by establishment abroad?
- In what sense, if any, are foreign suppliers at a disadvantage to local suppliers?
- What are the most important policy barriers to providing services in foreign markets? Are trade barriers complementary so that one may render many other impediments irrelevant?
- How can the impact of restrictions on trade and other measures of economic performance be measured?

## Draft Agenda and Timing

<b>MONDAY 15 NOVEMBER 2010</b>	
<b>9:30-10:00</b>	<p><b>Introduction</b></p> <p><i>Welcome remarks by Raed Safadi, TAD Deputy Director; The Chair Jan Hoffmann, Trade Facilitation Section, UNCTAD; and by the OECD Secretariat</i></p> <p><i>Setting the scene</i> <i>Keynote speech on the transport sector by the Chair</i></p>
<b>10:00-11:00</b>	<p><b>Session I: Trade in air transport services</b></p> <p><i>Speakers:</i></p> <p>Christopher Findlay, University of Adelaide (Air Passengers) Massimo Geloso Grosso, University of Sciences Po (Air Cargo) Kenneth Button, George Mason University (Airports)</p>
<b>11:00-11:15</b>	<p><b>Coffee break</b></p>
<b>11:15-12:30</b>	<p><i>Panelists:</i></p> <p>Glyn Hughes, IATA Narjess Teyssier, ICAO</p> <p><i>Discussion</i></p>
<b>12:30-14:30</b>	<p><b>Lunch</b></p>
<b>14:30-15:45</b>	<p><b>Session II: Presentation of available indicators of restrictiveness in transport</b></p> <p>The World Bank's Services Trade Restrictiveness Index and the WTO Air Liberalisation Index Ingo Borchert, World Bank Pierre Latrille and Antonia Carzaniga, WTO</p> <p><i>Discussion</i></p>
<b>15:45-16:00</b>	<p><b>Coffee break</b></p>
<b>16:00-18:00</b>	<p><b>Session III: Trade in maritime services</b></p> <p><i>Speakers:</i></p> <p>Pierre Latrille, Services Division, WTO (Shipping) Michel Donner, Independent consultant (Ports)(TBC)</p> <p><i>Panelists:</i></p> <p>Les Ward, Transport Canada (Shipping and Ports) Herman De Meester, European Community Shipowners' Association (Shipping) Jan Fritz Hansen, Danish Shipowners' Association (Shipping)</p> <p><i>Discussion</i></p>

<b>TUESDAY 16 NOVEMBER 2010</b>	
<b>9:30-11:30</b>	<p><b>Session IV: Land transport services</b></p> <p><i>Speakers:</i></p> <p>Peter Krausz, International Road Transport Union (Road) Jean-Pierre Lehmann, Union Internationale des Chemins de fer (Rail)</p> <p><i>Panelists:</i></p> <p>Frank Joost, EC DG Mobility and Transport Steve Perkins and Elene Shatberashvili, International Transport Forum Peter Sierat, Transport en Logistiek Nederland</p> <p><i>Discussion</i></p>
<b>11:30-11:45</b>	<b>Coffee break</b>
<b>11:45-13:00</b>	<b>Session V: Break out groups*: air, maritime, road and rail transport</b>
<b>13:00-14:30</b>	<b>Lunch</b>
<b>14:30-15:00</b>	Groups report back to the plenary
<b>15:00-17:30</b>	<p><b>Session VI: The way forward: door to door services</b></p> <p><i>Speakers:</i></p> <p>Carlos Grau Tanner, Global Express Association Eva Molnar, UNECE Jean Francois Arvis, World Bank Robert Keen, UK Freight Forwarders Association</p> <p><i>Discussion</i></p>
<b>17:30</b>	<b>Close of the meeting</b>

(\*) Break out groups are formed with a view to organising a brainstorming session in which participants will provide the Secretariat with ideas as to relevant barriers to these services.

**OECD EXPERTS MEETING ON DISTRIBUTION SERVICES  
TOWARDS A SERVICES TRADE RESTRICTIVENESS INDEX**

**OECD Headquarters**

**Paris, 17 November 2010**

**Background**

The Trade and Agriculture Directorate of the OECD has launched a project that aims at quantifying barriers to trade in services by developing services trade restrictiveness indices (STRI). Three pilot sectors, telecommunication, business services and construction were initially chosen, while the new sectors are transport, distribution and audiovisual services.

Distribution services include wholesale and retail services. A host of restrictions on market access, national treatment and other regulatory measures affect the cost of foreign distribution services suppliers to enter and service a foreign market. The STRI project aims at aggregating such restrictions into one index for each sector and mode of supply. In order to do so, expert advice is required for the selection of the measures to be included in the indices.

**Purpose of meeting**

The objective of the meeting is to bring together experts from the private sector, governments, international organisations and academia to share knowledge and ideas on key reform issues in distribution services, including driving forces, main impediments, and impact on trade and other measures of economic performance. In particular, the meeting is to provide background information for future development of services trade restrictiveness indices for the distribution sector and to inform policy analysis and policy recommendations regarding the distribution sector.

**Organisation of the meeting**

The meeting will cover retail and wholesale services in both food and non-food contexts. It will start with the presentation of an OECD background paper on retail services. This will be followed by panels of experts and practitioners, which will share their views on the regulatory constraints affecting trade in both retail and wholesale services.

The final session will be organised as group session where each group will be asked their views on possible barriers to trade in distribution services. Each group will have a chair who will report to the final plenary session.

Background material for the meeting will include analytical work on the subject undertaken by sectoral experts from their recent research.

**Questions to be covered:**

- What are the most important driving forces for trade in this service sector?
- What is the preferred mode of supply to foreign markets (cross-border supply, commercial presence, or supply by natural persons)?

- Does the preferred mode of supply differ between markets? If so, why?
- Are modes of supply linked in a way that supply in one mode is impossible without the other? For instance does cross-border supply have to be supported by establishment abroad?
- In what sense, if any, are foreign suppliers at a disadvantage to local suppliers?
- What are the most important policy barriers to providing services in foreign markets? Are trade barriers complementary so that one may render many other impediments irrelevant?
- How can the impact of restrictions on trade and other measures of economic performance be measured?

## Draft Agenda and Timing

<b>17 NOVEMBER 2010</b>	
<b>9:30- 10:00</b>	<p><b>Introduction</b>  Welcome remarks by Raed Safadi, TAD Deputy Director;  The Chair: John Dawson, University of Edinburgh and by the OECD Secretariat</p> <p>Setting the scene  Keynote speech on the distribution sector by the Chair</p>
<b>10:00-11:45</b>	<p><b>Session I: Distribution services (Food)</b></p> <p>Presentation of the OECD paper by Neil Wrigley, University of Southampton (Retail)</p> <p><i>Panelists:</i>  Jean Bergevin, EC Internal Market and Services  Adam Hemphill, Walmart  Marc Jansen, Dutch Food Retail Association (CBL)  Matthew Reisman, US International Trade Commission</p> <p><i>Discussion</i></p>
<b>11:45-12:00</b>	<b>Coffee break</b>
<b>12:00-13:00</b>	<p><b>Session II: Presentation of available indicators of restrictiveness in distribution</b></p> <p>The World Bank's Services Trade Restrictiveness Index  Batshur Gootiiz and Ingo Borchert, World Bank</p> <p>The US International Trade Commission Database on Non-tariff Measures,  retail services  Richard Brown, US ITC</p> <p><i>Discussion</i></p>
<b>13:00-14:30</b>	<b>Lunch</b>
<b>14:30- 15:45</b>	<p><b>Session III: Distribution services (Non-Food)</b></p> <p><i>Panelists:</i>  Martin Roy, WTO  Ralph Kamphöner, EuroCommerce  Matthew Bennett, UK Office of Fair Trading  Antoine de Riedmatten, Deloitte</p> <p><i>Discussion</i></p>
<b>15:45-16:00</b>	<b>Coffee break</b>
<b>16:00-17:15</b>	<b>Session IV: Break out groups *: food and non-food distribution services</b>
<b>17:15-17:45</b>	Groups report back to the plenary
<b>17:45-18:00</b>	<b>Close of the meeting</b>

(\*) Break out groups are formed with a view to organising a brainstorming session in which participants will provide the Secretariat with ideas as to relevant barriers to these services.

## ANNEX 2. LIST OF PARTICIPANTS

15-17 November 2010

<b>Australia/Australie</b>	Mr. Graham ANDREWS First Secretary Permanent Delegation
<b>Belgium/Belgique</b>	M. Philippe B. TULKENS Conseiller adjoint Service public fédéral Economie - PME - Classes moyennes et Energie
<b>Canada</b>	Christina Roy Foreign Affairs and International Trade Canada  Mr. Les WARD Director, Trade Policy Transport Canada
<b>Hungary/Hongrie</b>	Dr. Agnes JANSZKY Counsellor Permanent Delegation
<b>Japan/Japon</b>	Mr. Atsushi KUWABARA Counsellor Permanent Delegation
<b>Korea/Corée</b>	Mr. Hyunsoo YUN First Secretary Permanent Delegation
<b>Mexico/Mexique</b>	Mr. Mario ALANIS Minister for Economic Affairs Ministry of Economy Permanent Delegation  Ms. Flavia FARINETTI Counsellor for Economic Affairs, Trade and Industry Ministry of Economy Permanent Delegation  Ms. Eugenia GONZALEZ Intern Permanent Delegation of Mexico to the OECD
<b>Spain/Espagne</b>	Mrs. Mercedes RUBIO DOMINGUEZ Conseiller Economique et Commerciale, Chef Permanent Delegation



<b>Switzerland/Suisse</b>	M. Blaise SANGLARD Conseiller d'ambassade Délégation Permanente
<b>United States/États-Unis</b>	Mr. Richard BROWN U.S. International Trade Commission  Mr. Greg HALL Department of Transportation  Ms. Amanda HORAN Director for Services and Investment U.S. Trade Representative  Mr. Matthew L REISMAN US International Trade Commission
<b>EU/UE</b>	M. Jean BERGEVIN Head of Unit MARKET E2 Retail and Information Services DG Internal Market: Services, Electronic commerce and Commercial European Commission  Mr. Frank JOOST EC DG Mobility and Transport
<b>Business and Industry Advisory Committee (BIAC)/ Comité consultatif économique et industriel (BIAC)</b>	Mr. Tom SALLIS BIAC
<b>UN Conference on Trade and Development (UNCTAD)/ Conférence des Nations Unies pour le commerce et le développement (CNUCED)</b>	Mr. Jan HOFFMANN Trade Facilitation Section, TLB, SITE UNCTAD
<b>UN Economic Commission for Europe (UNECE)/ Commission économique pour l'Europe des Nations Unies (CEE-ONU)</b>	Mrs. Eva MOLNAR United Nations Economic for Europe (UNECE)
<b>World Bank/Banque mondiale</b>	Mr. Jean-Francois ARVIS International Trade Department (PREM)

Mr. Ingo BORCHERT  
Development Research Group  
The World Bank

Ms. Batshur GOOTIIZ  
Development Economics Research-Trade Unit  
The World Bank

**World Trade Organization  
(WTO)/  
Organisation mondiale du  
commerce (OMC)**

Ms. Antonia Giulia CARZANIGA  
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M. Pierre LATRILLE  
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Dutch Food Retail Association

Mr. Pierre CARIOU  
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Mr. Robert KEEN  
Chairman FIATA Working Group Sea  
FIATA

Mr. Fabien BERTHO  
Groupe d'Economie Mondiale

Mr. Glyn HUGHES  
IATA

Ms. Narjess TEYSSIER  
ICAO

Mr. Michel DONNER  
Consultant

Mr. Peter KRAUSZ  
Head of Goods Transport and Facilitation  
IRU (International Road Transport Union)

Mr. Peter SIERAT  
Transport en Logistiek Nederland

M. Jean-Pierre LEHRMANN  
Union Internationale des Chemins de Fer

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Professor  
University of Edinburgh

Mr. Neil WRIGLEY  
Professor of Economic Geography  
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Mr. Anthony KLEITZ  
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