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Working Party on the Transport of Perishable Foodstuffs

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Item 5 (b) of the provisional agenda

Proposal of amendments to the ATP: New proposals

Proposals on improving decision making and voting rules

Transmitted by the Government of Belgium as chair of the informal working group

Introduction

1. During its seventieth session, WP.11 was informed that some delegations in the Inland Transport Committee had criticized the voting procedures used by WP.11 for decision making and felt that they were hindering the proper evolution of the ATP. They had invited WP.11 to assess whether there was a need to reconsider its decision-making procedures and urged Contracting Parties to refrain wherever possible from making objections to amendments.

2. During the seventieth session of WP.11, delegations had a long discussion on the assessment of the need to reconsider its decision-making process on the basis of document ECE/TRANS/WP.11/2014/7 of the Secretariat. This document reviewed voting practices in other ITC subsidiary bodies and proposed that WP.11 consider amending its rules of procedure to allow decision making by majority vote rather than by unanimous vote. The subject remained open for further consideration and WP.11 agreed to establish an informal working group under the leadership of Belgium to discuss the issue in greater detail and to report its findings back to WP.11.

3. This document is the result of the activities of this informal working group and contains a package of proposals to ensure the proper evolution of the ATP and to optimize the work of WP.11. Under A there is a proposal to reconsider the decision-making procedure within the ATP itself. Under B there is a proposal to optimize the application of the rules of procedure of WP.11 and their interpretation. Under C a proposal can be found with guidelines for the preparation and submission of documents for the Working Party.

A. Proposal to reconsider the decision-making procedure within the ATP itself

4. It is urgent to modernize the ATP revision procedure to bring it into line with both technological and political and economic developments. Many challenges within the ATP have been ongoing for several years now (the distinguishing marks affixed by manufacturers of ATP vehicles, tests for the renewal of certificates for older ATP vehicles); some issues like the multi-compartment multi-temperature equipment and the extension of the scope to fruit and vegetables discussions have been ongoing for decades. One of the most important reasons that little progress can be made in amending the ATP is due to the unanimity requirement as set out in article 18 of the ATP Agreement.

5. Furthermore, it is urgent to keep the agreement up to date as the instrument and warrantor for high quality products and health protection worldwide in order to achieve a greater geographical coverage by increasing the number of contracting parties to the ATP. Flexible revision of technical issues concerning new materials, new equipment and new control methods would make the ATP more attractive to third countries to become contracting parties.

6. The revision of article 18 has been on the agenda of WP.11 on several occasions. As from 1995 the unanimity rule started being questioned and several delegations expressed also on other occasions the view that, in order to modernize ATP, it would be essential to establish the rule of majority voting, as is the case for other ECE agreements and conventions. For improving the ATP revision procedure, proposals were made to adapt the voting procedure for the ATP itself on the one hand, and to use the majority vote procedure only with regard to the annexes to the ATP, and not for the body of the ATP itself, on the other hand. The latter was introduced to make the distinction between technical amendments relating to the annexes and the amendments concerning the articles of the agreement.

7. The informal working group reintroduces the amendment proposal that was tabled by Italy in 2002 and taken over by Portugal in 2007 to put an end to the unanimity rule. The aim of this proposal is that at least three objections should be required in order to reject an amendment to the technical annexes to the Agreement, while maintaining the rule of unanimity for the articles of the Agreement itself.

8. The following amendments to paragraphs 4, 5 and 8 of article 18 of the ATP are proposed by the informal working group:

*“4. If an objection to the proposed amendment **to the Articles to this Agreement** is stated **or at least three objections are stated to the proposed amendment to the Annexes to this Agreement** in accordance with the terms of paragraphs 2 and 3 of this article, the amendment shall be deemed not to have been accepted and shall be of no effect.*

*5. If no objection to the proposed amendment **to the Articles to this Agreement** has been stated **or less than three objections have been stated to the proposed amendment to the Annexes to this Agreement when a majority of votes are in favour**, in accordance with paragraphs 2 and 3 of this article, the amendment shall be deemed to have been accepted on the date specified below:*

...

*8. Independently of the amendment procedure laid down in paragraphs 1 to 6 of this article, the annexes and appendices to this Agreement may be modified by agreement between the competent administrations of all the Contracting Parties **or if less than three objections have been stated to the proposed amendment**. If the administration of a Contracting Party has stated that under its national law its agreement is contingent on*

special authorization or on the approval of a legislative body, the consent of the Contracting Party concerned to the modification of an annex shall not be deemed to have been given until the Contracting Party has notified the Secretary-General that the necessary authorization or approval has been obtained. The agreement between the competent administrations may provide that, during a transitional period, the old annexes shall remain in force, wholly or in part, concurrently with the new annexes. The Secretary-General shall specify the date of the entry into force of the new texts resulting from such modifications.”.

B. Application of the rules of procedure of WP.11

Decision making and voting rules

9. Following current practice, every proposal introduced in WP.11 is put to the vote. All votes during the sessions are recorded by the Chairman with the assistance of the Vice-Chairmen and the secretariat. This is a lengthy process that slows down the proceedings of the Working Party and of which the result is most of the time predictable especially when divergent proposals are put on the table by different contracting parties. Furthermore, in this process it is not unusual that contracting parties who abstained from voting, state that they have done so to avoid any blockage in the work of WP.11 and that they reserve the right to make an objection to the proposed amendments concerned once they have been circulated by the United Nations Treaty Section.

10. In the past it was not a common practice for the Working Party to put every proposal to the vote. Until 2005 proposals were only put to the vote in the rare case that a contracting party explicitly requested to do so. In all other cases, after an exchange of views on a certain topic, the Working Party set up a small group to find a solution which would accord with the interest of all parties. These small groups met during breaks of the formal meeting of WP.11 most of the times under the chairmanship of the initiator of the proposal. If they could not come up with a satisfactory solution for all parties, the item was kept on the agenda for the next session.

11. In 2010, WP.11 adopted its terms of reference and rules of procedure as proposed by the secretariat and inspired by those developed for other Working Parties serviced by the Transport Division. Rule 35 of the Terms of Reference and Rules of Procedure of WP.11 reads: “Decisions regarding the ATP shall be carried by a unanimous vote in favour. Decisions regarding the ATP Handbook shall be carried by a majority vote in favour provided that there are no more than three votes against the proposal. All other decisions shall chiefly be taken by consensus but in the absence of consensus, decisions shall be taken by a majority of the full participants present and voting.”.

12. Consensus is the preferred manner of decision-making within ITC subsidiary bodies, also within WP.11. The “unanimous vote in favour” as stated in the Rules of Procedure means a vote on a matter which no Contracting Party present and voting objects to. Therefore the informal working group proposes to reinstate the practice of setting up small groups to find solutions that could accord with the interest of all contracting parties. In that way WP.11 would make every effort to reach consensus. Taking into account the lengthy and time consuming practice of putting each proposal to the vote, the informal working group also proposes only to vote on those proposals that could be adopted by a unanimous vote in favour. The informal working group therefore suggests to add a third category of proposals to the agenda, namely “Proposals put to the vote” next to the two existing ones, i.e. pending proposals and new proposals.

C. Guidelines for the preparation and submission of documents for the Working Party

13. At this moment, the Terms of Reference and Rules of Procedure for WP.11 contained in ECE/TRANS/WP.11/229 have an appendix with a standard format for documents regarding amendments to a legal instrument.

14. It might be helpful for the secretariat to prepare some guidelines for the preparation and submission of all documents to the Working Party and not only for those documents amending the ATP itself. This uniform approach would bring more consistency to the different proposals considered by WP.11.

15. A good practice that could be taken over are the ‘Templates for documents to be submitted to the Working Parties (GRs) and to the World Forum WP.29’ contained in informal document WP.29-157-07/Rev.1. In this regard, to mark the proposed amendments to the existing text, the proposals for consideration by the Working Party could be prepared either in track change mode or using bold text (for additions) and strikethrough (for deleted text). Several templates could be worked out for amendments to the ATP or to the ATP Handbook and for documents raising questions of interpretation.

16. The informal working group would give guidance to the secretariat in elaborating these guidelines for the preparation of documents. After adoption by WP.11 these guidelines could be put on the WP.11 website.
