

PROVISIONS
on the Procedure of the Customs Control Applicable to Goods
Containing Objects of Intellectual Property

I. General Provisions

1.1. These Provisions shall regulate the issues associated with measures taken by customs authorities of the Republic of Tajikistan to safeguard rights of a right-holder to intellectual property related to copyright and related rights, trademarks, service marks and the holder of a right to use the appellation of origin based on whose request they were included in the customs register of intellectual property.

1.2. Customs control of goods, containing objects of intellectual property shall be carried out in a generally established manner with the application of characteristics established by the Customs Code of the Republic of Tajikistan.

Release for free circulation, export, transit, re-export and re-import, processing within and outside of the customs territory, processing for free circulation, storage in customs warehouse, temporary importation and exportation, duty-free trade, free customs zone and free storehouse, of counterfeit goods containing objects of intellectual property, copyright and related rights, trademarks, industrial designs and the appellation of origin included in the customs register, shall be suspended while measures provided for in Chapter 54 of the Customs Code of the Republic of Tajikistan listed in Paragraph 2.1 are taken.

1.3. This Provision is developed for the implementation of the following:

- Chapter 54 of the Customs Code of the Republic of Tajikistan;
- Civil Code of the Republic of Tajikistan;
- Law of the Republic of Tajikistan on Copyright and Related Rights;
- Law of the Republic of Tajikistan on Trademarks and Service Marks;
- Decree of the Government of the Republic of Tajikistan No.160 of 20 February 1995, on Approval of the Temporary Provisions on Registration of the Appellation of Origin of Goods and Granting of the Right to Use It.
- Articles 156 and 275 of the Criminal Code of the Republic of Tajikistan;
- Article 199 of the Code of Administrative Violations of the Republic of Tajikistan;
- Decision of the CIS Heads of Governments on the Rules of Customs Control over Movement of Goods, which Contain Intellectual Property through the Customs Territory of 28 September 2001 approved by the Decree of the Government of the Republic of Tajikistan No.185 of 30 April 2002.
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

1.4. For the purposes of these Provisions the following definitions shall apply: objects of intellectual property - copies of works of science, literature and art, goods labeled with trademarks, service marks, appellation of origin; applicant - right holder or his/her representative who applies for safeguard measures related intellectual property rights to be taken by the customs authorities; right holder - the holder of rights for objects of intellectual property or the

owner of the exclusive license for such an object; counterfeit goods - goods containing objects of intellectual property, whose movement through the customs territory of the Republic of Tajikistan entails the violation of rights of a holder protected in accordance with normative-legal acts of the Republic of Tajikistan and international legal acts recognized by the Republic of Tajikistan; suspension of release of goods - delay in release or conditional release of goods containing objects of intellectual property by the customs authorities of the Republic of Tajikistan.

Other terms used in these Provisions shall be determined in accordance with the Customs Code, the Law of the Republic of Tajikistan on Copyright and Related Rights and the Law of the Republic of Tajikistan on Trademarks and Service Marks.

II. Application for Registration of Object of Intellectual Property

2.1. For the purposes of protection of his/her rights, the holder of copyrights and related rights, trademarks and appellation of origin of goods protected in the Republic of Tajikistan, may submit an application in writing to the Customs Department of the Ministry of State Revenues and Duties (MSRD) of the Republic of Tajikistan requesting it to take measures regarding the suspension of release of goods being counterfeit based on his/her opinion. The application may be submitted by the representative of the right holder on his/her behalf.

2.2. Application regarding the registration of intellectual property in the customs register shall be submitted by the right holder in a format provided for in Addendum No.1 to the MSRD of the Republic of Tajikistan and shall include the following information:

- Complete information on the right holder; where the application being submitted by his/her representative, the information on the representative shall also be included (copies of a certificate confirming state registration for legal entities or copies of identification documents for natural persons), including contact information;

- Description of an object of intellectual property to be included in the customs register;

- Names and addresses of the organizations manufacturing his/her goods as well as organizations having authorization or license for using intellectual property belonging to him/her, and documents confirming powers for their use;

- Country of origin of original goods;

- Period during which taking measures by the customs authorities is requested.

2.3. The documents confirming the right to an intellectual property being protected in the Republic of Tajikistan shall be attached to the application. Such documents may include:

- Certificate of registration of a trademark issued by the Patent Office;

- Extract from the Register of International Bureau of World Intellectual Property Organization regarding registration of a trademark for the territory of the Republic of Tajikistan with an appropriate confirmation by the Patent Office;

- Certificate confirming right to use the appellation of origin of goods issued by the Patent Office;

- Certificate of registration of a copyright if it is registered in Copyright and Related Rights Agency.

- Agreement on transfer of rights to industrial property (license agreement, cession of rights agreement) registered in the Patent Office;

- Agreement on transfer of rights to copyright (license agreement, cession of rights agreement).

- Agreement on transmission of rights to trademark (license agreement, cession of rights agreement) registered in the Patent Office of the Republic of Tajikistan.

2.4. The application shall be accompanied by original goods containing object of intellectual property, and if need, by samples and photographs, or other information giving complete idea of the appearance of goods containing objects of intellectual property sufficient for customs authorities to identify counterfeit goods.

2.5. The applicant may also submit any other information that may be used by the customs authority to make a decision on entering into customs register and on suspension of release of goods.

2.6. The application shall also be accompanied by the surety for fulfillment of an obligation on compensation of possible material damage caused. Instead of the surety for fulfillment of an obligation the right holder shall have the right to submit insurance agreement covering the risk of liability for causing damage on behalf of persons indicated in Paragraph 4 of Article 438 of the Customs Code of the Republic of Tajikistan.

2.7. If the application is submitted by a representative, the power of attorney confirming the powers of a representative executed in an established manner shall also be attached to the application.

2.8. There shall be no payment required for reception, processing of an application, inclusion in the customs register of an object of intellectual property, as well as for extending the term of a registration.

2.9. Upon registration of an object in the customs register and in order to assist customs authorities the applicant may provide the latter with additional information regarding specific shipments, which, according to his/her opinion, contain counterfeit goods:

- Name and address of an importer and/or consignee of the suspected counterfeit goods;
- A country or countries of origin or an enterprise manufacturing allegedly counterfeit goods;
- Location where the suspected goods will presumably be submitted for customs clearance;
- Mode of transport or name of a transporting organization.

III. Application Processing and Decision Making

3.1. Reception and processing of an application shall be performed by the Customs Department of MSRD of the Republic of Tajikistan. The application shall be submitted in two copies.

3.2. Customs Department shall review the application and shall decide to include an object in the customs register or to refuse taking the measure measures within the period not exceeding one month from the filing date of the application. The right holder and his/her representative shall be notified in writing within three days from the day such a decision is made.

3.3. In case of reasonable doubts and for the purpose of verifying the accuracy of the information submitted in the application, the Customs Department may request additional documents and information from the applicant, third parties as well as from the state agencies confirming the information submitted. The indicated persons must submit the requested documents within 30 calendar days from the date of receiving the request. If there is a need to

conduct additional verification of information submitted in the application and to request additional documents and information, the authorized body for customs affairs shall have the right to extend the time-limit for the processing of application, however not for more than one month.

3.4. In case of compliance of the application with requirements of Section II of these Provisions, the Customs Department of MSRD of the Republic of Tajikistan shall make a decision to include the object of intellectual property into the customs register of goods containing objects intellectual property. The copy of an application with a reference on inclusion in the customs register shall be returned to the applicant.

3.5. Where a positive decision is made, the information sheet containing information required for identification of goods containing objects of intellectual property and counterfeit goods, as well as the period within which the measures will be taken, shall be communicated to regional customs authorities for fulfillment within 3 days.

3.6. Basis for refusal to include in the customs register may be the following:

1) Submission of incomplete or inaccurate information by the right holder (or his/her representative) if they haven't been corrected by the applicant upon indication by the customs authority;

2) Failure to present guaranties for fulfillment of obligations related to compensation of damages.

3.7. Decision to refuse to include the object in the customs register and to take measures may be appealed to court in an established manner.

IV. Maintenance of the Customs Register and Exclusion from the Register

4.1. Customs Department of MSRD of the Republic of Tajikistan shall maintain the customs register of objects of intellectual property in a format provided for in Addendum No.2 to this Provision.

4.2. Period of validity of the registration during which customs control measures will be taken shall be set based on the application of a right holder or his/her representative, but may not exceed five years from the moment of inclusion of an object in the customs register. Such a period may be extended based on the application of a right holder or his/her representative under the condition of compliance with requirements of Paragraphs 2.1-2.9 of this Provision. However, the period of validity of the registration may not exceed the term of validity of documents on protection of the object of intellectual property or a period of legal protection of rights to objects of intellectual property.

4.3. The applicant shall without delay inform the Customs Department of MSRD of the Republic of Tajikistan in writing about all changes in information provided in the application and the attached documents. Customs Department shall review the proposed changes within 10 working days and shall decide either to make relevant changes in the customs register or to refuse to do so. Customs Department shall inform the applicant (his/her representative) in writing about the decision made within three days from the day of making such a decision.

4.4. Goods may be excluded prematurely from the customs register in the following cases:

1) Based on the application of the right holder (his/her representative);

2) Expiration of a period of legal protection of intellectual property;

3) Early termination of license agreement or in other cases of early termination of rights of the applicant to the object of intellectual property;

4) If the right holder (his/her representative) failed to apply to court and request protection his/her rights two or more times during a period of suspension of release of goods, except in cases when the applicant (his/her representative) did not inform the customs authorities about his/her approval for release of goods in a timely manner.

4.5. Right holder (his/her representative) may appeal to the court against the decision of the authorized body responsible for customs affairs regarding exclusion of object of intellectual property from the customs register.

4.6. Customs register of objects of intellectual property shall be published by the authorized body responsible for customs affairs at least once every three months in its official publications.

V. Suspension of Release of Goods

5.1. In case of revealing of counterfeit goods containing objects of intellectual property registered in the customs register, the customs authorities shall suspend release of such goods for a period of 10 working days. The specified term may be extended for not more than 10 additional working days upon the written substantiated request of the applicant accompanied by the evidence confirming that he/she applied to court or other agencies authorized by law for the purpose of protecting his/her rights.

5.2. Decision on suspension and extension of a period for suspension of release of goods shall be made in writing by the head of the relevant customs authority or by the officer substituting him/her in accordance with Addendum No.3. For the purpose of decision making, the customs authority shall have the right to consult with a right holder regarding counterfeitness of consignment being reviewed. However, decision on suspension of release of goods shall be also signed by the applicant.

5.3. Customs authority of the Republic of Tajikistan shall inform the declarant and a right holder about suspension of release of goods not later than the following working day after a day when such a decision on suspension has been made, and shall also inform the declarant of the name and address of the right holder, and the right holder of the name and address of the declarant.

5.4. Release of goods shall not be suspended if upon receiving a notification on suspension the right holder submits approval for release of goods in writing.

5.5. If during the period of suspension or extension of a period of suspension of release of goods the right holder provides the evidence of instigating the court proceedings or the decision of a court or of the authorized bodies regarding the seizure, the seized goods shall be subject to storage under customs control in temporary warehouses. Upon request of the declarant, the customs authority may allow the storage of the specified goods in a declarant's warehouse under customs control if the customs authorities are satisfied that safety is ensured and there is no access to such goods without permission of the customs authorities. Meanwhile, such goods shall continue to be under customs control.

5.6. If upon expiration of a 10 days period or a period of extension of suspension of release of goods the customs authority was not informed by a right holder about instigating court proceedings, decision of a court or of the authorized bodies on seizure of goods, their

sequestration or confiscation, such goods shall be released provided that all other conditions for importation have been fulfilled.

5.7. If upon expiration of a 10 days period or a period of extension of suspension of release of goods the right holder appealed to court or other authorized bodies for the protection of his/her rights, and if in connection with procedural time limits was not able to receive a decision on instigation of court proceedings or on seizure of goods, sequestration or confiscation, such goods shall be released provided that the declarant provides the surety for the compensation of damages caused to a right holder, if it was subsequently established that the right of a right holder was violated. The amount of a surety shall be determined based on the cost of the consignment released. The manner of providing surety referred to in Paragraph 6.2 of these Provisions shall apply.

VI. Surety for Costs Associated with Suspension of Release of Goods

6.1. For the purpose of registering goods in the customs register, the applicant shall provide security or a surety for equal worth sufficient for protection of defendant and competent authorities as well as compensation of a possible property damage to:

- Declarant;
- Owner;
- Recipient; or
 - 1) If movement of goods through the customs border is carried out in accordance with a foreign economic transaction concluded by domestic person, to a domestic person who concluded such an economic transaction on behalf of someone or based on whom instructions this transaction has been concluded;
 - 2) If movement of goods through the customs border is carried out without conclusion of the foreign economic transaction by domestic person: to a person having the right to possession and (or) the right to use the goods in the customs territory of the Republic of Tajikistan;
 - 3) Other persons acting in capacity, which is sufficient in accordance with the civil legislation of the Republic of Tajikistan and (or) Customs Code for performing relevant legal actions in their own name with the goods under the customs control.

6.2. Methods of surety for the fulfillment of obligations for compensation of damages may be the following:

- Cash deposit with the customs authority;
- Pledge of property;
- Guarantee of a financial institution registered and carrying out the activity in the Republic of Tajikistan.
- Insurance agreement made with the insurance company registered and carrying out the activity in the Republic of Tajikistan.

6.3. Provision of an approval, in writing, for the release of goods containing objects of intellectual property shall not exempt the applicant from compensation of damage for the period starting from actual suspension of the release of goods and ending with the approval for the release of goods.

6.4. Property pledged or cash deposited shall be reimbursed to the applicant within ten days from the moment of removing goods containing objects of intellectual property from the customs register.

6.5. Where the goods whose release was suspended were found not to be counterfeit, the applicant shall be responsible for compensation of material damage caused to persons specified in Paragraph 6.1 of this Provision and shall pay costs for storage of goods under customs control during the effective period of a decision on suspension of release of goods.

6.6. Where the goods whose release was suspended were found to be counterfeit, and where the collection from offender has been complicated or impossible, then the right holder shall be responsible for the costs associated with storage, transportation and destruction of such goods. The right holder shall have the right to reimbursement of such costs by the offender in the recourse procedure, in accordance with the applicable legislation.

VII. Informing and Sampling

7.1. Customs authority may, without prejudice to protection of information containing state, commercial or official secret or any other law-protected secret, provide the right holders and declarants upon their request with the information that may be used in order to determine whether goods in respect of which a decision on suspension of release is made are counterfeit.

7.2. The customs authority shall have the right to provide the right holder with the information, upon his/her request, related to name and addresses of a supplier, importer and recipient as well as about the quantity of suspended goods.

7.3. Information obtained by the right holder (his/her representative) or a declarant shall not be disclosed and may not be communicated to the third parties and shall be used only for purposes it has been provided for, except in cases provided for in the legislation of the Republic of Tajikistan.

7.4. With the written permission of the customs authority and in the presence of its officer, the right holder (his/her representative) and declarant may take samples of goods with respect to which the decision on suspension of release has been made.

VIII. Revocation of a Decision on Suspension of Release of Goods

8.1. If during the period of validity of a decision on suspension of release of goods the right holder (his/her representative) made a request to revoke a decision on suspension of release of goods and/or to remove from customs register, then a decision on suspension of release of goods shall be subject to immediate cancellation.

8.2. Decision on suspension of release of goods shall be subject to cancellation upon submission, by a right holder, of the evidence of instigating the court proceedings with respect to the goods suspended and of the court order for sequestering the goods by a court. Decision on suspension of release of goods shall be revoked by the head of the customs authority of the Republic of Tajikistan or by the officer substituting him/her.

8.3. Revocation of a decision on suspension of release of goods shall not be a barrier for the right holder to use other safeguard measures provided by the applicable legislation and to apply to the bodies authorized by law for the protection of his/her rights.

8.4. Declarant, importer, exporter or the owner of goods shall have the right to apply to court and request compensation of damages caused by illegal suspension of goods.

IX. Disposal of Seized Goods

9.1. Counterfeit goods found to infringe copyright and related rights by a court decision may be transferred to the right holder upon his/her request, or shall be subject to destruction.

9.2. The fate of counterfeit goods found to infringe rights to trademark, service mark and appellation of origin of goods by a court decision shall be determined in accordance with civil-procedural, criminal-procedural or administrative-procedural legislation.

9.3. A Committee whose composition shall be determined by the Government of the Republic of Tajikistan shall be established for the purpose of destruction of counterfeit goods. The costs associated with the destruction shall be borne by the declarant, importer or exporter culpable for the violation of intellectual property rights.

X. Final Provisions

10.1. Measures associated with suspension of release of goods shall not be taken with respect to the following goods containing intellectual property being moved through the customs border:

- By natural persons or sent via international mail in negligible quantity if such goods are intended for private, domestic and other needs not associated with entrepreneurship;
- On the legal basis.

10.2. Customs authorities who performed a procedure in a bona fide manner established in the Customs Code, these Provisions and other normative and legal acts, shall not be responsible for the following:

- Failure to discover goods violating intellectual property rights;
- Non intentional release of such goods;
- Any other actions with respect to such goods.

Addendum No.1

to the Provisions on the Procedure of the Customs Control Applicable to Goods
Containing Objects of Intellectual Property

Application for registration of goods containing objects of intellectual property in the
customs register and for taking measures

Date: _____, 2005

Authorized Customs Body

1. Information on the right holder/representative:

Copies of certification on the state registration – for legal entities or copies of
identification documents – for natural persons.

Right holder _____

Address: _____

Phone/facsimile: _____

Email: _____

Date and No. of the state registration _____

(Date of issue and passport number) _____

Representative _____

Address: _____

Phone/facsimile _____

Email _____

Date and No. of the state registration _____

(Date of issue and passport number) _____

2. Description of goods and the object of intellectual
property:

Name _____

Code of CN FEA _____

Rights protected on the basis of _____

3. Name and addresses of the organizations manufacturing
his/her goods as well as of organizations having authorization or a license to use
the intellectual property owned by the applicant:

1. _____

—

Documents confirming the right to use
them _____

2. Documents confirming the right to use
them _____

3. Documents confirming the right to use
them _____

4. Place of manufacturing of original goods:

5. Period for which taking measures is requested for:

6. The list of documents submitted:
1. _____

2. _____

7. Date: _____

8. Signature _____

To be filled by the customs authority:

9. The specified object registered in the customs register
under the number: _____

Date: _____

(Signature and stamp)

Addendum No.2

to the Provisions on the Procedure of the Customs Control Applicable
to Goods Containing Objects of Intellectual Property

Customs Register of Objects of Intellectual Property

N o.	Information on right holder and representative	Name of goods	Code of CN FEA	Title document	List of documents submitted	Date of registration	Validity of registration

Addendum No.3

to the Provisions on the Procedure of the Customs Control Applicable
to Goods Containing Objects of Intellectual Property

Decision No. _____
on Suspension (extension of term) of Release of Goods Containing
Objects of Intellectual Property

In accordance with Article 441 of the Customs Code of the Republic of Tajikistan by this Decision the release of goods containing objects of intellectual property registered in the customs register under the number _____, documented based on CCD No. _____ for a period of _____ 200_____ shall be suspended.

Goods provided by declarant _____

The Right holder is _____

Notify the right holder and declarant about suspension and reasons thereof not later than the following working day; also, inform the declarant of the name and address of the right holder and vice versa.

Date: _____ 200
Head of the Customs Body _____
Signature
Stamp

In accordance with Article 441 of the Customs Code of the Republic of Tajikistan and in response to the written request of a right holder _____ (number and the filing date of the request), a period of suspension of release of goods containing objects of intellectual property shall be extended till _____ 200

Date: _____ 200
Head of Customs Body _____
Signature
Stamp

