

MODERN ADMINISTRATIVE AND LEGAL MODEL OF ASSISTANCE FROM THE CUSTOMS AUTHORITIES OF UKRAINE TO THE DEFENCE AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS WHEN MOVING GOODS ACROSS THE CUSTOMS BORDER

The purpose of the article. To analyze the administrative and legal status of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights when moving goods across the customs border.

Methods. The methodological basis of the study is a comparative method that allows us to consider the most effective approaches to the protection of intellectual property rights at the customs border. In the course of the research, we also used historical and legal, systemic and structural, structural and functional methods, the method of ascent from the abstract to the concrete.

The study determined the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of rights to intellectual property. The analysis of the powers granted to the customs authorities to promote the protection of intellectual property rights during the import and export of goods, and also made proposals for improving the methodological support for customs control over goods containing objects of intellectual property rights. The principles of interaction of the customs authorities of Ukraine with the subjects of assistance to the defence and protection of intellectual property rights of general, industry and special competence are considered. The article describes the problems of legal, personnel and material and technical support, as well as organizational activities and interaction of customs authorities with other subjects of assistance in the defense and protection of intellectual property rights.

Conclusions. The conclusion is made about the directions of assistance in the protection of intellectual property rights, which are protected in accordance with the legislation of Ukraine. The features of customs control and customs clearance of goods containing objects of intellectual property rights protected in accordance with the law and imported into the customs territory of Ukraine or exported from the customs territory of Ukraine are studied, carried out in a general manner, taking into account the specifics established by the Customs Code of Ukraine and other laws of Ukraine. The problematic issues of the algorithm of intradepartmental relationships within the organizational structure of customs authorities as subjects of public administration in the field of intellectual property are highlighted. The problematic aspects of the organizational and legal mechanism for promoting the defence and protection of intellectual property rights by the customs authorities of Ukraine are analyzed. The ways of improving the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of intellectual property rights of special competence are proposed.

Key words: Legislation in the Field of Intellectual Property, Intellectual Property, Infringing Goods, Customs Authorities, Object of Intellectual Property Rights, Public Administration, the Field of Intellectual Property, Adulterated Products.

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Andriy KHRIDCHKIN,
Professor at the Department
of Entrepreneurship,
Organization of Production
and Theoretical
and Applied Economics
Ukrainian State University
of Chemical Technology
Doctor of Juridical Sciences,
Assistant Professor
Khridochkina@ukr.net
orcid.org/0000-0001-9387-8864

1. Introduction

The results of human intellectual and creative activity occupy an increasingly dominant place in the global volume of property value, and therefore require reliable protection from any unlawful encroachments. The strategy chosen by our country for building civilized market relations, ensuring the social orientation of the economy and innovative socio-economic development, based primarily on the activation of its own intellectual potential, has necessitated the formation of an effective domestic mechanism for the defence and protection of intellectual property rights.

Petro MAKUSHEV,
*Professor at the Department
of Theory and History
of State and Law
University of Customs and Finance
Doctor of Juridical Sciences,
Assistant Professor
mpv12@i.ua
orcid.org/0000-0001-8693-1428*

In recent years, the theory and practice of customs activities in the field of protection of intellectual property rights have fundamentally changed. In particular, the protection of rights in various aspects was carried out by a number of scientists, and a separate area of research is the study of the organization of activities to promote the protection of intellectual property rights by customs authorities. At the same time, the issues of the place of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights during the movement of goods across the customs border remain unresolved. Over the past decade, an active law-making process in this direction has been carried out in Ukraine, and today it can already be argued that a modern legislative framework for the protection and protection of intellectual property has been created in our country (Prevention of customs offenses, 2017). The domestic system of legal sources, consisting of constitutional norms, norms of codes, laws, a number of by-laws, generally meets the international requirements defined by the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter – the TRIPS Agreement). In particular, the World Intellectual Property Organization noted significant positive changes in Ukrainian legislation in this area. But a significant number of infringing goods and adulterated products sold in Ukraine, as well as the volume of their distribution, still cause significant damage not only to the economy of our state, but also to the image of Ukraine. Therefore, it is not by chance that the international community points out to our state the need to apply more effective measures for the defence and protection of intellectual property, which not only declare, but also bring practical results. And despite the functioning in Ukraine of a rather ramified system of defence and protection of intellectual property rights, there is still a need to search for qualitatively new ways to solve the problem of strengthening the defence and protection of the rights of subjects of intellectual property rights. A significant part of the powers in the field of defence and protection of copyright holders is vested in the bodies exercising control over the movement of cargo and goods across the customs border of Ukraine.

The purpose of the article is to analyze the administrative and legal status of the customs authorities of Ukraine in the system of subjects of assistance for the defence and protection of intellectual property rights when moving goods across the customs border.

2. Methodology and Methods

Philosophical, general and specific methods are used to achieve the purpose of the article. The dialectical method was used to make a comprehensive analysis of the administrative and legal status of the customs authorities of Ukraine as subjects of assistance to the defence and protection of intellectual property rights when moving goods across the customs border. The use of methods of analysis, synthesis, systemic and structural-functional methods made it possible to study the main components of the administrative legal status of the customs authorities of Ukraine as subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border. The use of the structural and functional method contributed to a comprehensive study of administrative and legal relations arising in the process of violation of intellectual property rights at the customs border of Ukraine.

3. Modern model of Intellectual Property Protection

According to Art. 398 of the Customs Code (hereinafter – CC) of Ukraine, the rightholder, if there are grounds to believe that when goods are moved across the customs border of Ukraine, his rights to an intellectual property object are or may be violated, he has the right to submit an application for assistance in protecting these rights (Verkhovna Rada of Ukraine, 2012). And the central executive body that implements the policy in the field of state customs affairs maintains customs register of intellectual property rights protected in accordance with the law. After registration of the object of intellectual property rights in the customs register of objects of intellectual property rights, on the basis of an application by the copyright holder or his authorized person, the customs, on the basis of the information contained in this register, take measures to prevent the movement of infringing goods across the customs border of Ukraine.

The largest number of those intellectual property objects that are included in this register are trademarks, but it also contains the results of scientific and technical creativity (inventions, utility models, industrial designs, etc.), and objects of copyright (different types of work). The list of these objects of intellectual property included in the customs register of objects of intellectual property rights is constantly growing. After registration of the object of intellectual property rights in the customs register of objects of intellectual property rights protected in accordance with the law, the customs authorities, on the basis of the data of such register, take measures to prevent the movement of infringing goods across the customs border of Ukraine.

Every year, taking into account the effectiveness of customs actions to promote the defence and protection of intellectual property rights when moving goods across the customs border of Ukraine, the number of applications with declarations from rightholders or persons authorized by them to promote the protection of intellectual property rights is increasing (Cherednik, 2014). By preventing the circulation of infringing goods in the state through the implementation of measures specified in the CC of Ukraine to promote the protection of intellectual property rights at the customs border, customs authorities create favorable conditions for legal business. However, in the activities of customs on the implementation of Section XIV of the CC of Ukraine (“Assistance in the Protection of Intellectual Property Rights When Moving Goods Across the Customs Border of Ukraine”), as practice shows, there are a number of urgent problems that need to be addressed. These problems can be classified according to the problem of legal support, staffing, logistics, organizational activities and interaction of customs authorities with other subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border.

According to Art. 403 of the CC of Ukraine, when exercising control over the movement of goods containing objects of intellectual property rights across the customs border of Ukraine, customs authorities interact with other state bodies authorized in the field of protecting intellectual property rights, in the manner prescribed by the legislation of Ukraine (Svirida, 2013). To implement this provision, an appropriate mechanism should be developed for interaction of customs authorities with other entities promoting the defence and protection of intellectual property rights when moving goods across the customs border.

Transforming the acquisition of legal science in relation to the mechanism of legal regulation, as well as the theory of legal relations and the implementation of legal norms, which constitute the mechanism of interaction of customs authorities with the subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border, it is advisable to determine the following components: the legal basis and scope of this mechanism (legal component); subjects of interaction, what are the bodies of all branches of government and their governmental powers (organizational component); interconnection through the system of legal relations of subjects (organizational and legal component).

The subjects of customs and legal relations that arise when exercising control over the movement of goods containing intellectual property objects across the customs border of Ukraine are, on the one hand, the customs authorities: the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and implements the policy in the field of state customs affairs, state policy on the administration of a single contribution to compulsory state social insurance, state policy in the field of combating offenses in the application of customs legislation, as well as legislation on the payment of a single contribution, a customs authority that, in its area of activity, ensures the fulfillment of the tasks entrusted to on the bodies of revenues and fees), a customs post (a customs body that is part

of the customs as a separate structural unit, and in the area of its activity ensures the fulfillment of tasks assigned data to customs authorities). The subjects of customs and legal relations are also state bodies, institutions and structures endowed with direct and indirect functions and responsibilities in the field of intellectual property, and judicial authorities. The list of such bodies is set out in the draft “National Strategy for the Development of the Sphere of Intellectual Property in Ukraine for 2020–2025”: executive authorities (Ministry of Economic Development and Trade of Ukraine, Ministry of Internal Affairs of Ukraine, etc.); state bodies with a special status (Prosecutor General’s office of Ukraine, Security Service of Ukraine, Antimonopoly Committee of Ukraine), as well as judicial authorities (National Strategy for the Development of the Sphere of Intellectual Property, 2019). And in addition to the listed subjects of legal relations in the interaction of customs authorities with other subjects of assistance in the defence and protection of intellectual property rights when moving goods across the customs border are the parliament and the government of Ukraine.

The central executive body, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine and implements the state tax policy, state policy in the field of state customs, state policy on the administration of a single contribution to compulsory state social insurance, state policy in the field of combating offenses during the application of tax, customs legislation, as well as legislation on the payment of a single fee may propose to the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine draft regulations to resolve legal gaps or to improve the mechanism of public administration in the field of intellectual property when moving goods across the customs border of Ukraine. Such relationships are subordinate or vertical relationships (Komarov, 2017).

The relationship of interaction between customs authorities and government bodies (without the participation of parliament and government) is characterized by a dispositive method of legal regulation. This is a legal relationship of free expression of will and equality of the parties – the customs authorities enter into legal relations with state authorities at their level (Bondarenko, 2015). If it is necessary to apply to the highest authority from the above list of state authorities, then the customs, for example, have to apply for the need for such an appeal to the central executive authority, which ensures the formation and implements the state tax and customs policy. That, in turn, already enters into an appropriate legal relationship with a subject of equal status.

Thus, in addition to the listed subjects, one should remember about the presence of intradepartmental administrative relations between subordinates and their heads of customs authorities, relations between hierarchically lower and higher structural divisions of this department, etc. These relations are characterized by the presence of power and subordination, the power inequality of the participants in these legal relations, cases within the system between: services and subdivisions of different bodies; between them and senior officials; on the line “boss-subordinate” in the service, a division of legal theorists is called internal legal relationship (Mykolenko, 2018).

An important element of the investigated legal relationship is their object. N. Yu. Golubeva refers to material and intangible benefits as the object of legal relations, about which the subjects enter into legal relations, exercise their subjective legal rights and subjective legal obligations (Golubeva, 2013). Individual Scientists are of the opinion that the object of customs legal relations is the activity of moving goods, objects, vehicles across the customs border of Ukraine (Nikanorova, 2014). The subject of customs legal relations is goods, objects, vehicles that move across the customs border of Ukraine.

Part of the argument can be accepted. Since from the totality of objects of legal relations, objects of the material world (things, values, property), as well as certain products of intellectual creativity, are characteristic of customs legal relations. In legal relations to promote the protection of intellectual property rights when moving goods across the customs border of Ukraine, there may be a different object depending on the type of legal relationship. In regulatory legal relations, this is the procedure for moving such goods, the procedure for entering goods into the customs register of intellectual property objects, in security ones – specific measures of customs authorities to suspend customs clearance of such goods, placing them in a warehouse of the customs authority, customs clearance in accordance with the established procedure, destruction of such goods.

4. Directions for Improving the Protection of Intellectual Property Objects

Interaction of customs authorities with the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine, as a rule, is carried out on the following issues: maintaining state registers of objects of intellectual property rights; organization of information

and publishing activities in the field of legal protection of intellectual property; organization of work on training and retraining of specialists in intellectual property issues; issuing official bulletins on intellectual property issues (Berlach, Fil', 2017); studying, summarizing and analyzing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and submitting proposals for improving and harmonizing the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be; issuance of documents for customs control and customs clearance of goods transported across the customs border of Ukraine; implementation of state supervision (control) over the observance by subjects of all forms of ownership of the requirements of legislation in the field of intellectual property.

Consequently, the objects of legal relations of interaction in legal relations on the listed issues can be: issues of maintaining state and customs registers of objects of intellectual property rights; issues and forms of participation of customs officials in information and publishing activities in the field of legal protection of intellectual property objects; issues and forms of participation of customs officials in activities for the training and retraining of specialists in intellectual property issues; forms of participation in studying, generalizing and analyzing the experience of foreign countries, as well as the practice of Ukrainian legislation in the field of intellectual property, developing and submitting proposals for improving and harmonizing the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be; documents for customs control and customs clearance of goods transported across the customs border of Ukraine; issues related to state supervision (control) over the observance by subjects of all forms of ownership of the requirements of legislation in the field of intellectual property.

Under the legal fact, scholars understand the life circumstances with which the rules of law link the emergence, change or termination of legal relations (Theory of State and Law, 2017). Therefore, the legal facts of the relationship of customs authorities with the Department of Intellectual Property Development of the Ministry of Economy of Ukraine may be actions of officials or events related to maintaining state registers of intellectual property rights, information and publishing activities in the field of intellectual property protection, organization work on training and retraining of specialists in intellectual property, issuing official bulletins on intellectual property, studying, summarizing and analyzing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and submitting proposals to improve and harmonize Ukrainian legislation with the norms of international agreements to which Ukraine is or intends to be a party (Fil', 2016); issuance of documents for customs control and customs clearance of goods moving across the customs border of Ukraine, the implementation of state supervision (control) over compliance by economic entities of all forms of ownership of the requirements of legislation in the field of intellectual property.

The content of this type of customs legal relationship is traditionally subjective rights and legal obligations of their subjects. Subjective law is a measure of permitted behavior guaranteed by the state, and legal obligations are the type and measure of obligatory behavior of the subject of customs legal relations. Subjective law is traditionally characterized by the unity of three elements: the type and measure of permitted behavior of the bearer of this right, within which the bearer himself exercises his right; the right to demand from other persons such behavior, ensuring the achievement of the goal of entering into these legal relations; the right to demand the use by the state, represented by its authorized bodies, of coercion against the bearer of a counter legal obligation in the event of its non-fulfillment or improper fulfillment (Lytikov, 2013).

Legal obligation is the type and measure of required conduct as prescribed by law. The basis of subjective law is the legal support of the possibility, and the basis of the legal duty is the consolidation of the need. The bearer of the possible behavior is the authorized person, and the bearer of the obligation is the obligated person. An authorized person has the right to perform certain actions, but is obliged to perform and ensure them (Gamanyuk, 2015). In the legal relations under consideration, the subjective legal obligation corresponds to the subjective law of the counterparty and consists of such elements as: the need to perform certain actions or abstain from them; the need for the obligated entity to respond to legal requirements addressed to him by the authorized entity; the need to bear responsibility for failure to comply with these requirements (in our case, the legal relationship will be held accountable by the officials of these entities); the need not to prevent the counterparty from using the right that is guaranteed to him by law in these legal relations.

Legal relations on the interaction of customs authorities with other subjects of assistance in the protection and protection of intellectual property rights when moving goods across the customs border are formed on the basis of written requests and correspondence. For example, the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine sends a letter to the State Customs Service of Ukraine (hereinafter referred to as the SCS of Ukraine) with a proposal to send its specialists to training and retraining courses for specialists in intellectual property issues organized by the Ministry of Economy of Ukraine. SCS of Ukraine, in turn, sends a response with a list of persons who will improve their qualifications at such courses. The subjective rights and obligations of the Department for the Development of the Sphere of Intellectual Property of the Ministry of Economy of Ukraine and the SCS of Ukraine arise from the agreement received on the basis of correspondence and on the basis of the current legislation of Ukraine. The SCS of Ukraine has a subjective right to advanced training for its employees. The Ukrainian Institute of Intellectual Property undertakes to improve the qualifications of employees of the SCS of Ukraine in the protection of intellectual property rights. The State Customs Service of Ukraine undertakes the obligation to ensure the arrival of its specialists at a certain time and at the agreed place, as well as to require proper attitude to the training of these specialists. The Department of Intellectual Property of the Ministry of Economy of Ukraine has the right to demand this from the SCS of Ukraine. From the outside, everything looks pretty simple. In fact, such a simple correspondence is only an external form and the result of a complex system of intradepartmental legal relations, burdened by a significant number of conciliatory bureaucratic actions. Often, such actions slow down the adoption of necessary decisions and reduce the effectiveness of public administration activities.

It is necessary to develop such a model of interaction of customs authorities with other subjects of assistance to the defence and protection of intellectual property rights when moving goods across the customs border of intellectual property, which would ensure quick adoption of the necessary decisions and increase the efficiency of management activities.

5. Conclusions

Today, Ukraine has formed a legal framework and a system of subjects to promote the defence and protection of intellectual property rights when moving goods across the customs border. Confirmation of this thesis is the fact that Ukraine is a member of the World Trade Organization, a prerequisite for which was the mandatory compliance of national legislation with the norms of the TRIPS Agreement. At the same time, the legislation in the field of defence and protection of intellectual property when moving relevant goods across the customs border requires further revision. Further development is also required by the methodological support of the activities of customs authorities related to the promotion of the defence and protection of intellectual property when moving goods across the customs border. In order to improve the level of protection of goods containing objects of intellectual property, it is necessary to conduct a deep legal analysis of international experience and legislation to expand the competence of customs authorities in this matter. It is advisable to see and conduct a systematization of legislation governing the defence and protection of intellectual property in order to establish in Ukraine their unified and integral system. The strategic direction remains the creation of divisions for the defence and protection of intellectual property in the customs authorities. And in order to conduct customs control of goods containing objects of intellectual property rights, at the proper level, it is necessary to conduct thorough training and advanced training of specialists of customs authorities and to complete customs laboratories with new equipment. According to Art. 258 of the Customs Code of Ukraine, customs authorities interact with other subjects of assistance to the defence and protection of rights to intellectual property objects when moving goods across the customs border, in the manner determined by the legislation of Ukraine. We believe that cooperation is necessary not only at the state level, it is necessary to establish close and mutually beneficial relations with foreign and international bodies and organizations. Cooperation between the state and business structures in the field of defence and protection of intellectual property should be mutually beneficial and effective.

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**СУЧАСНА АДМІНІСТРАТИВНО-ПРАВОВА МОДЕЛЬ СПРІЯННЯ
З БОКУ МИТНИХ ОРГАНІВ УКРАЇНИ ОХОРОНИ ТА ЗАХИСТУ ПРАВ
НА ОБ'ЄКТИ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ
ПІД ЧАС ПЕРЕМІЩЕННЯ ТОВАРІВ ЧЕРЕЗ МИТНИЙ КОРДОН**

Андрій ХРІДОЧКІН,

*професор кафедри підприємництва, організації виробництва
та теоретичної і прикладної економіки
Українського державного хіміко-технологічного університету,
доктор юридичних наук, доцент
Khridochkina@ukr.net
orcid.org/0000-0001-9387-8864*

Петро МАКУШЕВ,

*професор кафедри теорії та історії держави і права
Університету митної справи та фінансів,
доктор юридичних наук, професор
Mpv12@i.ua
orcid.org/0000-0001-8693-1428*

Мета статті – аналіз адміністративно-правового статусу митних органів України в системі суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності під час переміщення товарів через митний кордон.

Методи. *Методологічну основу дослідження становить порівняльний метод, який дозволяє розглянути найбільш ефективні підходи до охорони прав на об'єкти інтелектуальної власності на митному кордоні. Під час дослідження також застосовувалися історико-правовий, системно-структурний, структурно-функціональний методи, метод сходження від абстрактного до конкретного.*

Дослідженням визначено адміністративно-правовий статус митних органів України як суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності. Проведено аналіз наданих митним органам правомочностей щодо сприяння захистові прав інтелектуальної власності при імпорті та експорті товарів, а також внесено пропозиції щодо вдосконалення методичного забезпечення для проведення митного контролю за товарами, що містять об'єкти права інтелектуальної власності. Розглянуто засади взаємодії митних органів України з суб'єктами сприяння охороні та захисту прав на об'єкти інтелектуальної власності загальної, галузевої та спеціальної компетенції. Охарактеризовані проблеми правового, кадрового і матеріально-технічного забезпечення, а також організаційної діяльності та взаємодії митних органів з іншими суб'єктами сприяння охороні та захисту прав на об'єкти інтелектуальної власності

Висновки. Зроблено висновок про напрями сприяння захисту прав інтелектуальної власності, які охороняються відповідно до законодавства України. Вивчено особливості митного контролю і митного оформлення товарів, що містять об'єкти права інтелектуальної власності, які охороняються відповідно до закону, та ввозяться на митну територію України або вивозяться з митної території України, здійснюються в загальному порядку з урахуванням особливостей, установлених Митним кодексом України та іншими законами України. Виокремлені проблемні питання алгоритму внутрішньовідомчих взаємозв'язків всередині організаційної структури митних органів як суб'єктів публічного адміністрування у сфері інтелектуальної власності. Проаналізовані проблемні аспекти організаційно-правового механізму сприяння охороні та захисту прав інтелектуальної власності митними органами України. Запропоновані шляхи удосконалення адміністративно-правового статусу митних органів України як суб'єктів сприяння охороні та захисту прав на об'єкти інтелектуальної власності спеціальної компетенції.

Ключові слова: законодавство у сфері інтелектуальної власності, інтелектуальна власність, контрафактна продукція, митні органи, об'єкт права інтелектуальної власності, публічне адміністрування, сфера інтелектуальної власності, фальсифікована продукція.