

ANNEX VIII.

**Government of the Republic of Tajikistan
RESOLUTION
of April 30, 2002 No. 185
Dushanbe**

On Approval of the Decision on the Rules for Customs Control on the Transfer of Goods
Containing Intellectual Property Objects across the Customs Border

The Government of the Republic of Tajikistan resolves:

1. To approve the Decision on the Rules for Customs Control on the Transfer of Goods Containing Intellectual Property Objects across the Customs Border adopted by the Council of Heads of CIS Governments in the City of Moscow on September 28, 2001.
2. The Ministry of Public Revenues and Charges of the Republic of Tajikistan together with the ministries and agencies concerned shall take the necessary measures to implement the declared Decision.
3. The Ministry Foreign Affairs of the Republic of Tajikistan shall inform the depositaries on implementation by the Republic of Tajikistan of the intergovernmental procedures required for putting this decision into effect.

Chairman
of the Government of the Republic of Tajikistan

E. Rahmonov

DECISION
**on the Rules for Customs Control on the Transfer of Goods Containing Intellectual
Property Objects across the Customs Border**

To implement the Agreement on Cooperation to Suppress Offense in the Field of
Intellectual Property of March 6,1998 and improve customs control on the transfer of
goods containing intellectual property objects across the customs border, the Council of
Heads of Governments of the Commonwealth of Independent States

decided:

1. To approve the Decision on the Rules for Customs Control on the Transfer of Goods Containing Intellectual Property Objects across the Customs Border (attached).
2. To confer the Economic Council of the Commonwealth of Independent States the right to amend, if required, the Rules of Customs Control on Transfer of Goods Containing Intellectual Property Objects across the Customs Border.
3. This Decision shall come into force from the day that the third notification on the fulfillment of all the required procedures by the States signatory to the Decision is lodged with a depositary. For the States that fulfill the required procedures later, this decision shall come into effect from the day when the relevant documents are lodged with a depositary.

This is done in one original cope in the Russian language in the city of Moscow on
September 28, 2001. The original copy shall be kept with the Executive Committee of
the Commonwealth of Independent States, which shall send its certified copy to each
State signatory to the present Decision.

For the Government
of the Azerbaijan Republic

For the Government
of the Republic of Moldova

For the Government
of the Republic of Armenia

For the Government
of the Russian Federation

For the Government
of the Republic of Belarus

For the Government
of the Republic of Tajikistan

For the Government
of Georgia

For the Government
of the Republic of Turkmenistan

For the Government
of the Republic of Kazakhstan

For the Government
of the Republic of Uzbekistan

For the Government
of the Kyrgyz Republic

For the Government
of Ukraine

APPROVED

By the Decision of the Council of Heads of Governments of the Commonwealth of Independent States

RULES

of Customs Control for the Transfer of Goods Containing Intellectual Property Objects across the Customs Border

1. Main Definitions

For purposes of the present Rules the following definitions are used:

The Parties – are Member-States of the Agreement on Cooperation to Suppress Offense in the Field of Intellectual Property of March 6, 1998;

counterfeit goods - *the goods containing intellectual property objects (objects of copyrights and related rights, and geographical indications) set up or transferred across the customs border violating the rights of the legal owner determined by the national legislation;*

a legal right holder– a natural (legal) person or a state, which holds rights in the objects of intellectual property that are protected in compliance with the national legislation of the Parties;

the suspension of release – an extension by the customs bodies of the period within which to make a decision on the release of goods transferred across the customs borders of the Parties where such goods are suspected to be counterfeit;

the register of goods containing intellectual property objects (hereinafter the register) – the register of goods containing intellectual property objects protected in compliance with the national legislation of the Party, which shall be compiled by a central customs body for customs control based on applications of a legal right holder, or an individual presenting the interests of a legal right holder, and including information allowing the customs bodies to identify counterfeit goods transferred across the customs border (the name of a intellectual property object, grounds for the acquisition of intellectual property rights; the title and the legal address of a legal right holder and individuals having a permit or a license to use the intellectual property object; a place of production of the original product and the data on its producers; a description, a country of origin, a mode of transportation, names of importers and/or exporters of alleged counterfeit products, etc.)

The Transfer of Goods Containing Intellectual Property Objects

Goods containing objects of intellectual property shall be transferred across the customs

border consistent with the present Rules and the national legislation of the Parties.

The central customs body of each of the Parties shall keep a register of goods containing objects of intellectual property for the purposes of the customs control.

The customs bodies, following the procedure determined by the national legislation of the Parties and the present rules, shall protect the rights of the legal right holder of objects of intellectual property incorporated in the register.

An Application on the Protection of Rights in Intellectual Property Objects

A legal right holder or any other individual presenting interests of a legal right holder (hereinafter the applicant), who has sufficient grounds to presume that, when transferring goods across the customs bodies, his rights for an intellectual property object have been violated, or may be violated, shall be entitled to submit to a central customs body an application for the protection of those intellectual property rights, requesting that the release of the counterfeit goods be suspended.

A central customs body shall determine the procedure for the submission of an application and presentation of the data and documents required.

A central customs body shall decide on the incorporation of an intellectual property object in the register, and in the case of non-compliance by an applicant of the requirements, or presentation of incomplete or spurious data, on the refusal to incorporate an object in the register, and shall notify the applicant of the decision made within the period determined by the national legislation.

A central customs body shall determine the procedure to maintain the register and to inform the customs bodies.

4. Fees for the Incorporation of an Intellectual Property Object in the Register

The fee for the incorporation of an intellectual property object in the register shall be charged in the amount and within the procedure determined by the national legislation of the Parties.

5. The Period of the Protection of Rights

A central customs body shall determine the period of the protection of rights consistent with the national legislation when a decision on the incorporation of an intellectual property object in the register is made, in view of the period of time applied for by an applicant and not longer than two years from the moment a decision has been made. The period applied for by the applicant may be extended upon application from the applicant.

The general period of the protection of rights shall not exceed the validity period of the right for an intellectual property object.

6. Ensuring of Costs Linked with the Suspension of Release

An application on the protection of intellectual property rights shall be accompanied by collateral, or depositing of an appropriate amount, or a guarantee obligation of an applicant, guaranteeing the compensation of costs to the customs bodies and compensation to an importer, a consignee, an exporter, or an owner of goods in case of loss or damage, which were a consequence of unjustified suspension of the release of goods.

The national legislation of the Parties shall determine the procedure for defining the size of collateral and compensation of costs incurred by a customs body in case of the suspension of release.

7. The Suspension of Release of Goods Containing Intellectual Property Objects

Where goods containing intellectual property rights and listed in the register are presented to a customs body, and a customs body finds that the goods may be counterfeit, the release of such goods shall be suspended.

In such a case, a customs body on its own initiative shall demand from an applicant to present without charge any information or assistance, including technical expertise and equipment, needed to find out whether the suspected goods are counterfeit.

The suspension of release shall take place within the period not exceeding the longer of 20 working days, or 31 calendar days, depending on which of the periods is the longer, if otherwise it is not stipulated for these purposes by the national legislation of the Parties.

A customs body shall immediately inform a declarant and an applicant about the suspension of release.

8. Provision of Information. Checking and Taking Samples

Following the procedure determined by the national legislation of the Parties, a customs body shall present to an applicant and a declarant the information found to reveal counterfeit goods on which a decision on the suspension of release has been made.

Following the procedure determined by the national legislation of the Parties, an applicant and a declarant may cross-check and take samples of goods on which a decision on the suspension of release has been made and conduct their expert investigation.

9. Cancellation of a Decision to Suspend the Release of Goods

Where an applicant has applied to a customs body to cancel a decision on the suspension of release of goods, or where such body does not take the necessary measures to reveal

infringement in the period determined by Item 7 of these Rules, the decision on the suspension of goods shall be subject to cancellation and goods shall be subject to the customs legalization and release.

The release of goods shall not serve as an obstacle for a legal right holder to apply to the bodies authorized by the legislation to protect his rights pertaining to intellectual property objects.

Where the bodies authorized by the legislation decide that the goods have infringed the rights of a right holder, such goods shall be not subject to release. In addition, infringing goods shall be subject to destruction or other action under the procedure determined by the national legislation of the Parties.

The bodies authorized by the legislation shall make decisions on the infringement of goods and their release within the period specified by the present Rules, Item 7, and Paragraph 3.

10. Additional Powers of the Customs Bodies for the Control of Goods Containing Intellectual Property Objects

Following the procedure determined by the national legislation, the customs bodies shall suspend the release, withdraw, or take other measures with respect to goods containing intellectual property objects that are not listed in the register, provided that there are sufficient grounds that these goods may be infringing the rights of a right holder.

Consistent with an agreement between the central customs bodies of the Parties, the customs bodies of one Party shall, within their competence, protect the rights of a legal right holder for intellectual property objects listed in the register of a central customs body of another Party.

The customs bodies of each Party shall be entitled to provide broader protection of rights for intellectual property objects when transferring goods containing such intellectual property objects across the customs border than it is envisaged by the present Rules.

11. Specifics of the Customs Control of Some Goods Containing Intellectual Property Objects

Consistent with the national legislation, these Rules shall not be applied with regard to the goods containing the intellectual property objects transferred across the customs border by natural persons, or in compliance with the customs “transit” regime, transmitted in international mail, or legally brought into the customs territory of a State by a legal right holder, released with the consent of the right holder into circulation for production or other commercial activities, provided that other requirements shall be observed as to the control placed on it by the customs bodies.