

Information on simplification of transit transportation and on Agreement between Government of the Kyrgyz Republic and Government of the Republic of Kazakhstan on transit transportation of goods by road transport through the territory of the Republic of Kazakhstan.

For today Kyrgyz Republic is a participant of many agreements, concerning issues of simplification of transit transportation of goods.

However existing bilateral and multilateral agreements on transit do not contain a real mechanism of their practical application because of absence of guarantees of application of sanctions in regard to unfair participants of foreign trade activities (traders) in cases of false transit in the territory of the transit state. In such a form they actually have the nature of political statement and strategic intentions and are not applicable for real assistance to trade simplification in the region.

Thus, for example, within the framework of Organization of Economic Co-operation (OEC) the Agreement on transit trade of Organization of Economic Co-operation (OEC) was signed as of March 15, 1995 (ratified by the Law of the Kyrgyz Republic №17 dated January 15, 2000) and the Framework OEC Agreement on transit dated May 9, 1998 (ratified by the Resolution of the Government of the Kyrgyz Republic № 459 dated August 18, 2001). However countries not even started to decide of question of a choice of the guaranteeing organization in each of countries and practical realization of these agreements has no prospects in the foreseeable future. But countries did not still start to solve the issue of selection of a guarantee organization in each of the countries and a practical realization of this agreements does not have perspectives in the foreseeable future.

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

A similar norm is stipulated in the Agreement on Unified Transit Conditions via the territories of the Custom Union state-members dated January 22, 1998, to which the Kyrgyz Republic is an active member.

During the First CCC Meeting (Urumchi, PRC, August, 2002) the agreement concerning the Common Action Plan (CAP) was reached, which has defined 7 directions of the activity. Among the raised initiatives on trade facilitation CCC considers that the most important one is a development of transit system as the majority of CCC member-countries have no a direct access to the sea, and economies of this countries have no significant value. Without effective transit systems facilitating trade inside of the region and promoting movement of goods, as in so out of the region, some of member-countries is under risk to stay further in isolation and not to have an opportunity to have an advantages from increasing globalization of a world economy.

Second CCC Meeting held in October 9-10, 2003 in Tashkent, Uzbekistan, has analyzed the results of work of Transit Working Group during the Meeting in Issyk-Kul, Kyrgyz Republic, held in August 3-8, 2003 and has approved the necessity of development of the simplified regional transit system as a key component of the Common Action Plan.

During the meeting it was recognized, that the development of the regional transit system can be started on the base of separate bilateral agreements which will serve as a ground and could be used for creation of the regional agreement on transit in the

perspective. Countries accordingly spoke for the development of such bilateral agreements on transit and completely supported offers on expansion of this bilateral agreements on other countries.

For acceleration of development of transit issues by the Department of Customs Service of the Kyrgyz Republic during 20th Meeting of the Council of Head of Customs Services on July 4, 2003 in Issyk Kul the signing of bilateral protocols of intentions between customs services of Tajikistan and Kazakhstan about decision of given issues at the first stage on a bilateral base has been initiated.

At the seminar held in Issyk-Kul (August 4-8, 2003), the overall working document «Strategy and action plan on development of the transit system» was prepared by the Secretariat and a two-aspect approach for decision of the given issue has been proposed:

1. perfection of already existing transit system: System of International Road Transportation (TIR), as the basic transit system, working in the region.
2. development and accepting in the framework of the CCC an agreement on regional transit system.

This two transit systems might complete each other, creating a favorable conditions for development of trade in the region and of an interregional trade.

Being a target for a future perspective, the development of the regional transit depends on a presence of concurrence in the actions of CCC member-countries in concern the plan of creation of a legal and physical infrastructure, which provides with a possibilities for creation of the regional transit system. So, regional efforts, aimed on a search of alternative transit system, should be based on the efforts of separate countries on reformation and modernization of customs service.

Kyrgyz Customs Service initiated the issue on the necessity to develop a regional agreement, stipulating the following:

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

Taking into consideration that the Kyrgyz Republic is an initiator of the transit issue, in February 2004 in Bishkek the Regional Meeting on Development of Simplified Transit Systems was held. The aim of the meeting was in discussion of the issue – in what way such a system may be developed with a focus on a key elements, that are necessary for such regional system. Also on the Agenda there were the issues as following:

1. system of guarantee of a supply;
2. procedures for transit;
3. institutional framework.

Given Meeting endowed in a discussions of issues, directed on creation of the simplified transit system in the region, in particular, on preparation of the draft bilateral agreement on transit between Kyrgyzstan and Kazakhstan.

On 26, March, 2004 in Bishkek the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on transit transportation of goods by road transport through the territory of the Republic of Kazakhstan was signed, which came into force on 11, May 2005.

On the base of the Agreement lays a mechanism of applying of the financial guarantee for ensuring transit movement, i.e. transit movement of goods by road

transport through the territory of the Republic of Kazakhstan is implementing on the base of consignment details, document on ensuring of payment of customs duties and taxes in the Kyrgyz Republic and document of good's delivery control.

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

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

Due to the constructive position of the customs service of Kazakhstan aimed at preparation a rational and realistically feasible scheme of control over transit of goods, the draft agreement has been developed, approved by the customs services of the Parties. At the same time it was agreed that for the customs service of the transit state – Kazakhstan – the inner national mechanism of damage compensation, measures of administrative influence on non-fair participants of external economic activity, the mechanism of accounting and control of used guarantees and other inner national details of regulation are not of a principal importance under the condition of observance of the major principle – actual compensation of the damage provided caused by non-sanctioned release of goods in the national economy of the transit country. Apart this, on the first stage it was important to assign legally the scheme of recognition of the guarantees of the one state in another state for further its development to the regional chain of guarantees through the mediation of customs bodies.

Article 3 of the Agreement specified a requirement to submit the following core documents necessary for movement of goods under customs control in accordance with the proposed simplified transit system: (1) a document for control of delivery and (2) a document testifying the guarantee of payment of customs duties.

The document on ensuring of payment of customs payments and taxes in the Kyrgyz Republic (Guarantee Commitment) shall be issued to the transporter by the customs body of the Kyrgyz Republic.

Guarantee Commitment represents a document, ensuring depositing to the Kyrgyz customs body's account the amount that shall not be lower than the amounts to be paid as customs duties and taxes (deposit or bank guarantee) at the expenses of which the gemage in the country of transit will be paid in case of non-delivery of goods to the customs body of destination.

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

The Kyrgyz Republic legislation stipulates the following order of issuing and application of the Guarantee Commitment.

Customs bodies of the Kyrgyz Republic accept bank guarantees, issued for ensuring a fulfillment of obligation of the traders before customs bodies, on the stipulation that on the base of this bank guarantee the payment of customs duties and taxes to customs bodies could be ensured in case of non-delivery of goods on the territory of the Republic of Kazakhstan.

After this a customs body during 3 days from the date of registration of all documents issues the Guarantee Commitment in duplicate.

A trader give one copy of the Guarantee Commitment to customs officials of the Republic of Kazakhstan on the entry point to the customs territory of the Republic of

Kazakhstan for the aims of customs processing and getting a document certifying the delivery of goods (DCD).

Period of validity – not less than 3 months, and is established by customs body, based on:

- period of validity of a bank guarantee;
- capacity of means of transport and length of a delivery route.

In case of fulfilment of an obligation by a trader before customs body, a validity period of the Guarantee Commitment is considered to be finished and a bank guarantee is returned to bank.

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

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

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

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

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

Such cases are stipulated by the draft Agreement in Article 6 separately to be applicable to such goods specified in provisions of national legislation of the Republic of Kazakhstan.

Article 7 of the Agreement envisages exchange of information on goods and means of transport moved under customs control, which envisages a possibility of adapting the principles of the New Computerized Transit System to the regional transit system. However the solution of this task has not been specified in this Agreement, the format for data exchange at the initial stage should be agreed by customs services of the parties.

Article 8 of the Agreement legally specifies the adequacy of financial guarantee only in the volume, which is realistically necessary to compensate the damage to the transit country in case of non-delivery of goods, depending on a concrete shipment and its value. This is a significant advantage compared to the TIR system under which the

amount of guarantee on each carnet is fixed and does not depend on the value of freight, and this advantage makes the transit transportation unaffordable for small-scale agricultural producers.

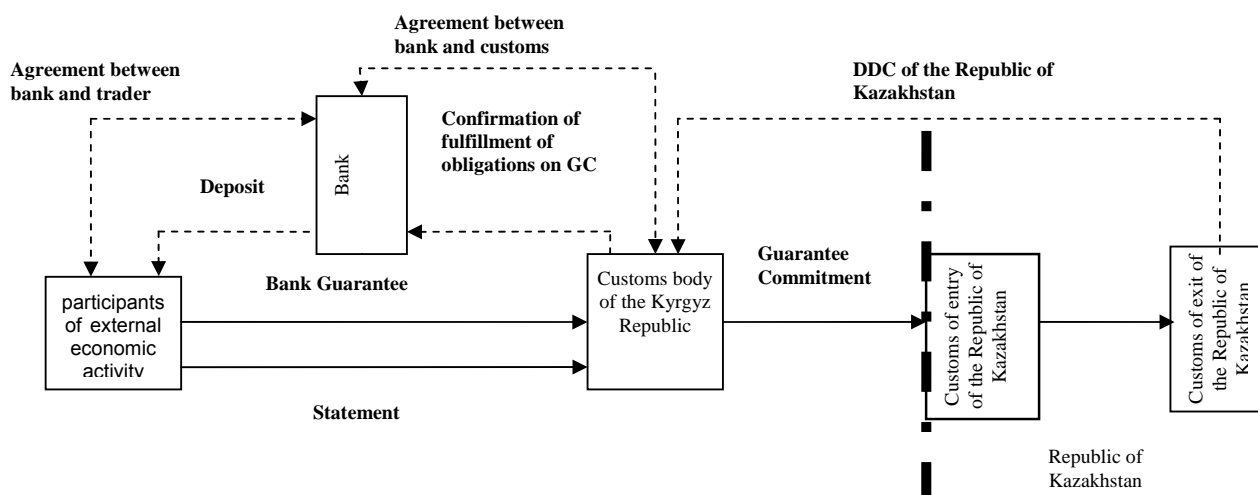
At the Issyk-Kul seminar the CCC emphasized the need to increase the responsibility of business subjects when moving goods, observing various prescription of customs bodies and other executive bodies. To ensure viability of any system of transit transportation a large significance is attached to a responsible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

It is necessary to take into account that unfair participants of external economic activity can be considered as a possibility for inauthentic declaration (declaring instead of goods with a low level of taxation – goods with high level of taxes and duties), transportation of prohibited goods and drugs, etc. The feeling of impunity can put in doubt the whole idea of establishing a regional chain of guarantees initiated by customs bodies. To prevent possible attempts of using the proposed scheme for establishment of illegal channels of goods transportation Article 9 of the Agreement stipulates investigations to be conducted on the facts of non-delivery of goods, including by joint working groups of the parties concerned.

The main limitations of the Agreement are as following:

1. The Agreement has an evasive nature, that expressed in its «one-sided» direction (i.e. use of the document ensuring the payment of customs duties and taxes, given only to the address of Customs Service of Kazakhstan).
2. The developed national Order of issuing and applying of the Guarantee Commitment by customs bodies of the Kyrgyz Republic is enough bulky mechanism.

Scheme of issuing of the bank guarantee and the guarantee commitment



Though, the developed Agreement has evasive nature, that expressed in its «one-sided» direction, the approbation of such scheme became possible for the preparation of a bilateral agreement with the Republic of Tajikistan.

Draft Agreement between Government of the Kyrgyz Republic and Government of the Republic of Tajikistan on transit transportation of goods by road transport is developed on the analogy of abovementioned Agreement with Kazakhstan.

Difference between the Agreement between Government of the Kyrgyz Republic and Government of the Republic of Tajikistan on transit transportation of goods by road transport and the Agreement with Kazakhstan are as following:

1. The Agreement is applied on transit transportation of goods by road transport through territories of the Kyrgyz Republic and Republic of Tajikistan, i.e. the Agreement will equally work on the territories of both Parties, that will have a positive influence on trade development on border area (i.e. enclave Voruh);
2. In the Agreement it is determined that in case of non-delivery of transit goods in accordance with the Agreement, the amounts to be paid under the Guarantee Commitment to the transit country, shall be paid in terms of money in convertible currency by customs body issued the Guarantee Commitment.

Necessary to note that the state-members of the Eurasian Economic Community (Byelorussia, Russia, Kazakhstan, Kyrgyzstan, Tajikistan), within the framework of the EurAsEC customs services work on development of the Agreement on ensuring the payment of customs duties by depositing to the customs body's account customs payments due or by using bank guarantees when moving goods under customs control between customs bodies of the EurAsEC. The work over this Agreement is conducting starting from 2002, however for nowadays the Parties did not developed still a final text of the agreement, that will satisfy the requirements of all interested state bodies of the Parties.

Mechanism of the Agreement is based on provision by customs bodies of the Parties of a real financial guarantees, which would may cover a possible damages of a transit country in case of unauthorized relinquishment of a transit goods. But for realization in practice of the Agreement the development of additional agreement on information exchange, order and terms of transferring of funds is necessary.