

RECUEIL DES INSTRUMENTS JURIDIQUES ET INSTITUTIONNELS
DE FACILITATION DU TRANSPORT ET DES ÉCHANGES
EN AFRIQUE SUBSAHARIENNE

ANNEXE VI-15

PROTOCOL FOR TRANSIT TRADE AND TRANSIT FACILITIES (COMESA)

PREAMBLE

THE HIGH CONTRACTING PARTIES

RECALLING the provisions of sub-paragraph (b) of paragraph 2 of Article 4 of the Treaty to the effect that the Member States shall make regulations for facilitating transit trade within the Common market;

RECALLING FURTHER the provisions of paragraph (h) of Article 85 of the Treaty;

HAVING REGARD to the provisions of paragraph 4 of Article 67 of the Treaty;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

Interpretation

In this Protocol:

"carrier" means the person actually transporting transit goods or in charge of or responsible for the operation of the respective means of transport;

"Common Market Transit Document" means any type of customs document for transit declaration approved by the Council to be utilised within the Common Market;

"container" means an article of transport equipment:

- (a) fully or partially enclosed to constitute a compartment intended for containing goods and capable of being sealed;
- (b) of a durable nature intended for repeated use;
- (c) specifically designed for the carriage of goods by one or more modes of transport without intermediate unloading and reloading of its contents;
- (d) fitted with devices for easy handling, particularly for its transfer from one mode of transport to another;
- (e) so designed as to be easy to fill and empty; and
- (f) having an internal volume of at least one cubic metre.

"customs office of commencement" means any port, inland or frontier customs office of a Member State where the provisions of this Protocol begin to apply;

"customs office of destination" means any port, inland or frontier customs office of a Member State where the provisions of this Protocol cease to apply;

"customs office en-route" means any customs office where goods are imported or exported in the course of a customs transit operation;

"customs office of entry" means any customs office of a second or other subsequent Member States where, in relation to that State, the provisions of this Protocol begin to apply, and includes any customs office which, even when not situated on the frontier, is the first point of customs control after crossing the border;

"customs office of exit" means any customs office which, even when not situated on the frontier, is the last point of customs control before crossing the border;

"goods" means all chattels personal other than things in action and includes wares, merchandise, mail, emblements and industrial crops;

"import or export duties and taxes" means customs duties and other charges of equivalent effect levied by reason of importation or exportation of goods;

"means of transport" include:

- (a) any railway stock, containers, watergoing vessels, road vehicles and aircraft;
- (b) where the local situation so requires, porters and pack animals; and
- (c) pipelines and gas lines;

"surety" means any person who gives an undertaking to the customs authorities of a Member State to answer for or be collaterally responsible for the debt, obligation, default or miscarriage of the transitor and for the payment to transit States of import duties and any other sums of money due and payable to them in the event of non-compliance with the terms and conditions of transit relating to transit traffic introduced into the transit States by carriers of such goods;

"RCTD Document" means the Common Market Road Customs Transit Declaration Document;

"transit traffic" means the passage of goods including unaccompanied baggage, mail, persons and their means of transport through the territories of the Member States in accordance with the itineraries set out in paragraph 1 of Article 2 of this Protocol;

"transitor" means the person responsible for the conveyance of goods under the provisions of this Protocol or his authorized agent;

"vessel" means any mechanically propelled ship, boat or craft with inboard engine power or any other craft moving through water carrying passengers or cargo.

ARTICLE 2

General Provisions

1. The Member States undertake to grant all transitors and transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:

- (a) or bound for other Member States; or
- (b) third countries and bound for other Member States; or
- (c) other Member States and bound for third countries; or
- (d) third countries and bound for third countries.

2. Notwithstanding the provisions of paragraph 1 of this Article, any Member State may, if it deems it necessary, prohibit, restrict or otherwise control the entry of certain persons, mail, merchandise or means of transport from any country for the protection of public morality, safety, health or hygiene, or animal or plant health, or in the public interest.

3. The Member States undertake not to levy any import or export duties on the transit traffic referred to in paragraph 1 of this Article. However, in accordance with paragraph 6 of Article 11 of this Protocol, a Member State may levy administrative or service charges.

For the purposes of this Protocol, the Member States undertake to ensure that there shall be no discrimination in the treatment of persons, mail, merchandise and means of transport coming from or bound to the Member States, and that rates and tariffs for the use of their facilities by other Member States shall not be less favourable than those accorded to their own traffic.

ARTICLE 3

Scope of Application

The provisions of this Protocol shall apply to any transitor, mail, means of transport or any instrument of bonded goods in transit between two points either in two different Member States or between a Member State and a third country.

The provisions of this Protocol shall only apply to transit transport if it is:

- (a) operated by a carrier licensed under the provisions of Article 4 of this Protocol;
- (b) performed under the conditions set out in Article 5 of this Protocol by means of transport approved by the customs office of commencement and issued with certificates which shall be in the form set out in Appendix III of this Protocol;
- (c) guaranteed by a surety in accordance with the provisions of Article 6 of this Protocol; and
- (d) undertaken under cover of the RCTD Document, or any other transit document approved by council.

The provisions of this Protocol shall apply to transit goods being carried by whatever means of transport, except that in the case of air, water and rail transport, the aircraft, vessel or train in transit shall be exempted from the application of the provisions of this Protocol but goods, including baggage carried on them shall be subject to the provisions of this Protocol. However, the aircraft, vessel or train will be subject to the national laws and regulations of the transit country.

The provisions of this Protocol shall cease to apply to transit traffic referred to in Article 2 (1)(a) of this Protocol when the customs duties and other charges of equivalent effect have been eliminated and common external tariffs established. In this regard, the Council will determine the transit regime and trade facilities to be applicable for Common Market produced goods.

ARTICLE 4

Licensing of Carriers

Any person intending to be engaged in the operation of transit traffic under the provisions of this Protocol shall be licenced for that purpose by the competent authorities of the Member State in whose territory he is normally resident or established, and the competent authority shall inform all the other Member States of all the persons so licenced.

The conditions for the issuance of the licences referred to in paragraph 1 of this Article to a person resident or established in a Member State shall be that:

- (a) the requirements of Article 5 of this Protocol have been satisfied; and
- (b) the applicant has not during the previous three years been convicted of a serious offence, including accepting, receiving or offering bribes, smuggling, theft, destroying documents or evidence, and failing or refusing to give information relating to inter-state transportation of goods.

3. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to applicants who are not resident or established in a Member State shall be determined by each Member State in consultation with the other Member States:

Provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that Member State.

4. Licensed carriers who are convicted of customs offences referred to in sub-paragraph (b) of paragraph 2 of this Article or who conceal their record of having been convicted of such offences in order to obtain a licence or who commit such offences after they have been licensed to operate transit traffic, shall have their licences suspended automatically or withdrawn by the issuing authorities who shall thereupon notify the customs authorities of the other Member States and the respective sureties of the action taken.

ARTICLE 5

Approval of Means of Transport

1. The means of transport used in transit trade shall be licensed by the appropriate licensing authorities of the Member States in accordance with their national laws and regulations.

2. For the purpose of sub-paragraph (b) of paragraph 2 of Article 3 of this Protocol, means of transport, together with their cargo, shall be presented to the customs offices of commencement for examination to ensure that they comply with the technical conditions stipulated in Appendix II of this Protocol before each transit traffic operation is undertaken.

ARTICLE 6

Bonds and Sureties

All Common Market transit traffic operations carried under the cover of the RCTD document or any other transit document approved by Council shall be covered by customs bond and sureties arrangements.

ARTICLE 7

Common Market Transit Document

1. Subject to such other conditions and regulations as the Council may deem necessary, each Member State undertakes to authorize a transitor or his authorized agent, to prepare in respect of each consignment of transit goods a Common Market Transit Document in accordance with the rules laid down in Appendix I of this Protocol.

2. Common Market Transit Documents shall conform to the standard form approved by the Committee on Trade and Customs. Common Market Transit Documents shall be valid for only one transit operation and shall contain a sufficient number of copies for customs control and discharge required for the transport operation concerned.

3. All means of transport covered by the provisions of this Protocol shall be accompanied by relevant Common Market Transit Documents and such documents shall, on demand, be presented by the carriers together with the respective means of transport and certificates to the customs offices en-route and the customs offices of destination for their appropriate actions.

3. The conditions for the issuance of the licences referred to in paragraph 1 of this Article to applicants who are not resident or established in a Member State shall be determined by each Member State in consultation with the other Member States:

Provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that Member State.

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3. All means of transport covered by the provisions of this Protocol shall be accompanied by relevant Common Market Transit Documents and such documents shall, on demand, be presented by the carriers, together with the respective means of transport and certificates to the customs offices en-route and the customs offices of destination for their appropriate actions.

ARTICLE 8

Exemption from Customs Examinations and Charges

Provided the provisions of Articles 4 and 5 of this Protocol are satisfied, goods carried in approved sealed means of transport, sealed packages, or accepted by a customs office of commencement as goods not susceptible to tampering, substitution or manipulation, and permitted to be carried unsealed, shall not:

- (a) be subject to the payment of import or export duties at customs offices en-route; and
- (b) as a general rule, be subject to customs examination at such offices.

2. However, in order to prevent abuse, the customs authorities may, where they suspect an irregularity, carry out at such offices a partial or full examination of the goods.

ARTICLE 9

Transit Procedures

1. All transit goods and means of transport shall be presented to the customs office of commencement together with duly completed relevant Common Market Transit Documents supported by appropriate bonds as necessary for examination and affixing of customs seals. The office of commencement shall decide whether the means of transport to be used provide enough safeguards to ensure customs security and whether the shipment may be made under cover of the relevant Common Market Transit Document.

2. Where it is not possible for goods to be transported in sealed means of transport or compartments, the customs authorities at the customs office of commencement may authorize their transportation in such unsealed means of transport or compartments and under such conditions as they may deem necessary, and endorse the relevant Common Market Transit Document accordingly.

3. A means of transport engaged in the transport of goods under the provisions of this Protocol shall not at the same time be used to transport passengers unless such passengers and their personal effects are carried in a part of the means of transport which is adequately sealed off to the satisfaction of the customs authorities of the customs office of commencement from that part of the means of transport used for the transport of goods under the provisions of this Protocol, and otherwise complies with the provisions of Appendix II of this Protocol, unless the goods are such that sealing is dispensed with under the provisions of this Protocol.

4. Nothing may be added to, taken from, or substituted for goods consigned under cover of a Common Market Transit Document at times of off-loading, trans-shipment or collecting.

5. The means of transport, together with the respective Common Market Transit Document, shall be presented to the customs authorities at customs offices en-route and at customs offices of destination for such administrative acts as may be required under the provisions of this Protocol.

6. Save where irregularities are suspected, the customs offices en-route within the Member States shall respect the seals affixed by the customs authorities of the other Member States. Such customs authorities may, however, affix additional seals of their own.

7. In order to prevent abuse, the customs authorities may, if they deem it necessary:

- (a) require the means of transport to be escorted through the territory of their country, at the transporter's expense, when goods are transported in unsealed means of transport; or

- (b) require that examination of the means of transport and their loads be carried out en-route in the territory of their country.
8. An unsealed shipment covered by an appropriate Common Market Transit Document shall have only one customs office of destination.
9. If the goods in a means of transport are examined at a customs office en-route or anywhere in the course of transportation, the customs authorities concerned shall affix new seals and make a certified declaration of the particulars of irregularities, if any, and of the new seals affixed by them.
10. In the event of an accident or imminent danger necessitating the immediate unloading in whole or in part of a means of transport, the carrier may on his own initiative take such steps as may be necessary to ensure the safety of the goods being transported or the means of transport in which they are being transported. The carrier should, however as soon as possible thereafter, inform the customs office of commencement. The carrier shall arrange where appropriate for the goods to be transferred to other means of transport in the presence of Customs authorities concerned or any other accredited local authority. The Customs authority or such other accredited authority shall endorse the Common Market Transit document with the particulars of the goods transferred to the other means of transport and where possible apply the customs seal.
11. On arrival at the customs office of destination, the Common Market Transit Document shall be discharged without delay. If, however, the goods cannot be immediately entered under another customs regime, the customs authorities may reserve the right to discharge the document conditionally upon a new liability being substituted for that of the surety guaranteeing the said document.
12. If seals affixed by customs authorities are broken en-route otherwise than in the circumstances set out in paragraph 10 of this Article, or if goods are destroyed or damaged without breaking such seals, the procedure laid down in paragraph 11 of this Article shall, without prejudice to the application of the provisions of national laws, be followed and a certified report drawn up in the form set out in Appendix IV of this Protocol.
13. When the customs authorities are satisfied that the goods covered by a Common Market Transit Document have been destroyed by force majeure an exemption from payment of the duties shall be granted.

ARTICLE 10

Obligations of the Member States and Sureties

Subject to the provisions of Article 6 of this Protocol, the obligations of Member States and sureties are as follows:

- (a) Each Member State undertakes to facilitate the transfer to the other Member States of the funds necessary for payment of premiums or other charges claimed from sureties under the provisions of this Protocol, or for payments of any penalties which the transitor may incur in the event of an offence being committed in the course of transit transport operations.
- (b) The Member States agree to ensure that the liabilities undertaken by sureties cover import or export duties due, any interest thereon, and other charges and financial penalties incurred by the holder of a Common Market Transit Document and other persons involved in the transit transport operation under the customs laws and regulations of the Member State in which an offence has been committed. The surety and the persons charged with the offence shall be jointly and severally liable for payment of such sums. The fact that customs authorities might have authorised the examination of goods elsewhere than at a place where the business of the customs office of commencement or destination is usually conducted shall not affect the liability of the surety.

- (c) For the purposes of determining the duties referred to in paragraph (b) of this Article, the particulars of the goods as entered in the Common Market Transit Document shall, unless the contrary is proved, be regarded as correct.
- (d) The liability of the surety to the authorities of any Member State shall commence from the time when the Common Market Transit Document is accepted by the customs authorities of that Member State and shall cover only the goods enumerated in the document.
- (e) When the customs authorities of a Member State have unconditionally discharged a Common Market Transit Document, they may not subsequently claim from the surety payment in respect of the duties referred to in paragraph (b) of this Article unless the certificate of discharge was issued erroneously or fraudulently.
- (f) The transitor and surety shall be released from their undertaking to the customs authorities of each Member State entered when the goods carried have been duly exported or have otherwise been accounted for satisfactorily to the customs authorities of the Member State concerned.
- (g) Where a Common Market Transit Document has not been discharged or has been discharged conditionally, the competent authority of a Member State shall not claim from the surety the payments referred to in paragraph (b) of this Article unless such authority has, within a period of one year from the date on which the Common Market Transit Document was taken on charge, notified the surety of the non-discharge or conditional discharge of the document:

Provided that where the certificate of discharge was obtained erroneously or fraudulently, this paragraph shall not prevent the authorities of a Member State from taking the necessary action against the person or persons concerned at any time thereafter in accordance with their national laws.

- (h) The claim for payment referred to in paragraph (b) of this Article shall be made within three years from the date when the surety was notified that the relevant Common Market Transit Document had not been discharged or had been discharged conditionally, or that the certificate of discharge had been obtained erroneously or fraudulently. However, if the period of three years referred to in this Article includes a period of legal proceedings, any claim for payment under the provisions of this Article shall be made within one year from the date when the decision of the court becomes enforceable.
- (i) The Member States shall, where feasible, use the services available in other Member States in all transit traffic operations provided such services are competitive and not less efficient than those offered by other parties.

ARTICLE 11

Miscellaneous Provisions

The Member States undertake to establish or facilitate the establishment of bonded, transit or customs areas or bonded warehouses for the temporary storage of transit goods where the direct transport of goods from one means of transport to another is not possible. The management and operation of such bonded, transit or customs areas and such bonded warehouses shall be in accordance with the customs rules and regulations of the Member States concerned.

The Member States undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other Member States or authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations.

3. Each means of transport engaged in international transit traffic operations under cover of an RCTD document or any other transit document approved by Council shall have affixed to its front and rear, a plate bearing the letters "COMESA-TRANSIT", the specifications of which are laid down in Appendix V of this Protocol. These plates shall be so placed as to be clearly visible, readable and capable of being sealed. The seals to such plates shall be affixed by the customs authorities of the customs offices of commencement and shall be removed by the authorities of the offices of destination.

4. The Member States shall communicate to each other through the Secretariat facilities of the seals, stamps and date stamps they use.

5. Each Member State shall send to the other Member States through the Secretariat a list of its customs offices and stations including transit routes approved by it for Common Market Transit Document covered traffic and normal working hours of such offices. Contiguous Member States shall consult each other in determining the frontier customs offices to be included in such lists and where possible such offices shall be juxtaposed.

6. In all customs operations referred to in this Protocol, no charges shall be levied for customs attendance, save where it is provided on days or at times or places other than those appointed for such operations. Wherever possible customs frontier offices shall remain open for business for twenty-four hours a day or shall allow execution of customs formalities relating to the transportation of goods under the provisions of this Protocol outside the normal working hours.

7. Any breach of the provisions of this Protocol shall render a carrier liable in the Member State where the offence is committed to the penalties prescribed by law in that Member State.

8. Nothing contained in this Protocol shall prevent the Member States from enacting special legislation in respect of transport operations commencing or terminating in or passing through their territories:

Provided that the provisions of such legislation shall not conflict with the provisions of this Protocol, are extended to other Member States or do not confer benefits on third countries that are more favourable than those enjoyed by the Member States.

9. All Common Market Transit Documents may have an annex of a note explaining how that particular document should be used.

APPENDIX I

NOTES FOR THE USE OF THE COMMON MARKET TRANSIT DOCUMENT

The Common Market Transit Document herein after referred to as "document" shall be prepared in the country of commencement where the goods are first declared to be in transit.

The document shall be printed in the English, French and Portuguese languages, but completed in the language of the country of commencement. The customs authorities of the other countries traversed reserve the right to require their translation into their own language. In order to avoid unnecessary delays which might arise from this requirement, carriers are advised to supply the operator of the means of transport with the requisite translations.

A document remains valid until completion of the transit operation at a customs office of destination provided that it has been taken under customs control at the customs office of commencement within the time limit given by the issuing authorities.

- (a) The document must be typed or multigraphed or printed legibly.
- (b) When there is not enough space on the manifest separate sheets to enter all the goods carried, separate sheets of the same model as the manifest may be attached to the latter, but all copies of the manifests must contain the following particulars:
 - (i) a reference to the sheets; and
 - (ii) the number and type of packages and goods in bulk enumerated on the separate sheets;
 - (iii) the total value and the total gross weight of the goods appearing on the said sheets.

Weights, volume and other measurements shall be expressed in units of the metric system, and values in the currency of the country of commencement or in Eastern and Southern Africa Currency Unit (ESACU).

No erasures or over-writing shall be allowed on the document. Any correction shall be made by deleting the incorrect particulars and adding, if necessary, the required particulars. Any correction, addition or other amendment shall be acknowledged by the person making it and countersigned by the customs authorities.

When the document covers coupled means of transport or several containers, the contents of each means of transport shall be indicated separately on the manifest. This information shall be preceded by the registration or identification number of the means of transport or container.

If there is more than one customs office of destination, the entries concerning the goods taken under customs control at, or intended for, each office shall be clearly separated from each other on the manifest.

In the event of customs seals being broken or goods being destroyed or damaged accidentally, the operator of the means of transport shall ensure that a certified report is drawn up as quickly as possible by the authorities of the country in which the vehicle is located. The operator shall approach the customs authorities, if there are any near at hand, or, if not, any other competent authorities. Operators shall accordingly provide themselves with copies of the certified report form laid down in Appendix V of this Protocol on Transit Trade and Transit Facilities within the Common Market.

10. In the event of accident involving immediate unloading of the whole or part of the load en-route, the operator may take action on his own initiative without requesting or awaiting intervention by the authorities mentioned in paragraph 9 of these notes. He must then furnish adequate proof that he was compelled to take such action in the interests of the means of transport or of the load. Having taken such preventive measures as the emergency may necessitate, he shall at the first opportunity notify the authorities mentioned in paragraph 9 of these notes in order that the facts may be verified, the load checked, the means of transport sealed and a report drawn up.

APPENDIX II

REGULATIONS RELATING TO TECHNICAL CONDITIONS APPLICABLE TO MEANS OF TRANSPORT OTHER THAN PORTERS AND PACK ANIMALS WHICH MAY BE ACCEPTED FOR TRANSPORT OF GOODS WITHIN THE COMMON MARKET UNDER CUSTOMS SEAL

1. Approval for the intra-Common Market transport of goods by means of transport under customs seal may be granted only for means of transport constructed and equipped in such a manner that:
 - (a) customs seal can be simply and effectively affixed thereto;
 - (b) no goods can be removed from or introduced into the sealed part of the means of transport without obvious damage to it or without breaking the seals;
 - (c) they contain no concealed spaces where goods may be hidden.
2. The means of transport shall be so constructed that all spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for customs inspection.
3. Should any empty spaces be formed by the different layers of the sides, floor and roof of the means of transport, the inside surface shall be firmly fixed, solid, unbroken and incapable of being dismantled without leaving obvious traces.
4. Openings made in the floor for technical purposes, such as lubrication, maintenance and filling of the sand-box, shall be allowed only on condition that they are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside.
5. Doors and all other closing systems of means of transport shall be fitted with a device which shall permit simple and effective customs sealing. This device shall either be welded to the sides of doors where these are of metal, or secured by at least two bolts, riveted or welded to the nuts on the inside.
6. Hinges shall be so made and fitted that doors and other closing systems cannot be lifted off the hinge-pins, once shut; the screws, bolts, hinge-pins and other fasteners shall be welded to the outer parts of the hinges. These requirements shall be waived, however, where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins.
7. Doors shall be so constructed as to cover all interstices and ensure complete and effective closure.
8. The means of transport shall be provided with a satisfactory device for protecting the customs seal, or shall be so constructed that the customs seal is adequately protected.
9. The foregoing conditions shall also apply to insulated vehicles, refrigerator vehicles, tank vehicles and furniture vehicles in so far as they are not incompatible with the technical requirements which such vehicles must fulfil in accordance with their use.
10. The flanges (tiller caps), drain cocks and manholes of tank wagons shall be so constructed as to allow simple and effective customs sealing.
11. Folding or collapsible containers are subject to the same conditions as non-folding or non-collapsible containers, provided that the locking devices enabling them to be folded or collapsed allow of customs sealing and that no part of such container can be moved without breaking the seals.