

GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN

DECREE

ON APPROVAL OF THE DECISION ON RULES OF CUSTOMS CONTROL OVER THE
MOVEMENT OF GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY
THROUGH THE CUSTOMS BORDER

April 30, 2002

No. 185

Dushanbe

Government of the Republic of Tajikistan decrees the following:

1. Approve the Decision on Rules of the Customs Control over the Movement of Goods Containing Objects of Intellectual Property through the Customs Border made by the Council of Heads of Government of the Commonwealth of Independent States in Moscow on September 28, 2001.
2. The Ministry of State Revenues and Duties of the Republic of Tajikistan shall, jointly with the interested ministries and agencies, take necessary measures to implement the this Decision.
3. The Ministry of Foreign Affairs shall inform the depositor about the implementation of internal procedures by the Republic of Tajikistan required for entering into force of this Decision.

Chairman of the Government
of the Republic of Tajikistan
Rakhmonov

E.

APPROVED
by the Decision of the Council of Heads of Government
of the Commonwealth of Independent States Decision on the
Rules of Customs Control over
Movement of Goods Containing Objects of
Intellectual Property through the Customs Border
of September 28, 2001

RULES OF CUSTOMS CONTROL OVER MOVEMENT OF GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY THROUGH THE CUSTOMS BORDER

1. BASIC DEFINITIONS

For the purpose of these Rules, the following definitions shall be used:

Parties - member states to the Agreement on Cooperation to Suppress Violations of Intellectual Property Rights as of March 6, 1998;

Counterfeit goods - goods containing objects of intellectual property (objects of copyright and related rights, trade marks, geographical indications) established and/or moved through the customs border with the violation of rights of a right holder as provided by the national legislation;

Right holder - any natural person or legal entity or a state whose rights to objects of intellectual property are protected in accordance with the national legislation of the Parties;

Suspension of release of goods - the extension of a period for making decision by the customs authorities on the release of allegedly counterfeit goods moved through the customs border of the Parties;

Register of goods containing objects of intellectual property (hereinafter referred to as the register) – the *list of goods* containing objects of intellectual property protected in accordance with the national legislation of a Party made by the central customs authority for the purposes of customs control on the basis of the applications of a right holder or a person representing the interests of a right holder and including the information enabling the customs authorities to reveal counterfeit goods moved through the customs border (name of an object of intellectual property; basis for acquisition of an intellectual property right, name and legal address of a right holder and persons having permission or license for using this object of intellectual property, place of manufacture of original goods and data on their manufacturers, description of a country of origin, modes of transportation, name of importers and/or exporters of suspected counterfeit goods and etc.).

2. MOVEMENT OF GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY

Movement through the customs border of goods containing objects of intellectual property shall be carried out in accordance with these Rules and the national legislation of the Parties.

Central customs authority of each Party shall maintain register of goods containing objects of intellectual property for the purpose of customs control.

Customs authorities shall protect the rights of a right holder to objects of intellectual property included to the register in a manner provided for in the national legislation of the Parties and these Rules.

3. APPLICATION FOR PROTECTION OF RIGHTS TO OBJECTS OF INTELLECTUAL PROPERTY

Right holder or any other person representing the interests of a right holder (hereinafter referred to as the applicant), who has reasonable grounds to assume that his/her rights to object of intellectual property are or may be violated during the movement of goods through the customs border shall have the right to apply to central customs authority for the protection of intellectual property rights with the request of suspension of release of counterfeit goods. Procedure for filling of an application, submission of necessary information and documents shall be determined by central customs body.

Central customs authority shall make decision on registering the object of intellectual property in the register, and in case of non compliance of the application with set requirements or submission of incomplete or inaccurate information, on refusal to register, notifying the applicant about the decision made within a period determined by the national legislation.

The manner of maintaining the register, making it available to the customs authorities and applicants shall be determined by the central customs authority.

4. FEES COLLECTED FOR REGISTERING THE OBJECT OF INTELLECTUAL PROPERTY IN THE REGISTER

For the purpose of registering the object of intellectual property in the register, fees shall be collected in the amount and the manner determined by the national legislation of the Parties.

5. PERIOD OF PROTECTION OF RIGHTS

Period of protection of rights shall be established by the central customs authority in accordance with the national legislation when deciding on registering the object of intellectual property in the register taking into account terms specified by the applicant, but shall not exceed two years from the moment of making such a decision. Period specified by the applicant may be extended upon the request by the applicant.

Total period of protection of rights may not exceed the period of validity of the right to object of intellectual property.

6. SURETY COSTS ASSOCIATED WITH SUSPENSION OF RELEASE OF GOODS

Application for protection of intellectual property rights shall be accompanied by pledge or deposit of the appropriate amount or a guarantee commitment of the applicant ensuring reimbursement of expenses to the customs authorities and compensation to importer, consignee, exporter or the owner of goods in case of loss or damages caused by unjustified suspension of release of goods.

The manner of determining the amount of reimbursement of costs and expenses of the customs authority in case of suspension of release of goods shall be set by the national legislation of the Parties.

7. SUSPENSION OF RELEASE OF GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY

If upon presenting to the customs authority of goods containing objects of intellectual property included to the register the customs authority reveals indications that the goods may be counterfeit, the release of such goods shall be suspended.

In this case the customs authority may, upon its initiative, require the provision of any information or assistance, including technical examination and equipment by the applicant on a non-repayable basis in order to determine whether the suspected goods are counterfeit.

Suspension of release may be activated for a period not exceeding maximum of 20 working days or 31 calendar days depending on which of the periods is longer if not otherwise provided for in the national legislations of the Parties for these purposes.

Customs authority shall, without delay, notify the declarant and applicant about the suspension of release.

8. PROVISION OF INFORMATION, SAMPLING

Customs authority shall, in a manner provided for in the national legislation of the Parties, provide the applicant and the declarant with the information required for determining the counterfeitness of goods with respect to which the decision on suspension of goods has been made.

In a manner established in the national legislation the applicant and declarant may take samples of goods with respect to which the decision on suspension of release of goods and conduct the examination (study) thereof.

9. REVOCATION OF A DECISION ON SUSPENSION OF RELEASE OF GOODS

If the applicant submits an application to the customs authority to revoke the decision on suspension of release of goods or does not take necessary measures for establishing counterfeitness within a period provided for in Paragraph 7 of these Rules, the decision on suspension of release of goods shall be revoked and the goods shall be subject to customs clearance and release.

Release of goods may not serve as a barrier for the right holder to address to bodies authorized by law for the protection of his/her rights to objects of intellectual property.

In case of a decision on identifying counterfeit goods made by bodies authorized by law, such goods shall not be subject to release. Counterfeit goods shall be subject to destruction or disposal in a manner provided for in the national legislation of the Parties.

Decisions made by bodies authorized by law regarding counterfeitness of goods and their release shall be carried out within a time limit provided for in item 3 of paragraph 7 of these Rules.

10. ADDITIONAL POWERS OF THE CUSTOMS AUTHORITIES TO CONTROL GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY

The customs authorities may, in a manner determined by the national legislation, suspend release of goods, seize them and take other measures with respect to goods containing objects of intellectual property that are not included to the register if there are reasonable grounds for supposing that such goods may be counterfeit.

Upon agreement among the central customs authorities of the Parties, the customs authority of one Party may protect the rights of a right holder, within his/her competence, to the objects of intellectual property included to the register of the central customs authority of the other Party.

Customs authorities of each Party may provide a broader protection of rights to objects of intellectual property during the movement of goods containing such objects of intellectual property through customs border as provided for in these Rules.

11. CHARACTERISTICS OF THE CUSTOMS CONTROL OF CERTAIN GOODS CONTAINING OBJECTS OF INTELLECTUAL PROPERTY

These Rules, in accordance with the national legislation, may not be applied with respect to goods containing objects of intellectual property being moved through the customs border by natural persons or in compliance with customs "transit" regime sent via international mail, as

well as imported by the right holder, on a legal basis, to the customs territory of a state, placed, upon his/her approval, into circulation and are not intended for production and any other commercial activity, if compliance with other requirements, controlled by the customs authority, is provided.

RESERVATION OF GEORGIA WITH RESPECT TO DRAFT DECISION ON RULES
OF CUSTOMS CONTROL OVER MOVEMENT OF GOODS CONTAINING
OBJECTS OF INTELLECTUAL PROPERTY THROUGH THE CUSTOMS BORDER

Taking into account realities, which formed in Abkhazian and South Ossetia areas of the state border of Georgia.

G.Arsenishvili

SPECIAL OPINION OF THE REPUBLIC OF MOLDOVA BASED ON
PARAGRAPHS OF THE AGENDA OF THE MEETING OF THE COUNCIL OF
HEADS OF CIS GOVERNMENTS

September 28, 2001

Moscow

REGARDING RULES OF THE CUSTOMS CONTROL OVER MOVEMENT OF GOODS
CONTAINING OBJECTS OF INTELLECTUAL PROPERTY THROUGH CUSTOMS
BORDER

Rules of the Customs Control over Movement of Goods Containing Objects of Intellectual Property through the Customs Border shall have legal force with respect to Republic of Moldova only upon ratification of an Agreement on Cooperation to Suppress Violations of Intellectual Property Rights of March 6, 1998.

Prime Minister of
the Republic of Moldova
TARLEV

VASILE