



Faculty of Economics, University of Niš, 13 October 2016

International Scientific Conference

**THE PRIORITY DIRECTIONS  
OF NATIONAL ECONOMY DEVELOPMENT**

---

**PROBLEMS OF INTELLECTUAL RIGHTS CUSTOMS  
PROTECTION UNDER THE CONDITIONS OF INTERNATIONAL  
ECONOMIC INTEGRATION AS ILLUSTRATED BY THE  
EURASIAN ECONOMIC UNION**

**Olga Vladimirovna Shishkina \***

**Aleksei Mikhailovich Sorokin \***

**Elena Borisovna Gayko ♦**

***Abstract:** The article deals with customs protection of intellectual property. It describes the existing system of customs protection of intellectual property in the Eurasian Economic Union and the problems the customs authorities face when dealing with the Intellectual Property rights. The types of IP rights infringements are described, as well as the ways of IP rights protection. It lists the issues related to the customs protection of intellectual property rights through the economic integration.*

***Keywords:** Intellectual rights, property, customs authorities, infringements, economic integration, customs control of goods containing intellectual property*

**1. Introduction**

Intelligence is an asset inherent in humans. It largely identifies and distinguishes them from other objects of the living world on our planet. In fact, everything that has been created by humanity so far is the result of the activities of intelligence, creativity, etc. Notwithstanding this fact, it was not until the 15<sup>th</sup> century that the results of creative activity were recognized as intellectual property. In fact, anyone could freely use the results of other people's intellectual activities, in other words, they are considered to be in the public domain.

In industrial and post-industrial society the importance of intellectual property not only increases but also becomes an essential element for the formation of a high-tech and

---

\* Russian customs academy, Russia, ✉otk-olga@list.ru

• Russian customs academy, Russia, ✉sorokinalexmih@gmail.com

♦ Russian customs academy, Russia, ✉gaykoelena@gmail.com

UDC 005.336.4(4-672EU)

innovative economy [1]. Sustainable supply and demand is not the only *sine qua non* for the intellectual property market to function effectively. It is necessary to maintain a high level of intellectual property rights protection. Otherwise, copyrighted material will be simply stolen, copied and illegally used instead of being officially sold in the markets [2].

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) [3]. They are mandatory for every WTO member country. Under the TRIPS, customs protection of IPI rights is the cornerstone of an overall copyright protection system.

Today, there are numerous academic papers on copyright protection during the cross border movement of goods. However, most of them were published either prior to the formation of the Customs Union, or right after its creation [4,5,6]. However, in our view, problematic issues of intellectual property rights protection in conditions of economic integration are not sufficiently studied yet.

## **2. Imperfection of member states legislation is the main problem of IP rights protection**

When engaged in international economic integration, countries face significant challenges that result in the absence of a high level of intellectual property rights protection during the cross border movement of goods. As the illustration let us consider the issues the Customs Union countries of Russia, Belarus and Kazakhstan had to face as well as those that are being encountered by the Eurasian Economic Union countries.

The main reason lies in the difference in the Union countries' legislatures. They exist in spite of international treaties in this area. Another group of problems relates to the differences of IPI customs registries and procedures for customs control of IPI containing goods.

Under the current Customs Code the EEU countries' customs protection covers IPIs which have been entered by intellectual copy right holders into the EEU common customs intellectual property registry (CCIPR) or the national customs intellectual property registry (CIPR) [7]. The customs authorities are obligated to take IPI rights protection measures in respect to these intellectual property items. The EEU member countries may exercise their *ex officio* powers as provided for by the TRIPS. In line with these powers, they have the right (but not an obligation) to implement intellectual property rights protection measures in regard to IPIs which have not been entered into the registry.

When applying for the introduction of an IPI in the CCIPR the former is checked by each EEU member state's customs authorities on the basis of its national legislation. Moreover, the national legislation is not limited exclusively to the customs laws. Also of great importance are legal acts regulating general issues of intellectual property rights, e.g., in Russia it is the section 4 of the Civil Code. To decide on the inclusion of an IPI into the CCIPR it is required to have a positive feedback from the customs authorities of all the EEU states. Thus, the application must simultaneously satisfy all national legislations.

**Problems of intellectual rights customs protection under the conditions of international economic integration as illustrated by the Eurasian Economic Union**

---

In this respect, the CCIPR tends to be not so much of a single registry but rather a procedure that enables to run a check of its conformity to the EEU member states' legislatures. If we are to consider the CCIPR as IPI registration process rather than a registry, in that case all the CCIPR gives to a right holder a chance to make a one-time application for its entry and to pledge a compensation. At the same time, the right holder is still required to know and comply with all the subtleties of the national laws of the EEU member states.

The CCIPR has only slightly eased the steps and requirements necessary to ensure IPI protection along the EEU customs borders without solving the main problem of harmonizing the EEU member states' laws which would enable a right holder to be guided by the uniform requirements, specifically, those of the EEU members, rather than those of their national legislations. No IPI has been entered into the CCIPR in the past five years since it was formed. This it serves only to prove the inadequacy of the given institution.

The EEU member states' national customs registries are very similar in form, but quite different in content. For example, the RF CIPR contains more than 3,000 IPIs, that of Kazakhstan has about 550, with Armenia and Belarus having 300 and 150 respectively.

It should be understood that once an IPI has been included in any EEU member state's CIPR it becomes subject to customs protection when moving across the customs border of another EEU country.

Some EEU countries implement their *ex officio* powers, provided for by the TRIPs for customs protection of IPI rights [3]. Currently, they include Russia [8] and Kazakhstan [9]. In Belarus and Armenia, these powers are not applicable. This results in a significant reduction in the amount of IPIs, the rights to which can be protected by the customs authorities. Control of IPI containing goods that have not been entered in the registry which exists in some EEU countries adds to the differences in the list of the controlled IPI.

The EEU member countries apply different principles determining the exhaustion of the exclusive intellectual property rights (Fig. 1)

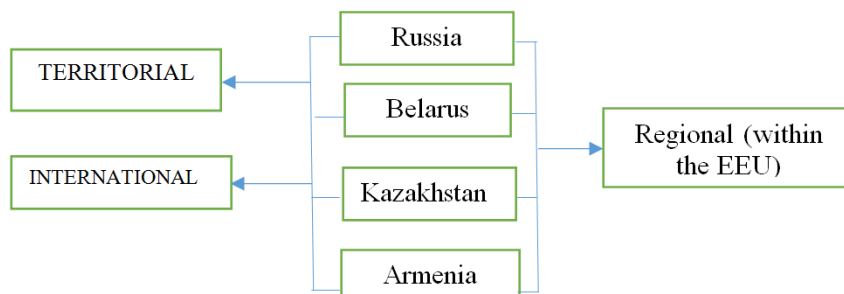
Russia and Belarus adhere to the territorial principle. This means that the right to import original goods from other countries into their country belongs only to its right holder or authorized distributor. In this case, we are talking about original and non-counterfeit goods, i.e., goods produced by an intellectual property owner.

Kazakhstan and Armenia employ an international principle, which presupposes that the owner's exclusive right is considered to have been exhausted in respect to a particular product at the time of its first introduction into the circulation in a country. Consequently, the commercial movement of goods between two countries is in fact unlimited. In their relationship the EEU member states apply one regional principle - that of free movement between the states.

Combination of the differences in the EEU countries' CIPR content, the domain of their *ex officio* powers and the exhaustion of exclusive IPI rights makes it impossible to provide a sufficient level of customs protection of intellectual property rights. Currently, due to the above discrepancies, we believe, there exist, at least, two legal schemes (in terms of customs legislation) for the importation of counterfeit goods into the EEU territory. The fundamental reason underlying all the problems is the axiom: "Once imported into the EEU

customs territory, products continue to move freely between the member countries since there are no customs borders between them." [10].

**Figure 1. The principle of exhaustion of exclusive rights to an IPI in the EEU countries.**



The first scheme allows "gray" goods to be imported into the countries of the former Customs Union through Kazakhstan while the second one due to the differences in the lists of controlled IPI along the customs border. This makes it possible to import counterfeit goods through the territory of a country. Here an IPI contained in (on) the goods is not subject to Customs protection. Giving the present differences in the national legislations it is currently impossible to terminate the activity under these schemes.

The first scheme is related to the principle of exhaustion of exclusive rights now in force in the EEU countries. It should be recalled here that Russia and Belarus use the territorial principle. Kazakhstan and Armenia, conversely, employ the international principle, implying that the owner's exclusive right is considered to be exhausted in respect to a particular product at the time of its first introduction into the circulation in any country.

Parallel imports are prohibited in Russia, and "gray goods" are considered to be counterfeit under the Civil Code while Kazakhstan holds such goods to be completely legal provided they have been placed to the market in another country. Moreover, such goods movement does not require any license agreement or other documents to be granted by their right holder.

Goods purchased in third countries find their way into the customs territory through the EEU customs border section which belongs to Kazakhstan, and later on as they move freely within the EEU, they may turn up in Belarus and Russia where they will have the status of counterfeits. At the same time, the customs authorities have no powers to suppress such deliveries.

The scheme of legal importation of illegal goods in violation of intellectual property rights is much more complex and multilayered. It is based on a significant difference in the nomenclature of EEU customs-controlled IPIs. In mathematical terms, the amount of customs-controlled IPIs differs from a country to a country, literally by an order. More than that, Russia and Kazakhstan use the *ex officio* principle, i.e. the customs authorities are empowered to take action in relation to those goods that have not been included in the EEU CCIPR or the national CIPR. This situation increases further the gap between these countries in respect to the volume of IPIs they control.

### **3. Conclusion**

Once the task is to import counterfeit goods into Russia, it can be done legally through Belarus provided that an IPI contained on (in) a product is excluded from Belarus's CIPR. It can also be done through Kazakhstan but they use their *ex officio* power and even if an IPI is excluded from the CCIPR, the Customs authorities are able to detain counterfeit goods. In contrast to this the Belarus customs authorities are virtually powerless (in case of IPI containing imported goods which have not been included in the Belarus CIPR).

Besides, in case of enhancement of customs protection of intellectual property it is important to pay attention to the solution of the following problematic issues:

- discrepancy between a form of customs protection as a kind of legal protection and its content which is reduced, generally to customs control;
- distinction of the legal basis and methodological approaches to the organization of customs protection at the international, interstate and national levels in this sphere, including the case of recognition of such goods counterfeit;
- lack of procedures and rules of accountability for violation of the rights and legitimate interests of owners in case of identification of the goods falling under the signs of counterfeit as smuggling;
- lack of single procedures and rules of interaction of customs authorities and participation in customs protection of non-profit organizations (in Russia and in Kazakhstan) and the state bodies (in Republic of Belarus and Armenia) representing copyright and related rights on a collective basis;
- lack of effective interaction between structural divisions of customs authorities of the EEU countries (on customs control, investigations and fight against smuggling);
- lack of interaction between bodies of customs protection and other public authorities which are responsible for the intellectual property protection where an owner is the state (The Ministry of Economic Development of the Russian Federation, Rospatent, FAPRID, state customers);
- lack of single procedures and rules of pricing in case of customs declaring of the goods moved through a customs border containing objects of intellectual property;
- legal collisions within procedures of trade of intellectual property, including the conditions of response measures, and also concerning customs protection of the intellectual rights and joint right of possession.

It can be inferred thus from the above examples and diagrams that under the present conditions of the integrated association the right holder cannot be provided with the adequate protection of his intellectual property rights through the customs methods. For the protection to be relatively efficient it is necessary to include an IPI in all the four CIPRs (or in the CCIPR), and even in this case it still will not absolutely guarantee against any violations, to say nothing of parallel imports prevention.

The existing system of customs protection of an EEU holder of intellectual property rights ought to be substantially improved and revised. The least possible thing that must be done is to terminate the operation of the above schemes.

### References

1. Lopatin V. (2015) Governmental Regulators in the Formation and Development of Intellectual Property in the Customs Union States and the CIS countries in 2014. *Intellectual Property Law*, 40 (2): 7-33.
2. Sudarikov.S.A. (2015) *Intellectual Property Law*. Moscow: Prospect
3. Agreement on the Single Customs Register of Intellectual Property Assets of the Customs Union Member States.
4. Agamagomedova, S.A. (2011) Improving the Mechanism of Intellectual Property Rights Protection during Implementation of the Customs Code of the Customs Union. *Bulletin of the Russian Customs Academy*, 2(1):37-41.
5. Sorokin A.M. (2015) The Conceptual Improvement of Customs Control Organization of Goods Containing Intellectual Property in The Customs Union. *Economics and Management Control Systems*, 1.1 (15): 183-189.
6. Dolgova M.V., Yurieva E.V. *Customs Control of Goods Containing Copyright Items*. Monograph: Publishing House of the Russian Customs Academy.
7. Customs Code of the Customs Union (Annex to the Agreement on the Customs Code of the Customs Union, approved of by the top-level EurAsEC Interstate Council dated from 27.11.2009 № 17.
8. On Customs Regulations in the Russian Federation: On Customs Regulation in the Russian Federation: Federal Law № 311-FZ of 27.11.2010.
9. The Code of the Republic of Kazakhstan dated June 30, 2010 № 296-IV.
10. Sorokin A.M. (2014) Differences in the National Systems of Customs Protection of Intellectual Property Rights. Megacity Management. *Scientific Theoretical and Analytical Journal*, 5 (41) Moscow. NIK Content-Press: 146-151.

### PROBLEMI CARINSKE ZAŠTITE INTELEKTUALNIH PRAVA U USLOVIMA MEĐUNARODNE EKONOMSKE INTEGRACIJE KAO ŠTO JE ILUSTROVANO EVROAZIJSKOM EKONOMSKOM UNIJOM

*Apstrakt: U radu se govori o carinskoj zaštiti intelektualne svojine. On opisuje postojeći sistem carinske zaštite intelektualne svojine u evroazijskoj ekonomskoj uniji i probleme carinskih organa koji se suočavaju sa problemima koji se odnose na prava intelektualne svojine. Vrste IP kršenja prava opisane su, kao i načini zaštite prava intelektualne svojine. Razmatraju se pitanja u vezi sa carinskom zaštitom prava intelektualne svojine kroz ekonomsku integraciju.*

*Ključne reči: intelektualna prava, imovina, carinski organi, povrede, ekonomska integracija, carinska kontrola robe koja sadrži intelektualnu svojinu.*