



**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
NACALA ROAD CORRIDOR STUDIES**

**FEASIBILITY STUDY FOR ONE-STOP BORDER POSTS,
DETAILED ENGINEERING DESIGN AND LEGAL FRAMEWORK
FOR OPERATION OF ONE-STOP BORDER POSTS AT
MCHINJI [MALAWI]/MWAMI [ZAMBIA AND CHIPONDE
[MALAWI]/MANDIMBA [MOZAMBIQUE].**

FEASIBILITY REPORT

**VOLUME 4:
BORDER OPERATIONS & MANAGEMENT PROCEDURES**



Submitted By:

Otieno Odongo & Partners Consulting Engineers
P.O Box 54021-00200
NAIROBI-KENYA
Tel : 020-38700222 Fax : 020-3870103
Fax : 020-3870103
Email: oopkenya@wananchi.com



Submitted to:

The Executive Secretariat,
SADC Secretariat,
P. O. Private Bag 0095
GABREONE-BOTSWANA
Email: info@sadc.int

TABLE OF CONTENTS

PAGE

Preliminary Feasibility Studies & Detailed Engineering Design, Legal and Institutional Framework for OSBPs at Chiponde-Mandimba between Malawi and Mozambique and at Mchinji-Mwami between Malawi and Zambia

Component on Proposed Operations & Management Procedures for the One Stop Border Posts at Chiponde-Mandimba and Mchinji-Mwami

1. Border Control Procedures

“The quality of a corridor is measured in terms of transit time and cost for shipment of goods along the corridor. The reliability of a corridor is measured in terms of not only the transit time but also the flexibility provided in terms of diversity of services offered on the multimodal routes” ARNOL, OLIVIER AND ARVIS (2005)

The International Convention on the Harmonization of Frontier Controls of Goods, 1982 contains specific operational guidelines regarding facilitation measures that countries may introduce at common borders.

Article 7 of the Convention contains its main provisions regarding cooperation at border posts between adjacent countries. It provides that;

“Whenever a common inland frontier is crossed, the contracting parties concerned shall take appropriate measures whenever possible to facilitate the passage of 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;

1. Opening hours

2. The control services operating there, the categories of goods, the modes of transport and the international customs transit procedure accepted and in use there”

The WCO, World Trade Organization (WTO) and specialized United Nations (UN) agencies on trade facilitation have designed and implemented a number of supportive and guiding conventions on procedures related to and emphasizing the one stop concept as a facilitation measure. An example is the Revised Kyoto Convention. Chapter 3 of the General Annex to the Convention 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, whenever possible cooperate with the neighbouring Customs to establish a juxtaposed Customs Office to facilitate joint controls”(WCO 1999)

The WCO guidelines on the interpretation of the General Annex further define the concept 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 administration” and

“The customs controls are conducted within a common area where customs officers of both administrations are established, whether in separate buildings or in a single facility”(WCO 1999)

International experience demonstrates that the full benefits of the OSBP concept require all border control functions to be relocated to a one stop facility. However, this need not be the starting point. Two customs administrations could agree to implement joint customs controls while other functions such as immigration continue in the two stop manner. At border posts processing large volumes of commercial traffic, even such limited cooperation may already translate into significant time saving and efficiency gains.

A major consideration in the establishment of an OSBP relates to infrastructure and traffic flow arrangements. These are critical issues in supporting the smooth operation of the border post but should be amplified by an integration of processes undertaken at the border post.

2. Simplification and harmonization of *all* procedures

Very often, border procedures are outdated as they are complicated and based on the use of paper documents. Countries are reviewing existing policies and procedures on the basis of International Conventions(such as the WCOs Revised Kyoto Convention) and international best practices to ensure that procedures are simplified and incorporate modern techniques including the extensive use of risk management and information technology.

The new operational environment requires a coordinated border management approach, providing optimal allocation of resources to one combined set of facilitation and control activities and consolidating information from all sources to optimize risk management capabilities. Essentially, this entails simplifying and harmonizing procedures, securing the supply chain and deploying modern technology.

- **Supply chain management.** The ‘supply chain’ is the continuous linking of activities that take place for the systematic movement of goods from the place of origin to the place of final destination. To facilitate international trade, the supply chain must first be secured. Securing the supply chain raises issues around the physical movement of goods between places and operators within the supply chain. Unless the consignment’s onward movement can be satisfactorily monitored throughout its export or import transportation leg, no amount of advance information will provide any guarantee about its integrity.
- **Use of modern techniques and technology.** Essentially entails adopting a risk-based approach and supporting technology, deploying enabling technology and tools and facilitating people and goods movements through appropriate accreditation.
- **Facilitation of legitimate trade and people movement.** This is underpinned by a risk-based approach based on a comprehensive understanding of client activities and risk profiles.

3. Coordinated Border Management

“Coordinated Border Management is the organization and supervision of border agency control activities to meet the common challenge of facilitating the movement of legitimate people and goods while maintaining national legal requirements”.(World Bank Group 2005)

According to the World Bank Group, coordinated border management requires a clear delineation of responsibilities for goods and people. The UK Governments’ 2007 border Review “Security in a Global Hub”(Cabinet Office UK) groups border activities into Border Control-processing people and goods moving across the border, Protective Security-protecting the people using and working at borders, border infrastructure and means of transport. In the case of border control, the processing of people is usually the responsibility of the immigration agency and takes place within immigration policies and laws. The processing of goods is usually the responsibility of the customs agency and takes place on the basis of policies and laws on international trade, revenue and those applicable to the international trade in goods. Protective security is usually provided by the police and transport security agencies. In most African border posts pedestrian and motorized traffic is not segregated. There are various other agencies which operate at border posts.

3.2 Standard Operating Procedures (SOPs)

Standard Operating Procedures (SOPs) are usually developed to supplement the legal instruments that would have been adopted. Ideally, the SOPs regulate the issues that are important to the day-to-day functions of the border agencies, coordination, procedures of all border agencies for both countries. SOPs will need to be agreed based on consensus amongst the agencies and the two states, and usually operate on a reciprocal or mutually beneficial basis. Article 17(2) Of the Bilateral Agreement signed between South Africa and Mozambique for instance provide that “Standard Operating Procedures must be developed that determine all administrative and operational procedures and /or functions related to combined border control actions”. It is also important that the SOPs be translated and other procedural documents or shared information as well. SOP’s provide personnel with the information to perform a job properly and facilitates consistency.

Standard OSBP operations require that parking and entry into the building/terminal is done only once. All procedures related to documentation and passports are processed in a single public hall for exiting one country and entering the adjacent country. If inspection of cargo is required, it is done once through a joint inspection involving all necessary agencies of both countries at the same time. Scanning of cargo if deemed necessary is also done once. Unlike in a traditional two stop border post, in an OSBP bus passengers enter one terminal and do both exit and entry processing. Cargo is off loaded once and inspection is done jointly. From the standpoint of the agencies, concentrating all operations in one facility enables greater coordination of procedures and sharing of intelligence and transparency.

3.3 Undertaking border controls –border control officers should, in principle be able to undertake their functions in exactly the same way as a two stop border post except that due to the proximity of the officers of the other state at the same location, there is little or no delay in between the conclusion of one State’s exit controls and the commencement of the other State’s entry controls. It is imperative that when undertaking controls, officers keep in mind the following:

- **Sequence of controls**-There is several different approaches to the sequencing of agency interventions. Generally, immigration is the first agency to carry out controls. Other agencies at the border, such as agriculture, health etc are often approached by clearing agents in advance. The sequence following immigration is generally that the other agencies address their permit and inspection requirements next. The Customs does their review of papers and assessment. The normal sequence is that exit controls are undertaken prior to entry controls. Once all duties are paid, the truck is released. Generally in an OSBP, all exit procedures are completed first and then all entry procedures are undertaken. An alternative that is used at some borders is to have immigration conduct their clearance on the person; exit first, then entry, immigration is followed by customs, exit of goods from one state followed by entry of goods into the next. However the various agencies from both countries can essentially implement processes simultaneously with certain decision steps of different agencies in the order of country of exit and country of entry can be queued for formalization whilst any associated or dependant processes are ongoing. It is important to adhere to this sequence so as to avoid confusion over which State has legal jurisdiction over the person, vehicle or goods subject to controls. As a general principle, jurisdiction resides with the State whose officers are conducting controls.
- **Handing over controls**-It is important to follow the correct procedure for handing over controls because once controls have been handed over, the person, vehicle and/or goods being controlled move from the jurisdiction of one State’s laws to the jurisdiction of the other State’s laws. This implies that the officers ceding control acknowledge that they have no further claim to conduct controls in respect of that person, vehicle and /or goods.
- **Joint controls**-Border agencies should facilitate movement of people and goods across borders while meeting normal national/regional trade requirements. Joint inspections are used to effectively control smuggling, duty evasion, prohibited commodities etc without unnecessarily delaying legitimate trade and pushing up transport costs.

Critical Requirements;

- i) Appreciate each others’ responsibility and roles
- ii) Streamline and simplify documentation and procedures
- iii) Put in place systems that support cooperation and collaboration.

Officers from both States are encouraged to undertake joint controls by formulating appropriate procedures to facilitate the same, e.g. in inspecting cargo. Joint controls follow the same principle regarding sequencing and handing over control as already described. This means that officers from both countries may attend a joint inspection, but that at any point in time, only one State’s officers will be conducting controls, while the other State’s officers will attend as

observers, until the moment when control is handed to them as already described. The act of observation will in practice have the effect of joint controls, as it will remove the need for the officers of the entry state to repeat the inspection.

There are several other issues that may arise at border posts as persons, vehicles and goods transit through the border. The handling of these issues may be covered under the agreements or other legal enabling instruments signed between the States. Such issues may include but not limited to;

- ***Return of persons, vehicles or goods***-How to handle cases of persons, vehicles or goods that have been denied entry into the State of entry notwithstanding that such State would have completed its exit formalities and handed over jurisdiction to the State of entry.
- ***State of entry may not arrest or detain a person while in the territory of the state of exit***-as a general rule, officers of the state of entry will not control persons (including their personal effects, vehicle or cargo conveyed in the vehicle) in the state of exit.
- ***Power of officers under border control laws***-within the common control zone (ccz) in the adjoining state; an officer has the **same** powers as he/she would have working within their own country subject to any exceptions as may be defined in the agreement or other legal enabling instruments.
- ***General Law enforcement powers***-whilst border agencies exercise their functions in terms of specific powers granted in their respective laws, e.g. Customs, Immigration etc by contrast, police officers have general powers to enforce the principles of any law.
- ***CCZ***- The extent of a ccz shall be as is specifically defined in the founding legal instrument. It is important that officers working in the neighbouring state familiarize themselves with the boundaries of CCZ. Their extraterritorial powers may only be exercised in the CCZ and hence any powers exercised in the neighbouring state outside the CCZ may be challenged as being legally null and void and also deemed a violation of the territorial integrity of that state.
- ***Exclusive use areas***-each State will have granted officers from the neighbouring State access to a working area set aside for their exclusive use. In order to protect each State's interests, the host State agencies may not enter an exclusive use area except at the express invitation of an officer from the neighbouring State.
- ***Immunities***-officers from a neighbouring state enjoy immunity from prosecution by the host State for any action related to the performance of their border control functions. Such offences are dealt with by the officers of the State that will have jurisdiction in terms of its laws. However, such officer's immunity does not extend to law and order offences, If an officer from a neighbouring State commits a law and order offence in the host State, he/she is subject to the criminal jurisdiction of that host State.

Other critical parameters that should complement the training module include the following;

- ***Legalizing the various schedules*** as will be provided for in the agreements that are intended to be firmed up after the agreements come into effect such as:
- ***Control zone demarcation and designation schedule***-this outline the extent of the CCZ by way of a schedule to the founding legal instrument spelling out the exact survey coordinates maps, and any relevant diagrams depicting such

- **Procedure manual**-outlining the agreed procedures to be used in undertaking the border controls by the various agencies of the two countries within the CCZ of the OSBP and to incorporate future changes to the procedures as and when developments to OSBP are undertaken. In the case of Chirundu OSBP, a procedure manual is yet to be developed.

1.5 Simplification and Harmonization of Documents and Procedures

The core of any border modernization programmes or OSBP implementation is streamlined procedures that take advantage of the various tools available to achieve a good balance between needed controls and trade facilitation. Attention must be directed to the elimination of long established systems. This requires both political will and a commitment to adopt new approaches because without a preliminary consensus on new procedures, an effective OSBP implementation will not be realized. An OSBP is first and foremost, a streamlining of clearance processes and the other components all support effective, fast OSBP operations.

The OSBP facility and its procedures begin and end with Customs as a lead agency by design or default in most African countries. Customs and other border control agencies are central, if transaction efficiency and seamless operations are to be achieved in the OSBP. Traditionally the roles of these agencies have focused on the control of goods crossing the border for revenue collection, standards, community protection, health and security among others. In the last 20 years or so these traditional roles have been expanded in principle to include facilitation of legitimate trade.

To enhance border crossing operations, it is required that the two countries shall:

- Align any documents used to international and regional clearance standards;
- Reduce the number and extent of procedures and documents as much as possible;
- Make use of risk-based methods and techniques;
- Make use of non-intrusive inspection of goods and travelers moving through ports of entry and exit through use of advance information.
- Transnational tracking of people and goods through systems interconnectivity.
- A 'single window' interface for advance information reporting for comprehensive government risk management and regulatory purposes.

The standardization and simplification of documentation includes the harmonization of forms required of and provided to those crossing the border. This should focus on using the same or similar templates for ease of reference and including the same data fields to facilitate analysis. Mutually agreed lists of what official documentation is acceptable from those crossing the border should be developed between neighbouring states. When a document or certificate is shared between the two countries, it should clearly indicate which standard it adheres to and preferably indicate findings according to both standards.

6 Review of Current Document Requirement and Procedures

6.1 Elimination of outdated Systems

Outdated and overly bureaucratic border clearance processes imposed by customs and other agencies are now seen as posing greater barriers to trade than tariffs. Cumbersome systems/procedures and poor infrastructure both increase transaction costs and lengthen delays for the clearance of imports, exports and transit goods.

It is important that both Customs and other border agencies eliminate outmoded models of clearance and to embrace simplified, often electronic means of achieving their objectives. One of the first steps is audit and review all procedures to determine their purpose and whether they are still needed. Often when processes are automated, paper trails are still maintained, although the paper forms go into a storeroom and not used. Such redundant activities must be evaluated and eliminated whenever possible.

6.2 Simplification and modernization.

As already stated above, Customs agencies have typically led border management reform efforts and improving customs remains a high priority for most countries. Customs is only one of the agencies involved in border processing; however, evidence suggests it is often responsible for some regulatory delays. Even as customs procedures are modernized, there is need to reform and modernize border management in all areas such as health, agriculture, quarantine, police, immigration and standards.

An example of customs simplification is the Single Administrative Document 500(SAD 500) The SAD 500 is now used in SADC as the core document. Swaziland Revenue Authority is using a SAD 500 for its customs processes. A SAD is a standard format document containing fields for entry of trade and movement data to service the purposes of all agencies. This eliminates the requirement to submit different sets of the same data to obtain the approval of different control agencies. The data fields used on all the documents were reviewed and it was established that most of the data fields were repeated and the few unique ones could be incorporated onto the single document. The implementation of the SAD had the following essential characteristics:

- To ensure openness in national administrative requirements; This constitutes the basis for any progress and simplification.
- To rationalize and reduce administrative documentation; The SAD replaces the different administrative forms previously required and limits the administrative documents which may be required in support of the SAD.
- To reduce the amount of information and standardize the required data; the legislation on SAD establishes, procedure by procedure, the maximum list of information which can be required of operators.
- To harmonize data likely to be transmitted from one Member State to another together with the establishment of common codes, constitutes a language understandable in all Member States and avoids linguistic problems for the documents which are drawn up in other countries.

Experience all over the world shows that modernization initiatives in Customs border management need to be introduced with the full support of the private sector, and its participation in the design of organization and operations, provide effective solutions.(LRG-OSBP Workshop. OSBP at Lebombo/Ressano Garcia. Luc De Wulf and Michel Zarnowiecki, Revised version 9 July 2007) A sample of a SAD 500 is annexed for reference.

An example of immigration simplification is the installation of various border management information systems in countries across Africa and the removal of entry and departure card processes for residents in Tanzania. These systems provide the potential ability to obtain multiple entry visas/permits at border control posts in order to reduce visa processing workload, especially within transport corridors and relating to transport operators.

An example with other border agencies is Sanitary and Phyto Sanitary (SPS). When countries apply the international standards such as the International Plant Protection Convention on plant health and the World Organization on Animal Health Standards, it allows for common requirements among countries and much greater coordination on enforcement.

6.3 Harmonization of efforts within Corridors

The corridor approach emphasizes transits from origin to destination. As already emphasized, time spent at borders has a significant impact on the cost of transport and as a result on the competitiveness of goods when they reach the market. To contain the cost of transport and reduce high inventories, most goods would be cleared in motion on the corridor. This links the concept of transport efficiency with the implementation of border controls. The laying of fibre optic cables off the coasts of Africa is improving interconnectivity between border posts and eliminates some of the huddles of transiting under customs controls. In Zambia for instance, transit goods are recorded on entry and the exit border post informed of the consignment details to handle acquittal on departure. For example when goods enter Zimbabwe at Beitbridge the documents can be pre-cleared for exit from Zimbabwe and entry into Zambia at Chirundu OSBP. The same process can continue through Zambia to Kasumbelesa on the DRC border. With scanners being installed at most borders, scanned images can also be used to verify consistency of cargo especially if some risk is suspected, otherwise scanners can introduce an additional time-consuming bottleneck. Radio Frequency Identification (RFID) technology is also used for non-intrusive tracking of vehicles and cargo to identify diversion of goods and potential dumping with paying duties. Such systems are currently deployed in Ghana and being implemented in Kenya and Ethiopia. Combined with one stop borders and active risk management programmes, a near seamless virtual corridor would be created. Effective pre-clearance and “fast Tracks “through borders would provide a major incentive for compliance with border controls. With officers of both countries operating in the same facility, OSBPs provide the opportunity for this type of operations.

6.4 Issue of conflicting mandates and legislation.

There may be cases where legislation does not correspond between countries. For instance an activity may be legal in one country and not in the other or standards may have differing levels of stringency. In such instances:

- It is the legislation of the country where the procedure is currently taking place that is applicable.
- Efforts should be made to align legislation and standards

7 Outline of Chirundu OSBP Procedures

The Chirundu OSBP procedures have undergone a series of revised processes even after it was opened as an OSBP. The procedures agreed on prior to the official opening have been subjected to significant variation to take into account new challenges that have emerged and that have become clear only after implementation started.

- 1) All procedures for persons, vehicles and goods to exit Zambia and enter Zimbabwe are carried out in the Zimbabwe terminal. For all procedures for the persons, vehicles and goods to exit Zimbabwe and enter Zambia take place in the Zambian terminal.
- 2) Entry procedures cannot begin until all exit procedures are completed and jurisdiction has formally passed from the exit state to the entry state except in cases where goods are pre-cleared. This is to avoid any conflict over national jurisdiction within the OSBP. Jurisdiction is based on the officer performing the controls NOT on the basis of the national territory in which the controls are performed.
- 3) Officers carry out their own border control laws even when acting in the adjoining country, but only within the common control zone established by the Bilateral Agreement.
- 4) Whenever possible, inspections and other procedures are carried out jointly.
- 5) Cross-border risk assessment of persons and goods are employed to the extent possible.
- 6) If at any point in the processing, persons are denied exit or entry or an arrest is made, or goods are confiscated, return of said persons or goods will be executed.
- 7) National police will address any law and order offences that occur on national territory. Any regulatory infringements that occur in the performance of border control duties will be referred to the agency management to which the officer reports.

8 Other Measures which may be considered to fasten border crossings.

8.1 Single Window (SW)

The concept has been defined at UN level as follows:

The SW environment aims to expedite and simplify information flows between business and government and bring meaningful gains to all parties involved in cross-border trade. SW can be described as a “system that allows traders to lodge information with a single body to fulfill all import or export related regulatory requirements”

In practical terms, a SW environment provides one entrance (either physical or Electronic) for the submission and handling of all data and documents related to the release and clearance of an international transaction. This entry point is managed by one agency which informs the appropriate agencies and /or performs combined controls .The SW focuses on paperless trading-for customs clearances, for license and permit approval by other government agencies and in some cases transport and logistics services associated with cargo import and export.

The Kenya Government has set April 2014 as the implementation date for SW system at the port of Mombasa. Through the system the government hopes to enhance turn-around time for clearance procedures by allowing parties involved in trade and transport to lodge standardized information and documents with a single entry point. This will fulfill all import, export and transit related regulatory requirements. With the system in place, the state hopes to bring the average cargo clearance to two days. Common bottlenecks at the port such as congestion, inaccuracies in processes, loss of revenue through corruption will either be minimized or eliminated. The system will also ensure that parties in the trade including Kenya Revenue Authority, Kenya Bureau of Standards, Kenya Ports Authority and shipping agents share a single system. Others are importers and exporters, clearing agents as well as insurance firms and banks. The single window electronic platform will be the sole podium for the receipt and processing of international trade logistics, cargo clearance documentation in an electronic form.

The platform will then route the cargo clearance documentation to the various Government agencies for clearance or approval.(The Standard on Saturday-7th December,2013)

8.2 Fast Track arrangements

This entails the introduction of “fast lanes” where pre-identified drivers make a self-declaration by selecting the fast lanes and pre-screening of regular users. Compliant clients are fast tracked through the border management tools of Authorized Economic Operator (AEO),risk management, green and blue channel lanes, pre-arrival declarations, post clearance audits and SW usage. The identified compliant clients may also enjoy other clearance privileges such as;

- Warehousing which allows a trader time to mobilize funds, change status of goods, transfer ownership, transfer/re –pack goods and storage space outside the CCZ.
- Temporary imports (motor vehicles, construction equipment and trade shows/exhibition goods) allow easy reconciliation.
- Direct payment of duties enables fast delivery of cargo, truck retention. demurrage, loading and offloading that are sometimes incurred through slower payment methods.

Authorized Economic Operator(AEO)

AEO is an economic operator, by satisfying certain criteria which is considered to be reliable in its customs related operations and is therefore entitled to certain benefits and greater trade facilitation. In an OSBP, the concept is to fast track compliant companies. The system is being used in parts of Southern Africa to reward compliant customers with faster border clearances. It is currently practiced in Zambia where it has been used as a basis for

establishing a Fast Track lane for processing and clearance of commercial vehicles through a booth.

- I. The development of AEO status is the response to the need to improve intra-African trade and increase trade facilitation while improving compliance and closer partnership with the business community. The client will usually receive accreditation status that is recognized by all participating government agencies operating in the CCZs
- II. The aim is to provide business with an internationally recognized quality mark which indicates that their customs procedures are efficient and compliant. That implies that upon arrival into the CCZ, the client is expedited to continue without getting subjected to the rigorous normal processes even at OSBPs.
- III. AEO accreditation indicates that the business is reliable in financial and customs terms and can therefore be considered a reliable trading partner.

8.3 Electronic cargo tracking systems (ECTS)

An ECTS is multi-tiered system developed to electronically monitor goods under transit, as they move along the supply chain from source to destination. It offers real time cargo tracking solution. The ECTS can be implemented using Radio Frequency Identification (RFID) and GPS/GPRS technology. All trucks/vehicles, tankers and containers carrying goods on transit, exports and under agencies' control are fitted with a tracking device and electronic seal which sends the seal status, truck location and any violation information to recipient agents on real time basis.

In the East Africa and Southern Africa Region, Kenya has developed a cargo tracking system whose purpose is to monitor vehicles that might be diverting goods into the local economy so that the number of physical check can be reduced. The system is however not yet operational due to a court case filed by transporters against Kenya Revenue Authority (KRA) regarding who between the transporters and KRA should buy the transponders the transporters are required to fit on their trucks to monitor their movements. The system also seeks to reduce the escorting, which in practical terms is more of a charge than actual escort and the number of customs controls that add time and cost to transit of traffic.

9 Conclusion

The inherent value in the OSBP is to expedite movement of vehicles and passengers through the single stop and to expedite clearance processes through review and simplification of documents required, enhanced procedures and greater coordination among border agencies.