

Service sector in terms of changing environment

## Measures of the customs administration of the Republic of Macedonia for the protection of the intellectual property rights as part of the contemporary trends in customs

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### Abstract

Violation of intellectual property rights as a social phenomenon poses a serious threat to the survival and development of each county. The experiences speak of the fact that no country or region remains beyond the reach of this phenomenon, nor it is immune to this danger, which indicates that this is a problem of global proportions. As a result, each country builds national strategies and develops different forms and mechanisms to effectively combat this problem. Unlike countries with a traditional system of Parliamentary democracy faced with the need to build and upgrade the already established strategy, developing countries such as Macedonia, have to start building such a strategy simultaneously with the implementation of the overall development processes and the establishment of the overall laws of the state.

Thanks to the organizational structure of the Customs Administration of the Republic of Macedonia on the country's borders and the knowledge of international trade flows, it provides a substantial role in the protection of the Macedonian economy from goods that infringe on the intellectual property rights. The Customs measures for protection of the intellectual property rights represent one of the non tariff (non fiscal) measures applied during the regular customs procedures, pursuant to the Law on Customs Administration and the Customs Law. However, it should be pointed out that although the trade with falsified and pirated goods, as a derivative form of the international trade, exists as long as the trade itself exists, nonetheless, in the Customs system of the Republic of Macedonia the Customs measures to combat this sort of trade have been put into effect only recently. The customs measures to protect

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intellectual property rights were defined in 2005 for the first time by passing the Law on Customs Measures for Protection of Intellectual Property Rights.

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## 1. Introduction

Since the early 1980s, the production of counterfeit and pirated goods is strongly influenced by economic and political developments in the world, such as continuous growth of international trade, the process of globalization and the worldwide collapse of political systems in Central and Eastern Europe and the Soviet Union. Today, everything that can be bought or sold can be counterfeited. Trafficking in counterfeit and pirated goods is the dominant form of illegal trade. Although it is difficult to determine the precise extent of this phenomenon, it is estimated that trade in counterfeit goods ranges from 3% to 9% of world trade.

The fight against counterfeited and pirated goods encompasses many different activities. Customs administrations of all countries have an important role in protecting the markets from this evil. However, the customs administrations cannot achieve the desired results without the necessary cooperation and contribution of the owners of intellectual property rights. Mutual cooperation between these two subjects may be the best weapon to combat infringement of intellectual property. This cooperation is expressed through the possibility and necessity for submission of requests by holders of intellectual property rights to the customs administrations by taking appropriate measures.

## 2. Measures of the customs administration of the Republic of Macedonia for protection of the intellectual property rights

Customs measures for protection of intellectual property rights represent one of the non-tariff (non-fiscal) measures applied during the regular customs procedures, pursuant to the Law on Customs Administration and the Customs Law. Customs measures apply only to goods placed under customs procedure. Other institutions are responsible for goods released into free circulation on the domestic market, such as: State Market Inspectorate, Ministry of Internal affairs, Ministry of Culture and others. The regulations on the protection of industrial property and copyrights are provided by the Law on Industrial Property and the Law on Copyright and Related Rights.

Customs Administration on the basis of Article 10 paragraph 1 item 9 of the Law on Customs Administration is responsible for export control, import and transit of goods for which special measures are prescribed for the protection of copyright and related rights and industrial property. Customs control is defined in Article 2 point 8 and it consists of carrying out specific actions such as examining goods, verifying the existence, accuracy and authenticity of documents, examination of accounting books and records, review and search of vehicles, examination and search of personal luggage and other goods found in possession of passengers, carrying out official inquiries and other similar actions with regard to preserving the customs regulations and where necessary, other regulations that apply to goods subject to customs supervision. In the process of implementation of customs control, customs officers have the authority to take measures as prescribed in Article 37 of the same law. Consequently, they can hold and

temporarily confiscate specific goods and documents relating to the goods, until it is determined that they comply with the Customs Law and other legislation for which the Customs administration is authorized.

The Law on Copyright and Related Rights in Article 3 clearly states what sort of works are protected by copyright law as follows: written works such as a literary work, article, manual, brochure paper, discussion, etc., computer program, literary work, verbal work such as a speech, sermon, teaching, etc., a musical work (with or without text), dramatic, dramatic-musical work and puppetry work, choreographic work, fixed on a material surface, photographic work and work produced in a manner similar to a photographic work, cinematographic and other audiovisual work, art work, as well as images, graphics, sculptures, etc., architectural work, a work of applied art and design and paper work, plan, sketch, technical drawing, project, table, plastic work and another work with the same or similar nature relating to the geography, topography, architecture or related scientific and educational, technical or artistic nature. The law prescribes that the customs control system encompasses goods that are being imported and infringe on copyrights, such as matrices, negatives, various types of sound or data carriers, moulds or other means and the equipment that is solely or mostly intended to violate copyrights.

The Law of industrial property provides that the system of customs control of counterfeit goods includes imported goods that infringe intellectual property rights and patent, industrial design, trademark and appellation of origin and geographical indication. The patent protects an invention, industrial design, new form of body image, contour, and composition of colours or combination of design. The trademark protects a specific trademark, appellation of origin and geographical indication protect a geographical name.

With Macedonia's entrance into the World Trade Organization all TRIPS Agreement obligations were also taken over.

The provisions of the Industrial Property Law and the Law on copyright and related rights provide that if the right holder has reported to the customs authority that the importation of certain goods violate his right, the customs authority can on request withhold free circulation of the goods, or order the goods to be stored in a safe place. The right holder must submit a detailed description of the goods, necessary evidence of their exclusive rights and their probable violation. The right holder can examine the goods subject to import. The Customs authorities are obligated to notify the importer and consignee of the goods immediately. At the request of the customs authorities, the right holder is obligated to give bail for the damage that could occur with the undertaken measures.

Stopping the release for free circulation of the goods on the basis of industrial property rights (patent, industrial design, trademark and appellation of origin and geographical indication) may last up to eight days. Stopping the release for free circulation of the goods in the case of a copyright basis can last up to ten days. In all concrete cases of taking these customs measures, the customs authorities shall make temporary conclusion in administrative proceedings, under Article 292 of the Law on the General Administrative Procedure.

After the aforementioned deadline the customs authority shall lift the suspension measure if the right holder does not file suit or commence other proceedings for enforcement of the adopted measures.

The customs authority shall take appropriate action when goods are suspected of infringing an intellectual property right in the situations when the goods are:

- declared for release for free circulation, export or re-export in accordance with customs rules;
- they are found during controls on goods being entered in or exited from the customs area of the Republic of Macedonia, placed under a transit procedure, customs warehousing procedure, inward-processing procedure, processing under customs supervision or temporary import, or placed in a free zone or free warehouse in accordance with customs rules.

A Right-holder can be:

- any domestic or foreign legal entity or individual who is, in accordance with law, a holder of a patent right, industrial design right, trademark, designation of origin, geographical indication, copyright or related right

- any other domestic or foreign, legal entity or individual authorized to use any of the intellectual property rights
- a representative of the right-holder or of the person authorized to use any of the intellectual property rights.

The term legal entity includes associations whose main objective is the collective exercise of copyright or related rights and forms of associations and chambers that have submitted an application for protection of geographical name or an application for recognition of the right to use protected geographical name, protected designation product of origin or protected geographical indication.

Action by the customs authority may be based on a request (application) for action by the customs and actions ex officio.

A right-holder may apply in writing to the Customs Administration central office – legal department for protection of their intellectual property rights and request a certain action by the customs authorities. The application for action shall be made out on a form, the form and contents of which shall be provided by the Minister of Finance. The application must contain all the information needed to enable the goods in question to be readily recognised by the customs authorities as follows:

- an accurate and detailed technical description of the goods
- any specific information the right-holder may have concerning the type of fraud
- the name, surname and address and phone number of the contact person appointed by the right-holder.

Requests for taking action can be used by the right holder, as a precautionary measure, when he has reason to believe that his rights have been violated or are suspected to be injured.

The customs office when implementing measures of customs supervision or control of goods under customs procedure and before an application has been lodged by a right-holder or granted, has sufficient grounds for suspecting that goods may violate an intellectual property right, they may suspend the release of the goods or detain them. For the actions taken, the customs office must immediately notify the Department of Customs Legal Affairs by fax and shall submit photo copy of the SAD (Single administrative document) and the invoice or other document (picture, brochure etc.). The Department of Customs Legal Affairs will notify the Department of Control and Investigation. The Department of Customs Legal Affairs informs the right holder in writing that they must file a request for action in 3 working days. If the right holder does not file a request for action the goods will be released and their detention ends, provided they have completed all customs formalities or they do not violate other regulations.

The customs authorities may, without divulging any data other than the actual or supposed number of items and their nature and before informing the right-holder of the possible infringement, ask the right-holder to provide any data that they may be need to confirm their suspicions.

If the right holder does not submit an application for action within three working days after notification, the release of the goods shall be allowed or the period of detention stopped, provided all customs formalities are completed.

In addition to the previously mentioned measures of protection in administrative proceedings, the customs authority may also take action in criminal proceedings.

The Customs Administration of Republic of Macedonia during 2009 undertook a series of activities to develop awareness of the negative consequences of trade in counterfeit goods (tax evasion, money laundering, financial fraud, forging documents). In this context, actions were undertaken to combat this phenomenon by focusing on examination of the financial transactions of persons transporting and importing counterfeit goods. As a result of the achieved results in the field of protection of intellectual property rights, the Customs Administration of Macedonia won the WCO "Yolanda Benitez WCO Trophy 2009 Combating Counterfeiting and Piracy" for achievements in the fight against counterfeiting and piracy, in competition with 174 member administrations of WCO.

At the end of 2009 the Customs Administration registered 250 trademarks to protect intellectual property, compared with 199 at the end of 2008. Because of reasonable suspicion of import and transit of goods infringing on intellectual property rights, in 2009 it seized more than a million pieces and 196 pounds of various types of goods (in 2008 it seized 983 thousand pieces, 20 thousand pounds, 11 thousand litters and 550 meters of goods).

In 2009 the Customs Administration intervened in 130 cases of suspected violation of intellectual property rights in the process of import, export, transit of goods and the customs warehousing procedure (compared with 173 in 2008). The reduced number of interventions is primarily due to reduced imports, especially transit, due to strict controls, as well as increased measures of neighbouring countries, especially by the Republic of Bulgaria.

At the end of 2010 the Customs Administration prepared a Strategy for Protection of Intellectual Property 2011-2013. The strategy aims at improving of the organizational structure and technical equipment of the customs administration, continuous training of customs officers, raising awareness about the harmful effects of counterfeit goods and protecting the competitiveness of domestic and foreign producers of goods with trademarks. At the end of 2010 the Customs Administration registered 223 applications for trademarks to protect intellectual property.

In 2010 the Customs Administration intervened in 131 cases because of suspected violation of intellectual property rights in the process of import, export, transit of goods and the customs warehousing procedure (compared with 130 in 2009). Based on the implemented actions 372,225 pieces, and 400 meters of goods were seized on the grounds of suspected violation of intellectual property right.

According to the Law on Customs Measures for Protection of Intellectual Property Rights, after completion of the procedure for detecting counterfeiting and infringement of intellectual property rights, the Customs Administration in 2010 assisted right holders of trademarks in destruction of 56 thousand pieces counterfeit goods.

### **3. Conclusions**

The violation of intellectual property rights is a problem that is increasing steadily. Counterfeit and pirated goods are an imminent threat to health and safety of people, their jobs, competitiveness of goods and investments in market economies.

Regulation of international flows and detecting banned international economic activities, such as counterfeit goods represent the interests of any modern state. The violation of intellectual property rights is a global problem that gets international dimensions, with action on economic, social and cultural development of people, hindering national targets and sets an obstacle to their realization. Therefore, today, the issue of infringement of rights is resolved at the national and multinational level by adopting a number of conventions to combat such an occurrence.

Until recently the role of customs was the collection of customs duties, but together with the global changes the role of customs changed. The importance of the Customs Administration in the fight against such activities has been underestimated for a long time. The effective fight against such activities requires a process of simplification and rationalization of customs legislation, applying advances in science, and intensive cooperation between customs administrations of all countries, improvement of services through cooperation between customs and companies, organizing training seminars for customs authorities, promoting international customs cooperation, in order to promote and simplify customs procedures worldwide.

As a part of the Customs Administration of Macedonia a separate unit for non tariff measures was established within the Department of Customs system, with persons employed as specialists in this field. Future activities of the Customs Administration of Republic of Macedonia on customs measures for protection of intellectual property should be the following: participation in training officers to recognize

originals from fakes and pirated goods; cooperation of competent authorities and exchange of information on registered rights and holders of copyrights and exchange information with international institutions.

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