

PLACE OF THE CUSTOMS AUTHORITIES OF UKRAINE IN THE SYSTEM OF SUBJECTS OF PUBLIC ADMINISTRATION IN THE FIELD OF INTELLECTUAL PROPERTY

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INTRODUCTION

Problem formulation. The results of creative intellectual activity of a person occupy an increasingly dominant place in the global value of property value and, therefore, they need for reliable protection against any unlawful encroachments. The strategy chosen by our country for building civilized market relations, ensuring social orientation of the economy and innovative social and economic development based primarily on the activating of our own intellectual potential has created the an urgent need for the formation of an effective domestic mechanism for the protection and protection of intellectual property rights.

During the last decade, an active law-making process in this area was being implemented in Ukraine, and today we can state that in our country a modern legal framework has been created for the protection and protection of intellectual property. The domestic system of legal sources, which consists of constitutional norms, norms of codes, laws, and a number of bylaws, generally complies with the international requirements defined by the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement). In particular, the World Intellectual Property Organization (WIPO) has noted significant positive changes in Ukrainian legislation in this area. But a significant amount of counterfeit and falsified products sold in Ukraine, as well as the volume of its distribution, still cause significant damage not only to the economy of our state, but also to the image of Ukraine. Therefore, the international community does not accidentally point out to our state the necessity of applying effective measures of protection and protection of intellectual property, which not only declare but also bring a practical result. And, despite the functioning of a rather ramified system of protection and protection of intellectual property rights in Ukraine, there is a need to find qualitatively new ways to solve the

problem of strengthening the protection and the protection of the rights of intellectual property subjects. A significant part of the powers in the field of protection and protection of right holders are entrusted to bodies that control the movement of goods and goods across the Customs Border of Ukraine of Ukraine.

1. Principles of Interaction of the Customs Authorities of Ukraine with Subjects of Public Administration in the Field of Intellectual Property of General and Sectoral Competence

According to Art. 398 of the Customs Code of Ukraine (hereinafter – the CC of Ukraine) the right holder, if there are reasons to believe that during the movement of goods across the Customs Border of Ukraine violated or may be violating its rights to the object of intellectual property, has the right to apply for the promotion of the protection of these rights¹. And the central executive body, implementing the state tax policy, the state policy in the field of state customs business, maintains a Customs Intellectual Property Register, which are protected in accordance with the law. After registration of the object of intellectual property rights in the Customs Intellectual Property Register on the basis of the statement of the legal owner or the authorized person of the customs, on the basis of the information contained in this register, take measures to prevent the movement of counterfeit goods through the Customs Border of Ukraine.

As of July 2018, almost 37,800 intellectual property objects were registered in this register. Most of them are trademarks, but there are also results of scientific and technical creativity (inventions, utility models, industrial designs, etc.), and objects of copyright (various types of works). The list of data of objects of intellectual property included in the Customs Intellectual Property Register is constantly growing. After registration of the object of intellectual property rights in the Customs Intellectual Property Register, which are protected in accordance with the law, the customs authorities, based on the data of such register, take measures to prevent the transfer of counterfeit goods through the Customs Border of Ukraine.

¹ Митний кодекс України: Закон України від 13 березня 2012 р. № 4495-VI. URL: <http://www.zakon.rada.gov.ua/laws/show/4495-17>.

Every year, taking into account the effectiveness of customs actions to promote the protection and protection of intellectual property rights during the movement of goods across the Customs Border of Ukraine, the number of applications filed by legal owners or their authorized persons to promote the protection of property rights of intellectual property increases. By preventing the circulation of counterfeit goods in the state, through the implementation of measures defined in the CC of Ukraine to promote the protection of intellectual property rights at the customs border, customs create favorable conditions for legal business. However, as practice shows, there are a number of urgent issues that need to be addressed in the activities of the customs authorities regarding the implementation of Section XIV of the CC of Ukraine (“Promoting the Protection of Intellectual Property Rights in the Movement of Goods through the Customs Border of Ukraine”). These problems can be classified into problems of legal support, personnel provision, logistics, organizational activities and interaction of customs authorities with other subjects of public administration in the field of intellectual property.

According to Art. 403CC of Ukraine, while exercising control over the movement of goods containing intellectual property rights through the Customs Border of Ukraine, customs authorities interact with other state authorities authorized in the field of protection of intellectual property rights in the manner prescribed by the legislation of Ukraine. To implement this norm, it is necessary to develop an appropriate mechanism of interaction of customs authorities with other subjects of public administration in the field of intellectual property.

By transforming the achievements of legal science in the mechanism of legal regulation, as well as the theory of legal relations and implementation of the law, the components of the mechanism of interaction of customs authorities with the subjects of public administration in the field of intellectual property, it is expedient to determine the following components: the system of legal norms, which is the legal basis and scope of this activity mechanism (legal component); the subjects of interaction, which are the bodies of all branches of state power and their state power (organizational component); interrelations in the form of a system of legal relations of subjects (organizational and legal constituent).

The subjects of customs and legal relations that arise during the control of the movement through the Customs Border of Ukraine of goods containing objects of intellectual property are, on the one hand, the customs authorities: the central executive body whose activities is directed and coordinated by the Cabinet of Ministers Ukraine and which implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state flight in the field of combating offenses during the application of tax and customs legislation, as well as legislation on the payment of a single payment, customs (a customs authority which, in the area of its activities, ensures the fulfilment of tasks entrusted to bodies of incomes and fees), a customs post (customs authority, which is part of the customs as a separate structural subdivision, and in the area of its activity ensures the fulfilment of tasks entrusted to the customs authorities). The subjects of customs-legal relations are also state bodies, institutions and structures, which are endowed with direct and indirect functions and responsibility in the field of intellectual property, and judicial bodies. The list of such bodies is set out in the “National Strategy for the Development of the Intellectual Property in Ukraine until 2020”²: executive bodies (Ministry of Economic Development and Trade of Ukraine, Ministry of Internal Affairs of Ukraine, etc.); state bodies with special status (Prosecutor General’s Office of Ukraine, the Security Service of Ukraine, Antimonopoly Committee of Ukraine), as well as judicial authorities². And in addition to those, the subjects of legal relations in the interaction of customs authorities with other subjects of public administration in the field of intellectual property are the parliament and government of Ukraine.

The Cabinet of Ministers of Ukraine directs and coordinates the central executive body activities. This authority implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state policy in the field of combating offenses under the time of application of tax, customs legislation, as well as legislation on issues of payment of a single payment. It can also propose to the Verkhovna Rada of Ukraine and the Cabinet of Ministers Ukraine s draft regulations for

² Національна стратегія розвитку сфери інтелектуальної власності в Україні на період до 2020 року. URL: <http://uba.ua/documents/ip-strategy28082014.pdf>.

the settlement of legal gaps or to improve the mechanism of public administration in the field of intellectual property in the movement of goods across the Customs Border of Ukraine of Ukraine. Such relations are subordinated or vertical relations³.

The dispositive method of legal regulation is characteristic of the relations of interaction of customs authorities with state authorities (without the participation of the parliament and government). This is the legal relationship of free expression of the will and equality of parties, when the customs authorities enter into a legal relationship with state authorities of their level. If it is necessary to apply to a higher body from the above list of state authorities, then the customs, for example, have to file a petition for the need for such a petition to the central executive authority, which ensures the formation and implementation of state tax and customs policy. That, in turn, already enters the corresponding legal relationship with an entity equal in status.

Thus, in addition to the listed entities, it is necessary to remember the existence of intra-administrative administrative relations between subordinates and their heads of customs bodies, relations between hierarchically lower and higher structural subdivisions of this department, and others. Characteristic of these relations is the presence of power and subordination, power inequality of the participants in these legal relationships. Relations within the system between: services and units of different bodies; between them and senior officials; on the line of “subordinate – chief” in the service, the unit theorists of law called internal legal relationships⁴.

An important element of the legal relationship being investigated is their object. N. Yu. Golubev object of legal relations calls the material and intangible benefits, about which subjects enter into legal relationships, exercise their subjective legal rights and subjective legal obligations⁵. Some scholars have expressed the opinion that the object of the customs relations is the activity concerning the movement of goods,

³ Комаров О. В. Юридичний статус та повноваження суб'єктів митних правовідносин. *Lexportus*. 2017. № 6. С. 75–84. С. 78.

⁴ Миколенко О. М. Об'єкт адміністративно-деліктних правовідносин в доктрині адміністративного права. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція*. 2018. Вип. 31. С. 52–54, С. 53.

⁵ Голубева Н. Ю. Вимоги до об'єкта зобов'язальних правовідносин. *Наукові праці Національного університету «Одеська юридична академія»*. 2013. Т. 13. С. 363–374, С. 364–365.

objects, vehicles into the Customs Border of Ukraine⁶. The subject of customs relations are goods, objects, vehicles moving through the Customs Border of Ukraine.

Partly with this thesis you can agree. Since the totality of objects of legal relations characteristic of customs relations are objects of the material world (things, values, property), as well as certain products of intellectual creativity. In the legal relationship to promote the protection of intellectual property rights during the movement of goods across the Customs Border of Ukraine may be a different object depending on the type of legal relationship. In the regulatory, legal relationship, it is the procedure for the transfer of such goods, the order of entering goods in the Customs Intellectual Property Register, in security relationship there are specific measures of the customs authorities to suspend the customs clearance of such goods, placing them in the warehouse of the customs authority, customs clearance in the prescribed manner, the destruction of such goods.

The interaction of customs authorities with the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine, as a rule, is carried out on the following issues: maintenance of state registers of intellectual property objects; organization of information and publishing activities in the field of legal protection of intellectual property; organization of work on training and retraining of specialists on intellectual property issues; issue of official bulletins on intellectual property issues; studying, generalizing and analysing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and making proposals for the improvement and harmonization of the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be a party; issuance of documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine; implementation of state supervision (control) by observance by the subjects of management of all forms of ownership of the requirements of legislation in the field of intellectual property.

⁶ Ніканорова О. Н. Митні правовідносини як різновид правових відносин в Україні. *Митна справа*. 2014. № 6(2.2). С. 463–469, С. 467.

Consequently, the objects of legal relations of interaction in the legal relationship of the listed issues may be: issues related to the administration of state and Customs Intellectual Property Register; questions and forms of participation of officials of customs bodies in the information and publishing activity in the field of legal protection of objects of intellectual property rights; questions and forms of participation of officials of customs bodies in measures for training and retraining of specialists on intellectual property issues; forms of participation in the study, synthesis and analysis of the experience of foreign countries, as well as practices of Ukrainian legislation in the field of intellectual property, the elaboration and introduction of proposals for the improvement and harmonization of the norms of Ukrainian legislation with the norms of international treaties, the participant of which is or intends to be Ukraine; documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine; issues related to state supervision (control) of observance by the subjects of management of all forms of ownership of the requirements of legislation in the field of intellectual property.

According to scientists, the legal factis the circumstances of life, with which the law links the emergence, change or termination of legal relationships⁷. Consequently, the legal facts of customs authorities' relations with the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine may be actions of officials or events related to the maintenance of state registers of intellectual property objects, information and publishing activities in the field of legal protection of intellectual property, organization of work with training and retraining of specialists on intellectual property issues, issue of official bulletins on intellectual property issues, studying, generalization and analysis of the experience of foreign countries and practice of the law of Ukraine on intellectual property, development and proposals for the improvement and harmonization of legislation of Ukraine with the norms of international treaties which participant is or intends to be Ukraine;

⁷ Теорія держави та права: навч. посіб. / Є. В. Білозьоров та ін.; за заг. ред. д-ра юрид. наук, проф. С. Д. Гусарева, д-ра юрид. наук, проф. О. Д. Тихомирова. Київ: Освіта України, 2017. С. 153.

issuance of documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine, implementation of state supervision (control) upon compliance by subjects of management of all forms of ownership with the requirements of legislation in the field of intellectual property.

The content of this type of customs relations is traditionally subjective rights and legal obligations of their subjects. Subjective right is a measure of permitted behaviour that is guaranteed by the state, and legal obligations are the kind and extent of the obligated behaviour of the subject of the customs relationship. The subjective right is traditionally characterized by the unity of three elements: the type and extent of the permitted behaviour of the carrier of this right, within which the media itself realize its right; the right to demand from other persons such behaviour which ensures achievement of the purpose of entering into these legal relationships; the right to demand the use by the state, in the person of its authorized bodies, of compulsion to bearer of a counter legal obligation in case of its non-fulfilment or improper fulfilment⁸.

Legal duty is a type and measure of the necessary behaviour, which is established by law. The basis of subjective law is the legal provision of opportunity, and the basis of legal obligation is the consolidation of necessity. The bearer of possible behaviour is the authorized person, and the bearer of duty is the person obligated. An authorized person has the right to perform certain actions, but is obliged to perform and provide them⁹. In the legal relationship, the subjective legal obligation corresponds to the subjective right of the counterpart and consists of such elements as: the need for certain actions or abstention from them; the need for the obligated subject to respond to legal requirements that were addressed to him by an authorized entity; the need to be responsible for non-compliance with these requirements (in this case, legal relations will be borne by the officials of these entities); the need not to prevent a counterpart from

⁸ Лютіков П. С. Класифікація та характерні ознаки суб'єктивних прав та обов'язків як складових адміністративно-правового статусу юридичної особи: теоретико-правовий аналіз. *Вісник Запорізького національного університету. Юридичні науки*. 2013. № 2(1). С. 125–131, С. 126.

⁹ Гаманюк Л. О. Особливості юридичного обов'язку у військовому праві. *Митна справа*. 2015. № 3(2). С. 187–192, С. 187–188.

exercising the right guaranteed to him by the law in the given legal relationship.

The relationship between customs authorities and other entities of public administration in the field of intellectual property are drawn up on the basis of written appeals and correspondence. For example, the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine sends a letter to the State Fiscal Service of Ukraine (hereinafter referred to as the SFS of Ukraine) with a proposal to direct its specialists to the training courses and retraining of specialists on intellectual property issues organized by the Ministry of Economic Development and Trade of Ukraine. The SFS of Ukraine, in turn, sends a response to the list of individuals who will increase their qualification at such courses. The subjective rights and responsibilities of the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine and the SFS of Ukraine arise from the agreement obtained on the basis of correspondence and on the basis of the current legislation of Ukraine. The SFS of Ukraine has a subjective right to upgrade qualifications for its employees. The State Service of Intellectual Property of Ukraine pledges to increase the qualification of employees of the SFS of Ukraine on issues of protection of intellectual property rights. The SFS of Ukraine is obliged to ensure the arrival of its specialists within a specified time and place, as well as to require proper training from these specialists. The Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine has the right to demand this from the SFS of Ukraine. From the outside everything looks quite simple. In fact, such simple correspondence is only an external form and the result of a complex system of intra-legal relationships burdened by a significant amount of conciliatory bureaucratic actions. Often, such actions impede the adoption of necessary decisions and reduce the effectiveness of management activities.

It is necessary to develop such a model of interaction of customs authorities with other subjects of public administration in the field of intellectual property, which would ensure the rapid adoption of necessary decisions and increased the efficiency of management activities.

2. Principles of Interaction of the Customs Authorities of Ukraine with Subjects of Public Administration in the Field of Intellectual Property of Special Competence

The theoretical model of the interaction of the Customs Authorities of Ukraine with other subjects of public administration in the field of intellectual property is a reflection of the elements of the system of protection and protection of intellectual property rights, stipulated by the legislation, that provide protection of these rights during the movement of goods across the Customs Border of Ukraine¹⁰. Given this, it can be assumed that the interconnections, in particular regarding the protection and protection of intellectual property rights, should be built up between the customs and the tax component. For the purpose of legal regulation of such interconnections, it was advisable to adopt the relevant regulatory act. In line with this objective requirement, the Ministry of Finance of Ukraine issued an appropriate order (“On Approval of the Procedure for the Interaction of Customs Units in the Field of Customs Control and Customs Clearance of Goods Containing Intellectual Property Rights”)¹¹. However, his careful analysis showed that it helped regulate the interaction of elements exclusively within the customs component. Thus, intra-interrelation becomes a form of interaction between the elements of the organizational structure of the state customs system.

The internal communications are clearly traced in the circumstances of the completion (completion) of customs clearance of goods outside working hours (in the second shift of work). In this situation, officials of the customs clearance unit inform the officials of the specialized unit about the necessity of their involvement in the customs clearance of goods before the end of working hours (the first change of work). Copies of the customs declaration and the documents on the basis of which decisions were made by the specialized unit shall be kept in the affairs of the specialized unit in paper and/or electronic form.

¹⁰ Запобігання митним правопорушенням: охорона і захист прав інтелектуальної власності на митному кордоні України : монографія / за заг. ред. П. В. Пашка. Ірпінь-Хмельницький: ФОП Стрихар А. М., 2017. 323 с. С. 152.

¹¹ Про затвердження Порядку взаємодії підрозділів митниці при здійсненні митного контролю та митного оформлення товарів, що містять об’єкти права інтелектуальної власності: наказ Міністерства фінансів України від 30 травня 2012 р. № 647. URL: <http://www.zakon.rada.gov.ua/go/z1033-12>.

The algorithm of intercommunity interaction, that is, the interaction between the specialized unit and the customs clearance unit, regarding the control over compliance with the legislation of Ukraine in the field of intellectual property rights protection during the customs control and customs clearance of goods moved by citizens, covers the actions of officials of the above units, are similar those carried out on the results of customs inspection of goods.

Consequently, internal relations are formed within the organizational structure of customs authorities and for the most part fulfil the functions of providing information flows, directly promoting the protection of intellectual property rights, partially carrying out administrative functions, in particular, control, etc. Instead, external relations ensure the formation of a state customs policy to promote the protection of intellectual property rights, the implementation of a strategic vision in this area, fulfilling a security function in relation to internal interactions in the organizational and legal mechanism to promote the protection of intellectual property rights.

The functioning of the mechanism for promoting the protection of intellectual property rights depends on its qualitative organizational and legal component, that is, on the interconnections between the elements of the mechanism. Such elements in the block of external interaction in the model act above the authorities of different branches of government. The extent of their powers in the field of protection and protection of intellectual property rights depends on the level of inclusion of these subjects of public administration in the process of promoting protection and protection of intellectual property rights¹². This, in turn, determines the importance, depth and durability of the relationships that arise between these actors as elements of the block of external interaction of the model of interaction of customs authorities with other subjects of public administration in the field of intellectual property.

The practice of customs authorities testifies to the existence of such a problematic issue as the lack of direct interaction between the officials of the relevant customs departments with the Department of Intellectual Property of the Ministry of Economic Development and Trade of

¹² Чередник Н. В. Правовий аналіз рекомендацій Європейської комісії щодо управління інтелектуальною власністю (трансфером знань) та проблеми їх імплементації. *Науковий вісник Ужгородського національного університету. Серія: Право*. 2014. Вип. 28(2). С. 204–206, С. 205.

Ukraine. The essence of the problem lies in the fact that one of the tasks performed by the bodies of revenues and collections, performing customs duties in accordance with Art. 544 of the Criminal Code of Ukraine is “to promote the protection of intellectual property rights, to take measures to prevent the transfer of goods across the Customs Border of Ukraine with violations of intellectual property rights protected by the law, and preventing the transfer of counterfeit goods through the Customs Border of Ukraine”. According to Art. 398 of the CC of Ukraine, the rights holder who, if he has reason to believe that during the movement of goods across the Customs Border of Ukraine violated or may be violating his rights to the object of intellectual property rights, has the right to apply to promote the protection of his property rights to the object of intellectual property by entering appropriate information into the Customs Intellectual Property Register, which are protected in accordance with the law.

Based on the statements of the owners the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state policy in the field of fighting offenses in the application of tax, customs legislation, as well as legislation on the payment of a single payment, keeps a Customs Intellectual Property Register protected in accordance with the law. After registration of the intellectual property object in the Customs Intellectual Property Register, customs on the basis of data of such register take measures to prevent the movement of counterfeit goods through the Customs Border of Ukraine.

Among the problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights the Customs Authorities of Ukraine several identified groups. The first of these is related to the organization of the work of the employees of the sector on issues of protection of intellectual property rights of the Department for Customs Control. We are talking about: the need to improve the level of customs control through the preservation of human resources, which has a certain experience of such work; the need to address the problem of compliance with certain procedural deadlines by employees of the sector on the protection of intellectual property rights of the Department for Customs Control, in particular, to ensure the

sending of notifications about the fact of presentation of goods containing objects of intellectual property rights; the need to involve the employees of the sector on the issues of intellectual property rights of the Department of Customs Control Organization before carrying out customs inspections (detection of violations of intellectual property rights (“untypical” or “hidden”) is more possible in the direct implementation of customs cargo inspections; resolving the issue of placing goods whose customs clearance is suspended.

The second group of problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights by the Customs Authorities of Ukraine is connected with the conduct of the Customs Intellectual Property Register and entering of information, namely, registration of well-known things or registration of “duplicate objects”. The famous things have already registered, such as respirator, tablet PC, screw, toothpicks, clothes hanger, cigarette lighters, auto parts, sticks for shish kebab, matches. Taking into account the foregoing, one can register anything and obtain a patent, including a certain thing¹³.

At the same time, the presence in the Customs Intellectual Property Register of a considerable number of similar objects of intellectual property similar in character is the actual problem, which complicates the customs control over the protection of intellectual property rights. It is mostly industrial designs, patents for which are granted without qualification examination of the merits of the applicants’ applications. In such cases, with almost similar signs of declared goods entered into the Customs Intellectual Property Register, officials of customs are required in the conditions of certain time standards, in accordance with their competence, to determine clearly whether all the essential features of industrial designs used in the given goods are used, entered in the Customs Intellectual Property Register. The presence of several different patents for the same industrial design, which was registered in the customs register, leads to complication and confusion in the event of a decision to suspend the customs clearance of such goods in terms of informing the right

¹³ Свирида В. А. Організаційно-правовий механізм реєстрації митними органами України прав на об’єкти інтелектуальної власності. *Бюлетень Міністерства юстиції України*. 2013. № 11. С. 204–210, С. 207–208.

holder about the fact of presentation of these goods to customs clearance (taking into account that several owners).

In accordance with the current legislation, an industrial design is the result of human creative activity aimed at achieving the decorative appearance of the product. An industrial design must satisfy both the aesthetic and ergonomic needs of the consumer. That is the product must be external and at the same time be capable of performing its intended function. The scope of the legal protection of an industrial design is determined by the set of essential features of the industrial design, which are presented in the image (images) of the product (its layout, figure)¹⁴. It should be noted that the signs refer to the essential if they affect the appearance of the product, which has aesthetic and ergonomic features. Legal protection is given to an industrial design that does not contradict the public interests, the principles of humanity and morals. According to Art. 461 of the Civil Code of Ukraine, an industrial design is considered suitable for the acquisition of intellectual property rights to it, if it is new in accordance with the law¹⁵. In this case, the industrial design is considered new if the set of its essential features has not become public in the world before the date of filing an application for it, or if the priority is claimed prior to the priority date.

Unfortunately, recently, the tendency to enter the customs register of such industrial designs is increasing. At the time of registration they were well-known. A set of essential features of such industrial designs prior to the date of registration by the State Intellectual Property Service of Ukraine and, accordingly, has become publicly available in the Customs Register in the world.

Indeed, in accordance with the procedure for registration in the Customs Intellectual Property Register, the registration of industrial designs in the Customs Intellectual Property Register is carried out including on the basis of a document confirming the property rights to the object". The Ukrainian patent for industrial design, issued by the Ukrainian Institute of Intellectual Property for Industrial Design, is such

¹⁴ Бондаренко О. О. Основні напрями удосконалення національного законодавства у сфері охорони промислових зразків в Україні. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція.* 2015. Вип. 15(2). С. 4–7, С. 5.

¹⁵ Цивільний кодекс України: Закон України від 16 січня 2003 р. № 435-IV. URL: <http://www.zakon.rada.gov.ua/go/435-15>.

a document. You can continue to blame the Ukrainian Institute of Intellectual Property, which, without conducting a substantive examination, without examining the novelty of the file submitted for the registration of an industrial design, issues patents for all industrial designs without exception, without taking into account the consequences that such registration may entail. Nevertheless, the formal examination of industrial designs is an international practice and one can hardly hope for changes in the national legislation on the protection of rights to industrial designs, including the order of their state registration.

Thus, it is advisable to amend the Procedure for Registration in the Customs Register Objects of Intellectual Property Rights to protect intellectual property rights during the movement of goods across the customs border and to avoid delays in customs clearance associated with ambiguous interpretation of the legislation on the protection of intellectual property rights for industrial designs. These rights are protected in accordance with the law, having established the possibility of registering only those industrial designs that have received legal protection in accordance with the Hague Agreement Concerning the International Registration of Industrial Designs, as Ukraine is a party to the Hague (1960) and the Geneva Act (1999) of the Hague Agreement for International Registration of Industrial Designs, concluded in 1925.

Another group of problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights by the Customs Authorities of Ukraine is the issue of realization of property rights by legal owners and their representatives: the need to involve the right holders in conducting expert assessments; the need to resolve the issue of untimely return of samples of goods, which is a violation of the norms of customs legislation; the need to address the issue of returning to the practice of providing the holder with a pledge or an equivalent guarantee for the reimbursement of costs associated with customs actions to promote the protection of intellectual property rights¹⁶; the need to address the issue of unification of information about official importers of goods and enterprises that may violate intellectual property rights; the final solution to the problem of the deliberate

¹⁶ Филь С. П. Адміністративна відповідальність за переміщення товарів через митний кордон України з порушенням прав інтелектуальної власності. *Право і суспільство*. 2016. № 5(2). С. 129–134, С. 129–130.

complication of customs clearance by representatives of legal owners, due to the fact that the multiple implementation of measures to suspend the customs clearance of goods permanently imported by the same subjects of foreign economic activity by the same foreign economic agreements¹⁷; eliminating the practice of “pulling” the customs into a competitive struggle bearing signs of attempts to use the public-law resource in private interests and essentially serving as a form of abuse of the law.

Therefore, there are a number of problems that impede effective and high-quality work of the system of security and protection of intellectual property rights. In order to eliminate and optimize the work of the customs, promptly introduce changes to the regulatory legal acts that regulate the intellectual property, promote business development, accelerate external trade, etc., it is necessary, first of all, to reduce the time for decision making by the Customs authorities regarding the implementation of customs clearance, which are transferred through the customs border, or their suspension or execution of other customs procedures provided for by law. In addition, it is advisable to develop a qualitatively excellent model of interaction of Customs authorities with other actors promoting the security and protection of intellectual property rights. The main characteristic of this model should be the minimum number of hierarchically complex interconnections, the absence of dubbing in internal interactions, the possibility of direct interaction of customs with other subjects of security and protection of intellectual property rights. In addition, it seems advisable that such information be directly received by an official of the customs clearance unit, and not by the intermediary of an official of the specialized unit. This approach allows to eliminate another unnecessary interconnection of the internal communication – sending information about the introduction of new objects of intellectual property rights into the customs register from a specialized unit in the customs clearance unit.

As mentioned above, the domestic practice of interaction between customs and other bodies of state power has the character of subordination. This situation leads to very slow solution of problems that

¹⁷ Берлач Н. А., Филь С. П. Сутність митної діяльності, спрямованої на сприяння захисту прав інтелектуальної власності в Україні. *Наука і правоохорона*. 2017. № 1. С. 20–27, С. 22.

require an operational approach. The ability to solve urgent issues with a minimum amount of bureaucratic formalities would ensure a much better functioning of the system of security and protection of intellectual property in Ukraine and bring our country closer to the EU standards.

CONCLUSIONS

As of today, Ukraine has already formed the legal framework and the system of subjects of public administration in the field of intellectual property. This thesis is confirmed by the fact, that Ukraine is a member of the World Trade Organization (WTO). It was a necessary condition for the mandatory compliance of national legislation with the provisions of the TRIPS Agreement. At the same time, legislation in the field of protection and protection of intellectual property needs further elaboration when moving the relevant goods through the customs border. The methodological support to the activities of customs authorities related to the promotion of the protection and protection of intellectual property in the movement of goods across the customs frontier also requires further development. And in order to improve the level of protection of products containing intellectual property, it is necessary to undertake a deep legal analysis of international experience and legislation to expand the competence of customs authorities in this matter. It is also reasonable to see the systematization of legislation regulating the protection and protection of intellectual property in order to establish a unified and integrated system in Ukraine. A strategic direction is the creation of units on protection and protection of intellectual property in customs authorities. And in order to carry out customs control of goods containing objects of intellectual property rights, it is necessary to carry out thorough preparation and advanced training of specialists of customs bodies and equip customs laboratories with new equipment at the appropriate level. According to Art. 258CC of Ukraine customs authorities interact with other subjects of public administration in the field of intellectual property, in the order determined by the legislation of Ukraine. We believe that cooperation is needed not only at the state level, it is necessary to establish close and mutually beneficial relations with foreign and international bodies and organizations. The cooperation between the State and business structures in the field of protection and intellectual property protection should be mutually beneficial and effective.

SUMMARY

The place of the Customs Authorities of Ukraine in the system of subjects of public administration in the field of intellectual property was determined. The administrative-legal status of the Customs Authorities of Ukraine as subjects of public administration in the field of intellectual property was analysed. The principles of interaction of the Customs Authorities with subjects of public administration in the field of intellectual property with general, branch and special competence were considered. The problems of legal, personnel support and logistics as well as organizational activity and interaction of customs authorities with other subjects of public administration in the field of intellectual property were described. We separately identified the prospective directions of cooperation between the Customs Authorities of Ukraine and the Intellectual Property Department of the Ministry of Economic Development and Trade of Ukraine. We also identified the problematic issues of the algorithm of intra-internal relations within the organizational structure of customs bodies as subjects of public administration in the field of intellectual property. The problematic aspects of the organizational and legal mechanism for promoting the protection and protection of intellectual property rights by the Customs Authorities of Ukraine were analysed. The ways of improvement of the administrative and legal status of the customs bodies of Ukraine as subjects of public administration in the field of intellectual property of special competence are offered.

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