

CUSTOMS CODE OF THE REPUBLIC OF MOLDOVA
Law of the Republic of Moldova No. 1149-XIV of 20.07.2000

(Extract)

(Art. 1, Chapter XII)

Article 1. Main Terms

For the purpose of this Code, the following main terms are defined as follows:

- 1) Goods mean any movable property, items, and other valuables, including foreign exchange (foreign and national cash, payment instruments, and securities denominated in a foreign or national currency), natural gas, electric power, heat, and other types of energy, and means of transportation excluding those specified in paragraph 4;
- 2) *Domestic goods* – goods:
 - a) integrally obtained on the customs territory of the Republic of Moldova as provided in Art. 20 of the Law on Customs Tariff, not incorporating goods imported from outside the customs territory of the Republic of Moldova. Goods obtained from goods placed under a suspensive customs procedure is not considered to have local character;
 - b) imported from outside the customs territory of the Republic of Moldova, which were released for free circulation;
 - c) obtained or produced on the customs territory of the Republic of Moldova either from the goods referred to in letter b) or from goods referred to letters a) and b);
- 3) *Foreign goods* are those not mentioned in paragraph 2;
- 4) *Means of transportation* - any means of transport (which is not subject to external transactions) used for international transport of passengers and cargo, including containers and other transport equipment;
- 5) *Crossing the border* - introduction and removal from the customs territory of the Republic of Moldova of goods and means of transport, including international postal shipments, pipeline and electric transmission lines. Such actions provide that:
 - when introduction of goods and means of transport on the customs territory of the Republic of Moldova or their placement on the other side of the customs territory of the Republic of Moldova within customs warehouses, the transition of customs border occurs;
 - when removal of goods and transport means from the customs territory of the Republic of Moldova or in case the introduction of customs warehouses in the territory on the other side of the customs territory of the Republic of Moldova, the submission of the customs declaration or any other customs operations denotes intention to introduce or remove the goods and means of transport;
- 6) *Entities* - individuals and legal entities, excluding specific cases stipulated in this Code;
- 7) *Entities of the Republic of Moldova* - enterprises, institutions and organizations located on the territory of the Republic of Moldova and created in accordance with legislation; legal entities and individuals engaged in entrepreneurial activities in accordance with legislation which are registered on the territory of the Republic of Moldova; nationals of the Republic of Moldova;
- 8) *Foreign entities* – entities not specified in paragraph 7;
- 9) *Entities transferring goods across the customs frontier* - goods owners, holders, or other entities stipulated in this Code;
- 10) *Customs and customs unit* - customs authority units which perform all or some of the formalities envisioned by the customs regulations;
- 11) *Customs officer* - person vested on a permanent or temporary basis under the law, with rights and duties to perform customs functions or take administrative, management, organizational, and economic actions;
- 12) *Officer of criminal pursuit from the Customs Service* - customs officer authorized to conduct a criminal pursuit of crimes which are within the customs authorities' competence;

- 13) *Declarant* - any person who has the right to dispose of the goods or/and means of transport, fills a customs declaration on its own behalf or an entity on the behalf of which the customs declaration is filled out;
- 13¹) *direct representation* – report on the basis of which customs broker acts on the name and behalf of another person;
- 13²) *indirect representation* - report on the basis of which customs broker acts on his own name but on behalf of another person;
- 14) *Carrier* - an entity that actually transfer goods across the customs frontier or responsible for use of the means of transportation;
- 15) *Release* - unconditional and unrestricted transfer by the customs authorities of goods and means of transportation following their customs clearance into an entity's complete disposal;
- 16) *Conditional release* - release of goods and means of transportation contingent upon the entity's obligations to comply with the set of restrictions, requirements, or conditions;
- 17) *Customs regime* - a set of customs regulations defining the status of goods and means of transportation depending on the objectives of a business transaction and destination of goods;
- 18) *Release permit* - transfer by the customs authorities of goods or means of transportation following their customs clearance into an entity's complete disposal for purposes provided for by the applicable customs regime;
- 19) *Customs clearance* - a procedure of placement of goods and means of transportation under a certain customs regime and termination of such a regime in accordance with provisions of this Code;
- 20) *Customs supervision* - any action taken by the customs authorities in order to enforce customs legislation;
- 21) *Customs control* - a set of measures taken by the customs authorities in order to inspect goods and the availability and reliability of documents; review of accounting and financial records; control over means of transportation; control over luggage and other transported goods; fact-finding and other actions aimed at enforcement of customs legislation and other regulations regarding goods under customs supervision;
- 21¹) *Subsequent control* - checking the information on the customs declaration and accompanying documents, verifying the existence and authenticity of documents provided to conduct a customs or customs procedure, review of accounting and all documents in any form, including computer, means of transport, storage spaces , cargo (if they can be identified);
- 22) *Customs operations* – control over goods and means of transportation, personal examination, review of accounting records, control over customs warehouses, duty-free shops, and free zones, preparation of customs documents, charging customs fees, and other actions performed by the customs authorities in the field of customs;
- 23) *Customs declaration* - a unilateral act in which by which an entity declares its will regarding the placement of goods under a certain customs destination in the manner set forth by the customs legislation;
- 24) *Economic policy measures* - restrictions on bringing into and out of the Republic of Moldova of the goods and means of transportation imposed in view of the economic policy interests which provide for licensing, quotas, taxation, and setting price floors and ceilings;
- 25) *Customs tariff* - a catalogue of the nomenclature of goods brought into or out of the customs territory and the size of the customs duties charged on such goods;
- 26) *Customs fees* - fees charged by the customs authorities in accordance with the legislation when goods are brought in and out: customs duty, taxes (value added tax and excise taxes), customs service fee, authorization fee, and other charges;
- 27) *Customs duty* - a fee levied by the customs authorities in accordance with the import tariff;
- 28) *Customs service fee* - a payment for services rendered by the customs authorities in the field of customs activities; the list of such services and service fees are stipulated in the legislation;

- 29) *Taxes* - taxes to be levied by the customs authorities;
- 30) *Customs legislation* - a set of normative acts governing imports, exports, and transshipment of goods and application of various customs destinations thereto, including prohibitive, restrictive, and supervisory measures, and normative acts passed by the Customs Service within its scope;
- 31) *Customs regulations* - provisions of this Code, Regulations on Customs Code application, and other normative acts regarding customs.
- 32) *Customs destination* – placement of goods under a certain customs regime, their placement into a free zone, into a duty-free shop, re-export, destruction or abandon in the interest of the state;
- 33) *Taxation elements* – percentage share or tariff established per goods unit, provided for by the Law on Customs Tariff as well as the methods of determination of the value at custom and the rules of origin established by the legislation;
- 34) *Titular of the operation* – person in whose name the customs declaration has been performed (declarant) or the person to which the rights and obligations related to the customs destination, of the aforementioned person have been transferred to (declarant).
- 35) *Customs obligation* – payment obligation related to import and export duties (including fees and penalties) provided by the legislation as well as to those discovered after the customs operations;
- 36) *Customs payer* – person obliged to pay a custom duty;
- 37) *Compensatory products* – all goods (products) that result from their placement under the customs regime of active or passive improvement;
- 38) *Transformed products* – all goods (products) that result from their placement under the customs regime of transformation under customs control;
- 39) *Equivalent goods* – local goods used instead of import goods for the fabrication of compensatory products;
- 40) *Output share* – amount or percentage of compensatory products obtained from the processing or transformation of a certain amount of goods;
- 41) *Prohibited goods* – goods, whose placement under any customs destination is prohibited;
- 42) *Restricted goods* – goods whose placement under a customs destination is conditioned of fulfillment of certain conditions provided for by the legislation.
- 43) *Declaration by action* – form of explicit (clear) declaration of the auto transport means, which exempt the physical person from filling out some customs documents provided presentation to the customs bodies located in the state frontier points of the registration documents of the auto transport means (with observance of the conditions stipulated in the art.10 paragraph (3), (5) and (14) from the Law on manner of introduction and taking out of goods by physical persons from the territory of the Republic of Moldova), with its further registration in the informational system of the Customs Service. In case of application of the form of declaration by action, the customs documents are not issued.”
- 44) *Declaration of the rights holder* – declaration by which the intellectual property right holder shall be responsible on behalf of the involved people, if the court determines that the goods without prejudice to any intellectual property right, and agree to bear all costs incurred by keeping the goods and other operations under customs supervision, including expenses caused by destruction;
- 45) *Intellectual property right*- copyright, neighboring rights, right on the product or protected service and product marks, right on industrial designs and models, right on geographical indications, right on patents, right to supplementary protection certificates, right on plant variety;
- 46) *Copyright* –intellectual property right of the natural or legal person who has created an original work in the literary, artistic or scientific field, regardless of creation method, how

creative or how the concrete form of expression and independent of the value and its intended use, or other recognized legal holders (individuals or companies);

47) *related rights* - intellectual property rights other than copyright, enjoyed by performers for their own performance, producers of sound recordings and audiovisual recordings producers for their own recordings, and broadcasting organizations for their own programs and programs;

48) *object of intellectual property* - results of intellectual activity, confirmed by the respective rights of the holders of such use, including: objects of industrial property (inventions, utility models, plant varieties, topographies of integrated circuits, designations of origin, brands and service marks, industrial designs), objects of copyright and related rights (literary, art, science and so on, including computer programs and databases), trade secret (know-how) and so on;

49) *right holder* - holder of an intellectual property right or his representative or any other person authorized to use the right or its representative;

50) *counterfeit goods*:

a) goods, including packaging, bearing without authorization a trademark identical to the trademark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark-holder's rights;

b) any trademark symbol (including a logo, label, sticker, brochure, instructions for use or guarantee document bearing such a symbol), even if presented separately, on the same conditions as the goods referred to paragraph a);

c) any packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred in paragraph a);

51) *goods infringing an intellectual property right*:

a) counterfeit goods;

b) pirated works;

c) goods infringing the rights on a patent for invention, a supplementary protection certificate, designations of origin or geographical indications, or a plant variety right.

Any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right shall be treated as goods of that kind if the use of such moulds or matrices infringes the right-holder's rights.

52) *Customs payer record sheet* - individual record sheet belonging to natural or legal person reflecting the appearance, modification, extinguishment or cancellation of customs duty related to carried out external economic transactions;

53) *Post clearance audit citation* – in a written form, by which the person is invited to submit to the customs authorities or to submit other relevant information for performing a post clearance audit;

54) *Bank citation* - specific written application requesting the financial institution (branch or subsidiary) to provide information about audited person or person liable to post clearance audit and the bank accounts operations of the concerned person;

55) *Mandatory information on the origin of goods* - information on the origin of the goods, issued by the Customs Service, which is mandatory for the customs offices (posts);

56) *Applicant of the mandatory information on the origin of goods* - any person who request, in written form, a compulsory information on the origin of goods;

57) *holder of the mandatory information on the origin of goods* - person on whose name is issued the mandatory information on the origin of goods.

Chapter XII

INTELLECTUAL PROPERTY BORDER PROTECTION MEASURES

Article 301. Field of application

(1) The provisions of current Chapter shall apply to goods liable to infringe an intellectual property right that:

- a) are brought into or out of the customs territory of the Republic of Moldova;
- b) are declared to customs authorities in order to place them under a permanent or suspensive customs procedure;
- c) are under customs supervision in all other cases;
- d) have not been declared when entering or leaving the country and are discovered by customs authorities during customs checks;
- e) entered into state ownership by confiscation or abandoned in favor of the State.

(2) Current Chapter shall not apply to goods which represent the subject of the protected intellectual property rights and which have been manufactured with the consent of the right holder, but are in one of the situations referred to in para. (1) without his consent;

(3) Current Chapter shall not apply to goods referred to in para. (2), manufactured or protected by other intellectual property rights, in other terms than those agreed with the right owner.

(4) Intervention measures provided for in this chapter shall not apply to goods designed for personal use, moved across the customs border of the Republic of Moldova by natural persons.

Article 302. Measures prior to an application for intervention of the customs authorities

(1) If no intervention application is filed or until the acceptance of this application, customs authority may suspend and / or retain clearance procedure, for a period of 3 working days, of the goods in one of the situations referred to in Art. 301, if there are sufficient grounds to consider that these goods infringe an intellectual property right. The customs authority shall notify the right holder and the declarant / holder of the goods, if the latter are known, on the applied measure as a model established by the Customs Service. The 3-day period begins from the date on which the right holder has been notified.

(2) If within the period specified in par. (1) the right holder does not apply for intervention, customs authority cancel withholding measure and/or perform their clearance provided to meet other legal requirements.

(3) In the case referred to in para. (1), the customs authorities may request information on the holder' protected right until his notification about a possible violation of an intellectual property right.

Article 302¹. Filing and examination of the application for customs intervention

(1) The customs intervention application shall be submitted by the right holder to the Customs Service in written or electronic form, according to the model established by the Customs Service. The application must contain the following mandatory information:

- a) right holder's identification data;
- b) accurate and detailed technical description of the original goods, data about the place they were produced, of their manufacturer and data on other right holders;
- c) any specific information which the right holder holds about infringement means of his right;
- d) the name and address of the contact person designated by the right holder.

(2) Upon the application for customs intervention, photographs and samples of the original goods shall be submitted.

- (3) The right holder shall provide, as far as they are known, any other information, such as:
- a) value of the original goods before taxation;
 - b) place and destination of goods;
 - c) details of identifying the lot or parcels;
 - d) the date of arrival or departure of the goods;
 - e) the means of transport used;
 - f) the country or countries of manufacture and routes used;
 - g) technical differences between the original and likely goods infringing an intellectual property right;
 - h) the name and headquarter of legal entities authorized to import, export or distribute goods.
- (4) The application for intervention shall be joined by the following documents:
- a) declaration of the right holder of a prescribed form, by which he assumes the responsibility if goods are found not to infringe an intellectual property right and the obligation to cover all the costs incurred under this chapter;
 - b) evidence that it is the owner of the intellectual property.
- (5) Where an application for intervention is filed without compliance with the requirements mentioned in par. (1) - (3), Customs Service is entitled to reject by a reasoned decision stating the appeal. The application may be filed again only after it has been completed accordingly.
- (6) Within 30 days of receiving the application, the Customs Service shall notify in writing the owner of the acceptance or rejection of the application or the fact that it is subject to review, or the necessity to submit additional information.
- (7) Right holder does not have to pay any fees / charges to cover administrative expenses related to management of the application for intervention.
- (8) Right holder may file a complaint with the competent court against the decision to reject the application for customs intervention.

Article 303. Acceptance of the applications for customs intervention

- (1) If the application for intervention of the customs authorities is accepted, the Customs Service establishes the intervention period up to one year from the issuance date of the acceptance decision. On expiration, this period may be extended as long as the Art.302¹ is respected.
- (2) The Customs Service presents to the subordinated customs authorities the accepted applications for intervention in order to take the necessary measures at the border.
- (3) The provisions of the Art.302¹ shall be applied accordingly in case of requests for extension of the intervention period.

Article 304. Conditions and customs intervention measures

- (1) On the basis of the accepted application for intervention, Customs authority shall issue a decision to detain the goods suspected of infringing an intellectual property right and / or suspend the clearance procedure, notifying in writing about it, according to the model established by the Government, both right holder as well as the declarant / recipient of the goods. The customs authority notifies the Customs Service on the undertaken measures immediately as required.
- (2) If the customs authority detained the goods suspected of infringing an intellectual property right and / or postponed the customs clearance process, the goods may be destroyed without following the procedure laid down in para. (7), if the following conditions are met:

a) the right holder shall inform in writing the customs authority, within 10 working days from the receipt date of the notification referred to in para. (1) or 3 working days in case of perishable goods, that the detained goods infringe an intellectual property right;

b) the right holder submits to the customs authority, within the period referred to in paragraph a), the written consent of the declarant / recipient of the goods that abandons these goods with the view of destruction, this Agreement may be submitted directly to the customs authority by the declarant / recipient of the goods; current condition shall be deemed to be fulfilled when the declarant / recipient of the goods has not disputed in writing within the time limit expressly the detention and / or suspension of the customs clearance operation or destruction;

c) the customs authority obligatory report the samples of goods that shall be destroyed, according to the customs regulations, with the view to preserved for further evidences in the court, if appropriate;

d) destruction shall be done at the expense and under the responsibility of the right holder, if the legislation do not provide otherwise.

(3) If the declarant / recipient of the goods contested the measures of detention of the goods and / or suspension of the customs clearance operation or opposes to the destruction of goods, the procedure laid down in para. (7) shall be applied.

(4) In order to ascertain that an intellectual property right has been infringed, the customs authority shall notify the right holder, upon written request, the name and address of the declarant / holder of the goods, country of origin and shipment of goods suspected of infringing an intellectual property right, whether the customs authority holds that information.

(5) The holder of intellectual property that receives information pursuant to para. (4) can not use them only for the purposes of par. (2). Use of such information for purposes other than those expressly set aside attracts the intervention of the holder's responsibility and cancelation of the customs intervention.

(6) The customs authority may allow the parties to examine the seized goods and / or which clearance is suspended, and report the samples with the view to determine, through analysis or testing, whether the goods are suspected of infringing intellectual property right. If the samples are not destroyed as a result of the analysis, the right holder shall return them as much as possible, before the release of the goods and / or release for free circulation. The costs and responsibilities related to the analysis of these samples shall be borne by the right holder.

(7) If, within 10 working days from the date of receipt of the notification of detention of the goods and / or suspension of the clearance operation, the right holder does not sue the declarant / recipient of the goods and whether the provisions of par. (2) and (3) are not applicable, the customs authority releases the goods and/or release for free circulation, as long as the other legal provisions are not infringed.

(8) In based on cases, at the written request of the right holder, the Customs Service may extend up to 10 days the time limit set in par. (7), and in cases of perishable goods up to 3 working days, which is referred to in para. (10) can not be extended.

(9) If the declarant / recipient of the goods shall be sued, the holder of the intellectual property right shall immediately inform the customs authority on the adopted measures, and the customs authority detains the goods until the date on which the court decision remains final and irrevocable.

(10) The holder of an intellectual property right is obliged, within 15 days from the termination date of the protection of intellectual property right, as well in cases of other related changes that occur in the Republic of Moldova, to inform about the Customs Service. Otherwise, the holder shall bear all the consequences to be derived from his inactions, being responsible to the involved persons.

Article 305. Measures applicable to goods infringing an intellectual property right

(1) Goods in respect of which turned out to infringe an intellectual property right, can not be brought into or out of the customs territory of the Republic of Moldovan, or free economic zones or free warehouses, can not be imported, exported, re-exported, placed under suspensive customs regime, except the exceptions set in par. (2).

(2) The goods referred to in para. (1):

a) can be destroyed according to the legal norms in force or removed from the commercial circuits so as to avoid causing an injury to the holder, without any compensation, if the legislation do not provide otherwise, and with no any expense to the state;

b) are subject to any measure which final consequence consist of efficient depriving of the economic profits of the transaction of the concerned persons, except the cases when simply removal of the trademarks applied to counterfeit goods is not considered as a measure that would effectively deprive the persons involved of the economic benefits of the transaction;

c) can be returned free of charge, depending on their nature, to some public institutions, including of the social protection system, public associations or humanitarian foundations, sport associations or clubs, educational institutions of the state, some individuals who have suffered from natural disasters, if there is any written consent of the intellectual property owner and if the goods fit individuals consumption or use, as long as they are not commercialized.

(3) The measures referred to in para. (2) shall not preclude recovery by the owner of his rights in court, according to the law.

Article 306. Insurance

(1) Where goods liable to prejudice the rights on industrial designs, patents for invention, supplementary protection certificates or plant variety patents, the right holder or declarant / recipient of the goods has the opportunity to obtain release of the goods or cancelation of the detention of the goods, if a guarantee is set by them and if the following conditions are met:

a) the right holder has submitted to the customs authority the proof of formulation of an action in court;

b) it is not judicially ordered the goods seizure or freezing measure before ending of the time limits laid down in Art.304;

c) all the customs procedures are completed according to the legislation.

(2) The guarantee referred to in para. (1) shall be sufficient to protect the interests of the right holder and must be established according to paragraph (10) of the Art.127¹ and other norms of application of this Code. The establishment of this guarantee does not affect the use of any type of appeal by the right holder.

(3) If case the court action was brought otherwise than on initiative of the right holder on industrial designs, patents for invention, supplementary protection certificates or plant variety patents, the guarantee will be made available if, within 20 working days from the date of notification the right holder, the later does not prove the initiation of legal proceedings to which the goods referred to in para. (1).

(4) The period referred to in para. (3) may be extended to a maximum of 30 working days.

Article 307. Liability of customs authorities and right holders

(1) Acceptance of the applications for customs intervention does not entitle the right holder to request the customs authority any reward or damage compensation or, if the goods referred to in Art.301 were not detected by the customs authority.

(2) Withholding goods liable to infringe an intellectual property right and / or suspension of the customs clearance operation do not attract liability of customs authority towards the persons who can claim a right to the goods referred to in Art.301 to repair any damage caused by them as result of customs intervention.

(3) costs for deposit, handling and storage of the goods under customs supervision, as well the destruction costs or other related or similar expenses are on behalf of the intellectual property right holder or person importing these goods.

(4) In case of disclosure, contrary to legal provisions, of the information referred to in Art.304 para. (5, Customs officers may be disciplined in accordance with the legislation in force.

Article 308. Information provided by the public authorities to enforce intellectual property rights by the customs authorities

The State Agency on Intellectual Property will promptly provide the customs authority with the information necessary to identify the protected intellectual property rights and their holders.