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**ECE CONVENTION ON CUSTOMS TREATMENT OF POOL CONTAINERS
USED IN INTERNATIONAL TRANSPORT
(Customs Container Pool Convention)**

Implementation of the Convention: Issues for consideration

Note by the secretariat

A. INTRODUCTION

1. During the sessions of the informal ad hoc group, established by the Working Party to prepare a model of a Container Pool Agreement, a number of issues linked to the implementation of the Convention were discussed. In this paper the secretariat has tried to summarize some of these issues, including a number of interpretations of certain provision of the ECE Convention as considered by the ad hoc group. These remarks and interpretations are views of the secretariat to initiate a discussion on the preparation of comments on the provisions of the Convention. The preparation of such comments was suggested by the Working Party at its seventy-sixth session (TRANS/WP.30/151, paragraph. 56).

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B. USE OF POOL CONTAINERS IN INTERNAL TRAFFIC

2. Article 4 of the Convention provides for unlimited use of Pool containers in internal traffic, ... provided that the conditions laid down in article 5 are complied with.

3. Article 5, paragraph 2 of the Convention stipulates that each Contracting Party may decide whether the containers of a Pool member established in its territory shall meet the conditions contained in the national legislation concerning admission and unrestricted use in internal traffic on its territory.

4. A conflict between the above provisions of Article 4 and Article 5, paragraph 2 might therefore be construed. The interpretation proposal given below may avoid such a misinterpretation:

Interpretation proposal:

5. The wording of Article 5, paragraph 2 stems from a compromise arrived at by the Working Party. Some countries had felt that all containers put at the disposal of a Pool by a Pool member need to be in free circulation in the country in which the Pool member is established, i.e, if the national Pool member contributes 100 containers to a Pool, all duties and taxes, if applicable, due for these 100 containers must be paid. As this position was not shared by all delegations, the agreed wording of Article 5, paragraph 2 leaves it up to the Customs authorities of countries, that are Contracting Parties to the Convention whether the payment of duties and taxes on national containers to be put at the disposal of the Pool would be requested or not.

6. However, once these containers are put at the disposal of the Pool and the Pool agreement has been approved, all facilities provided for by the Convention apply to all Pool containers, including unrestricted use of these containers in internal traffic as long as the principle of equivalent compensation is complied with.

7. The intention of the provisions in Article 5, paragraph 2 was certainly not to allow Contracting Parties to prohibit or restrict free internal use of Pool containers in its territory. Such an interpretation of Article 5, paragraph 2 would not be in line with the objectives and the spirit of the Convention and would take these provisions out of context.

C. MARKING AND IDENTIFICATION OF CONTAINERS

8. Article 5, paragraph 3 (a) of the Convention stipulates that "...containers bear durable and unique marks agreed upon in the Pool agreement, which shall allow identification of the containers;...".

9. Article 5, paragraph 1 (b)(ii) requires Pool members to "...keep records, for each type of container, showing the movement of containers so exchanged;...".

10. Article 9, paragraph 2 of the Convention provides for the control by Customs authorities of the list of the numbers of containers placed at the disposal of the Pool and the number of Pool containers of each type in its territory.

11. The above Articles provide for marking and identification requirements in the Pool agreement and in the records to be kept by Pool members.

12. The question may arise whether this means that specific containers need to be allocated to a Pool or whether it is sufficient for a Pool member to allocate to the Pool a certain number of containers by type. Two possible interpretations are elaborated below.

Interpretation I:

13. If individual containers need to be allocated to a Pool and if the identification numbers of these containers need to be contained in the Pool agreement, Pool members would only be able to use these specific containers under the Convention. Customs authorities would be able to verify, for instance at the border, whether a specific container belongs to a specific Pool or not, using the information contained in the Pool Agreement.

14. As container operators usually do not know in advance which of their own containers, or which containers of other companies with which they have sharing arrangements, are used for certain transport operations covering Pool territories, such a requirement will be very restrictive and will not allow, in many cases, efficient container operations - which is one of the main objectives of the Convention.

15. To maintain operational flexibility, container operators might thus need to put all of their containers, which might possibly be used in traffic between and in Contracting Parties to the Convention, into the Pool. While this may be a feasible, though burdensome option for some land transport operators, others, particularly maritime container operators, will only do so if duties and taxes, where applicable, are not required by Customs authorities for putting containers at the disposal of the Pool. This is because at present, the majority of maritime containers are not in free circulation and are using, whenever required for inland transport, existing temporary admission procedures.

16. However, it seems unlikely that Customs authorities will refrain from requiring containers put at the disposal of a Pool to be in free circulation. If no duties and taxes would need to be paid for these containers, operators would be inclined to put as many of their containers as possible into a Pool or Pools and as a consequence, apart from a considerable drop in tax revenue, no more restrictions would apply for the use of foreign containers in domestic traffic (if countries would like to provide such extensive liberalization of internal container traffic, the Convention may seem to be superfluous).

17. Therefore, it seems that the above interpretation of Articles 5 and 9 is not be in line with the spirit of the Convention as it may not provide additional facilities to many container operators.

Interpretation II:

18. If only the number and the types of containers need be stipulated in the Pool Agreement, container operators could use all of their own or any other containers under the Convention as long as the number and the types of containers used in the territory in which they are established is not above the number and in line with the type of containers allowed and stipulated in the Pool Agreement. Customs authorities, however, would not be able to verify easily at the border whether a specific container is used in a Pool or not. They would need to contact the container operator who would have to furnish proof that the particular container falls under a certain Pool. Customs would then only be able to make spot checks at the container operators control centres using the container markings identified at the border.

19. Following this interpretation, it is obvious that container operators (Pool members) must keep records of each individual container in order to allow the identification by Customs authorities of containers that are part of a certain Pool. These records must also show, at any given time, the number of these individual containers by type in the territory in which the Pool member is established.

20. The informal ad hoc group established by the Working Party felt that interpretation II would seem to be acceptable and in line with the spirit of the Convention, provided that Customs authorities could ensure an effective control of the principle of equivalent compensation. Further investigation into this aspect need to be made. Delegations are invited to report on the results of their inquiries on this matter.

D. OTHER ISSUES AND QUESTIONS TO BE RESOLVED

(a) Should Customs authorities, approving the Pool Agreement, allow individual containers to be put at the disposal of more than one Pool at the same time?

21. The informal ad hoc group was of the view that such a procedure should not be allowed as it would lead to a situation where for one national container put at the disposal of, for example, two Pools, two foreign containers could make use of the facilities of the Convention, i.e., they could be used in internal traffic without restriction. However, the question still needs to be examined as to how Customs authorities can verify that such a situation exists in case the individual containers are not listed in the Pool Agreements.

(b) Can damaged and/or destroyed Pool containers be replaced within a Pool?

22. It seems that there does not need to be any restriction in this respect, as long as the records kept by Pool members show clearly the replacement of containers put at the disposal of the Pool.

(c) How often can the list of containers in the Pool Agreement be changed (i.e., change in the number and type of containers put at the disposal of the Pool, etc.)?

23. As any modification of the Pool agreement must be approved by all Customs authorities of all countries concerned by the Pool, it does not seem to be feasible to effect changes too often, as it entails considerable administrative costs. In this connection, the question should be considered whether a minimum time period between modifications be determined in the Model Pool Agreement?

(d) To what extent would the new Convention make work for Customs authorities more complicated?

24. In theory, there should be a decrease of work with the implementation of the new Convention (see booklet: "Introduction to the Customs Container Pool Convention"). It must however be recognized that the provisions of the Customs Container Pool Convention will be applicable together with the existing schemes for temporary importation in the countries, that are Contracting Parties to the Customs Conventions on Containers of 1956 and 1972 or the Istanbul Convention on Temporary Admission of 1991. While the traditional concept of temporary importation requires the registration of each individual container upon importation, the concept of equivalent compensation in the new Customs Container Pool Convention no longer requires such a procedure and replaces it by the verification of the records of the container operators.

25. The question now arises as to what extent Customs authorities could apply the facilities of the new Convention in daily practice and do away with the individual registration of containers used in a Pool as long as the traditional concept of temporary admission is being used in parallel?

(e) How must the Pool Agreement be approved and by whom?

25. It may be clarified that the Pool Agreement must be accepted in the same form by all Pool members and by all Customs authorities in the territories in which the Pool is operating.

(f) Who must keep the balance of exported and imported containers in line with the principle of equivalent compensation?

26. The individual Pool members established in the territory of a Contracting Party is responsible for ensuring that a balance in line with the principle of equivalent compensation is ensured (Article 5, paragraph 1 (a) (iii)).

(g) Who may be a Pool member?

27. A Pool member may be an individual firm, an agent of a multinational company or possibly a number of container operators which have formed a national group which in the context of the ECE Convention can be regarded by national Customs authorities as one Pool member. Thus a Pool Agreement could be established between Pool members which all belong to a single company that has agents in the territories of countries in which the Pool is functioning. The Pool Agreement could also be established between Pool members, all belonging to different national companies or between Pool members where each individual Pool member is composed of different companies acting together for the purposes of the Convention.

28. It is, however, important that Customs authorities can, at any time, control the records of the Pool member established in its territory in accordance with Article 9 of the Convention.

(h) How to calculate the container balance over 12-month periods?

29. It seems that for purposes of establishing the balance, in accordance with Article 5, paragraph 1 (a) (iii) of the Convention, it may not be enough to simply deduct, during a 12-month period, the number of exported containers from the number of imported containers and subject the remainder to duties and taxes, if appropriate. Such a calculation could lead to a hypothetical situation where in case of 100 containers put at the disposal of a Pool, 10,000 containers are imported and used in the territory of a country during 364 days of the year, and on the 365th day 9,500 containers are exported to fulfil the requirements of the balance to be kept.

30. In order to exclude such possibilities, it might be appropriate to use as an indicator for the balance to be kept by Pool members the concept of container-days, i.e., a container which has been imported and is being used in a country for 30 days would count as 30 container-days. Whether up-to-date information using such an indicator could be furnished to Customs authorities by container operators may need to be established.
