

Single-Stop

Customs Practices

In Cross-Border Clearance - Draft

**Prepared for
The Asian Development Bank
Under RETA 5060**

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Single-Stop Customs Practices In Cross-Border Clearance

1. Preamble

The Agreement on Facilitation of Cross-Border Transport of Goods and People (Agreement) was prepared under ADB RETA 5060 in 1999 and has since been acceded by six member states comprising the Governments of Laos, Thailand, Vietnam, People's Republic of China, Myanmar and Cambodia. The Agreement calls for the facilitation of cross-border transport of goods and people among member states through (i) the harmonization of cross-border transport procedures and (ii) the propagation of multimodal transport.

In harmonizing cross-border transport procedures, the main text of the Agreement specified a number of measures that would:

- Simplify and expedite cross-border formalities (Part II);
- Introduce formal entry and exit controls of people (Part III);
- Exempt onerous practices in international goods transit and institute a Customs inland transit and clearance regime as replacement (Part IV);
- Govern the entry of road vehicles into the host country (Part V);
- Control the business conduct of transport operators in the host country (Part VI);
- Standardize and upgrade road infrastructure and border crossing facilities (Part VII); and
- Establish *fora* at the national (National Transport Facilitation Committees) and international (Joint Committee) levels for implementation and monitoring of the Agreement, including dispute resolution at the Joint Committee level (Phase VIII);

These measures are complemented by a multimodal transport regime aimed at propagating the use of multimodal transport to further facilitate cross-border trade and transport. The promotion of multimodal transport is articulated in Article 34 of Part IX of the Agreement covering measures that would:

- Institute a multimodal transport liability regime to unify the different liability regimes of modal carriers;
- Establish minimum qualifications to be a multimodal transport operator;
- Institute a special container Customs regime to govern the formalities for inland container operation.

Since the accession of the Agreement in 1999, a number of initiatives under ADB RETA 5060 have been undertaken to implement the Agreement. One key initiative underway is the implementation of fast border clearance, which requires securing

consensus among member states by means of a pilot test program at selected border sites in Laos, Thailand, Vietnam and Cambodia, regarding the procedures and arrangements according to Annex 4 Facilitation of Frontier Crossing Formalities. The key features of this initiative as stipulated in Annex 4, which is applied primarily to the movement of goods by road, are:

- Single-stop inspection through joint Customs control (Article 3.b);
- Single-window inspection (Article 4)
- Coordination of hours of operation (Article 3.c);
- Advance exchange of information for clearance (Article 9);
- Reduction of routine (compulsory) inspection practice (Article 11);
- Reduction of number of documents and elimination of superfluous procedures, etc. (Article 6);
- Alignment of trade documents to the UN layout key (Article 5)
- Introduction of Customs inland clearance practice (Article 12);
- Traffic prioritization according to passengers, fresh food, livestock, and other perishable merchandize (Article 10).

A series of Customs workshops and meetings have been held as part of this initiative, the most recent of which took place in Phnom Penh on December 2 to 4, 2002. Attended by Customs officials from Thailand, Laos, Cambodia and Vietnam, representatives from JICA and JBIC, and ADB officials, the December workshop reached agreement on several aspects of single-stop Customs inspection pertaining to the eight pilot sites¹, notably the following:

- Standardization of Customs Declaration Forms;
- Harmonization of inspection procedures (acknowledging use of risk assessment method);
- Transparent method of evaluation based on benchmarking of performance as measured by processing time, trade volume, and qualitative views of private sector users;

However, no consensus has been reached on the mechanism(s) judged suitable for operationalizing the single-stop inspection concept at the designated pilot sites. Participants expressed the need for more understanding as to how the concept works and also the concern over jurisdictional sovereignty. There was preference for an alternative that impinges least on territorial sovereignty, rationalizing that “mutual recognition” of procedures is more acceptable than “joint inspection” and that “delegated authority” is the most troublesome.

ADB agreed to the Customs officials’ request for more information on single-stop inspection and indicated that a paper would be prepared in January 2003 for dissemination. This paper is a response to that request.

¹ Located in Cambodia (Poipet and Bavet), Laos (Dansavanh and Savannakhet), Thailand (Aranyaprathet and Mukdahan), and Viet Nam (Moc Bai and Lao Bao).

2. Scope of this Paper

This paper covers the concept and practice of single-stop Customs inspection in the international arena and links them to the application of the Agreement, in particular Annex 4, to the pilot sites. It is an exposition on the subject and not a manual for step-by-step implementation. The motive is to reveal the options that can be considered most appropriate for the stakeholders to take on the course of action consistent with the spirit of the Agreement.

In doing so, the paper covers the following:

- Origins of the practice;
- Institutions and legal regimes that legitimize the concept and propagate the practice;
- Different models in operation;
- Enabling legal framework; and
- Key factors for consideration in the pilot program.

3. Origin of Single-Stop Customs Inspection Practice

The trend toward single stop inspection world-wide is a relatively recent phenomenon that has taken root in Europe and North America as economic integration motivated countries to speed up the trading process by removing the impediments in the international transport system. The practice is predicated on the rationale of reducing duplicated inspections traditionally found in countries sharing a land border where outbound traffic is inspected upon leaving a country and again when entering the other country. This duplication of inspection is time consuming, document intensive and susceptible to unpredictable delays that cost the shipper in terms of spoiled goods (particularly perishables), high inventory (to avoid stockout), and price-markdown in the event of late delivery beyond the contractual date (particularly time-sensitive products).

A single-stop inspection procedure, properly designed and operated, would minimize or avoid these consequences. A single-stop procedure is one that is carried out once at the border on a site that is located in the territory of either country with respect to the national laws of both countries. This notion leads to several models of Customs cooperation that can be viewed by keeping in mind the distinction between the process of inspection control and the configuration of facilities.

In the case of Customs control, there are several methods of performing the function to satisfy the Customs laws of each country within the concept of single stop inspection. One method is delegated authority, a means by which the Customs of one country defers authority to the Customs of another jurisdiction to carry out the inspection process. This method hinges on the mutual recognition of Customs procedures, a

requirement that stresses a high degree of trust and transfer of sovereignty. Another method is joint Customs control, a means where Customs of both jurisdictions carry out the inspection simultaneously (or almost simultaneously). Involving the joint cooperation of both Customs administrations, this method is considered more practicable where sovereignty is a sensitive matter.

The application of Customs control, whether based on delegated authority or joint inspection, has to take place at a designated facility. How this facility is configured is of interest because it attracts jurisdictional attention and affects design, construction and operation. In this regard, there are several physical arrangements that can facilitate the control process but these arrangements possess the distinguishing feature that there is a common control area where joint inspections take place.

The most obvious configuration, for either method of control, is the single shared facility that straddles the border or is located on one side of the border. Alternatively, there is the split configuration, that is primarily applicable to joint inspection, where one facility is located on a particular side of the border while the other facility is located on the other side. In a split arrangement, one facility usually specializes in a particular function while the other facility specializes in another function according to traffic direction (inbound/outbound) and carriage (passenger and/or freight). Within these basic configurations, there are others that can be configured, such as an integrated facility located in a common control zone that straddles the border (or located on one side of the border), for Customs of both countries to perform joint inspection while maintaining individual facilities.

In practice, the configuration of single-stop Customs control depends on several factors ascribed to the following:

- Topography of the particular border site;
- Nature of the goods or passenger traffic passing through;
- Risk profile of the country, users and/or goods; and
- Insistence by the countries on reciprocal treatment.

International experience in Europe and North America indicates that certain configurations of single-stop inspection are more prevalent, as will be seen in the next section. Suffice to say at this juncture that in the exercise of Customs control, little or no experience is reported on the use of delegated authority based on mutual recognition of procedures by any of the countries in the region, whereas there is an overwhelming practice in joint Customs operation. In other words, international experience in single-stop inspection is concentrated on joint Customs control.

3.1 North America

In North America, there is a long established practice between Canada and the United States of sharing facilities at isolated land border crossings in outlying areas.

These are remote stations that straddle the border, many of which are small but others have higher volume border crossings. In four of the relatively higher volume remote border crossings in particular, new facilities have been constructed (or are near completion) where both governments share facilities (and costs) to accommodate border service agencies under one roof or in close proximity. Built in response to the Shared Border Accord signed by both countries in 1997, these facilities are found at border crossings between Sweetgrass in Montana and Coutts in Alberta, Poker Creek in Alaska and Little Gold Creek in Yukon, and Oroville in Washington and Osoyoos in British Columbia.

The events of September 11, 2001 have given a boost to closer Customs cooperation between the two countries. In December 2001, the governments of Canada and the United States signed a Smart Border Declaration and Associated 30-Point Action Plan to modernize border management, taking into consideration a series of measures that include wider deployment of shared facilities and joint controls at border crossings. In September 2002, the two governments announced 12 additional border crossings for consideration of joint Customs operations at the following locations:

- St. Stephen, New Brunswick, Canada and Calais, Maine, U.S.
- River de Chute, New Brunswick, Canada and Easton, Maine, U.S.
- Bloomfield, New Brunswick, Canada and Monticello, Maine, U.S.
- St. Croix, New Brunswick Canada and Vanceboro, Maine, U.S.
- Morses Line, Quebec, Canada and Morses Line, Vermont, U.S.
- Highwater, Quebec, Canada and North Troy, Vermont, U.S.
- Winkler, Manitoba, Canada and Walhalla, North Dakota, U.S.
- Northgate, Saskatchewan, Canada and Northgate, North Dakota, U.S.
- Snowflake, Manitoba, Canada and Hanna, North Dakota, U.S.
- West Poplar River, Saskatchewan, Canada and Opheim, Montana, U.S.
- Chopaka, British Columbia and Nighthawk, Washington, U.S.
- Rykerts, British Columbia and Porthill, Idaho, U.S.

3.2 Europe

Joint Customs control has been introduced between the European Union countries and their eastern neighbors, notably at key border crossings between Austria and Hungary (Nickesdorf and Hegyeshalom), Germany and Poland (Penkum and Koblaskowo; Frankfurt and Slubice; Gablenz and Tuplice; Gorlitz and Zgorzelec), and Germany and the Czech Republic (Schmiding and Cheb; Furth Im Wald and Folmava; Bayerisch Eisenstein and Zelena Ruda; and Philippsreut and Strazn). At these border crossings, joint Customs operations are currently controlling the flow of trade and people.

Outside the European Union, developing countries belonging to the South Eastern European Co-operative Initiative (SECI) comprising Albania, Bosnia Herzegovina, Bulgaria, Croatia, Greece, Hungary, Macedonia, Moldova, Romania, Slovenia and Turkey, are committing themselves to a step by step introduction of joint controls and joint facilities. This commitment is the result of the work of SECI, an initiative launched in 1996 to provide a framework for transboundary co-operation between states in South Eastern Europe. The United Nations Economic Commission for Europe (UNECE) is directly assisting SECI in the implementation of the initiative, focussing on locations in the major Pan European corridors.

There are already several examples of progress achieved in this area. Bosnian and Croatian customs officials have set up a single customs house on Croatian territory at the Neum-Klek border crossing. Moldova and Romania are also engaged in joint Customs control.

3.3 Commonwealth of Independent States (CIS) and Other Countries in the Former Soviet Union

Countries in the Commonwealth of Independent States (CIS)², in the attempt to liberalize trade and pursue Customs reform, have been active in the development of single stop inspection. An interesting example is that of Russia, Ukraine, Moldova and Transdnistria (breakaway region of Moldova) making a quadrilateral arrangement to establish joint Customs control at a checkpoint on the Transdnistrian section of the Moldovan-Ukrainian border with Russian Customs officials controlling it on a third party basis. This example represents the only case identified in this paper where Customs control is embarked upon by means of delegated authority, albeit on a third party basis.

Ukraine is most active on this front, having introduced a number of joint Customs control stations at the frontier with Moldova and Belarus. Furthermore, it is completing an arrangement with Poland for introduction of joint Customs control at several checkpoints.

² Consisting of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

Belarus, another member of CIS, eliminated Customs control on its side of the border with the Russian Federation in 1995 and instructed the Belarusian State Customs Committee to work with customs bodies in the Russian Federation to establish joint customs control. Joint Customs control is in operation today in several checkpoints along the Belarus-Russia border.

Outside the CIS, The Baltic state of Latvia has established a number of joint Customs control stations at border crossings with Lithuania (Gricgale and Souvainiskis, Medumi and Zarasai, and Meitene and Joniskis) and Estonia (Ainazi and Ikla, Veclaicene and Murati, and Valka and Valga). These border crossings are directed mainly at import (inbound) traffic entering Latvia.

3.4 Africa

The significant work on single stop inspection carried out in the African continent belongs to the countries in the South African Development Community. Comprised of 14 member states that include Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe, SADC has been debating the subject with the view to implementing it since the mid-1990s. Prompted by the growing awareness of the high costs of delays at the border crossings in the region, the SADC treaty has placed joint customs controls firmly on its agenda. This interest is further amplified by the support of the Customs administrations in SADC that have expressed their “resolve to continue with efforts to establish one stop processing of customs formalities in such forms as may be agreed to by the member countries concerned.”³

Although no two states have implemented joint Customs controls on a permanent basis in SADC at this juncture, there have however been a number of initiatives that, collectively, reflect the growing sense of purpose among the SADC Customs Administrations to implement joint controls as and when feasible. These initiatives include:

- Negotiations between South Africa and Namibia on establishing joint facilities in 1997;
- Conclusion of an Agreement on Combined National Border Control between South Africa and Mozambique;
- Discussions on implementing joint controls between the South Africa Customs Administration and counterparts in Botswana, Lesotho, Namibia, Swaziland and Zimbabwe; harmonization of border post business hours between Namibia and Botswana;
- Planning for the new Kazungula border crossing bridge which is being undertaken on the premise that Botswana and Zambia will implement joint controls; and

³ Resolutions and Recommendations of Summit of SADC Heads of Customs, 18 - 22 November 2000.

- Notably, a recent pilot project in joint Customs control that was successfully conducted between South Africa and Mozambique at a facility located in South Africa by Customs officials from both countries.

4. The Legal Basis for Single-Stop Customs Inspection

The legal force driving single-stop inspection or joint Customs control is the collection of international agreements established over the last three decades that relate 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 under the aegis of the Customs Co-operation Council and later renamed the World Customs Organization (WCO). The original Kyoto Convention entered into force on 26 September 1974 and has been ratified by 62 states.

In 1999, a revised text of the convention, known as Kyoto 2000, was prepared by WCO that was agreed to by the WCO member states. To date, 11 contracting states have ratified Kyoto 2000 and another 29 signatories are required for the amendment to enter into force. Kyoto 2000 provides the international benchmark for the introduction of joint customs controls, as per 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, cooperate with the neighbouring 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. Article 7 of the convention contains its main provisions regarding co-operation at border stations between adjacent countries. It provides the following:

"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) endeavour to arrange for the joint control of goods and documents, through the provision of shared facilities;*
- (b) endeavour to ensure that the following correspond:*
 - opening hours of frontier posts,*
 - the control services operating there,*
 - the categories of goods,*
 - the modes of transport and*
 - the international Customs transit procedures accepted or in use there."*

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 SECI initiative as well as the International Road Transport Union. Article 6 on Border Crossing Points of Annex 8 provides as follows:

"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;*
- (ii) separation of traffic for different types of traffic on both sides of the border allowing to give preference to vehicles under the cover of valid international Customs transit documents (TIR, T) or carrying live animals or perishable foodstuffs;*
- (iii) off-lane control areas for random cargo and vehicle checks;*
- (iv) appropriate parking and terminal facilities;*
- (v) proper hygiene, social and telecommunications facilities for drivers;*
- (vi) encouraging the establishment of forwarding agents at border crossings with adequate facilities, offering services to transport operators on a competitive basis."*

5. Single-Stop Inspection Models

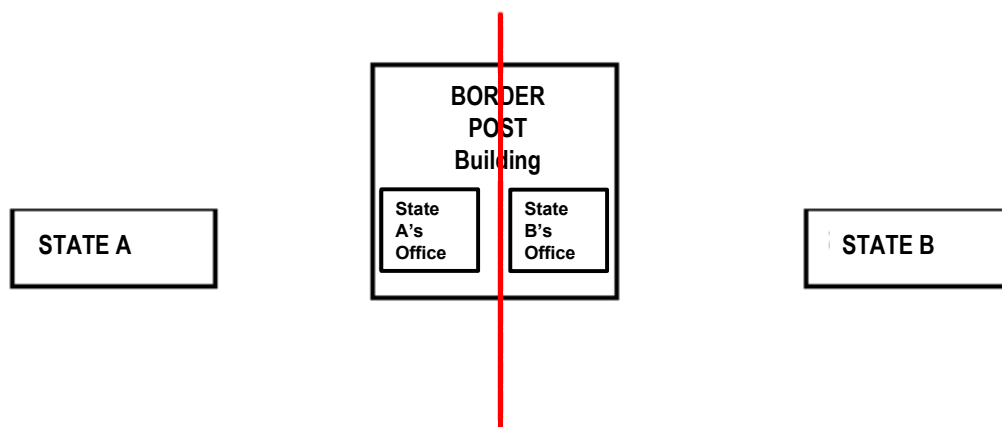
Models for implementing joint controls broadly fall into several broad categories, depending on whether the Customs border facilities:

- Straddle the common border;
- Located within the national territory of only one of the two countries sharing the common border; or
- Split into two with both countries having a facility on each side of its border.

5.1 Straddling facilities

Straddling facilities occur at both small border crossings handling low traffic volumes and large border crossings processing high volumes of cargo. The former are found in many remote border crossings between the United States and Canada, normally manned by only a single official from both sides. In these cases, the respective customs authorities provide simple facilities (normally no more than two to three rooms) that are shared by Canadian and US personnel. These facilities straddle the border, enabling each official to continue to perform official duties on home soil. This approach is illustrated graphically below:

FIGURE 1
INSPECTION THE COMMON BORDER FACILITY STRADDLING

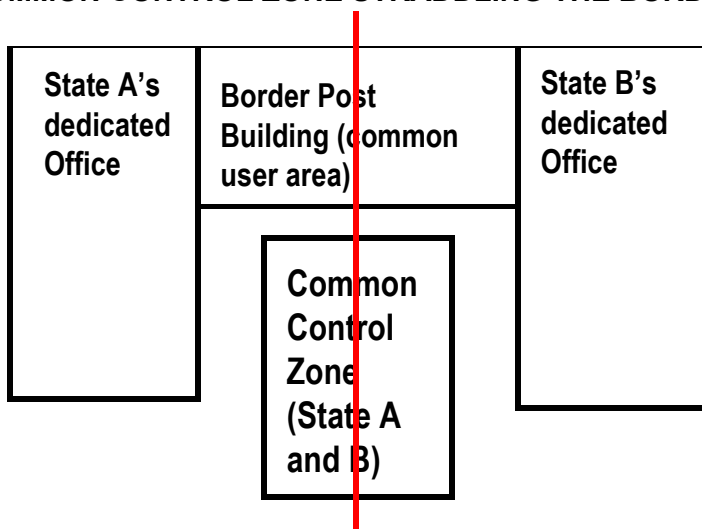


Newer facilities of this kind controlling the Canada-U.S. traffic tend to be somewhat larger, distinguishing between common user areas and dedicated offices as well as separating between passenger traffic and commercial traffic. In isolated locations, residential accommodation is provided for as well. Examples of this kind include the border crossings between:

- Little Gold Creek in Yukon, Canada and Poker Creek in Alaska, U.S.
- Osoyoos in British Columbia, Canada and Oroville in Washington, U.S.

In contrast, high traffic volume border stations that straddle the border are characterized by extensive integrated facilities. At these large border stations, each country still has facilities located on its side of the border. However, officials use common control zones, which are effectively located in both countries and even only one country, to conduct joint controls. Within these zones, officials perform all the control functions mandated by the respective national laws. This configuration is shown below:

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



In the border crossings between Canada and the United States, an example of this kind is the newly constructed facilities at Coutts in Alberta, Canada and Sweetgrass in Montana, U.S. The twelve new border crossings designated by both governments for the operation of joint facilities indicated earlier would mostly fall into this category as well, according to Canadian authorities.

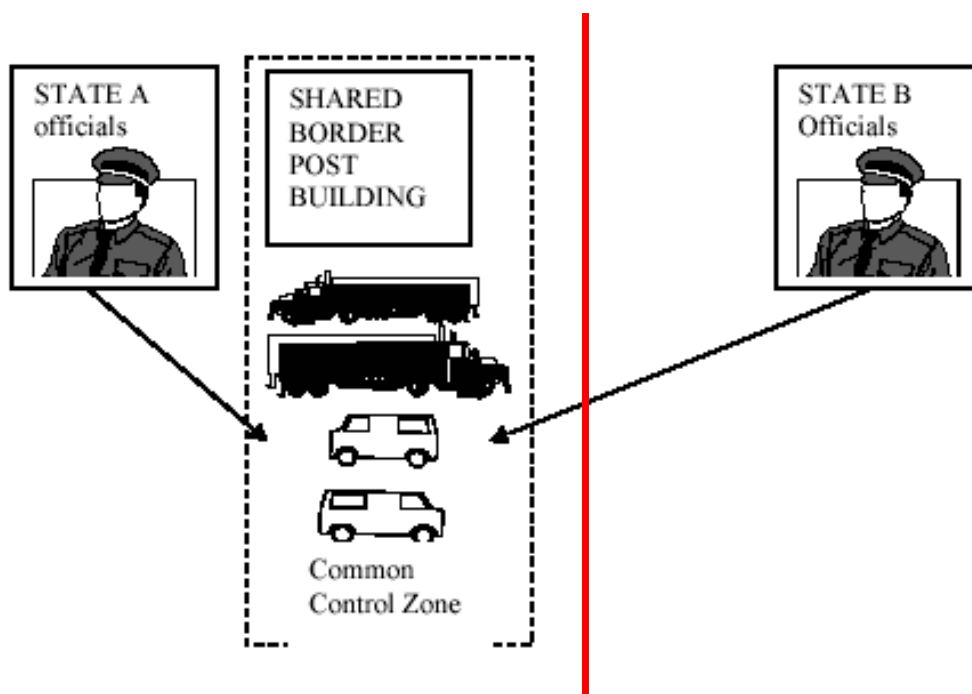
However, the more notable examples of integrated facilities are found in Europe at the major border crossings between Germany and Poland (e.g. Penkum and Koblaskowo, Gablenz and Tuplice and Gorlitz and Zgorzelec), Germany and the Czech Republic (e.g., Bayerisch Eisenstein and Zelena Ruda, Furth Im Wald and Folmava) and Austria and Hungary (Furstenfeld and Kormend).

5.2 Facilities Located Wholly Within One State

While straddling facilities may be a desirable configuration, topography or other reasons may make it impractical to build and operate. A hilly area, river crossing or other physical constraints are some of the reasons that may stand in the way. Where this has occurred, states have agreed to locate facilities wholly within the national

territory of only one state. This means that 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 control zone. A graphic illustration of this kind of configuration is shown below:

FIGURE 3
INSPECTION FACILITIES
WHOLLY WITHIN ONE STATE LOCATED



An example of this kind is the border crossings between Germany and Poland where the Customs station is located in German territory at Frankfurt an de Oder. Another is the border between Bosnia and Croatia, where Customs administrations of both countries have set up a single customs house on Croatian territory at the Neum-Klek border crossing. Also, along the border between Belarus and Russian Federation, the joint Customs checkpoints are located on the Russian side.

5.3 Split Facilities with Exchange of Personnel

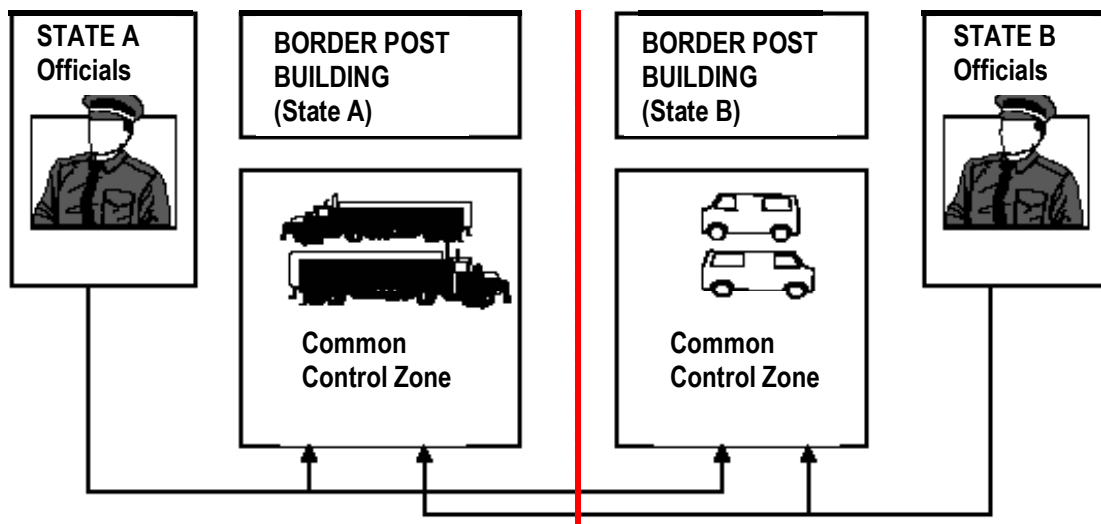
Where states prefer to retain existing border facilities, that is, two separate buildings, officials may under the concept of single stop be stationed in each other's territories to ensure that joint controls can be undertaken. This approach enables states to differentiate in the treatment between:

- Passenger traffic and commercial (goods) traffic; or
- Inbound traffic and outbound traffic; or
- Combination of the above;

Individual Facility Dedicated to Either Freight or Passenger Traffic

In this case of split facilities, the existing border stations are dedicated to the processing of passenger traffic at one border station while the commercial goods are processed at the other border station. Both border posts are, however, staffed by Customs officials from both states to support joint controls. A graphic illustration of this configuration is shown below.

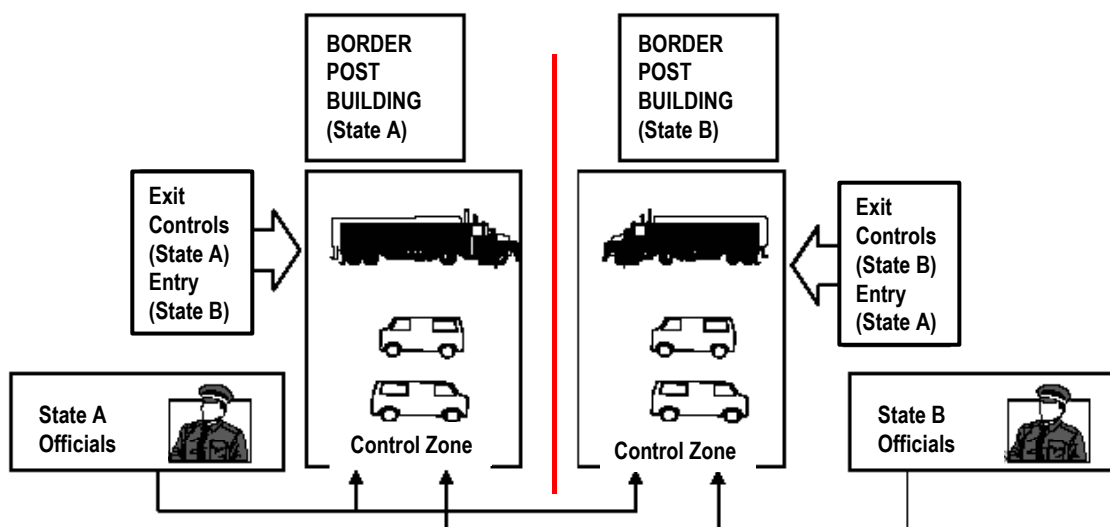
FIGURE 4 - SPLIT FACILITIES WITH EXCHANGE OF PERSONNEL TO INDIVIDUAL FACILITY DEDICATED TO CONTROL OF TRAFFIC BY PASSENGER OR FREIGHT



Individual Facility Dedicated to Control of Traffic According to Combination of Type of Carriage and Direction

Another case of split facilities is the particular method of controlling traffic according to the combination of type of carriage and directional movement. As with before, the execution of entry and exit controls is divided between two border posts, with officials from both states conducting joint controls within two control zones but the method of handling exit and entry controls on the traffic is different. 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 commercial goods 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 commercial goods traffic with respect to exit out of State B and entry into State A.

FIGURE 5
SPLIT FACILITIES WITH EXCHANGE OF PERSONNEL -
INDIVIDUAL FACILITY DEDICATED TO CONTROL OF TRAFFIC
ACCORDING TO PASSENGER/FREIGHT AND DIRECTION



There are several examples of split facilities that are in operation, with most deploying a joint Customs control that is a combination of carriage type and traffic direction. Europe has a few cases. Between Austria and Hungary, the border crossing of Nickelsdorff in Austria and Heygeshalom in Hungary has such an operation. Also, along the border between Germany and the Czech Republic, the border crossings between Schmiding and Cheb as well as Philippsreut and Strazn have similar operations.

In the Baltic region of Latvia, Lithuania and Estonia, this configuration is also deployed on the borders between Latvia and Lithuania and Latvia and Estonia. Each border has three joint Customs control stations. At the Latvia and Lithuania border, these stations are located at the crossings between Gricgale and Souvainiskis, Medumi and Zarasai, and Meitene and Joniskis, while on the Latvia and Estonia border the stations are located at the crossings between Ainazi and Ikla, Veclaicene and Murati, and Valka and Valga.

In the application of split facilities by the Baltic countries, Customs control is directed at import traffic entering the country. Operations include interaction with the frontier guards, who usually start the process by first inspecting oncoming individuals and vehicles. This is then followed by Customs inspection of the country of exit, and subsequently by Customs inspection of the country of entry. Documents are passed over from one Customs to another by hand. The control process is undertaken manually and sequentially (or nearly simultaneously).

6. Enabling National Legislation

The notion of single-stop inspection requiring 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 where Customs offices of both administrations are established usually poses an institutional problem for Customs administrations. This is because existing national laws of countries usually do not contain provisions for foreign Customs officials to perform the control process according to foreign laws in their territory nor for their own Customs officials to perform the control process in the foreign country's territory. As a result, the different Customs administrations are not empowered with the authority to perform such functions unless new laws permit them to do so.

Many of the countries that have undertaken joint Customs control, or are preparing to do so, have confronted this situation. While the political systems of these countries vary, each country has recognized that national laws have to change to incorporate new provisions that accommodate Customs functions to be performed extraterritorially. 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.

The first is a condition requiring national governments to conclude an international agreement either through multilateral agreements 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, Kyoto 2000 or Harmonization Convention of 1982). There is also a minority of

countries that have not followed this path, choosing instead to enter into bilateral agreements, notably the CIS countries.

In the GMS, none of the countries, with the exception of the People's Republic of China, has ratified any of the previously mentioned conventions. Instead GMS countries (including China) have chosen to become contracting states to the Agreement and are now in the process of concluding the various Annexes in the Agreement. In other words, GMS countries are in the process of completing the first part of the foundation.

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 true 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 GMS countries, as contracting parties to the Agreement, can adopt this approach depends on the adaptability of the existing legal framework of Customs administrations. 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, including private sector stakeholders, 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;
 - powers and duties of a foreign customs officer performing in the territory.

7. Key Factors for Consideration in the Pilot Program

The fact that single-stop inspection implies a simultaneous (or near simultaneous) process of joint Customs control in a common area means that implementation of such a concept would require GMS stakeholders to build their facilities in a suitable manner to support joint operations. As there is a range of options to be chosen from, the preferred option for each of the pilot site must reflect local conditions and national considerations as determined by topography, traffic type, risk profile of users, and government attitude towards reciprocal treatment. Straddling facilities may be appropriate under conditions where topography is suitable, no division of the border by “no man’s land”, low-volume passenger-oriented traffic, and other factors. However, few sites may fit these criteria and therefore other configurations, particularly split facilities, may be more applicable. The point is that each site must be considered according to its own merit and in the end there could be a range of configurations for the different sites rather than one particular model.

The setup of joint Customs control within a common control area also points to decisions that have to be made by the Customs administrations of both countries with respect to the management and operation of facilities. There are choices to be made with respect to a shared versus separate facility or a combination of both (comprising separate offices with shared inspection bays). There may also be room for private sector investment of facilities (warehousing, etc.) if this is deemed to be desirable. Nevertheless, the appropriate arrangement would depend on the degree of cooperation between the two Customs administrations but operational efficiency must be a primary consideration.

Joint Customs control conducted through a common control area also requires sound decisions on the type of inspection process, where there is a choice between simultaneous and sequential (or near simultaneous) inspection. 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 (e.g., common declaration forms, alignment to UN layout key), harmonized inspection procedures (e.g., streamlined processes, reduced routine inspections through adoption of risk based methods), coordination of working hours, and other instruments called for in Annex 4 and addressed in previous Customs Workshops. These workshops culminated in the December 2002 meeting that took place in Phnom Penh which secured the agreement of the participating Customs administrations on the first three instruments. Importantly, these instruments now need to be integrated together in the context of simultaneous joint single-stop Customs control, a step that is essential to fulfilling the objectives of Annex 4.

Furthermore, the incorporation of other instruments, as stipulated in Annex 4, should further enhance the performance of single stop-inspection. Chief among these is the concept of single-window, which is designed to accompany single-stop inspection to expedite cross-border clearance of goods. Single-window as defined in Annex 4

includes the coordination of other government formalities conducted by police, immigration, commerce, agriculture, etc. as part of border management. These formalities should be integrated with the single-stop inspection process with Customs taking the lead on behalf of other government agencies. In other words, 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. Attention should be given to this area, just as much as the implementation of single-stop Customs inspection is. Indeed, exclusion of single window would defeat the intended purpose of single-stop (speedy clearance combined with border security) and subject the cargo traffic to delay because of poor coordination of formalities at the border.

In the same vein, the practice of advance exchange of information for Customs clearance, as well as Customs inland clearance, which are also articulated in Annex 4 should be implemented in a coordinated fashion with single-stop and single window inspection. Both measures would further facilitate border management, the former by expediting information in support of inspections based on risk assessment methods, which several Customs administrations are currently introducing. The latter would reduce traffic pressure at the border by transferring the inspection process from the border to an inland location approved by Customs.

Finally, a well functioning single-stop inspection procedure must be given legal force. For single-stop inspection to enjoy legal force, the individual contracting parties in the Agreement must incorporate provisions in national legislation to empower the Customs administration to conduct such operations. International experience suggests that there are two possible approaches, one by resolution from the country's legislative body and the other by separate legislation. The first is practicable provided the content of the international agreement is in sufficient detail so as to be self-executing. Where this is not the case, then the second approach is undertaken through legislation, either independently or as amendment by amplifying existing Customs laws. This area is an essential undertaking in the implementation of single-stop inspection.