

Legal and Regulatory Framework for the Facilitation of Regional Transit Trade in CAREC

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Overview of Presentation

- International Legal and Regulatory Instruments Regarding Transit
- Legal and Regulatory Regimes by Country
- Preliminary Findings and Recommendations

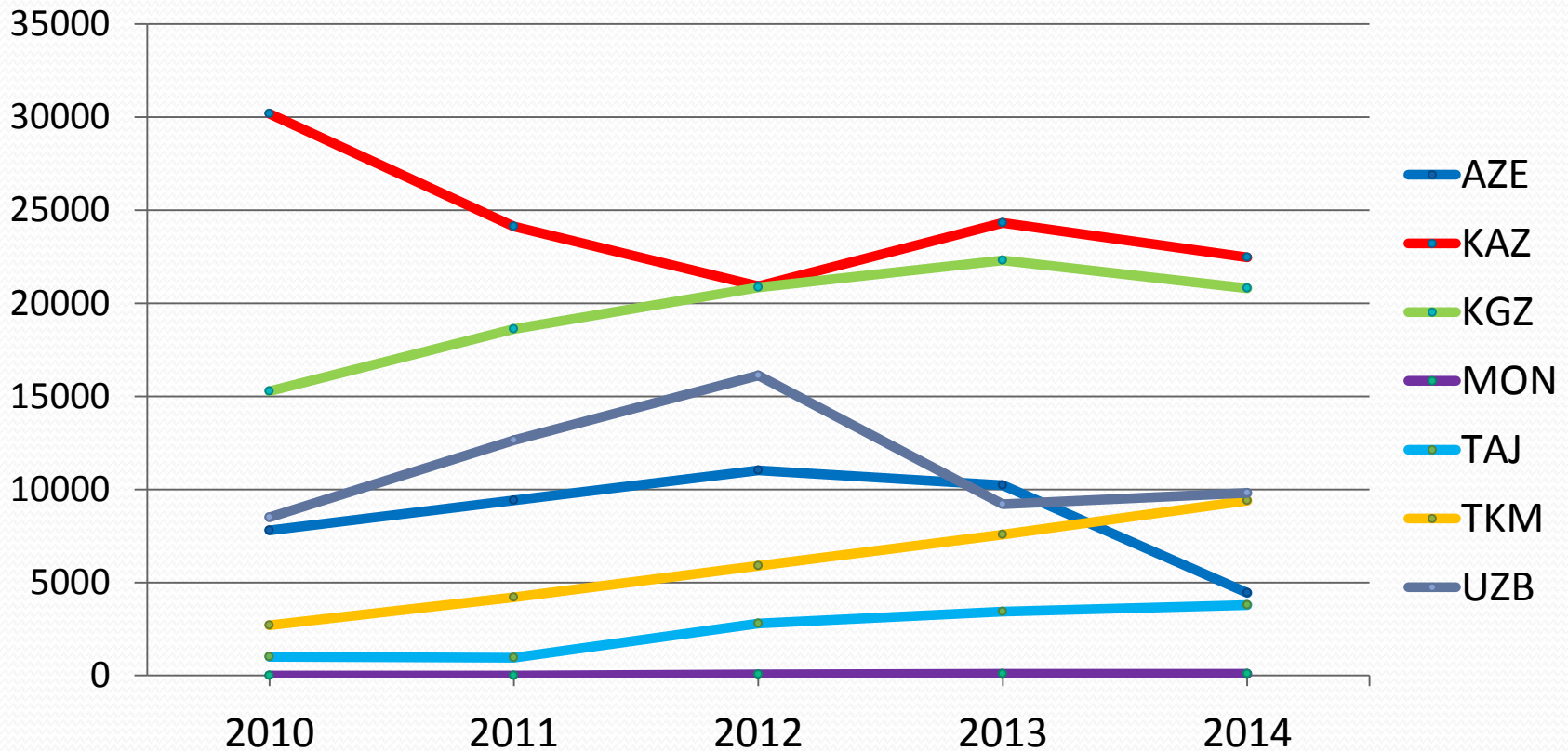
International Legal and Regulatory Instruments Regarding Transit (1/9)

- Global and International Conventions
- Regional Agreements
- Plurilateral Agreements
- Bilateral Agreements Involving CAREC Countries

International Legal and Regulatory Instruments Regarding Transit (2/9)

- Global and International Conventions
 - Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 1975
 - Other Global International Conventions
 - * Customs Convention on the Temporary Importation of Commercial Vehicles, 1956
 - * Customs Convention on Containers, 1972
 - * Revised Kyoto Convention, 1999
 - * The General Agreement on Tariffs and Trade (GATT), 1994
 - * Trade Facilitation Agreement, 2014

International Legal and Regulatory Instruments Regarding Transit (3/9)



Note: Pakistan acceded to the TIR Convention in July 2015

Abbreviations: AZE = Azerbaijan, KAZ = Kazakhstan, KGZ = Kyrgyz Republic, MON = Mongolia, TAJ = Tajikistan, TKM = Turkmenistan, and UZB = Uzbekistan

International Legal and Regulatory Instruments Regarding Transit (4/9)

- Regional Agreements
 - Transit Transport Framework Agreement, Almaty, 1998
 - TRACECA Basic Multilateral Agreement on International Transport for Development of the Europe-Caucasus-Asia Corridor, Baku, 1998
 - Shanghai Cooperation Agreement among the Member States on International Road Transport Facilitation, Dushanbe, 2014
 - Eurasian Economic Union (based on a treaty signed in 2014 and entered into force in 2015)

International Legal and Regulatory Instruments Regarding Transit (5/9)

- Plurilateral Agreements (1/2)
 - Quadrilateral Traffic in Transit Agreement, Islamabad, 1995
 - Agreement on Cross-Border Transport of Persons, Vehicles and Goods within the Framework of Central Asian Regional Cooperation, Dushanbe, 2010
 - Agreement on International Road Transportation among the Governments of the Kyrgyz Republic, the Republic of Uzbekistan and the People's Republic of China, Tashkent, 1998

International Legal and Regulatory Instruments Regarding Transit (6/9)

- Plurilateral Agreements (2/2)
 - Agreement on the North-South International Transport Corridor, St. Petersburg, 2000
 - Trilateral Trade Agreement (final draft), Dushanbe, April 2015

International Legal and Regulatory Instruments Regarding Transit (7/9)

- Bilateral Agreements (Overview) (1/3)

Country	PRC	KAZ	KGZ	MON	PAK	TAJ	TKM	UZB
AFG					28/11/ 2010	27/07/ 2005	05/07/ 2007	24/8/ 2004
AZE		16/09/ 996				15/03/ 007	19/05/ 2008	27/05/ 1996
PRC		26/09/19 92	25/02/ 1993	16/06/ 2011	28/12/ 1993	27/08/20 08		13/12/ 1993
KAZ	26/09/ 992		25/12/ 2003	22/10/ 1993	12/03/ 1995	04/05/ 2006	27/02/ 1997	20/03/ 2006
KGZ	25/02/ 993	25/12/ 2003		01/03/ 2004	11/12/ 1994	27/05/ 2013	29/11/ 1995	04/09/ 1996
MON	16/06/ 2011	22/10/ 1993	01/03/ 2004					
PAK	28/12/ 1993	12/03/ 1995	11/12/ 1994				14/05/ 1996	15/03/ 2007
TAJ	27/08/ 2008	04/05/ 2006	27/05/ 2013				09/12/ 2007	
TKM		27/02/ 1997	29/11/ 1995		14/05/ 1996	09/12/ 2007		16/01/ 1996
UZB	13/12/ 1993	20/03/ 2006	04/09/ 1996		15/03/ 2007		16/01/ 1996	

Source: Various, e.g., CAREC 14th Transport Sector Coordination Committee [TSCC], *Report to the TSCC on Recommendations of the Cross-Border Transport Facilitation Workshop in the CAREC*, Ulaanbaatar, Mongolia, 29 April 2015, slide 2

International Legal and Regulatory Instruments Regarding Transit (8/9)

- Bilateral Agreements (2/3)
 - Afghanistan-Pakistan Transit Trade Agreement (APTTA), Kabul, 2010
 - Agreement between Turkmenistan and Afghanistan on Transit Trade, 2007
 - Agreement between the Government of [the PR] China and the Government of Mongolia on International Road Transport, 2011
 - Road Transport Agreements between the Kyrgyz Republic and Kazakhstan, 1999 and 2003

International Legal and Regulatory Instruments Regarding Transit (9/9)

- Bilateral Agreements (3/3)
 - [Road Transport] Agreement between the Government of the Republic of Tajikistan and the Government of the People's Republic of China, Dushanbe, 2008

Assessment by Country: AFG (1/10)

- Global: TIR, CCTICV
- Multinational and Plurilateral: ECO TTFA and CBTA
- Bilateral: PAK (APTTA), TKM, UZB
- Unclear whether monist or dualist
- National: Customs Law (2005), Chapter 10; Law on International Transit and Transportation in Afghanistan
- Remarks: Draft AFG-PAK-TAJ agreement (APTTA+) signed; some progress being made with the ECO TTFA; advanced draft of SAARC Motor Vehicles Agreement, including AFG and PAK; notable bilateral transit agreement with TKM

Assessment by Country: AZE (2/10)

- Global: TIR, CCTICV, CCC, RKC
- Multinational: ECO TTFA, TRACECA BMA
- Plurilateral: NSITC
- Bilateral: KGZ, TAJ, TKM, UZB
- Likely monist
- National: Customs Code (2011), Chapter 29; associated secondary legal instruments
- Remarks: Depository of the TRACECA BMA

Assessment by Country: PRC (3/10)

- Global: CCC, RKC, GATT
- Multinational: SCO
- Plurilateral: QTTA, KGZ-UZB-PRC
- Bilateral: KAZ, KGZ, MON, PAK, TAJ, UZB
- Traditionally monist, but moving toward dualist
- National: Customs Law (2000, as amended in 2013) and various GACC decrees (e.g., on AEOs)
- Remarks: In the later stages of accession to the TIR Convention; recent Russian proposal for a customs transit regime under the auspices of the SCO

Assessment by Country: KAZ (4/10)

- Global: TIR, CCC, RKC
- Multinational: ECO TTFA, TRACECA BMA, EEU
- Plurilateral: QTTA, NSITC
- Bilateral: AZE, PRC, KGZ, MON, PAK, TAJ, TKM, UZB
- Monist
- National: Code of Customs Affairs (2010, as amended)
- Remarks: Proposed an action plan to improve the transit system in the EEU (2014); KAZ customs law will need to take the EEU customs code now under development fully into account

Assessment by Country: KGZ (5/10)

- Global: TIR, CCTICV, CCC, RKC, GATT
- Multinational: ECO TTFA, TRACECA BMA, SCO, EEU
- Plurilateral: QTTA, KAZ-UZB-PRC
- Bilateral: AZE, PRC, KAZ, MON, PAK, TAJ, TKM, UZB
- Monist
- National: Customs Code of (2014, effective 2015)
- Remarks: KGZ customs law will need to take the EEU customs code now under development fully into account; Some progress now being made with the ECO TTFA, which includes two corridors traversing KGZ

Assessment by Country: MON (6/10)

- Global: TIR, RKC, GATT
- Multinational: ECO TTFA
- Bilateral: PRC, KAZ, KGZ
- Monist
- National: Customs Law (2011), Chapter 11
- Remarks: Recent movement in the implementation of the bilateral transit agreement with the PRC

Assessment by Country: PAK (7/10)

- Global: TIR, RKC, GATT
- Multinational: ECO TTFA
- Plurilateral: QTTA
- Bilateral: AFG (APTTA), PRC, KAZ, KGZ, TKM, UZB
- Likely mixed monist/dualist
- National: Customs Act 1969 (IV) as amended, Sections 16 to 129a, on Transit Trade; Pakistan Customs Rules and Afghanistan-Pakistan Transit Trade Rules
- Remarks: Draft AFG-PAK-TAJ (APTTA+) signed; advanced draft of SAARC Motor Vehicles Agreement, including PAK and AFG; prepare implementation plan for an AEO program

Assessment by Country: TAJ (8/10)

- Global: TIR, CCC, GATT
- Multinational: ECO TTFA, TRACECA BMA, SCO, EEU
- Plurilateral: CBTA
- Bilateral: AFG, AZE, PRC, KAZ, KGZ, TKM
- Monist
- National: Customs Code (2004, as amended; comparable to KAZ/KGZ provisions)
- Remarks: Draft AFG-PAK-TAJ agreement signed; some progress now being achieved with the ECO TTFA, which includes two corridors traversing TAJ

Assessment by Country: TKM (9/10)

- Global: TIR
- Plurilateral: NSITC
- Bilateral: AFG, AZE, KAZ, KGZ, PAK, TAJ, UZB
- Monist
- National: Customs Code (2010, as amended; generally comparable to provisions of CIS countries)
- Remarks: Notable bilateral transit agreement with AFG

Assessment by Country: UZB (10/10)

- Global: TIR, CCTICV, CCC
- Multilateral: SCO
- Plurilateral: KGZ-UZB-PRC
- Bilateral: AFG, AZE, PRC, KAZ, KGZ, PAK, TKM
- Monist
- National: Customs Code (1997, as amended); various decrees and resolutions of the Cabinet of Ministers
- Remarks: A previous ADB TA recommended development of a primary law on international transport and transit

Preliminary Findings and Recommendations (1/9)

- Compatibility between and among the Countries' Transit Laws and Regulations (1/2)
 - To the extent that the countries have monist legal systems, an international agreement between/among countries may address the compatibility issue, although work would be required to incorporate the agreements into the respective national bodies of law
 - Between/among the CAREC countries that have broadly similar transit provisions in their primary customs laws (AZE, KAZ, KGZ, MON, TAJ, TKM, UZB), incompatibilities may be minimized

Preliminary Findings and Recommendations (2/9)

- Compatibility between and among the Countries' Transit Laws and Regulations (2/2)
 - On the other hand, if countries have mixed (or dualist) legal systems – as do the PRC and Pakistan and perhaps Afghanistan – international agreements may not be self-executing, which means that compatibility issues cannot be as readily resolved through international agreements; in such cases, having at least broadly consistent legal/regulatory regimes regarding transit, as do at least most CIS CAREC member states, becomes more important

Preliminary Findings and Recommendations (3/9)

- Overall Requirements for a Regional Transit Regime (1/3)
 - General principles for a regional transit regime may include:
 - + statement of the transit principle
 - + exemption of transit traffic from non-cost related charges
 - + facilitation of road vehicle crew entry
 - + facilitation of road vehicle entry
 - + facilitation of container entry
 - + permission of foreign transport operator activity
 - + **facilitation of cargo entry**

Preliminary Findings and Recommendations (4/9)

- Overall Requirements for a Regional Transit Regime (2/3)
 - + infrastructure design harmonization
 - + climate of law and order and foreigner-friendly environment
 - + non-discrimination and national treatment
 - + facilitation of border crossing formalities
 - + road traffic rules
 - + cooperation in the repression of customs fraud and tax evasion

Preliminary Findings and Recommendations (5/9)

- Overall Requirements for a Regional Transit Regime (3/3)
 - Facilitation of Cargo Entry

Preliminary, proposed language follows:

“The contracting parties shall exempt cargo transiting through their territory from routine physical customs inspection, customs escorts, and the deposit of a bond per transport operation and operator but subject to security provided by a guarantor. Specific details of the regional guarantee transit mechanism are provided in the **technical annex.**”

Preliminary Findings and Recommendations (6/9)

- Specific Requirements for a Regional Transit Guarantee Mechanism [Technical Annex] (1/3)
 - General Provisions and Procedures (e.g., obligations of the principal, sealing)
 - Use of Information and Communications Technology (application of electronic data exchange)
 - Guarantees (single, multiple/comprehensive, liability of the guarantor, cancellation and revocation of the guarantee)

Preliminary Findings and Recommendations (7/9)

- Specific Requirements for a Regional Transit Guarantee Mechanism [Technical Annex] (2/3)
 - Authorized Transit Traders (general criteria; applications for and decisions on authorized transit traders; amendment, surrender, or revocation of authorizations)
 - Simplified Procedures (e.g., exemption from the presentation of goods at the customs office of departure)
 - Transit Operations and Procedures (e.g., procedures, incidents, termination of the transit operation, fallback procedures)

Preliminary Findings and Recommendations (8/9)

- Specific Requirements for a Regional Transit Guarantee Mechanism [Technical Annex] (3/3)
 - Port Transit Procedures (e.g., enquiry procedure to establish correct termination of a transit operation, customs debt and recovery, administrative assistance)
 - Miscellaneous Provisions (e.g., minor discrepancies, exclusion)

Source: After ASEAN Framework Agreement on the Facilitation of Goods in Transit, Protocol 7, Customs Transit System, 11 March 2014 [good/best practice example]

Preliminary Findings and Recommendations (9/9)

- Implications for the proposed pilot project involving the PRC (XUAR), KAZ, and KGZ
 - The arrangement described may be agreed by the participating countries, after which it may be directly applicable in Kazakhstan and the Kyrgyz Republic at least, to the extent that these countries have monist legal systems.
 - However, due regard will need to be paid to transit arrangements being developed under other legal instruments, specifically the customs code of the EEU now being drafted, as well as perhaps transit arrangements being developed under the auspices of the SCO.

Thank You Very Much For Your
Attention