

Annex 14: Container Customs Regime

To the Agreement between and among the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People
(hereinafter referred to as "the Annex")

The Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam (hereinafter referred to as "the Contracting Parties"),

Referring to the Agreement between and among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People, originally signed at Vientiane on 26 November 1999, amended at Yangon on 29 November 2001, acceded to by the Kingdom of Cambodia at Yangon on 29 November 2001, acceded to by the People's Republic of China at Phnom Penh on 3 November 2002, and acceded to by the Union of Myanmar at Dali City on 19 September 2003, and amended at Phnom Penh on 30 April 2004 (hereinafter referred to as "the Agreement"),

Referring to Articles 3(b) and (n) of the Agreement to the effect that Annexes and Protocols contain technical details or time- and/or site-specific variable elements and that they form an integral part of the Agreement and are equally binding,

Referring to Article 36 of the Agreement, as amended, per which the Agreement may be signed and ratified or accepted and enter into force separately from the Annexes and Protocols,

Referring to the Ninth GMS Ministerial Conference held in Manila in January 2000, the Seventh Meeting of the Subregional Transport Forum held in Ho Chi Minh City in August 2002, and the 11th GMS Ministerial Conference held in Phnom Penh in September 2002, where the Governments agreed to a work program to finalize the Agreement and its Annexes and Protocols by 2005, and

Referring to Article 34 of the Agreement, calling for this Annex to provide technical details,

HAVE AGREED AS FOLLOWS:

Article 1: General Provisions

(a) Definitions

- (i) Container means a transport equipment device that is:
 - fully or partially closed to constitute a compartment intended for containing goods;

- of a permanent nature and consequently strong enough to be suitable for repeated use;
 - specially designed to facilitate the carriage of goods by one or more modes of transport, without intermediate (un/re)loading of the goods;
 - designed for ready handling, particularly when being transferred from one mode of transport to another;
 - designed for easy filling and emptying; and
 - having an internal volume of at least one cubic meter.
- (ii) Force Majeure means circumstances that could not be foreseen and avoided, and the consequences of which could not to be prevented or controlled.
- (iii) Special Drawing Right (SDR) means a unit of account defined by the International Monetary Fund (IMF). Conversion of sums into national currencies shall be calculated in accordance with the method of valuation applied by the IMF.
- (b) Scope of Application
- (i) The regime of this Annex shall apply to containers specified in Article 1(a) (i) of this Annex.
- (ii) The regime and procedures set out in this Annex are optional for the container operator, who is entitled either to use the present temporary container importation system or to comply with the existing Host Country Customs procedure.
- (iii) The regime of this Annex shall not preclude the Contracting Parties to grant greater facilities by unilateral national arrangements.
- (iv) The cargo carried in the container will be governed by the provisions of Annex 6 to the Agreement.
- (v) The regime of this Annex shall not preclude the application of national health/quarantine laws/regulations, compatible with Article 9 of the Agreement to the containers.

Article 2: Exemption from Import Duties and Taxes

Subject to re-exportation and other conditions laid down in this Annex:

- (a) each Contracting Party shall grant temporary admission to its territory of containers originating from other Contracting Parties, where they are owned or operated by residents registered in the other Contracting Parties, without payment of import duties and taxes and free of other prohibitions and restrictions; and
- (b) the accessories, equipment, and spare parts in reasonable quantities for the repair of the container shall be exempted from import duties and taxes (they need not be mentioned separately in the Temporary Admission Document).

Article 3: Marking of the Container

In order to benefit from the facilitation provided for in this Annex, the containers shall be marked in the manner described in the Attachment to this Annex.

Article 4: Temporary Admission Document

- (a) Containers imported temporarily into the Host Country territory shall carry a Temporary Admission Document,

- (b) The Temporary Admission Document shall be issued by the container's Home Country authorized issuing organization/institution,
- (c) The Temporary Admission Document may cover one or more temporary admissions into the territories of Contracting Parties.
- (d) The Temporary Admission Document shall consist of the following number of original copies:
 - (i) one for the authorized issuing/guaranteeing organization/institution;
 - (ii) one for the container operator; and
 - (iii) two for each of the Host Country's Customs Authorities whose territory is entered.
- (e) The Temporary Admission Document shall include the following particulars in the English language without prejudice to the parallel use of national languages:
 - (i) the title: Container Temporary Admission Document;
 - (ii) a reference to Article 34 and Annex 14 of the Agreement;
 - (iii) the name of the issuing organization and a box for signature and/or stamp;
 - (iv) the name and address of the holder and a box for signature and/or stamp;
 - (v) the period of validity and extension;
 - (vi) the geographic scope of validity;
 - (vii) the point of entry and exit;
 - (viii) specification and description of the container:
 - country of registration,
 - registration number,
 - date of first registration,
 - year of manufacture,
 - net weight,
 - production/serial number,
 - make (name or trademark of the manufacturer),
 - color (RAL code),
 - payload capacity,
 - equipment (e.g., tank, refrigeration),
 - type of material (e.g., steel, alloy), and
 - other particulars;
 - (ix) the date and place of entry, signature, and/or stamp of the Customs Authorities (entry endorsement) for each temporary admission;
 - (x) the date and place of exit, signature, and/or stamp of the Customs Authorities (exit endorsement) for each temporary admission; and
 - (xi) a box to record the granted period of extension for re-exportation.

The Joint Committee may modify the particulars to be included in the Temporary Admission Document form, as appropriate.
- (f) The Joint Committee will determine the format, appearance, layout, and printing specifications of the document form.

Article 5: Re-Exportation

Containers mentioned in the Temporary Admission Document shall be re-exported in the same general state, except for wear and tear, within the period of validity of such document.

Article 6: Evidence of Importation and Re-Exportation

- (a) Evidence of temporary admission of the container shall flow from the possession of the relevant copy of the Temporary Importation Document by the Host Country's Customs Authorities and the entry endorsement entered in the relevant copy of the Temporary Admission Document.
- (b) Proof of re-exportation of the container shall flow from the exit endorsement entered in the relevant copy of the Temporary Admission Document by the Host Country's Customs Authorities.
- (c) In case of the lack of such original copy of the Temporary Admission Document bearing the exit endorsement, the container operator may provide alternative proof to satisfy the Customs Authorities that the container has actually been re-exported.

Article 7: Discharge of the Temporary Importation Papers

The exit endorsement entered in the Temporary Admission Document within the time period allowed shall have the effect of discharging the Temporary Admission Document. Satisfactory alternative evidence of re-exportation may have the same effect.

Article 8: Time Limits

- (a) The Temporary Admission Document shall specify its period of validity with a minimum of six months commencing from the date of issuance. Provided it was first used before the expiry of its validity period by presentation to the Host Country's Customs office of entry, a Temporary Admission Document shall however remain valid until the return of the container to its Home Country.
- (b) Containers admitted under the regime of this Annex shall leave the Host Country territory within a period of 30 days, commencing from the date of their entry into the territory of the Host Country.
- (c) In order to be timely, the Temporary Admission Document shall be discharged within a period not exceeding three months, commencing from the date of entry into the territory of the Host Country.

Article 9: Incidents En Route

- (a) **Loss or Destruction of the Container En Route**

A temporarily admitted container that has been heavily damaged in an accident shall be exempted from the obligation of re-exportation, provided:

 - (i) the import duties and taxes have been paid to the Host Country Customs Authority;
 - (ii) it has been abandoned to and accepted by the Host Country Customs Authorities; or
 - (iii) it has been destroyed under official Host Country supervision at the expense of the person or entity who has temporarily entered it and any salvaged parts have either re-exited or paid import taxes and duties for.
- (b) **Extension of Time Limits**
 - (i) If a person or entity who has temporarily entered the container, is unable to timely re-export the container or to discharge the Temporary Admission Document, due to force majeure or other reasonable cause, he/she is to file a

request for an extension of the re-exportation period with the Host Country Customs Authorities before the expiry date.

- (ii) The Host Country's Customs Authorities will grant such extension if they are satisfied that the timely re-exportation or discharge of the Temporary Admission Document was prevented by force majeure or other reasonable cause.

(c) Change of Itinerary

In case the container operator is compelled to abandon the designated route due to circumstances beyond his/her will, he/she shall forthwith inform the Host Country Customs Authority, which shall inform any other Competent Authorities for the purpose of designating an alternative route.

Article 10: Issuing and Guaranteeing Organizations/Institutions

- (a) Each Contracting Party shall authorize a national organization/institution to issue the Temporary Admission Document and to guarantee vis-à-vis the Customs Authority of the Host Country the payment of the import duties and taxes (including interest) in case the document was not duly or timely discharged or in case of other irregularity.
- (b) The Contracting Parties shall mutually recognize the authorized issuing/guaranteeing organizations/institutions.
- (c) For the purpose of payment of sums claimed by their Customs Authority, the Contracting Parties shall provide the authorized issuing/guaranteeing organization/institution with facilities for the transfer of currency.

Article 11: Liability of the Issuing/Guaranteeing Organization/Institution

- (a) The authorized issuing/guaranteeing organization/institution shall be jointly and severally liable with the container operator from whom the sums are directly due, to pay the import duties, taxes, and interest, under the customs laws and regulations in the Host Country in respect of the irregularity (e.g., breach of customs laws and regulations, lack of response, lack of timely discharge of the Temporary Admission Document etc.) in connection with the temporary admission of the container under the regime of this Annex.
- (b) At their discretion, the Host Country Customs Authorities may also claim the duties, taxes, fines, and interest from the person(s)/ entity(ies) who is (are) directly liable for them.
- (c) After the Customs Authority of the Host Country establishes an irregularity, the authorized Home Country issuing/guaranteeing organization/institution is to deposit with or pay the duties, taxes, and interest due to the Customs Authority of the Host Country not later than 30 calendar days commencing from notification.
- (d) The Host Country Customs Authority shall refund to the authorized issuing/guaranteeing organization/institution the amount received upon the established absence of any irregularity, without delay, provided that the authorized issuing/guaranteeing organization/institution shall claim such refund within the period of time specified by national laws and regulations.
- (e) The authorized Home Country issuing/guaranteeing organization/institution is entitled to take recourse and claim reimbursement of the customs duties, taxes, and interest that were paid as a guarantor to the Host Country Customs Authority,

from the holder of the document and/or the person(s)/ entity(ies) from whom the sums are due.

- (f) The liability of the authorized issuing/guaranteeing organization/institution shall be limited to SDR 300 per Temporary Admission Document issued.

Article 12: Guarantor Security to the Customs Authority

- (a) General

In order to meet its guarantee obligation vis-à-vis the Host Country Customs Authority, the authorized issuing/guaranteeing organization/institution shall provide the Host Country Customs Authority with the security of the modality and monetary amount indicated in the following paragraphs (b) and (c).

- (b) Modality

Among other modalities, the authorized issuing/guaranteeing organization/institution shall:

- (i) maintain assets in the Host Country; or
 - (ii) make a cash deposit; or
 - (iii) deposit a collective and continuous bond with the Host Country Customs Authority:
 - by arranging for a bank guarantee issued by a bank or financial institution established in the Host Country; or
 - by contracting a guarantee insurance with an insurance company established in the Host Country; or
 - (iv) be represented by its counterpart organization in the Host Country; or
 - (v) provide combinations of two or more of the above;
- subject to approval by the Host Country Customs Authority.

- (c) Monetary Amount

The amount of security to be provided according to this Article shall be a maximum of SDR 600. If the amount of security provided is partly or wholly consumed by an outstanding liability, it must be replenished up to the amount of SDR 600.

Article 13: Exclusion of Offenders

- (a) The Contracting Parties shall have the right to exclude temporarily or permanently from the application of this Annex any person(s)/entity(ies) guilty of a serious offense against their relevant customs laws/regulations applicable to international movement of containers.
- (b) The Customs Authority of the relevant Contracting Party shall notify this exclusion immediately to the Customs Authorities of all other Contracting Parties and to the authorized issuing/guaranteeing organization/institution of the Home Country.

Article 14: Amendment

Any Contracting Party may propose amendments to the Annex via the Joint Committee. Such amendments shall be subject to the unanimous consent of the Contracting Parties.

Article 15: Ratification or Acceptance

The Annex is subject to ratification or acceptance of the Governments of the Contracting Parties. The same applies to an amendment to the Annex, if any.

Article 16: Entry into Force

The Annex will enter into force on the day that at least two Contracting Parties have ratified or accepted it, and will become effective only among the Contracting Parties that have ratified or accepted it. The same applies to an amendment to the Annex, if any.

Article 17: Conforming National Law

Where necessary, the Contracting Parties undertake to conform their relevant national legislation with the contents of the Annex.

Article 18: Reservations

No reservation to the Annex shall be permitted.

Article 19: Suspension of the Annex

- (a) Failure to deposit or pay within the time limit specified in Article 12 (c) of this Annex, the import duties and taxes to the Host Country's Customs Authorities by the Home Country authorized issuing/guaranteeing organization/institution in case of expired and not discharged temporary admission document or other irregularity, entitles the Host Country's Customs Authorities to suspend the application of the present container temporary admission system under the regime of this Annex vis-à-vis the container operators whose Home Country issuing/guaranteeing organization/institution defaults.
- (b) Each Contracting Party may temporarily suspend wholly or partly the application of the Annex with immediate effect in the case of emergencies affecting its national safety. The Contracting Party will inform as soon as possible the other Contracting Parties of such suspension, which will end as soon as the situation returns to normal.

Article 20: Relationship with the Agreement

As a measure to implement the principles laid down in the Agreement, the Annex cannot depart from or be contrary to these principles. In case of incompatibility between the Annex and the Agreement, the latter shall prevail. In case of incompatibility between the Annex and another annex or protocol, such incompatibility shall be interpreted in light of the Agreement.

Article 21: Relationship of the Attachment to the Annex

The attachment shall form an integral part of the Annex and shall be equally binding.

Article 22: Dispute Settlement

Any dispute between or among two or more Contracting Parties on the interpretation or application of the Annex shall be settled directly or by amicable negotiation in the Joint Committee.

Article 23: Denunciation

Once entered into force, the Annex cannot be denounced separately from the Agreement.

Annex 14 Attachment: Marking of the Container

In witness whereof, the undersigned, being duly authorized, have signed this Annex.

Done at Beijing on 20 March 2007 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

(Signed) His Excellency Tram Iv Tek
Secretary of State, Ministry of Public Works and Transport

For the Government of the People's Republic of China

(Signed) His Excellency Weng Mengyong
Vice Minister of Communications

For the Government of the Lao People's Democratic Republic

(Signed) His Excellency Sommad Pholsena
Minister of Communication, Transport, Post and Construction

For the Government of the Union of Myanmar

(Signed) His Excellency Thura Thaung Lwin
Deputy Minister of Rail Transportation

For the Government of the Kingdom of Thailand

(Signed) His Excellency Sansern Wongcha-um
Deputy Minister of Transport

For the Government of the Socialist Republic of Viet Nam

(Signed) His Excellency Tran Doan Tho
Vice Minister of Transport

Annex 14 Attachment: Marking of the Container

This attachment can be downloaded from the ADB GMS Cross-Border Transport Facilitation Agreement website www.adb.org/GMS/Cross-Border/default.asp. It has not been included here because of its size and/or technical complexity.

