

Development of a Simplified Transit System

A. Review of general preconditions for establishment of a simplified regional transit system

1. In August of 2002 the Customs Cooperation Committee approved the Common Action Plan, one of its items was the development of enhanced transit systems. As one of the key components for trade facilitation, improvement of the regional transit system should be based on best practical methods and such work should include the evaluation of methods to be used for introduction of simplified transit systems.

2. Such work was to be conducted alongside with the work on studying the situation of transport and customs infrastructure, capabilities of communications systems and schemes for information exchange at cross-border passing points, improvement of the border crossing procedure and improvement of the TIR system.

3. One of the perspective directions at the initial stage of studying the problem of establishing simplified transit systems assumed a New Computerized Transit System (NCTS), which should be adapted to conditions of the Central Asian region, Azerbaijan, China and Mongolia. However, to implement the NCTS acceptable for the CCC countries, it is necessary to improve legislation on transit and actual accounting for costs related to establishment of a computerized infrastructure, as well as staff training.

4. An attempt to systematize and evaluate opportunities of the region for establishment of a simplified transit system was made at the meeting of CCC Working Groups in Almaty, Kazakhstan, during April 21-25, 2003. It was recognized that transit is one of the most important issues for trade facilitation, as a majority of countries are continental. Major impediments for simplification of the transit system include (1) lack of mutual recognition of customs control procedures, including recognition of customs stamps and seals, (2) lack of participation of the governments in development of transit systems, (3) lack of mutual recognition of bank guarantees for ensuring transit freight transportation.

5. Notwithstanding the fact that a majority of countries in the region use the system of TIR transportation, the parties recognized that alongside with development and encouragement of TIR transportation, there is a need to develop alternative transit systems in the region. At the same time the problem of transit requires a comprehensive approach, which includes adoption of a multilateral agreement on mutual recognition of the results of customs control, customs seals, stamps and customs documents, improvement of border infrastructures for transit, creation of conditions for information exchange, development of the sector of transport operators and freight forwarders, application of bank guarantee schemes and insurance policies to ensure transit.

6. For a complete understanding of a possibility of establishment of alternative transit systems a review of bilateral and multilateral agreements and conventions signed by the parties and related to transit issues, issues with regards to bank guarantees and insurance policies was

undertaken to study the applicability of national legislations to resolve the problem related to transit. The review of the mentioned issues was undertaken at the 2nd Regional Workshop of the CCC on Trade Facilitation and Customs Modernization at the Issyk-Kul, Kyrgyzstan, during August 4-8, 2003.

7. Based on the results of the Regional Workshop the participants recognized the need to establish a simplified regional transit system, which requires: (1) development of a regional system of guarantees; (2) harmonization of legislations regulating transit issues in the region; (3) ensuring compliance with legislations by participants of external economic activities; (4) mutual recognition of transit documents. It was recognized that another perspective is to study the experience of establishment of a New Transit System of the European Community, as well as the experience of the Chinese People's Republic applying advanced computerized systems of control over movement of transit goods.

B. Theoretical and Practical Principles and Recommendations for Development of the Agreement on the Regional Transit System

8. It was noted that the key issue and the basis for transit simplification is development of a regional system of guarantees allowing to eliminate the risk of non-sanctioned arrival of goods into economy of the transit state and in this connection non-payment of customs duties and taxes due to the state budget. Establishment of a regional system of guarantees will allow to significantly reduce the impact of such factors as the lack of mutual recognition of customs documents, significant delays at customs borders, will allow to reject customs escort, reduce financial costs related to transportation.

9. It was recognized that the establishment of a regional system of guarantees involves interests of banks, insurance companies, customs brokers, commercial chambers, transportation organizations and for the purpose to attract them to the transit problem solution it is necessary to consult them to identify their opportunities from the viewpoint of national and international legislation.

10. The CCC participants-members of the Eurasian Economic Community (Belarus, Russia, Kazakhstan, Kyrgyzstan, Tajikistan) have been notified that within the framework of the EurAsEC customs services work on development of the Agreement on ensuring the payment of customs duties by depositing to the customs body's account customs payments due or by using bank guarantees when moving goods under customs control between customs bodies of the EurAsEC.

11. For a comprehensive understanding of transit issues the importance is attached to the conclusions made at the Issyk-Kul regional workshop on the necessity to have a two-aspect approach to solution of the transit problems – development of the TIR transportation system and establishment of a regional transit system. These conclusions were reflected in the materials of the Regional Preparatory Meeting for the 2nd Ministerial Meeting on the Issue of Economic Cooperation in Central Asia held on September 27-28, 2003 in Tashkent, Uzbekistan. It was stated that the legal basis for the current transit procedure consists of (1) bilateral and regional agreements; (2) national transit systems; and (3) transit based on the Convention of International Road Transporters, 1975.

12. The existing bilateral and multilateral transit agreements do not contain the mechanism of financial guarantee to be provided by one country in case of a false transit in the

territory of the transit state. In such a form they actually have the nature of political intentions and strategic intentions and are not applicable for realistic trade facilitation in the region.

For reference: a) Thus, for example, within the framework of the Economic Cooperation Organization (ECO) the Agreement on Transit Trade of the Economic Cooperation Organization (ECO) was signed as of March 15, 1995 (ratified by the Law of the Kyrgyz Republic as of January 15, 2000, № 17) and the Framework ECO Agreement on Transit as of May 9, 1998 (approved by Resolution of the Government of the Kyrgyz Republic as of August 18, 2001, № 459).

b) Article 10 of the Agreement on Establishment of a Free Trade Zone dated April 15, 1994 specifies that transit through the territory of each Contracting Party shall be carried out based on the principle of free transit via the routes most acceptable for international transportation, for transit transportation in the territory or from the territory of other Contracting Parties without any distinction or discrimination based on ship ensigns, place of origin, destination, entry, exit or destination or some other circumstances related to the ownership of goods, ship or other transportation means.

c) A similar norm is stipulated in the Agreement on Uniform Transit Conditions via the territories of the Customs Union participant states as of January 22, 1998, to which the Kyrgyz Republic is an active member.

13. In fact the absence of a coordinated approach in transit issues results in application of national legislation provisions, which creates significant difficulties for trade development. National transit systems are mainly based on furnishing financial guarantees in the transit country, require significant financial costs, are difficult for practical implementation, require a significant period of time, the mechanism of repayment is complicated and non-transparent. As a result the most common measure for transit ensuring is physical customs escorts for the major transit volumes.

The practice of Customs Escort costs money, increases the level of corruption, results in unacceptable delays and as a rule does not meet the requirement of rapid movement of goods. The methodology to calculate the cost of such services is rather confusing and in practice such payments are not registered and transparency is not ensured.

14. International transit practice was implemented by applying transportation practices in the region according to the TIR system under the IRT Convention of 1975. It has considerable advantages, however, is rarely used for short-distance transportation and thus does not meet the requirements on promotion of regional trade facilitation. One of the reasons for insufficient development of TIR short-distance transportation of cheap goods, which are mainly agricultural products, is inaccessibility of the TIR system for small-scale farmers, thus preventing its wide spreading in the region.

15. The revised Common Action Plan and Proposed Action Plan for 2003-2004 approved at the Second CCC Meeting on October 9-10, 2003 in Tashkent, envisages a component of the Regional Transit System, which includes the following. It is necessary to study further feasible transit systems, financing needs for establishment of regional guarantees, evaluation of the capacity of existing state transit systems to be adapted in the regional system.

A separate objective is the plan on implementation of the pilot testing of the regional transit system involving two countries in the region.

16. The Kyrgyz Customs initiated the issue on the necessity to develop a regional agreement envisaging (1) simplicity of transit movement of goods within the region; (2) availability of a financial guarantee to the transit state, in which the customs authorities allowed for non-sanctioned release of goods; (3) conformity of the financial guarantee with the real value of goods and customs duties and taxes calculated on its basis; (4) accessibility of the regional transit system for a broad circle of users; (5) mutual recognition of the financial guarantee document and the customs document, on which the transit is carried out.

17. Several approaches to the draft agreement, under which the first options considered a possibility of depositing necessary amounts of guarantees to accounts of customs bodies with further compensation of these amounts to the customs bodies of the transit state in case of non-delivery of goods to the destination or non-exit of goods from the territory of the transit state. However this option was not acceptable due to the fact that the customs service, being a state executive body, does not exercise the function of a guaranteeing organization.

18. Drafting of the transit agreement for Kyrgyzstan and Kazakhstan was promoted by the fact that in December of 2003 a number of the most important agreements were concluded between these states, including the Agreement on Allied Relations, which, being of the most important political nature, becomes a fundamental one for a significant impetus in trade and economic relations of the two countries.

19. Due to the constructive position of the customs service of Kazakhstan aimed at preparing a rational and realistically feasible scheme of control over transit of goods, the draft agreement has been developed, approved by the customs services of the parties and at present is subject of international state procedures of registration.

C. The Text of the Draft Agreement on Transit Movement of Goods by Road Transport through the Territory of the Republic of Kazakhstan

AGREEMENT on transit movement of goods by road transport through the territory of the Republic of Kazakhstan (The Agreement has been translated by the ADB)

The Revenue Committee under the Ministry of Finance of the Kyrgyz Republic and the Customs Control Agency of the Republic of Kazakhstan, hereinafter referred to as the Parties guided by the Agreement on Allied Relations between the Republic of Kazakhstan and the Kyrgyz Republic as of December 25, 2003,

based on the Agreement on Uniform Conditions of Transit through the Territories of the Countries Participants of the Customs Union as of January 22, 1998,

to implement provisions of the Protocol on customs control of goods and transportation Means moved between customs bodies of the Customs Union participant countries as of February 17, 2000,

to implement Item 3 of the Decision of the EurAsEC CCSM №186 dated July 4, 2003, striving to accelerate the movement of goods under customs control in their territories, with an intention to simplify international shipment, willing to promote the development of international trade, agreed on the following:

Article 1

The present Agreement shall be applicable to goods moved under the customs control by road transport through the territory of the Republic of Kazakhstan.

The present Agreement shall not cover the transportation of goods carried out in compliance with the IRT Convention, 1975.

Article 2

The movement of goods under the customs control by road transport through the territory of the Republic of Kazakhstan in accordance with the present Agreement shall be executed on the basis of submitted documents accompanying the goods, the document supporting ensuring of payment of customs payments and taxes in the Kyrgyz Republic and the document to control the delivery of goods.

The document ensuring the payment of customs duties and taxes in the Kyrgyz Republic, shall be issued to the transporter by the customs body of the Kyrgyz Republic.

The document to control the delivery of goods shall be prepared by officials of the customs bodies of the Republic of Kazakhstan following the procedure as stipulated by customs legislation of the republic of Kazakhstan and shall be recognized by the Parties as a document certifying the delivery of goods to the destination.

Article 3

The movement of goods under the customs control by road transport through the territory of the Republic of Kazakhstan in accordance with the present Agreement shall be executed without applying the measures envisaged to ensure the delivery of goods and transportation means, as stipulated by customs legislation of the Republic of Kazakhstan.

Article 4

The movement of goods shall be executed through the passing points as established by the present Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic signed as of December 25, 2003 "On the Passing Points through the State Border" and Resolution № 1556 of the Government of the Republic of Kazakhstan as of December 3, 2001 "On Approval of the List of Road Transport Passing Points at the State Border of the Republic of Kazakhstan".

Article 5

The present Agreement shall be applicable to the goods the transit of which through the territory of the Republic of Kazakhstan shall be executed only when observing the requirements established by the Government of the Republic of Kazakhstan on security and measures in the sphere of export control, as well as on ensuring the payment of customs duties and taxes.

Article 6

The Parties shall exchange information on goods and transportation means moved under the customs control pursuant to the present Agreement on a monthly basis.

Article 7

When confirming a fact of non-delivery of the good to the destination customs body, the Kyrgyz Party shall ensure compensation of the damage to the Kazakh Party within 30 days.

To receive the compensation related to the non-delivery of goods, the Kazakh Party shall furnish the Kyrgyz Party with a written requirement to compensate customs duties and taxes due, specifying their types, rates and amounts. However these amounts shall not be lower than

the amounts to be paid as customs duties and taxes as if these goods have been released in free circulation in the territory of the Republic of Kazakhstan.

Customs value determined in compliance with customs legislation of the Republic of Kazakhstan shall be accepted as the basis for calculation of the amount ensuring the payment of customs duties and taxes when moving goods under the customs control.

Article 8

In case of non-delivery of goods to the destination, the Parties shall be obliged to conduct investigation of such facts notifying the Party, where the fact of non-delivery of goods was discovered about the investigation results in writing.

Upon mutual agreement of the Parties, investigation of the facts of non-delivery of goods can be conducted by joint working groups of the Parties concerned.

Article 9

Amendments and addenda can be introduced to the present Agreement, which shall be stipulated in Protocols being an integral part to the present Agreement.

The present Agreement shall be temporary applicable from the date of signature and shall come in force from the moment the Parties exchange notifications on completion of interstate procedures and shall be effective until the Parties to the present Agreement notify officially six months prior to withdrawing from the Agreement.

The present Agreement is made in _____ city on _____, 2004 in three original copies, each in the Kazakh, Kyrgyz and Russian languages, all texts being equally authentic.

In case of disputes arising when interpreting provisions of the present Agreement the Parties shall use the text in the Russian language.

**For the Government
of the Republic of Kazakhstan**

**For the Government
of the Kyrgyz Republic**

D. Analysis of the Draft Agreement Based on Recommendations of the CCC, TRACECA, its Capabilities and Development Perspectives

20. Notwithstanding the fact that the developed draft Agreement is of an indeterminate nature, which is reflected in its “one-sided” focus (i.e. the use of a document ensuring the payment of customs duties and taxes issued only to the customs service of Kazakhstan), testing of such a scheme might be useful within the framework of a bilateral agreement for its further replication in the regional scale. At the same time it was agreed that for the customs service of the transit state – Kazakhstan – the international national mechanism of damage compensation, measures of administrative influence on non-fair participants of external economic activity, the mechanism of accounting and control of used guarantees and other internal national details of regulation are not of a principal importance under the condition of observance of the major principle – actual compensation of the damage provided caused by non-sanctioned release of goods in the national economy of the transit country.

21. Article 2 of the Agreement specified a requirement to submit the following core documents necessary for movement of goods under customs control in accordance with the proposed simplified transit system: (1) a document for delivery control and (2) a document testifying the guarantee of payment of customs duties.

22. The recommendation of the TRACECA project related to the use of common guarantees instead of individual ones for each shipment was not reflected in this draft Agreement. At the same time the developers assumed that the use of common guarantees will require increased amounts to ensure all freights for a specific period of time (a year, half a year), which will make the transportation scheme under this Agreement not accessible for small business representatives, especially for small-scale farmers, who transport goods (1) in small-value batches, (2) their transportation activities are of a seasonal nature, and (3) they cannot release significant funds for this purpose.

In addition, it was important to stipulate in legislation the very scheme of recognition of guarantees of one state in the other state for its further transformation into a regional chain of guarantees through mediation of customs bodies.

23. The developed draft Agreement took into account recommendations developed by the TRACECA project in terms of the issue that at the initial stage the system of guarantees cannot be applied to the system of regional transit for goods subject to high duties. The movement of goods subject to high customs duties and taxes under guarantee commitments raises a concern of customs administrations about a possible falsification of documents and development of corrupted schemes by concerned unfair importers to avoid the payment of customs duties due.

In addition it is impossible to exclude completely customs escorts from national legislations, as there is a specific list of goods subject to mandatory escorting (poisonous substances, dangerous waste, radioactive substance, arms, etc.).

Such cases are stipulated by the draft Agreement in Article 5 separately to be applicable to such goods specified in provisions of national legislation.

24. Article 6 of the Agreement envisages exchange of information on goods and transportation means moved under customs control, which envisages a possibility of adapting the principles of the New Computerized Transit System to the regional transit system. However the solution of this task has not been specified in this Agreement, the format for data exchange at the initial stage should be agreed by customs services of the parties.

25. Article 7 of the Agreement legally specifies the adequacy of financial guarantee only in the volume, which is realistically necessary to compensate the damage to the transit country in case of non-delivery of goods, depending on a concrete shipment and its value. This is a significant advantage compared to the TIR system under which the amount of guarantee on each carnet is fixed and does not depend on the value of freight, and this advantage makes the transit transportation unaffordable for small-scale agricultural producers.

26. At the Issyk-Kul seminar the CCC emphasized the need to increase the responsibility of business subjects when moving goods, observing various prescription of customs bodies and other executive bodies. To ensure viability of any system of transit transportation a large significance is attached to a responsible approach of subjects of external economic activity to adherence to the Agreement provisions.

It is necessary to take into account that unfair participants of external economic activity can be considered as a possibility for inauthentic declaration (declaring instead of goods with a low level of taxation – goods with high level of taxes and duties), transportation of prohibited goods and drugs, etc. The feeling of impunity can put in doubt the whole idea of establishing a regional chain of guarantees initiated by customs bodies. To prevent possible attempts of using the proposed scheme for establishment of illegal channels of goods transportation Article 8 of the Agreement stipulates investigations to be conducted on the facts of non-delivery of goods, including by joint working groups of the parties concerned.

27. Thus, the developers tried to take into account all recommendations and wishes of customs services of the parties, international experts, results of studies conducted under various international projects on transit-related issues.

It is worth noting that the Government of the Kyrgyz Republic pays much attention to the issue of free movement of goods as one of the decisive factors for successful development of trade of the Kyrgyz Republic with the countries of the region. Based on the understanding of impossibility to conclude long-term agreements on transit issues without providing financial guarantees to customs services of the transit party, the mechanism of the draft Agreement has been preliminary approved by the Government.

We hope that signing of the Agreement will allow to create preconditions for establishing in future a stronger basis for the regional system of guarantees to ensure transit transportation.