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«Intellectual Property Protection in the Customs Sphere: Reality and Prospects»

Research Field:

Intellectual property as an object of international trade

International trade does not stand still and every day it expands not only in volume but also in the nomenclature of exchanged goods. With the leading countries giving preference to knowledge-intensive and high-tech products in trade the role of goods containing intellectual property objects (hereinafter named IPO) is growing. According to some reports, about 80% of global trade is in such goods¹. The volume of cross-border movement of goods containing IPO is also growing which requires a clear mechanism for determining the customs value of goods containing IPO as well as the need to improve customs control of such goods.

First and foremost, the protection of intellectual property rights is of interest to the state. For example, the importation of counterfeit products can lead to losses of the state budget and job opportunities. The degree of protection of intellectual property rights also affects the inflow of investments into the country: proprietors are more likely to conduct business where the legislation protects their interests. Strong legal protection will not only attract foreign investors but also stimulate creativity and innovation at home which is particularly important for developing countries. In addition, in the age of high technology, it is important for developing countries to develop and modernize domestic production which is greatly facilitated by the importation of IPOs. Moreover, the enforcement of intellectual property rights guarantees safety for life and health of the population as the likelihood of importing counterfeit products is reduced. For example, the U.S. is the largest owner of the results of intellectual property and for many years the export income from goods containing IPO has been the main source of revenue for the U.S. budget which illustrates the need and prospects for the development of this sphere.

¹ Кузнецова Г.В. Международная торговля объектами интеллектуальной собственностью / Г.В. Кузнецова // Российский внешнеэкономический вестник, 2013. – С. 35-47.

To analyze the state of the system of customs and legal protection of intellectual property in the EAEU let us compare it with a similar system in the EU.

In the EU the protection of intellectual property rights is mainly carried out in accordance with the EU Regulation No. 608/2013 concerning customs enforcement of intellectual property rights. Article 2 of this regulation establishes that trademarks, copyrights and related rights, patent rights, industrial designs, trade names, geographical indications, certificates of medicines and plants, plant varieties and semiconductor product topographies are subject to customs protection¹. In the EU the right holder can apply for customs protection measures for IPO both at the national and international level by applying for appropriate protection measures. At the same time, customs authorities can implement measures to suspend goods that infringe intellectual property rights regardless of whether an application has been filed or not. The period within which the customs authorities must take measures should not exceed one year. The characteristic feature is the absence of compulsory material security when applying to the customs authorities which makes the protection more accessible to the right holder. On the territory of the EU there is also a procedure for destruction of counterfeit goods at the lowest cost, but on the territory of the EAEU there is no such pre-trial procedure. In the EAEU, in general, the legislation does not provide for compulsory destruction of counterfeit goods by customs authorities.

In the EAEU the protection of intellectual property rights in the customs sphere is ensured through inclusion of IPO in registers: national registers of EAEU member states (hereinafter named CRIP) and the Unified Customs Register of the EAEU (hereinafter named UCRIP). At the same time, the Code enshrines the possibility for customs authorities to apply the procedure ex officio if it is established by national legislation, i.e. customs authorities have the right to suspend the release of goods containing IPO, not included in the UCRIP or CRIP, without the application of the right holder. It should also be noted that the Agreement on the EAEU CRIP establishes a protection procedure only for copyright and related rights, trademarks, service marks and appellations of origin. Moreover, to date, applications for the inclusion of IPO in the ETRIC are not accepted, and the right holder must register his trademark in each CRIP in order to protect his rights throughout the EAEU¹. In addition, the Republic of Armenia and the Kyrgyz Republic charge a fee for the inclusion of intellectual property in customs registers. Additionally, in the Kyrgyz Republic a fee is charged for the extension of protection of IP rights which is almost 2 times higher than the fee for inclusion in the CRIP. A significant limitation of the right holders' access to protection of intellectual property rights by the customs authorities in

¹ EUR-Lex [Электронный ресурс]. – Mode of access: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0608&from=bg> – Date of access: 21.04.2022.

Kazakhstan is the requirement that an application for inclusion of IPO in the customs register must contain a document confirming the fact of movement of goods across the customs border of the Union with infringement of IPO rights¹. Thus, it can be said that the regulation of intellectual property protection in the Union is heterogeneous and requires unification of the relevant national legislation. The absence of the current Unified Register of Intellectual Property Rights and the different content of national customs registries causes the problem of parallel imports between the EAEU countries.

The issue of the legalization of parallel imports is very topical today. On March 30, current year, the Russian Federation signed a decree abolishing liability for gray imports of sought-after goods the list of which is approved by the Ministry of Industry and Trade. In our opinion, in the current realities it is a logical way out of the situation which will help provide the market with the necessary goods the official import of which is prohibited by sanctions. The legalization of parallel imports also contributes to the development of competition within the country expanding the product range and reducing the prices of foreign goods. However, in the long term, this solution is not the most profitable, because later it may make the Russian market less attractive for foreign rights holders and the companies may not want to return to it. The possibility of counterfeit goods entering the market will increase, there will be no guarantee on imported goods and no possibility of after-sales service and the volume of tax injections into the budget will decrease.

Based on the above analysis, the following problems in the sphere of customs and legal protection of intellectual property in the EAEU can be highlighted:

1. Insufficient level of unification of national legislations on this issue.
2. Lack of uniformity in regulation of the principle of exhaustion of exclusive rights and the principle *ex officio*.
3. Passivity of proprietors in terms of their assistance in the activities of customs authorities to protect intellectual property rights, including their low interest in including the IPO in the registers, which may be due to the presence of administrative barriers: the need to provide an insurance sum the amount of which is established by national legislation.
4. The lack of a functioning UCRIP which is an obstacle to the protection of intellectual property rights at the level of the integration association.

¹ Информационно-правовая система нормативных правовых актов Республики Казахстан. [Электронный ресурс]. – Mode of access: <https://adilet.zan.kz/rus/docs/K1700000123> – Date of access: 21.04.2022.

In addition to the need to improve and unify legislation on the protection of intellectual property in the customs sphere it is necessary to improve the practice of customs control over goods containing IPO. Therefore, we also consider it necessary to highlight a number of difficulties that hinder effective customs control of goods containing IPO:

1. Lack of an established system of interagency cooperation between customs authorities and other state bodies of member states.
2. Insufficient legal literacy of subjects of foreign economic activity regarding inclusion of license fees in the customs value.
3. Lack of a uniform scheme for filling out the customs declaration in Box 31, which greatly complicates the control process and prevents it from being automated.
4. In the Republic of Belarus there is no separate structure within the customs authorities specialising in the protection of intellectual property rights.

The study has revealed that the regulation and implementation of intellectual property rights protection in the EAEU is hampered by a number of problems. The EAEU is in the absence of a functioning regional mechanism for customs protection of rights to IPO, the existence of different approaches to the exhaustion of exclusive intellectual property rights which makes it possible to import counterfeit products into the Union and also affects the creation of a generally unfavorable environment for proprietors. Thus, we can say that the system of intellectual property protection in the customs sphere within the Union requires not only improvement of the legislative framework but also improvement of the mechanism of customs control over goods containing IPO as well as strengthening of cooperation between customs and business.

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«Psychology of deception in the activities of customs authorities in the conditions of coronavirus infection»

Coronavirus infection has significantly affected the activities of the customs authorities of the Republic of Belarus. The Government has taken certain measures affecting the socio-economic sphere. The application of the measures affected the activities of various state bodies, including the customs service. In the context of the pandemic, priority areas were identified, for which the following measures were taken:

- Prohibitions and restrictions on the movement of certain goods;