

ANNEX I

PROTOCOL ON TRANSIT TRADE AND TRANSIT FACILITIES

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 actual 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:

fully or partially enclosed to constitute a compartment intended for containing goods and capable of being sealed;

of a durable nature intended for repeated use;

specifically designed for the carriage of goods by one or more modes of transport without intermediate unloading and reloading of its contents;

fitted with devices for easy handling, particularly for its transfer from one mode of transport to another;

so designed as to be easy to fill and empty; and

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, implement 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:

any railway stock, containers, water-going vessels, road vehicles and aircraft;

where the local situation so requires, porters and pack animals; and

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 authorised 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.
4. 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

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

3. 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.
4. 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

1. Any person intending to be engaged in the operation of transit traffic under the provisions of this Protocol shall be licensed 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 licensed.

2. 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 consultations 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 authorise a transitor or his authorised 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.

ARTICLE 8

Exemption from Customs Examinations and Charges

1. 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 to compartments, the customs authorities at the customs office of commencement may authorise 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 enroute and at customs offices of destination for such administrative action as may be required under the provisions of this Protocol.
6. Save where irregularities are suspected, the customs offices enroute 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 transitor'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 enroute in the territory of their country.
1. An unsealed shipment covered by an appropriate Common Market Transit Document shall have only one customs office of destination.
2. If the goods in a means of transport are examined at a customs office enroute 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.
3. 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.

4. 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.
5. If seals affixed by customs authorities are broken enroute 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.

6. 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 purpose 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; and
- (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

1. 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 trans-shipment 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.

2. 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 their 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, removable 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 facsimiles 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.