

## CUSTOMS PROTECTION OF THE RIGHTS FOR INTELLECTUAL PROPERTY ITEMS - IMPROVEMENT IN THE EURASIAN ECONOMIC UNION

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**Abstract:** *The article deals with one of the inseparable parts of each state's economic activity that is customs protection of the intellectual property objects. In industrial and post-industrial society, the importance of intellectual property does not only increase but also becomes an essential element for the formation of a high-tech and innovative economy. As far as the global requirements for the protection of intellectual property items (IPI) have been set forth in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), nowadays they are mandatory for every WTO member country. Nevertheless, in connection with the existing system of intellectual property Customs Protection in the Eurasian Economic Union the problems the customs authorities face when dealing with the Intellectual Property rights arise. The types of IP rights infringements are described, as well as the ways of IP rights protection. The article lists the issues related to the customs protection of intellectual property rights through the economic integration. The distinctive features of rendering the state services within the integration consolidation are distinguished. The existing instrument for the IPR objects protection, which is the EEU common customs intellectual property registry (CCIPR) and the national customs intellectual property registry (CIPR) is described. The shortages of this instrument that make it impossible to provide a sufficient level of customs protection of intellectual property rights and the schemes of "gray good" importation are characterized. The ways of their elimination are given. The need of centralization and harmonization of the process of State customs service's rendering is proved and the options of this purpose achievement are given.*

**Key words:** *Customs protection, intellectual property objects, innovative economy, infringements, import, state services, registry, state instruments*

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### INTRODUCTION

The rapid processes of modern integration put on the agenda issues related to the cross-border movement of goods containing objects of intellectual property (IP). In the world, the share of goods containing the intellectual component is steadily increasing. The value of intellectual property not only increases, but also becomes a necessary element for the formation of a high-tech, innovative economy. In modern conditions of transition to an innovative economy and import substitution, issues of the intellectual property rights (IPR) protection are of particular importance because intellectual property (IP) becomes not only a strategic resource of the state, but also a full-fledged independent category of tradable goods.

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This problem has been recognized as global and requires solving not only at the national, but also at the international level.

Currently, research on the issues related to certain aspects related to intellectual property, namely, legal protection and protection of intellectual property rights, regulation and use of intellectual property, declaration of goods containing intellectual property objects (IPO), customs control of goods containing IPOs, is becoming more and more relevant.

It is necessary to maintain a high level of intellectual rights protection; otherwise the results of intellectual activity will not be sold, but stolen, copied and illegally used. “Business and the author in their interaction with each other do not always find common points of contact. These contradictions should be resolved in legal terms based on legal and regulatory principles protecting intellectual rights.” [1].

### **THE CUSTOMS CODE OF THE EURASIAN ECONOMIC UNION (EAEU) AS THE LEGAL INSTRUMENT FOR THE IPR PROTECTION**

A special role in the IPR protection is assigned to the customs authorities. From the point of view of economic theory, customs protection of intellectual property rights (IPO) should be viewed from the position of services. Customs protection of intellectual property rights is a service provided by the state. [2].

The Customs Code of the Eurasian Economic Union (EAEU CC) among the functions performed by the customs authorities provides the protection of intellectual property rights in the customs territory of the Union. [3].

Considering the customs protection of rights to the Intellectual Property Objects (IPOs) as a state function, we can conclude that its goal is to counteract the movement of counterfeit goods across the customs border. Customs protection of rights to the IPOs as a state service is the activity of the customs authorities in the implementation of state functions in order to protect the rights of copyright holders to the IPOs in the cross-border movement of goods. [4].

The purpose of the customs control carried out by the customs officials, in the terms of intellectual property, is to identify the IPR violations in cross-border movement of goods as the basic condition for the provision of the public services for the IPR customs protection. There should be noted a distinctive feature that is the object of public services and the rights to intellectual property objects of the right holder, while the object of the state function and the object of customs control, through which the service itself is provided, are the goods containing IPOs transported by the declarant. [5].

### **SHORTAGES OF THE LEGAL BASIS FOR THE IPR PROTECTION**

The legal basis for the IPR protection by customs authorities is constituted by the legal acts of various levels, regulating the procedure and conditions for the movement of goods containing intellectual property objects across the customs border.

The entry into force on January 1, 2018 of the Customs Union of the EAEU has entailed significant changes that affect many areas of customs and foreign economic activity (FEA). The legal and regulatory framework that existed within the framework of the customs legislation of the Customs Union member states, which regulated legal relations in the field of

intellectual property protection, was not sufficiently developed. The scope of customs protection of the rights to the IPOs in the member states of the Customs Union was regulated in different ways and has led to various misunderstandings and infringements.

### **PROBLEMS OF THE IPR PROTECTION IN THE EAEU TERRITORY**

Unfortunately, even after the entry into force of the EAEU Customs Code (EAEU CC), little has changed. Currently, the EAEU member states have different principles for the exhaustion of exclusive rights. Not all the countries apply the procedure “ex officio”. Like the Customs Code of the Customs Union, the possibility for customs authorities to take measures to protect the rights to IPOs in relation to the goods containing them were not included in the IPOs customs registers (CCIPR) at the level of the national legislation of the EAEU member states.

The content of the national customs registers of intellectual property varies greatly depending on the national legislation of the member state. For example, at the end of 2017 in the Customs Register of Intellectual Property Objects (CIPR) of the Federal Customs Service of Russia, the total number of intellectual property objects registered in the Customs Register was 4.617 objects, then in the CIPR of the Republic of Kazakhstan there were 550 objects, in Belarus - 301 objects, in the Kyrgyz Republic - 253 objects and in the Republic of Armenia - 163 objects.

The existing differences determine the existence of legal, from the position of customs legislation, schemes for the import of counterfeit goods into the territory of the EAEU. Due to the fact that in Kazakhstan and Armenia there is an international principle of the exclusive rights exhaustion, there is a scheme for “gray goods” importing into the EAEU through a section of the customs border owned by Kazakhstan or Armenia, where such goods are not considered counterfeit.

Fewer IPOs entered into the CIPR of Belarus (approximately 18 times less than in the CIPR of the Russian Federation), and the non-use by the Belarus officials ex officio leads to the possibility of unimpeded importation of counterfeit goods into the EAEU through this country. Once imported goods move further freely between the EAEU member states, because there are no customs borders between them.

The conditions for the right holders on the inclusion of the IPOs to the CIPR and the Unified Customs Register of the EAEU (CCIPR) countries differ. This situation does not ensure the effectiveness of the IPOs rights protection and does not prevent the movement of counterfeit goods across the customs border of the EAEU. The existing procedure for the customs declaration does not always allow to uniquely identify the IPO contained in the declared goods. This leads to a low probability of the counterfeit goods detection in the framework of the public services provision.

The amount of the holder's obligation to compensate the property damage in member countries depends on foreign currency. The fluctuations in exchange rates observed in recent years do not comply with the requirement of the Art.53 of the Agreement on Trade-Related Aspects of the Intellectual Property Rights “On the Pledge or Equivalent Guarantee”.

### **CHANGES MADE AFTER THE NEW EAEU CC ACCEPTANCE**

With the entry into force of the Customs Code of the EAEU, certain changes have occurred in the field of the IPOs rights customs protection. If earlier the CIPR was conducted by the Federal

Customs Service of Russia, then at present the administration of the CCIPR is the prerogative of the Eurasian Economic Commission.

One of the mandatory conditions for the IPOs inclusion in the CCIPR was previously provided by the need to conclude the liability insurance contract for the property damage in connection with the suspension of the goods' release before making a decision on the inclusion of the IPOs into CCIPR. In spite of the fact that inclusion into the CCIPR is free, the right holder had to provide an insurance policy that is not free.

Moreover, the right holder had to cover the costs even if he did not actually receive services (no counterfeit goods were found with his IPO belonging to him). The EAEU Customs Code provides the opportunity to submit at the time of application only the written commitment certified by the copyright holder - the form of the obligation is set out in the Annex 4 to the Decision of the Board of the Eurasian Economic Commission No. 35 dated March 6, 2014. "On maintaining a single customs register of intellectual property objects of the member states of the Eurasian Economic Union" and the actual presentation of the insurance contract will be required only in the event of a positive decision on the inclusion of the IPO in the CCIPR.

Thus, the potential unjustified costs of the right holder associated with the submission of a liability insurance contract when submitting an application for the inclusion of the IPO in the CCIPR are excluded. This change should simplify the inclusion of the IPOs in the CCIPR, in which, for the entire period of its existence, not a single IPO has been included.

Unfortunately, at present time, even with the current changes, CCIPR is not able to contribute to solving the main problem that is the provision of equivalent protection throughout the entire EAEU customs territory.

The procedure for suspending the release of goods containing the intellectual property and the resumption of the release date for such goods has not changed. Thus, the entry into force of the EAEU CC did not introduce significant changes in the scope of customs protection of the IPOs rights.

A slight decrease in administrative and financial barriers in this sphere does not solve a number of existing problems in this area. Further legislative activities at the level of each state will be carried out within the framework defined by the EAEU CC, which does not allow solving the existing problems at the national level.

## **SITUATION WITH THE COUNTERFEITING IN THE RF TERRITORY**

In the Russian Federation in 2017, the customs authorities identified about 10.1 million units of counterfeit products, prevented damage that could be caused to the copyright holders of the intellectual property objects, worth more than 4.5 billion rubles. Subjects of offenses most often were: food bags, souvenirs, confectionery, tobacco and alcohol products, pocket lighters, soft drinks, capping agents, cans, goods for the holidays, children's toys and sports goods.

## **CONCLUSION**

In order to improve the quality of state services in maintaining the Customs Register of the IPOs, as well as the transparency provision of the administration, the Federal Customs Service of Russia has launched an experimental information service "Personal account of a participant in foreign economic activity". It is purposed to the inclusion of trademarks in the Customs

Register of the Intellectual Property. This initiative was purposed to the software improvement that is used by the customs authorities when performing the customs operations related to the customs declaration. This work will allow quickly responding and taking measures to protect the rights of the rights holders.

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