



Terms of Reference

Project Title: Regulation of Customs Territorial Competence and Customs Terminals in the Republic of Moldova

Starting Date: April 11, 2014

The Terms of Reference (ToR) will serve as the basis of the contractual agreement between the American Chamber of Commerce in Moldova (AmCham) and the responsible expert organization/individual for carrying out the work of evaluating the possibilities of legislating Customs Territorial Competence and Customs Terminals in the Republic of Moldova.

AmCham reserves the right to make minor revisions to the content, order, and numbering of the provisions in ToR document to be executed by the selected awardee.

BACKGROUND

Currently, in the Republic of Moldova, the terms "customs territorial competence" and "customs terminal" **are not defined** anywhere in legislation and their activity **is not regulated** by any type of document, be it law, Government Decision or Order. On the other hand, in practice, customs terminals become an important part of the customs process (customs terminals are used to close transit, perform physical verification of goods by Customs Service, parking of trucks while awaiting for Customs agents, storing goods, etc.) with which economic agents interact regularly in order to conduct their import/export activities.

Due to the fact that terminals do not have any status, their activity is not regulated, and they function by unclear rules - economic agents are being deprived of **predictability** and **transparency** in their trade activity. European Union provisions and national laws state that regulatory predictability and decisional transparency are the core principles of business regulation. Moreover, for investors to invest with greater confidence and for businesses to grow and prosper, a predictable and transparent regulatory environment is essential.

Note: *Law no. 235 from 20.07.2006 regarding basic principles regulating business activity provides the principle of predictability of business regulation, expenses, technical normative documents and also, provides the principle of decisional and regulatory transparency. Neither of these principles is being respected regarding customs terminals.*

ARGUMENTATION AND NECESSITY

Regulating customs territorial competence and customs terminals are important issues for the business environment for the following reasons:

- The terms "customs territorial competence" and "customs terminal" are **not defined** anywhere in legislation, as there is no regulated activity. Terminals currently do not have any status, function by unclear rules, and lack predictability and transparency in their activity which negatively affects importers/exporters.



- The services of these entities (which are mandatory) **are charged**. Charges range from one terminal to another and depend on the time of day (day or night). Similarly, these fees are not mentioned in any legislation/regulation which deprives economic agents of **financial predictability**.
- Currently, customs terminals are used to close transit, to perform physical verification of goods by Customs, for parking of trucks while awaiting for Customs agents, to storing goods, etc. From those described above, it becomes clear that customs terminals are an **inherent** part of the customs process and help Customs Service carry out its duties stipulated in Art. 11 of the Customs Code. Some of the Customs Service prerogatives are transferred, without any legal basis to customs terminals operators and without imposing certain obligations regarding the ensuring of adequate infrastructure, security, storage of goods in good conditions, etc.
- Since the process of selecting customs terminal operators is not regulated and is lacking transparency, economic agents do not benefit from optimal conditions, like in the case they would have benefited, if these operators were selected by well-established criteria in a context of healthy competition and equal treatment regarding all bidders.
- The liability aspect, where cargo from the terminal is lost, stolen, destroyed, etc., is not specified anywhere. Normally, the customs terminal operator should respond twice in case something happens to the goods: to the state – for the rights of import/export; and to the economic agent - for the integrity of the goods. Possibly, this can be done through a warranty, as a condition of authorization.

OBJECTIVES

The general objective is to **legislate and legalize customs territorial competence and customs terminals**, as they are now conventionally named, in order to bring clarity, predictability and transparency in their activity and therefore, in the activity of importers/exporters.

Currently, customs terminals can be only described as entities that work in close interdependence with the Customs Service and that offer paid administratively imposed services to importers/exporters without having a transparent way of functioning.

The main stakeholders of the project are the economic agents, relevant public authorities and donor organizations.

METHODOLOGY

During the research, the expert consultant/organization is expected to apply the following approach for data collection and analysis (but not limited to):

- a. **Consulting importers/exporters/logistic companies, Customs Service representatives, customs terminals' operators on the necessity of regulating customs terminals.**
 - Conducting separate interviews with importers/logistic companies, brokers, Customs Service representatives and terminal operators (around 12 representatives in total), with a short questionnaire integrated;



- Organize a joint meeting with stakeholders on the subject of customs territorial competence and customs terminals.
- b. **Evaluation of the current status regarding customs terminals.**
 - Analysis of the current legislation regulating customs territorial competence and customs terminals: definition, selection criteria, tariffs, etc.;
 - Number and location of the terminals and territorial competence units;
 - Average number of importers/exporters using customs terminal services per customs terminal;
 - Functions of the customs terminal in practice;
 - Tariffs required by using customs terminal services;
 - Average time of stationing in the customs terminal;
 - Form of contracting customs terminal operators by Custom Service;
 - Process of selection customs terminal operators (tender dates);
 - Potential losses to the state budget;
 - Analysis of available statistical data.
- c. **Analysis of international experience**
 - Identify the best international practices of regulating customs terminals, such as: public ownership and administration of customs terminals, public private partnership, concession of administration rights, other methods.
- d. **Analysis of possible solutions for Moldova, taking into account the economic and legislative impact**
- e. **Elaborating the Study on Regulation of Customs Territorial Competence and Customs Terminals**
- f. **Formulating recommendations on the possible solution implementation through legislation and economical analysis**
- g. **Elaborating the Regulatory Impact Analysis (RIA) on the best solution**
- h. **Drafting legislative proposals on regulating customs territorial competence and customs terminals, accompanied by an Informative Note.**

DELIVERABLES

- A study on the topic of “customs territorial competence and customs terminals” that would analyze international experience, national legislation and would present **recommendations** on regulating these entities.
- **Legislative proposals** that would regulate customs terminals, if necessary - according to the study recommendations, accompanied by RIA.



QUALIFICATION REQUIRED

- Advanced University Degree in customs and/or trade law;
- At least 3 years of experience in providing similar and/or related consultancy;
- Experience in coordination or project management;
- Proven experience on preparation of written reports in an accurate and concise manner;
- Public presentation skills;
- Experience in working with different stakeholders (government bodies) including business community and civil society;
- Fluency in oral and written English and Romanian, good command of Russian is desirable.

SELECTION CRITERIA

- Experience of the research consultant/organization in relevant fields;
- The quality and applicability of the proposed methodology;
- The proposed time-frame for executing the assignment;
- Engagement in advocating for the implementation of the recommendations at the Governmental level;
- The requested price for services.

APPLICATION PACKAGE

The applicant should submit the following documents:

- A CV/CVs reflecting the relevant experience of the applicant (references will be an advantage) - 2 pages;
- Examples of previous research conducted - 2 pages;
- Research methodology - 2 pages;
- A tentative timetable for preparation, field-work, analysis and finalization of the Report - 1 page;
- Detailed budget for the evaluation in USD (total price, daily fee, travel costs, communication, translation fees, etc.) - 1 page.

SUBMISSION OF APPLICATIONS

The deadline for submission of applications is April 11, 2014.

Applications should be sent to the following address: 45B, Pushkin Street, MD 2005, Chisinau, Moldova, or alternatively by e-mail: anaraileanu@amcham.md with "Regulating customs terminals" in the subject line. All questions regarding this task shall be addressed in writing to Ana Raileanu, AmCham project manager, anaraileanu@amcham.md with copy to milamalairau@amcham.md. If you have any questions please contact Ana Raileanu at 022 211 781