

Efim Obreja, Viorelia Gasca , Natalia Calenic

The Customs Activity in the Republic of Moldova and Corruption



**TRANSPARENCY
INTERNATIONAL**
MOLDOVA

Chisinau, 2003

CZU 339.543 : 328.185 (478) = 111

O-16

AUTHORS:

Efim Obreja
Viorelia Gasca
Natalia Calenic

TRANSLATION INTO ENGLISH:

Victor Guzun

Descrierea CIP a Camerei Naționale a Cărții

Obreja, Efim

The Customs Activity in the Republic of Moldova and
Corruption / Efim Obreja, Viorelia Gasca, Natalia Calenic;
Transparency International - Moldova. – Ch.: Transparency
International - Moldova, 2003 (Bons Offices). – 135 p.

ISBN 9975-9776-0-X

500 ex.

339.543 : 328.185 (478) = 111

© Transparency International - Moldova, 2003

98, 31 August Str., 2004, Chișinău, MOLDOVA

Tel/Fax. (373-2) 237876

www.transparency.md

e-mail: office@transparency.md

ISBN 9975-9776-0-X

CONTENTS	3
Introduction	5
1. International Experience and Cooperation in Customs	6
2. Integrity in Customs	9
3. Legal Framework of the Customs Service	30
4. Quantitative Aspects of Customs Activity	36
5. Fighting Smuggling and Other Offenses of Law	40
6. Corruption in Customs	64
6.1 Forms and Causes of Corruption in Customs	64
6.2 Staff Issues	84
6.3 Wages of Customs Officials, Equipment of Customs	87
6.4 Procedures at Ports of Entry	91
Customs Regimes	91
Valuation of Goods in Customs	98
Customs Procedures	102
Information Technology	106
Preshipment Inspection	112
Conclusions and Recommendations	116
Bibliography	125

Introduction

Following the declaration of independence the Republic of Moldova launched the process of transition to market economy, the economic framework inextricably linked to the phenomenon of globalization. The economic development of the country is increasingly relying on the international cooperation.

One of the mechanisms targeted at safeguarding the economic security of the country is the customs system. Along with other states Moldova felt the need to create its own customs system within a short time framework. Under this strategy the customs institutions of Moldova (the ex-USSR abrogated customs system) were placed under the jurisdiction of Government of the Republic of Moldova.¹ The State Department for Customs Control² was established in accordance with the adopted decisions having its basic activity focused at the following: the customs clearance of goods and resources; establishment of inspection stations and ports of entry at the border; development of customs system of statistics and tariffs. Along with that were adopted decisions on establishment of ports of entry and customs control and on establishment of the Customs Inspectorate.³ A set of laws and decisions was adopted with the objective of governing the customs activity. Also, the Republic of Moldova concluded a set of bi- and multi-lateral agreements and acceded to several international instruments with the view of cooperating in the domain of customs control.

Starting with 1991 Moldova made significant effort for the development of standards and organizational structure of the customs activity. However, we have to state that within this period not everything was yet carried out for the integral implementation of principles of customs activity. At present the state of affairs in the customs service does not permit to state that the customs institutions are in full control of the implementation of responsibilities, that the objectives of provision of economic

security for the state, of protection of legitimate rights and interests of the person in customs are achieved. Within this period many problems emerged in the customs activity to be repeatedly brought to the attention of public. In the framework of the survey of customs, the issues of transparency and corruption are sure to stand out.

The objective of the present paper is to make a complex assessment of the customs activity in the Republic of Moldova, and also to ponder to the extent of possibilities on the problems existing in this domain and also to submit relevant recommendations for the improvement of the situation, the enhancement of efficiency of this activity, the provision of the state security, especially of the economic one, the protection of legitimate rights and interests of persons by the customs activity.

1. International Experience and Cooperation in Customs

The developed states with market economies have covered quite a long and complicated way for the establishment of the customs system. Different obstacles have been removed, quite a rich experience accumulated. The need for the protection of state economies (from low-quality and prohibited for circulation goods and objects, etc.), as well as the factor of economic integration made the multitude of initiatives contribute to the implementation of a range of mechanisms that nowadays stand for the basis of customs activity in these states. The development and implementation of the national and international mechanisms in the domain resulted in providing for economic security and integrated economic cooperation, this standing for decisive factors of welfare. For these reasons we consider it absolutely necessary that the mechanisms and principles developed by the industrial countries be put in the foundation of an efficient customs service, that the legal provisions of the Republic of Moldova comply with the internationally accepted principles.

In this respect it is necessary to mention:

- ***The Convention of the establishment of the Customs Cooperation Council***,⁴ which stipulates the objectives and tasks of the Customs Cooperation Council;

- ***The Kyoto international Convention for the simplification and harmonization of customs procedures***⁵;

The Kyoto Convention contains the basic rules referring to customs related activities, applicants, declaration of goods, goods accompanying documents, the filing, registration and inspection of declarations on goods, special procedures for authorized personnel, the inspection and clearance of goods, denial or liquidation of goods, taxes and duties, guarantees, customs control, utilization of information technologies, relations between the customs service and third persons, information, decisions and norms of the customs service, appeals against customs issues.

- ***The Nairobi international Convention of mutual administrative assistance for the prevention, investigation and repression of customs offences***;⁶

- ***The Declaration of the Customs Cooperation Council on Integrity in Customs (The Arusha Declaration)***⁷, etc.

An efficient activity in the framework of the customs system may take place only under conditions when a program on integrity in customs is implemented. There are possibilities for ***corruption to emerge in customs, for utilization of this system for illegal purposes and these are that contribute to economic degrading and weakening of the economic and political relations with other states***. The Arusha Declaration announces the very 12 principles which ought to be implemented for the provision of integrity in the customs institutions.

The Republic of Moldova is a relatively small country. Its development is not possible without an efficient economic cooperation with other states, and especially with the European ones.

On 11.28.1994 Moldova country signed the EU-Moldova Partnership and Cooperation Agreement (APC), effective since June 1998. According to Article 73 of this document, the cooperation in the customs service has as objective the provision of conformity of all decisions adopted in the framework of trade exchange and the adjustment of the customs procedure of the Republic of Moldova to the ones of the Community. In particular this cooperation will be focused at: the exchange of information, improvement of working procedures, implementation of the mixed nomenclature and of the single administrative document, interconnection between the Community transit systems and those of the Republic of Moldova; simplification of inspection procedures and formalities related to the transportation of goods; assistance in the introduction of advanced systems of customs information; organization of workshops and training for the staff.

APC stipulates that bringing the legislation of the Republic of Moldova to conformity with that of the Community is an important condition for the consolidation of economic ties between countries. For this reason, the Republic of Moldova should undertake the necessary measures to provide for the gradual increase of conformity of its legislation to that of the Community, in the domain of customs inclusive (Art. 50).

The text of the Agreement is accompanied by a Protocol on mutual assistance between administrative authorities on customs issues. This Protocol stipulates the terms and conditions for rendering mutual assistance in view of guarantying the correct application of the customs legislation, in particular by the prevention, identification and investigation of customs offenses.

These reasons explain the necessity of customs cooperation and harmonization of legislation. Moldova signed a set of bi- and multi-lateral agreements on customs cooperation with states from CIS, Romania⁸, Poland⁹, and Turkey¹⁰. Some of the agreements with the CIS countries make reference to the 1995 agreement on cooperation and mutual assistance¹¹ and on exemptions from

customs duties and taxes, issuance of special permits, transportation of regulatory documents, samples, measuring devices, samples of standards for metrological inspection and clearance¹², etc. These acts may possibly lose their value in the immediate future. According to some sources the Russian Federation announces its withdrawal¹³ from several agreements concluded with the CIS countries. It is also mentioned that the Russian Federation is no longer interested in participating in the agreements on common principles in tax and customs policies, regulation of social relations in the transnational companies and in the Convention of these companies, etc., the governments of the member-states shall be informed on this decision of Moscow by special notifications.

It is clear that for an efficient cooperation among states, the international Conventions may serve as the legal basis. With this goal, the Republic of Moldova acceded to the Convention of the establishment of the Customs Cooperation Council¹⁴, to the Nairobi Convention (07.20.2001)¹⁵, to the *Agreement on the establishment of the World Trade Organization*, concluded in Marrakech (15.04.1994), and to the Protocol of accession to the Marrakech Agreement.¹⁶

It is also necessary to simplify and harmonize the customs procedures. To achieve these goals it is necessary to accede to the Kyoto International Convention of the simplification and harmonization of customs procedures, which contains the basic rules of customs procedures.

2. Integrity in Customs

The international trade plays an important role for the developing countries. Yet the increase in international trade and the development of the global market should not be perceived outside the activity of customs institutions. The efficiency of customs procedures may have a significant impact on the economic competitiveness of countries, for this reason it is to their

advantage to have a customs service that would be characterized by integrity, competence, professionalism and conformity to international standards. On July 26, 2001 the Republic of Moldova acceded to the World Trade Organization and has to adjust to its standards.

Being a fundamental link in the range of international trade, of import-export, transit and other transactions, in their everyday activity the customs institutions are confronted with situations that test the integrity of every official of the customs and in general terms of integrity of the entire customs system. Regretfully, the customs stand for a ground which is propitious for the emergence of corruption, as it is directly responsible for fighting the cross-border offenses and the illegal traffic, especially smuggling and money laundering. On the other side the customs collect the largest part of the VAT, which constitutes the primary tax revenue for the budget. The evasion of VAT and other customs payments by committing corrupt practices give companies a considerable competitive advantage over their competitors, a fact that creates incentives for unofficial payments to the customs officials.

In other words the globalization and the continuous increase of international trade have transformed the customs into a point of control of certain large-scale economic resources and implicitly, increased the potential risks of power abuse and corruption.

Although the government undertook more than one action and implemented different programs and strategies of reform in the customs sector, the civil society considers that corruption is broadly spread in customs. According to a recent sociological survey, carried out by Transparency International – Moldova, in 2002 the customs turned out among those most often indulging in bribe-taking and personal relations. There is not a single shade of doubt that the customs service is contaminated by corruption.

In the era of globalization the corruption and operational inefficiency of the customs stand for major obstacles to the

practical implementation of the liberalized trade policies. The solution might be an ample reform that would stipulate the modernization of customs. The reform should comprise both the statutory and legislative framework and the organization of the activity, the management of human resources, the internal control, international cooperation, and also the collection of taxes, the investments, efficient control of the border, the introduction of information technology into the customs activity.

The adoption and implementation of certain programs and strategies aimed at the improvement of the customs system should have specific supportive principles in reference to the organization and activity of the customs institutions.

The organizational principles of customs are the following:

- The separation and structural centralization of the customs. This is characterized by a three level hierarchical system of customs institutions (the national, regional and local), being incorporated into a single and autonomous entity under the Ministry of Finance (the example of Bulgaria).
- The acceleration of customs procedures at the border and the transfer of the customs activities inland the country. It is implemented by the introduction of new customs procedures of two levels (customs inspection at the border and inland) based on the practices of the European Union, paying a special attention to the inland inspection (at the inland customs offices).
- The effective division of functions and terms of reference among the customs institutions. Has in its basis the possibility of a dynamic organization of the customs offices activity and the possibility of charging them with specific responsibilities, which depend on the place of location, intensity of traffic, type of transportation vehicles, type of transited goods, economic profile of the region, etc.
- An enormous work was carried out in the direction of certain principles of customs activity following the adoption of the

Declaration on integrity in customs by the World Customs Organization (WCO).

The Arusha Declaration states that if customs are corrupt, ***they do not provide the revenue due to the state do not efficiently fight the illegal traffic and hamper the increase of legitimate international trade and the economic growth.*** The customs enjoy no gratitude or public trust if the staff deliberately breaks the law. Following this, the Declaration identifies the key factors, which should be taken into consideration in a nation-wide program on integrity in customs. Its elements follow further:

1. Minimum administrative regulation;
2. Transparency;
3. Automation;
4. Strategic segregation of functions rotation of tasks and relocation of staff;
5. Responsibility and liability of the management;
6. Internal and external audit;
7. The morale and organizational culture;
8. Recruitment and selection;
9. Code of Conduct ;
10. Professional development;
11. Adequate reimbursement;
12. Communication between customs officials and business community,

The self-assessment Guide of the „Practical implementation of the Arusha WCO Declaration”, developed by the World Customs Organization (WCO), explains in detail the principles of integrity in customs.¹⁷ Hereinafter we shall dwell on each principle separately:

Minimum administrative regulation. The customs legislation should be clear and precise. The import tariffs should be moderate. The number of rates (i.e. of the duties and taxes) should be limited. The administrative regulation should be reduced to the absolute minimum. There should be as few exceptions from the standards as possible.

Every interested person should be entitled to have free access to the customs legislation. The practical consequences of the legislation should be regularly explained in detail to the public at large. The necessary changes, which are pressing, should be introduced under proper procedure into the customs legislation.

The laws, regulations, customs procedures and administrative acts should be harmonized and simplified for purposes of implementation of the customs duties assessment and customs clearance without unjustified delay. This process often involves the adoption of standards agreed at international level, for example by the Agreement of the World Trade Organization (WTO) on the customs valuation, the WTO Agreement on Trade-Related Aspects of Intellectual Property and the Kyoto revised Convention⁵. Also, the process of harmonization and simplification presumes the change or restructuring of the current system and procedures in view of reducing or eliminating the red tape, including the elimination of non-tariff regulations and/or redundant actions and duplication.

The principle is related both to the facilitation of trade and the removal of practices that encourage the emergence of corruption; for example the combination between the power of monopoly, the official discretionary and the minimal responsibility.

Transparency. The customs procedures should be simple, consistent and readily accessible. A procedure of appeals against customs decision should be enacted providing for the possibility of appeals and in the final instance for an independent court decision. These procedures may be based on the Kyoto Convention and should be provided so as to reduce to the minimum the inadequate exercise of discretionary authority.

Transparency is a key subject for all customs. The clients should enjoy a high degree of safety in their relations with the customs authorities. This can be achieved if the laws, regulations and customs procedures are public, accessible and are implemented in a consistent and uniform way. To provide for discretionary

authority not being abused, the basic criteria on the grounds of which these powers are implemented should be clearly defined and publicly available. The grounds and motives for the exercise of discretionary powers should be clearly documented and subsequently monitored and reviewed.

The standards referring to the customs clearance of the cargo and those referring to the customs services and procedures should be published. At the same time it is important to introduce time limits for the implementation of inspections of natural persons, goods and vehicles at the border and inland and also for the procedure of customs duties assessment. The utilization of time limits will result in the acceleration of the processes related to goods and to a considerable facilitation of the import, export and transit of goods, the failures to observe the time limits should be sanctioned.

Transparency is also assisted by the implementation of the corresponding provisions in reference to revision and appeals, which offer to the clients the opportunity to request revision or to appeal against potentially erroneous or unfair customs decisions. It would be ideal that additionally to the internal mechanisms, the provisions related to the appeals would also include the implementation of an independent hearing by the customs authority.

The development and implementation of revision or appeals mechanisms should strike an adequate balance between the necessity to initiate a process that is fair, accessible, time and money cost effective and the necessity to avoid a process based on frivolous appeals against decisions.

Reaching this level of transparency is not an easy task, yet it is of vital importance for the development of an ample program of integrity in customs. The existence of extremely complex regulations and procedures creates a fertile soil for the emergence of corrupt practices.

In this context it is necessary to lay the stress on the fact that the general revision of the systems of collection, processing and use

of information is of major importance for the improvement of activity of customs institutions, in particular being provided by the following activities:

- Establishment of a specific unit for the investigation and accumulation of information in the customs offices. The improvement of activity of these units and the provision of conditions for their operation by the introduction of new methods of operation, consolidation of facilities and supply of advanced specialized technical equipment.
- Creation of a new information database on offenses and infringements in customs and the provision of a permanent exchange of information between different agencies directly involved in fighting offenses and infringements in customs;
- Enhancement of coordination among customs offices, improvement of the infrastructure and communications;
- Encouragement of information exchange between customs and improvement of international cooperation;
- Utilization of the existing legal framework for information exchange among customs at international level.

Automation. The automation (including EDI – *electronic data interchange*) is a powerful tool in the fight against corruption and it should be used as a priority.

Automation or computerization may enhance the efficiency of customs. It may remove many opportunities for the emergence of corruption. Recognizing the potential of automation for the reduction and elimination of corruption, during the development, implementation or configuration of automated systems we are to make sure that they operate in a way that minimizes the direct contacts between the clients and customs officials, this reducing the opportunities for the discretionary actions of customs officials. The use of this principle is important also for the fact that it significantly enhances the responsiveness, responsibility and level of information management.

Even more so, we are to make sure that the points of vulnerability of the manual system are not to be reiterated in the automated system and that the new system does not translate this vulnerability into different acts of corruption on a segment of the process which is not subject to automation (for example, by insisting on the maintenance of the paper-based systems which duplicate or work in parallel with the automated one or by changing the place of collection of illegal taxes from the tax assessment to the cargo inspection).

It is necessary to acknowledge that the automated systems may be vulnerable to attacks and manipulations by both insiders and outsiders. If external consultants or contractors are involved, it is important to make sure that the adequate security controls are provided and that adequate surveillance and security systems are in place.

If sensitive information is kept in automated systems, adequate safeguards are to be set for the protection of information and identification of officials accessing it for personal purposes or contrary to the destination.

The mentioned above also refers to the implementation of payments. It is necessary to promote the payments via banking system (including the use of credit cards) in order to avoid the cash payment in customs.

The strategic segregation, rotation and reallocation. In view of reducing the opportunities for legal offences, the managers of customs institutions should use such tools as the strategic segregation of functions, the rotation of tasks and the random scheduling of examinations of officials and, under certain circumstances, the regular relocation of the staff.

The results of administrative controls may be improved by the removal of opportunities for the staff to keep vulnerable positions for a long period of time. For example, in order to provide for the staff not to develop close or inadequate relations with the clients,

the rotation of staff or mobility systems may be introduced so that officials change positions at regular intervals of time.

The administration should install mechanisms aimed at the provision of appointment of staff based on objective and pre-defined criteria and on registration of motives of these decisions. The customs officials who hold vulnerable positions, from the point of view of corruption, or hold them for a long period of time should be subject to frequent rotation.

Also, to make sure that clients do not have to deal with just one single customs official, who by virtue of discretionary power may request an illegal tax for the implementation of terms of reference, the segregation of work may be applied so that a certain number of customs officials implement these discretionary functions.

Without perturbing the operational efficiency or the facilitation goals, the working places should be structured so that the exercise of discretionary powers by individual officials depends on other officials. For example, according to accounting practices, the official should not have the possibility to levy and certify payments.

In cases when examinations or inspections are to be carried out, the tasks should be given to individual officials at random and not on grounds of type of commodity, industry or geographical location. The implementation of examinations or inspections should be subject to regular and independent auditing.

Responsibility and liability of the management. As their primary responsibility the managers should have the identification of vulnerable points in the working procedures and in the integrity of staff and also the implementation of corrective activities. The need for the establishment and operation of a clearly defined system of surveillance of decision making with specifically identified responsibilities is an important element of any integrity program. The customs officials, supervisors, managers, all should accept an adequate level of responsibility and liability for the

prevention and detection of corrupt offences. At starting points managers should work with the staff in order to assess the administrative systems and safeguards of the organization for purposes of identifying the points of vulnerability to corruption.

However, the adequate supervision and decision making will only be successful if the responsibilities and the stipulated conduct are adequately modeled by the members of the top management. The importance of personal example may not be underestimated. If the conduct of senior officials is not regarded as consistent with the provisions of the Code of Conduct, the anti-corruption strategies are doomed to fail. In conclusion, the senior officials should not only be free from corruption, but should also be seen by their subalterns as alien to any form of corruption.

In order to encourage the maintenance of adequate supervision practices and of peer pressure, the customs may appeal to broadening the scope of liability for corrupt conduct by including the supervisors and the working team members into it. For example, a system of responsibility may be introduced to make the supervisor at least partially liable for the mistakes of staff. Such a system of responsibility may also be extended to the members of the working teams that the corrupt individual belongs to. The staff at all levels should be encouraged to accept an adequate level of responsibility for the identification and reporting of integrity offenses. Few corrupt practices are committed without knowledge of others.

The restructuring of the organizational framework and the improvement of the managerial system and internal communication, also the modernization of the infrastructure, supply of highly-performing equipment, significantly consolidate the reform of the entire customs system.

Internal and external audit. The internal and external audit is essential for a good operation of customs institutions. An efficient internal audit is an extremely useful tool for achieving conformity and correct implementation of customs procedures. The structure

of the internal audit should be supplemented by a unit of internal affairs having specific responsibility for combating offenses.

The prevention of corruption in customs may be assisted by the implementation of a range of adequate mechanisms, such as the adoption and implementation of internal programs of verification, random examination of samples and the implementation of controls without notification. At that, the internal and external audit is important for a proper operation of an adequate control mechanism. The capacity of active investigation of corruption allegations has a significant role, as the controls, sanctions and penalties make little sense if the real rate of detection is low.

Although the adequate and prompt sanctioning of customs officials who commit offenses is of fundamental importance, the efficient use of publicity mechanisms will put a certain pressure on the activity of the entire customs.

To prevent the collusion of customs officials and clients and in order to avoid cases when the clients might anticipate the actions of customs, a special unit may be established, comprising staff from different units of the organization under the leadership of a senior official. This unit would have the mission to implement special operations at irregular intervals without prior notification or could initiate controls at different high risk customs points.

For the investigation of allegations of corruption, the organization should have proper tools to verify the secured information. This may result in the establishment of an internal unit having sufficient autonomy for carrying out investigation in an impartial and professional way. The persons selected for this job should be trained, have the support of the management and be free of any suspicion in the part of integrity.

If complex investigations are necessary or if corruption in an organization is spread at large, access to an independent authority should be provided for fighting corruption. An example of success is the Hong Kong independent Commission against corruption¹⁸.

The customs officials, clients and the public at large should also be encouraged to provide information to the customs institutions on allegations of corrupt, unethical and illegal activity. When such information becomes available, it should be thoroughly investigated providing guarantees of confidentiality.

The provision of strict confidentiality and of prompt actions should be based on a special channel to be used for reporting corrupt practices, identified by the customs officials, directly to the top management level. Alternatively, the staff may directly report to an independent anti-corruption authority.

A useful practice for Customs Department might be the regular publication of its financial results. Also, a hot telephone line might be established for the citizens and customs officials to provide on terms of confidentiality information on allegations of customs officials' inadequate conduct. This information must be accessible only to the special unit of internal audit or investigation. The information on cases of detection of corruption in customs should be publicized and proper sanctions applied, providing for the confidentiality of identities.

For purposes of effective internal control and surveillance the measures undertaken by a customs official are to be properly documented. The documentation should contain the timeframe of customs clearance thus facilitating the establishment of time standards for the future.

The morale and organizational culture. The management should inspire the customs officials with the spirit of loyalty and pride for their service, an „esprit de corps” and with the willingness to cooperate in activities for the reduction of exposure to the factor of corruption.

In particular corruption threatens the units where the morale or „esprit de corps” is low and where the officials are not proud of the performance of their service. Also, it will spread in the units where the internal practices encourage, incite and conceal the

offences and where there is discrepancy between the propagated code of conduct and the real practices. There is little probability that the staff will act with integrity if the morale is low for lack of a procedural equity, weak practices relating to the management of human resources and lack of reasonable opportunities for advancement in career.

For an efficient fighting of corruption it is necessary to have the staff at all levels actively involved in the effort for integrity. Without support and devotion of the staff, the strategies initiated for the development of integrity in most cases will fail. The general support of the customs management and of the entire team of executive management is also an integral element of this process. In some cases it might be necessary to carry out an enormous work in order to change the opinions of the customs staff and clients as to their perception of corruption.

Recruitment and selection. The processes of recruitment and promotion of customs officials should be objective and immune to any form of intervention. They should include means for the identification of candidates who display standards of personal ethics.

The administrative processes of recruitment and promotion should be fair, objective, bias or interference free and based on criteria of merit. The procedures of selection and recruitment of staff should be targeted at the selection on grounds of incorruptibility, academic, professional and/or technical expertise.

In order to make sure that the staff meets these requirements, it is pressing to make a careful selection of the potential customs officials by the examination of records of earlier positions and/or of guarantees of honesty. Even more so, if corruption is relatively endemic in a society, it might be necessary to have the staff recruited from other state institutions known for honesty, be it from the private service or from international institutions. Or, it might be necessary to apply to external experts for examination and proposals on the improvement of internal selection procedures. Such a policy is especially important for the jobs

where the exercise of discretionary powers is inevitable and where the supervision is difficult.

To make sure the process of recruitment and promotion of staff is objective and immune to any interference, each recruitment committee should consist of independent members, selected from different structural units of the organization. This arrangement can minimize the number of cases of nepotism and corruption.

Some countries, for example the Czech Republic, in the case of recruitment of candidates for the customs service, practice the cooperation between the customs service and psychologists.

The Code of Conduct. The customs staff should have a Code of Conduct, the implications of which are to be explained in detail. It is necessary avail of efficient measures of sanctioning, the option of dismissal inclusive.

A key element of any integrity program is the publication and adoption of a comprehensive Code of Conduct that in very practical and clear terms would describe the conduct expected from all customs officials. The document should include the responsibilities of everybody for the prevention and detection of corruption and the penalties associated with the infringements of the Code. Additionally, there might be included provisions to provide for the customs officials annual declaration of their investments, amount of assets and liabilities.

The customs might think that if a general Code of Conduct exists for the public service, one specifically for customs would not be necessary. However, there are certain advantages in having a customs Code of Conduct that would recognize the unique role of customs and the higher standards of conduct required for the customs environment. Such a code should supplement but not replace the general code of the public service.

The development of the Code of Conduct may play an important role in the change of the current mixture of incentives and penalties. In other words, the Code of Conduct should convince

the staff that it is better to be productive and fight corruption than have an illegal and unethical conduct.

The key elements of a Code of Conduct¹⁹ or of a Code of Ethics are the following:

- Responsibility and personal involvement of all officials;
- Unconditional observation of the law;
- Improvement of relations with the public;
- Settlement of the problem of gifts, reimbursements and discounts;
- Prevention of conflicts of interests;
- Political activity;
- Conduct in cases of issues related to money;
- Confidentiality and use of official information;
- Use of property and services belonging to the customs;
- Private procurement of state property by the officials;
- Working environment.

As previously mentioned, the adequate conditions for recruitment and reimbursement should be supportive of the Code of Conduct, be optimal and to creative of incentives for an ethical conduct.

The anti-corruption efforts would be more efficient if the system of penalties is sufficient to actually prevent a corrupt conduct. It is necessary to establish specific penalties for the infringement of the Code of Conduct, for example the fines and dismissal for serious offenses, the simple pressure, restrictions, transfers, reduction of autonomy or discretionary powers, demotion of professional status and negative public opinion.

The Code of Conduct should be included into the initial training programs and be accessible for the new staff immediately after recruitment.

Professional development. The customs officials should benefit from adequate professional training alongside with studying the issues of ethics and integrity throughout the entire career.

The education and training, both formal and informal, have a major role in the fight against corruption and have two-ways impact. First of all, they offer to customs officials an adequate professional development, thus enhancing their technical expertise. In this way the informal on-job training becomes redundant.

Secondly, it offers opportunities to the organization to regularly reinforce the message of integrity and anti-corruption. This approach is of particular benefit to an organization with a formal Code of Conduct. The training should be focused at the standards of conduct expected from all the officials and on the mechanisms available for reporting on the infringement of the Code. Whenever possible it is necessary to promote the sense of group or mutual responsibility.

In order to maintain the credibility of the formal and informal training it is essential that it adequately reflects the real situation at the workplace.

Adequate reimbursement. The reimbursement of customs officials, a factor of extreme importance due to their professional status, should be sufficient to afford them a decent standard of living and, under certain circumstance, may include social benefits like medical care and residence facilities and/or incentive payments (supplements, bonuses, etc.).

On proper grounds the severe penalties imposed for infringement of the Code of Conduct will be easier comprehended when the difficult working environment and the required levels of integrity are supported by the amount of reimbursement.

The subject of adequate payment or reimbursement is still one of extreme difficulty for the customs. It is absolutely clear that the official reimbursement may never be at a level preventing all the corrupt conduct; however the rates of payment should be sufficient to provide that the officials are not tempted to accept poorly paid governmental jobs on the assumption of supplementing their income by illegal commissions.

Whatever the integrity strategies are, if wages are inadequate it will be difficult to eliminate corruption from the customs service.

In order to reimburse persons and enforce particular conduct which reduces or keeps corruption under control it is necessary to award bonuses. For example, systems of performance evaluation may be used to encourage the model conduct. Also, the staff may be reimbursed for the identification of new circumstances under which corruption may emerge and for suggestions on improving the control procedures. Additionally, the transfer, training, delegation and publicity may be used as non-pecuniary incentives aimed at encouraging the positive conduct.

However, even if the staff enjoys a reimbursement sufficient for decent standards of life, it is necessary to take make sure that officials do not make exaggerated expenses getting into considerable debt. The staff that has large debt problems may be more vulnerable to corruption. If the official is identified as having severe financial difficulties, he should benefit of counseling and permanent supervision, and, if that is the case, be transferred away from the areas of high risk.

Communication between customs officials and business community. The customs should encourage an open and transparent communication of the customs officials with the corresponding sectors of the business community. The liaison committee is useful in this sense.

As the majority of principles of Arusha Declaration are focused at the strategies minimizing the corruption in customs, it is also important to pay attention to the central role of the clients in keeping corruption under control. Different forms of administrative corruption require the active implication of external partners. This is recognized by the rules of conduct for combating extortion and bribery stipulated by the International Chamber of Commerce, by UN Declaration against corruption and bribery in international commercial transactions and by OECD Convention of combating bribery of foreign public officials.

Thus the efficient cooperation with the clients is important for securing the support and cooperation of the former for the surveillance and elimination of corruption. Indeed, the groups of clients should accept a corresponding level of responsibility for the problem, for the identification and implementation of adequate solutions.

Also, the idea of establishing liaison committees may be taken into consideration so that problems of mutual interest, including the activities for the prevention of corruption, are discussed with different groups of clients or with different industries. The liaison committees offer the customs an important tool for clear communication of the standards of conduct expected from clients. In some cases it is possible to recommend the establishment of a mixed customs/client unit against corruption targeted at identifying practical solutions and not only the corrupt officials.

The clients, public at large, third persons, banking institutions and the business associations may offer potential information sources on the most vulnerable points of the organization or real cases of corruption. The supply of this information may be facilitated by providing anonymity guarantees, by encouraging the staff and citizens report corrupt practices, by the establishment of hot lines and of special post boxes on the territory of the customs institutions, offices and points for confidential messages and complaints delivered by shippers, transport agents, passengers, representatives of companies, etc. Certainly, if this information is to be disseminated to the public at large, it should be thoroughly investigated and, if proven, be used in conformity with the relevant procedure. For example, the Customs of India created a web page encouraging the clients and the general public to report cases and allegations of corruption.

The strengthening of cooperation between the customs, economic agents, businessmen and common citizens presumes that they are informed on the rights and duties of customs officials. Citizens should know to who they may appeal if customs officials do not

meet their terms of reference properly. This will considerably restrict the number of abuses of official status and of infringement of rights and interests of clients by the customs officials.

Also, there is a need to examine the complaints of citizens and clients within shortest period of time. At present the responses to complaints are deliberately delayed, the laws are interpreted arbitrarily, etc. and under these circumstances the corruption in customs increases.

At that the penalties for corrupt conduct should suffice to provide that groups of clients, being satisfied with a prompt customs clearance of their goods, do not add to the problem by bribes or other informal payments.

The information brochures in customs may contain information on the prohibition of direct payments to customs officials, except for the cases when the payments are collected by a cashier responsible to certify the payment by official receipt.

It is important to develop new forms of cooperation between the law enforcement institutions for fighting and preventing smuggling, trafficking, illegal import and the corrupt practices accompanying them. Another aspect of cooperation is the exchange of information between customs and the tax service. The introduction of permanent and mandatory procedures for regular collation of data in customs and the income declarations will provide a maximal conformity and will consolidate the reform endeavors of the customs service. This also refers to the establishment of an integrated information system in customs and also of a system for mutual exchange of intelligence between the customs offices at the borders of neighboring states.

Speaking about the principles of the customs service, especially about the Arusha Declaration, it is absolutely necessary to mention the *Kyoto Convention of the World Customs Organization*. The International Convention of the simplification and harmonization of customs procedures (the Kyoto

Convention) came into effect in 1974. It was revised for purposes of meeting the advanced requirements of governance and international trade. The Council of the World Customs Organization adopted the Kyoto revised Convention in June 1999 as model for advanced and efficient customs procedures in the 21st century. The process of revision has introduced important concepts, like the application of new technologies, the implementation of the new concepts of customs control and the will of partners from the private sector to get involved in mutually advantageous alliances with customs institutions.

Among the new principles of the Kyoto Convention, the most important is the commitment of customs to provide for transparency and predictability in aspects of international trade.

Additionally, the customs institutions undertake the commitments to use the risk management techniques, to cooperate with other authorities and relevant business communities and to implement the corresponding international standards.

The Kyoto revised Convention promotes the facilitation of trade and efficient controls, stipulating in details the application of certain simple, yet efficient procedures aimed at offering a maximal level of facilitation for goods and passengers. The revised Convention also contains new and mandatory rules to be applied and accepted without reservations by all contracting parties.

According to this Convention, advanced customs should implement the following principles:

- Unified and simplified procedures;
- Development and continuous improvement of customs procedures;
- Maximal use of information technologies;
- A relationship of partnership between customs and tradesmen;

The key elements to be applied by the advanced customs, according to the Convention, are the following:

- Maximal use of automated systems and information technologies. This principle stipulated the use of international standards, consultations with all interested parties, introduction of computerized request (via use of computer), methods of electronic as an alternative to paper-written requests and the strategy of electronic trade (the support initiative);
- The use of risk management techniques (including the risk assessment and the selective nature of controls). This principle stipulates the identification on grounds of analysis of high risk cargoes, the transition from general documentary and physical controls to selective, the facilitation of legitimate trade, and with all that the maintenance of an efficient control, the efficient use of customs resources;
- Standardization and simplification of the declaration of goods and accompanying documents. This principle stipulates the minimal requirements referring to data, electronic filing of documents and development of a specimen of customs data;
- Use of wire transfer of funds;
- Interventions coordinated with other agents. This principle requires the implementation of the mixed inspection together with other border institutions.
- Provision of free access to the information on requirements, laws, rules and customs regulations. This principle relates to the rules of information supply;
- Providing a transparent system of appeals on customs problems. This principle refers to clear and transparent appeals procedures (to customs, independent authority, judiciary);
- The regulations simplified procedures for authorized clients having due registries of conformity. This principle stipulates the clearance of goods and the supply of the minimal information for identification (the subsequent filing of the declaration);

- The regulation of the minimal control necessary for the provision of conformity;
- Audit-based control. This principle also stipulates the audit after customs clearance;
- Consultative and partnership relations with the business community. This principle stipulates the formal consultative relations, the dissemination of information and of Memoranda of Understanding (MoU);

The acts of the World Customs Organization (declarations, conventions, etc.) and the WTO Doha principles on trade facilitation, adopted by the World Trade Organization, are compatible and complementary. Thus, the Kyoto Convention indicates the instruments for the implementation of the principles stipulated in the Doha Declaration of the World Trade Organization on the facilitation of trade (November 2001).

In conclusion, the adoption and implementation of certain principles of organization and activity of customs are indispensable for the implementation of an effective reform resulting in an actual curbing of corruption in customs.

3. Legal Framework of the Customs Service

In view of creating the regulatory basis of the customs service, the Parliament of the Republic of Moldova adopted a set of laws and decisions, the major ones being the following:

- Law on the state border;
- Law on entry/exit into/from the Republic of Moldova;
- Law on the customs tariff;
- Law on the state regulation of external trade;
- Law on service in customs;
- Customs Code;
- Law on control of export, re-export, import and transit of strategic goods;
- Law on import/export of goods by natural persons to/from the Republic of Moldova;

- Law on preshipment inspection, other laws and decisions of Parliament.

*The Law on service in customs*²⁰ governs the recruitment, dismissal, re-appointment in service in customs, implementation and terms of service in customs. According to this law the service in customs is a special type of activity in the public service by which functions, rights and duties relating to the system of law enforcement are exercised.

*Customs Code*²¹ stipulates the legal, economic and organizational principles of the customs service targeted at the protection of sovereignty and economic security of Moldova. The Customs Code stipulates that the customs service promotes the customs policy; provides for the observation of customs regulations during the transit of goods, vehicles and persons across the customs border of the Republic of Moldova, the collection of import and export dues, the customs clearance and supervision, other activities of customs policy and the conformity of implementation of the customs service in compliance with international norms and practices.

According to the Customs Code the customs policy is an integral part of the external and internal policy of the state and is targeted at providing the efficiency of customs service, at the regulation of commodity exchange on the customs territory of the Republic of Moldova, at the contribution to implementation of political and trade policy in reference to the protection of the internal market and at the stimulation of development of the national economy, other objectives stipulated by law. The Customs Code regulates the entire organization of the customs service. The Code includes the functions of the customs institutions; the provisions referring to the crossing of border for goods and vehicles, the customs regimes (import, transit, customs storage, duty free shop, free area, export, etc.), the import and export dues (customs duties, VAT, excises, customs procedures fees, etc), the assessment and payment of dues, customs clearance procedures; provisions

relating to provisional storage, customs brokers, customs transport, declaration, customs control, customs benefits granted to certain categories of foreign persons, customs value of goods, identification of country of origin of goods, possession of goods and vehicles and money proceeds gained from their sale, the investigation operations activity, criminal and preliminary investigation by customs institutions, customs offences and liability, procedures in case of customs offences and their investigation; appeals against decisions, action or inaction of customs institutions and officials; the application of sanctions at the border for the protection of intellectual property; the provisions referring to customs officials and also the implementation of customs statistics, etc.

According to the Customs Code the implementation of the customs service is carried out by customs institutions which stand for the law enforcement entity and constitute a unified system consisting of the Customs Department as the specialized central authority, of customs offices and posts. According to the Code, the customs institution has the following terms of reference:

- Participates in the development of state customs policy and promotes it;
- Provides for the observation of the customs law;
- Protects the legitimate rights and interests of the person by the customs activity;
- Contributes within limits of competence to safeguarding the economic state security;
- Protects the economic interests of the state;
- Implements the customs procedures for the regulation of economic and business relations;
- Collects the import and export dues;
- Participates in the development of activities of economic policy on the transit of goods across the customs border and implements other activities;

- Fights smuggling, infringements of customs laws and regulations relating to goods crossing the customs border; prevents the illegal crossing of border of narcotic substances, weapons, objects of art, objects of historic and archaeological value, objects of intellectual property, species of animals and plants, etc.;
- Contributes to fighting international terrorism;
- Exercises and improves the customs control, carries out the customs clearance, creates conditions for acceleration of transit of goods across the customs border; exercises other functions stipulated by law.

*Law on customs tariff*²² stipulates the procedure for the assessment and collection of customs tariffs on goods imported/exported to/from the Republic of Moldova, the rules of assessment of customs tariffs and also the methods of assessment of the value of goods and of their country of origin. The purpose of application of the customs tariff is the streamlining of the goods import structure, the balancing of import and export of goods, the protection of internal producers of goods; the creation of favorable conditions for the integration of economy of the Republic of Moldova into the world economy.

*Law on import/export of goods to/from the Republic of Moldova by natural persons*²³ stipulates the procedure for crossing the customs border of the Republic of Moldova by goods, personal use objects and vehicles belonging to natural persons.

*Law on entry/exit to/from the Republic of Moldova*²⁴ guarantees to citizens of the Republic of Moldova, to foreign citizens and citizens of the world the right to entry/exit to/from the Republic of Moldova, establishes temporary restrictions on this right, regulates the procedure for issuance of entry/exit documents and of settles the litigations concerning their issuance.

The customs service is indispensably linked to the state border. The *Law on the state border of the Republic of Moldova*²⁵ also governs the state border regime and the procedures at the port-of-

entry. The ports of entry for persons, vehicles, commodities and other goods are stipulated here, the settlement of incidents related to the infringement of the state border regime, the procedure for the entry (exit) of persons, vehicles, import (export) of commodities and other goods, the stay in the ports of entry of persons and vehicles.

The respective stipulations, in their majority, seem to be sufficiently clear and appropriate for the legal basis and for the regulation of the customs service. The more so the law stipulates that “the customs service is carried out in conformity with the international norms and practice”. On the grounds of legal provisions there had been adopted a set of decisions of government which regulate the customs service. For example, on the grounds of Customs Code there had been adopted Regulations on the customs procedures²⁶.

Also, there had been developed acts of standard of the Customs Department.

This outlines the considerable amount of work carried out for the creation of the regulatory framework. The development and adoption of regulatory acts has been targeted at overcoming more than one difficulty. In the result of this in many cases the needed legal provisions had been adopted with relatively lengthy delays on the background of processes taking place in the society and of today’s needs for the provision of state economic security. Each time the lack of corresponding provisions or their adoption with delays were giving rise to gaps in the activity for provision of economic state security, inevitably resulting in the continuous economic degradation of the country.

At the same time the customs service has to confront a range of problems, including the ones of legislative order. During recent years the issues of implementation of the pre-shipment inspection stood out, of the time consumed for crossing the border, the implementation of the mixed control by customs services of neighboring states, the use of risk management and analysis, the

use of information technology and electronic communication devices for the improvement of customs control and also the international standards under the provisions of the Kyoto Convention, etc.

The practice also shows that for the improvement of the procedure for customs declaration filing, it is necessary to avail of a large number of documents and authorizations. According to the results of the public survey, carried out during 2000-2002²⁷, the customs procedures stand out among the main obstacles on the way of implementation of import/export activities. It is increasingly necessary to simplify these procedures, to unify and improve the legislation. In the result of this, the accession of the Republic of Moldova to the Kyoto international Convention of the simplification and harmonization of customs procedures has acquired a shade of pressing necessity.

It should be mentioned that the laws, decisions of Parliament and Government, other government regulatory acts, are as a rule published in the Monitorul Oficial and may be accessed via Internet²⁸. Some acts or standards are published in the mass media of economic profile. With all that the access to the regulatory acts is not that free as desirable. Many entrepreneurs from small businesses and even more the public at large, for material reasons often can not access the Monitorul Oficial or the Internet. The documents are insufficient in number even for the activity of the customs officials. Often the legal provisions are not regularly explained in detail to citizens. Many persons are confronted with the consequences of failures to observe the customs law at ports of entry. In other cases the customs law is invoked in the mass media usually in the context of customs infringements or in connection with the development or adoption of legal provisions, special attention being paid to certain categories of entrepreneurs. Hence the problem and need for the dissemination of the customs legal provisions.

Also in this compartment it is necessary to mention that in certain cases the legal provisions are of a generalized nature and require additional regulations for implementation. For reasons that the necessary acts are developed with delay in time, in the current activity have been governed by regulations and orders issued by the Customs Department which have not been subject to legal expertise and were not even published in the Monitorul Oficial, and in the absence of the former the decisions of the customs authorities were based on administrative instructions and personal interpretation.

Other problems relating to law are reflected in the respective chapters.

4. Quantitative Aspects of Customs Activity

It may be said that one of the basic parameters on the grounds of which the everyday activity of customs is evaluated is the volume and quality of customs operations, which in their turn reflect the quality of customs clearance, collection of import and export dues, creation of conditions for the acceleration of traffic of goods across the customs border, the circulation of citizens and vehicles. The main objective of this activity is the provision of the state economic security.

The statistic data show that under consistent implementation of the market economy principles and expansion of globalization processes, the economic activities of the Republic of Moldova have an internationally increasing impact. Thus the external trade in 2002 registered a volume of about 26.6 billion Lei. The economic agents implemented more than 230.5 thousand external transactions or by approximately 90 thousand more than in 2001, the share of the import transactions being of approximately 73 per cent. The volume of the exports constituted about 11.1 billion Lei and of imports about 15.6 billion Lei. The volume of imported goods increased comparatively to 2001 by 3.5 billion Lei and the volume of imported goods by 4.1 billion Lei. Thus customs collected duties, subsequently transferred to the budget, in the

amount of about 2.5 billion Lei, i.e. by 1.634 billion Lei more than in 2001. In 2002 the customs border of the Republic of Moldova was crossed in both directions by approximately 6 million persons. Comparatively to 2001 the number of travelers in both directions increased by approximately 2 million persons. At the same time, in 2002 the customs border was crossed by approximately 780 thousand auto cars or by 110 thousand more than during the previous year. Comparatively to 2001 in 2002 the number of trucks subject to customs control increased by 1.3 times, the total amount being 235 thousand. The customs registered an increase of about 20 per cent of the cargo railway cars and by approximately 70 per cent of cargo flights. On the other side there has been registered a considerable reduction of railway passenger cars crossing the customs border-75.5 thousand, by approximately 35 per cent less than in 2001 and also a reduction by 1.1 per cent of the number of passenger flights.²⁹

During the first five months of 2003 the border of Moldova was crossed by about 2.2 million passengers, 28.1 thousand buses, 54.1 thousand trucks and 305.1 auto cars.³⁰

During the first half of 2003 the economic agents of the Republic of Moldova carried out more than 78.7 thousand transactions in external trade, by 12.6 thousand more compared to the same period of the previous year. According to the data of the information centre “Vama” the export involved 28.9 thousand customs operations, the import - 49.8 thousand. The economic agents exported goods in the amount of 6.463 billion Lei (\$ US 461.64 million) an increase of 1.712 billion Lei (\$ US 122.29 million), the imports were assessed at 9.239 billion Lei (\$ US 659.9 million) – by 2.483 billion Lei (\$US 177.35 million) more than during the first 6 months of 2002. During transit operations there had been filed 39.2 thousand customs declarations, by 6.4 thousand more than in the first 6 months of 2002.³¹

During seven months of 2003 from the Chisinau International Airport there had been transported by regular and charter flights

175,750 passengers i.e. by approximately 10 per cent more than during the similar period of 2002.³²

These data display that the volume of goods, number of passengers and of vehicles subject to customs clearance is on continuous rise. With all that the workload for the customs is lower compared to the one of similar institutions from many developed countries of Europe, where the turnover of goods, vehicles and passenger is clearly much higher. In spite of this, there had been registered lengthy stays at the customs points or offices, but especially so at the temporary deposits (also called 'terminals') for the customs clearance of goods. For example, sometimes the customs clearance takes 5 to 7 days, which is very long for the economic agents and may cause considerable prejudice to their activity. Many of the economic agents suffered for reasons of products deterioration due to lengthy customs clearance at ports of entry. Additionally to the level of professionalism of customs officials, even the law stipulates exaggerated terms. According to the Customs Code, the goods and carriers may stay in the provisional deposit for up to 2 months (Art.160), the corroboration of the customs declaration, documents and required information, the inspection of goods and carriers is implemented by customs within term of up to 10 days from the day of declaration filing, the inspection of live animals and easily perishable goods - up to 3 days (Art. 199). Taking into account the current conditions it is not hard to imagine what may happen to the easily perishable or other goods after so long a time and what the impact on the economic activity of the entrepreneurs would be.

As mentioned before, the effective law does not regulate the system of risk management and its analysis during the customs clearance, even if selective customs clearance is stipulated by the Customs Code (Art.192). With all that the risk management system has started to be used by the customs de facto. Thus, in spite of the absence of legal provisions, the Regulations on the

procedure of filing declarations and implementation of customs clearance came into effect by order of the Customs Department, # 108-0 of 06.04.2003, starting with June 9 current year. Of the participants to external economic activity a „group of trustees” was made– 121 companies were granted the benefit of simplified customs clearance. These companies establish specific customs units in charge for the correctness of declarations. The clearance of the imported or exported goods belonging to these companies is carried out on the grounds of filed declarations without physical inspection of the cargo. The customs reserve the right to implement random controls. In the case of infringements, the identified companies are sanctioned and excluded from the “group of trustees”. The criteria for the selection of companies are: absence of debt to the budget and customs, no claims and objections on behalf of the customs for at least the last year. The inclusion into the list is made on grounds of applications from companies; it is expected to create incentives for a legitimate activity of the participants to the external economic activity and, at the same time, will limit the direct contact of the former with the customs officials.³³ In general terms, this is one of the mechanisms of risk management and analysis while carrying out the customs clearance. Also here it is possible to mention that the order of the Customs Department, along with other departmental acts, was not published in the Monitorul Oficial and for this reason the society knows of only some aspects of this order from the mass media, this conflicting with the effective law. In order for this system not to become a form of abuse on behalf of customs, it is necessary to make addenda to the Customs Code by which the system of risk management and analysis would be clearly regulated.

At the same time, taking into account the tendency of increase of commodity fluxes at the border of Moldova, it is necessary to consolidate the professionalism of customs officials in the application of advanced methods of customs clearance.

The volume of customs activity is increasing. For this reason its quality, which determines the efficiency in fighting smuggling, infringement of customs and tax law in the part of goods crossing the border, is another function of customs that is important for the state. At the same time the quality of customs control also determines the level of protection of the legitimate interests or persons at having commodities or other goods cross the customs border. It's just this activity by which customs contribute to the provision of state economic security.

5. Fighting Smuggling and Other Offenses of Law

Before adoption and implementation of the new Criminal Code, fighting of smuggling was carried out by the Service for Information and Security, the Customs Department, the institutions of interior, prosecution and by the Centre for Fighting Economic Crime and Corruption. According to the new Criminal Code (effective from 06.12.2003), the fighting of corruption belongs to the competence of criminal investigation of the Customs Department and of the Centre for Fighting Economic Crime and Corruption.

According to the statistic data of the Ministry of Interior, on the territory of the Republic of Moldova³⁴ all law enforcement institutions registered the following number of cases of smuggling: 1998 – 15; 1999 – 124; 2000 – 195; 2001 – 282; 2002 – 219; in the first four months of 2003 – 138 offenses. Out of the total, the major share of detection belongs to the Ministry of Interior, for example during four months of 2003 out of 138 cases of smuggling, 117 were detected by the officials of the interior; 14 – by customs and 7 – by the Centre for Fighting Economic Crime and Corruption. The assessed amount of damage registered in the criminal cases in 2002 was 18.08 million Lei; for cases under investigation in 2002, including some cases from previous years, the amount was of 31.65 million Lei. The practice shows that the smuggling of goods dominates (alcohol, oil and tobacco products, medicines, chemical products, consumer goods, auto

cars, stolen inclusive, etc.), and the real damage caused to the state in the result of smuggling is estimated at about two billion Lei on annual basis, a significant amount for the country.

According to the data of the Parliamentary Commission⁴⁰ in the period of 2000–2002 the law enforcement institutions initiated 1613 cases (see Table 1). Of this amount for absence of *corpus delicti* 402 cases were dismissed (about 25%).

Table 1. Information on initiation of investigation and dismissing criminal cases on smuggling

Institution	2000	2001	2002	Total	Dismissed for absence of <i>corpus delicti</i>	Percentage of dismissed cases
Prosecution	-	-	118	118	35	30%
MoI	308	450	467	1225	293	24%
SIS	-	-	92	92	20	22%
CFECC	-	-	5	5	-	-
Customs	67	67	39	173	54	31%
TOTAL	375	517	721	1613	402	25%

According to the Administrative Code customs are entitled to investigate the administrative infringements related to customs (Art.193) and also to transportation, storage or sales of goods that are excise taxable in cases of absence of control or excise stamps (Art.152¹⁰).

From June 1999 the Customs Department as law enforcement institution was granted the entitlement to carry out criminal investigation³⁵ and from December 1999-the function of implementing operations investigation activity³⁶. At present the criminal investigation entities of the Customs Department carry out under the Criminal Code³⁷ the prosecution³⁸ in cases of offenses stipulated by Art. 248 (smuggling; in the dated Criminal Code-Art. 75) and in Art. 249 (evasion from payment of customs duties; in the dated Code Art. 164⁸).

In view of implementing these functions the Customs Department established the division for fighting smuggling and customs offenses with two units correspondingly specialized on smuggling criminal investigation.³⁹ By the end of 2002 the unit for fighting smuggling was staffed with 62 persons; the unit for criminal investigation- with 5 persons. Also, another entity was created within the Customs Department, the operations division, which has not been staffed for 3 years already, an indicator that the operations activity is not carried out.⁴⁰

The same source informs that during the period of activity the staff of the division for fighting corruption and customs offenses filed more than 5 thousand protocols on infringement of customs rules. More that 3 thousand natural persons and economic agents have been sanctioned. The amount of penalties levied by the customs institutions in the years of 2001-2002 accounts for approximately 30.6 million Lei, out of which the amount of approximately 2.6 million Lei was collected (see Table 2).

Table 2. Number of protocols, sanctioned persons, amount of penalties levied and collected

Year	Number of protocols	Number of sanctioned natural persons	Number of sanctioned legal entities	Amount of penalty (Lei)	Collection of penalty (Lei)
2001	1619	1242	351	9690194	903354 (9.3%)
2002	1841	1225	594	20917877	1717199 (6.7%)

In the result of fighting the administrative and customs infringements (smuggling) there had been confiscated (seized, sequestered) and passed over to the tax service for disposal different goods and objects in the amount of 2,873,706 Lei: in 2000 – 869,933 Lei; in 2001 – 1,119,443 Lei; in 2002 (10 months) – 884,330 Lei.

During 2000-2002 the customs initiated 173 criminal cases (about 11% of the registered total), out of which 54 were dismissed for absence of *corpus delicti*. Others have been suspended for reasons of failures to identify the guilty person or whereabouts. For example, in the unit for criminal investigation of the Customs Department there had been accumulated 68 suspended files, out of which 58 were for failure to identify the persons to be pressed charges against and 10 files for reason of failure to identify the whereabouts.⁴⁰

Both sources indicate that the *activity of customs is not successful in the detection and registration of smuggling and other customs offenses*; thus, in this respect the *activity of the customs is not efficient enough as the major part of smuggling cases is identified not by the Customs Department, but by the entities of interior or other institutions*. It is alarming that the major part of registered acts of smuggling is carried out via the transit of goods in relatively large quantities through customs points, having the consent or participation of customs officials. One such example is the case of smuggling via the Criva customs point of about 37 tons of sausage carried out by citizen M.J. and the representatives of the companies „Giparu-prim”, „Comacs”, of one set of furniture by the representatives of the company SRL ”Limang”; via Leuseni customs – of 2 machine tools by the citizen Iu.V.; via Cahul customs – of goods with the value of 100 thousand Lei by N.N.; via Sculeni customs – of about 13 tons of potatoes by V.Gh.; via Criva customs– of chicken legs with the value of about 13 thousand US dollars by S.A.; via Ocnitsa customs – of about 20 tons of rice by the individual company „Aria-Popovici”; via Briceni customs – about 38 tons of chicken legs with the value of about \$US 40 thousand by C.; via Costesti customs – of 393 batteries by V., etc. It is not really the lack of professionalism of customs officials or the existence of other problems, but rather *the large-scale spread of corruption in customs, the absence of a advanced automated information system, the failure to implement the preshipment inspection, the*

improper organization of the activity for fighting smuggling and other infringements of the customs law and also of providing for integrity in customs.

The import of dubious quality goods fraught with inflicting damage to citizens and the state economy and the export of goods with derogations from the requirements of the international market damage the image of economic subjects and entirely of the Republic of Moldova and stand for the negative consequences of some such cases. The import of dubious quality goods is displayed by the multitude of markets in the country where they are sold. The consequences are even worse in cases of smuggling goods that are prohibited for circulation (drugs, weapons, radioactive materials, etc.) which enormously endangers the security of persons and of the state. Regretfully, the customs can not boast of good results in this respect. During 11 months of 2001 the Customs Department registered only nine cases of smuggling of narcotic substances⁴¹, which does not reflect the actual situation in the illegal circulation of drugs. According to official statistic data for 2001, on the territory of the Republic of Moldova there had been registered 1897 offenses of illegal circulation of drugs.⁴²

Multiple infringements identified by the Chamber of Accounts speak of ***insufficient accounting of goods and vehicles crossing the customs border of the Republic of Moldova.*** The Government was recommended to reconsider the procedure of accounting of imported and exported goods and of vehicles at the border service.⁴³

It has been notified that at the end of 2002, the time when the control was carried out by the Parliamentary Commission, ***the Customs Department did not have regulations on the procedure of reception, registration and processing of the information related to infringements.*** For this reason the information was passed over to other law enforcement institutions. Even more so, if customs institutions were dismissing the criminal case, no

practical activities for the detection of these infringements were carried out.

The analysis of the data related to bringing criminal action on smuggling shows that the gaps in activity and infringements of legislation resulted in ***illegal actions against persons***, who were latter acquitted in courts (this being characteristic not only for customs institutions but other law enforcement entities as well). Usually the cases of persons pressed criminal charges and acquitted are not even reviewed by customs and the officials in charge bear no liability for the infringement of rights of persons. On the other side ***certain cases are dismissed on common grounds of corruption***.

Evidence shows that smuggling, large quantities cases inclusive, is often carried out by third persons (drivers, shippers, hired personnel) who sometimes do not even know who the real owners of goods are, the latter being “covered” and, possibly, even holding public positions, such smuggling cases are based on the existing links between the real owners of smuggled goods and the corrupt persons from the customs institutions, other law enforcement or state institutions. It is these corrupt links that cause the groundless dismissal of smuggling cases, this causing enormous prejudice to the state. Even more so, in some cases the dismissal of criminal cases creates conditions for accusing the investigators and corresponding managers of abusive conduct.

The improvement of the legal provisions referring to the judiciary supervision of the pre-court proceedings would create incentives for the settlement of the problem of illegal dismissal of criminal cases. This problem has been considered in a study published by Transparency International-Moldova which discussed the judiciary system.⁴⁴ In practice the criminal cases investigated by an institution are often dismissed by the prosecution or another entity after the files are passed over for investigation following instructions from the prosecutor. The Code of Criminal Procedure (both the old⁴⁵ - Art.195¹, and the

new³⁷ – Art. 313) stipulate that the decisions on suspending and dismissal of criminal cases may be appealed against in court by the alleged, defendant, counsel of defense, the injured party, other participants in the process or other persons whose rights and legitimate interests have been infringed by these institutions. The phrase “or by other persons whose rights and legitimate interests have been infringed” would presume that this right is also granted to the institution that initiated the criminal action. But after examining such actions, the Supreme Court of Justice did not recognize this right. For example, some officials of the previous Department for Fighting Organized Crime and Corruption appealed in court the legality of dismissal of certain criminal cases. The ruling of 03.16.2001 of the Centru sector court decided on the abrogation of dismissal the criminal cases, #98267005, 98427067, 98457006, 98087003. Meanwhile on 04.27.2001 the Criminal Collegium of the Chisinau municipality Tribunal integrally rejected the appeal of the prosecutor. Yet both decisions, of the court and of the Tribunal, have been dismissed by the Supreme Court of Justice with the justification that the petitioners (i.e. the persons who initiated the cases and carried out investigation) were no longer parties in the corresponding criminal cases and could not be considered as persons whose rights or interests were infringed by the dismissal of criminal cases. Thus, the rulings on dismissal of criminal cases stayed effective and they were not further investigated.

In connection with this it is necessary to specify the categories of persons included in the phrase “... or by other persons whose rights and legitimate interests have been infringed” from Art. 313 of the Code of Criminal Procedure and stipulate that the institution that had been involved in the investigation of the criminal case is entitled make appeals in court against decisions of prosecution or another institution on such cases. This is necessary because the dismissal of such cases like smuggling inflicts damage not only to specific natural persons but to the state itself as it is only the entity that initiated and/or carried out

the criminal investigation to know the details and be able to determine the legality of dismissal of the case.

The data on the initiation and dismissal of criminal cases show that the principle of regulation of discretionary authority in criminal cases is often violated⁴⁴. Both the initiation and the illegal dismissal of cases have a negative reflection on not only the quality of activity of the law enforcement institutions, but also on the safety of business, especially of the small and medium-size.

The efficiency of fighting smuggling and other offenses in customs is unsatisfactory also for reasons of insufficient cooperation among law enforcement institutions and for absence of regulation of the control of goods shipped by entrepreneurs. In the result of this, abuses are committed by officials, the rights and legitimate interests of entrepreneurs are infringed. It has been mentioned that in certain cases the vehicles with cleared goods are stopped by police after the customs barrier or on the way to the place of destination, are taken to police premises, inspected and released without any explanation of the reason for detention. No documents with the justification of the respective actions are produced in these cases. Thus, in June 2002 the officials of the Buiucani Police Precinct detained four vehicles with cargo from Italy, which had the clearance of the Leuseni customs. Later they were released with no protocols or explanation of the reasons for detention. In other cases the customs officials are directly interfered with the implementation of their functions, being treated as offenders. For example, on February 23, 2002 in the vicinity of the Southern bus station, the police officials detained a column of 4 tank-trucks on the route Leuseni–ExpoBusiness–Chisinau, which were escorted by customs officials. During the detention the customs officials had been sworn at, hit, caused body lesions and one of them was hand-cuffed.

In the result of this the image of the law enforcement institutions is compromised, the efficiency of fighting smuggling is reduced, but most important the interests of entrepreneurs are damaged.

Following this, *regulations are necessary for the cooperation and coordination of activities by the law enforcement specialized institutions*, and also *clear rules on the detention and inspection of transported goods*.

One of the causes contributing to the illegal introduction of goods to Moldova was the adoption in 1994 of the decision on the *establishment of customs free deposits*⁴⁶ and the *absence of due control of these deposits on behalf of customs institutions*. It was stipulated that the customs free deposit is used for the temporary storage under customs supervision of imported or transited goods, without perception during storage of customs duties, VAT, excises and without applying methods from politicized economy (licensing, quotation, prohibition of export, etc.) and that in customs free deposits are stored for maintenance also the goods produced in Moldova for export in conformity with the customs law on export.⁴⁷ In reality the goods delivered to the customs free deposit were often released for free circulation in Moldova. Same thing was happening to goods from Moldova stipulated for export only on paper and for which false documents were filed. There had been detected cases when the territory of Moldova was used for purposes of illegal traffic.

The Chamber of Accounts mentions that in 1997 under the procedure of customs supervisions the deposits accommodated goods in the amount of 1 billion 500 million imported cigarettes, more than 150 million Lei, the owners of goods being from the Netherlands, United Kingdom, Greece, Turkey, Cyprus, Hong-Kong, etc. Initially the cigarettes were deposited via the Ilyichiovsk port at the customs points Cuchiurgan and Otaci. Subsequently the major part was exported to the opposite direction, using the same route to Ilyichiovsk port. Officially on the territory of the Republic of Moldova the imported cigarettes were not subject to customs clearance. With all that their procurement on the markets of Moldova could be made with no difficulty at all. All the imported cigarettes, in sale in Moldova,

had no excise stamps whatsoever. When implementing the control the Customs Department did not create a single specialized deposit in the customs area. All the customs deposits, hosting the tobacco, alcohol and beer products (all imported) did not belong to customs but to certain private companies. There were cases when the customs deposits stored excise taxable goods, manufactured in the country, this being prohibited by the effective regulatory acts.⁴⁸ The Customs Department did not take adequate measures against companies that infringed the Regulations on the customs-free deposits. Thus in conflict with Para 9 of the Regulations, in June 1997 the cooperative "Rodnic", which subsequently was renamed into FCP "La izvorul cristalin", was issued the license on establishing in Volcineț, Ocnitza rayon, a customs-free deposit. During the operation the customs-free deposits (until April 1, 1998) stored imported cigarettes in the amount of 88 million Lei. Additionally to this, large quantities of alcohol have been stored. The cigarettes from the deposit were exported via Ocnitza customs to the Baltic States and to Armenia. On February 10, 1998 the officials of the Ministry of National Security detained at Naslavcea port of entry bordering Ukraine 13 trucks with no documents (4 with imported cigarettes and 9 with alcohol in to total amount of more than 5 million Lei. It had been determined that all goods were loaded at the customs-free deposit "Rodnic" ("La izvorul cristalin"). Even though the representative of the customs was present, all goods were taken out of the deposit illegally. The goods were seized by the Ministry of National Security. Although customs legislation was broken, the Customs Department did not undertake any actions and the deposit "La izvorul cristalin" continued to operate throughout the months of March-May 1998 importing and exporting cigarettes and other excise taxable goods.

The above reasons might have been the causes for the decree of President on the establishment of customs-free deposits to be subsequently abrogated⁴⁹ and in conformity with the Law, # 990-XV of 04.18.2002, the customs-free deposit regime was excluded

from the Customs Code, this being justified by the necessity to fight smuggling and corruption. It should be mentioned that the storage of goods at deposits that benefit of customs-free regime stands for a practice that is increasingly practiced in the international trade and is a factor of facilitating sales on the external market. The international practice admits that in some cases the absence of CFD may damage the interests of importers and exporters. Thus, by the liquidation of CFD, the economic agents of Moldova had been deprived of the possibility to practice a profitable activity of possessor of customs-free deposit, whenever the importers and exporters were deprived of the opportunity to carry out certain transactions and benefit from the mentioned regime. We consider that the liquidation of CFD demonstrates not only the lack of skills in carrying out the customs inspection of certain deposits, but even the incapacity of the state to fight smuggling and corruption by legal instrument, thus, instead of improving the mechanisms of prevention and fighting of smuggling and corruption, the customs-free deposits were liquidated. The effective Customs Code encourages the “customs deposit” regime, yet the possibilities are more limited compared to the “customs-free”. Secondly, only the customs institutions and other entities under the jurisdiction of the Customs Department may be operators of customs deposits (Art. 46), whenever the customs-free deposits may be operated by legal entities (economic agents) on the grounds of respective licenses and under customs supervisions, this offering the possibility to invest and facilitate the economic activity. Also, as different from the CFD, the customs deposit regime reduces the amount of authorized types of activities (the goods may not be processed, for example). Third, the customs-free term of storage is limited (3 years), whenever the customs regime deposit term of storage is unlimited.

Following the above, for facilitation of economic activities it is necessary to adopt addenda to the Customs Code stipulating the implementation of the “customs-free deposit” regime.

Smuggling often takes heed of the transit customs regime, when goods are transported under customs supervision from one customs point to another, this being done without collection of export and import dues and without applying measures from politicized economy. The new Customs Code contains restrictions aimed at constraining the expansion of this phenomenon. It has been decided that the time of transit is to be fixed by the customs institution and may not exceed 72 hours from crossing the customs border; and for railways transit, if trains are assembled at stations of Moldovan Railways, it may not exceed 168 hours from the time of customs border crossing, etc²¹. These limits must be observed by transporters of goods and properly monitored by customs, yet even this did not stop smuggling completely. The due monitoring by customs of observation of limits by transporters is missing. At the session of the Supreme Security Council of July 20, 2002, which designed activities for the improvement of the oil products market, the chief of state spoke in favor of an emergency improvement of legislation for an efficient fighting of oil products smuggling and requested the implementation of permanent controls of oil products transit, full collection of taxes at entry and refund of respective amounts at exit from the country.⁵⁰

The adoption of decisions enabling the Customs Department to procure and use devices for sealing the transited cargoes⁵¹, and also the introduction of the single control bond at the customs offices Cahul, Giurgiulesti and customs point Palanca⁵², stand for other activities aimed at preventing smuggling. Also, the so-called “chip” (the “SMART” seals) system was developed, which is focused at the accounting and control of cargo transit. Being developed by the Department for Information Technology, it was handed over to the Customs Department for operation at the customs offices Sculeni, Otaci, Palanca back in August 2001⁵³, and at customs office Giurgiulesti and free economic area Taraclia in autumn 2002⁵⁴. According to some sources, the

Customs Department started the operation of this system only in May 2003 at the insistence of President of the country.

The issue of fighting smuggling has been in the attention of public for quite a while. During the initial stages of activity of the Department for Fighting Organized Crime and Corruption a tendency of direct connection between smuggling and organized crime was noted. Smuggling and corruption stand for reasons of adoption in 1999 of the presidential Decree on the establishment of working groups for the study of activity of customs institutions⁵⁵, for the establishment at the end of 2002 of the parliamentary control commission charged with the control of execution of the Law on service in customs⁵⁶, etc. The results of the last control showed a set of infringements in the domain of customs activity, this resulted in the adoption by the Parliament of certain activities targeted at the improvement of the situation⁵⁷. Yet, by adopting the corresponding decision, the Parliament violated the principle of division of powers by giving direct instructions to the prosecution to initiate actions on criminal cases, this meaning the restriction of independence of the prosecution. Drawing on the parliamentary decision, it might be understood that it rests on the acknowledgement of problems in combating smuggling and dismissal of criminal cases for absence of *corpus delicti*.

The problem of smuggling exists and has been quite severe for several years. Many persons apply to smuggling for illegal, quick and substantial profit. The major determinant for them is the evasion from complete customs payments (import and export dues, customs duty, fee customs procedures, value added tax (VAT), excises, license fee, etc.). In part of smuggling, it should be noted that ***these acts or the evasion of customs payments are carried out also for reasons of exaggerated taxes on import and of priority of customs in contributing proceeds from import-export activity to the budget.*** According to the Chamber of Accounts⁵⁸, in 2002 the customs contributed to the consolidated

budget the amount of 2493.6 million Lei (49.0% of total revenues) or by 629.4 million Lei more (33.8%) than in 2001 and by 138.4 million Lei (5.9%) more than stipulated by the adjusted plan. The major part of the amounts is due to import-export transactions of economic agents⁵⁹. Or, for example, the revenues collected by customs during the first half of 2003 in the result of import-export transactions and contributed to the state budget stand for 1.430 billion Lei (\$ US 102 million), an increase by 451 million Lei (\$US 32.2 million) to the period of January-June 2002³¹. The contributions of customs to the budget during July 2003 stand for 352.3 million Lei, an increase of 48% to the first half year monthly average. During the first half of 2003 the average monthly revenues collected by customs accounted for 238.4 million Lei. The total amount of revenues collected during January-June 2003 from VAT is of 995.8 million Lei compared to 654.6 million Lei for the similar period of 2002, the excise collections increased from 207.6 million Lei to 264.2 million Lei.⁶⁰ The tendency of contributions to the budget on account of customs payments would indicate that the priority for the Customs Department is maximum proceeds for the budget, whenever the provision of economic state security, the protection of rights and legitimate interests of person in customs remains secondary. For example, the report of the Parliamentary Commission runs that “for failure to contribute revenues to the state budget in 2002, 4 managers of customs offices have been disciplinarily penalized” or that the import of diesel oil from Turkey in the amount of 6 thousand tons with title of humanitarian assistance for Gagauzia first of all a loss of about 7 million Lei for the budget. The identified cases of unjustified increase of customs value of goods has probably taken place also for purposes of increasing the contributions to the budget.

According to the law, the customs duties vary from 5 to 30%, the value added tax on import of goods and services stands for 20%, except for the import of natural and liquefied gas, the rate for

which is 5%, the fee for customs procedures in the period of 2000-2001-0.25%, and from 2002 – 0.2% of the goods customs value.

This aspect contradicts one of the principles proclaimed by Arusha Declaration, according to which the tariff on import should be moderate, where possible, and the number of taxes (duties) limited⁷. According to the Memorandum signed with the International Monetary Fund in 1999 Moldova undertook the commitment to apply rates not higher than 15%. On the other side the ceiling for tax rates negotiated during the process of Moldova acceding to WTO (the consolidated customs duty) has been fixed at a higher level.

The negative consequences of these factors (high rates of tariffs and taxes) result not only in the increase of smuggling or evasion of customs dues, but also in the increase of corruption and creation of additional obstacles to the economic activity.

Because of high tax rates a major part of economic agents and organizations strive by different ways to secure exemptions aimed at not paying the full amount of taxes on imported goods. As a result the collected payments constitute about 10% at average. According to data for 2000, furnished by the Section of information and statistics of the Chisinau customs, the total import constituted 4964 million Lei, in 2001 – 5427.8 million Lei, in 2002 – 7192.8 million Lei. The levied customs duties constituted 0.97%; 0.95%; 1.33%; the VAT – 7.84%; 7.08%; and 11.37%. Thus the customs payments (the fee for customs procedure, the customs duty, the VAT) assessed on the import of goods in the period of 2000-2002 constituted 9.06%; 8.28% and 12.9% of the goods customs value.

The documents illustrating the activity of customs suggest that the increase in the customs payments is due to improvements in customs activity. This outcome is denied by MP Panfilov. He considers that the increase of contributions to the budget is not just the merit of the customs, but also of the economic agents, who implemented the corresponding volume of import-export

activity.⁶¹ In 2002 the import increased by \$US 130.9 million, the export – by \$US 76.6 million. Yet the efficiency of the customs activity is not really the one expected. This is also confirmed by the major part of smuggling that goes undetected via customs and is apprehended not by customs but other institutions, mostly by the interior, after crossing the border. This shows that the major task of customs of providing for the economic state security is fulfilled insufficiently, being marginalized by tasks (or purposes) to contribute proceeds to the budget.

The customs are to reconsider the priorities and focus not on budget contributions first, but rather on protection of legitimate interests of the citizens and economic agents. Only under these conditions the activities of economic agents are certain to result in the increase of contributions to the budget. Also, for the prevention of smuggling and customs duties evasion it is necessary to reconsider the rates and number of customs payments, which should be streamlined so that smuggling or evasion of customs payments become inconvenient economically. These activities would contribute to the reduction of smuggling, to proper payment of the customs dues and, overall, to the increase of contributions to the budget, even though the tariffs in some cases would be lower than the effective at present.

The organization and implementation of mixed control by the customs of neighboring states at the ports of entry might contribute not only to the acceleration and simplification of customs clearance, but also to the reduction of smuggling. This provision is stipulated by the Kyoto Convention and is successfully implemented in certain states. ***The Republic of Moldova is not yet party to the Kyoto Convention and the implementation of the mixed control by customs services of neighboring states at the ports of entry is not stipulated in the legislation of Moldova.*** Nevertheless, this provision is accepted at least for purposes of identifying ways for the settlement of issues of border security with Ukraine. Thus, at the meeting with

the ambassador of Ukraine of June 2003 it was mentioned that in the future several common points of customs control would be established following the European standards and that Ukraine had already such control points at the border with Hungary and Poland and was ready to share the accumulated experience with the Moldovan colleagues.⁶² Thus addenda must be made to the Customs Code to govern the organization and implementation of the mixed customs controls by neighboring states at ports of entry. This reinforces the necessity for Republic of Moldova to accede to the Kyoto Convention.

Another issue that contributes to smuggling is the failure to provide for *the demarcation of the border between the Republic of Moldova and Ukraine*. This problem has for a long time been in the attention of Moldovan and Ukrainian authorities, at present, as sources inform, this process is on its way to completion⁶².

There is no doubt that *the private sector can play a significant role in fighting the trans-border offenses*. A valuable mechanism to be used by customs in the activities of combating infringements in cooperation with the private sector would be the Memorandum of Understanding (MoU).

The principles of cooperation between customs authorities and economic agents have been developed by the World Customs Organization (WCO) starting with 1985, when the latter initiated the MoU program as a tool for the increase of efficiency of fighting drugs. Since then the WCO signed a series of MoU-s with international organizations targeted at encouraging the respective national programs.

The MoU is a voluntary agreement signed by customs authorities and private sector (economic agents, transport, operators of deposits, associations of economic agents, etc.) with the objective of improving the customs control and fighting smuggling. MoU may be signed with the objective of fighting infringements in general or with specific goals of fighting drugs, pirate or counterfeit products trafficking, tax evasion, money laundering, etc.

MoU represents a tool by means of which the private sector may notify the customs on deliveries of suspect goods or of dubious circumstances so that customs get access to intelligence. MoU is also advantageous for the economic agents as the delivered information enables the customs to carry out more thorough inspection of suspicious transactions and facilitate the legitimate traffic of goods. On their side the customs undertake the commitment to inform the economic agents on issues of illegal trafficking and methods to fight this phenomenon. Thus, MoU facilitates the legitimate trade, contributes to the improvements of relations with the private sector, consolidation of cooperation and knowledge, the combating of smuggling and other offenses.

Making reference to the causes of smuggling we can not skip the *problem of Transnistria*.

In 1992 the so-called Moldovan Republic of Transnistria illegally self-proclaimed itself. Since that time on the Dniester left bank territory the legislation of the Republic of Moldova does not operate. As a consequence this territory and the sector bordering Ukraine stay out of customs control.

In 1999 the Chamber of Accounts mentioned that the problem of collection at the ports of entry of taxes on oil, tobacco and alcohol products with the destination to companies in Transnistria is not settled, a fact encouraging the economic agents to evade the payment of import taxes, this causing prejudice both to the state and local budgets. During the years of 1997-1998 the customs of Moldova saw more imported goods (without collection of taxes) with the destination to the rayons from the left bank of Dniester than to all other rayons of Moldova, respectively: alcohol – by 1.7 and 3.1 times more, alcoholic drinks – by 3.7 and 19.4 times more; imported cigarettes – by 252 times more (12 billion vs. 0.05 billion pieces) and by 90 more (9 billion vs. 0.1 billion pieces). The control of excise taxable goods on the left bank of Dniester is very difficult and does not reach the set objective.⁴⁸

In 2000 the Chamber of Accounts mentioned that the goods with Transnistrian destination are not declared at the ports of entry so that taxes to the budget are not paid. The failure to observe the law in the part of collection of customs payments at the border contributed to the considerable increase of excise taxable goods with the destination for the economic agents in Transnistria. The analysis of import of certain excise taxable goods shows that the flows to Transnistria are higher than to the rest of Moldova. In spite of the decrease of tax rates on imported cigarettes, according to some sources⁶³, in 1999 the import to the right bank was 2.4 billion units and to Transnistria - 5.1 billion units or by 2.1 times more. The right bank imported 850 tons of ethylic alcohol, Transnistria - 9704 tons or by 11.4 times more. Additionally to that Transnistria imported 49 thousand tons of gas and 22 thousand tons of diesel fuel. If excises had been collected for the four items above, the budget revenues would have increased by 234 million Lei. Additionally, no VAT was collected. According to another source⁴³ in 1999 the right bank imported 133 tons of ethylic alcohol, whenever Transnistria - 9704 tons or by 1.9 times more. In ten month of 2000 the right bank imported 3903 tons of alcohol, Transnistria - 17855 tons, by 4.6 times more.

Thus, it should be mentioned that smuggling and Transnistria are closely related, ***the economic agents of Transnistria serve as a major subject of illegal import of goods***. This has been recently confirmed by the ex-deputy-prime minister St. Odajiu, who in connection with the approval of activities for the provision of implementation of import-export activities by the economic agents from the left bank of Dniester, mentioned that “the activities stipulated in the draft will contribute to preventing cases of illegal import of goods via the economic agents from the east rayons”.⁶⁴

The settlement of the problem of Transnistria will remove the largest part of smuggling and provide the security of the border segment with Ukraine.

*Transnistria was transformed into a “black hole” where different types of illegal trafficking are practiced, but for the Transnistrian leader Smirnov and his men –into quite a profitable illegal business.*⁶⁵

The problem of Transnistria exists for several years already and its existence is stimulating dubious affairs on the territory on both banks of Dniester. At the session of May 2003 on the problem of Transnistria, the authorities of Odessa region mentioned the necessity of an emergency establishment of mixed customs points on the Transnistrian segment of the Moldo-Ukrainean border, stressing that it “would reduce the access of smuggled goods, narcotic substances and weapons to the territory of Odessa region and would contribute to preventing the trafficking in human beings”.⁶⁶ For lack of control at the ports of entry between Ukraine and Transnistria, radioactive metal from the Chernobyl atomic power station was delivered to Rybnitsa. In August 2002 the Rybnitsa metallurgical plant imported a large quantity of scrap metal contaminated with the radioactive element Cesium 137. It was melted in one of the furnaces of the plant without preliminary analysis of consequences, the emission into the atmosphere of an unidentified amount of radioactive elements. The environment has been polluted; the employees of the factory and citizens of Rybnitsa were exposed to radiation. The Moldovan specialists tried to make an analysis on the premises but the Tiraspol administration denied the access.⁶⁷ President Voronin personally signaled that Transnistria is involved in the mass production of weapons, smuggling of alcohol, drugs, cigarettes, etc. and that “we have been offended by the Smirnov regime for ten years already, we have been offended by the fact that it tore the country apart both economically, socially and just humanely”.⁶⁸ The territory of Transnistria also stands for a danger because the Russian military deposits have become a source of proliferation of weapons both for the organized crime and regions with military conflicts. The trafficking of weapons from this area is confirmed not only by internal sources, but also by other

countries. One case that was mentioned related to the formation at the beginning of 2003 of a train with missiles “Strela-2M” of Russian origin, which had Southern Lebanon as point of destination, the author made reference to the deposits of the former soviet republics, including Moldova.⁶⁹ The Council of Europe considers Transnistria as “non droit” area.

The authorities from Chisinau state that the Transnistrian segment of the border of Moldova with Ukraine is an area of extensive smuggling activity and increasingly recognize the gravity of the Transnistrian problem.

In April 1999 the Government of the Republic of Moldova, with the intention to revert the trend of smuggling goods to the right bank from the left one, decided to establish mobile fiscal points along Dniester.⁷⁰ According to the regulations on the activity of internal control posts, approved by the Ministry of Interior and the Ministry of Finance on 08.17.2000, the common internal fiscal control points represent a tool for the intervention of tax and customs institutions for strengthening the financial discipline, increasing the budget revenues, enhancing the fighting of legal offenses, smuggling, shadow economy, tax evasion and also providing for a rigorous control of the import-export transactions implemented by natural persons and legal entities. The objective of these posts was the collection of the customs duties and VAT on goods imported into Moldova via the territory of Transnistria. These points do produce revenues for the budget, but in no way do they provide real control of the state customs border.

As of late the identification of ways for the settlement of Transnistrian crisis and the tendency to internationalize this problem were enhanced, even a separate ministry (the Ministry of Reintegration) was created for this purpose.

The settlement of the problem of Transnistria and of the associated with it problem of customs control depends a lot on the relations with Ukraine. To provide for a rigorous control at Moldo-Ukrainean ports of entry and for the implementation of

provisions of the Agreement signed by the Government of Moldova and the Cabinet of Ministers of Ukraine,⁷¹ the Government resolved that the Customs Department and the Department of Border Guards together with the Ukrainian authorities, starting with September 1, 2001 would establish mixed control points at some auto and railways ports of entry at the border with Ukraine.⁷² In view of providing customs control of the Transnistrian border with Ukraine on September 1, 2001 the Customs Department put into circulation new specimens of documents, stamps and customs applications complying with the requirement of the World Customs Organization, without providing them to the Transnistrian authorities. At interdepartmental level there were developed and approved regulatory acts on the implementation of the Agreement of 03.11.1997, concluded by the governments of Moldova and Ukraine on the organization and mixed control at the Moldo-Ukrainean state border^{41,73}. However, even after September 1, 2001 Ukraine continued to recognize the customs seals used by Tiraspol, an act considered by Chisinau as encouragement of illegal exports made by the Transnistrian region. There had been cases when Ukrainian authorities allowed the import and transit of Transnistrian goods with old seals. In order to overcome the divergences between Chisinau and Kiev lengthy negotiations have been held. Also the troika of the European Union applied to the Government in Kiev with the corresponding note.⁷⁴ Mass media informed that Kiev adopted the decision to enhance the customs control on the Transnistrian segment of the Moldo-Ukrainean border. On May 15, 2003 the Customs Department of the Republic of Moldova and the Customs Service of Ukraine, concluded in Kiev the protocol on the recognition of transport, trade, customs documents and customs insurance, which came into effect on May 25, 2003. According to the protocol the transportation of goods on the customs territories of the Republic of Moldova and Ukraine will be carried out on the grounds of documents of transportation, trade and customs that are practiced

internationally that the crossing of commodities and cargo will be reciprocally permitted only upon availability of these documents, seals and stamps. Subsequently, starting with May 25, 2003 the Ukrainian customs officials no longer accept the exports from the Transnistrian region, stamped by the old soviet seal, but examine only the Transnistrian goods accompanied by the documents with the seal of the Republic of Moldova. In order to avoid the stationing of vehicles with goods to be transported from Transnistria to Ukraine, the Customs Department requested the economic agents registered in Transnistria to implement the filing of customs documents in the customs offices operating on the right bank of Dniester.⁷⁵

During consultations with the Ukrainian party practical procedures were examined for the organization of mixed control at the Moldo-Ukrainean ports of entry. The Customs Department of the Republic of Moldova and the Customs Service of Ukraine signed the protocol of cooperation for fighting the illegal trafficking of weapons, ammunition, explosive substances, narcotics, psychotropic substances and precursors.⁷⁶ The need for signing this document is dictated by the significant volume of import-export transactions between the Republic of Moldova and Ukraine, the increase of international illegal trafficking of weapons, ammunition, explosive and psychotropic substances and precursors.

In the context of implementation of the agreement with Ukraine and for the facilitation of import-export activities of Transnistrian companies, the Government adopted a decision,⁷⁷ by which the procedure of registration of Transnistrian economic entities by the Registration Chamber of the Republic of Moldova was facilitated. As a result, within term of 2 weeks Chisinau registered a significant number of companies and economic agents from Transnistria, thus making an important segment of the Transnistrian economy fit the legal framework.⁷⁸ From May 25, 2002 the Transnistrian companies filed more than 700

customs declarations with Moldovan customs.⁷⁹ During the period of May 20-June 22, 2003 the Chamber of Trade and Industry of Moldova issued 571 certificates of origin of goods on the amount of about \$US 16.9 million to 573 economic agents from the left bank for the export to more than 30 countries.⁸⁰

The agreement with Ukraine along with the registration of some Transnistrian companies in Chisinau are important steps in the settlement of the Transnistrian problem and may contribute to the reduction of smuggling, although this is not sufficient for the complete settlement of the Transnistrian crisis and for the provision of state economic security. The problems with the customs control in the Transnistrian sector of the border may not be finally settled before the rule of law is restored in the Transnistrian region.

For several years already, the settlement of this problem had the involvement of OSCE, Russia and Ukraine, yet the efforts made did not result in reaching the expected objective. At present there are more and more voices heard on the need of involvement of other neutral international mechanisms like UN and the European Union. At the Belgrade Summit of South East Europe Cooperation Process (April 9, 2003) the President of the Republic of Moldova requested a more active involvement of the European community in the issue of creating mixed Moldo-Ukrainian customs posts on the Transnistrian segment of the border between the Republic of Moldova and Ukraine.⁸¹ The European Union has to play an important part in the settlement of the conflict and stipulated this participation in the form of “consulting and expertise” for the development of the new constitution and in an eventual direct participation in peacekeeping operations in Transnistria.⁸² The High Representative of the European Union for Common Foreign and Security Policy, Javier Solana sent to President Voronin a message in which it was mentioned that EU was willing to grant assistance to Chisinau for the reintegration of the country, the process of democratization, promotion of

economic reforms and strengthening of relations with the European Union.⁸³ The willingness of the European Union to actively support the Republic of Moldova in the process of settlement of the Transnistrian conflict was made public by Romano Prodi, President of the European Commission and by Christopher Patten, EU external affairs Commissioner, who underlined the importance of secure border of the Republic of Moldova, in particular of the border with Ukraine on the Transnistrian segment.⁸⁴

The settlement of the Transnistrian conflict is also likely to be supported by NATO.⁸⁵

The Republic of Moldova has to take advantage of the opportunities that may be offered by the international community for an accelerated and prompt settlement of the Transnistrian problem, for the full evacuation of weapons and Russian troops, the instauration of law on this territory and also for the security on the Transnistrian segment of the Moldo-Ukrainian border.

6. Corruption in Customs

6.1 Forms and Causes of Corruption in Customs

The implemented analysis shows that corruption (abuse of official status inclusive) in customs activity proved to be quite extensive.

According to the statistic data of 1999, 14 customs officials were brought to justice on criminal allegations; in 2000 there had been identified and detained 17 persons from the Ministry of Finance (including customs officials), in 6 month of 2001 there had been registered 4 offences of bribing committed by customs officials. By the number of registered bribe offenses the customs grade second (after officials from the interior). Yet these data do not reflect the real level of corruption in the system. The practice shows that the majority of registered acts of smuggling via customs points are carried out by bribing the customs officials.

About 30% of the customs officials in Moldova are involved in dubious affairs of reducing the real value of goods during assessment and of other actions, enabling some economic agents to avoid the law so that the budget is deprived of the necessary payments for the implementation of import-export transactions. In conformity with the results of the public opinion survey, carried out by Transparency International-Moldova by end of 2002, about 74% of households, 64.1% of businesses and 68% of representatives of non-government organizations consider that customs are involved in bribe taking and informal relations. During last 12 month ***about 240 thousand representatives of households and about 2/3 of businessmen, who had contacts with the customs paid bribes. Unofficial payments were made to get favors in customs or to avoid problems.***⁴⁴

Corruption in customs has been repeatedly identified both by law enforcement institutions and by the Parliamentary Commission, which carried out such a control at the end of 2002.

The analysis shows that corruption in customs shows itself in several forms, the main ones being:

➤ ***Extortion of bribes or goods for permits to transit goods;***

For example on 03.29.2000 a criminal action was initiated on bribe extortion by the Larga customs office, Briceni, from citizen C. for permit to introduce goods into the territory of Moldova.³⁴

➤ ***Protection by certain persons with high-ranking positions in the Customs Department of illegal activities of economic agents; the implication of officials in the development of smuggling channels;***

Thus by the letter, # 3494 of 12.07.1999, the deputy manager of Chisinau customs S. Baranovschi confirmed to Ocnitsa customs that IE "Iana Durlesteanu" had no debt to Chisinau customs, this enabling the economic agent to file customs documents on the import of ethylic alcohol via Ocnitsa customs. Without taking

into consideration that IE "Iana Durllesteanu" had no license for the production of medicines, was not a pharmaceutical entity, the management of Chisinau customs (V. Banari) and Ocnitsa (A. Popov) on no grounds granted to the company the exemption from VAT in the amount of 1564.2 thousand Lei and from excises- 4349.3 thousand Lei on the import of ethylic alcohol, causing the state budget a prejudice of 5913.5 thousand Lei.⁴³ S.R.L."Viviendi-Cosmetic" imported 124.6 thousand liters of ethylic alcohol, the former being exempt from excises in the amount of 1082.2 thousand Lei. According to financial reports filed to the tax institutions, the mentioned company does not operate, the transactions on banking accounts have been frozen since November 2001⁸⁶. During the period of 1999-2000 the company „Succes-M” from Chisinau in 23 cases imported goods (refrigerators) in the amount of \$US 405 thousand without declaring them, the commodities being transported via mixed control points (police, customs, tax service).⁸⁷

➤ ***Creation of conditions of unloyal competition for economic agents,***⁴⁸

The Chamber of Accounts identified cases of granting tax benefits to certain entrepreneurs, including to the largest suppliers of oil products, thus creating for them more favorable economic and financial conditions and to the same extent discriminating against other economic agents, a clear violation of law. For example, on 05.01.1998 the amount of debt of economic agents on the payment of excises, VAT, customs duties and other payments to be collected by the Customs Department, was 93.8 million Lei, including the economic agents importing gas and diesel fuel – 73.8 million Lei, out of which 65.6 million Lei stand for the amounts that were “frozen” and postponed on the grounds of decisions of Government issued with infringement of regulatory acts.⁴⁸ The postponement of payment of customs duties, excises and VAT by 120 days on the import of 100 thousand deciliters of absolute alcohol for wine distillation⁸⁸ was

the cause of failure to collect the amount of 36.6 million Lei for the 2001 state budget.

➤ ***Diminution or increase of goods customs value, falsification of goods codes;***⁸⁹

By selective control Chisinau customs identified a considerable difference between the minimum and maximum price for one and the same type of commodity, the import being from the same county, under similar terms, yet declared by different economic agents. In 2000 S.A. "Moldtranselectro" imported into Moldova 711107 Mwt of electric power at the average price of 372.97 Lei for 1 Mwt, whenever S.A. "Corporatia Trans" – 127310 Mwt at the average price of 235.90 Lei for 1 Mwt, or by 1.6 times less than the former. The value of solar oil imported via Chisinau customs, declared in 2000, varies from 480 Lei (S.A. "Gentas-Group") up to 2080 Lei per ton (S.R.L. "Mihail").⁴³

The diminution of goods customs value, the change of classification, etc., with the goal to minimize the payments, all this implying a certain "tribute", is a practice that is often observed in some customs offices.⁹⁰

➤ ***sequestration (confiscation) of goods without sale and without contributing the corresponding amounts to the state budget***⁴⁰;

On 09.04.2000, 600 sheets of slate with the value of 15 thousand Lei were confiscated, passed over to budget institutions, which did not make the payment to the state budget. Or, another example, by decisions of Cahul customs office of 06.27.2002 a „Mercedes-0303” with the value of 172491 Lei was confiscated and passed over to the tax institutions for utilization, until the moment of control it was not sold for reason that the vehicle was taken over by the State Chancellery of the Republic of Moldova.

➤ ***sequestration of goods in the interests of economic competitors;***

For example, all the confiscated ethylic alcohol is stored only at SA „Aroma”.⁹¹ Thus on 06.28.2002, the Giurgiulesti customs illegally sequestered 7903 deciliters of alcohol with the value of \$ US 30134 from the SRL „Best Wine” from Chirsovo, UTA-Gagauz-Yeri, on grounds of allegations of infringements of customs law. The tank was sealed, transported as usual to a deposit of SA “Aroma” and used for manufacturing purposes without waiting for the decision of the last instance of court. On 11.08.2002 the Cahul Tribunal abrogated the decision of the Giurgiulesti customs and ruled the withdrawal of sequestration from the alcohol; on 02.27.2002 the Court of Appeal upheld the ruling. With all that the restitution was not possible as the alcohol had already been used by S.A. „Aroma” without customs clearance and having illegally removed the seals.

➤ ***Double activity (both as customs official and entrepreneur). Some customs officials had private businesses when in public service and abused their public status for private interests,*** one of the reasons for the import of goods at an insignificant price.⁹⁰

➤ ***Recruitment by customs of persons with criminal record***

On 07.29.2002 by order of Nicolae Vâlcu, the general director of the Customs Department, Valeriu Ignat was appointed as manager of the Section for the administration of customs procedures and granted the rank of lieutenant-colonel of customs service. According to some sources⁹², Valeriu Ignat had earlier worked in the customs of Moldova, Russia and Ukraine under the name of Valerii Raicovici, citizen of Ukraine and during 1990-1996 diverted considerable amounts from the state property abusing his official status. The Ukrainian justice initiated a criminal action, Raicovici was searched internationally, became citizen of the Republic of Moldova under the fake identity as Valeriu Ignat. He was appointed for work at the Customs Department being an old friend of N.Vâlcu, who established for him a special section in the most important division of the department.

➤ *Abuse of official status by use of “telephone right” by parliamentarians and other high-ranking officials*⁹⁰;

An example is the request of Nicolae Vâlcu, the general director of the Customs Department, addressed to the President of the country to “shield the employees of the customs from the “telephone right” exercised by certain parliamentarians and high-ranking officials”. The use of the “telephone right” (abuse of official status—a well-known form of corruption) was also put in front to the participants of the session of members of the Collegial Council of the Customs Department of 07.14.2003, summoned by President Voronin.⁹³ The abuse of official status takes the form of pressure put by managers on the customs staff; this is reflected in the results of the public opinion survey that indicated the pressure but by managers as one of corruption factors⁴⁴.

The customs employees confirm the abuse of official status, but say they have to abide for fear of losing jobs as this “right” is exercised mostly by certain high-ranking public officials of the legislative and executive powers and also by some from law enforcement, who carry out discreet economic activity through other persons. The damage from abuse of official status is usually considerable, maybe higher than other common corruption acts. In the case of high-ranking officials abusing their official status, the negative image of corruption falls on the customs employees who have to live with this. When some customs employees are fired for infringement and abuse, they benefit of the support of high-ranking officials, from court instances inclusive. For example, an inspector was fired from Leuseni customs and several policemen were fired from the Ministry of Interior for transiting a cargo across the border without customs documents, with all that the fired employees were restored to their positions by decision of the court. In 2002 24 employees of the Customs Department were fired for different infringements. All filed appeals in court and 6 of them were restored in positions even though their guilt was beyond doubt for the Customs Department.

President Voronin said the leadership of the country knew of customs problems and that „we do have the list of those who abuse of the “telephone right”, he also confirmed that this right should be uprooted as having endemic negative consequences for the economy of the country and for disintegrating the society⁹⁰.

Why then did the Customs Department not submit to the prosecution the corresponding materials for criminal action against the high-ranking officials indulging in abuse of official status?

Corruption in customs is a definite danger for the economic security of the country. This danger increases if corruption in customs is mingled with the one from the higher echelons of the state power. In this case the connections and activities of these persons generally transcend into a real mafia putting to the knees or substituting the state institutions.⁹⁴ Last year statistic data and the publications in the mass media speak of these tendencies, illegal trafficking of goods by high-ranking persons, including some from law enforcement institutions, who are in charge of fighting offenses.

The analysis shows that generally the customs activity is contaminated with the forms of corruption related to the domain of business:⁹⁵

- Extortion of bribes at filing documents and organization of economic activities;
- Extortion of bribes under claims of disclosure of legal offenses; illegal initiation of administrative and criminal cases, groundless penalties;
- Creation of conditions of unloyal competition;
- Use of officials as “shelter” for the shadow economy, suppression of activity of competitors, illegal appropriation of assets of businessmen;
- Corruption of officials and use of illegal methods of business.

Corrupt structures⁴⁰ had been detected in customs, the activity of which was targeted at ***the artificial creation of obstacles for***

some economic agents and the subsequent “settlement” of problems with goods crossing the customs border, the manipulation of the customs activity in the interests of certain private companies. Thus the manager of the Chisinau customs office, V. Baciú, organized a group on the principle of personal devotion, made of employees of the Chisinau and Leuseni customs, where he had worked earlier as manager. With their assistance former he kept the customs process at the border under control. The trusted persons were listed in the major units of financial activity. The activity of the group consisted in the identification of wealthy economic agents, who were running into artificial obstacles at the ports of entry that were later “successfully” removed via the manager of the Chisinau customs office. In this way several companies had been placed under illegal umbrellas that produced considerable financial yield. Onward, these companies were offered a whole range of “benefits” from customs clearance at a ten times diminished value to the introduction of goods into the country without declaring (“black” import). The economic agents competing with the shielded companies were confronted with unfavorable customs conditions, aimed at having them liquidated as competitors. Such a situation was created for the economic agents importing goods from Turkey, Bulgaria and United Arab Emirates. The financial yield from this activity was directly proportional to the circulation of procured goods, the volume of import and the number of served clients. In order to minimize the competition for the shielded companies and to attract clients from other companies, the corrupt customs officials used the detention of goods in customs, which under different claims were not cleared for many days, the increase of the customs value to an exaggerated level, if compared to other commercial entities, or other obstacles. For example in 2002 the company „Tomigan” SRL declared 15 vehicles with goods in the amount of 2.7 million Lei. The declared average value per vehicle with goods was of 177.3 thousand Lei. The company „Aridon” imported goods by

56 vehicles in the total amount of 18.8 million Lei; the value of declared goods per vehicle was 335.8 thousand Lei. At the same time the companies „Tudorservice”, „Intur” and „Cameleon” declared respectively 17 vehicles with the value of 621 thousand Lei, 14 vehicles with the value of 586.3 thousand Lei, 3 vehicles with the value of 137.8 thousand Lei. This shows that for each vehicle the value of the goods in customs was respectively 36.5 thousand Lei, 41.9 thousand Lei, 45.9 thousand Lei and that the value of declared and assessed goods for „Aridon” was by 7-9 times higher than for the last three mentioned companies. The conclusion would be that the shielded companies practically declared only 10-20% of the imported goods; all other goods were introduced as “black” import. Thus corruption is looming in the activity of customs both at customs border crossing and in the assessment of goods customs value.

The acts of corruption committed by customs officials discredit first of all the due activity of the officials, who put considerable effort in the creation of the foundation for customs activity; they also discredit the public service in general. Secondly, this creates considerable obstacles for the provision of the economic state security, the protection of rights and legitimate interests of persons in customs, the development of economic relations with other states.

The damage inflicted by corruption acts in customs is assessed at enormous amounts. The survey of public opinion shows that the unofficial payment for the import constitutes about 45%, for export about 51% from the amount due official payment.²⁷ Another survey shows that the lump bribe paid to customs officials by the representatives of households varies between 25 to 1168 Lei, constituting an average of about 199 Lei; by representatives of NGO-s from 30 to 700 Lei, constituting an average of about 272 Lei; from businessmen– from 20 to 22667 Lei, constituting an average of 681 Lei. The total amount of bribes paid to customs officials during the last 12 month by

representatives of business is estimated at about 173 million Lei, which by far exceeds the bribes paid to tax inspectors (97 million Lei), construction licensing institutions (62 million Lei), police (37 million Lei). The amount of bribes collected from households is estimated at about 187 million Lei (after payments to lawyers – more than 348 million Lei, tax inspectorates – 222 million Lei, medical institutions - 217 million Lei, educational institutions–205 million Lei).⁴⁴ The MP Panfilov estimates the bribing of customs officials by economic agents as causing a loss of about 1700 million Lei, which is more than 70% of the amount contributed by the Customs Department to the budget in 2002.⁶¹ To mention that the basis for the assessment of prejudice was the assumption of bribes standing at 9-10% of the amount due official payment by the economic agent for crossing of border and customs clearance of goods. The size of bribes paid to customs by representatives of households was not taken into account, if take the same principle as basis for calculation of prejudice the earlier amount should be added another 1870 million Lei. Thus, ***the total prejudice in the result of corruption in customs is estimated at about 3570 million Lei, which by far exceeds the contributions of the Customs Department to the budget and constitutes 70% of the consolidated budget revenues for 2002.***

At the session of the Customs Department Collegium of February 2003⁹⁰, the President of the country stated that „annually we lose two thirds of the budget because of corruption in the state institutions and the conspiracy between unscrupulous officials and entrepreneurs. In customs, in the major part, this happens because of lack of transparency in the relations between customs officials and economic agents. Remaining face to face with the entrepreneurs the customs officials do not settle the problems of the state, but their own. The smuggling of oil, tobacco, alcohol and other goods is flourishing; everybody knows the ways for the introduction of goods into the country and the executors, both the

customs officials and the law enforcement institutions, yet everybody keeps silent for having personal interest.”

Corruption in customs is supported (or initiated) by some economic agents who seek ways to avoid the payment of customs taxes. This is one of reasons for the increase of smuggling. For this purpose they use the ***companies residing in offshore areas***. This way of evasion from the payment of taxes is used for the import of goods from Europe via the free economic areas in Romania (Braila, Galati), Bulgaria (Sofia, Plovdiv), and Hungary (Debrecen). It was demonstrated that the goods purchased by Moldovan economic agents in Germany, Netherlands, Austria, France, Poland are imported to the free economic areas on behalf of certain offshore companies, whose owners are the same economic agents from Moldova. Subsequently, new transportation documents are made for the Moldovan economic agents that reduce the invoice value by up to 80%. At the same time the Moldovan company requests the company SGS Chisinau to implement the preshipment inspection not at the producers of goods in Europe, but at the offshore companies from the free economic areas in the mentioned countries. The goods might also be dispatched to the address of several companies, assessing the customs value as smaller than \$US 3000 per company (the rate stipulated by law as exempt from preshipment inspection), thus evading the SGS preshipment inspection. The operation of this mechanism of import of goods from European countries directly involves the customs officials at the border and in Chisinau in favoring the crossing of the border based on personal interests. The parliamentary commission mentioned that the customs officials may have required the economic agents to file customs declarations or increase the customs value to the statistic average price levels, but in order to avoid this the economic agents were paying from 4 to 15 thousand Euros per vehicle, depending on the specification of the imported goods⁴⁰.

At international level, it is acknowledged that the tax heavens with a non-transparent procedure contribute to capital flight from other countries, facilitate tax evasion. By the mediation of offshore companies obscure and dubious affairs are carried out, the lack of transparency may disguise illegalities and cause prejudice to the national financial systems. The illegal profit annually accrued by the offenders enables them to buy the complicity of customs officials, of their protectors from state institutions and political circles. Thus a chain of corruption is created.

In this context at international and EU levels there have been developed certain mechanisms and recommendations for purposes of fighting this phenomenon.

Although the mechanisms used by evaders are known for years, the state proved unable to fight them.

What are the reasons for corruption in customs? It is determined by the following factors:

- Frequent violation of provisions governing the recruitment of public sector staff by competition and on basis of merit;
- Insufficient level of professional skills;
- Absence of a code of conduct that would clearly explain the principles of conflict of interests;
- „Encouragement” of corruption (abuse of official status) by managers of different levels;
- Absence or insufficient internal control of the observation of law;
- Problem of decent wages and equipment for the customs officials;
- Absence of real liability of different level officials (including the customs system) for abuse of official status;
- Absence of real liability of managers for failure to observe the Law on fighting corruption and protectionism;
- Failure to provide for the physical security of customs officials carrying out the direct customs control and clearance

of goods, resulting in blackmail of customs officials by the organized crime;

- Absence of efficient activities targeted at the prevention of corruption in customs;
- Inefficiency of the adopted procedure of declaring and inspecting the property;
- Gaps or vacuum in the customs law relating to customs tariffs, procedures, etc.;
- Incomplete implementation of the system of customs brokers;
- Absence of a advanced automated system;
- Absence of the transparency necessary in the customs activity;
- Insufficient activity for the dissemination of legal provisions relating to customs, crossing of customs border, customs clearance, tariffs and other issues of customs activity;
- Clear ignoring of legal provisions, for example of those relating to the valuation of goods in customs and to their classification;
- Use of opportunities “offered” by the law. For example those related to customs procedures;
- Excessively complicated and lengthy procedures, etc.

Additionally to the arguments presented above on reasons of corruption, the following may be added.

Practice shows that the *customs is fraught with corruption for reasons of low morale*. Often the staff lacks the feeling of pride for service in customs. The internal existing practices encourage offenses and their concealment. *The absence of a code of conduct* creates discrepancy between the practical conduct and the generally accepted one. To a large extent the staff at all level is not involved in integrity activities.

The appointed customs officials in their majority were vulnerable as operating in limited numbers (the number of persons in a shift varied from 2 to 4)³ and were appointed for a long period of time. This situation inevitably results in the

development of close and inadequate relations with the clients, extortion of illegal taxes for the implementation of legal works. The rotation of personnel as a method was in principle not desired and even when used did not produce expected results.

Practice shows that the ***prevention of corruption in customs is hardly assisted by control and internal audit programs***. The external audit (senior level) proved to be of a higher efficiency. The controls carried out by the Chamber of Accounts showed a range of drawbacks having a direct relationship with the issues of transparency and corruption.

The ***„encouragement of corruption” happens in cases*** when certain jobs in the customs system may not be taken without engaging in abuse of official status or other elements of corruption (a phenomenon characteristic not only for the customs system, but for other law enforcement institutions as well), when the ***selection, appointment and promotion of customs officials is not always based on the principle of merit***, when the transit of goods across the customs border with infringement of the effective law is influenced by managers of state power institutions, etc.

It is important to mention that the bribing of customs officials creates conditions making the customs officials dependent on the organized crime and having to break the law. On the other side, these officials can not inform about pressures from criminal groups, which carry out illegal trafficking, for fear of being brought to justice for corruption acts and, on the other side, because of physical threats coming from members of these groups. These threats happen even in cases when the customs officials do not accept bribes. The customs officials stated that many of them were exposed to ***danger on behalf of the organized crime***, being hunted, chased, blackmailed, including the members of their families⁹⁰. At least for these reasons ***it is necessary to provide for the physical security of the customs***

officials carrying out the customs control and clearance, and for members of their families.

Another issue relating to customs and encouraging corruption is the insufficiency of facilities for activity, for example ***of space (temporary deposits, usually called terminals) equipped for goods customs clearance.*** The Customs Code (Art. 132) stipulates that the customs clearance of goods is carried out in established places in the presence of the shipper or recipient of goods and in conformity with the procedure stipulated by the Customs Department. At the request of the person the clearance may be carried out on personal account, with the consent of the customs office, in other places and outside working hours. According to Annex 2 to the Law on customs tariffs, the clearance of goods and other objects outside the customs control area (on the territory and in the space of companies storing such objects and goods) or outside working hours may be carried out at the request of the economic agent for a supplementary payment in the amount of 20 Euro. Usually for lack of equipped space and other reasons the economic agents request clearance at their deposits. The same source⁴⁰ indicates that the management of Chisinau customs argues that every vehicle with goods should be cleared at the temporary customs deposits, which in reality belong to certain private firms and are rented from state institutions. For example, the company „Glorinal” rented from SA „Aviatehnologie” the space of 1770 m² and subsequently of another 9403 m², the latter being a non-equipped territory. At the same time, following the concluded agreements, the rented space and territory were allocated to Chisinau customs for the organization of the „terminal” (temporary deposit) with customs clearance to show that to some extent the requirement of the Customs Code were observed. In reality they were not observed as in conformity with Art. 151 and 152 of the Customs Code the temporary storage is carried out in well equipped temporary deposit operated by the customs institution, and, in conformity with Art. 46, only the customs institutions may be operators of

customs deposits under the jurisdictions of the Customs Department. As such, the Customs Department does not possess own terminals for the clearance of goods but rents the space from private companies, which in their turn rent the corresponding space from state institutions.

In order to enter the territory of “customs terminal” the economic agent pays from 70 to 100 Lei per vehicle and an extra 50 Lei for each day on its territory. Practically, the economic agent is detained on the territory of the “customs terminal” for up to 5-6 days. All the expenses supported by the economic agent are paid to the accounts of the companies renting these deposits. Thus, thousands of vehicles have to pass on annual basis through these deposits and millions of Lei of revenues go not to the state budget but to some private companies, protected by managers of different customs units. For example the income of the company „Glorinal” for 2000 from entry and parking of vehicles is estimated at 880670 Lei; for 2001 – at 1092889 Lei; for 10 months of 2002 – at 779614 Lei. In the period of February-November 2002 the company „Confort-AM”, which created the „Auto terminal”, collected from similar activity the amount of 1028895 Lei.

The import company „Aridon” applied to the Chisinau customs office with the request of customs clearance at the deposit of the company, yet the managers of the customs office rejected the request, this conflicting with the law.

The authorization for the placement of goods and vehicles on the territory of the economic agents is accepted only in some cases, more frequent being the cases when the goods stand for food products, medicines, special goods, humanitarian aid, goods imported for some manufacturers like („Zorile”, „Ionel”, „Artima”, „Carmez” etc). The accounting of goods outside customs offices is not carried out and during the control at the end of 2002 the parliamentary commission did not get the corresponding information, neither the list of economic agents.

The conditions which favor the commitment of acts of corruption in customs relate to the ***limited access to legal provisions on customs and to insufficient activity for their dissemination.*** Under the circumstance one could hardly admit that the legal requirements are applied consistently and evenly and be convinced that no abuse of discretionary power is committed.

Also, it is quite difficult to accept the existence in the activity of customs of the necessary transparency for providing a high level of safety in the relations with the customs authorities, a fact that creates a fertile soil for the proliferation of corrupt practices. ***The lack of due transparency*** also comes out from the answer received from the Customs Department.⁹⁶ In connection with the implementation of a survey in the domain, Transparency International – Moldova filed a request for information on the activity of customs, yet the Customs Department refused to provide it, an infringement of the effective legislation. In the received refusal the justification is that “the requested information contains aspects and elements of operations activity of the customs system and these can only be provided for business purposes only”. It should be reminded that according to Art. 323 of the Customs Code the customs may provide statistic, general and private information to applicants with specific business interest. In conformity with the Law on access to information of 05.11.2000 any person is entitled to seek, receive and know the official information except for the data under clauses of state and commercial secret, other stipulated by law. It may be that for purposes of providing for transparency the Customs Department created an Internet site (www.customs.md).

One of activities for the prevention of corruption in the customs system is the use of property declaration and control. In this respect corresponding laws⁹⁷ had been adopted but no visible effect is seen either in the system of customs, or in other public institutions. By now the procedure established for the declaration and control of declared property did not identify any person who

gained goods and proceeds by illegal means, including corruption and other illegal activity in the customs sector. ***The mechanism adopted for the declaration and control of the property of state dignitaries is not effective and may not reach the expected goal of prevention of corruption in the public sector*** for the reasons described above⁹⁸: The insignificant number of members of commission; the work of members of commission as public service; the brief time for the control of declarations; the preventive control of conformity of data in the declaration (passing the declarations to the specialists of the Centre for Fighting the Economic Crime and Corruption only in the case when the commission finds discrepancies); the incompetence of members of the commission in control issues; the doubtful independence of commission members; the gaps in the law (lack of provisions relating to the possibility of control of declarations after the work of commission is over, to the place and duration of keeping declarations, the corroboration of information from different sources, the cooperation of the commission members with the civil society). At least for these reasons we consider that the established declarations control mechanism may not reach the goal of identifying the persons who gain assets by illegal means, including acts of corruption. In order to provide for the efficiency of the property declaration mechanism as a tool for prevention of corruption, the former should be amended taking as basis the direct control of declarations by specialized institutions.

The issue that certain legal provisions have not been implemented most often has negative effects. For example, an advanced integrated information system is not implemented. The applicant usually contacts the customs official directly. As the process is not automated, it is not that effective and does facilitate the expansion of acts of corruption. Also, for a long time already, the preshipment inspection has not been implemented. Its absence not only by far degrades the efficiency of the customs activity, reduces the possibilities of preventing the infringement of

customs law and of fighting smuggling, it also does not permit to prevent corruption in customs.

It could be said that *the inefficiency of law enforcement in fighting corruption* rests on the inefficiency in fighting the abuse of official status., the absence of real liability of different rank officials (including those from the customs system) for failure to observe the Law on fighting corruption and protectionism. During many a year the law enforcement did not register such infringements and there was no real fighting of abuse of official status. The reason might be the failure to acknowledge the gravity and dangers of this phenomenon, the lack of willingness to fight the abuse of official status, the absence of experience and professionalism and the failure to implement the methodological recommendations. In this respect it is necessary to implement activities targeted at the efficient organization of fighting corruption, and especially of the abuse of official status by bringing to justice the persons involved in the commitment of this offense.

Corruption in customs raises considerable indignation especially with the economic agents. In order to settle the pressing problems of their businesses and for crossing the customs border, the economic agents are forced to apply with increasing frequency to different institutions, starting with the central staff of the Customs Department and finishing with the courts. Increasingly frequent are their appeals against the actions or decisions of customs officials.

The Customs Code stipulates the procedure of appeals against decisions, actions or inaction of customs institutions and officials, including the decisions on cases of administrative infringement. According to the Customs Code the complaints are examined and settled by the Customs Department or the court. During 2001 the Department received 15809 documents (in 2000-12407), including 678 complaints from the economic agents.

The following figures speak about legitimacy in customs: in 2002 the Customs Department and the courts reviewed 215 appeals against sanctioning decisions. Out of these, 74 decisions (34%)

have been abrogated and the cases dismissed.⁴⁰ Or, for example, on 01.27.2003 the company „Aridon” won the process in court on the illegal increase of goods customs value.

In order to improve the situation the Customs Department developed the procedure for appeals to the customs institutions⁹⁹, but this measure was not able to stop corruption and to improve the situation.

Formally there had been measures undertaken to fight corruption in the customs system. The practice, yet, shows that these measures are of episodal nature, even formal ones, and are usually reduced to the implementation of an external control. Thus for reasons of multiplication of signals on the increasingly frequent abuses of official status or acts of corruption in customs, by the decrees of the President there had been formed working groups for the study of activity of customs in the part of registration and accounting of goods and objects imported and exported to/from the Republic of Moldova⁵⁵.

During a session in the Parliament the general director of the Customs Department stated that for purposes of fighting corruption in the customs institutions, the management of the department implemented different activities like the rotation of staff, initiation of criminal cases. In 2002, 57 employees have been fired from customs and in the cases of 86 persons disciplinary sanctions have been applied⁵⁹. It was also mentioned that in reality the major part of those fired came back to work in the Customs Department.

According to other sources, for purposes of reducing the number of infringements in customs, during the period of July-December 2002, a rotation of staff was carried out in the customs system. In total 168 staff took part in it, the rotation of staff, which was carried out following the control of the Customs Department by the parliamentary commission, gave positive signals. For example, before the replacement of management at Ocnitsa customs the daily payments were of 1.3 million Lei, and after –

about 1.9 million Lei. After replacement of management and of about 80% of the staff, the Cahul customs in a week contributed more funds to the state budget than throughout the entire previous month⁹⁰.

For purposes of reduction of corruption in customs, it is necessary to:

- Implement the anti-corruption activities stipulated in the 2003-2005 state Program for fighting crime and corruption¹⁰⁰, designed with the participation of Transparency International – Moldova;
- Recognize the principles of customs activity stipulated in the Declaration of the Customs Cooperation Council made in Arusha, Tanzania (07.07.1993) and adopt a national program on integrity in customs;
- Implement the activities developed for the consolidation of the court system⁴⁴, paying special attention to the provision of independence and impartiality of judges and prosecutors.

6.2 Staff Issues

At the time of creation of ports of entry and customs control in the Republic of Moldova, the established Customs Inspectorate had a staff of 210 employees³.

At present the upper limit of staff number at the Customs Department is 1845 units, including 1567 basic staff and 278 auxiliary. It was stipulated that the maximum number for central staff is 161 units, including the basic staff - 137 units and auxiliary staff- 24 units, and in territorial customs - 1684 units (including basic staff - 1430 units and auxiliary- 254 units).³⁹

According to some sources⁴⁰, by end of 2002 the Customs Department, 17 customs offices and 74 customs points had 1718 staff, including 1470 officials. Of the 1470 officials who worked at the moment, 1177 had university education and 69 had incomplete university educations, which constituted 85%. The

basic specialists (lawyers, economists, accountants, managers, engineers) stood for 59%, the staff under 40 years old – 59% (including 23% women).

It is presumed that the recruitment for customs service is made only after a test of skills in customs law, computer and foreign languages, that the selection is made in conformity with the provisions of the Regulations on the customs control command corps service and also on the provisions of the Law on service in customs, that the recruitment for customs jobs is carried out from the staff rostrum, which by end of 2002 contained 330 persons.

For purposes of solving the issue of staff education, the Customs Department signed a contract with Moldova State University in accordance with which 14 graduates of the law department were hired (specialty of customs activity). But even so it is necessary to have a centre for staff education in the Customs Department, in which the officials would advance in their education under a program of developed in conformity with the international standards.

The same source reads that the issue of professional skills may be settled by continuous improvement, 185 staff has been trained this way. With direct assistance from the customs services of USA, Russian Federation, Romania and Eurocustoms, 65 employees were trained in different domains.

With all these positive aspects, negative issues showed up either. For example 12 employees displayed insufficient knowledge at skills training exams. At some customs offices the professional training does not meet the requirements. In the result of the performance evaluation at the customs offices Cahul, Basarabasca and Rybnitsa 15 employees were demoted for insufficient knowledge, 32 employees were given 2 months for repeated evaluation and 18 employees were proposed to continue service in other customs offices.

For serious infringement of office discipline during January-October 2002 the management of the Customs Department fired

23 officials, including several managers. For failure to observe the working discipline during the same period 86 employees were sanctioned disciplinarily and 8 were subject to criminal investigation.

According to another source¹⁰¹, during the period of June 2002-June 2004 42 employees were fired for serious infringement of discipline and 115 sanctioned disciplinarily. These penalties were applied not only against low or medium ranking staff. For serious infringements some managers of customs or their deputies had been fired.

In some cases customs officials display a conduct beyond limits, the citizens, foreign inclusive, being treated in a degrading manner.¹⁰²

These data show that the principle of competition and merit based recruitment is ignored; the risk of accepting of corrupt persons to customs (and other public institutions) is ignored. No wonder that certain applicants for jobs in customs do not even ask of the terms of wages, housing, station of duty. For them the main is to be appointed on the expectation that the position would yield extra revenues enabling them to settle personal problems.

All this shows that ethical and professional standards are relatively low, this being one of the reasons of high level of corruption, violation of discipline and abuses.

Some activities were implemented to provide for a higher level of discipline. Additionally to the Law on service in customs and the Customs Code, the following acts were adopted: the Regulations on the state customs control command corps service, the Disciplinary Statute of the state customs control command corps service¹⁰³, the Disciplinary Statute of decision makers in customs¹⁰⁴, the Regulations of the Customs Department³⁹ and the Regulations on the customs officials' performance evaluation¹⁰⁵. These documents contain provisions focused at the recruitment and implementation of terms of reference in customs. Even more so, it was stipulated that every manager is liable for the observation of discipline by employees.

As not fully implemented these activities could not stop the multiple violations of law and the willingness to use the official status for personal gains, ignoring the requirements of discipline and law. Practice shows that some managers are in the habit of violating discipline and law by abusing the official status for personal gains.

The Customs Department states that “it is typical practice that after disciplinary action is taken not only discipline level increases, but also the contribution of customs payments to the budget”¹⁰¹. In reference to the increase of daily contributions to the budget following the replacement of the management of Ocnita customs and of about 80% of staff of Cahul customs, MP Panfilov inquires „but where were these amounts going earlier, they are not that small”⁶¹.

This happens because of absence of the Code of Conduct containing clear provisions on the conflicts of interests, of failure to respect the customs law and also because managers are not really liable for deficiencies in the sector, including the liability for failure to observe the Law on fighting corruption and protectionism. Some managers were not even sanctioned, but instead promoted somehow, while the parliamentary commission named them as decision makers in customs units that violated the effective law⁴⁰.

6.3 Wages of Customs Officials, Equipment of Customs

Authorities have always been keen in their attention to wages and equipment in customs. Many regulatory acts adopted since the creation of Moldovan customs speak of that. By decision of Government starting with 04.01.1992 the former State Department for Customs Control was granted the entitlement to benefit integrally from the 1992 volume of collections for the implementation of customs procedures and also from 50% of the volume of collection of customs duties and other customs revenues (except for confiscated goods sales revenues and the

import-export tax on natural persons and legal entities). The proceeds from the accounts of the Department were to be allocated for the design, construction and repairs of customs objects and up to 10% for wages, social and cultural benefits in customs. It was decided that 10% of foreign currency proceeds, accrued from customs activity, except for the confiscated currency, gold and other precious metals, were to be transferred to the currency account of the Department for development of the technical and material supply of the customs.¹⁰⁶

Further¹⁰⁷ the wage and tariff coefficients were introduced, the supplements to wages for special ranks, the supplementary monthly quantum for length of service. The customs managers were entitled to grant quarterly bonuses, material assistance for the staff, to decide on bonuses to officials for major importance activities and high professional competence in the amount of up to 80%, supplements for surpassing the volume and intensity of work, for cumulating jobs (positions), parallel implementation of basic terms of reference and replacement of temporarily missing staff of up to 30% of the job wage and also the monthly supplement for special conditions activities for the operations staff of the Customs Department.

A special fund was created in the amount of 20% from contributions to the state budget of financial sanctions (penalties) and from the ones contributed to the state budget following court rulings. It was decided that the proceeds be used for bonuses and material aid to staff.¹⁰⁸

Later up to 5% from the revenues collected from customs procedures were authorized to be used for bonuses to central staff of the Customs Department and other units under its jurisdiction (up to 6 month wage quanta).¹⁰⁹

Additionally to the 2000 allocations, the excess of proceeds collected for the customs procedures was authorized to be used for wages, procurement of devices, capital investment.¹¹⁰

At present according to the Law on service in customs²⁰, the reimbursement of a customs official consists of; the tariff wage in conformity with the position and wage category; the bonus for length of service, scientific degree and special degree, bonuses, material aid and other supplements stipulated by law. Other conditions of service in customs are also stipulated, like the working hours, vacation, social protection, mandatory insurance, pension, severance pay, etc. The Regulations on the procedure for assessment of bonuses for length of service¹⁰⁵ stipulated the upper limit of 40% of the position wage.

The purpose was to encourage the staff and fund an important domain of activity of the state. In spite of this, the provision of a decent wage for officials and proper equipment for customs units was not possible. According to available data, at present the monthly wage of medium rank customs official accounts for about 800-1200 Lei, which is under the minimum consumer basket per person. The statistic data show that¹¹¹ in May 2003 the estimated cost of the consumer basket was 1342 Lei, and in June – 1226 Lei (\$US 87.5). As in the case of other categories of public officials, this wage does not provide for a decent living and settlement of personal and family problems of strict necessity, first of all the procurement of an apartment for the family or the construction of a house.

The parliamentary commission informs that the staff is not provided with residential space and no construction is made, the pensions are not paid to customs officials, etc., and that the taxes for customs procedures represent the only source of income in the customs system.

In conditions of a high level of corruption in society, the failure to provide a decent wage to the officials represents a significant push for some employees using the official status for personal and illegal gains.

The President of the country displayed willingness to contribute to the settlement of several issues confronting the customs, in

particular the issue of wage increase. This issue is not of customs only, but of other public services as well.

In the part of technical supply the same tendency is observed. The allocated funds were not sufficient to provide for the respective technical supply for customs units. For this reason appeals for international assistance are increasingly frequent. For example, the Chisinau airport customs was supplied the same information capacity as the majority of international airports. This facilitates the services to passengers and cargo under terms of world practice. It was possible due to the implementation in Moldova of the TACIS program „Customs Control Airport”, initiated 6 months ago for the training of the organization „Eurocustoms”. During the implementation of this program the technical components were interconnected in a single network and adjusted to the computer program „SITA”¹¹². For example, recently the US Government donated to Government of the Republic of Moldova in the form of 34 auto cars „VAZ” and 5 minibuses with special destination for the Customs Department. According to Infotag news agency, the equipment is part of the Program for the control of exports and security, due to which during the last two years the Republic of Moldova has benefited from about \$US 2 million assistance. At the ceremony of transmission of the equipment, it was announced about the conclusion of an agreement on the grounds of which Moldova would receive a grant in the amount of \$US 189 thousand for a study of the modernization of the telecommunications system at the customs of Moldova. At the ceremony of donation the Prime Minister specified that 5 of the 74 customs points had been modernized last year and seven more were stipulated for modernization this year.

Although measures have been undertaken for the improvement of reimbursement and technical supply of customs, there had been infringements registered. For example, it was stated that during the reconstruction and repair works there had been cases of increase of expenditure due to the procurement of construction

materials at prices higher than the ones on the local market, and that at present the Chisinau customs does not transfer to the budget the amounts collected from the economic agents as advance payments of taxes⁴⁸.

For these reasons, it is not only the activities of financial and technical supply to be provided, but also the implementation of regular internal and external audit for purposes of preventing the illegal use of funds under the control of customs.

6.4 Procedures at Ports of Entry

Customs Regimes

According to the Customs Code the import and export of goods and vehicles into/from the country is carried out following the relevant customs regime for the clearance of goods stipulated by regulatory acts (Art. 22). In their turn, the customs regimes are selected depending on the goal of transaction and destination of goods. Depending on the customs regime, restrictions are applied on the import/export of goods, import/export dues are collected, exemptions are granted, rights and responsibilities of clients are established and also the liability for offenses of law. Of the mentioned above it runs that *non-transparent and contradictory regulations in the domain of customs represent a fundamental factor that encourages corruption in customs*.

The Customs Code of Moldova stipulates 14 types of customs regimes, which generally correspond to the international practice (for comparison, the 1993 Customs Code contained only 4 customs regimes). As the provisions of the Code are of a general character and the regulations on implementation have not yet been developed, in current activity the customs have used the regulations and orders of the Customs Departments, which have not been in fact subject to legal expertise or published in the Monitorul Oficial. In their absence the customs authorities relied on the administrative instructions and personal interpretation. As

a result there were cases of groundless authorization of certain customs regimes and also of granting customs benefits by decisions of high ranking officials. Only in March 2003 (with a delay of more than 3 years) the Decision of Government, #207 of February 26 2003, on approval of the Regulations on application of customs regimes came into effect. The thorough examination of the mentioned regulations show that their authors probably had other intentions than those of simplification and harmonization of customs procedures, as it is well known that complex regulations and operations stand for the main causes of corruption. In this context it seems necessary to improve the regulations by translating the principles stipulated in the Kyoto Convention into the national law.

Of the 14 the most often used are the import and export customs regimes, which stipulate the payment of import dues (customs duty, VAT, excises, tax for customs procedures) or of the export dues and the clearance of goods for circulation inside or outside the customs territory.

Import Customs Regime

In the customs sector the rules of favorable tariff treatment at import are the most potent factors for the emergence of corruption.

According to law the exemptions from payments are established by the Law on customs tariff. At the same time until now, some exemptions are also stipulated in other acts as well, for example in the Law on foreign investment (Art. 35, 36) of 04.01.1992 and the Law on leasing (Art. 17) of 02.15.1996. Such contradictions are to be removed by an addendum to Art. 28 of the Law on customs tariff and by inserting a comprehensive list of tariff benefits at import of goods into a single act.

If speak of the customs tariff, the statistic data indicate that the share of customs tariffs in the state budget does not exceed 5%. This is explained by the origin of the major part of import from CIS states and Romania, with who Moldova signed agreements

on free trade areas. In reality some economic agents succeed in illegally benefiting from these facilities by submitting to the customs authorities certificates with erroneous data on the origin of goods, which are accepted by corrupt customs officials. At the same time according to the Law on customs tariff and to agreements on the free trade areas, the customs authorities are entitled in cases of suspicions as to authenticity of certificates to apply to the corresponding authorities of the exporting countries for supplementary data. The implementation of this system of administrative cooperation is a decisive factor in providing for the correct application of exemptions from customs taxes in free trade areas.

The fighting of tax evasion relating to origin of goods is also possible by the implementation of an expertise of goods. In the Republic of Moldova the expertise of the origin of goods is made by the Chamber of Commerce and Industry which, among other, issues certificates of origin. It should be mentioned that the majority of such certificates are issued by state institutions like customs. Probably, the lack of corresponding knowledge and of necessary conditions do not permit the customs of Moldova to do this, at that the Customs Department did not express willingness of undertaking this responsibility.

Corruption also appears due to a very complex nomenclature of goods. The lack of corresponding knowledge and also the complex regulations can result in placing the imported goods at wrong tariff positions. Many economic agents benefit of this situation and declare the goods under different names placing them at tariff positions that are taxed with low or 0% rates. Such offenses are committed with the complicity of customs officials who accept bribes for a more advantageous positioning. This scam has become very convenient for the economic agents who paying the bribe (the higher the tax rate the higher the bribe accepted by customs official) evade from payment of considerable amounts to the state budget.

Another example of corruption emerges when implementing the valuation of goods in customs.

One of solutions in the reduction of material prejudice caused by offenses in the classification of goods, determination of the country of origin and of the value in customs would be ***the establishment of customs laboratories for the expertise and examination of goods***. The existence of customs laboratories optimizes the customs control and provides for a more efficient activity of the customs system in general. It should be noted that ***even if the Customs Department did benefit from technical assistance from international institutions, until now the customs laboratories have not started their operation***.

In the majority of above cases corruption is initiated by economic agents who infringe the law, by conspiracy inclusive, and benefit from favorable tariff treatment. ***The major factors generating such type of corruption are: the high rate of customs taxes, the existence of numerous restrictions on import and of many exemptions alongside with them***.

In the context of import procedure it is necessary to take into account that ***corruption relates not to customs officials only, but to the decision makers from other state institutions and commercial banks***. Thus corruption is not excluded when banking guarantees are issued for the Customs Department to grant tax holidays; same refers to the confirmation of funds transfer that takes no place.

Export Customs Regime

The export procedure does not stipulate tax collections, yet it grants the entitlement for the refund of VAT and excises. To benefit of this ***some economic agents practice fake*** export, i.e. goods are listed as exported without even leaving the country. The role of corrupted customs officials is in confirming the fictitious export documents, a direct violation of legal provisions.

Often corruption in customs is related to the so-called *suspended customs procedure*-temporary transactions with the effect of postponing the tax payments and thus fraught with corruption. The regulation of this should be maximally transparent and detailed otherwise the risk of groundless tax benefits is imminent. The temporary admission, active improvement and transit of goods are among them.

Regime of Temporary Admission of Goods

This procedure is requested by economic agents for goods of other destination than sale, like the ones for participation in exhibition, shows, use of vehicles and manufacturing equipment, for purposes of scientific didactic research, etc. According to the effective law the goods under this procedure are exempt of import taxes except for the payment of customs procedure fee.

The main causes of corruption related to the temporary admission procedure are of legal nature:

- The procedure of issuance of authorizations by customs is complex and lengthy;
- Even though the Customs Code contains provisions of total and partial exemptions, until now no partial exemption mechanism is developed. Thus until now all such goods enjoy full exemption, this increasing the corruption risk.
- The failure to identify the goods that are imported/exported may permit the substitution of original goods with counterfeit or vice versa, the change of their state, etc.
- The problem of re-export of goods after the term for temporary import is over.

The ATA carnet, a mechanism which helps preventing and eliminating such offenses, was developed at international level and is effective in 63 countries. It stands for the authorization request, the completed page stands both for the authorization and customs declaration for temporary admission, at the same time it is a guarantee of observation of the procedure.

The most frequent cases of corruption are related to the application of temporary admission whenever the goods are for sale. At that other customs offenses may be committed with the complicity of officials, like illegal transactions with goods and vehicles, change of their state, violation of temporary admission terms. The situation is aggravated by customs officials accepting bribes to protect the economic agents from material or administrative sanctions when administrative infringements are detected. In this case the customs officials do not file protocols or dismiss cases.

Following the above it seems *necessary to improve the regulations on temporary admission*. For this, it is recommended to ratify the international agreements containing the basic principles for curbing corruption, among them the 1961 Customs Convention of the ATA carnet for the temporary admission of goods and the 1990 Istanbul Convention of temporary import.

Regime of Active Improvement of Goods

Following the problems in the national industry many local producers carry out the *in lohn* processing on contractual basis – i.e. services of processing raw material and returning it to the client as finite. In this case the imported raw material is declared under the customs regime of active improvement.

For purposes of fighting corruption in customs of a special interest is the procedure of issuance of active improvement authorizations, the control of the processing, the observation of terms of exporting the finite products and the provision of identification of goods for processing into finite products.

The customs control of the active improvement requires special skills. As the processing may be very complex, corrupted customs officials may contribute to the substitution of the imported raw material with local one, to breach the terms of export of finite products or to facilitate the sale of the raw material without paying the import dues. Partially, the mentioned

problems are solved by demanding an act of expertise, issued by the Chamber of Commerce and Industry; however the customs control still belongs to customs.

Regime of Transit of Goods

The transit customs procedure is permanently in the centre of attention of law enforcement institutions as lots of offenses are committed with excise taxable goods. Most frequent is the situation when goods are declared as in transit when in reality they are for sale. The major task of customs is to monitor the vehicles in transit on the customs territory and to prevent the sale of goods without payment of import dues. Additionally to the TIR card, the methods used the most are the guarantees of customs taxes and the customs escort.

The Government of Moldova tried to use more methods - starting from escorting certain goods up to the implementation of information technologies. Thus for the automated accounting and control of transited goods the Department for Information Technology developed the accounting and control system “CONTROL-GT (TRANZIT)” which involves the use of electronic seals. The system was tested starting November 1, 2001 at several ports of entry like Sculeni, Otaci and Palanca. The efficiency of this system in fighting illegal transit is doubtful, following this since January 2003 the Government restored the escort system with the Centre for Fighting Economic Crime and Corruption in charge.

Corruption is also present in cases of “internal transit” when goods are transported for declaration and clearance to internal customs. Thus if at the border the documents presented to customs are originals, at the internal customs they already contain erroneous data and yet are accepted by corrupt officials.

Valuation of Goods in Customs

The assessment of value of goods in customs is governed by the Law on customs tariff²². This assessment is important as it stands for the bases of payment of customs taxes. According to the law the value in customs is determined on the following grounds:

- a) Transaction value with the corresponding goods or the effective price paid or due payment;
- b) Transaction value with identical goods;
- c) Transaction with similar commodity;
- d) Commodity price per unit;
- e) Assessed value of goods;
- f) Reserve method.

According to the law the main of the specified methods is the assessment of goods customs value on grounds of transaction value with corresponding goods. In case it is not applicable, other methods are applied. Each of successive methods is used when the previous does not suffice. The methods stipulated in letters 'd' and 'e' may be applied in any consecutiveness at the preference of the applicant.

The exported goods customs value is determined on the grounds of their contractual value under D.A.F. terms ("Delivered at border").

According to the Law on customs tariff and the Regulations on the procedure for declaring of the customs value of goods entering the territory of Moldova¹¹³, the applicant determines the customs value according to stipulated methods. The declared customs value and additional data should be verified and corroborated by documents. The customs value declaration is submitted to customs alongside with the customs declaration and other documents necessary for customs purposes. For the assessment and verification of customs value both the data provided by applicant and the data available to customs may be used. The customs official verifies the declared value, the correctness of the applied method and the opportunity for its use,

the completeness of documents (mandatory and supplementary) and their conformity to requirements.

Although the procedure is clear *in many cases the entrepreneurs or other persons and the customs officials ignore the legal provisions on the assessment of the goods customs value.*

The practice of diminution of the customs value was described earlier in the examples of certain shielded companies, like „Tudorservice”, „Intur”, „Cameleon” *et alia* and it is carried out due to corrupt relations with customs officials. The main activity of these companies is the transportation by natural persons of goods to Moldova, which are subsequently sold on the internal market. Recently the officials of the Centre for Fighting the Economic Crime and Corruption identified a lot of paint with the value of 1 million Lei. The 64 tons of paint, produced in Dnipropetrovs’k, Ukraine, were carried in heavy trucks. The commodity was imported by the ghost company „Principe Negu Vin”, which was granted by customs a license of import for the amount of \$US 1500, without taking into consideration that the company had not been paying taxes since 2001.¹¹⁴

Another source runs that several companies imported to Moldova different goods with diminished customs value, for example a musical centre was declared at the price of 392-560 Lei; a vacuum cleaner 182-280 Lei; a TV-set (42 cm screen diagonal) – 420-584 Lei; a TV-set (52 cm) – 465-619 Lei; a TV-set (72 cm) – 736-1008 Lei; a video camera – 681 Lei; a washing machine – 732 Lei¹¹⁵ or, for example, vacuum cleaners for 61 Lei each, mixers – 7 Lei, tea kettles – 8 Lei⁸⁹, etc. which are way lower than real prices. At the conference of entrepreneurs in June 2002, the representative of the Customs Department confirmed some cases: quality jeans of 50 cents, TV-sets with the screen diagonal more than 70 cm at \$US 20-50, etc.¹⁰¹.

Often the diminution of the goods customs value is made at the initiative of tax evading economic agents, by using false document or other illegal ways, in other cases the customs

officials are the initiators. Practice shows that frequently this diminution and also the falsification of codes of goods are accepted by customs officials or managers for “incentives” to ignore the legal provisions.

Although the Law on customs tariff entitles the customs officials to all rights and tools for the correct assessment of the customs value (demands for certain additional documents and information, conditional clearance of goods, independent assessment of the value in customs) this domain continues to be very vulnerable to corruption. Most frequently such cases take place when customs officials accept documents with erroneous data given to them by economic agents. Yet there are situations when the officials themselves abuse their right of independent assessment of the customs value.

For the implementation of the Law on customs tariffs, in 2001 50234 customs declarations were verified as to the correctness of assessment of goods customs value. The results showed a diminution by 234766 thousand Lei and a penalty was laid in the amount of 40209.7 thousand Lei⁴¹.

Thus, the economic agents not only incorrectly declare the quantity of goods, but also diminish their value, offenses that to some extent contribute to inadequate control carried out by customs officials.

Also here it may be mentioned that often some economic agents do not corroborate by documents the data on the transportation expenditure, the shippers do not indicate the amounts for transport expenditure in the international transportation documents. And when detected, these cases are settled quite “amiably” with the customs officials, the offenses being not registered. The created impression is that detected are only the importers who can not find common language with the customs officials.

Of the mentioned above it runs that the customs stand for a decisive factor for the state budget, on the other side it is also the

cause of insufficiency of collections to the budget. The tax evasion by economic agents, committed with assistance from customs officials, is a tool for fighting competitors. Thus corruption in customs contributes to unloyal competition on the internal market.

Practice shows than in *certain cases the customs value is on the contrary subject o unjustified increase (without proper documentation), the increase being initiated by customs officials*. For example⁴⁰ according to the declaration of 05.27.2002 the company “Bicar-Bimpex” declared the value of imported tomatoes in the amount of 19381 Lei (transport expenses included), yet it was not accepted by customs officials, who arbitrarily included into the value the customs duties and the VAT so that the “new” value reached 30301 Lei, i.e. an extra 10920 Lei. In the result of the increase the company paid the tax of 13588.35 Lei, which stands for 78% of the initially declared value. Same thing with the tomatoes increase of value from 25524 to 32485 Lei, importer - „Lenimpex-com”; peaches from 25031 to 62584 Lei, importer – „Silirs”; chips from 39950 to 57114 Lei, importer „Nicaver-prim”; oranges from 69042 to 80617 Lei, importer - „MS-Impex”; paint from 8199 to 16350 Lei, importer - „Custolac-Com”, etc. In the, the created situation makes the economic agents fall out of the legal basis in the accounting of goods at customs value as the accounting is based on the invoices of goods delivered by the supplier, the use, sale and VAT calculation are based on procurement costs. The difference in the VAT assessed in customs and paid for the difference of increased value of goods is deducted from the payments to the budget, as the increase is not registered in the accounting books, and thus remains as liability. In order to find a way of this situation, the VAT assessed by the economic agents is diminished by the amount of the debt of the budget to the economic agent, created in the result of the payment made in customs on increased value, thus the VAT paid at the increased cost is refunded to the economic agent.

This example shows not only that customs official infringes the law, but it also shows the willingness *to contribute the maximum possible funds to the budget without proper observation of the law...*

In order to enhance the control of the customs valuation of imported goods, the Government adopted in 1998 the decision on the mandatory control of goods in customs for certain imports,¹¹⁶ according to which for some goods included into the annex (the majority of food products, alcohol, clothing, footwear) the value of comparison was established (minimum value). Practically it was prohibited to import goods with a lower value than the comparative one. As long as the decision was effective (until January 2000) the increases of customs value could not practically be appealed against. It should be mentioned that the minimum or maximum prices represent in fact an obstacle in the way of trade.

Customs Procedures

The customs procedures stand for a group of technical formalities that importers/exporters have to meet in order to observe the customs regulations. Yet when too complex, lengthy and excessively demanding numerous supplementary documents, the procedures generate corruption and become additional obstacles for the external trade. Thus, by complicating or simplifying the customs procedures the state directly influences the import and export of goods.

The general principles of customs procedures are stipulated by the Customs Code. The standards for filing, circulation and use of declaration forms are described in detail and approved by the Customs Department on January 12, 1999, same refers to other regulatory acts.

According to effective law the customs procedures include the following stages:

- 1) Preliminary activities for the creation of conditions accelerating the traffic of goods across the customs border. These activities stipulate: registration of the economic agent as participant in external economic activity; securing of necessary certificates and licenses; notification of customs on crossing of the border; presentation to customs of the goods, vehicles and commodity accompanying documents; filing of a concise declaration.

The list of documents due presentation to customs was established by order of Customs Department, # 276-0 of 10.24.2002, according to which the majority of documents are to be original or authenticated copies. This requirement was qualified as an additional obstacle to trade and gave rise to tough criticism on behalf of economic agents. Due to this the Customs Department had to amend the order to comply with the effective law.

- 2) Temporary storage under customs supervision in deposits established by customs.
- 3) Written declaration of all goods and vehicles by filing a detailed customs declaration within term of 72 hours.
- 4) The documentary customs control, the physical control of goods and vehicles, other forms of customs control stipulated by law. The customs control is carried out within maximum 10 days from day of reception the customs declaration and of necessary documents.

For purposes of fighting corruption in customs it is important to identify the problems characteristic for the customs procedures that generate this phenomenon. The main problems are the following:

- Complex customs regulations that are not transparent and predictable;
- Lack of continuity between legislation and implementation, the law is applied differentially at different ports of entry;
- Information on customs regulations is insufficient or missing in general;

- Competence of customs in the authorization of some customs regimes is not properly defined, the procedure of issuance of authorizations is lengthy and not transparent;
- Customs procedures are complex and unpredictable;
- Simplified procedures and information technology are not used for customs clearance.

The main tendency at international level is to exclude the negative effects of obstacles arising from or due to customs formalities and administration, which is possible only by the simplification of customs procedures. The initiation of simplified procedures is a complicated and lengthy process, which presumes a fundamental change of the entire customs activity. At the same time it is a decisive factor for fighting corruption in customs.

We have to admit that certain activities had been undertaken at national level for the improvement of customs procedures, among them is the introduction of regular publications in the local press, according to the decision of the Customs Department of 10.28.2002; the restriction starting with October 2002 of the number of authorities acting at ports of entry from 8 to 4 (Customs Department, Border Guards, the phytosanitary and veterinary services); the introduction of selective control for certain categories of economic agents, according to order of the Customs Department, # 108-O of June 4, 2003. Yet this is only the beginning of the reform of customs.

It should be mentioned that a successful implementation of reforms requires the development and adoption of a well defined strategy and action plan. In this context we consider as welcome the study of international practices in the simplification of customs procedures. Internationally, a tendency of harmonization of customs procedures was materialized by the adoption of the Kyoto Convention, its basic goal being the simplification of customs clearance formalities, the acceleration of traffic of goods and the reduction of the time period for crossing the border. In

this view it is recommended to implement the following procedures and advanced techniques of customs clearance:

- Introduction of simplified customs procedures according to which a certain part of economic agents would not undergo the direct control in customs. Among these procedures we could mention the customs clearance at residence.

The customs clearance at residence makes part of the simplified customs procedures applied for the increase of promptitude of customs clearance, especially for the economic agents that frequently deal with such transactions. At the centre of this procedure is the continuous customs clearance directly on the premises of the economic agent, who files a preliminary declaration without the necessity of presence of the customs official. For the physical or documentary control, after the customs clearance, the customs official may carry out the verification on the grounds of intelligence and accounting data of the recipient. Thus the time duration for passing the customs is reduced. The more so that this procedure may be accelerated via utilization of automated techniques, this excluding the direct contact between the customs official and the economic agent and reducing the potential of eventual acts of corruption;

- Harmonization of the documents used for customs clearance;
- Development and implementation of subsequent customs control;
- Development of selective customs control with the risk factor as to origin, type of goods, solvency of the economic agent, type of customs procedure, etc. as criteria for selection of declarations;
- Establishment of the “single cash desk” for collection of taxes at the ports of entry. The goal of establishment of the single cash desk is the simplification of the tax collection at crossing the border, the increase of its speed, the coordination of actions of authorities at the customs point and the elimination of redundancies. This mechanism stipulates the issuance to participants of tax payment receipts in single electronic format.

At that the following is recommended:

- Improvement of the legal framework for customs, including the translation of the principles stipulated in the relevant international agreements into the national law;
- Harmonization of the internal regulatory acts with the effective law and exclusion of its personal interpretation;
- Provision of access to interested persons to the information on customs regulations, on electronic basis inclusive. It should be stressed that the information on customs issues is mandatory, both at European and international levels;
- Simplification of requirements for authorizations issued by customs and also of the issuance procedure;
- Automation of customs procedures by the implementation of information technology;
- Development of the customs broker institute - authorized legal entities rendering services for filing customs declarations, representation in customs, consulting, etc. Due to mediation activities in customs, carried out by competent persons, the customs procedures are simplified and the time duration is reduced;
- Development of corresponding relations with the private sector for the establishment of the Consultative Committee under the Customs Department.
- Cooperation with the international organizations and institutions to benefit from technical assistance.

If integrally implemented all these activities will contribute to the acceleration of goods crossing the customs border and to the reduction of corruption. At the same time it is important to make sure that the simplification of customs procedures does not damage the customs control quality.

Information Technology

Information technology constitutes a necessary instrument for the administrative and legal reform in customs. International practice

shows that introduction of information system is one of the most efficient methods of fighting corruption and modernization of customs in general.

In principle, the introduction of information systems is targeted at accelerating the circulation of goods, improvement of procedures of assessment and collection of customs taxes, provision of standardized automated and clear customs procedures, supply of precise and prompt statistic information on external trade, improvement of methods of collection of customs dues, improvement of financial control. All these contribute to curbing corruption in customs.

Many states successfully apply information systems based on similar characteristics:

- The automated customs system permits the implementation of the entire package of effective customs regulations in processing of declarations and provides for the unified approach to customs taxes. The system guarantees to all economic agents equal access to customs legislation, regulations on impost-export dues and exemptions;
- The system offers the possibility of communication of economic agents with the customs by electronic exchange of data. As a result, the written declaration is substituted by the electronic one. The applicant connected to the information system can file, verify and send electronic declarations to customs;
- The system is based on a mechanism of automated selectivity and evaluation of risk during the electronic customs clearance;
- The system provides for the exchange of information among all customs units via networking.

If make reference to the situation in customs it may seem paradoxical. It looks like nobody opposes the modernization of customs offices, yet for several years the introduction of information technology has been delayed.

The statistic service of the Customs Department¹⁰⁶ has been established for the selection, grouping and analysis of information on barter transactions, volume of import-export, payment for export and other deliveries. Subsequently it was transformed into the Specialized Information Centre „VAMA”,¹¹⁷ following the decision on the introduction from January 1, 1994 of the magnetic passports of economic agents for purposes of providing complete, prompt and correct accounting of the implementation of import-export transactions. The Centre is one of the basic units of the central office of the Customs Department³⁹.

The Customs Code stipulates the administration of statistics in customs. The customs collect and process data on the traffic of goods across the customs border, furnish the information to the central public authorities (within limits stipulated by law). The sources of data for customs statistics are the supplied documents and information on customs control and clearance²¹.

The specialists of Customs Department confirm that a computerized information system is implemented in customs, on the basis of which the accumulation and grouping of information from customs offices is carried out, and also the utilization of information by the Customs Department. Yet both the system and the equipment do not meet advanced requirements. Even more so, the information system does not provide for the exclusion of falsification and withdrawals of customs documents and does not possess the necessary characteristics. For this reason it is increasingly pressing to start the implementation of a new automated information system.

The Government adopted the Regulations on the use of the information system "FRONTIERA"⁵² for the automation of accounting of goods, vehicles and persons crossing the state border. The objectives of this system have been: the connection of all control and service units at ports of entry to a single information system, that would provide for the automated

accounting of goods, vehicles and natural persons crossing the border, and the streamlining of their activity; the provision of unified collection of payments by all services; provision of a strict accounting of goods, vehicles and natural persons, of payments assessed and collected, etc. Subsequently a new concept was adopted for AIS "FRONTIERA" targeted at the accounting and control of persons, vehicles and goods that cross the state border and/or the customs border, and also the Regulations for this system.¹¹⁸ According to it, the AIS «FRONTIERA» is designated for the collection, processing, storage, updating and analysis of data on natural persons, vehicles and goods crossing the border. This information is delivered under provisions of law to the public authorities of the country, natural persons and legal entities. This system is created first of all for purposes of providing the security of the Republic of Moldova, in particular via fighting illegal import and export of goods, prevention of falsifying goods and documents, implementation of control of illegal migration, identification of persons and vehicles prohibited to enter or exit the country, enhancement of combating of organized crime, illegal migration, drugs trafficking, illegal trafficking of weapons, provision of cooperative interaction between ministries and departments charged with registration and control, provision of economic sovereignty of the Republic of Moldova, increase of level of internal stability in the state. The corresponding system was due implementation in cooperation with the Department for Information Technology as the concept and regulations were developed by the latter.

Even more so, according to the 2003-2005 state Program for fighting crime and corruption¹⁰⁰, for purposes of fighting crime it is stipulated to create and implement the automated information subsystem "CONTROL" at the ports of entry; and of AIS „CONSUL" at consulates and embassies for the accounting of aliens. Both subsystems are stipulated as component parts of AIS „FRONTIERA".

The specialists of the Department for Information Technology state that the information system contains many aspects simplifying the activity of customs, their cooperation with other institutions, including those from abroad, the acceleration of crossing of customs border, the prevention of smuggling, corruption and other negative phenomena. At the same time it is also stipulated to handle the corresponding information on persons and vehicles registered by the border guards service. This unified accounting would prevent the implementation of certain manipulations registered at present, thus the offenses of law would be restricted. Yet, although this information system seems quite efficient, so far it has not been implemented.

The international system ASYCUDA, which is used in 87 countries, may be implemented in the Republic of Moldova, although it is not adapted for the needs of the country.¹¹⁹ For a long time there had been discussions, yet the advanced and internationally compatible system is still missing, the implementation of an advanced information system is a difficult case, as President Voronin said, the customs are clearly reluctant to accept the activities targeted at strengthening the control of traffic of goods and do not propose anything in exchange, that the customs do not like either the information system, or the ASYCUDA, or the preshipment inspection, or the transit control chip system, etc⁹⁰. This might mean that the customs (possibly under the pressure of more influential people) oppose the effective control providing the economic state security.

The specialists of the Department for Information Technology consider that the information system ASYCUDA is dated to the 70s-80s and that it would be more efficient to allocate the stipulated funds not for its implementation but for an advanced information system, more efficient and with broader perspective, the one like for example, FRONTIERA.

The specialists of the Customs Department insist on ASYCUDA as the intention is an advanced version that was not yet

implemented in other states and this system is compatible internationally and meets the performance demands.

The integrated info system ASYCUDA exists in many versions developed by UNCTAD (UN Conference on Trade and Development) and is used by customs in many countries. ASYCUDA is a standardized, automated and flexible system under operation and continuous improvement. Thus the latest version of ASYCUDAWorld, which is an Internet-based customs clearance system, was presented by UNCTAD in March current year. It is ASYCUDAWorld – the advanced and performing system that was selected as most suitable for Moldovan customs. The more so that the Republic of Moldova would be the first country to implement this version of ASYCUDA.

It is clear that the introduction of automated info systems is not possible without a corresponding funding. The implementation of ASYCUDA in Moldova is one of the main objectives of the project „Trade and Transport Facilitation in Southeast Europe” (TTFSE) funded by the World Bank, US and Moldovan governments in the amount of about \$US 9 million. This project is part of a regional program from the Stability Pact in Southeast Europe and is targeted at the harmonization and gradual simplification of customs procedures in the region. The World Bank offers the credit for with the exclusive of implementing this automated info system.

As the Customs Department had been against ASYCUDA the situation in the negotiations with the World Bank in the part of funding TTFSE became difficult. For the settlement of the issues, the Government by decision # 124-d of 02.19.2002 established a special commission to analyze the system recommended by the World Bank and the one proposed by the Customs Department as alternative.

It is clear that without a single automated info system, compatible with the international systems, no one can talk of order in customs activity and the delay in the settlement of this issue

causes continuous prejudice to the economy and state security. Also it is clear that for the adoption of specific decisions it is necessary to take into account the opinions of specialists and, probably, to announce an international tender for the identification of an optimal info system and of the organization to implement it.

Thus, for purposes of automated customs operation it is necessary to accelerate the development and adoption of a corresponding legal framework, to implement the system and to provide for its efficient operation that would permit the facilitation of customs activities, the strict accounting of traffic of goods, the prevention of violation of customs law and of corruption in customs.

Preshipment Inspection

Often the data supplied by other states on the trade with the Republic of Moldova differ from those of Moldova. For purposes or knowing the real situation as to goods and volumes imported into Moldova it is necessary ***to monitor the customs transactions via an independent statistics. This role is up to the preshipment inspection of imported goods.***

Back in the 60s the governments of certain developing states started to use the services of preshipment inspection, the objective being the reduction to the minimum of fraud and tax evasion and the enhancement of the protection against goods not meeting contractual quality description; the improvement and continuous modernization of customs operation, the significant increase of revenues to the state budget by a more efficient collection of customs duties, VAT and excises on imported goods; the facilitation of the legitimate trade by improvement of administrative procedures on import; the collection of precise data for trade statistics and the consolidation of consumer protection.

The inspection may have positive results only if there is an efficient cooperation between companies and customs.

On 05.08.2001 Moldova acceded to the Agreement of the establishment of the World Customs Organization, , concluded in Marrakech on 04.15.1994 and to the Protocol of accession to the Marrakech Agreement¹⁶ by which she undertook the commitment to observe the agreement as to the preshipment inspection.

For purposes of implementation of the Law on the customs tariff (Art. 11, Para 8 on expenditure supported by the buyer for services of preshipment inspection of imported goods) and the improvement of the procedure of goods valuation in customs, of statistics, accounting and control of quality of imported goods, in 1999 the Government adopted the decision on the introduction of preshipment inspection of imported goods¹²⁰ and approved the agreement on preshipment inspection customs modernization services concluded between Government of Moldova and Societe Generale de Surveillance S.A. (SGS) in Chisinau on March 31, 2000.¹²¹ At the same time by the budget law for 2000, # 918-XIV of April 11, 2000 (Art. 14, Para 7), the preshipment inspection of imported goods was established and in conformity with Art. 61, letter 'b' the Government undertook the commitment to develop within term of 2 months the corresponding regulatory acts and to fix the date for the inauguration of the inspection, having informed about it the external trade partners. Yet the decision of the Government was declared unconstitutional.¹²²

Taking this into account, the preshipment inspection was stipulated in the Law on state regulation of external trade.¹²³ According to Art. 12 the preshipment inspection includes the verification of quantity and quality of goods, of prices and customs classification. The inspection is carried out by an organization with global infrastructure on the territory of the country that delivers the goods for export and/or import. The law stipulates that the procedure for preshipment inspection of goods is established by law (statement declared unconstitutional¹²⁴).

On grounds of these provisions and for purposes of verification of conformity of quantity and quality, of prices and customs

classification, the Government instituted the preshipment inspection of goods imported into Moldova under the customs regimes for import and customs-free storage. The company Societe Generale de Surveillance S.A. was designated as service provider.¹²⁵ Also by the corresponding decision the Regulations on preshipment inspection of imported goods were approved, according to which the preshipment inspection is to be carried out on the territory of the exporting country by the authorized company. Also were approved the Agreement of preshipment inspection¹²⁶ and the Regulations on the Commission for the examination of appeals relating to the preshipment inspection of imported goods.¹²⁷ It was decided that the preshipment inspection of the imported goods would be carried out by the company SGS, effective from December 1, 2001.

Following the declaration of constitutional conflict of governmental decisions, # 1009 and, #1139 of 2001, a set of decisions and regulations was abrogated¹²⁴. Thus both the implementation of preshipment inspection and the activity of the Swiss company SGS were suspended and the comparative results of import activity registered by SGS and customs during the period of December 2001 - September 2002 were not made public. The weekly „Accente” mentions that “the circles of businessmen from Chisinau, supported by the majority of deputies and public officials, did not give up for a second the idea of removing the preshipment inspection and succeeded in doing so”. “The arguments against it have been the following: the mandatory tax for the implemented control will result in the increase of payment for the import, this being not stipulated by the tax law; for the implementation of inspection two parties (the importer and exporter) have to disclose their commercial secrets to the third private party – SGS; the import procedures are becoming more complex. And the most important is that the importers from the very beginning considered the introduction of PSI both useless and illegal. According to their opinion, this will not bring profit to the country”.¹²⁸

Thus we have the situation when for several years the preshipment inspection finds no ways for implementation, although it is a mechanism for fighting smuggling and not only. This does not show incapacity in creating the legal framework, but the ***strong resistance to the implementation of preshipment inspection***. And this might explain the discrepancies between the data supplied by other states in reference to the trade with Moldova. Comparing the indices for export in 1999 from the Moldovan statistics to those provided by the exporters, IMF came to the conclusion that ***at least 50 per cent of the import into Moldova evade customs and are not registered***. During the same year the amount of prejudice constituted \$US 700 million. Part of this import represents the so-called “technical smuggling”. IMF estimated that if importers had been deprived of the possibility to implement “double accounting”, the budget of Moldova would have been replenished by at least \$US 100 million. For this very reason, IMF insisted on the introduction of PSI¹²⁸.

The International Monetary Fund conditioned the release of funding on returning to the preshipment inspection and insisted on the implementation by July 1, 2003.¹²⁹ On 06.26.2003 the Parliament adopted the ***Law on the preshipment inspection***¹³⁰, having in principle, met one of the main conditions forwarded by IMF for releasing the external funding for Moldova. The deputy V. Doronin qualified this document, adopted just after first reading, as being a “forced legal act”.¹³¹ The objectives of the Law are:

- Improvement of the external trade control system;
- Increase of collection of import taxes and customs duties;
- Exclusion of discrimination in the economic agents external trade activity;
- Exclusion of above- or under-price invoicing, of other unloyal practices on import of goods to Moldova;

- Enhancement of protection of local consumer and producer by excluding from circulation the import of low quality and prohibited commodities.

The law stipulates the presence on the market of Moldova of a single company entitled to render preshipment inspection services and selected by the Government without announcing a special tender. The preshipment includes the inspection of goods, verification of prices, classification of goods, country of origin and the observation of restrictions on import. For the settlement of litigations between the importer and company it is stipulated to establish a special appeals institution: the Commission for the consideration of appeals. The Appeals Commission was approved on July 9, 2003 and consists of 8 staff representing state institutions and the private sector.¹³² On the grounds of the Law the Government appointed Societe Generale de Surveillance S.A. (SGS) for preshipment inspection of imported goods and services and on 10.27.2001 approved the agreement concluded with this company and the addendum to it.¹³³

Conclusions and Recommendations

12 years ago the Republic of Moldova proclaimed its independence having selected the democratic development on market principles. As in period of transition, the country was and continues to be confronted with a range of obstacles that definitely hampers the settlement of the crisis and the reduction of poverty.

It is well known that during transition periods the multilateral development of any state is permanently endangered by corruption. For absence of efficient tools of prevention, corruption is able to penetrate into any domain of activity, this resulting into economic, social and even political degradation.

We made an endeavor to analyze customs as one of the tools aimed at providing the state security, and especially the economic security.

The analysis showed that during this period considerable effort was made in Moldova for the implementation of principles of activity of customs. Starting from the relics of the ex-soviet customs, the efforts led to the creation of the regulatory framework, organization of customs activity and implementation of the custom system proper.

Regretfully, during this time the customs of Moldova in general terms were not able to avoid certain difficulties characteristic for the transition period. The implemented analysis shows that in customs activity there are serious problems relating to the international cooperation, full implementation of customs principles, harmonization and simplification of customs procedures, efficient organization, financial and technical supply, professional skills and conduct of customs officials, fighting of smuggling and other offenses of law and dissemination of legal provisions. A special problem is the proliferation of corruption among customs officials, the abuse of official status on behalf of high ranking officials, the problem of safeguarding the segment of border with Ukraine, the provision of legitimacy on the left bank of Dniester. These problems have legislative, organizational and economic aspects and in their totality place under real danger the efficiency of customs activity, the provision of state, especially of the economic one, the protection of rights and legitimate interests of the person by the customs activity, the development of economic relations with other states.

Based on the above, we consider it necessary to submit a set of recommendations targeted at the improvement and adjustment of the national law to international requirements, at the simplification of customs procedures, enhancement of efficiency of customs activity, protection of rights and legitimate interests of persons by the customs activity, prevention of smuggling and other offenses of law, prevention of corruption and abuse of official status, facilitation of external trade, development of economic relations with other states and provision of state security.

In the domain of international cooperation:

- Accession to the International Convention of simplification and harmonization of customs procedures, concluded in Kyoto on 05.18.1973 and to the Protocol of amendments to the Convention, adopted in Brussels on 06.26.1999.
- Accession to the 1961 Customs Convention of ATA carnet for temporary admission of goods and to the 1990 Istanbul Convention of temporary admission;
- Acknowledgement of the principles of customs activity stipulated in the Declaration of Customs Cooperation Council on integrity in customs, concluded in Arusha, Tanzania, on 07.07.1993.

In the domain of improvement and adjustment of national law to international requirements:

- Development of special procedures on economic cooperation with the economic agents registered in offshore areas;
- Adoption of addenda to the Customs Code on risk management and analysis in the implementation of customs controls, the implementation of advanced forms of customs control that would provide for its efficiency;
- The adoption of addenda to the Customs Code for the implementation of the “customs-free deposit” regime;
- The revision of terms for the verification of customs declarations and other documents and of implementation of clearance of goods and vehicles, stipulated in Art. 199 of the Customs Code, for purposes of facilitation of economic activity and prevention of delays;
- The adoption of addenda to the Customs Code governing the mixed customs control by neighboring states at ports of entry;
- The adoption of amendments to the legislation for purposes of removing the conflicts between the customs and tax laws. In

particular, the exclusion of provisions on exemptions from imports dues stipulated by the Law on foreign investments (Art. 35, 36) and the Law on leasing (Art. 17) which conflict with the Law on the customs tariffs. The insertion into a single regulatory act of an exhaustive list of tariff benefits on import of goods via an amendment to Art. 28 of the Law on customs tariff;

- For purposes of improvement of legal provisions relating to the judicial control of pre-judicial procedure and prevention of illegal dismissal of criminal cases, the phrase “or by other persons whose rights and legitimate interests have been infringed” from Art. 313 of the Code of Criminal Procedure must specify all the categories of persons entitled to make appeals against the decisions of the institution responsible for the criminal investigation or prosecution. A legal provision is necessary so as the institution having initiating a criminal case be entitled to appeals against decisions on such cases adopted by the prosecution or other institutions with criminal investigation authority;
- Adoption of addenda to the Law on service in customs for purposes of providing for the physical security of customs officials dealing with the customs clearance of goods, and also for the security of members of their families;
- Development and adoption of the regulatory framework for the automated information system according to advanced requirements;
- Revision of current customs payments (import-export dues) for purposes of streamlining them and placing at levels practiced in the countries of the European Union;
- Adoption of procedure for monitoring the goods transiting the territory of Moldova and of provisions stipulating the liability of officials for unauthorized controls of goods and vehicles.

For the increase of efficiency of customs activity:

- Establishment and equipment of temporary customs deposits (the so-called ‘customs terminals’) for the improvement of efficiency of the goods customs clearance;
- Implementation of the regime “customs-free deposit”;
- Adoption by Customs Department of regulatory acts governing the reception, accounting and actions upon reception of intelligence on customs offenses, the procedure of cooperation and coordination of activities with law enforcement and control institutions specialized in statistic information, fighting of smuggling and other infringements of the customs and tax law;
- Implementation of specific activities providing for the physical security of customs officials dealing with the customs clearance of goods, and also for the security of members of their families;
- Acceleration of organizational activities for the implementation of the automated information system and provision of its efficient operation;
- For purposes of preventing the infringements of law, for the study of customs regulations and for access to legal provisions to implement activities of dissemination and providing free access to legal provisions relating to customs: design and disseminate brochures, booklets and other materials with information of priority, necessary to citizens and entrepreneurs; timely update the specialized sites by necessary information and documents.
- For purposes of preventing cases of illegal tax holidays and other infringements of law, the National Bank of Moldova needs to undertake extra efforts for the exclusion of cases of groundless issuance by commercial banks of banking guarantees and fictitious confirmations of transfers of proceeds;

- Adoption of decisions on the organization and implementation of mixed customs control by neighboring states at ports of entry;
- Adoption and implementation of activities targeted at the acceleration of the process of border demarcation between the Republic of Moldova and Ukraine;
- For purposes of correct classification of goods, determination of country of origin and of customs value, to implement the activities necessary for the creation of customs laboratories for expertise and examination of goods;
- Sign memoranda of understanding between customs and economic agents on exchange of information on illegal transactions and deliveries;
- For purposes of developing the relations with the private sector, for the analysis of problems emerging in customs, development of recommendations for their settlement, improvement of legislation on external trade, it is necessary to establish a consultative council under the Customs Department with the participation of representatives of the public and private sectors;
- For purposes of introducing simplified customs procedures it is necessary to:
 - Implement the procedures of selective control of economic agents and of customs clearance at residence;
 - Implement and develop the subsequent customs control;
 - Design the selective customs control on the criteria of selection of customs declarations depending on the analysis of risk factors relating to the origin, type of goods, solvency of economic agent, type of customs procedure, etc.;
 - Establish the “single cash desk” for the collection of taxes at the ports of entry;

- Simplify the requirements for securing authorizations issued by customs and also the procedure of issuance;
- Automate the customs procedures on the grounds of advanced information technology;
- Develop the institute of customs brokers;
- Apply the international experience in the procedure of goods customs valuation;
- Adopt and implement additional activities targeted at the provision of technical and material supplies for customs that would enable them implement an efficient customs control.
- Create a centre for the training of staff under the Customs Department.

For fighting corruption and abuse of official status in customs:

- Ratification of the Civil law Convention (Strasbourg, 11.04.1999) and of Criminal law Convention (Strasbourg, 01.27.1999) on corruption;
- Accession to the OECD Convention of fighting corruption of alien public agents in commercial transactions (Paris, 12.17.1997);
- On the grounds of principles of customs activity stipulated in the Arusha Declaration of the Customs Cooperation Council it is necessary to adopt a national program on integrity in customs, which would contain activities for the minimal administrative regulation; transparency; automation; strategic segregation of jobs; responsibility and liability of management; internal and external audit; the morale and organizational culture; recruitment and selection; professional development; adequate reimbursement; communication of customs agents and business community;
- Development and implementation of the Code of Conduct of the customs official that would stipulate the principles of conflict of interests; on the grounds of norms of the Code of

Conduct it is necessary to adopt a coherent program of education of the customs staff, of promotion of ethics and good conduct;

- Adoption of a set of activities targeted at the promotion of transparency and integrity;
- Implementation of the internal control mechanism for the observation of law by customs officials;
- Amendment of the existing procedure of declaration and control of property of state dignitaries and public officials, stipulated by the effective law, for purposes of providing its efficiency as a tool for the prevention of corruption on the basis of direct control of declarations by specialized institutions;
- Drawing the attention of the specialized law enforcement institutions to the inefficiency of fighting corruption, especially in the part of abuse of official status; absence of real liability of officials of different ranks for the abuse of status; absence of real liability of managers for failures to observe the Law on fighting corruption and protectionism. Adoption and implementation of organizational activities for the enhancement of efficiency of specialized institutions in fighting corruption;
- The implementation and monitoring of anti-corruption activities adopted by the 2003-2005 state Program for fighting crime and corruption;
- Implementation of activities aimed at strengthening the judiciary system, the provision of independence and impartiality of judges and prosecutors;
- Adoption and implementation of activities targeted at wages providing for a decent living of customs officials;
- Adoption of measures for the real implementation of an objective mechanism of selection, appointment and

promotion of customs officials via competition and on principles of merit;

- Implementation of the procedure of regular evaluation of professional skills and observation of law by customs officials;
- For purposes of due transparency in customs it is necessary to regularly publish the statistic data on customs activity.

Also, in order not to make the customs be only a collector of funds for the budget, within limits of competence, it is necessary to reinforce that ***the priorities of customs are:*** the fight against phenomena endangering the state security (economic inclusive), the protection of legitimate interests of citizens and entrepreneurs by the customs activity.

For purposes of ***instauration of legitimacy in the territory on the left bank of Dniester it is necessary to provide the security of the segment of border with Ukraine***, prevent smuggling and other infringements of law, fight the illegal traffic, implement additional activities and use the possibilities that may be offered by the European Union, the Organization of the United Nations for a consistent and prompt settlement of the Transnistrian problem.

Bibliography

¹ Decree of President of the Republic of Moldova on placing under jurisdiction of the customs institutions located on the territory of the Republic of Moldova, # 189 of 09.03.1991.

² Decision of Government on the establishment of the Customs Control Department of the SSR of Moldova, # 70 of 02.11.1991.

³ Decision of Government on the establishment of ports of entry and customs control, # 496 of 09.06.1991.

⁴ Convention of the establishment of the Customs Cooperation Council, concluded in Brussels on 12.15.1950.

⁵ International Convention of simplification and harmonization of customs procedures, concluded in Kyoto on 05.18.1973 (effective since 1974); Protocol of amendments to the Convention, concluded in Brussels on 06.26.1999.

⁶ International Convention of mutual administrative assistance for the prevention, investigation and repression of customs offences, concluded in Nairobi on 06.09.1997.

⁷ The Declaration of the Customs Cooperation Council on integrity in customs, concluded in Arusha, Tanzania on 07.07.1993.

⁸ Decision of Government on approval of Agreement between Government of the Republic of Moldova and Government of Romania on customs cooperation and mutual administrative assistance for the prevention, investigation and repression of offenses in customs activity, # 732 of 07.24.2000.

⁹ Decision of Government on approval of Agreement between Government of the Republic of Moldova and Government of Poland on customs cooperation and mutual assistance, # 1444 of 11.11.2002.

¹⁰ Decision of Government on approval of Agreement between Government of the Republic of Moldova and Government of the Republic of Turkey on customs cooperation and mutual assistance, # 874 of 07.14.2003.

¹¹ Decision of Parliament on the ratification of Agreement on customs cooperation and mutual assistance, # 396-XIII of 03.16.1995.

¹² Decision of Parliament on ratification of Agreement on exemptions from customs duties and taxes, and on issuance of special permits for the transportation of normative documents, samples, measuring devices, samples of standards for purposes of metrological inspection and customs clearance, # 601-XIII of 10.03.1995.

¹³ “Russia demolishes the Commonwealth of Independent States”, Flux, 07.02.2003.

¹⁴ Decision of Parliament on accession of the Republic of Moldova to the Convention of establishment of the Customs Cooperation Council, # 164-XIII of 06.30.1994.

¹⁵ Law on accession of the Republic of Moldova to the International Convention of mutual administrative assistance for the prevention, investigation and repression of customs offences, # 275-XV of 06.21.2001.

¹⁶ Law on the accession of the Republic of Moldova to the World Trade Organization, # 218-XV of 06.01.2001.

¹⁷ Self-assessment Guide on the “Practical implementation of the Arusha WCO Declaration”, developed by the World Customs Organization.

¹⁸ <http://www.icac.org.hk/>

¹⁹ *See the Model Code of Conduct of the World Customs Organization.*

²⁰ Law on service in customs, # 1150-XIV of 07.20.2000.

²¹ Customs Code, adopted by Law # 1149-XIV of 07.20.2000.

²² Law on customs tariff, # 1380-XIII of 11.20.1997.

²³ Law on import/export of goods to/from the Republic of Moldova by natural persons, # 1569-XV of 12.20.2002.

²⁴ Law on entry/exit to/from the Republic of Moldova, # 269-XIII of 11.09.1994.

²⁵ Law on state border of the Republic of Moldova, # 108-XIII of 05.17.1994

²⁶ Decision of Government on approval of Regulations on customs procedures, # 207 of 02.26.2003.

²⁷ Maria Ciubotaru, “Regulation and transparency policies in the domain of small and medium enterprises”, Conference materials, “SME: Partnership, Abilities and Transparency”, Chisinau, 06.26-27.2003.

²⁸ See: www.docs.md

²⁹ “Last year the external trade of the Republic of Moldova constituted 26.6 billion Lei”, AP Flux, 01.31.2003.

³⁰ “Customs contribute 1.6 billion Lei to the budget”, Infotag, 01.07.2003.

³¹ “The amount of external trade increased”, Moldova Suverană, 31.07.2003.

³² “During seven month the passenger flights increased by 10 per cent”, Moldova Suverană, 13.08.2003.

³³ “The Customs Department created the “group of trustees”, Ekonomicheskoye Obozrenie, 06.06.2003.

³⁴ Statistic data of the Ministry of Interior, 1999 – 4 months of 2003.

³⁵ Law on amendments and addenda to the Criminal Code, # 472-XIV of 06.25.1999.

³⁶ Law # 727-XIV of 12.16.1999 on amendments and addenda to Law on operations investigation activity, # 45-XIII of 04.12.1994.

³⁷ Criminal Code adopted by Law # 985-XV of 04.18.2002.

³⁸ Code of criminal procedure adopted by Law # 122-XV of 03.14.2003.

³⁹ Decision of Government on approval of structure, staff breakdown and Regulations of the Customs Department, # 410 of 06.06.2001.

⁴⁰ Information note of the parliamentary commission (March 2003) on the results of control of implementation of the Law on service in customs, # 1150-XIV of 07.20.2000.

⁴¹ Report of the Ministry of Finance on the execution of the 2001 budget.

⁴² Ministry of Interior: Information on crime situation and results of fighting crime on the territory of the Republic of Moldova for 12 months of 2001.

⁴³ Decision of the Chamber of Accounts on the results of control of certain aspects of activity of the Customs Department of the Republic of Moldova for the period of 1999-2000, # 75 of 08.03.2001

⁴⁴ Lilia Carașciuc, Efim Obreja, Tudor Popovici, Valeriu Mândru “Corruption and access to justice in the opinion of the public and experts”, Transparency International – Moldova, Chisinau, 2002.

⁴⁵ Code of criminal procedure of 03.24.1961 with subsequent amendments.

⁴⁶ Decree of President on establishment of customs-free deposits, # 28 of 01.28.1994.

⁴⁷ Decision of Government on establishment of customs-free deposits on the territory of the Republic of Moldova, # 608 of 08.10.1994.

⁴⁸ Decision of the Chamber of Accounts on the results of control of economic and financial activity of the Customs Department of the Republic of Moldova for the period of 01.01.1996 - 10.01.1998, # 7 of 02.03.1999.

⁴⁹ Decree of President # 462-III of 01.24.2002 on abrogation of Decree of President # 28 of 01.28.1994.

⁵⁰ “Vladimir Voronin speaks in favor of an emergency improvement of the legislation”, Moldova Suverană, 08.01.2003.

⁵¹ Decision of Government on application of customs seal, # 379 of 04.23.1997

⁵² Decision of Government on interaction of services, regulation of payments collection and automation of accounting for the

implementation of controls at the ports of entry to the Republic of Moldova, # 808 of 08.09.2000.

⁵³ Decision of Government on development and implementation of the cargo transit system of information and accounting, # 903 of 80.30.2001.

⁵⁴ Decision of Government on transportation on territory of the Republic of Moldova of excise taxable goods with the application of the seal “SMART”, # 804 of 06.19.2002.

⁵⁵ Decree of President on the establishment of working groups for the study of activity of customs institutions, # 885-II of 01.28.1999.

⁵⁶ Decision of the Permanent Bureau of the Parliament, # 20-XV of 10.25.2002.

⁵⁷ Decision of Parliament, # 151-XV of 03.27.2003 on the results of control of implementation of the Law on service in customs, # 1150-XIV of 07.20.2000.

⁵⁸ Decision of the Chamber of Accounts on the management and use of public funds in 2002, # 51 of 07.07.2003.

⁵⁹ “Records” of the customs”, Jurnal de Chisinau, 03.28.2003.

⁶⁰ “The amount contributed to the budget by the Customs Department in July 2003 stands for 352.3 million Lei”, Interlik, 08.19.2003.

⁶¹ “Parliamentarians discuss the activity of the customs”, Ekonomicheskoye Obozrenie, 03.14.2003.

⁶² “Chisinau and Kiev stipulate opening mixed points of customs control”, AP Flux, 06.19.2003.

⁶³ Decision of the Chamber of Accounts on the results of control of the execution by the Customs Department under the Ministry of Finance of the Republic of Moldova of articles of expenditure and revenues budgetary tasks for 1999, # 35 of 06.15.2000.

⁶⁴ “Government approved the measures for the provision of implementation of import-export transactions by the economic agents from the left Dniester bank”, AP Flux, 06.11.2003.

⁶⁵ “The Smirnov regime- between agony and misinformation”, Moldova Suverană, 10.15.2002.

⁶⁶ “Prime Minister Tarlev discussed the common problems, including trafficking in human beings, with officials from Odessa region”, AP Flux, 05.07.2003.

⁶⁷ “The Rybnitsa metallurgical plant processes radioactive materials”, AP Flux, 06.05.2003.

⁶⁸ “President Vladimir Voronin considers that “it would be good if President Putin instructs Smirnov to leave Transnistria”, Infotag, 01.14.2002.

⁶⁹ “The European press re-opens the discussion of the “Hammoud case”, Flux, 07.01.2003.

⁷⁰ Decision of Government on common internal fiscal control points, # 362 of 04.28.1999.

⁷¹ Agreement between the Government of the Republic of Moldova and the Cabinet of Ministers of Ukraine on mutual assistance and cooperation in customs of 08.18.1999.

⁷² Decision of Government on organization of mixed control at the Moldo-Ukrainean ports of entry, # 904 of 08.30.2001.

⁷³ Declaration on the basic principles of creation of the Customs Union between the Republic of Moldova and Ukraine of 01.11.1997.

⁷⁴ “The European Union suggests to Kiev to cooperate with Chisinau for the establishment of customs control at the Moldo-Ukrainean border”, Basa-press, 01.14.2002.

⁷⁵ “Ukraine no longer accepts the soviet seals”, Flux, # 53, 05.27.2003.

⁷⁶ “The Republic of Moldova and Ukraine signed the protocol on mutual recognition of customs specimens”, Basa-press, 05.16.2003.

⁷⁷ Decision of Government on activities for the implementation of import-export transactions by the economic agents from the east rayons of the Republic of Moldova, # 712 of 06.12.2003.

⁷⁸ “The situation in Transnistria is increasingly tense”, Moldova Suverană, 07.01.2003.

⁷⁹ “The Transnistrian companies will become Moldovan”, Ekonomicheskoye Obozrenie, 06.13.2003.

⁸⁰ “Declaration of Government of the Republic of Moldova”, Moldova Suverană, 07.02.2003.

⁸¹ “Voronin requested a more active involvement of the European community in the creation of Moldo-Ukrainean customs points on the Transnistrian segment of the border”, AP Flux, 04.09.2003.

⁸² “The European Union might conclude with the Republic of Moldova an agreement similar to the ones concluded with Croatia or Albania”, Basa-press, 06.13.2003.

⁸³ “Republic of Moldova under EU umbrella?” Flux, 06.25.2003.

⁸⁴ “During the visit to Brussels the chief of state had meetings with several European dignitaries”, Basa-press, 06.25.2003.

⁸⁵ “President Voronin met NATO Deputy-Secretary General on political issues”, Basa-press, 04.09.2003.

⁸⁶ Decision of the Chamber of Accounts on the results of control of activity of the Customs Department and its territorial units for 2001, # 47 of 05.24.2002

⁸⁷ Information Note of Prosecutor General on results of activity of prosecution in fighting corruption and protectionism for 2000, # 22-1d/2001 of 01.31.2001.

⁸⁸ Law on addenda to the 2001 budget Law , # 1392-XIV of 11.30.2000 and the amendment to Title IV of the Tax Code, # 507-XV of 10.05.2001; Decision of Government on the import of wine distillates, # 1319 of 11.29.2001.

⁸⁹ “The customs in Vâlcu’s house”, Accente, 08.27.2003.

⁹⁰ “President prohibited the officials to call to the customs “, Ekonomicheskoye Obozrenie, 02.14.2003.

⁹¹ “Large-scale fraud at the alcohol deposits of SA “Aroma”, Flux, 06.20.2003.

⁹² “Persons with criminal record hold responsible positions at the Customs Department”, Jurnal de Chisinau, 01.17.2003.

⁹³ “Fighting smuggling is a task of priority in the activity of the Customs Department”, Moldova Suverană, 07.15.2003.

⁹⁴ “Managers of SIS- oil and alcohol smugglers”, Accente, # 70, 01.16.2003.

⁹⁵ Efim Obreja, “Measures for preventing corruption and for protection of entrepreneurs”, Conference materials, “SME: Partnership, Abilities and Transparency”, Chisinau, 26-27.06.2003.

⁹⁶ Message, # 4723 of the Customs Department of 07.02.2003.

⁹⁷ Law on declaration and control of income and property of state dignitaries, judges, prosecutors, public officials and some persons with management positions, # 1264-XV of 07.19.2002;

Law on approval of Regulations on the organization and operation of the Central Commission for the control of declarations of income and property and of the Regulations on the organization and operation of departmental commissions of control of declarations on income and property, # 1576-XV of 12.20.2002.

⁹⁸ “Hitting corruption with the declaration or let’s do business?”, Office, # 4, 02.06.2003.

⁹⁹ Customs Department, Procedure for appeals by economic agents and natural persons to customs, # 288-0 of 11.05.2002.

¹⁰⁰ Decision of Government on the 2003-2005 State Program for fighting crime and corruption, # 1693 of 12.27.2002

¹⁰¹ Vadim Rotaru, “Problems in the application of customs law”, Conference materials, “SME: Partnership, Abilities and Transparency”, Chisinau, 26-27.06.2003.

¹⁰² “Welcome to Moldova or ... How foreign visitors are met in Chisinau”, Jurnal de Chisinau, 04.04.2003.

¹⁰³ Decision of Government on approval of Regulations on the service of command corps of the customs service of the Republic of Moldova and on the disciplinary Statute of the command corps

of the customs service of the Republic of Moldova, # 203 of 03.30.1992.

¹⁰⁴ Decision of Government on approval of the disciplinary Statute of decision makers in the customs of the Republic of Moldova, # 746 of 08.07.1997

¹⁰⁵ Decision of Government on approval of some regulatory acts on the implementation of the Law on service in customs, # 383 of 05.29.2001.

¹⁰⁶ Decision of Government on improvement of republican customs and consolidation of its technical and material basis, # 183 of 03.24.1992.

¹⁰⁷ Decision of Government on increase of staff number and approval of new reimbursement conditions for the units of the Customs Department, # 322 of 06.11.1996.

¹⁰⁸ Decision of Parliament on approval of Regulations on establishment and allocation of proceeds of the special fund for incentives to the staff of the Ministry of National Security, Ministry of Interior, Department of Customs Control, the State Tax Service and the Department of Financial Control and Audit under the Ministry of Finance, # 1046-XIII of 12.18.1996

¹⁰⁹ Decision of Government on approval of expenditure budget for extra budgetary proceeds of the Customs Department for 1998, # 425 of 04.09.1998

¹¹⁰ Decision of Government on increase of budget allocations for the provision of activity of the customs system, # 1239 of 12.12.2000.

¹¹¹ “Minimum consumer basket” for June decreased by 116 Lei”, Basa-press, 07.21.2003.

¹¹² “The Chisinau international airport corresponds to the world customs requirements”, Moldova Suverană, 07.22.2003.

¹¹³ Decision of Government on approval of Regulations on the procedure for declaring the customs value of goods entering the Republic of Moldova, # 600 of 05.14.2002.

¹¹⁴ “Smugglers paint themselves”, Moldova Suverană, 08.12.2003.

¹¹⁵ “Corruption – cradle of profitable patriotism”, Moldova Suverană, 08.20.2003.

¹¹⁶ Decision of Government on mandatory control of the value in customs for certain imported goods, # 1092 of 10.29.1898.

¹¹⁷ Decision of Government on establishment of the specialized information centre “VAMA”, # 508 of 08.10.1993.

¹¹⁸ Decision of Government on approval of the Concept and Regulations of the “FRONTIERA” automated information system for accounting and control of persons, vehicles and goods (cargo) crossing the state and/or customs border, # 1126 of 08.28.2002.

¹¹⁹ “The countries from the Stability Pact enhance the cooperation for fighting corruption in customs and smuggling”, Moldova Suverană, 02.11.2003.

¹²⁰ Decision of Government on the introduction of preshipment inspection of imported goods, # 747 of 08.03.1999.

¹²¹ Decision of Government on approval of Agreement on rendering preshipment services and on customs modernization services, # 452 of 05.15.2000.

¹²² Decision of the Constitutional Court on the control of conformity to Constitution of the decision of Government # 747 of August 3 august 1999 “On introduction of preshipment inspection of imported goods”, # 22 of 05.18.2000.

¹²³ Law on state regulation of external trade, # 1031-XIV of 06.08.2000.

¹²⁴ Decision of Constitutional Court # 35 of 09.24.2002 on the control of conformity to Constitution of decisions of Government # 1009 of 27 September 2001 “On preshipment inspection of imported goods and # 1139 of 25 October 2001 “On approval of the Agreement on rendering preshipment inspection services”.

¹²⁵ Decision of Government on preshipment inspection of imported goods, # 1009 of 09.27.2001.

¹²⁶ Decision of Government on approval of Agreement on rendering preshipment inspection services, # 1139 of 10.25.2001.

¹²⁷ Decision of Government on approval of Regulations of the Commission for the examination of appeals relating to the preshipment inspection of imported goods, # 1498 of 12.28.2001.

¹²⁸ “Preshipment inspection will be back in September”, Accente, 06.19.2003.

¹²⁹ “Law on preshipment inspection was voted after first reading”, Moldova Suverană, 06.20.2003.

¹³⁰ Law on preshipment inspection, # 265-XV of 06.26.2003.

¹³¹ “The Law on preshipment inspection was dragged in ...”, Ekonomicheskoye Obozrenie, 06.20.2003

¹³² “Government established the commission for the implementation of preshipment inspection”, Interlik, 07.10.2003

¹³³ Decision of Government, # 994 of 08.13.2003 on appointment of the company for rendering preshipment inspection services.