

**ON STATE SERVICES HARMONIZATION ON THE  
CUSTOMS PROTECTION OF THE RIGHTS FOR THE  
INTELLECTUAL PROPERTY OBJECTS IN THE  
EURASIAN ECONOMIC UNION<sup>1</sup>**

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**ABSTRACT**

The essence of the state services on the customs protection of the rights to the objects of intellectual property is defined in the article. The characteristics of the transition period to the innovative economics is given. The legal basis for the IP rights protection in the Eurasian Economic Union is described. The distinctive features of the public services provision in the framework of such integrated association as the Eurasian Economic Union are singled out. The problems of the modern Intellectual Property Rights Objects' Register application are analyzed. The necessity of centralization and harmonization of the process of such services rendering is proved; options for achieving this goal are given.

**KEY WORDS:** State services, intellectual property, customs protection of the rights to the objects of intellectual property, Eurasian Economic Union, customs register, customs control.

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## INTRODUCTION

In the Russian Federation, in the context of the transition to an innovative economy, a special significance is acquired for the formation of a civilized market of the intellectual property and rights to them, particularly through the provision of public services for the protection of such rights in the cross-border movement of goods.

Moreover, the formation of the Eurasian Economic Union (EAEU) on the basis of the Customs Union of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, necessitates new approaches in the terms of providing state services for the customs protection of rights to the intellectual property.

Among the federal executive bodies involved in the protection of intellectual property, the Federal Customs Service holds an important place, since its activities are directly aimed at preventing the import of counterfeit goods into the customs territory of the EAEU.

### LEGAL BASIS OF THE INTELLECTUAL PROPERTY RIGHTS PROTECTION BY THE CUSTOMS AUTHORITIES

The legal basis for the protection by the customs authorities of the rights to the objects of intellectual property are the legal acts of various levels and sectoral affiliations that regulate the procedure and conditions for the movement of goods containing intellectual property objects across the customs border.

International (supranational) acts include the fundamental international treaties listed in the Article 90 "Legal Regime of Intellectual Property Objects" of the Treaty on the Eurasian Economic Union of May 29, 2014, the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS), agreements and treaties of member-states of the EAEU: the Agreement on the Eurasian Economic Union of May 29, 2014, the Customs Code of the Customs Union (CCCU), the Agreement on Cooperation in the Field of Legal Protection and Intellectual property protection, and creation of the Interstate Council on the

issues of legal protection and intellectual property protection of 19.11.2010, the Agreement on a single customs registry of intellectual property objects of the Customs Union member states of 21.05.2010, the decision of the Commission of the Customs Union of June 18, 2010 No. 290 " On the Regulations for the Interaction of Customs Authorities of the Member States of the Customs Union on the Issues of Maintaining the Unified Customs Register of Intellectual Property Objects ", etc.

#### NATIONAL LEGISLATION OF THE RUSSIAN FEDERATION ON THE IPR PROTECTION

The national legislation of the Russian Federation includes federal laws in the field of cross-border protection of intellectual property rights, subordinate regulatory legal acts - resolutions of the Government of the Russian Federation, decrees of the President of the Russian Federation, etc. The normative definition of the customs protection of rights to intellectual property objects (IPRO) is given in State Standard-R (SS) "Intellectual property. Customs protection »[1].

This is a set of measures implemented by the customs authorities to prevent and detect violations of intellectual property rights in the transboundary movement of goods and prosecute the perpetrators of this.

At the same time, the customs protection of rights to IPRO, on the one hand, is a state function, and on the other hand it falls under the classical definitions of state customs services offered by the modern authors [2, 3].

#### CUSTOMS PROTECTION OF THE IPRO RIGHTS AS A STATE FUNCTION

Considering the customs protection of the rights to IPRO as a state function, it can be concluded that the purpose of the IPRO customs protection is to counteract the movement of counterfeit goods across the customs border. Customs protection of IPRO rights as a public service is the activity of customs authorities on the implementation of public functions with the target to protecting the rights of IPRO holders in the transboundary movement of goods [4].

Despite the fact that the state services for the customs protection of the IPRO rights are rendered by each state of the Eurasian Economic Union (EEU) separately, for the consumer of such services who is the right holder, their effectiveness will have a multiplier effect.

#### THE PROBLEM OF ILLEGAL IMPORT OF COUNTERFEIT GOODS

Let us consider in more detail what does this mean. The cornerstone is that there are no customs borders between the EEU countries. The customs border of the EEU consists of different sections belonging to different countries, and, accordingly, different national regimes operate in different sectors. The member states of the EEU can provide services for the customs protection of the IPRO rights only when goods are transported across the customs border at their site.

The investigations show that at present, due to various factors, there are legal, from the point of view of customs legislation, schemes for the importation of counterfeit goods to the territory of EEU [5].

Their main reason is that the key stages in the process of public services rendering is the maintenance of the customs register of intellectual property objects (CRIPO), customs control execution, etc., are carried out on the basis of national legislation, despite the fact that they rely on a supranational regulatory framework.

In addition, we can note the fact that different Objects of Intellectual Property (IPOs) are the subject to protection at various parts of the customs border due to the difference in the completion of the IPOs customs registers and the principles of exclusive rights exhaustion. We will especially emphasize the fact that, after six years, the institution of a single CRIPO has not started functioning.

## MEASURES FOR THE EFFECTIVE IPOS PROTECTION

Thus, in order to effectively protect the rights to IPOs, it is necessary to centralize and harmonize the process of rendering the state services for the IPOs customs protection.

There are possible options for existing problems solving.

According to E.Yu. Izmailova, the Head of the Legal Protection of Intellectual Property Department of the Eurasian Economic Commission (ECE), for resuscitation of such an institution as a single CRIPO of the Eurasian Economic Commission (EEC) member states, its management after the entry into force of the EAEU Customs Code will be transferred to the EEC [6].

Currently, this function is carried out by the Federal Customs Service (FCS) of Russia. Indeed, it seems more logical that a supranational register will be maintained by the relevant supranational body. Nevertheless, such a change does not carry any qualitative changes, and does not solve existing problems that do not allow the institution to function effectively.

At the same time, there are more effective ways to implement the supranational register of TRIPS. In particular, the experience gained in the European Union (EU) can be used.

As far as the EU includes significantly more countries than the EEU, lawmakers had to a priori abandon the idea used by the EEU that IPROs that are the subject to customs protection in all of the countries of the Union could be included in the European Customs Register on Intellectual Property Objects (ECRIPO).

In the EU there is no single CRIPO as such. Instead, the right holder can file one application, but with a request to bring his IPOs to several CRIPO countries of the EU. At the same time, the number of such countries is not limited, and the decision to accept IPOs for the customs protection is taken by each national customs body independently. Such a system allows the EU to solve an important problem existing in the EAEU - to ensure the need for simultaneous compliance with all of the national laws of the countries of the Union.

## SHORTAGES OF THE EXISTING IPROS SYSTEM

However, such a system has a number of shortcomings and, moreover, it cannot be adapted in a pure form to the realities of the EAEU.

Despite the fact that the transaction costs of the right holder for the IPOs inclusions in the CRIPO of different countries are reduced through the submission of the only one application, this approach does not provide the main goal the existing od the comparable list of the IPROS which are protected at the borders of the Union.

Therefore, in order to centralize the provision of state services for the IPROS protection in the EAEU, such a system is unlikely to be effective.

If a decision is made on the possibility of filing in a single application with the request to include the IPRO holder in several CRIPOs, the problem of the right holder obligation realization to pledge or an equivalent guarantee provided by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) will have to be solved in the EAEU.

The international document stipulates that the customs authorities have the right to demand from the right holder a pledge or an equivalent guarantee necessary to cover the declarant's losses caused by the wrongful actions of the right holder.

It is necessary to give the following example of a similar situation. The customs authorities suspended the release of a consignment of goods with a counterfeit sign. After the request of the customs authority to the right holder, a statement was received from the latter on the suspension of the release of goods and later a reasoned response that this consignment of goods was indeed counterfeit.

After that, as a rule, the right holder should apply to the court. But there may be a situation where, after the suspension of the release of goods, it turns out that the goods were not counterfeit. It turns out that the declarant suffered losses caused by the actions of the customs authorities, expressed in the idleness of the goods and the payment of the goods' temporary storage. In the member states of the EAEU, the implementation of this TRIPS item is carried out in different ways. In several countries there is an insurance system, in the others there is a lien system.

The insurance system assumes that when an IPO is included in the CRIPO, the

right holder must provide the customs authorities with an insurance policy. The insured amount varies from 300 000 rubles (app. 4000 euros) in Russia to the equivalent of 10,000 euros in Belarus.

The lien system implies that if the customs authorities suspend the release of goods that have counterfeit signs, the right holder must provide a pledge to the customs authorities. In Armenia, for example, it is 5% of the customs value. At the same time, in the other countries using the pledge system, the amount of such a pledge is much higher. For example, in China, the amount of such a pledge is 100% of the CIF price for imports or the price of FOB for export.

In the EU countries, neither the lien nor the insurance system is used, but it is specified what amounts can be collected from the right holder. Most likely, the administrative-command management style in the customs bodies of the EAEU member states will not lead to an early abandonment of the existing system.

Nevertheless, it is worth noting that since 2003 there has not been a single case when the actions of the right holders were illegal, and insurance policies were claimed in reality [7].

At present, the concept of the transition to the common customs register of the EAEU member states (COCRIPO) on the basis of a unified database of the member states of the EAEU has begun to develop actively in the scientific community.

So, the urgency of this issue was confirmed at the VIII International Forum "Innovative Development through the Intellectual Property Market" on May 18, 2016. Moscow.

#### THE CONCEPT OF THE COMMON CUSTOMS REGISTER OF THE INTELLECTUAL PROPERTY OBJECTS (COCRIPO)

The concept of COCRIPO is that the "IPOs will be contained in a unified database of the EAEU countries from the moment that it (IPO) on the basis of the application of the right holder will be accepted to the customs protection of one of the EAEU countries.

The proposed database is two-levelled. Once an IPO is entered into the CRIPO of one of the countries, it is included into the COCRIPO database, and the information about it is located at the first level will be used subsequently for all EAEU countries (the name of the IPO, the registration number, the type of the IPO), and second level information will be used only for a specific country of the EAEU (information about the proxies, goods nomenclature codes, etc.) "[8].

In addition, the form of the database will make it possible to provide the new types of IPOs to COTROIS, for which there are currently no public services for the customs protection of IPR rights. It is one of the ways to improve the efficiency of public services in the subject area [9].

This approach allows to combine the possibility of one application submission for the introduction of the IPO into several CRIPOs at the same time. Simultaneously, the necessity of the compliance with all the national laws of the member states of the EAEU is excluded.

At the moment, this is one of the few viable options that can solve the problem of not working CRIPO system.

Moreover, in order to provide effectively the public services in the field of IPOs customs protection, the harmonization of the exclusive rights exhaustion principles provision is necessary within the framework of the EAEU. Under the current conditions, it is the practice when the goods containing IPOs, when imported into one of the countries of the EAEU, are not the counterfeit products. However, if it moves inside the EAEU to another country, it acquires the status of the counterfeit product. This is a completely egregious situation for an economic union, which requires an early resolution. Unfortunately, the only way to achieve the harmonization of this issue is the unification of the regulatory base of the EAEU member states at the national or supranational level.

## CONCLUSION

Thus, in order to ensure the proper level of the public services provision in the field of customs control of the goods containing IPOs, it is necessary to centralize and unify the rules and procedures for providing such services through

the transfer of a number of powers to the supranational level. At the same time, it is necessary to ensure the uniformity in organization and implementation of the customs control of the goods containing IPOs.

The minimum necessary set of measures allowing to create an effective system of IPROs customs protection within the framework of the EAEU is the launch of the institute of a single or general COCRIPO, harmonization of the principles of exhaustion of the exclusive rights and the application by all the member-countries of the ex officio powers.

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