

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

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Overview of Presentation

- Assessment for the Three Pilot Project Countries
- Assessment for the Other CAREC Countries
- Findings and Recommendations

Assessment for the Three Pilot Project Countries (1/10)

- People's Republic of China
- Kazakhstan
- Kyrgyz Republic

What are some of the possible changes in the legal and regulatory framework that may be required to implement the proposed regional transit guarantee scheme?

Assessment by Country: PRC (2/10)

- 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: PRC (3/10)

- Gap Analysis

Probable need to amend the Customs Law of the People's Republic of China, 8 July 2000 (as amended on 28 December 2013), which makes only limited references to transit (Articles 23 and 100)

Probable need to amend Article 59 of the Customs Law, which provides that “[a]fter the consignee or consigner has paid to the Customs a deposit of an amount equal to the duties or provide a bond, temporary duty exemption shall be granted to goods that are temporarily imported or exported with the approval of the Customs and to bonded goods that are imported with special permission”

Assessment by Country: PRC (4/10)

- Gap Analysis (continued)

Probable need to amend GACC decrees, e.g., Decree No. 255 of the GACC, Interim Measures of Customs Administration of China Customs Administration of the People's Republic of China for Enterprise Credit Management, 8 October 2014

Also, consideration may be given to amending applicable agreements (e.g., SCO, QTTA)

Assessment by Country: KAZ (5/10)

- 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: KAZ (6/10)

- Gap Analysis

Probable need to incorporate appropriate provisions in the EEU Customs Code now under development, as well as in Chapter 38 (consisting of Articles 319 to 332) of the Code on Customs Affairs of the Republic of Kazakhstan, 30 June 2010 (and amended in 2012), No. 296-IV, on Customs Procedure[s] for Customs Transit

That said, the legal system of Kazakhstan – a former Soviet Republic – is monist, at least nominally; as stated in Article 4(3) of the Constitution of the Republic of Kazakhstan

Assessment by Country: KAZ (7/10)

- Gap Analysis (continued)

Consideration may be given to amending applicable regional (plurilateral) agreements, e.g., ECO TTFA, TRACECA BMA, EEU, SCO, QTTA, NSITC

Assessment by Country: KGZ (8/10)

- Global: TIR, CCTICV, CCC, RKC, GATT
- Multinational: ECO TTFA, TRACECA BMA, SCO, EEU
- Plurilateral: QTTA, CBTA, 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: KGZ (9/10)

- Gap Analysis

Probable need to incorporate appropriate provisions in the EEU Customs Code now under development as well as in the Customs Code of the Kyrgyz Republic, dated 27 November 2014, and effective from 12 August 2015, Chapter 16, Articles 86-90, of which cover customs transit procedures, including multiple references to the relevant provisions in the Customs Code of the Customs Union

That said, the legal system of the Kyrgyz Republic – a former Soviet Republic – is monist at least to some extent

Assessment by Country: KGZ (10/10)

- Gap Analysis (continued)

Consideration may be given to amending applicable regional agreements, e.g., ECO TTFA, TRACECA BMA, EEU, SCO, QTTA, CBTA

Assessment for the Other CAREC Countries (1/10)

- Afghanistan
- Azerbaijan
- Mongolia
- Pakistan
- Tajikistan
- Turkmenistan
- Uzbekistan

What are some of the possible changes in the legal and regulatory framework that may be required to implement the proposed regional transit guarantee scheme?

Assessment by Country: AFG (2a/10)

- Global: TIR, CCTICV
- Multinational and Regional/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: AFG (2b/10)

- Gap Analysis:

Possible need to revise the Customs Law of 20 March 2005, Chapter 10 on Customs Processes, particularly Article 79 on Transit Exemptions from Giving Security

Possible need to amend Article 137 on Form(s) of Security, which requires a customs transit guarantee in the form of a cash deposit, or in some other form (in some cases, up to 100% of the customs duties may have to be deposited)

Assessment by Country: AFG (2c/10)

- Gap Analysis (continued):

That said, Article 75,5 of the Customs Law of 20 March 2005, Chapter 10, acknowledges the substitution of the regime of the law by international agreements

Assessment by Country: AZE (3a/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: AZE (3b/10)

- Gap Analysis:

Possible need to amend Chapter 5 of the Customs Code of the Azerbaijan Republic, 2011 (which entered into force on 1 January 2012), which introduces the concept of AEOs

Possible need to amend Chapter 29 (Transit), Article 174 (International Transit) of the Customs Code of the Azerbaijan Republic, 2011

Assessment by Country: AZE (3c/10)

- Gap Analysis (continued):

That said, Azerbaijan's legal system is likely monist (i.e., international legal texts would be self-executing), although changes in relevant provisions of domestic laws may still be required for practical implementation purposes

Assessment by Country: MON (4a/10)

- Global: TIR, RKC, GATT
- Multinational: ECO TTFA
- Bilateral: PRC, KAZ, KGZ
- Monist
- National: Customs Law (2008), e.g., Chapter 11
- Remarks: Recent movement in the implementation of the bilateral transit agreement with the PRC

Assessment by Country: MON (4b/10)

- Gap Analysis

Need to amend the Customs Law of Mongolia, 1 July 2008, specifically Subchapter 1 of Chapter 11 (Articles 183 to 217), which covers international transit, and Subchapter 2 of Chapter 11 (Articles 191 to 199), which covers domestic transit

That said, Mongolia's legal system is monist – international legal texts are self-executing – although it may nevertheless be necessary to enact domestic laws for implementation

Assessment by Country: MON (4c/10)

- Gap Analysis (continued)

Consideration may be given to amending applicable regional/bilateral agreements, e.g., ECO TTFA, the Agreement between the Government of [the People's Republic of] China and the Government of Mongolia on International Road Transport

Assessment by Country: PAK (5a/10)

- Global: TIR, RKC, GATT
- Multinational: ECO TTFA
- Regional/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: PAK (5b/10)

- Gap Analysis

Need to amend the Customs Act, 1969 (IV of 1969), as amended, Chapter 13 – including Sections 126 to 129a (which covers Transit Trade)

Regarding Afghanistan, there is a possible need to amend the Afghanistan-Pakistan Transit Trade Rules, issued by Pakistan's Federal Board of Revenue (Rule 619)

Assessment by Country: PAK (5c/10)

- Gap Analysis (continued)

In terms of the direct applicability of international agreements into Pakistan's domestic law, Pakistan's legal system is likely a mix of monist and dualist – it has indicated readiness in principle to submit to (general) international law

Consideration may be given to amending applicable regional/bilateral agreements, e.g., the QTTA, (the still draft) trilateral transit trade agreement (AFG-PAK-TAJ), the bilateral agreement with AFG (APTTA)

Assessment by Country: TAJ (6a/10)

- Global: TIR, CCC, GATT
- Multinational: ECO TTFA, TRACECA BMA, SCO, EEU
- Regional/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: TAJ (6b/10)

- Gap Analysis

Need to amend the Customs Code of the Republic of Tajikistan, 3 December 2004 (as amended, with the last version dated 18 March 2015), which is broadly comparable to the customs codes of Kazakhstan and the Kyrgyz Republic with respect to transit

Tajikistan may join the EEU, which has been drafting its customs code, including extensive provisions regarding transit that would need to be taken into account if Tajikistan does become a member

Assessment by Country: TAJ (6c/10)

- Gap Analysis (continued)

Tajikistan – a former Soviet Republic – is monist, i.e., international legal texts are self-executing; see Article 10 of the Constitution of the Republic of Tajikistan

Consideration may be given to amending applicable regional/ bilateral agreements, e.g., ECO TTFA, TRACECA BMA, SCO, (the still draft) trilateral trade agreement (AFG-PAK-TAJ), CBTA

Assessment by Country: TKM (7a/10)

- Global: TIR
- Regional/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: TKM (7b/10)

- Gap Analysis

Probable need to amend the Customs Code of Turkmenistan of 25 September 2010, as amended, e.g., by Law No. 345-IV of 19 October 2012, which is the primary law of the country regarding customs transit

That said, the legal system of the Republic of Turkmenistan – a former Soviet Republic – is monist, i.e., international legal texts are self-executing (see the second paragraph of Article 6 of the Constitution of Turkmenistan)

Assessment by Country: TKM (7c/10)

- Gap Analysis (continued)

Consideration may be given to amending applicable regional/bilateral agreements, e.g., NSITC, the Agreement between Turkmenistan and Afghanistan on Transit

Assessment by Country: UZB (8a/10)

- Global: TIR, CCTICV, CCC
- Multilateral: SCO
- Regional/Plurilateral: KGZ-UZB-PRC
- Bilateral: AFG, AZE, PRC, KAZ, KGZ, PAK, TKM
- Monist
- National: Customs Code (2016); various decrees and resolutions of the Cabinet of Ministers under the previous code
- Remarks: A previous ADB TA recommended development of a primary law on international transport and transit

Assessment by Country: UZB (8b/10)

- Gap Analysis

Probable need to amend the Customs Code of the Republic of Uzbekistan, No. 3 (I), 20 January 2016, which entered into force on 21 April 2016

Need to promulgate new secondary regulations, or amend secondary regulations (to the extent they may still be applicable under the new Customs Code)

Assessment by Country: UZB (8c/10)

- Gap Analysis (continued)

As a former Soviet Republic, Uzbekistan's legal system is likely monist, i.e., international legal texts would be self-executing, although this should be confirmed with Uzbek legal authorities

Consideration may be given to amending applicable regional/bilateral agreements, e.g., SCO

Findings and Recommendations (1/5)

- For implementation of a regional customs transit guarantee scheme, the solution is likely to involve an international agreement (which could be in the form of an MOU) among the participating countries
- To the extent that the countries have monist legal systems, an international agreement between/among countries may be particularly effective, although work may still be required to incorporate the agreements into the respective national bodies of law

Findings and Recommendations (2/5)

- Content of the International Agreement
 - 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)

Findings and Recommendations (3/5)

- Content of the International Agreement (continued)
 - 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)

Findings and Recommendations (4/5)

- Content of the International Agreement (continued)
 - 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]

Findings and Recommendations (5/5)

- In addition, an international agreement may be reached to address overall requirements for a regional transit regime, as developed in a previous ADB TA for the previously established Central and South Asia Transport and Trade Forum
- For example, these may include general principles such as exemption of transit traffic from non-cost related charges, facilitation of road vehicle crew entry, facilitation of road vehicle and container entry, permission of foreign transport operator activity, and non-discrimination and national treatment

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