DISCUSSION DOCUMENT ON JOINT PROCESSING AT REGIONAL BORDER CROSSINGS *

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DISCUSSION DOCUMENT ON JOINT PROCESSING

Introduction

The Common Action Plan, endorsed by the Customs Co-operation Committee Meeting in Urumqi in August 2002, proposed under the Development of Border Posts and Facilities that an examination should be undertaken of the technical, financial and economic feasibility of developing joint border processing.

The 1st Meeting of the Customs Working Group in Almaty, Kazakhstan 21-25th April 2003 agreed that extended waiting times at many border posts could be attributed to inadequate border infrastructure, insufficient quality and quantity of technical equipment and materials, poor border design with shortfall of facilities in one area and a surplus in another, complicated procedures focused on centralized control, and multiple border organizations (up to nine at many crossings) working in isolation. Most users, unfortunately, considered the delays as principally customs-related. Despite best efforts, border audits in the region between 1995 and 2002 undertaken by the EU Tacis Program have indicated that performance of borders had not improved significantly in terms of unit processing speeds. Proposals such as streamlining border functionalities, single window and joint border processing were recognized to be viable options to improve border post performance that merited further consideration.

Whilst the delegates recognized, in principle, the potential benefits to be gained from joint border processing in terms of enhanced services and the more effective use of border facilities, there was not a comprehensive understanding of what joint border processing actually involved and of the differing implementation options. There are currently no joint border posts in operation in the region, so there is a lack of practical experience of the concept. Concern was expressed at the potential implications of such systems on the basis of the existing legal jurisdiction, how the other border organizations would be involved and how such systems would operate in practical operational terms.

The objective of this discussion paper is to address these issues and concerns so as to enable the Customs Authorities in the region to actively consider the possibility of introducing of joint border processing in the region, probably on a pilot basis at selected border crossings.

1. Demand for Joint Processing

A key role for all modern Customs organizations is trade facilitation. This function is enshrined in many of the bi-lateral, multi-lateral and international agreements signed by the Governments in the Central Asian Republics (CARS), the Peoples Republic of China (PRC), Azerbaijan and Mongolia. Despite this, Customs are still perceived by the trade and transport industries as a barrier to trade and transport development.

This adverse perception is highlighted by the delays incurred the border crossings. Border controls were only introduced in the CARS in 1991 as a result of the demise of the Soviet Union and the creation of independent Republics, each requiring its own border control mechanisms. The PRC border with the Soviet Union remained closed for many years and traffic has largely grown across this border only since the CARS came into existence. Thus, it is only in the 1990s that these new barriers were put in place at

the borders. This has resulted in delays that have driven transport costs up to some of the highest levels in the world, despite low fuel costs, and leads to rising trade costs.

In recent years substantial investment has been undertaken on the development of the primary and some secondary border crossings throughout the region. This is an on-going process being supported by ADB and other International Funding Institutions (IFIs) and particularly the individual countries themselves. However, despite this investment the transport industry and other users still complain that border transit speeds and procedures have not changed substantially over the last twenty years. Clearly, the current conditions are not compatible with the objective of development of region trade and cooperation and consequently new approaches should be considered that could enhance border performance, justify existing and future border investment and promote regional trade.

It is important to note that the concepts discussed in this paper represent only one of the potential solutions to border delays. The current EU TRACECA "Simplification of Border Crossing Procedures" program that includes all the countries, except PRC and Mongolia, is concentrating on proposals to simplify and harmonize border crossing procedures. It is intended that the ADB will continue and expand on this initiative with the Working Groups. These initiatives are likely to focus principally on reducing the extent of the procedures and number of organizations present. The concept of joint processing is an add-on option to this simplification and can be implemented on the basis of either existing or simplified procedures. Thus, the issue of joint processing is not in conflict with current initiatives by either the IFIs or individual Customs organizations.

2. The Concept

The principle of joint processing is to reduce the number of stops incurred in a cross border movement by combining the activities of both countries border organizations at either a single common location or at a single location in each direction (juxtaposed facilities).

Current border procedures consist of a series of procedures being undertaken within the Border Control Zone (BCZ) in State A mainly by the Border Police and Customs, but in most cases with additional processing by Veterinary, Phytosanitary, Sanitary and Ministry of Transport or State Railways. Following this processing the vehicle/train moves over the border into another BCZ in State B and is then subject to similar procedures. For users this resembles an "obstacle" race whereby one has to go through a number of "obstacles", drive a few hundred metres and then start again with a fresh set of obstacles. Joint processing is principally about placing all the obstacles in one place and then trying to reduce them by eliminating the amount of processing duplication. Consequently, it is a two stage process – establishment followed by rationalization.

Joint processing can be considered for both road and rail borders, though it is recognized that the principle benefits are achievable at road borders. It is not suitable for maritime borders, other than on short ferry routes, and the trans-Caspian routes are not considered to be ideal for such a concept given the transit distance/time.

3. Development Logic

The reasons why countries in the region should evaluate the potential to introduce joint processing relates to following benefits:

- Enhanced Border Performance;
- Lower Infrastructure and Operating Costs; and
- Compliance with International Conventions.

3.1 Enhanced Border Performance

As indicated in Section 2, the current transit times through the borders are seen by users to be excessive and create a negative image of Customs that is not always deserved. Initiatives to improve border performance have had limited success to date. The main reason why overall transit times have improved in recent years is principally due to the reduced volume of trade caused by the adverse economic climate in parts of the Region. Unit processing times for individual vehicles and trains have not altered significantly. Thus, the economic conditions continue to improve generating higher levels of regional trade the extended waiting times at borders will return.

With joint processing, even if the current border procedures remained unchanged, the border transit speeds would improve using a single processing location for the following reasons:

- The time taken to transit between the BCZs with the associated exit and entry gate checks would be eliminated;
- It would be possible to have a continuous flow processing "production line" for passenger traffic, thus reducing the inherent delays in non-flow techniques;
- A single stop for freight traffic where all administrative processes could be undertaken at a single location, thus reducing times parking and continual moving of heavy transport/trains.

The elimination of movement and parking-up times would result in an overall improvement in units processed per hour and consequent enhancement in border performance over the current separate BCZ methodology, even if each country were only to achieve existing unit processing speeds.

3.2 Lower Infrastructure and Operating Costs

Border infrastructure is expensive both in terms of the physical infrastructure – processing and administrative buildings, road and parking areas and utilities - and technical equipment – scanners, weighbridges and ICT. An additional problem in the region is that the majority of border crossings tend to be in remote locations, distant from major conurbations. This means such border development is more expensive than normal, both in terms of capital and operating costs.

The current position whereby each country has to provide major infrastructure for its own specific border processing requirements involves a duplication of investment at frontiers. If there were some potential to combine the investment resources, the cost to each country would be lower. This potential for combined investment can be achieved through the implementation of joint processing based on the option selected (Section 4).

As indicated, many of the borders in the region are in remote locations. This results in higher manning costs, both to encourage personnel to locate at these crossings and the need for the provision of accommodation. Joint processing makes more efficient use of manpower due to the reduced "idle time" of officers. It is noticeable at many of the

borders that officers are unable to undertake continuous processing, particularly of passenger traffic, due to the uneven inflow of work. One moment they are busy clearing units and then the next standing around incurring "idle time" because they lack units to work upon. The joint processing concept provides a more continuous work flow resulting in higher productivity due to the lower idle time, and consequent potential to reduce staffing levels, especially at these remoter locations.

There is an ever increasing demand for ICT development at border crossings. Most countries in the region already have an Automated Customs Clearance System (ACCS) or are in the process of developing and installing such systems. Such ACCS have a border interface with the connections to the central server, thus enabling data on shipments to be entered or extracted at the border. Significant potential exists for a border interface whereby exit data from one country can represent input data to the next country without the necessity to key in new data with the resultant transposition errors. If the systems can be connected through a LAN system within a single site, this would be significantly easier than a physical cross border data transfer. The language and procedures between each of the CARS and with Azerbaijan makes the potential for such data transfers high.

3.3 Compliance with International Conventions

The legal force in promoting joint customs processing is the collection of international agreements relating to the simplification of customs procedures and the harmonization of border controls. The most important is the *International Convention on the Simplification and Harmonization of Customs Procedures*, also known as the "Kyoto Convention", which was prepared by the Customs Co-operation Council, later renamed the World Customs Organization (WCO). This Convention entered into force in 1974 and has been ratified by 62 states.

In 1999, a revised text of the convention, known as the "Revised Kyoto Convention", was prepared by WCO and agreed to by the WCO member states. To date, 11 contracting states have ratified the Revised Kyoto Convention and another 29 signatories are required for the amendment to enter into force. However, the Convention provides the international benchmark for reform and modernization of Customs, including the introduction of joint customs controls.

The Convention establishes 3 types of standards in relation to implementation of the Convention:

- Standard - that have to be implemented within 36 months of contracting;
- Transitional Standards – that have to be implemented within 60 months of contracting; and
- Recommended Practices – have to be implemented within 36 months of contracting to that specific annex.

The issue of joint processing is specifically addressed in Chapter 3 of the General Annex to the Convention that binds the parties to implement the following standards:

"3.4 Transitional Standard
At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.

3.5 Transitional Standard
Where the Customs intend to establish a new Customs office or to convert an existing office to a common border crossing, they shall, wherever possible, co-operate with the neighboring Customs to establish a juxtaposed Customs office to facilitate joint controls".

The concept is further defined in the guidelines on the interpretation of the General Annex as follows:

"The customs controls of the exporting administration are conducted at the same time as the customs formalities of the importing administration (or near simultaneously) by officers from both customs administrations; and

The customs controls are conducted within a common area where customs offices of both administrations are established, whether in separate buildings or in a single facility."

The *International Convention on the Harmonization of Frontier Controls of Goods, 1982 (Harmonization Convention, 1982)* contains more specific operational guidelines regarding facilitation measures that countries may introduce at common borders. The TRACECA Basic Agreement that has been signed by most of the CARS and Azerbaijan promotes accession to this Convention. Article 7 of the Convention contains its main provisions regarding co-operation at border stations between adjacent countries. It provides the following proposals:

"Whenever a common inland frontier is crossed, the Contracting Parties concerned shall take appropriate measures, whenever possible, to facilitate the passage of the goods, and they shall, in particular:
(a) endeavor to arrange for the joint control of goods and documents, through the provision of shared facilities.

The contracting parties of this Convention recently considered various improvements to be incorporated as Annex 8 to the convention. These improvements were prompted by the experience gained with the South Eastern Europe Co-operation Initiative (SECI) initiative, as well as by the International Road Transport Union (IRU). Article 6 on Border Crossing Points of Annex 8 states the following:

"In order to ensure that the required formalities at border crossing points are streamlined and accelerated, the Contracting Parties shall meet, as far as possible, the following minimum requirements for border crossing points open for international goods traffic:
(i) facilities enabling joint controls between neighboring States (one-stop technology), 24 hours a day, whenever justified by trade needs and in line with road traffic regulations.

It is clear therefore that joint processing has been identified as a specific concept to be promoted within these international Conventions that are used as a "roadmap" to the development of modern border operations.

4. Joint Processing Options

Joint Processing involves a single methodology based on by combining the activities of both countries border organizations at a common location. However the implementation of the concept has a number of different variants or options based on the specific environment at that location.

In order to understand the concept of joint processing it is important to clarify both the terminology and the procedures involved. Joint processing relates to the processes undertaken by the border organization of each country, either in sequence or simultaneously. "Single-Stop" Customs practices relates to the physical movement of the user, be it an individual passenger, vehicle or train within a single location – i.e. "single stop" is movement-related and is not a specific process. In practice, single stop normally relates specifically to freight traffic movements by road or rail whereby processing is undertaken at a single point without the vehicle or train having to move about within the BCZs. The "Single-window" is a system that allows traders to lodge information with a single body to fulfill all import or export-related documentary requirements. This is more easily achieved with joint processing because of the proximity of the organizations in relation to document or data transfer. "Common Border Processing" relates to undertaking the border procedures within a single combined "common" border zone straddling the border or within one country. A level of joint processing is inevitable with a common BCZ – i.e. common relates to the profile of the BCZ with both countries operating within a common area, rather than the processes that are undertaken within that BCZ.

The standard joint processing routines are as follows for a cross-border movement from State A to State B:

- Pedestrians: enter BCZ from State A, subject to exit controls by Customs A and Border Police A, followed by entry controls Border Police B and Customs B and exit from BCZ into State B;
- Passenger Cars: drive into BCZ from State A, subject to drive-thru exit controls by Customs A and Border Police A, followed by drive-thru entry controls Border Police B and Customs B and Ministry of Transport (MOT) prior to exit from BCZ into State B;
- Freight Trucks: drive into BCZ from State A and park up in a common parking area. Driver exits vehicles and undertakes the administrative exit controls by Customs A and Border Police A, followed by administrative entry controls by Border Police B and Customs B and MOT prior to returning to vehicle. Vehicle then subject to inspection/examination either in the parking area or at inspection area prior to exiting from BCZ into State B;
- Passenger Trains: undertaken on a walk-thru by Customs from State A, followed by Border Police from State A, Border Police from State B and Customs from State B. This can be undertaken when train is either held locked in a station or undergoing bogie transfer or, more commonly, in transit between border stations; and
- Freight Trains; train held in a border station/siding and processes by Customs, Border Police and State Railways from State A followed by border processing by Customs, Border Police and State Railways from State B.

The activities of the other border organizations, such as Veterinary, Phytosanitary etc., are integrated into the above processes either directly or on a delegated arrangement. It

can be seen that the processes initially are almost identical to current procedures at the separate national facilities. The initial difference is only that of the location. However, the benefits to the users are significant in terms of reduced transit times. The benefits to the border organization mainly occur in Stage 2 when it is possible to rationalize the operations to reduce duplication of workload through the physical presence of both countries organizations within the one location using such techniques as joint inspections, enhanced ICT transfers etc. and the mutual recognition of procedures that allows one party to provide services for another.

In considering the introduction of joint processing the following factors need to be assessed:

- Existing Infrastructure;
- Current Procedures;
- Topography of the site/area;
- Nature of the traffic – road/rail, passenger, freight, volumes and peaking factors;
- Risk factors – country, users, goods etc. and
- Demands for reciprocal treatment/facilities.

Whilst it is possible to have joint processing of Customs in isolation, in practice the benefits of joint processing are unlikely to be achieved unless the joint processing also involves all the major border organizations. However, Customs are the main organization at the borders in terms of processing times and they can act as the promoter of joint processing.

There are 4 main joint processing options that mainly relate to the locational environment:

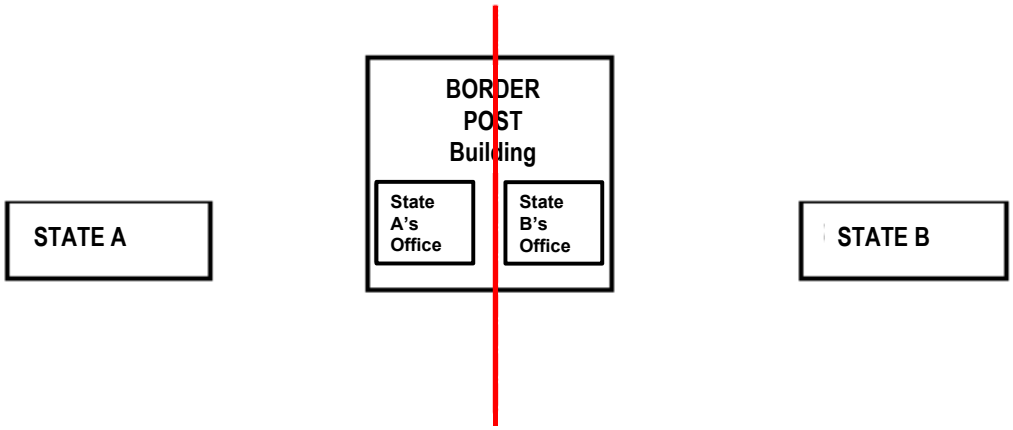
- Straddling Facilities;
- A Common Border Facility;
- Juxtaposed Borders Facilities; and
- Country of Entry Processing.

4.1 Straddling Facilities

Straddling facilities exist where the BCZs of the countries directly interface with each other with the international border running through the combined BCZ area. These can be either small border crossings handling low traffic volumes or large border crossings processing high volumes of cargo.

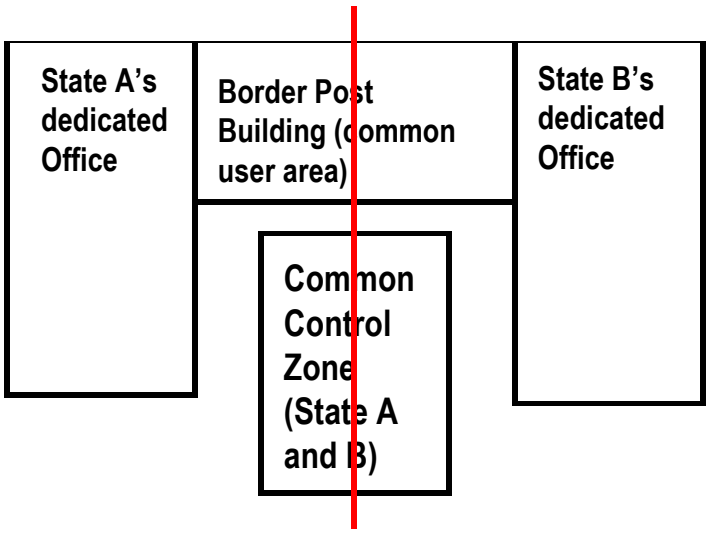
In the case of the small border crossings, particularly in the remoter locations, these are normally manned by only one or two officials from each side. The respective Customs authorities provide simple facilities (normally no more than two to three rooms) that are shared by personnel, thus saving on infrastructure costs or alternatively being able to provide better facilities than would be justified if each country were investing separately. These facilities straddle the border, thus enabling each official to continue to perform official duties on their national territory. This approach is illustrated graphically below:

FIGURE 1 INSPECTION FACILITY STRADDLING THE COMMON BORDER



The high traffic volume border crossings that straddle the border are characterized by extensive integrated facilities. Each country still has their facilities located on its side of the border. However, officials use a common BCZ that is effectively located in both countries to conduct joint controls. Within these zones, officials perform all the control functions mandated by their respective national laws. This configuration is shown below:

FIGURE 2 INSPECTION FACILITIES LOCATED IN COMMON CONTROL ZONE STRADDLING THE BORDER



In the case of the small crossings based on straddled facilities, these are most common on the US/Canadian borders, but could be particularly suitable to this Region in relation to the remoter secondary border crossings.

Examples of such straddled border facilities handling larger volumes of traffic in Europe include:

- Germany/Poland Penkum/Koblaskowo;
  Gablenz/Tuplice;
  Gorlitz/Zgorzelec;
- Germany/Czech Rep Bayerisch Eisenstein/Zelena Ruda;

Furth Im Wald/Folmava; and

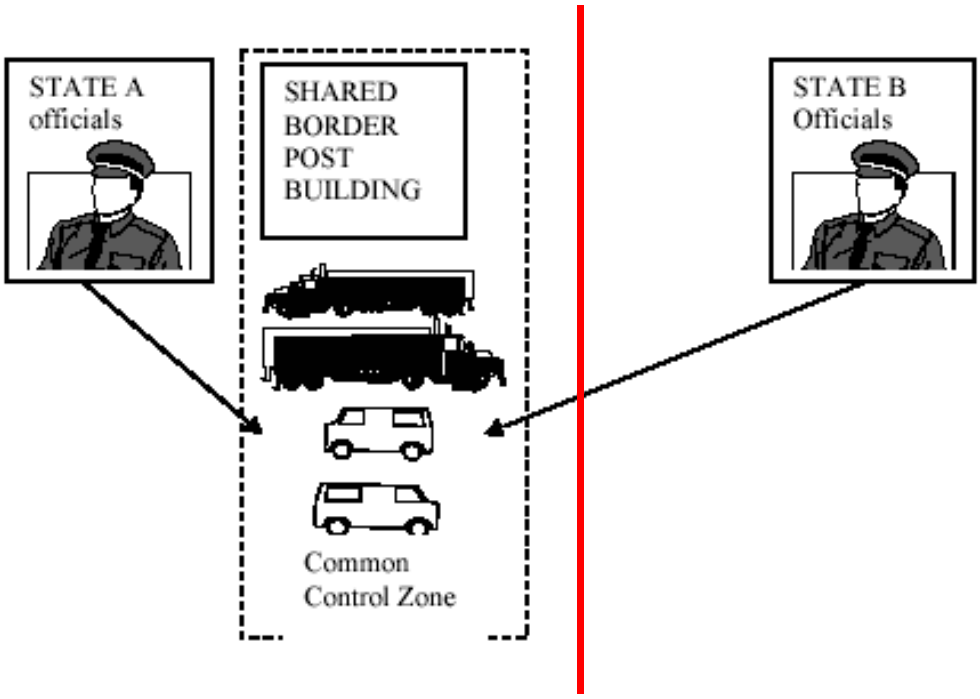
- Austria/Hungary Furstenfeld/Kormend.

The key feature of this option is that the topography has to be suitable – i.e. there has to be sufficient area for a BCZ either side of the border and they have to be able to directly interface. This is more difficult if the border contains a natural divisional feature such as a river etc. for example at the Kazak/Kyrgyz Republic crossing at Korday-Akzhol. In general, such straddled facilities tend to be based on new infrastructure – i.e. it is custom-built for the purpose – rather than adapting existing infrastructure.

4.2 A Common Border Facility

While straddling facilities may be the optimum configuration for joint processing, topography or other reasons often preclude the development of this option. Where this is the case, states have agreed to locate facilities wholly within the national territory of one of the states. This means that the entry and exit controls in respect of all forms of traffic are conducted only within the territory of one state and officials from both states work together in a common BCZ. A graphic illustration of this kind of configuration is shown below:

FIGURE 3 COMMON BORDER FACILITY



This option provides many of the benefits of a straddled crossing in that all processing is done within a single combined BCZ. In practice, the "border" becomes the entry and exit points to the BCZ, though at some common borders there is some segregation of processing such that the processing by the border officials from State A in the above illustrations will process on the left hand side of the BCZ and State B on the right – i.e. when proceeding from State A to State B all the exit procedures for State A are undertaken before passing over an invisible boundary into the entry processing of State B and passing into State B by exiting the BCZ.

A condition of this common BCZ by both Border Police and Customs is likely to be that there must be a dedicated fenced road between the BCZ and the other country as goods in transit between the BCZ and the border of State B in the above illustration have actually entered State B or have yet to leave State B but are transiting through a section of State A.

Examples of such common border facilities in Europe include:

- Germany/Poland Frankfurt-am-Oder;
- Bosnia/Croatia Neum-Klek;
- Russia/Belarus; and.
- Bulgaria/Romania Vidin (Rail)/Calafat (Road) under design

4.3 Juxtaposed Border Facilities

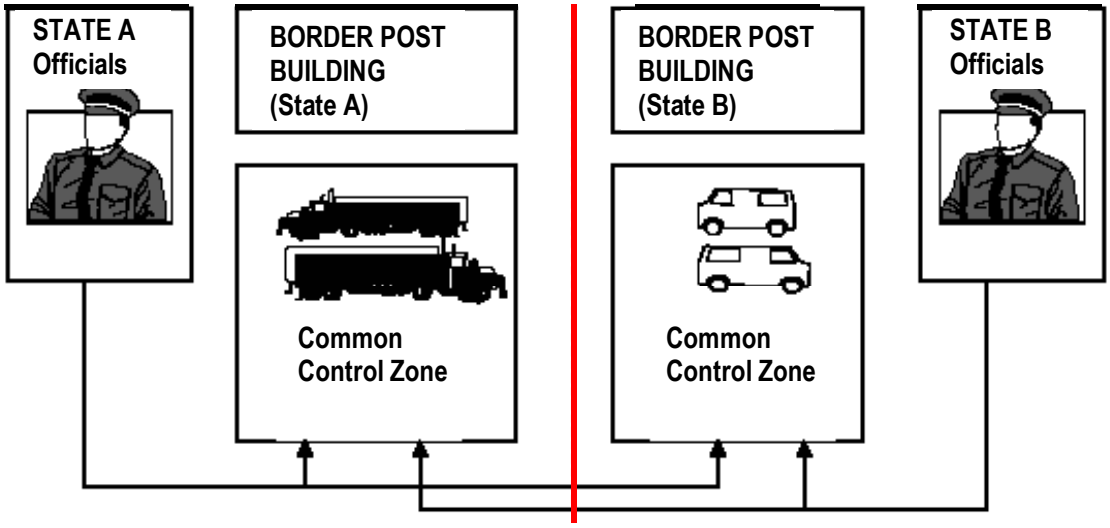
Where states prefer to retain existing border facilities, that is, two separate BCZs, officials may under the concept of joint processing be stationed in each other's territories to ensure that joint controls can be undertaken. This system is referred to as juxtaposed border processing, as proposed under the Revised Kyoto Convention. It is generally recognized that this option is less optimal than 5.1 and 5.2 because of the need for two locations and the inherent inefficiencies of split facilities. However, it still offers substantial benefits over conventional separate border processing either side of the frontier.

This approach enables states to differentiate in the treatment between passengers and freight, inbound and outbound traffic or a combination of the two.

Option 1 Individual Facility Dedicated to Either Freight or Passenger Traffic

In this case of juxtaposed facilities, the existing border crossings/stations are dedicated to the processing of passenger traffic at one border crossing/station while the freight is processed at another border crossing/station. Both border posts are, however, staffed by Customs officials from both states to undertake the joint border processing. A graphic illustration of this configuration is shown below.

FIGURE 4 - SPLIT FACILITY DEDICATED TO CONTROL OF PASSENGER OR FREIGHT TRAFFIC



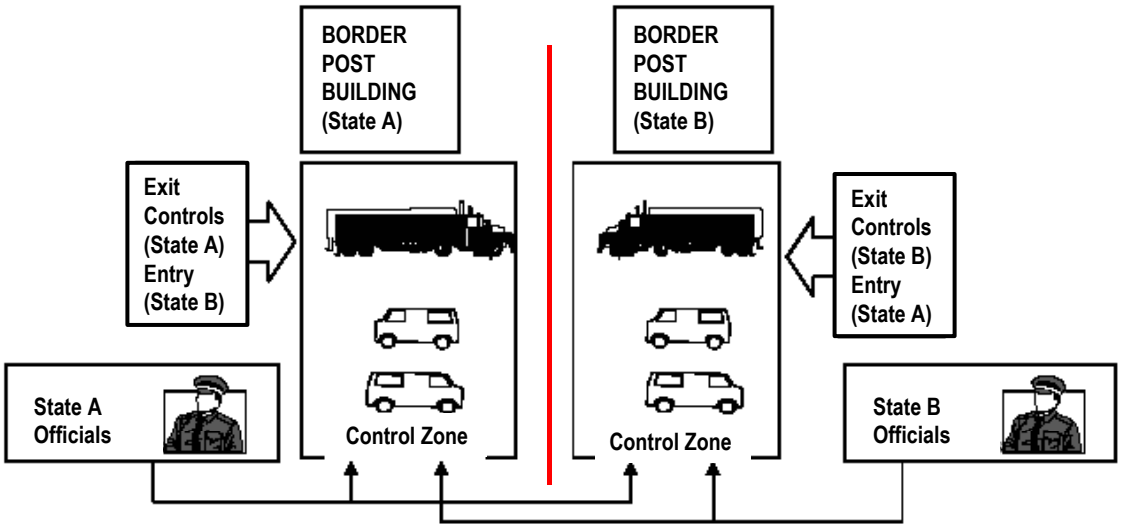
In practice, most rail borders tend to be divided into freight and passenger, with freight being processed in marshalling yards or border sidings and passengers being processed at passenger stations close to the border. Joint passenger processing generally requires the border stations to be within about one hour of each other, but freight much closer.

The decision to split freight and passengers to different border crossings is predominantly driven by the volume of freight, though occasionally by passenger traffic on key tourist routes. Due to the longer processing times incurred with freight transport movements, some countries have developed separate facilities for freight so as not to inhibit passenger transits. Due to the extra costs this usually only occurs on major freight routes, such as on EU Corridor X at Brest-Terespol whereby freight traffic is diverted to the Kozlovichi-Koroszczym freight-only border crossing. This differs from the situation in many of the CARS whereby freight is specifically directed to designated "international" crossings, but at which cars are also processed. However, it is acknowledged that the result of this policy does mean that some other crossings become passenger-only facilities.

Option 2 Individual Facility Dedicated by Type of Traffic and Direction

Another case of split facilities is the particular method of controlling traffic according to the combination of type of traffic and directional movement. As with Option 1, the execution of entry and exit controls is divided between two border posts, with officials from both states conducting joint controls within two BCZ but the method of handling exit and entry controls on the traffic differs. A graphical illustration of this method is shown in the figure below, in which the border post on the left is used to process persons entering and exiting State A combined with the processing of freight with respect to exit out of State A and entry into State B. Similarly, the border post on the right is used to process persons entering and exiting State B, as well as processing freight traffic with respect to exit out of State B and entry into State A.

FIGURE 5 - JUXTAPOSED FACILITIES ACCORDING TO PASSENGER/FREIGHT AND DIRECTION



A key feature of this methodology is that when the vehicle/train leaves State A for State B it is fully cleared for State B before it crosses the international boundary. As in 5.2 and Option 1 there must be a dedicated secure road/rail link between the respective

BCZ and the state border in both directions. Ideally, there should also be segregation between inward and outward traffic between the two BCZs.

Theoretically, there is no reason why these border processes could not be reversed such that in the above example Border Post Building in State A undertook exit controls (State B) and entry controls for State A. The complication of jurisdiction and handling of rejected traffic could be addressed through a bilateral agreement.

Given the ability to adapt existing infrastructure, the incidence of juxtaposed border crossings is more common. In Europe these include:

- Austria/Hungary Nickersdorff/Heygeshalom;
- Germany/Czech Rep Schmiding/Cheb, Philippsreut/Strazn;
- Latvia/Lithuania Gricgale/Souvainiskis, Medumi/Zarasai, Meitene/Joniskis
- Latvia/Estonia Ainazi/Ikla, Veclaicene/Murati, Valka/Valga;
- Belarus/Poland Brest/Terespol; and
- UK/France Dover/Calais.

4.4 Country of Entry Processing

One option relating to joint processing is to eliminate the need for outward processing completely by contracting arrangements with the country of entry – delegated authority. This acknowledges the reality that most Customs are less interested in outward traffic than inward traffic, principally because there is usually no duty liability. The main requirement is for statistical information on exports, but this can usually be obtained by other methods such as from the original export entry or data collected and transmitted back from the country of entry. Similarly, Border Police are less concerned about exiting passengers provided that records of the movement can be obtained by other means, such as from the country of entry.

Country of Entry processing is now becoming more common in Europe in relation to air and ferry transits, for example in the UK. This system can be implemented mainly because both Customs and Border Police have access to airline and ferry manifests, thus having data on outward passenger identities.

Theoretically, this system can be extended to land borders and freight traffic. However this would require a high level of co-operation between interfacing authorities and means of data transfer. Thus, in Figure 5 Border Post Building A would undertake entry processing for State B and Border Post Building B would undertake entry processing for State A with a data exchange system between the two facilities.

5. Potential Constraints

If joint processing offers potential benefits to both Customs and the users, why is it that there is as yet no joint processing being undertaken in the Region? The probable answer to this is as follows:

- Lack of understanding on joint processing and its adoption as a potential border development strategy;
- A perceived clearer understanding of the potential constraints to implementation of joint processing – i.e. a negative approach;
- The requirements for all border organizations to commit themselves to the concept for its successful introduction; and

- Inadequate or unsuitable infrastructure.

5.1 Legal Constraints

The legal aspects of joint processing that require Customs officials from both countries to execute the control process for import and export goods at the same time (or nearly simultaneously) within a common area is often cited as the key constraint by Customs administrations. This is because of perceptions that existing Customs legislation would not permit Customs officials from State B to perform their control process according to their foreign laws within in State A's territory or similarly for State A to operate outside their own territory in State B. As a result, the different Customs administrations are not empowered with the appropriate authority to perform such functions, unless new laws permit them to do so were provided.

The primary legislation in each country is the Customs Code. Changes in the Code require approval by Parliament and this often involves a period of consultation with other Ministries followed by an allocation of Parliamentary time for debate. This can require a processing time of up to two years depending on priorities. In most cases the Customs Code does not indicate approval of joint processing regimes. However, conversely, it may not specifically disallow joint processing. Each of the Customs Codes in the Region will be examined in detail to identify whether there are legal constraints enshrined within the existing Codes.

It is considered that secondary legislation, such as Customs Notices and Decrees, can normally be changed without referral to Parliament and therefore should not represent such a significant barrier to implementation. They could be relatively easily amended to incorporate joint processing.

Many of the countries that have undertaken joint Customs controls, or are preparing to do so, have faced this situation. While the political systems of these countries vary, each country has recognized that national laws have to be adjusted to incorporate new provisions that accommodate Customs functions to be performed extra-territorially. Hence, an enabling legislative framework is necessary to facilitate this change. This legal framework rests on a foundation comprising the following:

- An international (or bilateral) agreement on joint controls between two or more states sharing a common border; and
- Adequate national legislation supporting the implementation of joint controls, either primary or secondary.

The first is a condition requiring national governments to conclude an international agreement, either through multilateral or bilateral arrangements. The majority of countries that have embarked on joint Customs control have either ratified one or several of the international conventions (Kyoto Convention of 1974, The Revised Kyoto Convention or Harmonization Convention of 1982) thus using a multi-lateral approach. However, there is also a minority of countries that have not followed this path, choosing instead to enter into bilateral agreements, notably the CARS and other CIS countries.

The second is a condition relating to the adequacy of national legislation to support the implementation of joint Customs control. Generally, an international agreement only acquires the force of law if it is enacted by national legislation. In this particular case,

the question is whether joint Customs control needs to enjoy national legal force. International experience affirms this need since the principal motivation in introducing joint controls is to enable customs officers to perform most, if not all, of their functions jointly with foreign counterparts. This is because existing Customs functions have a statutory basis that is mandated by existing law and as a result any new agreement providing for Customs functions to be performed jointly must also enjoy legal force. If the provisions of an agreement are not given legal force, the actions of officers undertaken in terms of an agreement could face legal challenges.

Given this situation, an international agreement to implement joint controls can acquire legal force in a country in one of two ways:

- The agreement is approved by the country's legislative body by resolution, if it is self-executing; or
- The agreement is enacted through the adoption of legislation.

In practice, the approach is dependent on the content of the international agreement itself. If it is sufficiently detailed to be self-executing, it is possible to obtain approval by resolution and, hence, not require any further enactment into national law. This approach is obviously advantageous, as it would shorten the time period required in obtaining legislative approval.

In the event that the agreement is not self-executing and can only be implemented through the enactment of further legislative provisions, it will be necessary to adopt separate legislation for this purpose. Even so, this legislative effort may be minimized by amplifying current Customs laws to be sufficiently enabling to support the implementation of the international agreement without the need for further legislative amendment.

Internationally, the experience suggests that most countries do adopt and amplify national laws in order to implement joint customs controls. Whether countries in the Region can adopt this approach depends on the adaptability of the existing legal framework of Customs. To the extent that the existing legal framework is adaptable, it is advantageous to incorporate provisions that have the necessary flexibility to permit the implementation of any one or more of the various models in joint Customs control.

The provisions that would be necessary for enabling legislation in support of joint customs control would cover, but are not limited to, the following:

- *Establishment of Customs Facilities*

Permission (with applicable conditions) to establish a customs office (a "place of entry") outside the borders of the country and a foreign customs administration to establish a customs office within the territory of the country.

- *Powers and Duties of Customs Officials*

Scope of authority of national customs officials in foreign territories and, similarly, the authority of foreign officials in the national territory.

- *Immunities and Privileges*

Diplomatic protection to Customs officials stationed in foreign territory and, reciprocally, foreign officials stationed within the country. Protection also extended to the offices and buildings that are fully dedicated for use by foreign officials.

- *Institutional Arrangement*

Establishment of national committee comprising representatives of government departments involved at a border post tasked with overseeing the implementation of an international agreement on joint controls.

- *Offences and Penalties*

Prosecution of local and foreign Customs officials of any act, which constitutes an offence, in terms of the country's Customs or other laws.

- *Regulations*

Rule-making authority of designated government representative (such as Minister) in respect of:

- establishment of customs offices outside the country and the establishment of foreign customs offices in the country;
- definition of goods that are subject to joint customs controls;
- persons or classes of persons who are the object of joint controls;
- powers and duties of an officer performing outside the territory; and
- powers and duties of a foreign customs officer performing in the territory.

Subject to the results of the assessment of the Customs Codes in each country, it is clear that there may be potential legal impediments to joint processing but that the extent of these are not known at this stage. However, it is equally clear that other countries have been able to resolve these constraints in the manner indicated above. Thus, the legal constraint is only a temporary impediment, even if it actually exists in practice.

Whilst the emphasis is on Customs, similar checks will need to be undertaken in respect of the other border organizations. In practical terms, the other key authority is the Border Police/Guard. It is considered that if both Customs and Border Police legislation allows joint processing the other organizations would easily follow.

5.2 Infrastructure Constraints

The process of joint Customs control in a common area means that implementation of such a concept would require countries to adapt their present border crossing facilities in a suitable manner to support joint operations. As there is a range of options identified in Section, the preferred option for each of the pilot sites must reflect the specific environment local in respect of that location. Straddling facilities may be appropriate under conditions where the topography is suitable, there is no division of the border by a security zone etc. However, an initial assessment suggests that few sites in the region fit these criteria and therefore other configurations, particularly juxtaposed facilities, may be more applicable.

Other than in a situation where a new border crossing is to be opened, the border crossings within the Region are already established and countries have made investments in national border facilities. The three major infrastructure constraints are considered to be as follows:

- Border Separation;
- Border Post Design; and
- Utilities/Communication

Border Separation
The potential for joint operation is greatest the closer the two national BCZs are to each other. Indeed, the ultimate is where they interface each other over the border enabling a straddling facility to be developed. Unfortunately, this is not generally a common situation in the Region.

In general, both road and rail border BCZs are often significantly distant from each other, in many cases several kilometres apart. This often relates to the perceived need for a Security Zone either side of the international border, particularly between the PRC and the CARS but also between the CARS themselves. Clearly, the greater separation distances will make joint processing more difficult, partly because of increase travel time by border officials between juxtaposed facilities.

Border Post Design
The existing border facilities were designed and constructed solely to meet national requirements. Thus, the layout and office configuration was specific to that role. There would be a requirement to make adjustments to these in order to introduce joint processing regimes with both countries border organizations together.

The legal requirements in relation to infrastructure, such as building regulations and social requirement for differing types of personnel, varies between countries. In providing facilities for the other country's border organizations, it may be necessary to comply with their regulations in respect of areas used by their personnel. Thus, there may be some compliance issues.

A key problem in establishing juxtaposed facilities has been where the distances from the border to the BCZ vary on each side of the border significantly or where the standard and size of the facilities are dissimilar. In practice border officials do not want to have to travel further than their opposite organization has to come to them. Differing travel time has been a contentious issue at some juxtaposed facilities as has the level of facilities. Officials expect the partner country to offer facilities compatible with their own such that they are not disadvantaged by working in the other facility. Whilst these may at first appear to be minor issues, the human resource problems involved in introducing joint processing should not be underestimated.

Utilities/Communications
In the region many of the primary and secondary border crossings tend to be in remote locations. Access to reliable supplies of electricity and communication is often difficult. The implementation of joint processing places a greater reliance on the need for power and communications. This is especially true in relation to communications because of the increased need for data transfer if the full benefits of joint processing are to be achieved (Stage 2).

5.3 Operational Processing Constraints
It is not considered that there are any significant procedural constraints to Stage 1 implementation of joint controls, excluding the constraints identified in 5.1 and 5.2. The border organizations, including Customs, should undertake all of their existing procedures and processes, as at present – i.e. it is only the location that changes in relation to some of the controls.

The implementation of joint Customs controls within a common BCZ will require decisions by the Customs administrations of both countries with regard to the management and operation of facilities. There are operational choices to be made with respect to a shared versus separate facility or a combination of both (comprising separate offices with shared inspection bays). The appropriate arrangement would depend on the degree of cooperation between the two Customs administrations, but operational efficiency should be a primary consideration.

The implementation of Stage 2 of joint processing will require more difficult decisions in addressing the current border processing constraints – complex procedures, duplication of inspection and examination, too many organizations etc. Joint Customs control conducted through a common control area will require positive decisions on the type of inspection/examination process, particularly where there is a choice between simultaneous and sequential (or near simultaneous) inspection. In respect of freight, the former is more consistent with the principle of single-stop inspection but the latter is also acceptable though not as preferable from the point of view of fast border clearance. Both methods critically depend on standardized Customs documents, harmonized inspection procedures (e.g., streamlined processes, reduced routine inspections through adoption of risk based methods) and coordination of working hours. It is assumed that sequential processing of passenger traffic using flow techniques is the optimum methodology.

It is important that the concept of single-window is considered as it is designed to accompany single-stop inspection to expedite cross-border clearance of goods. Single-window promotes the coordination of the procedures of the various border organizations within an integrated border management system. These formalities should be integrated with the single-stop inspection process with Customs taking the lead on behalf of other government agencies. Thus, other government departments should delegate authority to Customs in the border control process and be on standby to process documents, perform inspections, or carry out other duties as required. Some of the countries, such as Uzbekistan, have introduced an element of integrated border management that reduces the role of the secondary border agencies (all agencies other than Customs and Border Police) and indicates some initial progress towards single window processing that is the ideal achievement under Stage 2.

It is recognized that the constraints indicated in this section are significant and lead to the current concerns by Customs on implementing joint processing. However, it is not considered that these constraints are insurmountable, as is proved by the ability of certain European countries to introduce such processing. There are considerable synergies between the border control requirement in the CARS and Azerbaijan in particular that could represent opportunities for joint processing without major changes to legislation or procedures.

6. Legal and Regulatory Environment (to be added later)

- Kazakhstan
- Kyrgyz Republic
- Peoples Republic of China
- Other CCC members

7. Recommendations for Pilot Project (to be added later)

- Location
- Selection

8. References

ADB – Single –Stop Customs Practices in Cross Border Clearances – 2003- Peter Yee
EU TRACECA – Harmonisation of Border Crossing Procedures