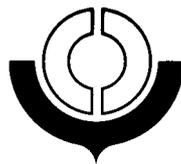


# **KYOTO CONVENTION**

## **GUIDELINES TO SPECIFIC ANNEX E**

### ***Chapter 2***

### ***TRANSHIPMENT***



WORLD CUSTOMS

ORGANIZATION

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## 1. Introduction

It often occurs, for reasons of trade or transport, that goods arrive in a Customs territory in order to be transferred from the importing means of transport to another means of transport in which they then leave that territory for their destination.

Frequently the arrival, the transfer of goods from one means of transport to another and the exportation of the goods all take place within the area of a single Customs office. To facilitate this operation the legislation of some administrations contains a procedure that enables the goods to transfer from one conveyance to another under Customs control and without payment of import or export duties and taxes. This procedure, for which a simplified control system is generally used, is called "transshipment" and is the subject of this Chapter 2 of the Specific Annex E. For container traffic, the term "transshipment" is sometimes known as "relay" or "immediate exportation".

Transshipment can be regarded as a simplified application of the transit system. However, as certain administrations do not have the transshipment procedure and others have no knowledge of transit, they would not have been able to accept all the relevant provisions of a single Chapter covering all these aspects, particularly since the Standards of the Chapter must be implemented without reservations. Thus Specific Annex E of the revised Convention contains 2 separate Chapters, one on Customs transit and another on transshipment. Contracting Parties can then accept either the first or the second Chapter, or both.

While Customs transit necessarily involves at least two Customs offices, the transshipment procedure only involves one. However it is possible, for example, that two Customs offices in one Customs or harbour area are both affected by a transshipment operation.

The transshipment procedure is probably best suited to the simplest Goods declaration and usually one in an electronic format.

This Chapter on transshipment does not apply to goods which, on arrival in the Customs territory, are already under a Customs procedure (such as Customs transit) and are transferred from one means of transport to another during the course of that procedure. Such a transfer is dealt with by Customs under the procedure already in operation. Nor does the Chapter apply to goods carried by post or in travellers' baggage.

## 2. Definition

**E1/F1** *“transshipment” means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.*

All the definitions of terms necessary for the interpretation of more than one Annex to the Convention are placed in the General Annex. The definitions of terms applicable to only a particular procedure or practice are contained in that Specific Annex or Chapter.

### 3. Principles of a Customs transhipment procedure

The purpose of a Customs transhipment procedure is simply to ensure that goods which arrive in the area of a Customs office for transhipment are subsequently duly removed from it for onward transport to their final destination. (See the Guidelines to Standard 3.1 of the General Annex for an explanation of the use of the term “Customs office”.)

It is important to recognize that transhipment operations will generally be carried out by the carrier or warehouse operator who will not have access to the same amount of information about the goods (e.g., their value or tariff classification) as would the importer or exporter.

Transhipment can be authorized for goods which, in accordance with the national legislation, are subject to import or export restrictions. In this case, Customs may lay down particular conditions or strict controls.

Transhipment does not allow for use of the goods. If a product is intended for use it must be placed under a different Customs procedure (home use, for example). However some operations that are likely to facilitate the exportation of goods are authorized (See Recommended Practice 9 and the respective Guidelines).

When designing a transhipment procedure, Customs administrations should recognize the following essential features of transhipment operations :

- the goods concerned arrive in the Customs territory only for the purpose of being transferred to another means of transport for removal from the territory;
- the transfer and removal usually takes place within a very short timeframe; and
- throughout their stay in the Customs territory, the goods are at all times under Customs control by virtue of remaining within the area of the Customs office.

In essence despite their arrival in the area of the Customs office, the goods are not "entering" the country in any real sense. The control procedures which would be applied, for example, to goods arriving for importation or processing consequently do not apply. Equally, on the goods' departure, the normal control procedures for exports do not apply.

#### **Standard 1**

*Transhipment shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.*

The revised Kyoto Convention has a set of obligatory core provisions that are contained in the General Annex. The General Annex reflects the main principles considered necessary to harmonize and simplify all the relevant Customs procedures and practices which Customs apply in their daily activities.

As the core provisions of the General Annex are applicable to all Specific Annexes and Chapters, they should be applied in full for transhipment. Where a specific applicability is not relevant, the general facilitation principles of the General Annex should always be borne in mind when implementing the provisions of this Chapter. In particular, Chapter 1 of the General Annex on General principles, Chapter 3 on Clearance and other Customs formalities and Chapter 7 on Information technology should be read in conjunction with this Chapter on Transhipment.

Contracting Parties should particularly note Standard 1.2 of the General Annex and ensure that their national legislation specifies the conditions to be fulfilled and the formalities to be accomplished for transhipment.

In line with Article 2 of the Convention, Contracting Parties are encouraged to grant greater facilities than those provided for in this Chapter.

#### **Standard 2**

*Goods admitted to transhipment shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with.*

#### **Recommended Practice 3**

*Transhipment should not be refused solely on the grounds of the country of origin of the goods, the country from which they arrived or their country of destination.*

Some of the normal elements of Customs procedures for goods arriving in or leaving a country do not apply for goods involved in transhipment operations. In particular :

- duties and taxes are not normally to be levied on the goods (Standard 2); and
- consideration of the goods' origin, the country from which they arrived for transhipment, or to which they are destined after transhipment shall not alone lead Customs to refuse the transhipment operation (Recommended Practice 3).

## **4. Elements of a Customs transhipment procedure**

The objective of ensuring that goods which arrive in a Customs office for transhipment are subsequently removed from it for onward transport to their final destination can be accomplished by a procedure based on documentary controls, supplemented in limited cases by physical controls as necessary.

### **4.1. Documentary controls**

#### **Standard 4**

*Only one Goods declaration shall be required for the purposes of transhipment.*

#### **Standard 5**

*Any commercial or transport document setting out clearly the necessary particulars shall be accepted as the descriptive part of the Goods declaration for transhipment and this acceptance shall be noted on the document.*

The process of controlling transhipment operations through documentation essentially involves recording the goods which arrive for transhipment, keeping a list of goods in transhipment, and then subsequently removing goods from the list when they leave for their onward journey.

A single Goods declaration should suffice to cover both the arrival and removal of goods in a transhipment operation (Standard 4). It is not necessary to demand one declaration when the goods arrive and another declaration when they are removed.

The most basic method of documenting transshipment for control purposes under Standard 4 is to use an official form in two copies made of two pages or in detachable parts. The data content need only be minimal to :

- declare that the goods are being transhipped;
- identify the party responsible for the transshipment operation;
- indicate the means of transport for arrival and the means of transport for removal;
- identify the marks and numbers of the goods or the containers in which the goods are being transported; and
- describe (briefly) the goods.

The last item (brief description of goods) can be provided by attaching a copy of the transport document (air waybill, sea waybill, bill of lading, etc), container packing/loading list, or the relevant extract of the carrier's manifest or of the cargo declaration (Standard 5).

On arrival of the goods, the completed form is presented to Customs for the purposes of entering the goods into the transshipment procedure. Customs retain a copy or a part of the form and return the other to the operator who is performing the transshipment. When the transshipment operation has been completed and the goods have been removed, the operator returns this part of the form to Customs. Customs match it up with the other copy or part, mark it to identify the procedure as having been discharged, and then file it. As with all documentation, Chapter 7 of the General Annex encourages Customs to implement and accept the information required for any procedure electronically.

## **4.2. Simplifications**

### **Recommended Practice 6**

*The Customs should accept as the Goods declaration for transshipment any commercial or transport document for the consignment concerned which meets all the Customs requirements. This acceptance should be noted on the document.*

Recommended Practice 6 sets out the framework for authorizing the use of commercial or transport documents as a Goods declaration for transshipment. This simplified method applies to all types of traffic, i.e. by rail, road, river, maritime or air. When the document is accepted as the Goods declaration for transshipment, the Customs office must authenticate that document as the Goods declaration for that transshipment.

Where a large number of transshipment operations are carried out in the same area of a Customs office, it is necessary to simplify the above process in order to ensure that excessive paperwork does not impede smooth and swift operations.

For high-volume transshipment operators, Customs could accept aggregated lists of consignments arriving for transshipment and subsequently being exported in place of individual declarations. The function of the documents remains the same : to record the arrival of the goods and later to record their export. These two lists may take the form of the inward and outward cargo declarations of the means of transport. The Customs process of reconciling the two lists to verify completion of the transshipment remains the same.

## **4.3. Supplementary physical controls**

### **Standard 7**

*When the Customs consider it necessary, they shall take action at importation to ensure that the goods to be transhipped will be identifiable at exportation and that unauthorized interference will be readily detectable.*

Customs may sometimes consider that the risk relating to a particular consignment arriving for transhipment is such that the documentary control processes need to be supplemented by physical controls. These could include sealing the goods container on arrival to provide an assurance (by examining the seal on departure) that the same goods were being removed as had arrived.

#### **4.4. Examination and identification of the goods**

The aim of an examination of goods under transhipment would primarily be to allow goods to be identified at the re-export stage and to detect unauthorized interference. Its objective is therefore different to that of examination of goods for home use, for instance, where the verification that the goods match their description can have an effect on the duties and taxes payable. Under a transhipment procedure, examination must therefore be as simple as possible. It should be done only as a means of identification when there is no other means available, for example if the usual trade documents cannot be presented. Customs' right to inspect goods nonetheless remains guaranteed in all cases.

#### **4.5. Additional control measures**

##### **Standard 8**

*When the Customs fix a time limit for the exportation of goods declared for transhipment, it shall be sufficient for the purposes of transhipment.*

##### **Recommended Practice 9**

*At the request of the person concerned, and for reasons deemed valid by the Customs, the latter should extend any period initially fixed.*

##### **Recommended Practice 10**

*Failure to comply with a prescribed time limit should not entail the collection of any duties and taxes potentially chargeable, provided the Customs is satisfied that all other requirements have been met.*

When a time limit is prescribed for the transhipment operation to ensure that the consignments are removed within a reasonable time it must be sufficient to allow the intended transhipment operation to take place (Standard 8), for example, by taking account of the sailing/flight schedules of the carriers involved. Customs should also be prepared to apply time limits flexibly where it appears appropriate, for example where schedules change or where the intended means of transport for removal is full (Recommended Practice 9). Similarly, failure to observe a time limit should not, by itself, lead to Customs collecting duties and taxes if they can determine that the goods were eventually exported and otherwise in compliance with all other requirements. (Recommended Practice 10).

Some countries do not set a time limit for the exportation of goods declared for transhipment as they consider that the person concerned will be careful not to allow his goods to devalue, and that Customs security is not compromised as long as the goods are in an area reserved for transhipment.

Other countries do set a general time limit or, more rarely, a specific time limit, depending on the transhipment of the goods concerned and in order to prevent transhipment

from becoming a warehousing procedure. Where a time limit exists, it must be sufficient and reasonable to allow the transshipment without placing undue constraints on the person concerned. As a rule, many countries set general time limits that are very generously calculated so that transshipment can take place under good conditions. The general time limit is easy to apply and allows for some degree of harmonization. This type of time limit is especially relevant for goods that present no particular risk. A more specific time limit would be applicable where Customs consider there is an increased risk or because of the route taken.

A transshipment operation is completed when the goods in question are removed from the Customs office for onward transport to their final destination. The documentary control process described in the final paragraph of section 4.1 above provides Customs with proof that a transshipment operation has been completed correctly in this way.

#### **4.6. Authorized operations**

##### **Recommended Practice 11**

*At the request of the person concerned, and subject to such conditions as the Customs may specify, the Customs should as far as possible allow goods in transshipment to undergo operations likely to facilitate their exportation.*

The process of transshipment is essentially that of transferring goods from one means of transport to another and it is generally understood that the goods should be in the same condition after the transfer as before. Use of the goods is not allowed. However in some countries, certain operations intended to facilitate exportation are expressly authorized. These can be of different types such as grouping, change of packing, marking, sorting, and repair or replacement of damaged packing. On request, Customs should allow such operations when it seems reasonable.

For example, the goods container may become damaged and need either to be repaired or replaced. Logistical efficiency considerations might indicate that goods for transshipment should be consolidated for onward carriage to a single country of destination or that packaged goods should be re-packed into larger packages or divided into smaller packages. In all such operations, the condition of the goods themselves will be unaltered - only their outer packaging or containers will change.

The Contracting Parties to the Kyoto Convention which accept Specific Annex E, Chapter 2 on transshipment but which do not authorize any operations on goods in transshipment must enter a reservation to Recommended Practice 11. However, those Parties which authorize some operations under Recommended Practice 11 are not obliged to enter a reservation to the other operations.

## **5. Extension of the procedure**

It is a defining feature of a Customs transshipment procedure that goods must be transferred from one means of transport to another within the area of a single Customs office. However, there may be occasions when the goods arrive at very large ports or airports, for example, where it may be necessary for goods to pass out of the gates, travel briefly on public roads, and then re-enter the port or airport through another set of gates in order to travel from

one berth or cargo shed to another. As a greater facility, Customs should allow such movements to fall within their transshipment procedure.

It is also the case that some administrations, in offering greater facilitation, allow an extension of the transshipment procedure to provide for the transfer to a means of transport at another Customs office instead of using the Customs transit procedure.

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