



KYRGYZ REPUBLIC: ISSUES OF BORDER CROSSING^{*}

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1. *Existing practice*

At present the customs registration of goods and transportation imported into customs territory of the Kyrgyz Republic and goods imported is realised in accordance with Customs Code of the Kyrgyz Republic and "Standard Procedure of customs registration and customs control of goods and transportation moved through the customs territory of the Kyrgyz Republic" that was approved by the Instruction of Ministry of Finance of the Kyrgyz Republic №12/П dated 13.01.2000 (hereinafter - Instruction).

According to article 125 of Customs Code of the Kyrgyz Republic the customs registration shall be done within 3 days from the moment of giving of the Cargo Customs Declaration (CCD). At that in accordance with the article 196 of Customs Code of Kyrgyz Republic CCD has to be presented within 15 days from the moment of presenting goods to the customs body.

Above-mentioned Instruction defines the list and consecution of actions of customs officials when realising the customs registration and customs control.

The Instruction stipulates the realisation of customs registration and customs control in 3 stages;

- examination and control over accurate calculation of customs fees and duties has to be paid on the ground of presented documents;
- examination and leaving out the goods.

Till January 2000 there was Instruction stipulated the realisation of customs registration and customs control in 6 stages that increased the time of customs registration.

By the Order of State Customs Inspection under the Ministry of Finance of the Kyrgyz Republic №15-11/778 dated 05.12.2000 the experimental procedure on customs registration (clearance) was introduced in accordance with which the customs registration of goods and transportation under the regime "Issuance for free circulation" that were imported by conscientious subjects of Foreign Economic Activity (FEA) - participants of experiment, shall be realised in one stage and by one customs officer directly in the border crossing point. This is

substantially shortening the time for customs registration (clearance) procedure and realisation of customs control.

By the Decree of Government of the Kyrgyz Republic № 632 dated 19.09.2002 "About simplification of procedure of control over imported goods based on security indicators" the principle of "Single window" is introduced. In accordance with that the procedure of control over imported goods based on security standards of authorised and accredited bodies (Kyrgyzstandard, Department of state sanitary and epidemiological supervision, Department of veterinary supervision etc.) will be conducted only on governmental body. This excludes the duplication of control functions and various governmental bodies and simplifies the procedure on obtaining the permission documents that are necessary for realisation of customs registration (clearance).

In accordance with the customs legislation of the Kyrgyz Republic for appealing of FEA subjects who are specialised on import of consumer goods, warehouse for temporary storage (WTS) was established close to the biggest trade area in the Kyrgyz Republic. This allowed FEA subjects to decrease expenses regarding the transportation and storing the goods in warehouses for temporary storage. It is necessary to note that office accommodations of WTS are subjects to controlling by all authorised state bodies.

Also with the aim to decrease the timing and material expenses of FEA subjects regarding the procedures of customs registration and customs control there is a practice of organising the permanent customs posts directly in the places of location of free warehouses, office accommodations of the largest FEA subjects.

In order to regulate the import of vehicles and exclusion of evasion from customs registration of imported vehicles the special automobile terminals in North and South regions as well as in Talas oblast of the Kyrgyz Republic were established. At that for accelerating the procedure of customs registration the auto terminals are working 24 hours a day.

Directions that might be compared with the international practice

At present the customs service of the Kyrgyz Republic is integrating with customs services of country-members of Eurasian Economic Community and customs services of CIS countries.

The work on harmonisation of national legislation is conducted as well as in the field of customs registration (clearance) and customs control in accordance with the regulations of Kyoto Convention, domestic legislation of country-

members of Eurasian Economic Community and CIS. For achieving this goal the Integration Committees of EurAsEC and CIS were created. The meetings of the Council of Heads of Customs Services are conducted regularly.

When realising the customs activity in the Kyrgyz Republic the Trade Nomenclature of FEA (TN FEA) is applied. This TN FEA was elaborated on the base of Harmonised System (HS) of European Union Countries (on the level of first 6 signs of code) and on the base of TN FEA of CIS (on the level of first 8 signs).

The principles of implementing of customs regimes and procedures of customs control in the Kyrgyz Republic as a whole correspond with the principles of countries of CIS and European Union excluding some peculiarities of domestic legislation.

Situation on revision of Customs Code of the Kyrgyz Republic

The current Customs Code of the Kyrgyz Republic was adopted in 1997 on the base of the Fundamentals of Customs Legislation of CIS members. Enforcement practice of the current code has revealed some demerits that on the current state development stage are becoming the serious obstacles in development.

One of the serious demerits of the current customs code is the significant quantity of reference norms, which entail to the elaborating of departmental normative acts that are frequently changed. This leads to insufficiently clear understanding of customs procedures, and becomes a reason for unbelief of trade community to the possibility of stable work.

All of these entailed to the complex and multistage system of customs registration and customs control, the permanent doubling of controlling functions of customs posts, customs houses and central administration that creates the certain discomfort for FEA subjects

The current Customs Code doesn't contain the system of risks evaluating and risks management that is the most progressive form of customs control and promotes the increasing of trade turnover and allows to prognosis the possible breaches of customs legislation.

Due to the absence of special norm that define the system of risk management, the inspection of all cargo is conducted by using the continuous method which is ineffective and doesn't exclude the errors of authorities.

Another demerits of customs legislation is the absence of computer technologies for realising the customs control, the low level of computerisation and automation for conducting the customs procedures.

With the purpose of bringing to conformity with the time demands, the maximum approaching of regulations of customs legislation of the Kyrgyz Republic to the requirements of international standards on customs services the draft of new Customs Code was prepared. The developer of this code tried to take into account all demerits of the current Code and to use the most progressive experience of customs services of other countries.

The advantages of draft of new Customs Code are the such regulations as sufficient independence and considerable widening of rights of FEA participants as well as the maximum approaching of Code to the problems of businessmen, the clarity of relations between authorities and FEA subjects.

New editing of Customs Code is the Law of "direct" impact id est the articles of Customs Code contain all necessary provisions on customs procedures and other customs formalities, norms are stated clearly, specifically with the minimum reference items.

The draft of new customs Code *doesn't contain* such sections as "Smuggling and other crimes in customs field", «Inquest and investigation activity of customs services», «Infringement of customs regulations and responsibility for this infringement», «Execution on issues of infringement of customs regulations and theirs consideration». *These issues will be regulated* by the Kyrgyz Republic's Code "On administrative responsibility", criminal procedural legislation that allow to avoid the contradictions between administrative, criminal and customs legislation.

In the draft of Customs Code for the first time the regulations regarding the special simplified procedures of customs registration were introduced. These procedures stipulate the presenting of unified cargo declaration for goods for the certain period. Within this period such goods were repeatedly transferred through custom border by the same person, the issuance of goods by presenting the information that are necessary for identification of goods, conducting the customs registration on the spot of persons who transferred the goods.

Also when elaborating the draft of Customs code the issues on providing the compatibility of its regulations with amendments and additions were foreseen. These amendments and additions concern of tax legislation particularly in the part of taxation after application the customs regimes. The following were brought to conformity with tax legislation: issues on payment of taxes when transferring the goods and vehicles through customs border; the order of calculation of customs duties and fees; collecting and repayment of paid customs duties and fees.

This draft of Customs Code includes the principally new methods of conducting the customs control (*conducting of customs control with the usage of audit methods*). The conducting of customs control with the usage of auditing methods is applied with the aim to check the authenticity of information about goods that were transferred through customs border and in relation to which, the simplified procedures of customs registration is applied.

To the draft of Customs Code the section «*the transference of goods in international posting*» was added. This section contains in details the norms of customs registration, levying the customs fees on goods that were transported within international posting as well as collaboration of customs bodies with posting organisations of Kyrgyz Republic.

The current Customs Code doesn't regulate issues regarding good transportation within international posting. In connection with this some questions have been arisen that were not stipulated by legislation of the Kyrgyz Republic.

For the first time *Custom Code* will contain provisions that regulate the issues of informational system and informational technologies. The implementation of modern informational technologies will allow to create new possibilities for replenishment of profitable part of budget, the acceleration the procedures on customs registration, improving the authenticity of customs statistics, the increasing of effectiveness of antismuggling activity and struggle against infringements of customs regulations. Automation and computerisation of customs will entail to increasing of efficiency of decisions' execution, monitoring of information and its availability as well as it will allow to use effectively the unified informational system.

Along with above-mentioned it's necessary to note the existing of certain defects that require clarification in connection with the adopting of Customs Codes by Kazakhstan and Russian Federation.

Law enforcement practice in customs bodies shows that customs regulations of foreign economic activity must be approached to the demands of business.

In the draft of the new Code the definitions differ from the definitions used in Customs Code of Russia Federation that wouldn't promote the integration within EurAsEC and impedes the adoption of international agreements on customs service. Accordingly the differences in definitions will lead to the different interpretation of the whole Custom Code that wouldn't improve the general understanding of customs procedures.

It's important to determine which legal provisions must be defined in Customs Code and which must be stipulated in departmental normative acts. The draft defines many reference provisions that must be defined or by Government either by Ministry of Finance.

The customs regime "the special customs regime" must regulate only those regimes that stipulated by other laws, for instance: "About Free Economic Zones", "About the Customs Zones" etc. But the articles 193, 194 of the draft are contradictory and don't contain clear interpretation of issues on granting or non-

granting the exemptions from customs fees and duties, the right of Government to establish the special customs regimes etc.

It's necessary to fully reconsider the section 26 of the draft by the following reasons. Firstly it's necessary to precisely define the term - the carriers. If this term relates to the international automobile carriers then it's necessary to apply the provisions of international agreements on regulation the activity of foreign automobile carriers. If the carrier means the railway transportation or aircraft then it's necessary to apply the provisions of existing international conventions.

At the same time the practical implementation of provisions of given section related to foreign or local persons using the transportation is impossible due to the complicated procedure of customs regulations.

It's necessary to fully reconsider the section 27 of the draft because of the following. The draft doesn't contain the clear definition of goods for personal usage. From the other hand the draft has significant quantity of defects. As for example, item 2 of article 212 that stipulates the payment of customs fees for personal staff of physical person.

At the same time this section delegates many rights to Government and Ministry of Finance the authority to establish the provisions for goods transporting by physical persons. The existing experience of implementation the rules of goods transporting by physical persons that was approved by Government regularly undergo the changes, that don't improve the stable policy concerning goods transporting by physical persons. The experience of other countries (Russia, Kazakhstan) reveals the necessity of transition to the civilised forms of international trade and necessity to significantly decrease the proportion of chaotic shuttle trade.

Current legal practice of Kyrgyz Republic on assessment of customs value of imported goods doesn't contain the legal regulations for implementation of current information on values.

Along with that for today the Custom Code of Kazakhstan as well as draft of Custom Code of Russia Federation contain the new procedures on using the available information on values for the purposes of control over the customs values.

It's important to note that customs bodies authorised with the large powers for customs evaluating and control over imported goods, concluded in using of information on values.

Information on values available in customs bodies is formed by authorised body on customs issues with using the statistics information on cargo customs declarations that were drawn up on the base of reliable, quantitatively definable and documentary confirmed information.

The absence of these procedures in customs legislation leads to the fact of inadequate declaration and accordingly to the significant arrears on payment of customs fees and duties.

It's necessary to note that by Resolution of Government of the Kyrgyz Republic № 40 dated January 31, 2003 the draft of Customs Code directed for consideration to Jogorku Kenesh of the Kyrgyz Republic. In June of current year on the session of legislative assembly of Jogorku Kenesh of the Kyrgyz Republic, the consideration of the Customs Code draft was postponed till September 2003.

2. Proposals for development

For further simplification of customs procedures the following measures are supposed to be taken:

- Creation of Single Automated Informational System (SAIS) of customs services of the Kyrgyz Republic, with taking into consideration the possibilities for further unification with program software of SAIS of states-participants of Customs Cooperation Committees (CCC);
- Developing of unified form for declaration of goods and vehicles transported within the states - participants of CCC (according to the general information - indicated when declaring);

- Developing the drafts of agreements within the framework of CCC on unification of rules for defining the country of goods' origin as well as the system of goods coding in mutual trade;
- Development of drafts of agreements within CCC on harmonisation of Rules for customs value for goods;
- Organising of regular exchange with information on transportation of goods between states-participants of CCC with the aim of introducing "mirror statistics" and stopping the customs crimes;
- The exchange with information on acting legal basis of CCC states-participants, that regulate the issues of customs registration and customs control with the aim of developing the principles of their further harmonisation and unification;
- Developing the plans of joint equipping of contiguous customs and border posts with the specific technical equipment for customs control (STECC) with taking into account the possibilities of simultaneous usage by both parties in order to exclude duplication and decreasing of financial and timing costs.