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THE ROLE OF THE TRIPS AGREEMENT IN THE REGULATION CUSTOMS POLICY

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Abstract. This article examines the application of customs legislation norms in relation to intellectual property objects, the movement of goods across the customs border, electronic processing of documents, the concepts of export and import, the main principles of improving customs legislation concerning intellectual property objects, as well as the role and significance of applying customs legislation norms to intellectual property objects in customs relations. In addition, the customs legislation relating to intellectual property objects has been analyzed, and the customs legislation and related practices of certain foreign countries concerning intellectual property objects have been studied in detail. Proposals for further improvement of national legislation in this field have also been developed.

Keywords: TRIPS Agreement, intellectual property objects, customs, customs authorities.

All social relations in society are closely interconnected, and the norms of legal acts also serve to regulate these interrelated relations. For example, concepts contained in the norms regulating civil law actively participate in relations connected with customs regulations. Intellectual property objects can serve as a clear example of this. Intellectual property objects are among the main property objects in civil law. At the same time, intellectual property objects may also constitute goods, including import and export goods passing through customs control. In civil law, intellectual property is understood as property created through human intellect and creative activity, which also satisfies the conditions established by current legislation. Today, this sphere is regulated and strengthened by the rapidly developing branch of intellectual property law. However, this branch is studied as a component of civil law and is considered one of its important parts, integrating many legal fields. When an intellectual property object is treated as goods and crosses the customs border, the provisions of the Customs Code and other normative legal acts regulating customs relations are applied. The protection of such objects at the customs border is also regulated by customs legislation. In recent years, the rapid development of human intellect and thinking, the expansion of information accessibility, and the accelerated exchange of resources under digitalization processes have led to the rapid development of this sphere. The improvement of digitalization policy and the increasing use of electronic information have also had a positive impact on this field. The inclusion of intellectual property protection in state programs demonstrates the growing attention given to this sphere in our country. In particular, within the framework of the Action Strategy for the Five Priority Areas of Development of the Republic of Uzbekistan for 2017–2021, extensive and effective reforms have been implemented.

In the sphere of economic development and liberalization, special attention has been paid to strengthening the protection of intellectual property and consumer rights. This includes increasing the transparency of procedures for registering trademarks and industrial designs and issuing patents, ensuring international recognition of intellectual property rights registered in Uzbekistan, adopting action programs against the production and sale of counterfeit goods, and revising standards regarding product quality, ingredient composition, labeling, and trademarks. These measures have served as an important basis for the development of the field and the protection of intellectual

property rights. Furthermore, active efforts are being undertaken to ensure the protection of intellectual property objects in accordance with the norms established by international organizations, as well as to guarantee their protection abroad through accession to international treaties and conventions and the incorporation of their norms into national legislation.

It should be noted that the Republic of Uzbekistan became a member of the World Intellectual Property Organization in 1991, immediately after declaring independence. Article 164 of the Civil Code of the Republic of Uzbekistan establishes that property rights include the right of a person to possess, use, and dispose of property belonging to them at their own discretion and in their own interests, as well as the right to demand the elimination of any violations of their property rights. Likewise, Article 13 of the Customs Code of the Republic of Uzbekistan defines goods as any movable property transported across the customs border, including the national currency of the Republic of Uzbekistan, currency valuables, securities, electricity, thermal energy and other types of energy, intellectual property objects, and vehicles.

Currently, a number of problems exist in the field of protecting and safeguarding intellectual property rights in our country, which lead to violations of the rights of intellectual property owners. These problems highlight the relevance of this research. The following problems can be particularly emphasized today:

firstly, insufficient measures for timely detection and elimination of violations in the field of intellectual property;

secondly, a shortage of qualified personnel in the intellectual property sphere;

thirdly, the absence of effective mechanisms for protecting trademark rights on the Internet;

fourthly, the lack of unified criteria in legal practice for determining and measuring damages caused to the exclusive rights holder by unlawful use of trademarks;

fifthly, the insufficient significance of judicial practice in resolving trademark disputes;

sixthly, the absence of legal grounds for recognizing trademarks as well-known by court decision. These issues are not limited only to intellectual property law itself but are also characteristic of goods connected with intellectual property rights in customs legislation. Considering that intellectual property objects are treated as goods, their protection is also ensured through customs regulations. Therefore, due to the insufficient legal protection of inventions, utility models, industrial designs, trademarks, and other intellectual property objects, cases of intellectual property rights violations also arise in the sphere of customs regulation.

In accordance with the Resolution of the President of the Republic of Uzbekistan No. PQ-4168 dated February 8, 2019 “On Measures to Improve Public Administration in the Field of Intellectual Property,” the activities related to the legal protection of intellectual property and the implementation of generally recognized international norms were recognized as unsatisfactory. Reforms aimed at improving the state management system in the intellectual property sphere continue to be carried out in order to increase the country’s investment attractiveness and fulfill the tasks outlined in the Action Strategy for the Five Priority Areas of Development of the Republic of Uzbekistan for 2017–2021. Within these priority areas, the protection of intellectual property rights is considered one of the main objectives. Article 42 of the Constitution of the Republic of Uzbekistan guarantees everyone freedom of scientific and technical creativity and the right to enjoy cultural achievements. The state also ensures care for the cultural, scientific, and technical development of society. Today, it is important to ensure full protection of intellectual property

rights within customs regulations and to improve legislation based on the advanced experience of foreign countries. Violations of intellectual property rights and the resulting significant losses suffered by rights holders require further reforms in this field. At the same time, the issue of commercialization of intellectual property is becoming increasingly relevant. Commercialization also implies the movement of intellectual property objects across customs borders. Indeed, it is necessary to ensure effective legal protection of intellectual property rights, further improve sectoral legislation through systematization and unification of legal norms, create an effective mechanism for protecting the rights and legitimate interests of exclusive rights holders, and improve mechanisms preventing unlawful use of intellectual property rights based on the advanced experience of foreign countries. When intellectual property objects are imported into or exported from the territory of a particular state, the rules established by international treaties apply. In particular, the TRIPS Agreement serves as one of the key agreements regulating these legal relations. In Uzbek, the TRIPS Agreement is also referred to as the Agreement on Trade-Related Aspects of Intellectual Property Rights. The TRIPS Agreement constitutes one of the major legal foundations of the World Trade Organization.

The Marrakesh Declaration on the Establishment of the World Trade Organization includes agreements such as GATT, GATS, and TRIPS as annexes. Each annex constitutes a separate agreement. GATT regulates trade in goods and ensures the application of national treatment and the most-favored-nation principle for goods. GATS regulates trade in services, applying national treatment and favorable conditions for services. TRIPS regulates intellectual property matters, applying national treatment and favorable conditions to intellectual property objects. The distinguishing feature of TRIPS compared to other international legal instruments is that it was the first agreement in the field of intellectual property to contain provisions ensuring the protection of intellectual property rights. Chapter Three of TRIPS contains provisions concerning civil, administrative, and criminal procedures, judicial protection, provisional measures, and border measures. In other words, TRIPS adopts a strict approach toward violations in the intellectual property sphere and provides more reliable protection for rights holders of intellectual property objects. One of the provisions of the Marrakesh Declaration includes rules and procedures for settling disputes among WTO member states. If a member state fails to comply with WTO agreement norms, another member state may appeal to a special dispute settlement body. In general, the TRIPS Agreement consists of seven parts and contains 73 articles. The agreement fully corresponds to the Paris Convention and the Berne Convention. Every state wishing to join the World Trade Organization must sign the TRIPS Agreement. In addition, such states must comply with its norms and harmonize national legislation accordingly. The subject matter of this agreement is the regulation of trade involving goods protected by intellectual property rights [1].

The agreement consists of the following seven parts:

The first part establishes general provisions and fundamental principles, including WTO regimes, the enjoyment of rights, objectives, principles, and other general norms;

The second part is entitled “Standards Concerning the Availability, Scope and Use of Intellectual Property Rights.” It regulates trademarks, geographical indications, industrial designs, patents, integrated circuit topologies, protection of undisclosed information, and control of anti-competitive practices in licensing agreements. This section consists of eight subdivisions, seven of which concern intellectual property objects. These subdivisions establish norms regarding the scope of protection, duration of protection, exceptions, and related matters;

The third part is devoted to the enforcement of intellectual property rights. It includes general obligations, civil and administrative procedures, judicial remedies, provisional measures for intellectual property violations, customs and border measures relating to the movement of intellectual property objects between states, as well as international standards of criminal liability for trademark counterfeiting and copyright piracy. Section Four of Part Three contains requirements aimed at eliminating intellectual property rights violations at customs borders while supporting the lawful circulation of goods;

The fourth part establishes rules concerning the acquisition and maintenance of intellectual property rights;

The fifth part is devoted to dispute prevention and settlement procedures;

The sixth part concerns the specific implementation of the agreement by developed, developing, and least-developed countries;

The seventh part covers institutional measures and final provisions relating to the implementation of the TRIPS Agreement;

The TRIPS Agreement primarily protects property rights in the field of intellectual property. It establishes the principles and procedures for granting national treatment and most-favored-nation treatment among participating states, as well as economic sanctions in cases where obligations under the agreement are not fulfilled. The well-known Russian researcher N.N. Karpova provided her own authorial definition of intellectual property and highlighted international norms protecting intellectual property rights within the WTO framework, as well as the differences between the TRIPS Agreement and other agreements in this field. She also identified both positive and negative aspects of WTO membership for developing countries in ensuring the protection of intellectual property rights.

According to her, WTO membership may improve the investment climate through effective intellectual property protection, establish a unified interpretation of intellectual property rights usage, support domestic producers, protect against discriminatory measures in foreign trade, harmonize national intellectual property legislation with international law, ensure recognition of widely known trademarks in national markets, and reduce the circulation of counterfeit and pirated products. However, she also noted that WTO membership may create disadvantages for newly acceding developing countries, including increased competition in foreign markets, reduced demand for scientific and technical expertise in industry, displacement of local producers due to intense competition between trademarks in domestic markets, and loss of state budget revenues from customs duties paid by foreign patent applicants [2]. According to Article 15 of the TRIPS Agreement, any sign or combination of signs capable of distinguishing the goods or services of one enterprise from those of another enterprise shall be recognized as a trademark [3]. Russian scholar M.A. Sorokin described the norms of the TRIPS Agreement as universal standards for the protection of intellectual property rights and highly evaluated its role in regulating legal relations connected with the transboundary movement of intellectual property goods.

In his opinion, one of the most significant advantages of the agreement is the authorization granted to customs authorities of member states to apply “ex officio” powers with respect to goods not included in the national customs register of intellectual property objects, although the application of such powers is not mandatory [4].

The requirements established by TRIPS regarding measures taken by customs authorities to protect intellectual property rights are set out in Articles 51–60 of the agreement. In particular,

Article 51 of the agreement obliges member states to ensure the protection of copyrights and trademark rights during the transboundary movement of goods. To obtain customs protection for a particular intellectual property object, the rights holder must provide grounds for suspecting that such goods may cross a foreign border within a certain period and must submit sufficient evidence of the possible infringement of their intellectual property rights [5].

One of the distinctive features of customs agreements is that they cover nearly all areas of a state's foreign economic activity. These include foreign trade, international transportation, tourism, combating international economic offenses, international postal circulation, environmental protection, preservation of endangered species of flora and fauna, protection of intellectual property rights, and prevention of illegal importation of narcotic drugs, psychotropic substances, radioactive materials, and other restricted materials.

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