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Transport Law: Preparation of a draft convention on the carriage of goods [wholly or partly] [by sea]

Proposal of the United States of America on the definition of “maritime performing party”

Note by the Secretariat

In preparation for the nineteenth session of Working Group III (Transport Law), the Government of the United States of America submitted to the Secretariat the proposal attached hereto as an annex with respect to the definition of “maritime performing party” in the draft convention on the carriage of goods [wholly or partly] [by sea].

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



Annex

Proposal of the United States of America on the definition of “maritime performing party”

1. As set out in footnote 9 of A/CN.9/WG.III/WP.81, it has been suggested that the definition of “maritime performing party” (draft article 1 (7) of the draft convention) should be edited to clarify that a rail carrier, even if it performs services that might be considered the carrier’s responsibilities after the arrival of the goods at the port of loading or prior to the departure of the goods from the port of discharge, should be considered a non-maritime performing party.

2. The convention applies to actions against the carrier or a maritime performing party (draft article 4), but not to actions against a non-maritime performing party. The suggestion outlined in paragraph 1 was made at the behest of the Association of American Railroads (AAR) (representing U.S., Canadian, and Mexican railroads). The AAR has made it known to the United States from the beginning of this negotiation that it is concerned that it might inadvertently be deemed to be a maritime performing party when it performs services within a port area, even though the ultimate purpose of those services will virtually always be to move goods into or out of a port and not to move goods from one place to another within a port. Therefore, the United States supports the suggestion reflected in paragraph 1.

3. The United States proposes that the following sentence be added at the end of draft article 1 (7) of A/CN.9/WG.III/WP.81 (the definition of “maritime performing party”):

“A rail carrier, even if it performs services that are the carrier’s responsibilities after arrival of the goods at the port of loading or prior to the departure of the goods from the port of discharge, is a non-maritime performing party.”