

Summary of ASEAN Member States Policies on Transportation of Empty Container

Member States	Question 1: Is empty container considered as cargo or equipments under the law of each ASEAN country?
BRUNEI DARUSSALAM	Muara Port is a government owned port. Most shipment into Brunei Darussalam are meant for domestic consumption. 5% are goods in transit bourn for East Malaysia i.e. Sabah and Sarawak. For export containers, 2% are laden and the rest are all empties. There are charges for these empties namely demurrage, storage and handling charges. Similar to Malaysia, these containers contribute to our container handling statistics by the port which is considered as a cargo.
CAMBODIA	Subject to the Law on Customs of the Kingdom of Cambodia, all imported goods must be reported at the custom office . In practice, empty Container imported to the territory of the Kingdom of Cambodia for the purpose of sale then it is considered as a cargo.
INDONESIA	In the shipping company, empty container is called equipment and also can be called a walking warehouse
LAO PDR	The Lao law does not provide definition / classification of an empty container
MALAYSIA	Ports in Malaysia can be categorized into Federal Ports and State Ports which are governed under different legal provisions. However, all those Acts do not define empty container as a cargo or as equipment. As the current practice, the movements of empty containers between ports in Malaysia are subject to the port charges, thus it is considered as a cargo to the shipping lines. Besides, they are also taken into account in container handling statistics by ports and therefore being considered as a cargo.
MYANMAR	As the current practice, the movements of empty containers between ports in Myanmar are subject to the port charges, thus it is considered as a cargo to the shipping lines. Besides, they are also taken into account in container handling statistics by ports and therefore being considered as a cargo.
PHILIPPINES	<p>The Philippine law does not provide for the classification of an empty container as cargo or equipment.</p> <p>However, the PPA pursuant to PPA Memorandum Circular No. 22-2004, for purposes of assessment of wharfage, viewed the following:</p> <ul style="list-style-type: none"> • Containers, in general shall be treated as part of ship's gear. • But for purposes of assessment of wharfage fee, a fee levied on cargoes, empty container is assessed as follows: <ul style="list-style-type: none"> • Foreign empty containers, shipped by and consigned to a foreign shipping line or manifested as having "NO COMMERCIAL VALUE" and brought into the country for use in export shipments and shipped through the shipping line's own vessel or any other foreign vessel shall not be subject to the payment of import wharfage • Foreign empty containers which are required to be transported to another Philippine port in order to load export cargo and shipped via domestic vessel (also referred to as transit or relay container, such foreign empty container, though considered as "cargo" shall not be subject to the payment of domestic wharfage • Foreign empty containers that are not owned by foreign shipping lines but owned by companies in the business of container leasing, cargo forwarding or logistics shall be subject to the payment of Import or domestic wharfage • Empty containers that are importations by any domestic shipping lines or any local company, for its own use or hire, shall be subject to the payment of import or domestic wharfage

Member States	Question 1: Is empty container considered as cargo or equipments under the law of each ASEAN country?
	<ul style="list-style-type: none"> • Empty containers used in the coastwise trade, owned and transported through vessels owned by the same shipping line shall not be charged domestic wharfage • Empty containers used in the coastwise trade transported through vessels not owned by the same shipping line shall be charged domestic wharfage
SINGAPORE	<p>The MPA Act defines <u>containers as goods</u> – Section 2 of MPA Act state that “goods” includes dangerous cargoes, animals, carcasses, baggage, <u>containers</u> and any other movable property of any kind whatsoever and whether in a refrigerated form or otherwise;” & “<u>Container</u>” means a receptacle 6.1 metres or more in length equipped with corner castings to facilitate handling by mechanical equipment.</p> <p>Singapore Customs (SC) administers the Customs (Container) Regulations. However, these Regulations <u>do not</u> expressly define a container as a cargo or an equipment. The definition of “container” under the Regulations is:</p> <p><i>“Container” means a box, tank or container of standard dimensions which —</i></p> <ul style="list-style-type: none"> <i>(a) is specially constructed for the safe carriage of goods;</i> <i>(b) is of permanent character and can be used more than once;</i> <i>(c) is specially designed to facilitate carriage of goods by one or more modes of transport;</i> <i>(d) is fitted with devices which enable it to be locked and sealed;</i> <i>(e) has an internal volume of at least one cubic metre; and</i> <i>(f) has conspicuous and permanent identification marks”.</i>
THAILAND	Equipment
VIETNAM	The Viet Nam Maritime Code 2005 defines container as goods: Goods means any machines, equipment, materials, fuels, consumer goods, and any movable property including live animals, containers or similar articles of transport supplied by the shipper for stuffing goods, to be carried under the contract of carriage of goods by sea.

Member States	Question 2: Providing domestic laws and regulations governing the transportation of empty containers between and among domestic ports;
BRUNEI DARUSSALAM	<p>Muara Port is the only commercial main gateway port for Brunei Darussalam. The Muara Container Terminal handles international containerised cargoes bound for Brunei and vice-versa. Smaller ports in Brunei Darussalam namely Kuala Belait Port and Temburong Port do not handle container as cargoes come in bulk and palletised. Hence, there is no occurrence whereby containers especially empties are being transported among domestic ports nor Cabotage Policy is being implemented. Therefore, there is no explicit law and regulation governing the transportation of empty containers between and among our ports.</p> <p>Brunei Darussalam may consider to take account on the law and regulation. It might be beneficial in the near future to adopt when there is a demand for such activity.</p>
CAMBODIA	<p>Phnom Penh Port is the port receiving containers for inland waterways of Cambodia. There is no occurrence whereby containers especially empties are being transported among domestic ports nor Cabotage Policy is being implemented. Therefore, there is no explicit law and regulation governing the transportation of empty containers between and among our ports.</p>
INDONESIA	<ul style="list-style-type: none"> ➤ Law 17 of 2008 on Shipping Article 8, paragraph 1 mention that domestic sea transport activities must be carried out by the national shipping companies and using Indonesian-flagged vessels (<i>Cabotage Principle</i>). ➤ Minister of Transportation Regulation No. 71 of 2005, Article 2 state that the sea transport of goods among ports in the country must be carried out by the national shipping company and folk shipping companies <p>But, There is no explicit laws and regulation governing the transportation of empty containers between and among domestic ports</p>

Member States	Question 2: Providing domestic laws and regulations governing the transportation of empty containers between and among domestic ports;
LAO PDR	According to bilateral agreement between Lao PDR and neighbouring countries, Truck with empty container is prohibited to enter Lao PDR. However, the empty truck can enter only when there is a contract between the two governments or agreement between supplier and client based on a particular project to come to pick up goods in territory of Lao PDR.
MALAYSIA	<p>As the empty containers are considered cargo, they are bounded to the Cabotage Policy. Cabotage Policy in Malaysia limits the transportation of goods and passengers (including the provision of services) in Malaysian waters and the Exclusive Economic Zone (EEZ) to Malaysian ships. Malaysian Ship refers to ships registered under Part IIA of the Merchant Shipping Ordinance 1952, whereby the ship is owned by Malaysians or companies with the majority of shareholders are Malaysians.</p> <p>Section 65A MSO 1952: In this Part, unless the context otherwise requires ‘domestic shipping’ means the use of ship-</p> <p>(a) to provide services, other than fishing, in the Federation waters or the exclusive economic zone; or</p> <p>(b) for the shipment of goods or the carriage of passengers –</p> <p>(i) from any port or place in Malaysia to another port or place in Malaysia; or</p> <p>(j) (ii) from any port or place in Malaysia to any place in the exclusive economic zone or vice versa.</p> <p>Section 65KA (1) - No ship other than a Malaysian ship may engage in domestic shipping.</p>
MYANMAR	There is no explicit laws and regulation governing the transportation of empty containers between and among domestic ports. Nevertheless, in accordance with Myanmar Sea Customs Act, there is no restriction on the transportation of empty containers considered to be equipment (between and among the domestic ports). It may be related to the law of Myanmar Port Authority or Transportation Laws.
PHILIPPINES	<p>For Question Numbers 2 to 6:</p> <p>Generally, foreign shipping lines are not allowed to trade between two (2) ports within territorial waters. This means they are not allowed to pick up their empty containers from one local port (e.g., Manila) and bring it to other local ports (e.g., Davao, Cebu) because of the “cabotage” principle.</p> <p>The foreign shipping lines should contract domestic ships to reposition their empty containers from one domestic port to another. Another option is for the foreign shipping lines to request for issuance of special permit to temporarily trade their ships to the Philippine waters pursuant to Republic Act No. 9295 and its Implementing Rules and Regulations.</p>
SINGAPORE	<p>There is no express provision in the MPA Act (or its subsidiary legislation) that regulates transportation of empty (or loaded) containers between ports. However, persons who carry out the transportation of empty/loaded containers between terminals within the port by sea will require <u>harbour craft permits</u> (see MPA (Harbour Craft) regulations).</p> <p>There is no provision in the Customs (Container) Regulations on the transportation of empty containers between domestic ports. The Customs (Container) Regulations currently only prohibit, inter alia, movement of loaded containers (not empty) between the container terminal and a consignee’s premises/container freight station (not between domestic ports) without a permit.</p>
THAILAND	- Customs Act B.E. 2469 Rules and regulations under the Port Authority of Thailand (PAT)
VIETNAM	No specific regulations for transporting empty containers, only general provisions on cabotage in Viet Nam Maritime Code 2005.

Member States	Question 3: Foreign shipping companies can transport empty containers between domestic ports of your country?
BRUNEI DARUSSALAM	No. Based on the information above, destinations of these empty containers are only meant for inbound and outbound. Empty containers are not handled in domestic ports.
CAMBODIA	Cambodia may consider to take account on the law and regulation. It might be beneficial in the near future to adopt when there is a demand for such activity.
INDONESIA	Based on Law and regulation mentioned above, foreign shipping companies can transport empty containers between domestic ports, as long as using Indonesian-flagged vessels
LAO PDR	Please see answer to Question 2
MALAYSIA	As mentioned above, Cabotage Policy limits the transportation of goods and passengers (including the provision of services) in Malaysian waters and the Exclusive Economic Zone (EEZ) to Malaysian ships. However, the Cabotage Policy is quite liberal where the Minister of Transport under the provision of MSO 1952 is authorized to grant exemptions to foreign vessels to operate domestically whenever Malaysian ships are unable to meet the demands of work as offered by section 65U. In line with that, effective from June 3, 2009, the Government had exempted foreign ships from the provisions of subsection 65KA (1) of the Merchant Shipping Ordinance 1952 with respect to the transport of containerized transshipment cargo for certain sectors.
MYANMAR	Foreign shipping companies cannot transport empty containers between domestic ports.
PHILIPPINES	See Answer in No. 2.
SINGAPORE	There is only one port in Singapore with two licensed public cargo terminal operators. Singapore has no restrictions for international freight transportation. Please refer to Singapore's maritime transport commitments at the WTO under CPC 7212
THAILAND	Shipping companies with up to 49% foreign ownership can transport empty container between domestic ports of Thailand
VIETNAM	Foreign shipping companies are not allowed to transport empty containers in Viet Nam. However, Viet Nam has considered a number of foreign carriers to balance their own empty container company for import and export of goods and when Vietnamese sea-going ships are not in a position to do.

Member States	Question 4: Providing information about requests of foreign shipping companies to be able to transport empty containers between domestic ports of your country;
BRUNEI DARUSSALAM	Not applicable. Please see answer question (3)
CAMBODIA	Destinations of these empty containers are only allowed to handle at Phnom Penh Port.
INDONESIA	The Information can be provided by the port authority.
LAO PDR	Nil
MALAYSIA	Nil
MYANMAR	The information can be provided by Myanma Port Authority.
PHILIPPINES	See Answer in No. 2.
SINGAPORE	Not applicable; please see answer to question (3).
THAILAND	Contact the Port Authority of Thailand and follow the rules and regulations under the PAT, and the Customs Act
VIETNAM	Some foreign shipping companies require to be transported to their company's empty containers from different ports of Vietnam to balance their empty containers between the port of export and import port (sometimes imbalance empty containers).

Member States	Question 5: Briefing the response of the competent authorities to the request of foreign shipping companies;
BRUNEI DARUSSALAM	Not applicable. Please see answer question (3)
CAMBODIA	Not applicable. Please see answer question (3)
INDONESIA	See answer question (4)
LAO PDR	Provincial Department of Public Works and Transport
MALAYSIA	Nil
MYANMAR	The information can be provided by Myanma Port Authority.
PHILIPPINES	See Answer in No. 2.
SINGAPORE	Not applicable; please see answer to question (3).
THAILAND	Please see answer to question (4)
VIETNAM	<ul style="list-style-type: none"> - Priority is granted to Vietnamese sea-going ships in the carriage of cargo and of passengers and luggage between Vietnamese seaports. - Check against actual demand of the empty containers imbalance between import and export ports that foreign companies proposed to be transported.

Member States	Question 6: Providing information if any related to the operation of foreign shipping companies in transporting empty containers between domestic ports of your country.
BRUNEI DARUSSALAM	Similar to Indonesia, the information on loading and unloading of cargoes by shipping companies, including empty containers, is recorded by the customs and port authorities.
CAMBODIA	Not applicable. Please see answer question (3)
INDONESIA	The information of loading and unloading cargo by shipping companies, including empty containers will be recorded by the customs and port authorities.
LAO PDR	Please see answer to Question 2
MALAYSIA	Under the Cabotage Policy, foreign shipping companies are prohibited to transport empty containers between domestic ports in Malaysia. However, exemption can be given to foreign ships whenever certified by the Shipowners Association of Malaysia that there are no suitable Malaysian vessel is available for transporting empty containers between domestic ports in Malaysia.
MYANMAR	Foreign shipping companies are prohibited to transport empty containers between domestic ports in Myanmar. In this regards, all the operations (whether or not empty containers) related to the foreign shipping companies or Local Shipping Companies are under the customs control and handled by Myanmar Port Authority.
PHILIPPINES	See Answer in No. 2.
SINGAPORE	Not applicable; please see answer to question (3).
THAILAND	<p>Currently, there are several foreign shipping companies which already transport empty containers between domestic ports such as</p> <ul style="list-style-type: none"> - NYS Logistics Co.,Ltd. - K Line (Thailand) Ltd. - SITC Container Lines Co.,Ltd - NYK Line (Thailand) Co.,Ltd.
VIETNAM	Currently, there are a number of companies licensed to transport empty containers of their company like Mearsk line, MSC, CMA-CGM, Yang Ming license for a period of 06 months / license 1 times.