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Economic Commission for Europe**Inland Transport Committee****Working Party on the Transport of Perishable Foodstuffs****Sixty-sixth session**

Geneva, 9-12 November 2010

Item 5 (a) of the provisional agenda

Proposals of amendments to the ATP: Pending proposals**Sea crossings and inland waterways: proposed amendments to Articles 3 and 5 of ATP¹****Transmitted by the Government of Finland****Introduction**

1. According to the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage (ATP), the length of sea crossings affects how the carriage of perishable foodstuffs in land transport equipment is treated. In certain cases, if the sea crossing is greater than 150 km, the ATP is not applied even if land transport equipment is used.
2. However, there are no practical reasons why carriage between exactly the same places and using similar equipment should be treated differently.
3. The present document proposes to clarify the situation by removing from Article 3 the reference to the length of the sea crossing and by amending Article 5.
4. This proposal does not affect the treatment of "containers classified as thermal maritime".

Background

5. At the 63rd session of WP.11, Finland proposed amendments to Article 3 of ATP (see document ECE/TRANS/WP.11/2007/11). The proposal was related to the length of the

¹ Submitted in accordance with the programme of work of the Inland Transport Committee for 2010–2014 (ECE/TRANS/208, para. 106; ECE/TRANS/2010/8, programme activity 02.11).

sea crossing mentioned in paragraph 2 of Article 3 of the ATP. During the meeting it became clear that the proposal could not be accepted as it was. Instead, an informal working group was established to re-draft the proposal and also take into account the connection to Article 5 of ATP. The group was lead by Finland.

6. At the 64th session of WP.11, Finland made a new proposal which included also a proposed amendment to Article 5 of ATP. The WP.11 examined the report of the informal working group (ECE/TRANS/WP.11/2008/3) which had met in Helsinki on 21-22 May 2008 and the proposal from Finland to amend Articles 3 and 5 based on the findings of the informal group (ECE/TRANS/WP.11/2008/2). It was agreed that before this work could be completed further clarification was needed regarding containers, including thermal maritime containers, and their relationship to ATP. The WP.11 agreed that the informal working group should continue its work on this subject. The group should also discuss the possibility of extending the scope of ATP to cover transport by inland waterways. It was suggested that the group could work by correspondence. A first draft proposal was sent by e-mail on 27 February 2009 and a second on 20 May 2009. The following countries sent comments: Denmark, Slovakia, Spain, Sweden, United Kingdom and United States.

7. At the 65th session of WP.11, Finland made a revised proposal which included also thermal maritime containers and carriage by inland waterways, and their relationship to ATP (ECE/TRANS/WP.11/2009/2). Discussion at the session made it very clear that it was not possible to mention a standards organization in the ATP because it would not be acceptable to change the Agreement itself every time a particular standard is revised. This is an important point if the standards organization intends to make changes to the standards. At the meeting, Germany argued that containers were already included in the ATP under insulated equipment in Annex 1. Finland said it would make a revised proposal to the next session working by e-mail with the informal working group.

Justification

8. In Article 3 of the ATP it is stated "In the case of carriage entailing one or more sea crossings other than sea crossings as referred to in paragraph 2 of this article, each land journey shall be considered separately". Sea crossings "other than sea crossings as referred to in paragraph 2 of this article" mean sea crossings which are at least 150 km long.

9. This means that carriage of perishable foodstuffs between two countries, if it involves a sea crossing of at least 150 km, is divided into sections which are considered separately according to the ATP. First of all the sea crossing is outside the scope of the ATP, but the land parts are too if they do not cross international borders. ATP is only applied to those parts of the total carriage by land which cross international borders.

10. To illustrate the problem, goods can be loaded in the southern part of Germany, then cross the Baltic Sea on a ro-ro ship before finally being unloaded in the northern part of Finland. The total length of such a journey could be more than 3 000 km and it might last more than four days, but because of the present "150 km rule", using ATP equipment would not be required. Only national regulations would apply.

11. Because a considerable quantity of perishable foodstuffs transported to and from Finland crosses the Baltic Sea and land transport equipment on ro-ro ships is commonly used for that transport, Finland considers that food safety could possibly be endangered if transport equipment is used which has never fulfilled ATP requirements or for which ATP classification has expired.

12. It is hard to understand why transport between exactly the same points must be done in ATP equipment if instead of a sea crossing, a land route is selected. This kind of practice puts the operators in an unequal position and is unfair to those having proper and well-maintained equipment. Transport companies have to take into account different national regulations but on the other hand it is possible for them to use land transport equipment of doubtful condition.

13. Ro-ro ship connections, which are common in the Baltic Sea, are also possible or already operational in the Mediterranean, North Sea, Eastern Atlantic and Black Sea. Some of those connections depart from non-ATP or non-EU or EEA countries with differing national regulations and practices for transporting foodstuffs. Increasing energy costs might even encourage the use of sea crossings when possible.

14. There is a better guarantee of food safety during sea crossings and journeys by inland waterways if the land transport equipment used is ATP classified. Conditions on board ships or inland waterway vessels may not always be optimal for the transport of refrigerated foodstuffs, with, for example the possibility of power cuts in the loading port or during carriage.

Simplification

15. The proposed modification is expected to make it easier to solve problems between transport companies and competent authorities concerning international transport by reducing the risk of problems during sea crossings or carriage by inland waterways. It will lead to an improvement in the average condition of the equipment used to transport perishable foodstuffs and help to maintain the safety of perishable foodstuffs.

16. The proposed text clarifies the requirements for the use of land transport equipment on routes including a sea crossing by stating that if land transport equipment is used it shall always be ATP classified regardless of the length of the sea crossing or leg by inland waterways.

17. It will be easier to read and understand the ATP Agreement without the current exception for sea crossings. This will be the case for transport companies, control authorities, trading, and wholesale firms.

Economic consequences

18. The proposal would not increase costs for operators using ATP classified equipment. Demand for services applying the present "150 km sea crossing rule" would probably be reduced and be transferred to operators using ATP classified equipment or "containers classified as thermal maritime".

Enforceability

19. The new text will be clearer for all companies and also for control authorities.

20. The exception concerning "containers classified as thermal maritime" in Article 5 of ATP is proposed to be amended so that the position of such containers remains as it is currently.

Proposal

Modify Articles 3 and 5 of the ATP as follows. Articles 1, 2, 4 and 6-20 remain unchanged.

"Article 3

1. The provisions of article 4 of this Agreement shall apply to all carriage, whether for hire or reward or for own account, carried out exclusively - subject to the provisions of paragraph 2 of this article - by rail, by road or by a combination of the two, of

- quick (deep)-frozen and frozen foodstuffs, and of
- foodstuffs referred to in annex 3 to this Agreement even if they are neither quick (deep)-frozen nor frozen,

if the point at which the goods are, or the equipment containing them is, loaded on to a rail or road vehicle and the point at which the goods are, or the equipment containing them is, unloaded from that vehicle are in two different States and the point at which the goods are unloaded is situated in the territory of a Contracting Party.

~~In the case of carriage entailing one or more sea crossings other than sea crossings as referred to in paragraph 2 of this article, each land journey shall be considered separately.~~

2. Notwithstanding the exceptions outlined in article 5 of this Agreement, the provisions of paragraph 1 of this article shall likewise apply to international sea crossings of less than 150 km and to carriage by inland waterways 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~~ carriage by sea or inland waterways precedes or follows one or more land journeys as referred to in paragraph 1 of this article or takes place between two such land journeys.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this article, the Contracting Parties need not apply the provisions of article 4 of this Agreement to the carriage of foodstuffs not intended for human consumption."

"Article 5

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 or carriage by inland waterways of more than 150 km. ~~other than a sea crossing as referred to in article 3, paragraph 2, of this Agreement.~~ Containers classified as thermal maritime are containers having a maximum external width of 2.438 m and a minimum stacking capability of 192,000 kg at 1.8 g vertical acceleration."

Note: The revised articles shall be applied 12 months after the date of their entry into force.