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**United Nations Commission on  
International Trade Law**  
**Working Group III (Transport Law)**  
**Twenty-first session**  
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## **Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]**

### **Proposal of the delegation of the Netherlands to include “road cargo vehicle” in the definition of “container”**

#### **Note by the Secretariat\***

In preparation for the twenty-first session of Working Group III (Transport Law), the Government of the Netherlands submitted to the Secretariat the attached proposal.

The document in the attached annex is reproduced in the form in which it was received by the Secretariat.

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\* The late submission of the document reflects the date on which the proposals were communicated to the Secretariat.



## Annex

### **Proposal of the delegation of the Netherlands to include “road cargo vehicle” in the definition of “container”**

1. Trailers and other road cargo vehicles loaded with goods are frequently carried by sea on board ferries and other specialized vessels. In the view of the delegation of the Netherlands, the purpose of the most important provisions in the draft convention that apply to containers, would be well served by making these provisions equally applicable to road cargo vehicles when they are loaded with goods and carried by sea.

2. In this context, reference must first be made to an ambiguity in draft article 62,<sup>1</sup> paragraph 3. Article 62 is the provision that provides for the limitation of the carrier’s liability, and paragraph 3 states that the packages enumerated in the contract particulars as packed in the “article of transport”, are deemed to be the packages for limitation purposes. In other words, the package limitation applies to each such package. However, the term “articles of transport” refers in paragraph 3 only to “a container, pallet, or similar article of transport used to consolidate goods”. As a result, it is unclear whether this term also includes trailers and other road cargo vehicles. In the view of the delegation of the Netherlands, it must be clarified that it should.

3. Without such clarification, a ferry operator could regard a road cargo vehicle loaded with goods as a single unit for limitation purposes. This would mean that in cases where the road cargo vehicle operator is liable to its customer for cargo damage that occurred on board the ferry, it could only to a limited extent take recourse against the ferry operator.<sup>2</sup> In the view of the delegation of the Netherlands, this possible result from the current draft of article 62, paragraph 3, would not be fair. The road cargo vehicle operator should be entitled, by enumerating in the contract particulars the number of packages loaded in the road cargo vehicle, to take recourse against the ferry operator up to the package limitation for each package loaded in the vehicle. In practice, this would, in a great majority of cases, mean full recourse.<sup>3</sup>

4. A second question is whether, in cases where the number of packages loaded in the road cargo vehicle is enumerated in the contract particulars, the ferry operator may qualify this information under article 42. In this respect, the most relevant part of article 42 is paragraph 3 that applies to “closed containers”. If the above clarification of article 62, paragraph 3 is acceptable to the Working Group, it would

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<sup>1</sup> The article numbering in this proposal is that of A/CN.9/WG.III/WP.101.

<sup>2</sup> The concern of the International Road Union (IRU) raised in paragraph 3 of A/CN.9/WG.III/WP.90, seems to refer to this point.

<sup>3</sup> The proposed clarification may also have another effect. If (in accordance with article 85 (c) of the draft convention) article 2 of the Convention on the Contract for the International Carriage of Goods by Road, 1956 (“CMR”) would apply to the carriage of goods that are loaded on a road cargo vehicle, and that vehicle is carried on board a ship, and, consequently, through the operation of article 2 of the CMR, article 62, paragraph 3, of the draft convention would indirectly apply to the relationship between the road cargo vehicle operator and its customer, the clarification may be beneficial to that customer as well.

be logical, in the view of the delegation of the Netherlands, to apply article 42, paragraph 3, to closed “road cargo vehicles” as well.

5. A next issue is whether, in view of the apparent similarity, in the context of the draft convention, of “a container loaded with goods” and “a road cargo vehicle loaded with goods”, it would be, in terms of drafting, convenient to extend the definition of “container” in article 1, paragraph 26, so as to include the term “road cargo vehicle” as well.

6. The other provisions in the draft convention that apply to containers and that would be materially affected should the definition of “container” be extended by the inclusion of “road cargo vehicle”, are:

- Article 26, paragraph 1, (goods allowed to be carried on deck). In this paragraph, it is provided that containers may be carried on deck when the deck is specially fitted to carry containers. It seems quite reasonable that the same rule should apply to inland road cargo vehicles. In such cases, decks must be equipped with pad eyes and/or other devices to which the chains can be fitted that are used to secure the vehicles. In practice, all specialized vehicle carriers are equipped with these devices.
- Article 26, paragraph 2 (carrier’s liability for deck cargo). The rationale that the carrier’s liability for damage to goods carried in containers regardless of whether the container is carried on deck or under deck,<sup>4</sup> should also apply to the carrier’s liability for goods carried in road cargo vehicles.
- Article 28, paragraph 3, (shipper-packed containers). This paragraph contains the rule that the contents of these containers must be properly stowed, lashed and secured. This provision already extends this requirement to shipper-packed trailers. It is only logical to apply this provision to road cargo vehicles other than trailers as well. Obviously, the word “trailer” must be omitted from this provision should the definition of “container” be extended to “road cargo vehicle”.

7. Other, less important provisions referring to containers would not be substantially affected by an extension of the definition of container<sup>5</sup> as proposed above.

8. For the reasons outlined in the previous paragraphs it is proposed:

- to include in article 1, paragraph 26, (definition of “container”) the words: “road cargo vehicle”.

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<sup>4</sup> This rationale is that for several operational reasons, the carrier needs the flexibility to carry containers on deck or under deck and that, consequently, with regard to the carrier’s liability for damage to the goods, it should not make a difference for the cargo-interested party whether its container is placed on deck or under deck. In addition, carriage of containers on deck has become so common that it would be odd not to apply the ordinary liability rules to containers on deck.

<sup>5</sup> These are: article 1, paragraph 24 (definition of “goods”), articles 15 (c) and 18, paragraph 5 (a) (carrier provided containers must be fit for the voyage), article 43 (c) (contract particulars referring to container seals) and article 51, paragraph 2 (b) (unpacking of undeliverable goods packed in containers).