

CONCURRENT CUSTOMS CONTROL

REALITIES AND PROSPECTS

1. The idea of a concurrent control pilot project at one of the border crossing points of the States, members of Central Asian Regional Economic Cooperation (CAREC) comprising Azerbaijan, Kazakhstan, Kyrgyz Republic, Chinese Peoples Republic, Mongolia, Tajikistan, Turkmenistan and Uzbekistan, emerged within the framework of the Regional Trade and Customs Facilitation Program funded by Asian Development Bank.

This idea was voiced as one of the components of the Program on regional economic cooperation in Central Asia at the first meeting of the Customs Cooperation Committee (CCC) held in the city of Urumchi, China, in August 2002.

2. CCC comprising of the customs administrations' officials of the respective member-countries, in order to promote concerted reforms in the customs administrations for the near future, approved the General Action Plan (GAP), which covers the following areas to be assessed: (1) simplification and harmonization of customs procedures, (2) development of simplified transit systems, (3) exchange of data and information technologies for customs modernization, (4) risk management and post-customs auditing. Apart from that, there was another field of study – a pilot testing of the concurrent customs control.

3. The concept of joint customs control and concurrent customs operations at border crossing points is acknowledged as the best practice ensuring the reduction of administrative pressure on entrepreneurs, those crossing the border, and facilitates trade. Advantages of such a practice are quite obvious in the countries where this system is being used. However the countries, which have just started setting up their concurrent control, have a lot of doubts concerning its potential benefits and disadvantages.

4. Theoretically, it is clear that the reduction of controlling bodies and human resources involved in the processing of cargos, the exclusion of functional overlapping, the reduction of time for border crossing, should bring along common economic benefits, will facilitate trade, and ensure comfortable conditions for users.

However, there is an equipoise of doubt – the system designers are concerned - to what extent they can simplify the control procedures, is the joint control always justified, and where is the line between the acknowledgement of a joint control and the necessity of a follow-up inspection.

Not having a joint experience in the region, and determining the value of joint control a priori, the Kyrgyz and Kazakh customs services under the support of CCC initiated a pilot testing of joint customs control at the Kyrgyz-Kazakh border crossing point Akzhol-Kordai.

Note: The activities on the introduction of joint control are based upon the previously achieved bilateral agreements within the framework of the Agreement between the governments of the Republic of Kazakhstan and the Kyrgyz Republic on border crossing on the route Almaty - Bishkek dated 15.11.1999, and in particular, it is based on the following segment of the Agreement in question:

Article 7 stipulates: "...the technical means of border control will be located within the areas of border crossing points, physically located or organized in a manner ensuring that transport means and cargos could be checked at the same place, preventing them from repeated checking, unloading and loading of cargos. The Parties will target their actions towards the amalgamation of the border control equipment according to the "one-stop" scheme in each direction. The Parties are going to consider a possibility of amalgamation of the adjacent Traffic Police checkpoints".

Article 24 stipulates: "In order to maintain the cargo traffic through the border crossing point Akzhol-Chu (Kordai) or a transit, the Parties commit to take efforts to ensure the following:

...consider a simultaneous application of all types of control, according to the legislation, at the border crossing points Akzhol-Chu (Kordai) by the relevant bodies / representatives of the Parties, which will ensure prevention from double checking”.

The customs services of the Republic of Kazakhstan and the Kyrgyz Republic developed a draft Agreement between the Republic of Kazakhstan and the Kyrgyz Republic on joint control on the Kazakh-Kyrgyz state border.

The relevant ministries and state agencies involved in the border control – the Border Services, Ministries of Transport, Agriculture, and Health – representing each Party, took part in the discussion of the draft Agreement.

The Customs Services continually discussed possibilities of the application of joint control, including case studies at the border crossing point Akzhol-Kordai. Monitoring was held and statistics of border crossing was analyzed, as well as a stopwatch study of particular border control operations was conducted; a potential for the customs infrastructure for joint customs control was assessed.

A pilot joint control operation was carried out at the border crossing point Akzhol-Kordai from 3 to 16 July 2004, involving all controlling bodies of both States. Goods carried through the border by individuals for industrial or commercial purposes, were chosen as the objects of control.

As of the beginning of July 2005, following the Decree of the Government of the Kyrgyz Republic 57-p, 31 January 2005, the draft Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on joint control of the Kyrgyz-Kazakh state border, was approved.

According to available information, the approval of the draft Agreement by the Government of the Republic of Kazakhstan is currently on the final stage.

5. The approval of such an action plan is in compliance with the pragmatic approach adopted by CCC for the resolution of the regional trade development challenges. This action plan comprises both regional and bilateral initiatives.

6. Several key factors were taken into account while selecting the pilot project on joint control: (i) the location of the border crossing point at a strategically important transport junction where the automobile communication is the most intensive; (ii) the membership of both States in several integral units (CIS, Eurasian Economic Cooperation, etc.); (iii) close relations established in the USSR, and essential in terms of historical and cultural kinship.

7. Another important factor favorable for prompt implementation of the joint control project is a bilateral intergovernmental Agreement signed in 1999 between the Kyrgyz Republic and the Republic of Kazakhstan (see note above), stipulating the necessity of joint control at the border crossing point Akzhol-Chu (Kordai).

8. Implementation of such international cooperation projects implies availability of preconditions for successful promotion and practical utilization of this idea, as well as the coordination of positions of each party. Multilateral consultations among the controlling and implementing government bodies were held, as well as consultations among the executive bodies of both States involving entrepreneurs and transporters. The opinions of all stakeholders should be described in a legal agreement signed on a relevant level; this document should be used as a tool for practical implementation of joint control.

9. While carrying out preparatory activities, especially when the issue of joint control had gone beyond the framework of purely customs interests, the customs services faced a problem caused by misunderstanding of the goals of joint control and the tasks allotted to each of these services. Each service considers itself derogated from its rights, and this fact demonstrates a narrow-departmental approach of the border services to the resolution of optimization of the border procedures, which once in a while take the form of confrontation between some of the services.

10. It is necessary to form the understanding of common tasks for border services in a global sense (on a national scale, for implementation of joint control – in order to understand the tasks on a regional scale), as well as for optimization of activities of the controlling bodies, exclusion of functional overlapping among the services.

In that regard, an idea to conduct a series of training sessions was voiced. The training should be dedicated to the subject of joint control consultations involving all border agencies.

It was suggested to hold one workshop as a forum with a field trip involving representatives of stakeholders, general public, mass media, and business associations to the border crossing point Akzhol-Kordai. In view of some objective reasons, the workshop was postponed, but we hope that it will be held, so that the endeavors of the customs services would have resonance among the public.

11. A demonstration effect of the introduction of joint control in the region would be quite feasible. The Central Asian countries were the members of one social State; very often they continue to apply similar infrastructural approaches, and in the course of transition towards the market economy they gravitate to similar models.

12. Besides that, many of the border regions still keep inter-infrastructural ties, which demand simplified movement of commodities and services, which is not the case in the national legislations of both countries.

Another important factor stipulating the necessity of simplification of border control procedures are geographical features of the region – the main transport lines repeatedly cross the state borders causing numerous inspections at the crossing points; there are plenty of enclaves in the border areas of Kyrgyzstan, Uzbekistan and Tajikistan.

In this regard, a successful implementation of joint control would have a significant positive impact for the whole region.

13. In view of the lack of legal practice of interactions among the customs and other controlling bodies in the region, the activities were targeted, in the first turn, towards the establishment of a legal basis agreed on an interstate level.

Another conclusion made in the course of joint assessment of a potential joint control was the principle of phasing, which, in our opinion, has a practical importance.

14. The beginning of activities on the development of this agreement were targeted towards studying of certain agreements concerning a simplification of border procedures, including the information exchange, establishment of joint data bases at the border crossing points, a mutual acknowledgement of the customs documents, standardization of requirements to documentation, application of harmonized customs control procedures, and possibilities of joint border management.

15. While trying to create an appropriate mechanism for joint control within the CCC framework, a study of similar initiatives applied in other countries and regions was conducted. There is no telling about an intention to apply principally new technologies at the Akzhol-Kordai crossing point. Neither the experience of certain countries was used as a starting point, nor any “recipes” in the form of existing agreements, joint control regulations, or an intergovernmental draft agreement, which could have been changed and retailored for a certain situation, were available.

16. The experience of our customs services in the establishment of a joint control scheme represents a mixture of the most essential, quite realistic and practical elements, which in the future can be developed into independent documents or attachments to the main Agreement.

Note. There is a need to refer to the concept of the joint control. In various materials dedicated to the issues of simplification of the border crossing procedures, there are numerous terms, which pretty often have different interpretation.

In a fundamental study held within the framework of TRASECA, the “one-stop” principle means that a vehicle is stopped within the control area and is checked there as well. If additional inspection is needed, the principle of “one-stop” is not applied.

In other studies there is a mention of the “one-window” principle, also meant for simplification of procedures. It implies an issue of a single permissible certificate to cross the border.

Above in this report there is a mention of a joint border management system, which, in a reference to the US-Canadian border, implies the establishment of a unified State controlling body substituting several separate controlling ones.

It is said in the draft Agreement that:

“joint control is an auditing held by a joint Kyrgyz-Kazakh detachment comprising the officials, representatives of the State controlling bodies, who control persons, commodities and vehicles crossing the border points at the Kyrgyz-Kazakh State border. This auditing includes a joint processing of documents and a joint issuing of single permissible certificates”;

“the “one-stop” principle is a maintenance of joint control with a single stop of persons, commodities and vehicles crossing the border points at the State Kyrgyz-Kazakh border”.

In the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan, it is said: “one stop means creation of conditions for joint processing of relevant documents needed for crossing the border by the personnel of both States”.

17. One of the most important issues of introduction of joint control is a harmonization of document formats applied in the process of border control. In fact, this means standardization of sets of data on the movement of commodities, vehicles and persons through state borders. In this regard the biggest impact could be reached by means of the application of standard formats of documents. It is needed to ensure that the parties would establish a minimal set of data needed at their borders. In the ideal, such sets of data should be defined by each of the controlling services maintaining joint control.

18. The limitation of the data set by each of the services should lead in the perspective to the development of a unified document needed for control at the border. Such kind of a document is already being applied by the Kazakh customs services. In fact, nowadays this document represents a unified permissible document certifying the results of data processed by various controlling bodies, and, in our opinion, such an approach can have a good potential in the perspective.

19. Even within one State, there are numerous obstacles for the development of an agreed approach among various controlling bodies, and these obstacles could originate from various factors: lobbying of corporate interests, contrarities in the national legislation, inconsistency of procedural issues, differences among the goals of control, overlapping of functions, etc.

20. In consequence of that, a log-frame draft format of a bilateral Agreement was suggested. It envisages a possibility for inclusion of a joint control scheme among the bodies, which reached mutual understanding. Besides that, such a format of the draft Agreement envisages a sufficient liberty in coordination of various procedural issues on an interagency level.

21. A possibility of a gradual involvement of certain controlling bodies in the process of joint control has led us to an interesting conclusion: to what extent the presence of a certain controlling body is needed at the border crossing point, and is it possible to exclude its functions, or to handle these functions to another body? Within the framework of the study in Kyrgyzstan, for instance, it was suggested to combine the functions of the phytosanitary and the veterinarian controlling bodies in one body (both types of control are under the patronage of the Agricultural Ministry), and the transport inspection has preliminarily agreed to handle some of its controlling functions to the customs service (the Kazakh customs service has a similar experience).

22. Another practical example of a gradual application of joint control is the understanding of the impossibility of the introduction of joint control for all types of commodities, vehicles and persons crossing the state border simultaneously. One of the key issues for the practical understanding of the impact of joint control is a more delicate division of the moving objects and subjects into groups and categories. Even the elementary control over vehicles involves various schemes of control, for they are broken up into control over unfilled cargo and passenger transport, individual transport, transport as a commodity, transport used for transportation of people, commodities, etc.

23. Another important finding for a further study is a selection of the key elements of joint control – exchange of information, mutual acceptance of the customs control results, joint

processing of documents, joint checking or examination, joint use of technical tools for customs control, and the objects of the customs infrastructure.

24. On another hand, even a perfect legal document cannot ensure an immediate success and acknowledgement of users unless such initiatives are understood and supported by the governments that should render a practical assistance, for instance, establishment of a needed logistical basis for implementation.

25. The first of the physical obstacles for the introduction of joint control at the Akzhol-Kordai crossing point was an uneven development of the customs infrastructure, i.e. the elements needed for the maintenance of a joint control. In particular, the infrastructure of the Kyrgyz crossing point Akzhol did not meet requirements of the procedures for joint control, i.e. there was a lack of warehouses, premises for checking, weighting, technical means for customs control, communication tools, etc.

26. After the approval of pilot probation at the Akzhol-Kordai crossing point between Kyrgyzstan and Kazakhstan, the customs bodies of the two countries and representatives of the donor agencies held a number of meetings where they discussed and coordinated common customs procedures. The Board of Asian Development Bank voiced an intention to assist in drafting of ToR, including the design of the crossing point, assessment of the infrastructure, logistical needs, and a feasibility study.

27. The Kyrgyz customs considers the issue of construction and facilitation of the border crossing points as a priority, and we hope that significant outcomes will be achieved within the nearest three years.

28. The study of mechanisms for joint customs control carried out by the customs services of Kazakhstan and Kyrgyzstan demonstrates that it would be difficult to fully reach the outcomes unless other border structures do not support the initiatives targeted towards harmonization of their procedures. In order to support the introduction of the joint control mechanisms, the customs bodies of Kazakhstan and Kyrgyzstan suggested to hold a consultative forum involving all relevant structures and representatives of the private sector.

29. With this purpose in view, the ADB initiative about the constant working groups involving representatives of the Kyrgyz and Kazakh agencies, was supported. The customs representatives hope that a study of other countries' experience (Thailand, China, Vietnam, etc.) will help to coordinate the key viewpoints of the controlling services, which the border control service belongs to. The joint study of the simplification of procedures at border crossing points could become an impact for a better understanding of mutual initiatives helping trade facilitation and identification of uppermost actions on joint control.

Attachment

The city of Bishkek, Government, 31 January 2005, N 57-p

DECREE OF THE GOVERNMENT OF THE KYRGYZ REPUBLIC

1. To approve the draft Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on joint control at the Kyrgyz-Kazakh state border.

2. To authorize chairman of the Committee on State Revenues under the Ministry of Finance of the Kyrgyz Republic to sign the Agreement in question on behalf of the Government of the Kyrgyz Republic with the right to introduce unprincipled amendments.

Prime Minister of the Kyrgyz Republic

N. Tanayev

AGREEMENT

between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on concurrent control at the Kyrgyz-Kazakh state border

The Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan, hereinafter the Parties,

based upon the Agreement about a simplified order of customs documentation of commodities transferred between the states-members of the Customs Union dated 24 September 1999, the Protocol on customs control over commodities and transport means transferred between the states-members of the Customs Union dated 17 February 2000, Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on trans-border movement along the route Almaty-Bishkek dated 15 November 1999;

wishing to ensure efficiency of control at the state border following the “one-stop” principle; acknowledging the necessity of integral interaction between the controlling bodies of the Parties at the state border in the maintenance of a concurrent control over the crossing of the border by persons, as well as over commodities and transport means through the border, and the processing,

have agreed on the following:

Article 1.

In this Agreement the following terms are used in the following meanings:

joint control – maintenance of checking by joint Kyrgyz-Kazakh staffs of the respective Parties' controlling bodies, who inspect persons, commodities and transport means crossing the border crossing points at the Kyrgyz-Kazakh state border, including joint processing of documents and issuing of single permissible certificates;

Controlling bodies – the border, customs and other State bodies of the Parties maintaining controlling operations on accepting persons, transport means and commodities at border crossing points though the Kyrgyz-Kazakh state border.

Controlling bodies are:

In the Kyrgyz Republic:

- 1) State Border Service of the Kyrgyz Republic;
- 2) Department of the Customs Service of the Committee on Revenues under the Ministry of Finance of the Kyrgyz Republic;
- 3) Ministry of Transport and Communications of the Kyrgyz Republic;
- 4) Ministry of Agriculture, Water management and Processing Industry of the Kyrgyz Republic;

5) Ministry of Health of the Kyrgyz Republic;

and in the Republic of Kazakhstan:

- 1) Border Service of the Committee of National Security of the Republic of Kazakhstan;
- 2) State Customs Control Agency of the Republic of Kazakhstan;
- 3) Ministry of Transport and Communications of the Republic of Kazakhstan;
- 4) Ministry of Agriculture of the Republic of Kazakhstan;
- 5) Ministry of Health of the Republic of Kazakhstan;

area of control – a specially demarked area with a limited access at the points of passing of the States-Parties within which the controlling bodies of the Parties maintain joint control;

commodity – a property being passed through the border, including information carriers, money, currency valuables, as well as transport means, except for the transport means indicated in this article;

transport means – any transport means (including full-trailers, trailers and combined transport means), used for international commercial transportation of individuals, or for commercial or non-commercial industrial or commercial transportation of commodities, as well as their spare parts, appliances and equipment, oil and lubricants contained in their fuel tanks, and oil, lubricants and fuel in established volumes, when they are transported together with transport means;

“one-stop” principle – maintenance of joint control with a single stop of individuals, commodities and transport means while crossing the border crossing points at the Kyrgyz-Kazakh state border;

joint inspection – actions by controlling bodies of the States-Parties with the purpose of checking commodity certificates, external visual inspection of commodities, luggage of individuals, transport means, availability of seals, stamps and other means of identification with the purpose of joint control;

joint examination – actions by controlling bodies of the States-Parties concerning commodities and transport means related with opening of packaging of commodities, cargo rooms of transport means and other premises where commodities are located or might be located;

officials of controlling bodies – teams on duty of controlling bodies of the States-Parties maintaining control over the crossing of the state border by individuals and movement of commodities through the border crossing points, processing of documents, including joint processing of documents in the controlling area.

Article 2.

The authorized bodies of the States-Parties responsible for the implementation of this Agreement's provisions are:

on behalf of the Government of the Kyrgyz Republic – Committee on Revenues under the Ministry of Finance of the Kyrgyz Republic;

on behalf of the Government of the Republic of Kazakhstan – the State Customs Control Agency of the Republic of Kazakhstan.

In case of changes of the official names and functions of the authorized bodies of the States-Parties, the Parties will be timely notified through diplomatic pipelines.

Article 3.

Joint control is maintained on the basis of interaction between controlling bodies of the States-Parties following the “one-stop” principle. While maintaining joint control, the following methods are used:

- exchange of information about the crossing of the border by individual, and movement of commodities and transport means through the border;

- joint auditing, inspections and examinations, at the border crossing points by officials of the States-Parties' controlling bodies;

- acknowledgement and use by the States-Parties' controlling bodies of certificates on commodities processed according to the national legislation and international agreements signed between the States-Parties;

- use of the existing forms and methods of joint control and development and introduction of new ones, whereas they are in compliance with the national legislation and international agreements signed between the States-Parties.

While maintaining joint control, the States-Parties' controlling bodies apply the forms sufficient to ensure the observation of the national legislation and international agreements between the States-Parties, whereas the control over their implementation is delegated to the States-Parties' controlling bodies, which apply the principle of analysis and risk management.

The States-Parties' controlling bodies do not use repeatedly the forms and methods of control, which have been once applied with respect to the same commodities and transport means, except for cases where there are signs of violation of the national legislation and international agreements signed between the States-Parties.

The States-Parties' border services reserve the right to maintain other control over individuals crossing the Kyrgyz-Kazakh state border, according to the national legislation of the States-Parties.

Article 4.

The order of use of the available technical means for joined control in the area of control is defined upon the agreement between the authorized bodies of the States-Parties.

Article 5.

The mode of duties of the States-Parties controlling bodies' detachments at the crossing points of the Kyrgyz-Kazakh state border is defined upon the agreement between the authorized bodies of the States-Parties.

Article 6.

The order of joint control at the Kyrgyz-Kazakh state border crossing points is defined according to a specific bylaw signed by the authorized bodies of the States-Parties and agreed with the relevant States-Parties' controlling bodies.

The crossing point infrastructure is used for the maintenance of joint control. This infrastructure should fully meet requirements of joint control.

Depending on the peculiarities of the movement of commodities and crossing the Kyrgyz-Kazakh state border by individuals, joint control can be maintained and finished on the territory of one of the Parties.

This means that until the crossing point of the second Party is entirely in compliance with the international standards, both entry and departure control for all forms of movement will be maintained on the territory of another Party's state. The officials of the States-Parties controlling bodies cooperate with each other in the area of control of the border crossing point, whereas control and processing of documents are carried out in two directions:

- a) processing of documents and control over individuals, light vehicles and commodities not meant for industrial or any other commercial activities;
- b) processing of documents for cargo vehicles, commercial commodities and transport means.

Article 7.

With the purpose to maintain joined control, the Parties allow the presence of officials, representatives of another State-Party controlling bodies in the area of control on the territory of its State during the whole period of time needed for accomplishment of their duties.

The presence of the officials in question in the areas of control on the territories of the States-Parties is allowed if they have their identification cards according to the lists approved by the authorized bodies of the States-Parties.

Article 8.

In order to ensure exchange of information, the Parties will equip the crossing points with needed technical means and software, and will agree upon the format of the exchanged information between the authorized bodies of the States-Parties.

Article 9.

The issues of consideration, investigation and assumption of decisions on cases of lawlessness revealed in the course of joint control, are regulated according to the national legislation of the State-Party, on the territory of which the violation of the legislation was committed, and according to the Convention on legal assistance and legal relations on civil, family and criminal cases dated 7 October 2002.

Article 10.

After the signing of this Agreement, the authorized bodies of the Parties will identify a pilot crossing point where they will be maintaining joint control with the purpose to further replicate the provisions of this Agreement at other crossing points of the Kyrgyz-Kazakh state border.

Article 11.

Expenditures eventuated in the course of implementation of this Agreement, will be covered by each of the Parties separately according to the respective legislations of the states-Parties.

The issues of the establishment of an integrated control area, including its technical equipment and readjustment to maintain joint control following the “one-stop” principle, will be resolved by the authorized bodies of the States-Parties upon agreement with the relevant controlling bodies of the States-Parties.

Article 12.

Arguments and disagreements in the course of interpretation and application of the provisions of this Agreement will be resolved by means of negotiations and consultations between the Parties.

Upon a mutual agreement of the Parties, changes and amendments can be introduced to this Agreement. These changes and agreements are documented with separate protocols, which become integral parts of this Agreement, and come into force according to the first paragraph of Article 13 of this Agreement..

Article 13.

This Agreement is signed for an indefinite term, and comes into force on the date of the receipt of a written notification on the accomplishment of internal state procedures by the Parties, needed for this Agreement to coming into force.

This Agreement is terminated after six months starting from the date of the receipt of a written notification by one Party from another Party, but not earlier than all financial and other obligations emerged during the term of this Agreement, have been settled.

Signed in the city of _____ " ____ " _____ 200__ in two original copies; each copy is in Kyrgyz, Kazakh and Russian languages, whereas all texts have equal force. In case of disagreements in the course of interpretation of this Agreement, the Parties will refer to the Russian text.

For the Government of
the Kyrgyz Republic

For the Government of
the Republic of Kazakhstan