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# МИТНЕ ПРАВО

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## **THEORETICAL AND PRACTICAL PROBLEMS OF THE FUNCTIONAL ORGANISATION OF BORDER INSPECTION POSTS IN THE PROCESS OF MODERNISATION OF THE STATE CUSTOMS PROCEDURES**

## **ПРОБЛЕМИ ТЕОРІЇ ТА ПРАКТИКИ ФУНКЦІОНАЛЬНОЇ ОРГАНІЗАЦІЇ ПУНКТІВ ПРОПУСКУ В ПРОЦЕСІ МОДЕРНІЗАЦІЇ ДЕРЖАВНОЇ МИТНОЇ СПРАВИ**

### **ABSTRACT**

This article reveals the matter and essence of the functional organization of border inspection posts at the border of Ukraine in the process of modernisation of the state customs procedures. It is established that such border inspection posts exist within the border of Ukraine, which may be classified according to categories, communication types, nature of transportations, functioning mode and their work

time. The main problematic aspects affecting the border crossing quality, practicality and operational efficiency of border inspection posts are studied. Attention is focused on the topical issues in the arrangement of a joint control of persons, vehicles, goods and objects at common border inspection posts at the Ukrainian-Moldovan State Border. The author comes to a conclusion that it is possible to resolve the problematic aspects of the functional organisation of inspection posts at the Ukrainian border provided that projects for reconstruction of present border inspection posts of Ukraine, modernisation of border inspection posts and their approach roadways would be launched, the priority of introducing the procedure of joint control would be considered, and negotiation procedures with specialised institutions of neighbouring countries would be reinforced for the purpose of signing international treaties on opening new international border inspection posts and joint control agreements.

**The key words:** state customs procedures (affairs), logistic services, customs border, capacity, inspection post (checkpoint), joint control.

An important feature of the modern development of the state customs affairs is intensification of integration processes, which is a basis for a significant increase of international transportation volume and international passenger flow through the customs border of Ukraine. Considering this unique location of Ukraine at the transport intersection of Europe, all the elements of both transport and customs logistics need be constantly improved. Herewith, the complex assessment of innovations in laws and changed practice of the functional organisation of border inspection posts of Ukraine in the process of modernisation of the state customs procedures confirms the occurrence of a number of not just positive practices, but problems as well that need be settled in general. Therefore, the theoretical and practical value of this performed research is beyond any doubts.

Irrespective of the fact that the researches and studies of logistic servicing problems were carried out by a branched group of scientists and practisers of the customs domain: Ye.V. Dodin, O.O. Zotenko, S.V. Kivalov, B.A. Kormych, N.N. Kotsan, P.V. Pashko, D.V. Prymaichenko, I.G. Smyrnov, D.V. Stakhanov, V.M. Stakhanov, V.V. Chentsov and others. The studied matter and essence of the functional organisation of border inspection posts of Ukraine in the process of modernisation of the state customs procedures are characterised with a high scientific novelty level.

To carry out the transport monitoring of the essence and peculiarities of the functional organisation of border inspection posts of Ukraine in the process of modernisation of the state customs procedures.

Inspection posts functioning on the state border lines are an important element of both transport and customs logistics. Thus, in compliance with Item 2 of the Regulation about border inspection posts and checkpoints, border inspection post is a special designated territory at railway and car stations at sea and river ports, where the border, customs and other types of control and border crossing of persons, vehicles, cargoes and other properties are performed.

Such inspection posts (checkpoints) work within the state border of Ukraine, which may be classified according to categories (international, interstate, local), communication types (for motor vehicles, railway, marine, air, ferry and river transports, pedestrians), nature of transportations (passenger, freight, passenger-and-freight, for specific types of vehicles, for particular operations), functioning mode (regular, temporary), and working hours (twenty-four-hour and such that work at a certain time) (Postanova pro zatverdzhennia Polozhennia pro punkty propusku cherez derzhavnyi kordon ta punkty kontroliu, 2010, Item 4).

Pursuant to Order “On Approval of the List of Checkpoints across the State Border” passed by the Administration of the State Border Guard Service of Ukraine of 12.01.2004, all border inspection posts are classified according to such categories as international (or interstate) or local, and according to the nature of transportations they are classified into passenger, freight, passenger-and-freight.

Opening, closing (temporary closing) of border inspection posts and checkpoints shall be carried out on the resolution of the Committee of Ministers of Ukraine, and signing of international treaties between Ukraine and a relevant neighbouring state is an obligatory condition for the Committee of Ministers of Ukraine to pass a resolution on opening border inspection posts and checkpoints for the motor, railway, walking, ferry (in certain cases) and river (in certain cases) communications (Postanova pro zatverdzhennia Polozhennia pro punkty propusku cherez derzhavnyi kordon ta punkty kontroliu, 2010, Items 9-10).

The Ukrainian border inspection posts can also be included to the lists of border inspection posts of Ukraine adopted by the Government of Ukraine, which the following is transited through: excisable goods (Postanova pro vyznachennia punktiv propusku cherez derzhavnyi kordon Ukrainy, cherez yaki zdiisnuietsia peremishchennia pidaktsyzykh tovariv ta vyznannia takymy, shcho vtratyly chynnist, deiakykh aktiv Kabinetu Ministriv Ukrainy, 2013), military goods and nuclear materials (Postanova pro

zatverdzhennia pereliku punktiv propusku cherez derzhavnyi kordon, cherez yaki zdiisniuietsia peremishchennia tovariv viiskovoho pryznachennia ta yadernykh materialiv, 2010), highly liquid, budget-forming items and goods with a high level of risk in the matter of taxation (Postanova pro zatverdzhennia pereliku punktiv propusku cherez mytnyi kordon Ukrainy, cherez yaki dozvoliaetsia peremishchennia narkotychnykh zasobiv, psykhotropnykh rehovyn i prekursoriv, 2002; Postanova pro zatverdzhennia pereliku punktiv propusku cherez derzhavnyi kordon, v yakykh zdiisniuietsia peremishchennia tovariv cherez mytnyi kordon Ukrainy, 2012) etc.

The general requirements to the arrangement of border inspection posts of Ukraine were established by Decree “On approval of the general requirements to arrangement of the crossing posts at the state border” of the Committee of Ministers of Ukraine No. 1142 dated 17.08.2002. It should be pointed out that one of the key factors affecting not only the border crossing quality, but practicality and operational efficiency of border inspection posts is their infrastructure suitability. Herewith, their capacity depends exactly on the infrastructure suitability of border inspection posts that may decrease after influenced by various factors of the destabilisation of state border procedures set by the legislation (Herman, 2014, 275–277).

It is believed that the decrease of capacities of border inspection posts is caused by a complex of external and internal circumstances arising incidentally and increasing uncontrollably, provoking violations in the border traffic organisation or public order in the territories of border inspection posts, and including such circumstances that may affect the traffic capacity of border inspection posts (Nakaz pro zatverdzhennia Poriadku dii kerivnykiv ta posadovykh osib mytnoho orhanu pid chas zmeshennia propusknoi spromozhnosti punktu propusku cherez derzhavnyi kordon Ukrainy, 2011, Item 1). It should be mentioned that the traffic capacity of most border inspection posts of Ukraine is presently not designated for such a big current flow unfortunately, and it causes many-hours-long lines. Herewith, the customs bodies of the State Fiscal Service of Ukraine do not have such a legal enactment today that could set a procedure for taking complex measures on preventing, correcting and stabilising the traffic capacity of border inspection posts and checkpoints.

The problems of the functional organisation of border inspection posts and checkpoints of Ukraine include problems with power lines, slowness of computer systems, because of which border inspection posts and checkpoints are “paralysed” from time to time.

Namely “the dead halt” and failures of computer systems of the Ukrainian customs points cause many-hours-long collapses at the border (Nespravne obladnannia paralizovalo robotu punktiv propusku na kordoni z Polshcheiu, Informatsiinyi portal pro zakupy v Polshchi).

Another aspect of the matter of functional modernisation is a problem of fitness of buildings and infrastructure of border inspection posts and checkpoints to the implementation of joint control – control carried out by officials of controlling authorities at a common border inspection post according to the international principles “Single Window”, “One stop”, spot inspection of vehicles and goods. But, unfortunately, most border inspection posts of Ukraine are constructed in such a way that it is completely impossible to perform the joint control without making some reconstructions there. At some other border inspection posts, the sequential control is indeed carried out by officials of the Ukrainian checkpoints and controlling authorities of a neighbouring state in one building in the territory of this neighbouring country.

It should be noted that Ukraine signed and is implementing the Agreement on joint border control with Poland (Uhoda pro spivrobotnytstvo pid chas zdiisnennia kontroliu osib, tovariv i transportnykh zasobiv, yaki peretynaiut ukrainsko-polskyi derzhavnyi kordon, 2001) and Moldova (Rozporiadzhennia pro pidpysannia Uhody mizh Kabinetom Ministriv Ukrainy ta Uriadom Respubliky Moldova pro spilnyi kontrol osib, transportnykh zasobiv, tovariv ta predmetiv u spilnykh punktakh propusku cherez ukrainsko-moldovskiy derzhavnyi kordon, 2017; Uhoda pro spilnyi kontrol osib, transportnykh zasobiv, tovariv ta predmetiv u spilnykh punktakh propusku cherez ukrainsko-moldovskiy derzhavnyi kordon, 2017), and the negotiations about same agreements with Slovakia and Hungary are still in the process. By focusing our attention on the Odessa Customs SFS, within the zone of activities of which a great number of border inspection posts of Ukraine and checkpoints are located, it should be mentioned that the representatives of the EUBAM Mission (O.O. Katsmaza studies the problems of the EUBAM Mission operations a well-detailed way (Kacmaza, 2006, 86–89; Kacmaza, 2007, 47–53)) with the partners representing the Customs and Border Police of the Republic of Moldova visited such border inspection posts and checkpoints as “Pavlivka”, “Yosypivka”, “Fedosiivka”, “Dubove”, and the customs point “Podilsk” of the Odessa Customs SFS, in summer 2018 so to assess the capabilities/necessary conditions for setting the joint border control in the

central segment of the Ukrainian-Moldovan Border. When visiting the border inspection point “Yosypivka”, it was offered to the representatives of the controlling authorities of the Republic of Moldova to take an office facility of 5m<sup>2</sup> for performing the common border and customs clearance procedures, but the condition and size of this office facility did not satisfy the representatives of the controlling authorities of the Republic of Moldova. As a result, the representatives of the EUBAM Mission with the partners from the Customs Service and Border Police of the Republic of Moldova expressed their opinion about the change of the border inspection point “Yosypivka” from international to local. The reasons for such conclusions were: poor status of the road accesses, small number of crossings of citizens’ vehicles and absence of goods movement by importers/exporters, as well as economic impracticability of stay of Moldova’s representatives in the indicated border post.

However, it should be noted that the unsatisfactory condition of the access roads to the border inspection posts at the Ukrainian/Moldovan border is characteristic of the entire Odessa region, therefore all roads necessitate repair in accordance with the conclusions indicated in the letter of the State Agency of Motorways of Ukraine “On provision of information” of 07.08.2018, No. 6258/3/9.1-17-1928/10.

As regards a small number of transport vehicle as well as citizens crossings, it is not correct to prefer the individual border inspection posts according to the number of crossings and neglect the border inspection post where there are fewer crossings of vehicles and citizens. In this context it is important to observe the rights and legally protected interests of individuals (Mytnyi kodeks Ukrainy, 2012, item 7, part 1 of Art. 8).

When stating the absence of goods crossing by exporters/importers across the border inspection point “Yosypivka”, it is worthwhile, above all, to take into account the unsatisfactory condition of the access roads to said border inspection post as well as the influence of the instructions of the Cabinet of Ministers of Ukraine “Aspects of customs clearance of goods and motor vehicles imported in Ukraine from the Republic of Moldova” which provisions envisage clearance of goods to the customs territory of Ukraine only in case when the consignment notes, commercial and customs document bear the customs seals and stamps of the Republic of Moldova. Besides, when the customs authorities of the Republic of Moldova clear export and import cargoes (including the cargo of exporters and importers from Transdnister region of the Republic of Moldova)

that are imported to the customs territory of Ukraine, they direct them to the border crossing posts that are located outside of the Transnistrier section of the Ukrainian/Moldovan border.

Along with that, there is a ban for the border inspection point “Yosypivka” to let pass individuals, motor vehicles, cargo and other property (clearance of the goods of 1-24 groups in compliance with UKTZED; alcoholic beverages and tobacco products having codes in compliance with UKTZED 2203 00, 2204-2208, 2402 10 00 00, 2402 20 10 00, 2402 20 90, 2403 10 10 00, 2403 10 90 00 and 2403 99 10 00 for which the excise duty has been imposed; narcotic drugs, psychotropic substances and precursors; transport vehicles and chassis and bodies to them that are carried by citizens; citizens of other states (except Ukraine and Moldova); transport vehicles registered in other countries (except Ukraine and Moldova) as well as transport vehicles that have no registration).

It should be noted that in compliance with Art. 20 of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova on joint control of individuals, transport vehicles, goods and things at the joint checkpoints across the Ukrainian/Moldovan state border, the control authorities of Moldova should arrange the required telecommunication systems in the border inspection point “Yosypivka” and use the communication means in compliance with the legislation of their country. Besides, the costs associated with operation and repair of the telecommunication systems stay, accordingly, with the control bodies of that state which installed such systems. It appears that under the circumstances Moldova did not express the intention to spend financial and material resources for the joint control in the border inspection point “Yosypivka”, therefore, it was proposed to change its status from the international to local. As regards the local border crossing posts, the joint control of individuals, motor vehicles, goods and objects is not envisaged by provisions of the current legislation.

Taking into consideration the fact that provisions of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Moldova on joint control of individuals, transport vehicles, goods and objects at the joint checkpoints across the Ukrainian/Moldovan state border do not indicate the obligation to set up joint border checkpoints across the Ukrainian/Moldovan state border, the border inspection point “Yosypivka” may, in future as well, perform its functions as an interstate post without a joint control of individuals, transport vehicles, goods and

objects exercised by officers of the Moldova control authorities. Indeed, the joint interests of Ukraine and the Republic of Moldova do not foresee a change of the category (status) of the border crossing posts from interstate to local at all, which issue lies outside of the agreement provisions.

The change of the category (status) of the border inspection point “Yosypivka” proposed by the EUBAM representatives and the partners from the Customs Service and Border Police of the Republic of Moldova may lead to violation and restriction of the rights, freedoms and lawful interests of citizens because the category of a local border crossing post provides for crossings of citizens of individual districts only and only during daylight. Also, absence of the representatives of the State Fiscal Service customs officers at the local border crossing post restricts a possibility to clear goods and certain motor vehicles which, in its turn, violates imperative principles of the state customs procedures (Mytnyi kodeks Ukrainy, 2012, Art. 8].

It is necessary to pay attention to the fact that the local border crossing posts are kept by the district state administrations. At that, in Zakhariivsk district of Odessa region there is, already, the local border crossing post “Pavlivka” which adequately meets the needs of local population. It is required to state, as well, that in each neighbouring district of Odessa region there are two functioning interstate border crossing posts (Velykomikhailovskyi district – “Velykoloske – Meleesht” and “Slov’ianoserbka – Blyzhnii Khutir”; Kodyma district – “Oleksiiivka – Vadul Turkulai” and “Tymkove – Broshten”). At the same time, the only functioning border crossing post in Zakhariivsk district of Odessa region is planned to be liquidated. At that, the distance to the nearest interstate border crossing point “Platonove” equals about 60 km.

Similarly it should be remarked that the change of the category (status) of the border inspection point “Yosypivka” will lead not only to violation of the provisions of Articles 24, 33, 64 and 68 of the Constitution of Ukraine, Law of Ukraine “On freedom of movement and free choice of the place of residence in Ukraine” and Law of Ukraine “On the measures to prevent and counteract discrimination in Ukraine” but, also, will result in a popular discontent of the near-Dniester region of the Republic of Moldova.

In connection with the existing situation, Zakhariivsk District State Administration of Odessa region applied to the Head of Odessa Customs with a request that the status of the border inspection point “Yosypivka” of “Podilsk” border post of Odessa Customs of the State Fiscal Service of



Ukraine, remains in the “interstate” category (Lyst do nachalnyka Odeskoi mytnytsi, 2018).

However, it appears that there exist many problems connected with the functional organization of the border crossing posts at the state border of Ukraine and provision of proper accomplishment of all possibilities of the border crossing posts for international, interstate or local communication which the Customs Service of the State Fiscal Service of Ukraine may not resolve.

### **Conclusion**

It appears that the indicated challenges of the functional organization of the border control posts at the state border of Ukraine can be resolved provided the reconstruction projects of the existing border inspection posts of Ukraine would be launched and modernization of the border inspection posts and access roads to them is implemented; when reconstructing the border inspection posts across the state border of Ukraine it is required to foresee the priority of the joint control procedures as well as reinforcement of the negotiations with the specialised institutions of the neighbouring countries with a view of concluding international treaties on opening new international border crossing posts and agreements on joint control implementation.

It also appears that the most optimum alternative for implementation of the joint control of individuals, motor vehicles, goods and objects at the joint border control points across the Ukrainian/Moldovan border is the alternative presented in Table 1.

It should be pointed out that modernization of the checkpoints across the state border of Ukraine is on the agenda of the appropriate authorities of Ukraine for a long time. However, such measures necessitate ample funds, which absence precludes successful modernization of the entire near-border infrastructure. Therefore, nowadays the necessity to attract external resources is increasing, and the issue which state bodies should take over the functions from the State Fiscal Service of Ukraine to develop and maintain the checkpoints at the state border of Ukraine remains open. However, a change of the category (status) of the checkpoints across that state border of Ukraine does not resolve rather complicated situation connected with a great number of the infrastructural logistic service problems in the checkpoints across the state border of Ukraine.

**Table 1. The most optimum alternative for implementation of the joint control of individuals, motor vehicles, goods and objects at the joint border control points across the Ukrainian/Moldovan border**

**LIST OF BORDER CROSSING POINTS AND TIME SCHEDULE FOR EXPANSION OF JOINT CONTROL**

NO	STATUS	NAME	RATING	LOCATION	TIME FRAME	REQUIRED INFRASTRUCTURE ADJUSTMENTS
1	2	3	4	5	6	7
1		Criva-Mamalyha <sup>1</sup>	I	Moldova	2020	Improvement of infrastructure and the technology of control
2		Kuchurhan-Novosavitskoe (rail)	I	Ukraine	2019	Creating the necessary conditions for MD controlling agencies. Performance of work by PJSC "Ukrzaliznytsa"
3		Tudora-Starokozache	II	Moldova	2019	Creating the necessary conditions for UA controlling agencies
4		Otaci-Mohylyv-Podilskyi <sup>2</sup>	III	Ukraine	2020	Phased implementation of joint control before the development and implementation of the BCP construction project
5		Giurgulest-Remi <sup>3</sup>	IV	Ukraine	2020	Completion of reconstruction of the BCP under the EU funded project
6		Kuchurhan-Pervomaic <sup>4</sup>	V	Ukraine	2020	Introduction of joint control in accordance with the stages of reconstruction of the BCP under the EU funded project
7		Palanca-Mayaky-Udobne <sup>5</sup>	VI	Moldova	2019	Completion of construction of new BCP under the EU funded project
8		Ocnita-Sokyryany road	VII	Ukraine	2020	Creating the necessary conditions for MD controlling agencies
9		Briceni-Rososhany <sup>6</sup>	VIII	Ukraine	2019	Improvement of infrastructure and control technology
10		Mirnoe-Tabaky	IX	Ukraine	2019	Creating the necessary conditions for MD controlling agencies
11		Vulcanesti-Vynohradivka	X	Moldova	2021	Improvement of infrastructure
12		Larga-Kelmentsi road <sup>7</sup>	XI	Moldova	2020	Creating the necessary conditions for UA controlling agencies
13		Goianul Nou-Platonovo	XII	Ukraine	2019	Creating the necessary conditions for MD controlling agencies

<sup>1</sup> Since 2004, the joint control has been carried out at two locations

<sup>2</sup> The dates are subject to clarification after the development and implementation of the relevant reconstruction project of the BCP

<sup>3</sup> Since 2004, the joint control has been carried out at two locations

<sup>4</sup> The phased introduction of the joint control was initiated in July 2017

<sup>5</sup> The joint control at the temporary facilities was launched in December 2017

<sup>6</sup> The joint control at one location in the modality of pilot project was launched in 2012

<sup>7</sup> Since 2004, the joint control has been carried out at two locations

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## АНОТАЦІЯ

**Федотов О. П. Проблеми теорії та практики функціональної організації пунктів пропуску в процесі модернізації державної митної справи. – Стаття.**

У статті розкрито зміст та сутність функціональної організації пунктів пропуску на державному кордоні України у процесі модернізації державної митної справи. Встановлено, що у межах державного кордону України функціонують пункти пропуску, які можна класифікувати за категоріями, видами сполучення, характером транспортних перевезень, режимом функціонування, а також часом роботи. Досліджено основні проблемні аспекти, які впливають на якість перетину державного кордону, доцільність та ефективність роботи пунктів пропуску

через державний кордон. Акцентовано увагу на проблемних питаннях організації спільного контролю осіб, транспортних засобів, товарів та предметів у спільних пунктах пропуску через українсько-молдовський державний кордон: проблеми пристосованості будівель та інфраструктури пунктів пропуску до запровадження спільного контролю, проблеми в електромережі, повільність комп'ютерних систем тощо. Автор робить висновок, що вирішення проблемних аспектів функціональної організації пунктів пропуску на державному кордоні України є можливим за умови відкриття проектів реконструкції існуючих пунктів пропуску через державний кордон України, проведення модернізації пунктів пропуску та під'їзних доріг до них, врахування під час реконструкції пунктів пропуску через державний кордон України пріоритетності введення процедури спільного контролю, а також посилення переговорного процесу з профільними інституціями країн-сусідів з метою укладення міжнародних договорів про відкриття нових міжнародних пунктів пропуску та угод про запровадження спільного контролю. Крім того, автором встановлено, що на теперішній час наявною є потреба залучення зовнішніх ресурсів, а також потреба нагального вирішення питання, яким державним органам передати від ДФС України функцію щодо розбудови та утримання пунктів пропуску через державний кордон України, що має бути спрямовано на підвищення ефективності функціональної організації пунктів пропуску на державному кордоні України.

**Ключові слова:** державна митна справа, логістичне обслуговування, митний кордон, пропускна спроможність, пункт пропуску, спільний контроль.

## АННОТАЦІЯ

**Федотов А. П. Проблемы теории и практики функциональной организации пунктов пропуска в процессе модернизации государственного таможенного дела. – Стаття.**

В статье раскрыты содержание и сущность функциональной организации пунктов пропуска на государственной границе Украины в процессе модернизации государственного таможенного дела. Установлено, что в пределах государственной границы Украины функционируют пункты пропуска, которые можно классифицировать по категориям, видам сообщения, характеру транспортных перевозок, режиму функционирования, а также времени работы. Исследованы основные проблемные аспекты, влияющие на качество пересечения государственной границы, целесообразность и эффективность работы пунктов пропуска через государственную границу. Акцентируется внимание на проблемных вопросах организации совместного контроля лиц, транспортных средств, товаров и предметов в совместных пунктах пропуска через украинскую-молдавскую государственную границу: проблемы приспособленности зданий и инфраструктуры пунктов пропуска к внедрению совместного контроля, проблемы в электросети, медлительность компьютерных систем и т.д. Автор делает вывод, что решение проблемных аспектов функциональной организации пунктов пропуска на государственной границе Украины возможно при условии открытия

проектов реконструкции существующих пунктов пропуска через государственную границу Украины, проведения модернизации пунктов пропуска и подъездных дорог к ним, учета при реконструкции пунктов пропуска через государственную границу Украины приоритетности введения процедуры совместного контроля, а также усиления переговорного процесса с профильными институтами стран-соседей с целью заключения международных договоров об открытии новых международных пунктов пропуска и соглашений о введении совместного контроля. Кроме того, автором установлено, что в настоящее время возросли потребность привлечения внешних ресурсов, а также необходимость неотложного решения вопроса – каким государственным органам передать от ГФС Украины функцию по развитию и содержанию пунктов пропуска через государственную границу Украины, что будет направлено на повышение эффективности функциональной организации пунктов пропуска на государственной границе Украины.

**Ключевые слова:** государственное таможенное дело, логистическое обслуживание, таможенная граница, пропускная способность, пункт пропуска, совместный контроль.

