



# Direct Transport / Non-manipulation Rule - In preferential trade agreements

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# Consignment (transportation, direct shipment, transit, transshipment etc.) rule – a historical perspective

- The concept of consignment, transportation etc. rule existed since early last century but widely used since the 70s under preferential trade agreements / arrangements (PTA). The 70s saw the introduction of the Generalised System of Preference (GSP).
- A great majority of the international trade then was in bulk cargo. Transiting through third countries, including landlocked countries, was a necessity. This system, particularly in relation to bulk cargo, would have increased the risk of alteration in a transit port. Under PTAs it is important that the exported goods are not altered so that they can retain their originating status and qualify for preferential treatment.
- Commercial practices in the modern trading environment have changed. Trading systems have changed. International trade is a series of physical flows of goods that may not necessarily use the most direct path instead it would use the least cost path.
- The term 'direct consignment' does not reflect the reality. In modern transportation system - transshipment or transportation through countries and carrying out certain operations while in transit are unavoidable.



# A neutral terminology needed to reduce confusion (transhipment or transportation through 3<sup>rd</sup> parties?)

Different terminologies being used create confusion. Some examples from PTAs:

- **Direct** consignment (e.g. ASEAN Trade in Goods Agreement. Passing through non-Member states permitted for geographical reason; cannot enter commerce; some operations permitted while in transit)
- **Transshipment** (NAFTA. No further production other than loading, unloading while in transit). This is a non-controversial terminology.
- **Direct transport** (PAN-EURO-MED. Transport through other territories permitted provided goods remain under Customs surveillance and do not undergo operations other than ..... Similar to direct consignment.
- **Transit and Transshipment** (Comprehensive and Progressive Agreement for Trans-Pacific Partnership [CPTPP] (transit or transshipment permitted provided ...)
- Let's first understand the concept clearly. Avoid using a concept which provides misleading interpretation (e.g. direct consignment). Customs have transit or transshipment procedures but not for direct transport or direct shipment.



# Reasons for consignment, trans-shipment etc. rules

- PTAs require consignment / transshipment provision to ensure imported good is same as the exported good (designed to prevent circumvention and abusive manipulation, alteration or mixing of originating goods).
- Only a few PTAs require consignments not go through a third country but most PTAs allow transit through 3<sup>rd</sup> countries' However, they impose certain conditions to mitigate risk of being altered or mixed in transit.
- **A great majority of PTAs justify transit entry for:**
- Geographical reason (e.g. landlocked country), logistical reason (availability of transport or warehousing facility), commercial reason (cost consideration).
- Modern production processes and supply chains have impacted on the way international business is conducted and Customs procedures need to cater for this commercial reality.
- Transshipment requirements should cater for **all** these situations.





# Considerations relating to transport requirements

**When goods pass through a 3<sup>rd</sup> country port, PTAs impose certain conditions to mitigate the risk of goods being altered. Examples of conditions:**

- Goods not cleared for consumption in a 3<sup>rd</sup> country's port
- Goods do not enter into trade or commerce in a 3<sup>rd</sup> country's port
- Goods do not enter free circulation in a 3<sup>rd</sup> country
- Goods remain under Customs control / surveillance in a 3<sup>rd</sup> country's port
- Goods remain under another authority (other than customs)
- Permitting some operations (e.g. loading, unloading preservation of goods).

Note:

- If these requirements are not clearly spelt out / defined, Customs will have difficulty.
- Possibly the Guidelines to be developed for RKC SA K can provide some help.



# Evidential requirements: Promote the use of already available evidence

## Examples of the types of evidence to verify non-manipulation / alteration has taken place:

- Existing documents such as Bill of Lading, Certificate of Origin, export /import entry, commercial contract, invoice, packing list, storage document, etc.
- Container seals and modern electronic devices
- Note - Nairobi (Ministerial) decision encourages preference-granting members to refrain from requiring a certificate of non-manipulation for products originating in an LDC unless there are concerns regarding the transshipment.
- Many transit countries do not issue such certificates for transhipped goods.



# A non-PTA Party not obliged to provide evidence of non-manipulation-

- A non-Party's customs administration not obligated to issue certificate of non-manipulation: The country (where a consignment transits) is normally a non-Party to the PTA. That country has no obligation to issue any documentary evidence. Hence, the best option for an importing country's customs administration is to use already available evidence. An example below:
- A consignment is exported from Country A (a Party to an PTA) to Country B (another Party to the same PTA).
- The consignment is going through a third country, Country C (not a Party to this PTA). The PTA allows certain operations to be performed under certain conditions in a third country.
- If there is a need to verify, the importing country (Country B) should use the available customs, commercial, warehouse and transportation documents and container seals or other evidence, etc. to determine whether an exported good has been altered in the transit country.
- A non-PTA Party is not obliged provide evidence of non-alteration. It is unfair for a PTA Party to ask a non-party, i.e. Country C, where the consignment has transited, to provide documentary evidence on non-manipulation. Country C has no obligation.



# New Zealand Case Study from a PTA

- NZ has a PTA with Country X
- Direct shipment rule of the PTA (summary): an originating good shall retain its originating status if transported directly. Good will lose originating status if it undergoes any operations (other than the permitted ones) or released from customs control in the non-Party [full rule is on next slide].
- Consignments were going through a non-Party's free zone (in Country Y), which is not a customs controlled area but managed by the port authority.
- Preference was denied at importation for reason that the consignment did not remain under customs control.
- An appeal to the Customs Appeal Authority was made by the importer. Appeal was successful. Appeal Authority satisfied that the transshipment in the manner described through the Free Zone had no effect on the good's status under the FTA. Consignment was within free zone and not under customs control in this case! But the goods were not available for domestic consumption in Country Y.
- Note - country Y does not issue certificate of non-manipulation.





# Direct shipment rule being referred to in the Case Study

## Direct Transport

- 1. An originating good shall retain its originating status as determined under Article 3.2 provided that it is directly transported to the importing Party without passing through the territory of a non-Party.*
- 2. An originating good that is transported through the territory of a non-Party shall not retain its originating status, if the good:
  - (a) has undergone any subsequent production or other operation outside the territories of the Parties other than unloading, temporary storage, splitting up of loads for transport reasons, reloading or any other operation necessary to preserve it in good condition or to transport it to the importing Party; or*
  - (b) has been released from customs control in the territory of a non-Party**

