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Working Party on the Transport of Dangerous Goods

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Proposals for amendments to Annexes A and B of ADR: new proposals

Exemption of the Special provision 363 in

Transmitted by the Government of Switzerland

Introduction

1. While trying to formulate a text for a multilateral agreement which solves the problem that we have formulated in documents 2012/1 and INF.5 we came to the conclusion that the scope of the exemption adopted in September 2011 in 1.1.3.3 (c) by the Joint Meeting and which is found now in special provision 363 relates only to the products which are not motor-fuels ("carburant" in French).

2. Let us recall on this subject that the WP.15 confirmed in November 2011 that the exemption in 1.1.3.3 was not provided to exempt liquid fuels intended for heating devices and that for this reason the WP.15 decided that the terms of the heading in French in 1.1.3.3 should continue to refer to the "motor-fuel" ("carburant" in French). Given that the scope of the new exemption for machinery and equipment concerns also the liquid fuels which are not "motor-fuels" the WP.15 decided for reasons of clarity at the same time to transfer in a separate special provision SP 363 the text that the Joint Meeting had adopted in 1.1.3.3 c). Independently if the text is or not in 1.1.3.3 (c) and bearing in mind the approach of the WP.15, the sentence "liquid fuels, other than those exempted according to paragraphs (a) or (b) of 1.1.3.3..." adopted by the Joint Meeting in 1.1.3.3 (c) on oral proposal of the United Kingdom says that only the liquid fuels which are not motor-fuels can benefit from the exemption. Thus, only heating oil is allowed to be exempted by SP 363. Of course this was never the intention of this exemption. The text says:

"SP 363 This entry also applies to liquid fuels, other than those exempted according to paragraphs (a) or (b) of 1.1.3.3, above the quantity specified in column (7a) of Table A of Chapter 3.2, in means of containment integral to equipment or machinery (e.g. generators, compressors, heating units, etc) as part of their original design type..."

3. In order to circumvent the problem it is necessary to note that 1.1.3.3 does not exempt the motor-fuel but the **carriage** of this motor-fuel according to (a) or (b). Thus instead of saying "liquid fuels, other than those exempted according to paragraphs (a) or (b) of 1.1.3.3..." are in the scope of special provision 363, it would be advisable to refer to "the **carriage** of liquid fuels not exempted according to 1.1.3.3 (a) and (b)...".

4. The advantage of this proposed wording is that it is no more the product (motor-fuel) which does not fall in the scope of the SP 363 but the art of carriage. Machinery and equipment containing liquid motor-fuels ("carburants" in French) could then be exempted following SP 363 if they are not yet exempted following 1.1.3.3.

5. Another point should be taken into account by the WP.15. It is owing to the fact that the reference to 1.1.3.3 (b) made in the SP 363 as a case of exemption which is not in the scope of the SP 363, has the consequence that no equipment permanently affixed on a vehicle will be ever eligible to benefit from the exemption of SP 363 because 1.1.3.3 (b) exempts any means of conveyance independently of the quantities of fuel contained. Thus vehicles can always benefit from the exemption in 1.1.3.3 (b) and cannot be exempted following the new exemption. That is not the case of 1.1.3.3 (a) where the quantities are limited and trailers containing more than 500 litres and transport units carrying more than 1500 litres could benefit from the exemption in SP 363. However as we indicated in document 2012/1 and INF.5, 1.1.3.3 (b) is applicable only to the vehicles transported as a load, and this is not the best way envisaged to transport a road vehicle. This is why the WP.15 should consider not to mention 1.1.3.3 (b) in the way it is actually formulated. Considering that the exemption of 1.1.3.3 is broader than the one in SP 363 (no marking and documentation is prescribed), it is very unlikely that a participant to a carriage which could benefit from the exemption of 1.1.3.3 will give up it and will instead apply the exemption SP 363. It thus seems not very useful to specify that the exemption of 1.1.3.3 (a) and (b) is not in the scope of the DS 363. By introducing this reference the intention was to reproduce what the Orange Book precise, namely that the vehicles are not concerned with the DS 363. As indicated in document 2012/1 and INF.5 it seems however necessary to us to give up this exclusion of the vehicles of the field of application of SP 363. In addition the only vehicles which would be interested in being able to profit from the exemption of SP 363 are those which cannot benefit from the exemption of 1.1.3.3. That is, vehicles which cannot be exempted following 1.1.3.3 (a) carrying more than 1500 litres per transport unit or more than 500 litres per trailer.

6. Instead to try to exclude the vehicles we would better say that SP 363 is only applicable to those carriages which are not already exempted following 1.1.3.3.

Proposal

The introductory text in the Special provision 363 should read:

"SP 363

This entry also applies to *the carriage of liquid fuels which cannot be exempted according to 1.1.3.3*, above the quantity specified in column (7a) of Table A of Chapter 3.2, in means of containment integral to equipment or machinery (e.g. generators, compressors, heating units, etc) as part of their original design type. *Such carriage is* not subject to other provisions of ADR if *it* meets the following:..."
