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Working Party on the Transport of Perishable Foodstuffs

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Item 5 (a) of the provisional agenda

**PROPOSALS OF AMENDMENTS TO THE AGREEMENT ON THE INTERNATIONAL
CARRIAGE OF PERISHABLE FOODSTUFFS AND ON THE SPECIAL EQUIPMENT TO
BE USED FOR SUCH CARRIAGE (ATP)**

Pending proposals

Report of the Informal Working Group meeting on Articles 3 and 5*

Transmitted by the Government of Finland

Date, place and organizer of the meeting

1. The Informal Working Group meeting on 21-22 May 2008 was organized by the Finnish Food Safety Authority Evira. The meeting took place at the Evira head office in Helsinki.

* The present document is submitted in accordance with the Programme of Work for 2008-2012 of the Inland Transport Committee (ECE/TRANS/2008/11, Item 2.11 (a)) which calls for the "Consideration of amendment proposals to ATP to ensure it is updated as necessary".

Participants of the meeting

2. The following participated in the meeting: Mr. Dahl (Denmark), Mr. Maunu, Mr. Rantti (Finland), Mr. de Putter (Netherlands), Ms. Sokolova, Mr. Davydov, Mrs. Filipenko (Russian Federation), Mr. Godál (Slovakia), and Mr. Lawton (United Kingdom).

Opening of the meeting

3. Mr. Mikko Maunu from Evira opened the meeting. The group agreed that he would be the chairman and Mr. Pekka Rantti from MTT Testing and Standardization (Vakola) would be the secretary of the meeting. Mr. Pekka Pakkala, former Finnish WP.11 representative, and Ms. Maria Teirikko introduced Evira and its activities.

Introduction

4. At its 63rd session (Geneva, 12-14 November 2007), the Working Party on the Transport of Perishable Foodstuffs (WP.11) discussed the proposal of Finland concerning the length of the sea crossing referred to in Article 3 of ATP (ECE/TRANS/WP.11/2007/11). The WP.11 voted on the proposal and the results of the vote were: In favour 10 (Belgium, Finland, France, Germany, Italy, Norway, Poland, Portugal, Russian Federation and Sweden), against 2 (Spain and United Kingdom), abstentions 8 (Czech Republic, Denmark, Greece, Ireland, Netherlands, Slovakia, Ukraine and United States). The WP.11 agreed that it was necessary to develop a revised proposal and decided to establish an Informal Working Group to examine all implications of the proposal including the economic implications of choosing different distances (i.e. 1500 km, 3000 km, etc.) and taking account also of Article 5. The group would be lead by Finland. The WP.11 decided that the Informal Working Group meeting would be held in Helsinki in 2008.

5. The WP.11 also examined document ECE/TRANS/WP.11/2007/3 from the Road Transport Association of the Netherlands requesting clarification from WP.11 on the applicability of ATP to reefer containers. The WP.11 decided that that this document should also be considered by the Informal Working Group.

6. Finland sent an invitation to ATP Contracting Parties and international organizations on 14 February 2008 asking them to send proposals and other relevant documents to the Finnish Food Safety Authority Evira by 9 May. All documents were sent to Contracting Parties and international organizations before the meeting.

Documentation

7. The following documents were considered: Proposal of Finland (ECE/TRANS/WP.11/2007/11); document ECE/TRANS/WP.11/2007/3 from the Road Transport Association of the Netherlands; proposal of Finland for the Informal Working Group, Articles 3 and 5; proposal of Spain for the Informal Working Group, Articles 3 and 5; and proposal of the Russian Federation for the Informal Working Group, Article 3.

Justification

8. The aim of the meeting was to try to resolve the problems identified in documents ECE/TRANS/WP.11/2007/3 and ECE/TRANS/WP.11/2007/11 regarding the scope of ATP as concerns maritime containers and the length of the sea crossing referred to in ATP.

9. The purpose of the meeting was to look into the possibility of changing Articles 3 and 5 of ATP concerning transport at sea without affecting international deep-sea transport of thermal maritime containers and their existing status within the Agreement.

10. The majority of the group believed that considering land journeys separately if they are separated by a sea crossing of at least 150 km does not help to achieve the main goal of ATP, which is maintaining food safety. It also puts operators in an unequal position as choosing the ferry instead of a land route gives an opportunity to use land transport equipment of a lower technical level and/or worse condition than ATP requires. Since the entry into force of ATP, Contracting Parties have spread around the Baltic, Mediterranean and Black Seas and a significant amount of foodstuffs in land transport equipment undergoes sea crossings of much longer than 150 km. For the members of the group, the origin of the 150 km rule was not clear.

11. Any change to the existing text is difficult as it involves altering the Articles of ATP. The Articles are the legal portion of the Agreement and therefore any change would need legal approval and modifications to domestic legislation by Contracting Parties. For that reason, proposals to amend the Articles have to be well explained and potential problems have to be clearly pointed out. The Informal Working Group has attempted to achieve the above with minimum adjustments although changes are required to both Articles 3 and 5 because they are cross referenced.

12. Presently, Article 5 must be ambiguous as it is interpreted in different ways by Contracting Parties, some believing it is illegal to transport maritime containers across boundaries in the land leg after a sea voyage. The change is also intended to clarify this issue. The representative of Denmark emphasized that proposing a change to ATP would lead to demands to document the need for the desired change and that it was a prerequisite to answer the following questions before any debate by the Working Party:

- (a) The reasons and the background for the 150 km rule.
- (b) How the scope of ATP should be interpreted regarding different combinations of international land- and sea transport.
- (c) Documentation that it is a significant problem when sea transport exceeds 150 km and should therefore no longer be included in ATP.

13. The representative of Denmark did not think it realistic to attain agreement in WP.11 before these questions were answered. He felt it was up to the secretariat to find the documents and prepare the necessary responses for questions (a) and (b), which could establish the basis for changing ATP. The representatives of Finland questioned whether such documents existed.

14. The representative of Denmark was of the opinion that the meeting had a technical character and its findings could not be considered binding for Contracting Parties.

Proposal regarding Article 3 of ATP

15. The Informal Working Group discussed the meaning of the present text. It was noted that depending on the border crossings before and after the sea crossing and the length of the sea crossing, several different cases could be identified from the ATP standpoint. It was noted that international transport in land transport equipment and without transloading of goods, which starts with a national land journey, continues with a sea crossing of more than 150 km and ends after a land journey in another country, is completely outside the scope of ATP.

16. The representatives of Finland pointed out that the Finnish intention was not to hinder the use of classified thermal maritime containers. However, land transport equipment, which does not fulfil ATP requirements, should not be used for international land-sea-land transports as is now possible by applying the 150 km rule in Article 3. That kind of practice cannot be considered to be in line with the spirit of ATP of improving food safety. It also puts operators in an unequal position.

17. The representatives of the Russian Federation described their situation and pointed out the importance of maintaining food safety.

18. The group also pointed out the existing texts of annex 2 paragraph 1 and annex 3 paragraph 1 as to why it is not necessary to specify the type of equipment: “...*the transport equipment has to be selected and used in such a way that during carriage the highest temperature of the foodstuffs at any point of the load does not exceed the indicated temperature.*” This indicates that not all ATP equipment (e.g. eutectic vehicles) is suitable for (long) sea crossings.

19. After a lively discussion, the group accepted the following proposal to amend paragraph 2 of Article 3 forwarded by Finland in document ECE/TRANS/WP.11/2008/2:

“2. *The provisions of paragraph 1 of this Article shall likewise apply to sea crossings ~~of less than 150 km~~ on condition that the goods are shipped in equipment used for the land journey or journeys without transloading of the goods and that such crossings precede or follow one or more land journeys as referred to in paragraph 1 of this Article or take place between two such land journeys.*”

20. Alternatively the group also considered the following text:

“2. *The provisions of paragraph 1 of this article shall likewise apply to journeys entailing sea crossings ~~of less than 150 km~~ on condition that the goods are shipped in equipment used for the land journey or journeys without transloading of the goods. The length of the sea crossing shall be less than 150 km except in cases of carriage in heated or mechanically refrigerated equipment whose thermal appliances are energised/supported by the carrying vessel. ~~and that such crossings precede or follow one or more land journeys as referred to in paragraph 1 of this article or take place between two such land journeys.~~”*

Proposal regarding Article 5 of ATP

21. It was apparent to the group that amending Article 3 was not possible without also amending Article 5. The existing text of Article 5 was considered by the group to be ambiguous. There was also discussion concerning the existence of thermal maritime containers that do not conform to ISO standard 1496-2 or are not ATP certified. The group decided to ask WP.11 how to proceed.

22. The representatives of the Russian Federation indicated that they would like to see a change to Article 5 whereby thermal maritime containers constructed according to ISO standard 1496-2 are required to comply with ATP 6 years after their date of manufacture. They would not like to distinguish between thermal maritime containers and other thermal containers. There followed a discussion concluding that the linkage of ISO standard 1496-2 and ATP, and ATP classification of 6 year old ISO containers without individual insulation capacity and cooling efficiency tests for each container are virtually impossible.

23. After discussion, it was agreed that the following proposal to amend Article 5 contained in document ECE/TRANS/WP.11/2008/2 would be forwarded by Finland:

“The provisions of this Agreement shall not apply to carriage in containers classified as thermal maritime by land without transloading of the goods where such carriage is preceded or followed by a sea crossing of at least 150 km ~~other than a sea crossing as referred to in article 3, paragraph 2, of this Agreement.~~”

24. Instead of referring to Article 3, paragraph 2, the length of the sea crossing, “at least 150 km”, is mentioned. In this way the amendment of Article 3 does not affect the status of thermal maritime containers.

Containers classified according to ISO 1496-2

25. The group was informed that ISO standard 1496-2 is under revision and a new draft is available.

Document ECE/TRANS/WP.11/2007/3 from the Road Transport Association of the Netherlands

26. The majority of the group was of the opinion that it should be possible to transport classified thermal maritime containers coming in from a sea voyage to their final destination in the territory of an ATP Contracting Party or to the harbour before a sea voyage.

27. Arguments in support of allowing transport in classified thermal maritime containers to be accepted are that transloading into ATP-approved equipment before or after a sea voyage would increase the risks of contamination due to changes in transport temperature, while it is accepted that thermal containers, at least those classified and constructed according to ISO 1496-2, are capable of maintaining transport conditions in the same way as ATP-approved equipment.

28. The current text of Article 5 of ATP can be interpreted in two ways if classified thermal maritime containers are used for a combination of sea and inland transport:

- Classified thermal maritime containers can be used for international inland transport and no requirements from ATP apply, or
- Classified thermal maritime containers are outside the scope of ATP and can only be transported within the country where loading on or off the ship takes place.

29. Although the first option seems to be intended, no evidence in official documents or reports was found to support either of the two interpretations. The conclusion was that if a text is open to interpretation, it needs to be clarified.

30. Another proposed amendment discussed was the introduction of ISO standard 1496-2 as a specification for classified thermal maritime containers. This clarification has already been introduced as a comment in the ATP Handbook based on a proposal from Spain. The interest in introducing this specification of thermal maritime container is related to new developments in reefer containers.

Deep sea and short sea shipping

31. The text of Article 5 may have been introduced with long distance sea voyages in ISO 1496-2 reefer containers in mind. However, new developments include the introduction of reefer containers which are outside the scope of ISO 1496-2. The new containers are generally known as 45' pallet wide (45' PW) reefer containers. Due to the larger dimensions of the 45'PW containers than ISO 1496 containers they are especially suited for shipping operations along the shores of the European continent or so-called "short sea shipping". The main concern is that the specifications, including the insulation properties, are determined by the buyer of the container rather than in a standard like ISO 1496-2.

45' Pallet wide reefer containers

32. The 45' PW containers were introduced about 6 years ago and their use is expanding rapidly. The specifications of these containers are specifically intended for multimodal transport in Europe. With an internal width of 2.44 meters and a length of 13.28 meters, the dimensions are such that the loading floor space is comparable to a semi-trailer and is sufficient to load 33 Euro pallets. The only disadvantage of the 45'PW is the higher empty weight of the combined container/carrying vehicle. The front corners of the container are squared off to fulfil the maximum length requirements/exemptions for road vehicles in the EU. The 45' PW container is equipped with its own refrigerating unit which can be electric or diesel/electric.

33. The use of 45' PW containers over the last six years has been based on the interpretation of Article 5 of ATP that classified thermal maritime containers may be used in a combination of sea (more than 150 km) and (international) inland transport outside the scope of ATP.

34. Introducing a specification that only ISO 1496-2 reefer containers can be used would block this entire industry. Because of their intended use for combined road-rail inland transport, the group felt that these containers should be regarded as ATP equipment and treated in that way.

35. The group discussed the concept of modal shift and short sea shipping, which is being encouraged by the European Union to limit road congestion and pollution, and agreed that there was a need to reconsider the scope of the ATP. At this moment, the scope is limited to inland transport by road and rail but it should be considered whether to extend it to inland waterways and coastal shipping to create clarity for users.

36. The group did not come to a conclusion on how to proceed on this point. The WP.11 should decide how to proceed in this case as soon as possible.

37. The group agreed that there should be no economic implications regarding the classification of sea containers for those operating according to the spirit of ATP and ISO.

Other business

38. The group agreed that the conclusions of the Informal Working Group meeting should be reported to the IIR subcommission "CERTE" meeting on 5-6 June 2008 in Prague.

39. The group also discussed the use of wireless temperature monitoring instruments according to EN 12830. The representative of Finland remarked that there have been some difficulties in testing wireless instruments according to Commission Regulation 37/2005. A Finnish testing laboratory has posed the questions below to Evira. These questions should be discussed by WP.11 in Geneva and the discussion could be reflected in the report of the session and made available to Contracting Parties and the European Commission.

- Regarding electromagnetic compatibility (EMC) properties and evaluation, what is the correct standard to apply? EN 12830 refers to EN 50081-1 and 50082-1 which are replaced by standards EN 61000-6-3 and -6-4.
- EN 12830 also mentions "or any other specific standard when applicable". Is it also possible to use standards from the EN 301489 series?
- Is it necessary to take account of Automotive EMC Directive 2004/104/EC?
- Is it necessary to take account of the properties of the instrument as a radio terminal? EN 12830 mentions nothing about it. The requirements for such devices are given in Directive 1999/5/EC on radio equipment and telecommunications terminal equipment.
- Is it necessary to take account of hazards related to electricity? Directive 1999/5/EC sets out electrical safety requirements regardless of operating voltage. What is the correct standard to apply, e.g. EN 60950-1?

Adoption of the report

The Informal Working Group adopted the draft report prepared by the secretary.

Technical visit

The group visited Suomen Kuljetuslaite Oy. The private company is a distributor of refrigeration units and also an ATP testing station for re-approvals.
