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Master's Thesis

**Impact of accession to the WTO on
correlation between the level of
intellectual property rights protection
and international trade
- on examples of Kazakhstan and the Eurasian
Economic Union -**

지적재산권 보호 수준과 국제무역 간의 상관 관계
에 대한 세계 무역 기구 가입의 영향

February 2017

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Abstract

Impact of accession to the WTO on correlation between the level of intellectual property rights protection and international trade

on examples of Kazakhstan and the Eurasian Economic Union

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The purpose of the thesis is to identify the impact of the accession to the World Trade Organization on the correlation between the level of intellectual property rights protection and international trade focusing on the examples of the Republic of Kazakhstan and the Eurasian Economic Union.

The thesis seeks to provide the linkage between the level of intellectual property rights protection and international trade, analysis of the membership in the WTO of Kazakhstan, the main problems of intellectual property rights protection of the Eurasian Economic Union Member States, trade within the Union and the WTO, and possible solutions to strengthen intellectual property rights and increase of international trade in the states.

Kazakhstan joined the WTO in November 2015 and it caused the issues, as Kazakhstan made commitments of the WTO that lower the level of customs

protection within the Union. Thus, the accession of Kazakhstan to the WTO complicates the trade in the Union.

Additionally, the accession of Kazakhstan to the WTO did not realize the expected goals of the government, the level of intellectual property protection still remains low, as the domestic intellectual property legislation does not provide effective protection. The international trade of Kazakhstan does not cross the borders of the Union.

The possible solutions of these issues are the harmonization of the intellectual property legislation of the Member States of the Union, establishment of the single body regulating the intellectual property system within the Union, and accession to the WTO of the Union as a Member. These steps will lead to the desired economic growth, increase of international trade, and high level of intellectual property rights protection in the Union and each Member State.

Thus, the research question is whether the accession to the WTO by a separate state can lead to a favourable intellectual property protection environment and economic growth or it is more likely to reach these goals by entering the WTO as a single union.

Keywords: Intellectual Property, Intellectual Property Rights, International Trade, WTO, Kazakhstan, Eurasian Economic Union
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Acronyms and abbreviations

CIS	Commonwealth of Independent States
CRIPA	Customs Register for Intellectual Property Assets
CU	Customs Union
CUC	Customs Union Commission
EC	European Commission
EAEC	Eurasian Economic Commission
EAEU	Eurasian Economic Union
EU	European Union
EurAsEC	Eurasian Economic Community
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IP	Intellectual Property
IPRs	Intellectual Property Rights
MCI	Monthly Calculation Index
SCRIPA	Single Customs Register for Intellectual Property Assets
SEZ	Special Economic Zone
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
USAID	United States Agency for International Development
USTR	United States Trade Representative
VAT	Value Added Tax
WTO	World Trade Organization

Chapter 1. Introduction

The strong intellectual property (IP) system and legislation are one of the most important and main requirements to join the World Trade Organization (WTO). The domestic IP legislation of each Member State should be brought up to the specific standards as provided in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement protects all of the types of IP: copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integral circuits, and undisclosed information.¹

The importance of the intellectual property rights (IPRs) within the framework of the WTO is caused by its economic nature. The commercialization of IP nowadays became a key point of the international trade. The strong IPRs protection influences on international trade flows. Thus, it is possible to assume that the accession to the WTO is one of the way to an economic growth. Undoubtedly, all the countries are seeking to get the benefits from the membership in the WTO. However, it is necessary to take into account the status of a state. The impact of the accession to the WTO is quite different from the perspective of developed and developing countries. The TRIPS Agreement following the purpose of assisting developing and least-developed countries provides transitional arrangements by giving necessary time to amend the domestic legislation, strengthen IPRs, thereby establishing the global protection of IPRs. It is expected that the WTO membership will lead to technology prosperity and investment flows, which in its turn can bring

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Part II, Apr. 15, 1994.

the developing countries to the economic development and increase of trade. Nevertheless, as experience shows, these prospects are not implemented.²

This thesis researches the issues of the Republic of Kazakhstan, with consideration of experience of the Russian Federation, the Republic of Armenia, and Kyrgyz Republic. All these countries are the former Soviet Union states, current Members of the WTO, and also Members of the Eurasian Economic Union (EAEU).³ The long process of entering to the WTO of the above-mentioned states was caused by almost the same reasons, therefore they became Members of the organization relatively late. As the former Soviet Union states, Kazakhstan, Russia, Armenia and Kyrgyz Republic have similar IP legislation. IPRs are protected by the Civil Codes; Laws on Patents, on Copyright and Related Rights, and etc. As the matter of fact, the expectations created by the TRIPS Agreement did not come up. Bringing the national IP legislation into the minimum standards of the TRIPS Agreement did not strengthen IPRs protection in these countries. Thereby, the positive impact of the accession to the WTO was not observed in the aspect of international trade increase. The amendments into the IP laws were not implemented de facto. IPRs protection level still remains weak in Kazakhstan, Russia, Armenia and Kyrgyz Republic.

The EAEU is a regional organization which was established in 2014 on the basis of the Customs Union (CU). However, the EAEU is not simply an extension of the CU, it is different by its nature. If the CU is characterized by the presence of

² Carlos M. Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options* (London: Zed Books Ltd., 2000), 2-10.

³ See the website of the *Eurasian Economic Union*; “EAEU Member-States”; www.eaeunion.org.

effective protective measures, and its aim is to restrict the flow of goods from the outside, the EAEU is aimed at coordinating policies of Member States of the Union for the efficient movement of capital, goods, people, and improving the efficiency of the economies in the international arena.⁴ This is precisely the fundamental difference between the EAEU and the CU. Therefore, the transition from one stage of integration to another, higher one, becomes clear: once the protective measures in the market are made, the transition to the external market is logical, to a broader engagement with other actors of the world economy.

Thereby, the originality of this thesis is in the novelty of the EAEU by itself, as it is a new young organization that does not have enough experience and faces the problems on the initial stages of its formation.

This thesis seeks to provide the linkage between the level of IPRs protection and international trade, analysis of Kazakhstan's membership in the WTO, the main problems of IPRs protection of the EAEU Member States, trade within the EAEU and the WTO, and possible solutions to strengthening of IPRs and increase of international trade in the states.

Thus, the research question is whether the accession to the WTO by a separate state can lead to a favourable IP protection environment and economic growth or it is more likely to reach these goals by entering the WTO as a single union.

⁴ Ibid. "General Information."

Chapter 2. Relationship between intellectual property rights and international trade in the WTO

Nowadays the international trade and the world economy in general are specified by the globalization, which develops in the following directions:

- International trade of goods, services, technologies, IP types;
- International movement of the production factors (capital, labour force);
- International financial and currency transactions.⁵

In the globalization conditions in the world market along with the goods and services there is also IP. The market structure tends to transit into the new technological mode.⁶

Globalization of the international relations is a complicated and contradictory process. The main issue is the cooperation between the countries with different levels of the economic development. The important elements of the globalization are the integrational processes that intensify free trade contributing free movement of all the production factors. However, such integration can restrain the movement of goods and services beyond its borders.

The growth of the national economics interrelationship is also contributed by the liberalization of the trade and capital market. Liberalization leads to decrease of the protectionist barriers which protect the national economy from the foreign

⁵ Michael Trebilcock, Robert Howse and Antonia Eliason, *The Regulation of International Trade: 4th Edition* (New York: Routledge, 2013), 31.

⁶ Christopher Arup, *The New World Trade Organization Agreements: Globalizing Law through Services and Intellectual Property* (Cambridge: Cambridge University Press, 2000), 11-13.

competition. Liberalization is the ideological base of the WTO that provides free movement of goods, services, capital and labour force.⁷

Globalization and the WTO are linked as a process, as it regulates the globalization of international trade. The rules of the WTO regulate 97% of the world trade of goods and services.⁸ Undoubtedly, it was very important for Kazakhstan to enter the WTO, since it would provide the decrease of barriers in trade, stability of labour conditions on foreign markets, and the possibility to form the rules of the international economic cooperation. Thus, in 2015 Kazakhstan joined the WTO which basic agreements are General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), and TRIPS.⁹

2.1. The TRIPS Agreement and multilateral trade regime

The TRIPS Agreement and its supposed influence on the improvement of the processes should be considered from the perspective of the current world situation. The TRIPS Agreement works by increasing the price of the technology and limiting the alternative possibilities of technologic modernization. In addition to that, the agreement effects on future economic development which nowadays depends on the level of the information technologies. Thus, it can negatively cause on the countries which do not have the technological potential and are characterized by weak IP legislation.

⁷ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (Cambridge: MIT Press, 1997), 11-15, 229-39.

⁸ *Encyclopedia of Business, Ethics and Society*, by Robert W. Kolb (New York: SAGE Publications, 2007), s.v. "World Trade Organization."

⁹ See the website of the *World Trade Organization*; "Kazakhstan"; www.wto.org.

Asymmetrical interrelationship between the developing and developed countries in the context of the TRIPS Agreement contradicts the system of the mutual cooperation within the framework of the WTO. Conclusion of the agreements in the WTO is reached during the negotiation process on the basis of mutual concessions, the purpose of which is providing benefits to all participants in this process. In the context of the TRIPS Agreement countries with low income are mainly consumers of technology, and these states have almost nothing to offer in return. Without the implementation of a set of additional measures, such as financing of education, the development of research capacity, creating mechanisms of incentives for research, formation of favourable investment climate, it is quite impossible to count on the expected benefits of the TRIPS Agreement.¹⁰

The negative aftermath of the Agreement conclusion is already obvious. First of all, it is caused by the limit on the access to the protected products and the increase of its price. The TRIPS Agreement provisions through the mechanism of the disputes resolution within the framework of the WTO allow the application of the trade sanctions against the countries that do not follow the conditions of the Agreement. For countries that have been affected by the TRIPS Agreement it means a reduction in the volume of exports and income of producers. Despite the counterarguments of the developed countries, the Agreement itself is a limiting factor for the trade because of the formation of monopoly rights and prevention of the appearance of cheaper versions of products in the form of generic drugs on the

¹⁰ Sumner J. La Croix and Denise Eby Konan, "Have Developing Countries Gained from the Marriage between Trade Agreements and Intellectual Property Rights?" *UH-Manoa Economics Working Paper* No. 06-5 (Mar. 3, 2006): 3-8, http://www.economics.hawaii.edu/research/workingpapers/WP_06-5.pdf.

market.¹¹ Therefore, this Agreement does not correspond to the objectives of the WTO that are aimed at enhancing economic development through the expansion of trade. This tool does not meet the basic principles of the WTO, moreover, it can cause them serious harm.

The TRIPS Agreement increases the cost of educational material that is protected by copyright. In the software field, only a small part of the population in developing countries can afford the Licensed Software, and the retaliatory measures can be used for non-compliance. In addition, the TRIPS Agreement can reduce the quality of imported software.

Developing countries lack the legal infrastructure that would enable the same conduct of effective struggle against the abuse of monopoly position, as in developed countries. Therefore, the developing countries need to develop a regime for IPRs, which would adequately combine both appropriate incentives and measures to ensure access to meet their needs.¹²

In this connection, it would be pertinently to focus on the experience of a developing country in order to scrutiny the impact of the TRIPS Agreement, and accession to the WTO in general. Thereby, the following chapters will cover the issue of Kazakhstan.

¹¹ Diane Desierto, *Public Policy in International Economic Law: The ICESCR in Trade, Finance, and Investment* (New York: Oxford University Press, 2015), 180-86.

¹² Ruchi Sharma and K.K. Saxena, "Strengthening the Patent Regime: Benefits for Developing Countries – A Survey," *Journal of Intellectual Property Rights* Vol. 17 (Mar. 2012): 123-29.

2.2. Formation of the intellectual property market in the context of Kazakhstan's membership in the WTO

One of the forms of using the results of intellectual work is a strategy of the commercialization of IP.

In modern conditions the transfer of rights to the use of different IP types on a commercial basis is an essential component of international economic relations. Today, when the trade of IP has become one of the fastest growing sectors in the world economy, the competitiveness of a country is determined by the level of its integration into the global IP market. In turn, successful entry into the global IP market is possible only if an effective national IP market is functioning.¹³

The formation of the modern market of IP in Kazakhstan is the main issue towards the innovative development of the country. Kazakhstan's market of IP is still on the initial stage of the formation.

In this regard, the particular relevance for Kazakhstan, as a country with a transition economy, is the task of formation and development of the national IP market.

Kazakhstan's approach to the organization and functioning of the market order of IP is characterized by:

- Domestic legislative provisions, governing the transfer of rights to various IP types;
- State registration of IP transactions;

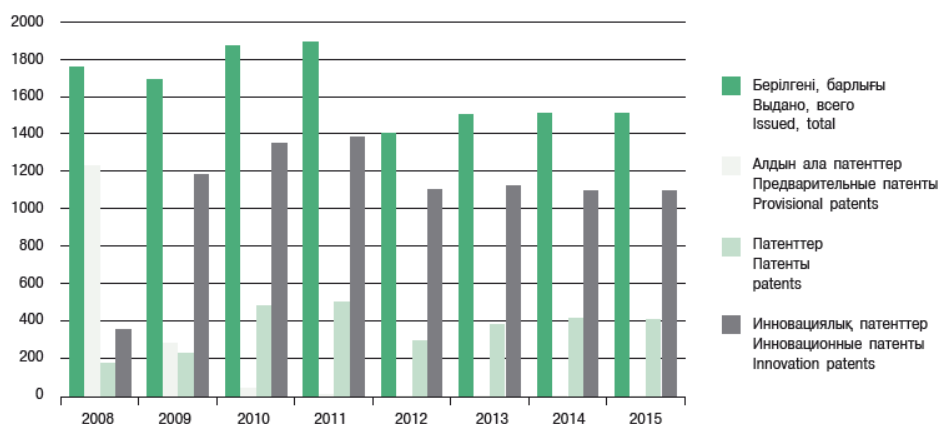
¹³ Carsten Fink and Carlos A. Primo Braga, "How Stronger Protection of Intellectual Property Rights Affects International Trade Flows," (1999): 3-5, http://www.iatp.org/files/How_Stronger_Protection_of_Intellectual_Proper.pdf.

- Registration of contracts on the transfer of rights to various IP types that is carried out by the national patent office;
- Transactions that take place on the domestic market are also obliged to be registered.¹⁴

The IP market can be determined as a complex of economic relations between the industrial property agents on the purchase and sale of IP and IP services.

The main indicator of the technological (innovative) activity of a company is the number of the registered patents. The amount of the registered licensed agreements on the assignment of rights also shows the improvement of the IP market.

As it is shown on the graph below, the number of granted patents in Kazakhstan stays on the same level for almost 10 years, and it hardly reaches the number of patent applications per day in the USA.¹⁵

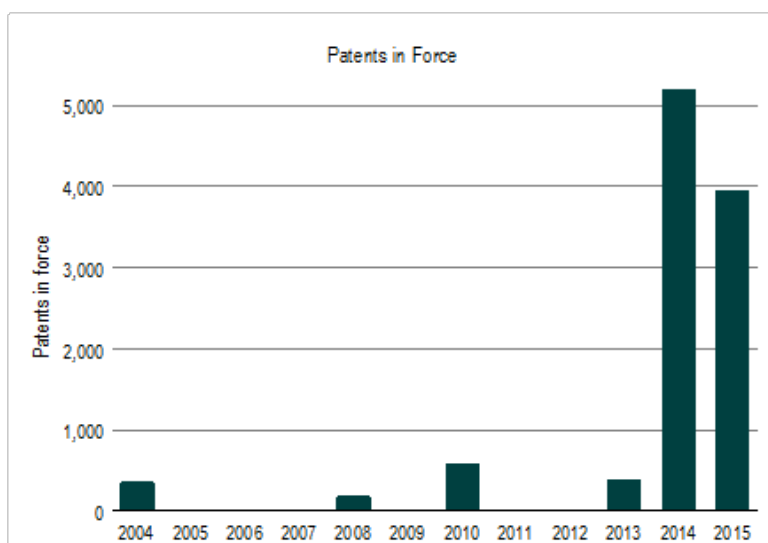


Source: Annual Report of the Republic State Entity *National Institute of Intellectual Property* of the Ministry of Justice of the Republic of Kazakhstan (2015), http://kazpatent.kz/sites/default/files/godovoy_otchet_2015.pdf.

¹⁴ Organisation for Economic Co-operation and Development, *Boosting Kazakhstan's National Intellectual Property System for Innovation* (Paris: OECD Publishing, 2016), 155-70, doi:10.1787/9789264260955-en.

¹⁵ According to the WIPO statistics in 2014 578802 patent applications were filed in the USA by residents and non-residents, see the website of the *World Intellectual Property Organization*; "Statistical Country Profiles"; www.wipo.int. Based on this number, approximately 1585 patent applications are filed per day.

Unfortunately, only a small number of inventions are implemented and used. One of the reasons is the absence of the governmental organization which would implement the patented inventions.



Source: the website of the *World Intellectual Property Organization*; “Statistical Country Profiles”; www.wipo.int.

Thus, the IP market, which is basically formed by the usage of patented inventions, in Kazakhstan remains weak. The country needs to increase patent activity among the residents, attract foreign investments to manufacture. The government hoped to change this situation by entering the WTO. However, Kazakhstan is facing some problems because of the accession to this organization.

Chapter 3. Issues of Kazakhstan’s membership in the WTO

In order to integrate into the world trading system, the process of Kazakhstan's joining the WTO began with the submission of the official statement on accession

to the WTO Secretariat on January 26, 1996. In February 1996, Kazakhstan was given the status of an observer in the WTO. At the same time a Working Group on Kazakhstan's accession to the WTO was established.¹⁶

During the period from 1996 to 2003, the WTO Secretariat has sent a large amount of informative materials and documents required under the regulations of the WTO accession.

In 2003, Kazakhstan completed the informative process of the WTO accession and entered an active phase of negotiations with the Member States of the Working Group on the definition of the conditions of membership in the WTO.

It should be noted that during the negotiations significant work to bring national legislation into conformity with international trade laws was implemented.

Besides, bilateral negotiations were conducted concerning on the conditions of access to the Kazakhstan market of goods from 29¹⁷ WTO Member States that expressed their interest to conduct such negotiations, as well as access to the services market with 15¹⁸ WTO Member States.

One of the difficult negotiations to join the WTO were the negotiations on agriculture.

¹⁶ Yernar Bakenov, "Maximizing the Benefits of WTO Membership and Global Economic Integration" (Presented at Third China Round Table on WTO Accessions, Dushanbe, June 2-5, 2015),

https://www.wto.org/english/thewto_e/acc_e/Session1YernarBakenovCommentary.pdf.

¹⁷ Argentina, Australia, Brazil, Canada, China, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Georgia, Guatemala, Honduras, India, Israel, Japan, Korea, Kyrgyz Republic, Malaysia, Mexico, Norway, Oman, Pakistan, Kingdom of Saudi Arabia, Switzerland, Chinese Taipei, Turkey, and the USA; *see* the website of the *World Trade Organization*, "An overview of Kazakhstan's commitments"; www.wto.org.

¹⁸ Australia, Brazil, Canada, China, Egypt, European Union, India, Japan, Korea, Norway, Kingdom of Saudi Arabia, Switzerland, Chinese Taipei, Turkey, and the USA; *see* *ibid*.

As a result of complicated negotiations, Kazakhstan has managed to defend the opportunity to provide state support to agriculture in the amount of 8.5% of the gross value of agricultural production. Long discussions in the framework of negotiations on the accession of the country to the WTO led to approval of the transitional periods.

Despite the fact that the benefits under the Special Economic Zone (SEZ) and the customs regime of free warehouse¹⁹ were contrary to the WTO rules, Kazakhstan was able to agree on a transitional period until January 1, 2017 for the residents of these areas that are registered before January 1, 2012. They were granted benefits under the VAT and customs duties to fulfil the criteria of sufficient processing.²⁰

It must be noted that benefits contrary to the WTO rules are cancelled, in this case, exemption from the VAT and customs duties. The rest of the benefits of corporate tax, land tax and others remain valid.

5-year transition period was agreed to allow the establishment of direct branches of foreign banks and insurance companies. In addition, Kazakhstan has set the minimum size of assets of parent banks, insurance companies, as well as minimum sizes of deposits of the population, to be approved by the Government.

Negotiations on Kazakhstan's accession to the WTO were complicated by the participation of Kazakhstan in regional integration processes.

¹⁹ Free warehouse is a customs regime under which foreign and Kazakhstani goods are placed and used in the appropriate places recognized as free warehouse, free of customs duties, taxes, and applying non-tariff regulatory measures, except for requirements regarding safety of goods, *see* Customs Code of the Republic of Kazakhstan, Art. 238, Mar. 19, 2010 (repealed July 1, 2010).

²⁰ ATAMEKEN, "We Are Joining the WTO: Is It Good or Bad?" news release, July 3, 2015, <http://petropavl.palata.kz/en/news/19046>.

With the creation of the CU and Russia's accession to the WTO the issue of Kazakhstan's compliance of the WTO tariff commitments under the CU after the accession to the WTO was of particular interest and concern to the WTO Members.

The difficulty was to find a compromise solution between the tariff commitments of Kazakhstan and Russia in the framework of the WTO and the rates of the CU Common Customs Tariff in order to preserve the possibility of further functioning of the EAEU.

Over the years, various approaches on harmonization of tariff commitments of Kazakhstan and Russia were discussed, that for different reasons did not satisfy the Members of the WTO.

However, the main issue of the long process to enter the WTO was the low level of IP protection in Kazakhstan. Thus, Kazakhstan took measures to bring legislation into compliance with the TRIPS Agreement. A number of amendments to existing laws in 2004, 2005, 2009 and 2012 were adopted.²¹

- The term of protection of copyright and related rights was increased from 50 years to 70 years after the author's death;
- Retroactive protection of rights was introduced, i.e. the protection of IP types created abroad, term of protection of which in the country of origin has not expired yet.
- Criminal liability for the use of counterfeit goods was refined and toughened through the introduction of specificity of criminal acts constituting the violation; integrated circuits, selection achievements were added as

²¹ OECD, *Boosting Kazakhstan's National Intellectual Property System for Innovation*, 79-85.

protected objects; repetition, as an aggravating circumstance that determines the severity of the offenses, was included; the value of fines was increased up to 5000 of MCI;²²

- Customs authorities are empowered to use *ex officio*, i.e. right to an independent suspension of goods with signs of IPRs violations.

3.1. Intellectual property rights protection in Kazakhstan

Since 1997 Kazakhstan has begun consultations with representatives of the United States Agency for International Development (USAID) to align the domestic legislation into conformity with the TRIPS Agreement requirements. Kazakhstan IP legislation received strong incentive for the revision and improvement. During this time the national IP law and system were completely revised:

- New section V of the Civil Code *IP Law* consisting of 77 articles;
- New Patent Law of July 16, 1999;
- Law on Trademarks, Service Marks and Appellations of Origin of July 26, 1999;
- Law on the Protection of Selection Achievements of July 13, 1999;
- Law on the Legal Protection of Topographies of Integrated Circuits of July 29, 2001;
- And also, accession to a number of international conventions in the field of copyright and industrial property.

²² Criminal Code of the Republic of Kazakhstan, Arts. 198, 199, N 226-V of July 3, 2014.

In addition to that, Kazakhstan along with some other countries of the Commonwealth of Independent States (CIS) was added to the Watch List of Special 301 Report on IPRs by the United States Trade Representative (USTR) in 2000 as a candidate for the announcement of IP pirate country. The main issues were the absence of retroactive copyright protection and the difficulty of applying criminal sanctions to the producers of counterfeit goods.²³ Kazakhstan remained on the Watch List till 2006.

In order to improve the state system of IPRs protection the Government created the Republican State Enterprise *National Institute of IP Committee on IPRs of the Ministry of Justice of the Republic of Kazakhstan* in 2002, which main activity is the implementation of industrial and economic activities in the field of science on IP issues.

Thus, it was a new management system which is now represented by the Committee on IPRs of the Ministry of Justice of the Republic of Kazakhstan. This Committee focuses on the functions of the authorized body for all major IP types: copyright and related rights, industrial property, selection achievements, topographies of integrated circuits.

According to the ranking of the Global Competitiveness Report published in 2010 Kazakhstan significantly reduced its performance on *Protection of IPRs* indicator from 78th place to 98th.²⁴

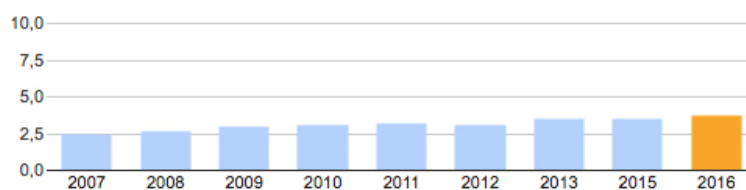
²³ United States Trade Representative, *Super 301, Special 301 and Title VII Report*, (Washington, DC: Office of the USTR, 2000), 2, 24-25, <https://ustr.gov/sites/default/files/2000%20Special%20301%20Report.pdf>.

²⁴ World Economic Forum, *The Global Competitiveness Report 2010-2011*, (Geneva: World Economic Forum, 2010), http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf.

Internet is full of pirated software, audio and video files that are used by most of the online audience. The legitimate producers of these programs do not have influence methods on the founders of pirated versions.

Currently, the legislation of Kazakhstan in the field of IP is formed in general. Kazakhstan is a party to the main international agreements and treaties. The package of measures undertaken in 2003-2005 which included the improvement of legislation, activation of the law explanatory work, cooperation with the international organizations, working with law enforcement and etc., allowed Kazakhstan to get out from the 301 checklist in 2006.

Intellectual Property Rights

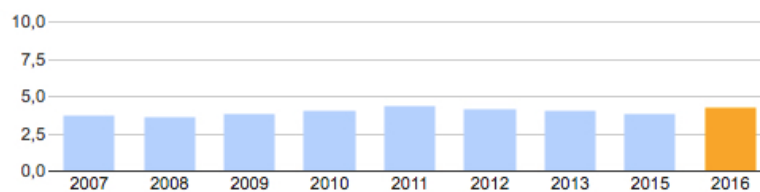


	Score	Globally	Regionally
Overall	3.7	110 of 128	17 of 20
Protection of Intellectual Property Rights	4.8	65 of 128	13 of 20
Patent Protection			
Copyright Protection	2.6	73 of 104	12 of 18

Source: The International Property Rights Index 2016, accessed Oct. 10, 2016, <http://internationalpropertyrightsindex.org/country?s=kazakhstan>.

As it is shown on the graph above, the index of IPRs in Kazakhstan remains almost on the same level during 10 years. Globally and regionally among the CIS countries Kazakhstan occupies the last positions. Despite the fact that de jure the government amended the IP legislation and improved the IP system, de facto IPRs are still not protected enough. It can be proved by the indicators of the graph below.

Legal and Political Environmental



	Score	Globally	Regionally
Overall	4.3	75 of 128	14 of 20
Judicial Independence	4.6	66 of 128	14 of 20
Rule of Law	3.9	93 of 128	16 of 20
Political Stability	5.1	62 of 128	9 of 20
Control of Corruption	3.5	99 of 128	17 of 20

Source: The International Property Rights Index 2016, accessed Oct. 10, 2016, <http://internationalpropertyrightsindex.org/country?s=kazakhstan>.

It is important to note that nowadays on the territory of Kazakhstan the distribution of counterfeit goods, which mainly comes from abroad, is spreading. However, the measures to prevent the introduction and spread of such products as well as the measures to protect IPRs in Kazakhstan are not effective enough.²⁵ There is a lack of proper legal practice and lack of control. The control mechanisms, such as licensing of certain types of activities, are not used.²⁶ The examination of the cases related to protection of the rights to computer programs, databases, as well as protection of authors' rights on Internet, is an unfamiliar area for the judges and because of the specific objects of protection it causes certain difficulties.

Thereby, the level of IPRs protection in Kazakhstan is low, nevertheless, the expectations of the accession to the WTO concerning on the IP sphere were and still

²⁵ Ernar Begaliyev, "Mechanisms Used in Intellectual Property Rights Fraud in the Republic of Kazakhstan," *Internal Security* Vol. 4(2) (July-Dec. 2012): 277-81.

²⁶ Zhanat Shaekina and Dinara Mamrayeva, "Problems and Ways of Enhancing the Innovation Activity in the Republic of Kazakhstan," *Education and Science Without Borders* Vol. 2(2) (2010): 35-37.

are quite high.

3.2. Aftermath of Kazakhstan's accession to the WTO

Kazakhstan announced its decision to enter the WTO and it was certainly a justified step. The desire of the country, that is building an open society and open economy, to become a full member of the world community can only be welcomed. This is a landmark event, as it is equivalent to transition to the market economy. The payoff is obvious: domestic goods have access to the markets of other countries; without any discrimination, there will be an additional inflow of investments not only in the primary sector, but also in other sectors of economy.

It was expected that the accession of Kazakhstan to the WTO will lead to eight positive factors:

1) Besides the fact that Kazakhstan will be recognized as a country with an open market economy, integrated into the world economy and global structures to facilitate its development, it automatically gets preferential treatment in relations with all Member States of the organization.²⁷

2) Due to the high involvement of the country in the world exports of petroleum, petroleum products, natural gas, electricity and coal, the great importance for Kazakhstan in the WTO will be a condition of trade between the WTO Members on a non-discriminatory basis. Accession to the WTO will give to Kazakhstan a number of advantages in the export licensing standards, the application of anti-

²⁷ United Nations, *Accession to the World Trade Organization: Issues and Recommendations for Central Asian and Caucasian Economies in Transition* (New York: United Nations, 2001): 209-12.

dumping and countervailing duties, and generally will contribute to the growth of foreign economic activity of the state.²⁸

3) Due to more effective competition in the market, expanding of the range and quality of goods and services, lowering its prices will be positive for consumers of Kazakhstan. Reduced prices will apply not only to finished imported goods and services, but also domestic ones, in production of which imported components are used. However, there will be corresponding changes in the volume and structure of consumption, which will be closer to the standards of developed countries. Increasing effective demand will have a positive impact on the growth of production, and show an improvement of socio-economic status of the population.²⁹

4) For manufacturers, the potential benefits will be linked to getting an easy access to world markets of goods, services, capital, internationally recognized rights to protect national economic interests in these markets. There will be a reduction of commercial risks through the establishment of a more stable trade regime, as well as reducing transport costs through the guarantee the freedom of transit of goods on the territory of the WTO Member States. All of this, in general, will help to reduce the cost of Kazakh products.³⁰

5) The creation of civilized conditions of competition and a clear legal framework will stimulate the overall acceleration of structural reforms, and give impetus to creation of a competitive economy. This will contribute to the harmonization of national legislation, in particular, in the field of taxation; customs

²⁸ Ibid.

²⁹ Ibid.

³⁰ Jesper Jensen and David Tarr, "The Impact of Kazakhstan Accession to the World Trade Organization: A Quantitative Assessment", (policy research working paper, World Bank, Washington, DC, Mar. 2007).

regulation; standardization and certification; regulation of services; competition policy; IP protection, in accordance with the provisions and regulations of the WTO.³¹

6) Prospects for the investment climate in connection with the accession of Kazakhstan to the WTO will be positive. The influx of foreign investment in the economy will increase due to the factors, such as general improvement of the country's image, opening up of Kazakhstan's economy, improvement of the legislative framework, increasing transparency of investment procedures, facilitating of access to the domestic market by foreign financial institutions, the development of the stock market. Investment flows will undoubtedly lead to the development of domestic production, serve as a powerful source of renewal of production and economic growth, promote the upgrade of industrial production, growth of export, attraction of new technologies and the growth of jobs, improvement of the skills of local experts.³²

7) There will be accelerated development in the industries producing final products with high-tech and value-added, high and medium workability. The increase in production of these products can only be supported by the release of Kazakhstan to foreign markets, which compensates for the *narrowness* of the domestic market and limited domestic demand. As a result of increase of the presence of advanced technologies, goods, services and investment in the domestic market, the introduction of international quality standards will create favourable

³¹ Ibid.

³² Ibid.

conditions for improving the quality and competitiveness of the national production.³³

8) The WTO membership will provide access to the unified international legal space, which will create for all exporters and importers stable and predictable operating environment. Kazakhstan will actually expect to receive the right to participate in the development of the rules governing world trade, guided by national interests. In addition, there will be an access to the operational information in the foreign policy and the intentions of the governments of the WTO Member States, which will allow to produce more effective trade and economic policies.³⁴

Kazakhstan became a Member of the WTO in November 2015 with these expectations of economic growth and the development of IPRs. Apparently, the country lost the balance of payments, export subsidies, agriculture and its producers and tariffs. The WTO membership is advantageous for developed countries as the market for their products is becoming the whole world. Countries with lower level of development face serious challenges, such as the need to protect the national market and the national commodity production from the onslaught of imported goods and services.

The current rules of the WTO and the GATT on a number of indicators of the balance of payments make it possible to achieve the best conditions for experienced negotiators. In particular, the current account of Kazakhstan balance of payments takes a negative balance about every three or four years. As for the

³³ Ibid.

³⁴ Ibid.

balancing items of the balance of payments, there never was a surplus on the balance of services line in Kazakhstan.

Kazakhstan balance of payments	2015	2016 1st half	2016	
			I	II
Current Account	-5463,7	-3585,6	-1067,7	-2517,9
Trade balance	12679,3	4574,5	2683,6	1890,9
Exports	46515,9	17111,9	8431,5	8680,4
Imports	33836,6	12537,4	5747,9	6789,5
Services	-5123,1	-1903,3	-994,2	-909,1
Exports	6409,6	3108,8	1513,1	1595,7
Imports	11532,7	5012,1	2507,3	2504,8

Source: the website of the *National Bank of the Republic of Kazakhstan*, “Balance of Payments”; <http://nationalbank.kz>.

Taking into account particular complexities of the balance of payments in Kazakhstan, the government has not used enough of these benefits during the negotiation process.

Export subsidies under the WTO are severely limited. Kazakhstan is among the countries that are far from the world's seaports, as well as in the category of countries where the transport costs occupy a significant share in the cost structure for the export of domestic products.

The negotiators stood at 8.5% in respect of the volume of agriculture aggregate support measures. At the same time, the team of negotiators from Ecuador (the year of accession to the WTO is 1996), Mongolia (1997), Panama (1997),

Georgia (2000), Albania (2000), Oman (2000),³⁵ and other countries could defend 10% of support.³⁶

The protection of national producers of goods is not fully elaborated by the government agencies. On this basis, Kazakhstan should strengthen the work including the work on identification and combating unfair competition to the detriment of domestic producers, hostile acquisitions of strategically important companies, prohibited subsidies and dumping, and etc.

For example, in 2013-2014 the prices for particular food products imported from the Members of the EAEU in some regions of Kazakhstan were 20-30% lower than in these Member States. This is the result of dumping or prohibited subsidies used against domestic producers.³⁷

The process of Kazakhstan's accession to the WTO has identified an important detail of the industrial policy. Thus, the experience of foreign countries, that have achieved impressive results in the acceleration of economic development, shows that a country is obliged to subordinate all the instruments of economic policy including customs and tariff component to the interests of the industrial policy.

The TRIPS Agreement is based on an approach that provides for an active role of the state in providing adequate protection and enforcement of IP types. The accession of Kazakhstan to the WTO will probably simplify mutual access of goods in the market of the WTO Member States. Under the conditions of constant

³⁵ The website of the *World Trade Organization*, "Members and Observers"; www.wto.org.

³⁶ World Bank, *Ukraine's Trade Policy: A Strategy for Integration into Global Trade* (Washington, DC: World Bank, 2005): 127.

³⁷ Irina Tochitskaya, "Kazakhstan's Accession to the WTO: Overview and Implications for the Eurasian Economic Union," (policy paper, IPM Research Center, Minsk, Dec. 2015), <http://eng.research.by/webroot/delivery/files/english/pp/pp2016e01.pdf>.

technology development, growth of IPRs infringements, problems in obtaining and using the results of intellectual activity, and interest of the authors and investors in a fair remuneration for creative work and invested capital, the role of the country in the field of IP strengthens. Over the past decade the national legislation on IP was amended several times in order to comply with international instruments.

According to law enforcement and regulatory authorities of Kazakhstan the proportion of counterfeit products in the consumer market is also increasing. For certain groups of products, such as perfume and cosmetics, shoes, clothing, detergents, meat, dairy, fish, tea, coffee and pastry, 30-50% of circulated products are counterfeit or adulterated. About 20% of alcoholic drinks sold in the market are also recognized as counterfeit. One of the most particular concerns is the problem of drug and medications counterfeiting.³⁸

The practice of developed countries of the world shows that IP can be an object of property which can be not only possessed and used but also managed. This process has been successfully implemented in many Member States of the WTO which is called as the commercialization of IP that can be achieved in Kazakhstan as a result of the following measures:

- Improvement of the legislation on IP;
- Development of the mechanism which coordinates the activity of commercialization.

There is an urgent need in Kazakhstan for legislation on IP commercialization adoption which would make the national legislation close to international standards and lead to the following positive legal, social and economic

³⁸ Ernar Begaliyev, "Mechanisms Used in Intellectual Property Rights Fraud," 281.

consequences:

- Strengthening the image of the country in the international arena and further effective cooperation among the countries in the field of IP;
- Provision of the protection from competitors for a period of market introduction of new products, as well as protection against unfair competition.

3.3. Impact of Kazakhstan's membership in the WTO on the Eurasian Economic Union

The parties' positions on the main issues were agreed in 2014, however, a few controversial issues requiring special consideration still remained. Firstly, Kazakhstan paid special attention to the preservation of the possibility of agricultural subsidies after joining the WTO. The volume of agricultural support measures for the entry conditions of Kazakhstan into the WTO was set at 8.5% of the value of gross agricultural production in Kazakhstan. For comparison, in the framework of the EAEU amount of state support should not exceed 10%.³⁹

Secondly, the parties' positions on the issue of local content did not match. The local content in Kazakhstan is the share of local goods and services, which should always be used in investment projects with foreign capital. For oil and gas projects, for example, it was about 50%. As a result of the entry into the WTO Kazakhstan will have to completely abandon the present tariff tool during the

³⁹ Irina Tochitskaya, "Kazakhstan's Accession to the WTO."

transitional period.⁴⁰ The content of local content requirements should be abolished by 2021.

Thirdly, the uniqueness of the negotiations on accession of Kazakhstan to the WTO was the need to harmonize the conditions of the WTO and the EAEU and customs tariffs. The final terms suggest decrease in the average import tariffs to 6.5%. Thus, for a variety of goods, about 3.5 thousand commodity positions, the import duties in Kazakhstan will be different from the duties set out in the EAEU.⁴¹

Nevertheless, many of the conditions under which, in the final result, Kazakhstan entered the WTO, are expected to impede the functioning of the EAEU and the common customs area. For a number of parameters, they do not comply with the principles of the EAEU activities. In particular, in respect of goods Kazakhstan has pledged to reduce the average tariff to 6.5% from the current 10.4% of the Common Customs Tariff of the EAEU. In this regard, there are two ways to solve the problem.

The first way is to preserve the existing customs tariff of the EAEU on the same level with the introduction of customs seizures in Kazakhstan. In this regard, Member States will face increased volume of deliveries of goods to the common customs territory through Kazakhstan, and imported goods will be cheaper, which will be reflected in price competition within the EAEU. This situation may lead to the need for internal customs control and restrict freedom of movement of goods in

⁴⁰ Correa, *Intellectual Property Rights, the WTO and Developing Countries*, 209-10, 247-48.

⁴¹ Bulat Mukhamediyev and Azimzhan Khitakhunov, "Central Asian Integration and Its Impact on Regional Trade and Economy," in *Country Experiences in Economic Development, Management and Entrepreneurship*, ed. Mehmet Huseyin Bilgin et al. (Cham: Springer Nature, 2016), 17-28.

the territory of the Member States. In general, the mere existence of customs seizures is not conducive to the development of integration processes.

The second way is to reduce the unified customs tariff of the EAEU and bring it in line with the conditions of Kazakhstan's accession to the WTO. The result will be a decline in prices for the end user, however the revenues to the EAEU Members will be reduced as well as the level of protection of domestic producers. In addition, in the long term, this move could lead to the attempt of western countries to achieve further reduction of the unified customs tariffs and more stringent conditions of WTO accession of Belarus Republic.⁴²

At the summit of the EAEU, held in Kazakhstan on October 16, 2015, the participants agreed to approve the withdrawal of the common customs tariff for Kazakhstan on all positions where there is a discrepancy. In order to minimize the risk of importation of goods cleared at lower rates, to the territory of other Member States, new measures were developed to synchronize the operation of the CU countries and the introduction of additional payment of duties at the intersection of internal borders.⁴³ However, the details of the mechanism of internal customs controls are unknown.

Thus, despite the publicly stated position of the EAEU according with Kazakhstan's membership in the WTO, there are more current unsolved problems than the potential long-term benefits. It can be predicted that the EAEU will inevitably face problems in future during the WTO accession of Belarus.

⁴² Irina Tochitskaya, "Kazakhstan's Accession to the WTO," 10.

⁴³ Ibid., 11.

Chapter 4. Intellectual property rights within the framework of the Eurasian Economic Union

Taking into account the experience of other integrational organizations, the EAEU implemented the provisions on the protection of IP into its legal system. The legal base of the cooperation between the Member States in IPRs protection sphere and the harmonization of the legislation is the chapter XXIII IP of the Treaty on the EAEU and the Annex 26 to the Treaty on the EAEU Protocol on the Protection and Enforcement of IPRs. All the Member States bound themselves to be guided by the provisions of the universal international treaties on IP.

The provisions of the EAEU legislation on the coordination of the internal policy and approximation of the legislation of the Member States, the provisions of IP are supposed to supply the complex solution of the issues of the negative and positive integration.

Concerning on the negative integration, i.e. the elimination of the trade and economic boundaries in the EAEU, there is a provision on the abolition of the discrimination between the citizens and legal entities of the Member States in the protection of their IPRs. The mechanism of such discrimination is the implementation of the national treatment in IP. According to the Treaty, the nationals of one Member State are treated on the territory of another one equally with its locals.⁴⁴

Concerning on the positive integration, the Treaty, more specifically the Protocol, provides the harmonization of the Member States' legislation of IP. The

⁴⁴ Treaty on the Eurasian Economic Union, Art. 90, May 29, 2014.

provisions set the minimum standard of IP protection *minimal harmonization*. Each Member State may increase these standards, i.e. provide in its legislation higher level of IP protection.⁴⁵

The following subchapters will deeply cover the current issues of IPRs protection in the Union.

4.1. Intellectual property rights protection in the Union

The EAEU was formed by signing the Treaty on the EAEU and from January 1, 2015 opened a new milestone in the economic integration of the former Soviet Union.

The main objectives of the Union:

- Creation of conditions for stable development of the economies of the Member States in order to improve the living standards of the population;
- Striving to create a single market for goods, services, chamber capital and labour resources;
- Comprehensive modernization, co-operation and competitiveness of national economies.⁴⁶

An important area of practical dialogue of state bodies with the business community is advocated by the Eurasian Economic Commission (EAEC), which is a permanent supranational regulatory body of the Member States.

Its main goal is to improve and harmonize the regulatory framework and enforcement practices of countries in order to create a favourable economic

⁴⁵ Ibid.

⁴⁶ Ibid., Art. 4.

environment, as well as the development of proposals in the area of economic integration.

IP is one of the most important field in the framework of the EAEU.

Following important aspects are brought before the EAEC:

- Increasing the investment attractiveness by creating favourable conditions for innovation;
- Harmonization of legislation;
- Formation of a civilized market of IP;
- The development of integration processes within the Union.⁴⁷

IP issues are assigned by the Development Department of entrepreneurial activity.

Following issues were already discussed at the meetings of the Advisory Committee of the EAEC board:

- The mechanism of payment of fees for the registration of trademarks;
- Registration of appellations of origin;
- The implementation of the WTO commitments of the Russian Federation to exclude non-contractual control of exclusive proprietary rights collectively;
- Principles of exhaustion of trademark rights.⁴⁸

The main objectives of cooperation in the framework of the EAEU are harmonization of national legislations in the field of IP and the protection of IPRs.

Priority areas of cooperation are identified in the following areas:

- Support for research and innovation development;

⁴⁷ Ibid., Section II.

⁴⁸ Annex 26 to the Treaty on the Eurasian Economic Union *Protocol on the Protection and Enforcement of Intellectual Property Rights*.

- Improvement of mechanisms of commercialization and use of IP;
- Provision of favourable conditions for holders of copyright and related rights;
- Introduction of a system of registration of trademarks and service marks of the EAEU and appellations of origin of the EAEU;
- Ensuring the protection of IPRs, including on the Internet;
- Ensuring effective customs protection of IPRs, including through the conduct of a Single Customs register for IP Assets (SCRIPA);
- The implementation of coordinated measures to prevent and combat trafficking in counterfeit goods.⁴⁹

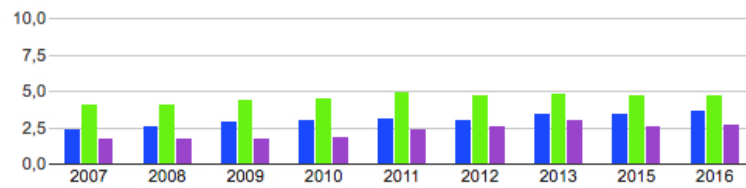
Annex to the Treaty on the EAEU regulates relations in the sphere of copyright and related rights, trademarks and service marks, patent rights, rights on geographical indications, rights on the appellations of origin goods, selection achievements, topographies of integrated circuits, trade secrets (know-how), enforcement of measures to protect IPRs.⁵⁰

However, currently the level of the IPRs protection in the Union is low, unless the legislation of each Member State becomes stronger. The graph below shows the level of the IPRs protection in Kazakhstan, Russia and Armenia. All of the indicators remain on the same level for almost 10 years, and are very low. Thus, it is necessary to strengthen the IPRs protection in each Member State in order to improve the IP system in the EAEU in general.

⁴⁹ Ibid.

⁵⁰ Ibid., Section I.

Intellectual Property Rights

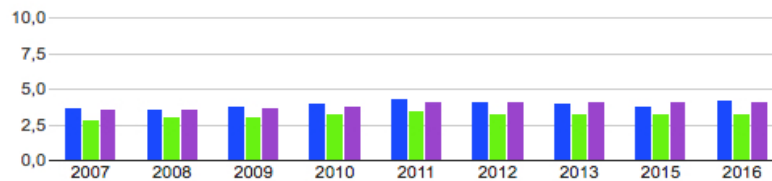


	KAZAKHSTAN	RUSSIA	ARMENIA		
Overall	3.7	4.8	2.8		
Protection of Intellectual Property Rights	4.8	3.4	4.2		
Patent Protection		7.4			
Copyright Protection	2.6	3.8	1.4		

Source: The International Property Rights Index 2016, accessed Oct. 10, 2016, <http://internationalpropertyrightsindex.org/country?s=kazakhstan>.

The current situation in the IP sphere in these countries are caused by several reasons which are described in the chart below.

Legal and Political Environmental



	KAZAKHSTAN	RUSSIA	ARMENIA		
Overall	4.3	3.3	4.1		
Judicial Independence	4.6	3.2	3.3		
Rule of Law	3.9	3.6	4.4		
Political Stability	5.1	3.3	4.6		
Control of Corruption	3.5	3.3	4.1		

Source: The International Property Rights Index 2016, accessed Oct. 10, 2016, <http://internationalpropertyrightsindex.org/country?s=kazakhstan>.

Thus, one of the solution of this issue is the harmonization of IP legislation of the Member States.

4.2. The laws of the Union, compliance with the regulations of the WTO, and comparison with the TRIPS Agreement

The most urgent and controversial issues of modern international system in general and the international IP protection system in particular are the issues of correlation of international legal obligations arising from the simultaneous participation of the state in the classic international organizations and regional integration, the scope of regulation of which are intersecting. This is caused by significant differences in the aims and objectives of the creation; the order of activity of integration associations; the special nature of the participants; the degree of the relationship between the Member States; features of regulatory statutes; approaches to the implementation of legal regulation; system and organ structure, its competence; the types of decisions and the order of their adoption and implementation; the establishment of a special legal regime of movement of goods, services, financial resources, labor force through such associations.⁵¹

The EAEU is an international organization of regional economic integration.⁵² In connection with the intersection of competence in the legal regulation of the sphere of IP protection in the framework of the WTO and the EAEU the important legal issues are those which relate to the ratio of the various international treaties and its international legal obligations of states, which are parties of both correlated acts.

⁵¹ Juan He, "Developing Countries' Pursuit of an Intellectual Property Law Balance under the WTO TRIPS Agreement," *Chinese Journal of International Law* Vol. 10(4) (2011): 837-45.

⁵² Treaty on the Eurasian Economic Union, Section 2, Art. 1.

Within the scope of the EAEU, regulation of IP protection is implemented in two different ways: by means of harmonization of the legal protection of IPRs and the transfer of control of the national authority on the level of integration association.

Currently, the main document harmonizing the legal regulation of the sphere of IP protection in the Member States is the Treaty on the EAEU, including the Protocol on the Protection and Enforcement of IPRs, which creates favorable conditions for trade and provision for an adequate level of protection of IPRs in the implementation of these relations.

The national powers transferred to the level of the EAEU Member States currently are the customs protection of IPRs. Appropriate basic regulation is established by the Treaty on the Customs Code of the CU of November 27, 2009. There are also other international treaties between the Member States. For example, the Agreement on the SCRIPA of May 21, 2010.

These and other international treaties and acts of the EAEU authorities are aimed at creating a single system of protection of IPRs within the Union.

The most important part for understanding the basis of the interaction of EAEU Member States and their enforcement of the rules of certain international legal obligations before and after the accession to the WTO is the Treaty on the functioning of the CU within the multilateral trading system of May 19, 2011.

Initially, the Treaty on the functioning fixed the basic rules of building relations between the participating states during simultaneous co-operation in the framework of the WTO and the CU, established in accordance with the Treaty

establishing a single customs territory and formation of the customs union of October 6, 2007.⁵³

Since the entry into force of the Treaty on the EAEU in accordance with the Protocol on the functioning of the EAEU within the multilateral trading system, the Treaty on the functioning will be applied to the corresponding relations within the Union. Protocol on the functioning will be extended to subsequently entered states into the Union.

It should be noted that the general guidance for compliance of the EAEU law with the rules of the WTO and the priority of the second over the first in case of conflict, as it was done in the Treaty on the functioning, is not provided by the Treaty on the EAEU. The text of the Treaty on the EAEU includes only the wording of the preamble that the Member States shall take into account the rules, regulations and principles of the WTO, as well as special provisions in certain areas.

The Preamble of the Treaty on the functioning provides the basic start of building relationships of the Member States in the framework of the parallel participation in the WTO and integration association, which can be reduced to perpetuate ideas of the focus on the effective functioning of regional integration in accordance with the rules and obligations under the WTO.

In accordance with the Treaty on the functioning from the date of accession by any state of the CU to the WTO, the provisions of the Agreement establishing the WTO, as defined in the Protocol of Accession, which includes commitments made as a condition of accession to the WTO, become part of the legal framework of the

⁵³ Maksim Karliuk, "The Limits of the Judiciary within the Eurasian Integration Process," (working paper, National Research University, Higher School of Economics, Skolkovo, 2016), <https://wp.hse.ru/data/2016/11/02/1111132877/69LAW2016.pdf>.

CU. By following accession to the WTO by other state of the CU, its similar obligations also become a part of the legal framework of the CU.

The term *legal system of the CU* is used repeatedly in the text of the Treaty on the functioning. Due to the termination of the existence of the CU as a separate integration association, *the legal system of the CU* also no longer exists. However, it is not set at the regulatory level whether this institution is replaced by. It seems logical to assume that the regulations, that were previously in force in the framework of the CU and continue to operate under the EAEU, are included into the law of the EAEU in accordance with Article 99 of the Treaty on the EAEU. In this regard, the above-mentioned provisions of the Agreement establishing the WTO and the obligations of the Member States become the part of the EAEU law.

In accordance with Article 2 of the Treaty on the functioning the Member States shall take steps to bring the law of the integration association in accordance with the Agreement establishing the WTO as provided by the Protocol on the accession of each Member State to the WTO, including the obligations of each Member State taken as the terms of its accession to the WTO.

Additionally, later the conclusion of international agreements in the framework of integration associations, the adoption and application of acts of its bodies, Member States shall also ensure its compliance with the Agreement establishing the WTO.⁵⁴

Thus, the law of the integration association should be consistent not only with the Agreement establishing the WTO, but also with the decisions of the WTO bodies.

⁵⁴ Treaty on the Functioning of the Customs Union, Art. 2.

An important provision of Article 2 of the Treaty on the functioning is also a rule, according to which if some regulations of integration association are more liberal in comparison with the Agreement establishing the WTO, but do not contradict it, the Parties shall ensure the application of such regulations for the effective functioning of the Union and international trade.

However, there are the exceptions permitted under paragraph 5 of the same Article 2. The above-mentioned provisions of the article are applied taking into account the derogations provided by paragraph 6 of Article 1, according to which the state of integration association, which is not a WTO Member, has the right to deviate from the provisions of the Agreement establishing the WTO, including the liabilities incurred by the state joined the WTO and which have become part of the Union law:

1) in which the law of the Union and the decisions of its bodies should be adjusted in accordance with Article 2, and/or

2) if such legal relations are regulated independently within its national legal system.

Deviation in this context refers to a deviation from established regulations and rules, i.e. the EAEU Member States that are non-Members of the WTO may apply the provisions of international treaties and decisions of the bodies within the Union, establishing different regulatory rules than provided in the legal instruments of the WTO⁵⁵ until amendments in such acts, in accordance with Article 2 of the Treaty on the functioning, or the accession to the WTO of the state and adoption of the relevant international legal obligations.

⁵⁵ Including regulations that fix a lower level of protection.

These provisions can only be applied by the EAEU Member States that are non-Members of the WTO⁵⁶, and those States that are Members of the WTO shall apply the provisions of national law that fix the level of protection relevant with legal instruments of the WTO system. After all the EAEU Member States join the WTO treaties and decisions of the Union bodies, they shall fully comply with the regulation established by the WTO.

It can be concluded that the national legislation of the Member State shall comply with the WTO rules in case of inconsistency between the rules of the WTO and the EAEU.

In this regard, it is important to note that paragraph 3 of Article 90 of the Treaty on the EAEU does not include the TRIPS Agreement as a *fundamental treaty*, according to which Member States should implement the regulation of activities in the field of protection and enforcement of IPRs, along with the international treaties provided by this paragraph.⁵⁷

⁵⁶ Currently the only EAEU Member State, which is a non-Member of the WTO, is Belarus Republic (as of Nov. 2016).

⁵⁷ Para. 3 of Art. 90 of the Treaty on the EAEU includes following fundamental international treaties: Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886 (as amended in 1971); Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977; World Intellectual Property Organization Copyright Treaty of December 20, 1996; World Intellectual Property Organization Performances and Phonograms Treaty of December 20, 1996; Patent Law Treaty of June 1, 2000; Patent Cooperation Treaty of June 19, 1970; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of October 29, 1971; Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 28, 1989; 98 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961; Paris Convention for the Protection of Industrial Property of March 20, 1883; Singapore Treaty on the Law of Trademarks of March 27, 2006.

However, this approach does not correspond with the WTO law and can only be temporary.

For the purposes of economic integration it is important to include the TRIPS Agreement in relation to the importance of trade as one of the main directions of development of economic integration, including protection of IP in the process of trade relations.

The Protocol on the Protection and Enforcement of IPRs of the EAEU contains only private links and pointers to the need for compliance with certain provisions of the TRIPS Agreement that cannot be considered sufficient, especially from the moment of accession to the WTO by all Member States.

Within the framework of the WTO for the IP protection the TRIPS Agreement does not provide for any of the rules of participation of the WTO Members in regional integration, within the framework of which the protection of IP is regulated. The only exception, dealing with participation in such associations, may fall under an exception to the most favored nation, which is provided in Article 4 (d) of the TRIPS Agreement.⁵⁸ This provision does not apply to the legal regulation within the EAEU.

The TRIPS Agreement requires minimum level of protection that should be provided by the WTO Members. In accordance with paragraph 1 of Article 1 of the TRIPS Agreement, the WTO Members may establish a higher level of protection than required by the TRIPS Agreement, on condition that it is not contrary to the provisions of the Agreement.

⁵⁸ Peter-Tobias Stoll, Jan Busche and Katrin Arend, eds., *Of WTO – Trade-Related Aspects of Intellectual Property Rights* (Leiden: BRILL, 2009), 159-67.

Such a *higher level of protection* can also be set by the agreements concluded within the framework of regional integration association. Basically, one of the main objectives of the WTO Members of participation in regional integration is to establish a higher level of protection than provided by the TRIPS Agreement between them, i.e. TRIPS-plus.⁵⁹

An example of the TRIPS-plus provision is Section X of the Protocol on the Protection and Enforcement of IPRs of the EAEU, which establishes the legal protection of selection achievements which is not provided in the TRIPS Agreement.

The Protocol also provides 10-year period of validity of the original registration of the trademark, whereas Article 18 of the TRIPS Agreement provides no less than 7 years.

Thus, after the accession of Belarus to the WTO the integration regulation as well as national, will have to comply with the TRIPS Agreement. This finding correlates with the principle of *pacta sunt servanda*, which claims that states shall not conclude international treaties which have entered into conflict with their commitments made earlier on the same issue under existing treaties with other states.

4.2.1. Trademark

Within the framework of the EAEU, trademarks protection is developed more, and it is provided by Sections III-V of the Treaty on the EAEU.

The Treaty determines trademarks and service marks, as well as the TRIPS Agreement, as signs, but with some specific details. According to Article 11 of the

⁵⁹ Ibid., 686.

Annex 26 to the Treaty on the EAEU, trademarks are served for individualization of the goods and/or services of one participants of the civil turnover from the goods and/or services of other participants of the civil turnover. Additionally, the above-mentioned article provides that verbal, graphic, volume and other signs or its combinations can be registered as trademarks. As well as the TRIPS Agreement, the Treaty provides exclusive right to the trademark owner, however the term of protection is longer, namely 10 years. The requirements of use of both documents are equal.

The Annex 26 to the Treaty on the EAEU is specified by the essential determination of the trademarks of the EAEU and the service marks of the EAEU. Only graphic signs can be registered as the trademarks of the Union, the owner of which also is guaranteed by the exclusive right.⁶⁰

Another important moment is the exhaustion principle of the exclusive right. According to the Article 16 of the Annex, the usage of the trademark of the Union with regard to the goods, that were legally implemented into civil turnover on the territory of any Member State by the owner of the trademark or by others with the owner's consent, is not an infringement of the exclusive right.

4.2.2. Patent

Patent rights are protected by the Section IX of the Annex 26 to the Treaty on the EAEU.

⁶⁰ Annex 26 to the Treaty on the Eurasian Economic Union, Art. 14.

Unlike the TRIPS Agreement, according to which patents shall be available for any inventions, the Protocol provides patents for inventions, utility models and industrial models. The authors of inventions, utility models or industrial models have not only exclusive right but also right of authorship. In addition to that, Article 26 mentions other rights of the authors, such as right to obtain patent, to compensation for usage of the employee's invention, utility model or industrial model.

The term of exclusive right on invention, utility model and industrial model is no less than 20 years, 5 years, and 5 years respectively. However, the Protocol does not provide the date from which the term of protection is counted.

4.2.3. Copyright

Copyright and related rights are provided by the Section II of the Protocol and extend to works of science, literature and art. The list of the author's rights is not exhaustive:

- 1) Exclusive right to perform;
- 2) Right of the authorship;
- 3) Right to a name;
- 4) Right to inviolability of the work;
- 5) Right to disclosure;
- 6) Other rights provided by the legislation of the Member States.⁶¹

The Protocol does not provide the distinct term of protection, but it refers to the Berne Convention, TRIPS Agreement, and Rome Convention.

⁶¹ Ibid., Art. 3.

The Protocol covers the rights of authors of computer programs, compilations of data, derivative works, as well as provides protection of cinematographic works.

In addition to that, the Protocol determines the related rights as property and moral rights to perform, rights on phonograms and other rights provided by the legislation of the Member States.

4.3. Harmonization of intellectual property legislation of the Member States

According to the expert survey conducted by the Chamber of Commerce (CCI), 71.7% of the experts consider the composition of violation of Article 180 *Illegal use of a trademark* of the Criminal Code of Russia excessive.⁶² In 2014, 8 sentences out of 152 of Article 180 were of imprisonment. The violations referred to this Article represent a low risk to society, and the basis for criminal liability under these articles is missing. These disorders should be treated as administrative offenses. However, sentences involving deprivation of liberty are carried under these articles.

The issue of illegal use of a trademark is extremely important for the Member States of the EAEU, as previously they were parts of the Soviet Union and produced homogeneous products, trademarks on which have been recorded at the same time in these countries by different manufacturers after the collapse of the

⁶² Marina Drel and Dmitry Semenov, "Russia" in *Anti-counterfeiting 2011 – A Global Guide*. (World Trademark Review, 2011), 117-19, <http://www.worldtrademarkreview.com/Intelligence/Anti-Counterfeiting/2011/Country-chapters/Russia>.

Soviet Union.

Article 180 leads to cases of elimination of competition with its use, when in fact the economic disputes are solved by criminal legal methods. In the present case, it seems reasonable and fair an implementation of the principle *economic crime is for economic punishment*.

At the same time among all the Member States of the EAEU, Russian experience can be regarded as the best practice in terms of legal regulation, which is, in particular, followed by many other Member States of the EAEU, except Kazakhstan. Thus, it is necessary to conduct a review of the laws of the Member States of the EAEU, protecting IP.

- 1) Criminal legal protection against counterfeiting. In the framework of legal regulation there are several formulations in the EAEU Member States:
 - Crime in the field of copyright and related rights (Criminal Codes of Russia, Kazakhstan, Belarus, Kyrgyz Republic, and Armenia);
 - Crime in the field of patent rights (Criminal Codes of Russia, Kazakhstan, and Armenia). In Belarus and Kyrgyzstan these relevant acts are not criminalized;
 - Unlawful use of means of individualization of goods (works, services) (Criminal Codes of Russia, Kazakhstan, Kyrgyzstan, and Armenia). In Belarus, there is no criminalization of the act.

It should be noted that in general corpus delicti is harmonized in all Member States. They differ only in the details of legal technique and sanctions. For example, in Belarus and Kyrgyzstan, the legislator has included in one article crimes against copyright, related rights, and patents. In other Member States the protection of

copyright and patent is carried out in different articles of the criminal law. On sanctions, there are some differences in the legal regulation, but they are minor and substantially penalty in all Member States corresponds to the severity of the crime. In all Member States of the EAEU the threshold for criminal liability for violation of IPRs is a major damage, but its size varies from country to country.

Patent infringements are characterized by the highest degree of difference between the Member States of the EAEU. Thus, the Russian criminal law does not set a specific amount of liability, as in other types of crime. However, there is a resolution of the Plenum of Armed Forces of Russia which fills the legal gap.

2) Civil protection methods from counterfeiting are also generally harmonized. In the civil codes of the Member States all the common ways to protect the rights are applied, which are enshrined in the general part of the Code. Along with this, additional security methods, that are defined in the special part, are used: the recognition of the rights; withdrawal of material support; publication of the decision on the violation of the court. Even in the field of language, four Member States of the EAEU (Kazakhstan, Belarus, Kyrgyzstan, Armenia) use almost identical legal structures. In the content area, it is possible to establish the existence of harmonization of Member States' legislation. For all Member States of the EAEU the unification of legal regulation on the effective date of the trademark registration is common.

4.3.1. Republic of Kazakhstan

IPRs protection in Kazakhstan is regulated by Section 5 of the Civil Code of the

Republic of Kazakhstan. The Civil Code provides for methods of exclusive rights protection, such as withdrawal of material objects with the use of which exclusive rights are violated, and material objects created as a result of such breach; obligatory publication on the violation committed with the inclusion of information about who owns the violated right, and other means provided for by legislative acts.

In administrative way infringers are punished in case if their actions do not contain signs of a criminal offense, and are regulated by the Administrative Code of the Republic of Kazakhstan. In accordance with Article 145 of the Code administrative liability is provided for unlawful use of a trademark, service mark or appellation of origin or a similar notation for similar goods or services, as well as the illegal use of another's trade name, if these actions do not contain evidence of criminal offense.

Protective measures are also provided in Article 49 of the Law of the Republic of Kazakhstan on Copyright and Related rights, such as recognition of the rights; restoring the situation that existed before the rights violations; suppression of acts infringing the right or threatening to infringe; compensation for damages including lost profits; recovery of income received by the infringer due to violation of copyright and related rights. The amount of compensation is determined by the court in lieu of damages or collection of income, the adoption of other measures stipulated by the legislation relating to the protection of their rights. In turn, the legislator gives the owner of copyright and related rights the choice of use of the above-mentioned measures.⁶³

⁶³ International Business Publications, *Kazakhstan Company Laws and Regulations Handbook Vol. 1 Strategic Information and Regulations*, (Washington, DC: International Business Publications, 2012).

Criminal liability is provided by the Criminal Code of the Republic of Kazakhstan for the attribution of authorship or compulsion to co-authorship, if this act caused considerable damage to the author or any other right holder, or significant harm to their rights or legitimate interests; illegal use of copyright or related rights, as well as the acquisition, storage, handling or manufacture of infringing copies of copyright and (or) related rights in purpose of sale, committed in significant amount. For violation of the rights to inventions, utility models, industrial designs, selection achievements or topologies of integrated circuits, liability is provided under Article 199 of the Criminal Code.

IP crimes are infringements of the rights of authors and other rights holders in the form of various types of use of works (replication, sale or other distribution, etc.) without the consent of the author and copyright holder as a result of that the significant harm is caused. This damage is, except for the cost of restoration of the right, the amount of remuneration payable to the author which was not received. Moreover, the proposed structure of the article allows not to establish the extent of damage, it will be sufficient to establish the size of the act itself. Thus, to bring to justice, according to the Articles 198 and 199 of the Criminal Code, there must be the fact of committing a crime in a significant amount.

4.3.2. Russian Federation

In Russia, the recognized and protected rights are the rights to works of science, art and literature, computer programs and databases, trademarks, trade names, inventions and other types of patent rights.

The current legislation provides several ways to protect the exclusive rights of IP, which differ from the type of protected object and the nature of the violation of the rights to it. The persecution of infringer is allowed in civil, administrative, and in some cases, criminal proceedings.

In accordance with the Civil Code of Russian Federation, in case of violation of trademark rights, as well as copyright and related rights it is possible to achieve its termination in court.

Claims for protection of trademarks and service marks are considered in arbitration courts in connection with the fact that the violation is related to business or other economic activity. The claim for infringement of any works of related rights may be considered in the arbitration, and in the court of general jurisdiction, depending on the legal status of the parties involved in the case.⁶⁴

The Civil Code provides for the possibility not only of forced suppression of existing and impending violations, but recovery or compensation for damages from the infringer.

In addition, in accordance with the Civil Code it is allowed to seize and destruct counterfeit goods and equipment, as well as other devices and materials, mainly used or intended to commit a violation of the exclusive rights on results of intellectual activity and means of individualization. At the request of the prosecutor, the court may decide on liquidation of the legal entity, which has repeatedly or grossly violated exclusive rights of IP.

Section 4 of the Civil Code provides that if the various means of individualization (trade name, trademark, service mark, commercial designation) are

⁶⁴ Maksim Karliuk, "The Limits of the Judiciary."

identical or confusingly similar, and as a result of such identity or similarity consumers and (or) counterparties may be misled. The individualization, the exclusive right to which arose earlier, has the advantage. The owner of such exclusive right may demand invalidation of the legal protection of a trademark (service mark) or a full or partial ban on the use of a corporate name or commercial designation.

In addition, the Civil Code prohibits a legal entity to use a trade name which is identical to the earlier registered trade name of another legal entity, or similar to the point of confusion, if these entities are engaged in similar activities. At the request of the right holder of such trade name, the legal entity, that registered a competing trade name later, is required to stop using it for activities similar to the activities carried out by the right holder, and pay the right holder damages.

In accordance with the Civil Code, it is also prohibited to use the commercial designation, which is capable of misleading as to the affiliation of the enterprise to a certain person. In particular, it is not allowed to use commercial designation confusingly similar to a trade name, trademark or commercial designation protected by the exclusive right which belongs to another person, whose respective exclusive right arose earlier. In this case, the infringer, at the request of right holder, shall stop using the commercial designation and pay the right holder damages.

With the entry into force of Section 4 of the Civil Code, information, that has actual or potential commercial value by virtue of being unknown to third parties, to which the third parties do not have free access on the legal basis and in respect of which the holder of such data applied commercial secret regime, is recognized and protected as a special type of IP: trade secret (know-how). Thus, at the present time

the trade secret is not understood as confidential information, but as the legal and institutional regime for its protection.

The owner of trade secret has the exclusive right to use and dispose it.

For infringement of the exclusive right of trade secret (know-how), in case of illegal acquisition or disclosure of such information, the right holder has the right to demand from infringer compensation for all losses caused if other liability is not provided by law or contract with that person.

Disclosure of the information which is not attributable to trade secret, but recognized confidential by law or agreement of the parties, also entails liability in the form of damages to the injured party or the payment of a contractual penalty.

In case of breach of contracts the infringer is liable in accordance with the general provisions of the Civil Code. In addition, Section 4 of the Civil Code, in some cases allows for the possibility of a unilateral refusal of the contract by right holder, which was not performed until failure, and the request for damages caused by the termination of such a contract.

In addition to the civil legal order to protect the violated rights, there is also the opportunity to effectively promote the interests using administrative procedures. The administrative liability is used for infringements on trademarks and trade names.⁶⁵

In addition, infringement of exclusive rights may result criminal liability under several articles of the Criminal Code. It provides for criminal liability for violation of copyright and related rights, illegal use of a trademark and illegal receipt and disclosure of information containing trade secret.

⁶⁵ Marina Drel and Dmitry Semenov, "Russia" in *Anti-counterfeiting 2011*, 117-19.

The Criminal Code also provides crimes in the sphere of computer information, criminalizing illegal access to computer information, creation, use and distribution of malicious computer programs, as well as violation of the rules of operation of computer systems or network.

4.3.3. Belarus Republic

First of all, IP protection is provided by Article 51 of the Constitution of Belarus Republic. However, until recently the national legislation did not contain any definition of IP and did not indicate the list of IPRs. This definition appeared in Article 139 of the Civil Code of Belarus Republic in 1998, where the IP is defined as the exclusive right of a citizen or legal entity of protected results of intellectual activity and equated means of individualization of products, works and services. Also, Article 980 of the Code provides a list of IP types:

- 1) Results of intellectual activity:
 - Works of science, literature and art;
 - Performances, phonograms and programs of broadcasting organizations;
 - Inventions, utility models, industrial designs;
 - Selection achievements;
 - Topographies of integrated circuits;
 - Undisclosed information, including trade secrets (know-how).
- 2) Means of individualization of participants of civil turnover, goods, works and services:
 - Trade names;

- Trademarks (service marks);
 - Appellations of origin.
- 3) Other results of intellectual activity and means of individualization of participants of civil turnover, goods, works and services.

All IPRs are traditionally divided into 2 groups protected by:

1. Copyright and related rights of works of science, literature and art, the rights of performers, phonogram producers, broadcasters and cable television;
2. Patent law (industrial property) of inventions, utility models, industrial designs, trademarks, service marks, trade names, protection against unfair competition, all other rights resulting from intellectual activity in the industrial area.

Currently, the main national laws governing the legal relationships in the field of copyright are the Civil Code of Belarus Republic and the Law of Belarus Republic on Copyright and Related Rights.

The main laws regulating relations in the field of industrial property are the Civil Code and a number of special laws, such as Law of Belarus Republic on Trademarks (Service Marks).

4.3.4. Kyrgyz Republic

Copyright and related rights in Kyrgyz Republic are protected by the Law on Copyright and Related Rights, which entered into force on January 14, 1998. According to the Copyright Law, the author has the exclusive right to carry out, authorize or prohibit the use of works. Measures of protection of copyright for the

unauthorized use of works are provided by civil, criminal and administrative legislation.

Civil protection methods are provided in the Copyright Law and the Civil Code of Kyrgyz Republic and implemented by the court by:

- Recognition of rights;
- Restoring the situation that existed before the violation of law;
- Suppression of acts infringing the right or threatening to infringe it;
- Compensation for damages;
- Collection of income received by the infringer due to infringement of copyright and related rights, instead of damages;
- Payment of compensation determined at the discretion of the court, instead of compensation for losses or recovery of income;
- Adoption of other measures stipulated by the legislation relating to the protection of their rights.⁶⁶

Criminal protection measures are provided in Article 150 of the Criminal Code of Kyrgyz Republic, in accordance with which infringement of copyright or related rights, if these acts intentionally or negligently caused large-scale damage, shall be punished by a *triple ayyyp*⁶⁷ or imprisonment for up to three years with deprivation of the right to hold certain positions or engage in certain activities for up to three years or without it.

⁶⁶ Kalikova & Associates, "Intellectual Property in the Kyrgyz Republic", accessed on Nov. 29, 2016, <https://www.hg.org/article.asp?id=4926>.

⁶⁷ The Criminal Code of Kyrgyz Republic is characterized by a special form of punishment, which is not inherent in legislation of other post-Soviet countries, as a *triple ayyyp*, i.e. penalty imposed by the court three times the amount of damage in cash or in kind. Two parts of *triple ayyyp* are collected in favor of the victim in respect of pecuniary and non-pecuniary damage, the third part to the state.

If these acts are committed repeatedly by a group of persons by prior agreement or an organized group, they are punishable by a *triple ayyp* with disqualification to hold certain positions or engage in certain activities for up to three years or imprisonment for a term of three to five years, with disqualification to hold certain positions or engage in certain activities for up to three years.

Administrative measures of protection are provided in Article 340 of the Code of Kyrgyz Republic on administrative violations, according to which the production, sale, lease, other unlawful use of copies of works or phonograms, unless copies of works or phonograms are counterfeit, if the copies of works or phonograms listed false information about their manufacturers and the place of production, if the copies of works or phonograms destroyed or altered the copyright mark or a symbol of protection of related rights, are punishable by a fine, with confiscation of counterfeit copies of works or phonograms. The confiscated copies of works or phonograms shall be destroyed in accordance with the law, except in cases of transfer to the owner of copyright or related rights, at his request.

4.3.5. Republic of Armenia

The main objective of the policy of Armenia in the sphere of IP is promoting innovation and commercialization of IP with the aim of effective protection of IPRs.

The issuance of patents and IPRs protection in Armenia are regulated by the following important legislative acts:

- Civil Code of the Republic of Armenia;
- Law on Copyright and Related Rights, which provides legal protection for

works of literature, music, painting, movies, software and other IP. It also provides legal protection for the rights of performers, producers of musical recordings and broadcasting organizations;

- Law on Trademarks, which stipulates the procedure for registration and protection of service marks, geographical indications and trademarks;
- Law on Trade Names, which regulates the registration, legal protection and use of the trade names of legal entities.⁶⁸

In addition to the above-mentioned laws, protection of IP in Armenia is also provided by the Law on Protection of Economic Competition, the Law on Utility Models and Industrial Designs, the Law on Protection of Rights to Topographies of Integrated Circuits, and the Law on the Geographical Indications.

4.4. Customs protection of intellectual property in the Union

The formation of the EAEU led to the cessation of such entities as a Common Economic Space, CU and the Eurasian Economic Community (EurAsEC). Thus, the EAEU is the assignee of these organizations.

One of the most important aspects of the cooperation between Member States on the protection of IPRs is the effective customs protection of IP through the SCRIPA of the EAEU Member States. However, the Treaty does not provide any other information on customs protection of rights.

The provision of effective protection of IPRs within the international economic integration is linked with a few difficulties concerning the conditions of a

⁶⁸ *Strategy of the Republic of Armenia on Intellectual Property Rights Protection* (Yerevan, 2011), http://www.aipa.am/u_files/file/IPRStrategyeng.pdf.

Member State. Customs protection of IP is one of the elements of IP protection in the EAEU. Customs bodies of the Member States are authorized to take measures towards the goods that contain the works of copyright and related rights, trademarks, service marks, and appellations of origin.

The legislation system of the customs protection of IP in the EAEU is complicated and multistage. Despite the fact that the Treaty on the EAEU provides the harmonization of the legislation of the Member States in the field of the IPRs protection, currently it is not implemented. The unique thing is only the system of principle and international agreements, on which the further implementation of the customs protection of IP is based.

The classic example of the contrary provisions of the legislation is the key principle of exhaustion of exclusive rights. There are different principles of exhaustion of exclusive rights on IP in the Member States. Thus, in Russia and Belarus: territorial principle, which means that the right to import the original goods belongs to the right holder or his official distributor. It is related to original goods produced by the IP holder. In Kazakhstan and Armenia: international principle, which is the first sale doctrine. Therefore, the commercial movement of goods between the countries is not limited. Between the Member States: regional principle, which means the free movement between the countries.⁶⁹

Concerning on the hierarchy of the legislation of the IP customs protection which is current in the EAEU, on the first international level there are conventions

⁶⁹ David G. Tarr, "The Eurasian Economic Union among Russia, Belarus, Kazakhstan, Armenia and the Kyrgyz Republic: Can It Succeed Where Its Predecessor Failed?" (The World Bank, Sept. 29, 2015), <http://as.vanderbilt.edu/gped/documents/DavidTarrEurasianCustomsUnion--prospectsSept282015.pdf>.

and agreements, such as TRIPS Agreement, which systemizes and unifies the provisions of different IP conventions and agreements.

On the EAEU level there are two main documents besides the Treaty on the EAEU. The first one is the Agreement on Unified Principles of Regulation in the Spheres of IPRs Protection. It is directed to the unification of the regulation principles in the field of IPRs protection. The second one is the Customs Code of the CU, in particular, Chapter 46. The Code remains as a main document regulating the customs protection of IP before the entry of the Customs Code of the EAEU into force, which is planned in 2017. However, the Code provides only fundamentals on the subject area. The procedure of the customs bodies and its authorities are provided on the lowest level of the legislation.⁷⁰

From the perspective of the method of the IP customs protection the process of the IP customs protection can be separated into several stages. This process is cyclical and terminates unless the type of IP is excluded from the Customs Register for IP Assets (CRIPA). The first stage starts when the right holder applies for the customs protection of IP to the customs body to add his IP to the CRIPA. The process involves the application, its approval, and the conclusion of a license agreement. This stage does not provide the real protection of IP from the customs bodies.

The structure of the CRIPA is unique by itself and does not have any analogues in the world. It is caused by the historical process of its formation from the establishment of the CU. There were several independent registries in the

⁷⁰ N. Kondrat'eva, "Eurasian Economic Union: Achievements and Prospects," *Mirovaya ekonomika i mezhdunarodnye otnosheniya* vol. 60, no. 6 (2016): 16-19, doi:10.20542/0131-2227-2016-60-6-15-23.

beginning. Each state of the EAEU⁷¹ independently ran its own CRIPA and used it on its own territory of the customs border. Thus, the SCRIPA was created in order to create the unified system of the IP customs protection along the customs border of the CU and form the unified list of controlled IP types.

However, the SCRIPA is not effective. The proof of this issue is the fact that from the moment of its formation there is no registered IP type. It is caused by several reasons. First of all, the potential volume of the SCRIPA is small. Only several types of IP can be added to the SCRIPA: copyright and related rights, trademarks, and service marks. One of the requirements of the SCRIPA is the protection of IP type in all the Member States of the EAEU. Another requirement is the submission of the insurance policy on the sum no less than 10 000 euros. It is necessary to cover the possible costs of the declarants caused by the actions of the right holder. In addition, this policy should be eligible in all the Member States. Currently, there is no company that can offer this kind of policy.⁷²

Another barrier which lowers the effectivity of the SCRIPA functioning is the approval process of adding the IP into the SCRIPA. The application of the right holder is reviewed by every customs body of the Member State on the basis of the domestic legislation. Additionally, the domestic legislation is not limited by the customs inspection only. The approval is possible with the positive decision of all the customs bodies of the Member States. Therefore, the application should enjoy

⁷¹ CU by that moment

⁷² Alexey Sorokin and Mikhail Sorokin, "Customs Protection of Intellectual Property in the Eurasian Economic Union," *Territoriya novykh vozmozhnostei. Vestnik VGUES* no. 3(30) (Vladivostok, 2015): 22-27.

simultaneously all the national legislations. This procedure needs the amendments, such as the formation of the unified rules and principles of the applications reviews.

The SCRIPA is not a single registry, but a procedure of the examination on the eligibility in accordance with the legislations of Member States.

The second stage starts from the customs operations, such as customs declaration, which are necessary for the customs control.

The third stage is the customs control. It is especially characterized by the organization and cooperation between the customs bodies, participant of foreign trade activity, and the right holder, since the right holder by himself decides whether his goods are counterfeited or not. The detection of crime and/or infringement occurs on this stage, as well as the prevention of the movement of the counterfeited goods through the customs border.⁷³

Since each Member State has its own features of the IP customs protection it is necessary to scrutiny the systems of the Member States. In case of Russia, the regulations on the customs bodies activity on the IP protection are provided by the federal law on Customs Regulation in the Russian Federation. The procedure consists of several stages:

1. Investigation whether the good has the signs of counterfeiting.
2. Examination on not belonging to the goods-exceptions, which are not protected by the customs bodies.
3. Determination of adding IP to the CRIPA.

⁷³ Vladimir Goshin, "Customs Cooperation of the Member-States of the Eurasian Economic Union: New Horizons," *Trade Policy* no. 4/4 (2015): 15-19.

4. Further activities are made in accordance with the adding/not-adding to the registry.
5. Notification of the right holder.
6. Further activities are made in accordance with the reaction of the right holder.⁷⁴

The procedure in Kazakhstan, Armenia, and Belarus has the same structure. It is caused by the implementation of the same regulations provided by the Customs Code of the CU.

In case of counterfeiting detection, the production of the goods is suspended for no more than 10 days. In some cases, this term can be extended for 10 days more. In case of counterfeiting detection of the goods not included in the CRIPA in the countries practicing the powers *ex officio*, the production is also suspended, however, the terms of suspensions differ in the Member States. The first suspension of production in Kazakhstan is for 3 days.⁷⁵ Additionally, if the customs bodies cannot determine the location of the right holder during 24 hours, the decision of the suspension is cancelled.

In Belarus, the principle *ex officio* is not practiced. The organization of customs control is analogous to Russian and Kazakhstan ones.

Armenia also does not practice the principle *ex officio*. In general, the procedure of the customs control is the same, but during 3 days after the suspension of the goods the right holder must provide by the pledge or another guaranty of the costs of the customs bodies caused by the suspension, and his own obligations for

⁷⁴ Federal Law on Customs Regulation in the Russian Federation, Chapter 42, Nov. 27, 2010, N 311.

⁷⁵ In Russia is for 7 days.

costs and damages. These methods are based on the fact that in Armenia, in contrary to other Member States, the right holder does not provide the obligation for compensation for possible damage during the application procedure of adding IP to the CRIPA.⁷⁶

After the completion of the customs control and decision on the declared goods the 3-year period starts during which the customs bodies can repeat the customs control after the issuance of the good.

After this procedure, the process of the customs protection of IP by the customs methods is over. However, as it was mentioned above, the protection by itself does not finish as the process of the protection is cyclical. An additional passing of the preliminary stage is not required, since the IP is already added into the CRIPA.

Thus, the customs protection of IP in the EAEU is a complicated system. Being a legal successor of the CU the system considers the usage of the general implementation of the main principles and methods. Whereas the concrete instructions are formed by the Member States independently.

⁷⁶ Alexey Sorokin and Mikhail Sorokin, “Customs Protection of Intellectual Property,” 26.

Chapter 5. Cooperation between the Eurasian Economic Union and international organizations: the potential of becoming a Member of the WTO

International activity of the EAEU is an activity directed on the solution of its issues through the international cooperation with the states, international organizations and international integrational unions, i.e. third parties.⁷⁷

There are two bodies of the EAEU that are regulating and implementing the international activity: the supreme body of the political leadership on the level of the Heads of the States, the Supreme Council; and the permanent regulatory body, EAEC. The Supreme Council provides the strategic management of the international cooperation of the EAEU.⁷⁸ According to this provision the international cooperation of the EAEU includes the contacts of the official representatives and authorities of the EAEU bodies with the representatives of the third parties, and the participation in the international events, such as conferences.

The most important legal result of the international activity of the EAEU is the conclusion of the international treaties of the Union with the third parties. Currently, the EAEC signed more than 20 agreements:

- With the third states;
- With international intergovernmental organizations and integrational unions;
- With international nongovernmental organizations.⁷⁹

⁷⁷ Treaty on the Eurasian Economic Union, Art. 7.

⁷⁸ The Decision of the Supreme Council #99 of Dec. 23, 2014 on the Procedure for International Cooperation of the Eurasian Economic Union.

⁷⁹ Nuritdin Djamankulov, "The Harmonization of Eurasian Economic Union Sanitary and Phytosanitary Measures and Technical Regulation for Agricultural Goods with the

However, the EAEU is still not a Member of any international organization as a single unit.

Within the framework of the EAEU the issue on the relation between the legal mechanisms of the Eurasian and global economic integration was brought on the stage of the formation of the CU of Russia, Belarus and Kazakhstan. In order to regulate the ratio of the CU legal system and the WTO law the countries signed the special Treaty on Functioning of the CU within the Multilateral Trading System.

Currently the Treaty has the legal status of one of the international treaties within the framework of the Union supplementing the memorandum of association. It keeps its legal power and is applied for regulation of the corresponding relations within the framework of the EAEU.⁸⁰

In accordance with the Treaty the WTO law is officially recognized as a component of the CU legal system, thereafter the whole law of the EAEU.

The Member States were required to bring the legal system of the CU in accordance with the WTO law, in case of contradictions to guarantee the precedence of the WTO law on the provisions of international treaties concluded within the framework of the CU and decisions of its bodies.

The WTO rules should not limit the improvement of the regional integration of the EAEU Member States. Thus, the Treaty with the WTO law consent provides that the regulations of the CU legal system can be more liberal than the WTO law, i.e. provides more open markets of the Member States, more free transboundary

Provisions of the WTO for the International Trade Development,” *Policy Studies on Rural Transition* No. 2015-5 (FAO Regional Office for Europe and Central Asia, 2015): 8.

⁸⁰Annex 31 to the Treaty on the Eurasian Economic Union *Protocol on Functioning of the Eurasian Economic Union within the Multilateral Trading System*.

economic activities by its citizens and entities.⁸¹

With regard to foreign experience, the best practice in this sphere is the experience of the EU. Since the question of counterfeiting and parallel imports are often linked to the legal regulation of trademarks, so far in this integration association a detailed regulation of the general IP, as well as private is carried out.⁸²

The objectives of trademark regulation at EU level are free movement of goods and freedom to provide services and the absence of distortion of competition in the common market.

Currently in the EU there are the following basic normative legal acts regulating legal relations connected with trademarks.

- Directive № 2008/95/EC of the European Parliament and the Council to approximate the laws of the Member States relating to trademarks.
- The Council Regulation No 207/2009 of February 26, 2009 on the Community trademark.⁸³

The preamble to the Directive establishes that it is essential to facilitate the free movement of goods and free provision of services by ensuring that the registered marks enjoy the same protection in the legislation of all Member States. This, however, does not deprive the Member States to provide more extensive protection to the signs which have acquired renown.

⁸¹ Andrey Slepnev, "Eurasian Economic Union Integration: Timetable, Priorities and Challenges," in *WTO Accessions and Trade Multilateralism*, ed. Uri Dadush and Chiedu Osakwe, (Cambridge: Cambridge University Press, 2015), 190.

⁸² Alexander Shirov and Alexey A. Yantovsky, "Estimates of Macroeconomic Effects of Trade Relations between the European Union and the Eurasian Economic Union," in *In Quest of the Craft: Economic Modeling for the 21st Century*, ed. Douglas S. Meade (Firenze: Firenze University Press, 2015), 73.

⁸³ Catherine Seville, *EU Intellectual Property Law and Policy* (Cheltenham: Edward Elgar Publishing Ltd., 2009), 210.

With regard to the Regulation, there is a set principle of possibility of registering regional trademarks, *EU trademarks*.

To implement these objectives at EU level appropriate organizational, institutional and political conditions have been established.

Currently, the EU retained the existing institutional structure of the European Community and the political balance. It created a special institution, the Office for Harmonization in the Internal Market (Trademarks and Designs), which was granted with legal, administrative and financial autonomies.

Application for registration of a trademark of the EU and all other information, the publication of which is prescribed by the Regulation or the Implementing Regulation, is published in all the official languages of the European Community.

All the notes to the Register of Trademarks of the European Community are also made available in all official EU languages.⁸⁴

Thus, the Register of Trademarks of the European Community is the official and the current EU registry.

Powers of control and supervision are held by the European Commission (EC). The EC should verify the legality of those acts of the President of the Office, for which EU law does not provide any verification of legality by another body, and acts of the Budget Committee attached to the Office.

Accordingly, the administrative system and the executive branch to ensure the rule of law in terms of IP in the EU is well structured and organized.

At the same time, essential role to ensure the rule of law in the EU lies with

⁸⁴ Ibid., 220.

the EU Court of Justice. The Court of Justice is a judicial authority, providing a high level of legal security in the protection of IPRs in the EU, which follows from the constituent acts.⁸⁵

The internal judicial system of the Member States functions at the same time. In accordance with Article 95 of the Regulation Member States must designate in their territory as far as possible a limited number of national courts and tribunals of first and second instance, *European Community Trademark Courts*, which must exercise the administration of justice functions under the Regulation.

The harmonization of the EAEU Member States' legislation in the field of IP is currently being implemented. The process of harmonizing to a certain extent also affects the issue of combating counterfeiting and parallel imports.

Now the EAEU has the following features in terms of harmonization:

- SCRIPA is fixed de jure;
- Rights holders can protect their rights and interests by applying for the inclusion of IP in SCRIPA;
- At the same time, customs authorities ex officio can protect IPRs;
- IPRs protection term is two years with possibility of extension, the entry into SCRIPA is not charged by fee;
- De facto SCRIPA does not work because there are no corresponding entries;
- In fact, right holders have to make entries into SCRIPA in order to be able to defend their rights. There are different levels of development of IPRs in the Member States.
- In the national legislations of Member States there is no harmonization of

⁸⁵ Treaty Establishing the European Community, Art. 225 (1), Mar. 25, 1957.

the principle of exhaustion of trademark rights: in particular, in Russia it is regional, in Belarus: national, and in Kazakhstan: international. However, at the level of the EAEU, this principle is uniquely determined as regional. Due to the priority of the EAEU law, the regional principle of exhaustion of rights should be recognized.

Thus, there is a need for further harmonization and unification of standards in the field of IP in the EAEU.

The Member States together with the EAEC developed a draft Treaty on Trademarks, Service Marks and Appellations of Origin of the EAEU, which provides:

- The concept of *trademark of the Union*;
- The procedure of the application for the trademarks of the Union, including in electronic form;
- The procedure for trademark registration of the Union and the provision of legal protection of appellations of origin;
- A register of trademark of the Union and register of appellations of origin;
- Issuance of a single document of title.

Novels of the draft of the international agreement are as follows:

- The principle of simultaneous legal protection of trademarks of the Union on the territory of the Member States;
- Submission of a single application in any of the patent offices and reception of a single document of title in this department;
- The ability to control the registration of trademarks by national patent offices in order to protect the exclusive rights of copyright holders and

combat abuse of rights;

- The applicant's interaction with only one agency.

In addition, the Treaty on the coordination of action to protect IPRs was drafted. It provides for the formation of the protection of IPRs system in the EAEU by:

- Making recommendations on coordination of authorized bodies aimed at improving the prevention, detection and suppression of IPRs infringements;
- Ensuring the effective suppression of turnover of counterfeit goods on the territory of the Member States;
- Taking measures to combat violations of the IPRs, including on the Internet;
- Harmonization and improvement of legislation in the sphere of IPRs protection.

The adoption of the agreement on the coordination will allow the competent authorities to exchange law enforcement experience in the field of prevention in terms of detection and prevention of IPRs infringement and develop uniform rules for business activities.

Improvement of the legal IP regulation in general and the combat against counterfeiting and parallel imports within the EAEU are being possible to reach.

First, the EAEC should have the mandate to conduct the Common Customs Registry, as well as conducting SCRIPA, and order of interaction with public authorities and stakeholders.

Second, the Court of the EAEU should have the special competence to review the category of case studies related to IP with the release of the appropriate structural unit. As it was mentioned above, the EU Member States have extensive

experience regarding the protection of IPRs. European Court of Justice in its practice turned to this issue many times, because the scope of cross-border trade raises many issues in terms of smuggling and parallel imports.

In addition, this increase in the powers of institutions and the EAEU bodies will contribute to a greater degree of integration and the rule of law within the international organization.

Chapter 6. Conclusion

Despite many of the above-mentioned problems, it is necessary to bear in mind that the whole course of human history teaches that the development of certain unions of states, as well as each individual Member State, depends primarily on their domestic political will and capacity for independent translational motion towards the achievement of their goals.

Construction of the CU and single economic space is a process based primarily on political motivations, when the Member States see in the implementation of its integration projects the opportunity to strengthen their national sovereignty, strengthen its military and political security and maintain, or even increase, their influence in international relations.

One of the most effective means of solving the above-mentioned problems would undoubtedly be the accession of all the EAEU countries to the WTO.

Harmonization of national legislation of EAEU Member States on the basis of principles of the WTO will undoubtedly entail further liberalization of their economic policy and, consequently, their interconnectedness. However, the most

desirable consequence of the economic freedom must be further political liberalization of the Eurasian countries, which, in turn, is a necessary precondition for solving the main problems of regional integration in the Eurasian space, in particular, building of effective supranational bodies. With the current degree of centralization of state power in the EAEU countries creating a strong parallel power structure is not feasible. In other words, the creation of supranational bodies is contrary to the existing concepts and principles of building states in Eurasia, where the leading political actors are not willing to share their vast governmental authority even within the country.

Therefore, for the construction of supranational bodies and further promotion of integration processes it is necessary to conduct fundamental domestic reforms, which main task should be further genuine democratization of state and society.

Based on the foregoing, there are many reasons to believe that further democratization in all the EAEU Member States is a prerequisite and essential precondition for the construction of an effective regional interstate association in the Eurasian space. Therefore, to be a supporter of genuine interstate integration in Eurasia is to be a supporter of achieving each of the Eurasian country's real progress in building a civil society and rule of law.

Bibliography

- Arup, Christopher. *The New World Trade Organization Agreements: Globalizing Law through Services and Intellectual Property*. Cambridge: Cambridge University Press, 2000.
- ATAMEKEN. “We Are Joining the WTO: Is It Good or Bad?” news release, July 3, 2015. <http://petropavl.palata.kz/en/news/19046>.
- Bakenov, Yernar. “Maximizing the Benefits of WTO Membership and Global Economic Integration.” Presented at Third China Round Table on WTO Accessions, Dushanbe, June 2-5, 2015. https://www.wto.org/english/thewto_e/acc_e/Session1YernarBakenovCommentary.pdf.
- Begaliyev, Ernar. “Mechanisms Used in Intellectual Property Rights Fraud in the Republic of Kazakhstan.” *Internal Security* Vol. 4(2) (July-December 2012): 277-83.
- Correa, Carlos M. *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options*. London: Zed Books Ltd., 2000.
- Desierto, Diane. *Public Policy in International Economic Law: The ICESCR in Trade, Finance, and Investment*. New York: Oxford University Press, 2015.
- Djamankulov, Nuritdin. “The Harmonization of Eurasian Economic Union Sanitary and Phytosanitary Measures and Technical Regulation for Agricultural Goods with the Provisions of the WTO for the International Trade Development.” *Policy Studies on Rural Transition* No. 2015-5 (FAO Regional Office for Europe and Central Asia, 2015).
- Drel, Marina, and Dmitry Semenov. “Russia.” In *Anti-counterfeiting 2011 – A*

- Global Guide*, 117-20. World Trademark Review, 2011.
<http://www.worldtrademarkreview.com/Intelligence/Anti-Counterfeiting/2011/Country-chapters/Russia>.
- Fink, C., and Carlos A. Primo Braga. "How Stronger Protection of Intellectual Property Rights Affects International Trade Flows." (1999).
http://www.iatp.org/files/How_Stronger_Protection_of_Intellectual_Proper.pdf.
- Goshin, Vladimir. "Customs Cooperation of the Member-States of the Eurasian Economic Union: New Horizons." *Trade Policy* no. 4/4 (2015): 15-19.
- He, Juan. "Developing Countries' Pursuit of an Intellectual Property Law Balance under the WTO TRIPS Agreement." *Chinese Journal of International Law* Vol. 10(4) (2011): 827-863.
- International Business Publications. *Kazakhstan Company Laws and Regulations Handbook Volume 1 Strategic Information and Regulations*. Washington, DC: International Business Publications, 2012.
- Jensen, Jesper, and David Tarr. "The Impact of Kazakhstan Accession to the World Trade Organization: A Quantitative Assessment." Policy Research Working Paper, World Bank, Washington, DC, March 2007.
- Jackson, John H. *The World Trading System: Law and Policy of International Economic Relations*. Cambridge: MIT Press, 1997.
- Karliuk, Maksim. "The Limits of the Judiciary within the Eurasian Integration Process." Working Paper, National Research University, Higher School of Economics, Skolkovo, 2016.
<https://wp.hse.ru/data/2016/11/02/1111132877/69LAW2016.pdf>.
- Kondrat'eva, N. "Eurasian Economic Union: Achievements and Prospects."

- Mirovaya ekonomika i mezhdunarodnye otnosheniya* vol. 60, no. 6 (2016): 15-23. doi:10.20542/0131-2227-2016-60-6-15-23.
- Kolb, Robert W. *Encyclopedia of Business, Ethics and Society*. New York: SAGE Publications, 2007.
- La Croix, Sumner J., and Denise Eby Konan. "Have Developing Countries Gained from the Marriage between Trade Agreements and Intellectual Property Rights?" *UH-Manoa Economics Working Paper* No. 06-5 (March 3, 2006). http://www.economics.hawaii.edu/research/workingpapers/WP_06-5.pdf.
- Mukhamediyev, Bulat, and Azimzhan Khitakhunov. "Central Asian Integration and Its Impact on Regional Trade and Economy." In *Country Experiences in Economic Development, Management and Entrepreneurship*, edited by Mehmet Huseyin Bilgin et al., 17-30. Cham: Springer Nature, 2016.
- Organisation for Economic Co-operation and Development. *Boosting Kazakhstan's National Intellectual Property System for Innovation*, Paris: OECD Publishing, 2016. doi:10.1787/9789264260955-en.
- Seville, Catherine. *EU Intellectual Property Law and Policy*. Cheltenham: Edward Elgar Publishing Ltd., 2009.
- Shaekina, Zhanat, and Dinara Mamrayeva. "Problems and Ways of Enhancing the Innovation Activity in the Republic of Kazakhstan." *Education and Science Without Borders* Vol. 2(2) (2010): 35-37.
- Sharma, Ruchi, and K.K. Saxena. "Strengthening the Patent Regime: Benefits for Developing Countries – A Survey." *Journal of Intellectual Property Rights* Vol. 17 (March 2012): 122-32.
- Shirov, Alexander, and Alexey A. Yantovsky. "Estimates of Macroeconomic Effects

- of Trade Relations between the European Union and the Eurasian Economic Union.” In *In Quest of the Craft: Economic Modeling for the 21st Century*, edited by Douglas S. Meade, 59-78. Firenze: Firenze University Press, 2015.
- Slepnev, Andrey. “Eurasian Economic Union Integration: Timetable, Priorities and Challenges.” In *WTO Accessions and Trade Multilateralism*, edited by Uri Dadush and Chiedu Osakwe, 187-97. Cambridge: Cambridge University Press, 2015.
- Sorokin, Alexey, and Mikhail Sorokin. “Customs Protection of Intellectual Property in the Eurasian Economic Union.” *Territoriya novyh vozmozhnostei. Vestnik VGUES* no. 3(30) (Vladivostok, 2015): 19-28.
- Stoll, Peter-Tobias, Jan Busche, and Katrin Arend, eds. *Of WTO – Trade-Related Aspects of Intellectual Property Rights*, Leiden: BRILL, 2009.
- Tarr, David G. “The Eurasian Economic Union among Russia, Belarus, Kazakhstan, Armenia and the Kyrgyz Republic: Can It Succeed Where Its Predecessor Failed?” The World Bank, September 29, 2015. <http://as.vanderbilt.edu/gped/documents/DavidTarrEurasianCustomsUnion--prospectsSept282015.pdf>.
- Tochitskaya, Irina. “Kazakhstan’s Accession to the WTO: Overview and Implications for the Eurasian Economic Union.” Policy Paper, IPM Research Center, Minsk, December 2015. <http://eng.research.by/webroot/delivery/files/english/pp/pp2016e01.pdf>.
- Trebilcock, Michael, Robert Howse, and Antonia Eliason. *The Regulation of International Trade: fourth edition*. New York: Routledge, 2013.
- United Nations. *Accession to the World Trade Organization: Issues and*

Recommendations for Central Asian and Caucasian Economies in Transition,
New York: United Nations, 2001.

United States Trade Representative. *Super 301, Special 301 and Title VII Report*,
Washington, DC: Office of the USTR, 2000.
<https://ustr.gov/sites/default/files/2000%20Special%20301%20Report.pdf>.

World Bank. *Ukraine's Trade Policy: A Strategy for Integration into Global Trade*,
Washington, DC: World Bank, 2005.

World Economic Forum. *The Global Competitiveness Report 2010-2011*, Geneva:
World Economic Forum, 2010.
http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf.

Strategy of the Republic of Armenia on Intellectual Property Rights Protection.
Yerevan, 2011. http://www.aipa.am/u_files/file/IPRStrategyeng.pdf.

국문 초록

지적재산권 보호 수준과 국제무역 간의 상관 관계에 대한 세계 무역 기구 가입의 영향

카자흐스탄 및 유라시아 경제 연합 사례 분석

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본 논문의 목적은 카자흐스탄 공화국과 유라시아 경제 연합의 사례를 중심으로 지적 재산권 보호 수준과 국제 무역 간의 상관관계에 대한 세계 무역기구 가입의 영향을 확인하는 데 있다.

본 논문은 지적재산권 보호 수준과 국제무역의 연관성, 카자흐스탄 세계무역기구 가입 분석, 유라시아경제연합 회원국의 지적재산권 보호의 주요 문제점, 유라시아경제연합과 세계무역기구 간의 무역, 회원국들 내에서의 지적 재산권 강화 및 국제 무역 증대를 위한 가능한 해결책을 제시하였다.

카자흐스탄은 2015년 11월에 세계무역기구에 가입하여 세계무역기구의 요건에 따라 유라시아경제연합 내 관세 보호를 낮춤으로 인해 문제를 끼쳤다. 따라서, 카자흐스탄이 세계무역기구에 가입하는 것은 유라시아경제연합 내 무역을 복잡하게 만든다.

또한, 카자흐스탄을 세계무역기구에 가입시키는 것은 정부의 예상된 목표를 실현하지 못하여 국내 지적재산권 법안은 효과적인 보호를 제공하지 못한 이유로 지적재산권 보호 수준은 여전히 낮다. 카자흐스탄의 국제 무역은 연합의 경계를 넘지 못한다.

이러한 문제의 가능한 해결책은 연합 회원국의 지적 재산권 법안의 조화, 유라시아 경제 연합 내에 지적 재산권 제도를 규제하는 단일 기관의 설립 및 전체 연합의 세계무역기구로의 가입이다. 이러한 정책들은 연합과 각 회원국의 희망적인 경제 성장, 국제 무역의 증대 및 높은 수준의 지적 재산권 보호로 이어질 것이다.

그럼으로 세계무역기구의 가입이 별개의 국가에 의해 유리한 지적재산권 보호 환경과 경제 성장으로 이어질 수 있는지, 또는 세계무역기구에 단일 기관으로 가입하여 이러한 목표에 도달할 가능성이 더 큰지 본 논문의 문제이다.

주요 어: 지적재산권, 국제 무역, 세계무역기구, 카자흐스탄, 유라시아 경제 연합

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