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

Geneva, 25-28 October 2011

Item 5 (a) of the provisional agenda

**Proposals of amendments to ATP: Pending proposals****Sea crossings and inland waterways: proposed amendments to Articles 3 and 5<sup>1</sup>****Transmitted by the Government of Finland****I. 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". There are many different definitions of containers in different standards. Thermal maritime containers or other containers used for refrigerated transport have to conform to an equivalent national or international standard approved by the competent authority of an ATP Contracting Party.
5. This proposal does not mention any particular standard because standards are likely to be changed and updated and WP.11 does not have any control over that process.

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<sup>1</sup> 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).

6. Food safety may be endangered if land transport equipment is used during the sea crossing or carriage by inland waterways.

## II. Background

7. At the 63<sup>rd</sup> 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 sea crossing mentioned in paragraph 2 of Article 3 of 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.

8. At the 64<sup>th</sup> 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 and 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. The following countries sent comments: Denmark, Slovakia, Spain, Sweden, United Kingdom and United States.

9. At the 65<sup>th</sup> 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 that they would make a revised proposal to the next session working by e-mail with the informal working group.

10. At the 66<sup>th</sup> 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.11/2010/1). The proposal regarding Articles 3 and 5 was not accepted but many countries supported the proposal for Article 3 (France, Germany, Ireland, Italy, Spain and Sweden). The revised Article 5 was supported by France, Germany and Italy. Against the proposal for Article 3 were Denmark, Netherlands, Norway and United States. Against the proposal for Article 5 were Denmark, Netherlands, Norway, Poland, Portugal, Spain, Sweden, United Kingdom and United States. Many countries agreed that changes concerning the sea crossing mentioned in the ATP were necessary. At the meeting it was decided that Finland should make a revised proposal for the 67<sup>th</sup> session taking account of the comments of delegates. Finland sent a revised proposal to Contracting Parties by e-mail and received comments from a number of countries.

## III. Justification

11. 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.

12. 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 ATP. First of all the sea crossing is outside the scope of 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.

13. 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.

14. 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.

15. 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 dubious condition.

16. 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.

17. There is a better guarantee of food safety during sea crossings and carriage 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.

#### **IV. Simplification**

18. 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.

19. 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.

20. 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.

## **V. Economic consequences**

21. 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". If the temperature of frozen food is higher than -15 °C after a sea crossing or carriage by inland waterways the products have to be used the same day or the next day. It is also possible that the frozen food may have to be destroyed if the temperature of the load reaches higher than -15 °C. It is impossible to freeze food after transportation because the legislation of the European Union and of Finland itself regulates against this. There are very significant consequences for transport companies, food factories and wholesale firms if products have to be destroyed after a sea crossing or carriage by inland waterways. Many transport problems are difficult to cover by insurance if the land transport equipment is not ATP classified and a temperature recorder has not registered the inside temperature during transport. Often, the land transport equipment may be without electricity for 4-6 hours in the harbour and sometimes it is possible that the cooling equipment malfunctions during the sea crossing. It is very important therefore that the land transport equipment is ATP classified also during sea crossings and carriage by inland waterways and that the inside temperature of the transport equipment is maintained at the correct level if electricity supply is lost in the harbour.

## **VI. Enforceability**

22. The new text will be clearer for all companies and also for control authorities. It will avoid the need for control authorities to make inspection visits to transport companies or wholesale firms or food factories. Currently, if the temperature of the foodstuffs is higher than -15 °C, an official control has to be carried out to check the product temperature of frozen foods after a sea crossing.

23. 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. Containers have to comply with the definitions and standards set forth in Annex 1 to ATP.

## **VII. Food safety**

24. Food safety may be negatively affected if the refrigerator malfunctions during the sea crossing or carriage by inland waterways or if the container is without electricity during carriage by road between the harbour and the food factory or between the food factory and the harbour. If the temperature of the frozen products is higher than -15 °C, then it has to be used in production either the same day or the next day. The same criteria are also mentioned in Annex 2, Appendix 2, paragraph 15 (i) of the ATP Agreement.

25. Food safety of chilled foodstuffs is an issue because microbiological growth is very rapid if the temperature increases by more than 5 °C. Microbiological growth is very rapid if the temperature is between +8 °C and +12 °C and therefore monitoring of the temperature is also very important for chilled foods. If the product is frozen (0 to -20 °C), the growth of micro-organisms is impossible. The real problem is if the temperature is between +8 °C and +12 °C for chilled foodstuffs.

## VIII. Proposal

Modify Articles 3 and 5 of 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. The provisions of paragraph 1 of this article shall likewise apply to sea crossings ~~of less than 150 km~~ and 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 sea crossings or carriage by inland waterways precede or follow one or more national land journeys ~~as referred to in paragraph 1 of this article~~ or take 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

#### *Proposal 1*

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 ~~other than a sea crossing as referred to in article 3, paragraph 2, of this Agreement~~ or carriage by inland waterways of more than 150 km. 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. Thermal maritime containers are constructed according to appropriate national or international requirements and meet standards of an equal level or higher than those specified in the present Agreement.

#### *Proposal 2*

The provisions of this Agreement shall not apply to carriage by land in a container where one or more national land journeys is preceded or followed by a sea crossing or carriage by inland waterways provided the container is constructed according to appropriate national or international requirements and meets standards of an equal level or higher than those specified in annex 1 to this Agreement.

*Note:* The revised Articles 3 and 5 shall be applied 12 months after the date of their entry into force.