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### **«The main directions for improving the determination of the customs value of goods containing objects of intellectual property in the EAEU»**

*Research Field:*

*Intellectual property as an object of international trade*

To date, the issue of determining the customs value when moving goods across the customs border is becoming increasingly important. The formation of high-tech production through the active trade exchange of the latest technologies and other intellectual property items with foreign partners is an essential element of the economic development of any state. In this regard, an important aspect when concluding foreign trade agreements is the issue of including license payments in the customs value of imported goods, which directly affects the amount of customs payments.

The issues of improving the customs valuation of goods in the customs territory of the EAEU are given quite a lot of attention, which is due to the need to create equal price conditions when moving goods across the customs border of the EAEU, streamline foreign trade operations, apply by the EAEU member states a unified procedure for customs administration and control of the customs value of goods<sup>1</sup>. No less important is the improvement of the practice of accounting for license payments for the use of the results of intellectual activity in the customs value of goods being valued.

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<sup>1</sup> Management in the field of customs: Sat. In the international scientific conference of materials, March 20, 2018, Minsk, Belarus / BSU, Fak. international relations, department customs business; ed. V. G. Shadursky [and others]. - Minsk: BSU, 2018. - P. 94-101

The procedure for determining the customs value of goods containing intellectual property items today is one of the most controversial and topical issues among participants in foreign economic activity and customs authorities, which is due to a number of shortcomings and problems in this area.

One of such problems in the practice of including royalties in the customs value on the territory of the EAEU is the lack of a detailed legal framework both at the supranational and national levels, which leads to contradictions in law enforcement practice and gives rise to differences in the interpretation of the conditions for including such payments as additional charges to the price actually.

Despite the fact that Recommendation № 20 of November 15, 2016 developed by the EEC on the inclusion of royalties regulates and clarifies the provisions of the Customs Code of the EAEU in more detail, and also contains a number of examples describing situations related to adding payments for the use of intellectual property items to the customs value, this issue is still not fully resolved and requires further elaboration.

Thus, the provisions of this Recommendation establish a general procedure for including license fees in the customs value, which are considered payments in respect of a fairly wide category of intellectual property items, including works of art, inventions, utility models and industrial designs<sup>12</sup>. However, at the same time, more detailed regulation of the procedure for adding such payments for certain categories of intellectual property items is provided only for trademarks and production secrets (know-how). Despite the fact that these types of OIP are the most common objects of international trade, the lack of clear rules for other categories of OIP provides traders with the opportunity to evade compliance with the requirements of customs legislation and, accordingly, leads to an unreliable declaration of customs value. Therefore, in order to solve this problem, it is necessary to introduce additional guidelines to resolve the issues of including license fees for the right to use for each type of intellectual property, which also requires the creation of a unified classification of intellectual property within the EAEU.

Since the decision to include or not include payments for the use of intellectual property items in the customs value of the goods being valued must be made individually in each specific situation and requires a detailed analysis of all the circumstances and conditions of the transaction, the next problematic issue is the lack of clear instructions on the list of documents containing information that would allow establishing the connection between the product being

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<sup>1</sup> On the Regulation on the addition of license and other similar payments for the use of intellectual property to the price actually paid or payable for imported goods: Recommendation of the Board of the Eurasian Economic Commission dated November 15, 2016 No. 20 (as amended on August 28, 2018) [Electronic resource] // Consultant Plus. – Access mode: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_207187/](http://www.consultant.ru/document/cons_doc_LAW_207187/) – Access date: 04/18/2022.

valued and the license fee, and also to determine whether they contain provisions on the need to pay a license fee as a condition for the sale of the product being valued.

In other words, the absence of such a list makes it difficult to make a legitimate decision on the need to add license fees and comply with the established conditions for their addition.

So, as a rule, the documents containing the information about the cost of goods containing intellectual property may be a license agreement, invoice, bank payment documents, accounting and other documents.

Taking into account the fact that the majority of license fees are paid in the form of royalties, which are usually transferred to the right holder only after the goods are imported into the customs territory, both traders and customs authorities face the problem of the lack of necessary documents and information at the time of customs declaration goods. At the same time, often «unscrupulous» economic entities, due to the minimization of their costs, deliberately try to hide the information on the amounts of license fees for the use of intellectual property existing at the time of customs declaration. In this regard, of particular importance is the exercise by the customs authorities of customs control after the release of goods, including as part of the control of customs value by checking the necessity and correctness of the payment of license fees<sup>13</sup>.

It should also be noted that an important step in solving the problem related to the lack of information necessary at the time of filing the customs declaration to determine the exact amount of license payments to be included in the customs value was the approval of the procedure for deferred determination of the customs value. However, for the full and effective application of this procedure, it is also necessary to improve the accounting system, which should ensure the possibility of comparing data on the sale of goods on the domestic market with specific declarations for goods in order to declare, within the period specified by law (no more than 15 months), the exact value of the customs value.

A certain contribution to improving the practice of determining the customs value of goods containing intellectual property items on the part of foreign economic activity participants can also be made by structuring license fees in the relevant documents, including by separating the amounts of payments related and not related to the goods being valued, which would make it possible to most accurately determine their size for inclusion in the customs value.

Regulation of issues of customs valuation of goods containing intellectual property items at the level of the national legislation of the EAEU member states is also one of the areas

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<sup>1</sup> Sukhareva, I. V. Features of the control of the customs value of goods containing objects of intellectual property / I. V. Sukhareva // Bulletin of the Russian Customs Academy. - 2015. - No. 3. - P. 60-69

requiring more detailed study and improvement, since, for example, the legislation of the Republic of Belarus does not establish the procedure for including license fees in the customs value of exported goods. At the same time, the Methodological Recommendations currently in force on the procedure for adding license fees when determining the customs value of goods imported into the Republic of Belarus have not yet been brought into line with the Customs Code of the EAEU, and therefore some norms of this document contain certain contradictions in relation to Union law.

No less significant is the problem directly related to the human factor in determining the customs value of this category of goods. Thus, the low level of legal literacy of many participants in foreign economic activity, as well as the lack of highly qualified specialists in the field of customs valuation of goods containing intellectual property items, significantly complicate the process of correctly determining the customs value of goods. The training and involvement of competent specialists both in the field of foreign economic activity and in the field of customs, with the necessary knowledge and skills, as well as analytical skills, would greatly contribute to improving the effectiveness of work not only in determining the customs value, but also in improving the efficiency of state policy in general.

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### **«Features of the application of the customs warehouse procedure in the framework of the Eurasian Economic Union»**

The Customs warehousing procedure is a customs procedure under which foreign goods are stored under customs control in a designated place for a certain period without payment of customs duties and taxes and without the application of non-tariff regulation measures.

In some cases, goods under other customs procedures are placed in the customs warehouse in order to suspend the validity of the ongoing customs procedure. [2]

Customs warehouses can be public or private. Customs warehouses are public if they are available for storage of any goods and use by any persons with authority over the goods. Customs warehouses are private if they can be used for storing goods of the owner of the customs warehouse. Public and private customs warehouses can be used to store certain types of goods that require special storage conditions or can do damage to other goods. [3]