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Working Party on the Transport of Perishable Foodstuffs

Seventy-third session

Geneva, 10-13 October 2017

Item 5 (a) of the provisional agenda

Proposals of amendments to ATP:

Pending proposals

Amendments to article 3, paragraph 1, ATP

Transmitted by the Russian Federation

Summary

Executive summary:

At its seventieth session, the Working Party considered a document from the secretariat (ECE/TRANS/WP.11/2014/5) entitled “Interpretation of article 3”, in which the question was raised of whether article 3 (1) was being correctly interpreted (“ATP applies even when the goods are loaded in the territory of a non-ATP Contracting Party and unloaded in the territory of an ATP Contracting Party”) and how “... non-ATP Contracting Parties [could] be obliged to apply an Agreement they are not party to other than by the receiving country refusing the goods unless they are carried in accordance with ATP.”

Several countries confirmed their application of that provision and it was also stated that there had been no practical problems associated with it.

The Chair invited countries to submit a document to the seventy-first session of WP.11 if they wished to further develop the discussion on that issue or other matters related to the interpretation of article 3 (ECE/TRANS/WP.11/231). However, no new proposals on the issue were received.

The Russian Federation believes it is necessary to return to the discussion on article 3 of ATP.

Action to be taken:

Introduce amendments to article 3, paragraph 1, ATP.

Related documents:

ECE/TRANS/WP.11/216;
ECE/TRANS/WP.11/218;
ECE/TRANS/WP.11/220;
ECE/TRANS/WP.11/222;
ECE/TRANS/WP.11/224;
ECE/TRANS/WP.11/231;



ECE/TRANS/WP.11/2007/3;
ECE/TRANS/WP.11/2007/11;
ECE/TRANS/WP.11/2008/2;
ECE/TRANS/WP.11/2008/3;
ECE/TRANS/WP.11/2009/2;
ECE/TRANS/WP.11/2010/1;
ECE/TRANS/WP.11/2011/2;
INF 12 (sixty-seventh session of WP.11, 2011);
ECE/TRANS/WP.11/2014/5

Introduction

1. At the opening of the seventieth session of WP.11 in 2014, Ms. Eva Molnar, Director of the Transport Division, called for another discussion of the 150 km rule concerning sea crossings,¹ as the interpretation of article 3 of the current version of ATP prevented some countries, contracting parties and prospective contracting parties, from taking full advantage of the Agreement or readily acceding to it (ECE/TRANS/WP.11/231).
2. During that session, the Working Party considered a document from the secretariat (ECE/TRANS/WP.11/2014/5) entitled “Interpretation of article 3”, in which the question was raised of whether article 3 (1) was being correctly interpreted: “ATP applies even when the goods are loaded in the territory of a non-ATP Contracting Party and unloaded in the territory of an ATP Contracting Party”, and how “... non-ATP Contracting Parties [could] be obliged to apply an Agreement they are not party to other than by the receiving country refusing the goods unless they are carried in accordance with ATP.”
3. WP. 11 discussed article 3 (1) at the seventieth session. Several countries confirmed their application of the provision and it was also stated that there had been no practical problems associated with it. The Chair invited countries to submit a document to the seventy-first session of WP.11 if they wished to further develop the discussion on that issue or other matters related to the interpretation of article 3 of ATP (ECE/TRANS/WP.11/231). However, no new proposals on the issue were received.
4. The Russian Federation believes it is necessary to return to the discussion on article 3 of ATP.
5. In 2007, Finland asked whether there some amendments should be made to article 3 of ATP (ECE/TRANS/WP.11/2007/11). In subsequent years (2008 to 2011), proposals for amendments to articles 3 and 5 of ATP were submitted in: the report on the meeting of the Informal Working Group on articles 3 and 5, held in 2008 in Helsinki, Finland, under the leadership of Finland and with the participation of Denmark, the Netherlands, the Russian Federation, Slovakia and the United Kingdom (ECE/TRANS/WP.11/2008/3); and documents from Finland (ECE/TRANS/WP.11/2008/2, ECE/TRANS/WP.11/2009/2, ECE/TRANS/WP.11/2010/1 and ECE/TRANS/WP.11/2011/2) and Spain (informal document INF.12 of the sixty-seventh session of WP.11 in 2011).
6. The most recent proposed amendments to articles 3 and 5 of ATP, which were discussed by the Working Party at its sixty-seventh session in 2011, were also put forward by Finland, in document ECE/TRANS/WP.11/2011/2 with the relevant justification and a detailed description of the history of the discussions on the amendments to articles 3 and 5 ATP, and Spain (in informal document INF.12 of the sixty-seventh session of WP.11 in 2011). The amendments proposed by Finland at that session were not adopted. WP.11 recommended that Finland restrict any future proposal on the subject to article 3 if possible. Finland said that in light of the objections expressed it did not intend to continue to lead the work on the topic.

¹ See ATP, article 3 (2), which states that the provisions of ATP apply to sea crossings of less than 150 km on condition that the goods are shipped in equipment used for the land journey or journeys without transloading of the goods and that such crossings precede or follow one or more land journeys or take place between two such land journeys.

7. At the sixty-seventh session, the Russian Federation supported the amendment to article 3 of ATP (ECE/TRANS/WP.11/2011/2) proposed by Finland but voted “against” both amendments to article 5 of ATP proposed in that document.

8. The Russian Federation thanks Finland for initiating the consideration of the issue and the thorough preparation it has carried out, and considers it opportune to propose that the Working Party should continue its consideration, as recommended by the secretariat at the seventieth session (ECE/TRANS/WP.11/2014/5).

9. Like the other participants in the meeting of the Informal Working Group, the Russian Federation would be interested to receive answers to the following questions:

What are the reasons for and background to the 150 km rule?

How should the scope of ATP be interpreted in respect of different combinations of international land and sea transport?

What documents could be used to confirm that there is a significant problem when sea transport exceeds 150 km and the 150 km rule should therefore no longer be included in ATP?

Unfortunately, no replies have as yet been received to these questions.

10. Although the reasons for and background to the 150 km rule are still unclear, we wish nevertheless to suggest the following.

11. When the Agreement on the International Carriage of Perishable Foodstuffs was drawn up, carriage already took place in containers “classified as thermal maritime” and mentioned in article 5 of ATP in the context of their use for land transport without transloading if the land transport was preceded or followed by a sea crossing of 150 km or more.

12. To separate the areas of “influence” of ATP and the ISO standards, in article 3 of ATP, the land transport of goods in which a sea crossing of less than 150 km is interposed is “assigned” to ATP, while, under article 5, for the carriage by land of goods in which a longer sea crossing is interposed, ATP applies only where the containers are “classified as thermal maritime”.

13. It will clearly be difficult to make any progress in solving the issue raised by the secretariat in document ECE/TRANS/WP.11/2014/5 without an explanation of the reason for the “150 km rule” in ATP.

14. The Russian Federation believes that, to resume the discussion of article 3, amendments could be proposed to article 3 (1) of ATP.

15. The amendments to article 3 (1) of ATP proposed by the Russian Federation are indicated **in bold** and deletions are shown in ~~strike through~~, with the original text *in italics*.

I. Proposal 1

16. Amendments to article 3 (1) of ATP.

1. *The requirements of article 4 ATP 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 [amendment applies only to Russian version] or by a combination of the two, of, (...) 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 **which are contracting parties to ATP.** ~~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.

In the case of carriage between the two countries where one is a contracting party to ATP, in order to ensure preservation of the quality of the product during

international carriage on the territory of the contracting party to ATP, carriage should be conducted in accordance with the requirements of article 4 of ATP.

II. Costs

17. None.

III. Feasibility

18. To be discussed.

IV. Enforceability

19. To be discussed.
