

necessary and desirable for the protection of citizens, and government measures aimed at protecting the general welfare of all market participants are widely popular.

The main means of combating market distortions in the European Union are administrative sanctions established by law. For example, if actions on the part of companies aimed at distorting the market are detected, administrative measures can be applied in the form of a fine of several million Euros or 15% of the total annual turnover for the past year¹.

In the Republic of Belarus, there is no such norm in the legislation, this is due to the social orientation of the national economy and the need to support certain industries.

In general, it is required to determine a sufficient degree of selectivity of government intervention to eliminate existing market distortions. This will make it possible to find a balance between the need to support certain areas of production and reduce the existing asymmetry of information, which is a consequence of the lack of information among market participants about the conditions for conducting market transactions and each other's intentions.

Thus, in recent years there has been a crisis of the previous models and tools of economic development. This leads to market distortions in various industries. Market distortions, in general, have a negative impact on consumers and some producers, but in some industries they arise as a result of targeted government intervention and can have a positive effect on the well-being of citizens. The main causes of market distortions in recent years have been the COVID-19 pandemic and growing trade tensions between the world's leading economies, which have led to a drop in the volume of trade in goods and services and an increase in prices for certain categories of goods both in the countries of the European Union and in the Republic of Belarus. The main tool used by foreign countries to combat market manipulations are administrative measures. However, they are not always effective due to their specifics, but the most effective may be to find a balance between the need for government intervention and market forces, which will both protect the most vulnerable industries and prevent complete information asymmetry in the markets.

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¹ Kasyanov, R.A. The main initiatives of the European Union in the fight against market abuses / R.A. Kasyanov // Bulletin of MGIMO. – 2014. – № 4. – P. 244–252. (in Russian)

«Intellectual property development in the context of international economic sanctions»

Research area:

Intellectual property as an object of international trade

It is well known that the development of a competitive economy in modern conditions is impossible without the development and subsequent commercialisation of intellectual property (hereinafter referred to as IP). The process of effective commercialisation is a symbiosis of different techniques and practices. The level of protection of right holders against infringement of intellectual property rights (hereinafter referred to as IPR) plays an important role in the promotion of a product containing IP on the market. Within the customs territory of the Eurasian Economic Union (hereinafter referred to as the EAEU), the customs authorities take protection measures within their competence in accordance with the Customs Code of the Eurasian Economic Union (hereinafter referred to as the EAEU Customs Code) and other national and supranational legislative acts of the EAEU member states.

At the same time, since February 2022, foreign sanctions have had an increasing impact on activities in various sectors of the economy, including intellectual property, in Belarus and Russia. Experts group the types of sanctions according to different characteristics. Generally speaking, blocking sanctions, sectoral sanctions and secondary sanctions are distinguished¹. Secondary sanctions are sanctions on persons from third countries who carry out transactions with the sanctioned persons. Blocking sanctions include a ban on transactions, provision of works and services¹. For example, a ban on export from the USA to Belarus of technologies and software in the defence, aerospace and maritime sectors. Such blocking sanctions are closely related to the next type of sanctions – sectoral – restrictions on certain transactions in a particular sector of the economy. For example, restrictions on the import of goods, a ban on transit. Examples of this type of sanctions include the US sanctions against the Republic of Belarus in the form of licensing export from the USA and re-export from third countries of goods containing technologies and components of US origin; restrictions on export from the European Union (hereinafter referred to as the EU) and the UK to Belarus and other transactions regarding tobacco products, dual-use goods; import from Belarus to the EU and the UK and other transactions regarding oil products, potash fertilizers; restrictions on the EU import of wood, cement, iron and steel products and certain types of machinery (some HS codes)¹. There is also a

¹ Update on sanctions against the Republic of Belarus [Electronic resource] // International REVERA law group. – 2022. – Mode of access: <https://revera.legal/info-centr/news-and-analytical-materials/1013-obnovlenie-sankcij-v-otnoshenii-respubliki-belarus/>. – Date of access: 16.04.2022.

ban on the transit of Belarusian transport companies through the EU territory. Such new restrictive measures are aimed at reducing the advantage of the country's geographical position. At the same time, in the aggregated structure of export (import) of services of the Republic of Belarus for 2021 the share of export of transport services was 42.7%, imports – 44.6%¹.

The restrictions also affected the sphere of intellectual property, despite the fact that they are indirectly caused by the withdrawal of a number of companies from the Belarusian and Russian markets. The Russian Federation responded at the end of March 2022 by legalising parallel import for certain product groups (the list of which was not finalised at the time of submission of this material) in order to prevent a shortage of high-tech goods on the national market. At the beginning of March 2022, the Electronics Developers and Manufacturers Association of Russia (hereinafter referred to as EDMA) submitted proposals to the Russian government to support the industry under sanctions, which included the suspension of the protection of IPR from countries supporting sanctions against Russia². Given the close relationship between Russia and Belarus within the framework of the Union State of the two countries, the proposed measures would also have an impact on the Belarusian market. In the absence of sanctions, customs officials have the obligation under the EAEU Customs Code to request confirmation of rights for goods imported into the EAEU customs territory containing intellectual property objects (hereinafter referred to as IPO) included in the national customs registers of IPO. In the conditions of external sanctions restrictions, this has become an additional domestic regulatory barrier to the supply of goods that are not produced on the territories of sub-sanctioned countries. In their proposal, EDMA and other organisations argued for the exclusion of confirmation requirements for IPR in cases the rights holders are foreign companies³.

On the one hand, the proposed measures will make it possible to avoid a significant increase in the cost of goods or its shortage (in the case of the import of original goods containing IPO). On the other hand, the risk of inflow of significant volumes of counterfeit goods into the territory of the Union State of Belarus and Russia, the lack of appropriate warranty and customer service and the reduction of investment attractiveness of two countries in the long run will increase.

¹ Balance of Payments of the Republic of Belarus for 2019. [Electronic resource] // National Bank of the Republic of Belarus. – 2021. – Mode of access: <http://www.nbrb.by/publications/balpay/balpay2019.pdf>. – Date of access: 17.04.2022

² Russian microelectronics manufacturers have proposed to legalise «grey» supplies [Electronic resource] // Interfax Information Group. – 2022. – Mode of access: <https://www.interfax.ru/digital/828137>. – Date of access: 16.04.2022.

At the same time, courts in the Russian Federation began to take sanctions into account in their practice in cases related to IPR. For example, the Arbitration Court in Kirov refused to protect the rights of a British company to the image of «*Peppa Pig*» because the country had imposed sanctions against Russia. Apart from other legislative provisions, the court referred to the Russian Federation Presidential Decree on the application of special economic measures in connection with the hostile actions by the USA and foreign states that have joined, which served as the basis for dismissing the claim¹. Thus, it will be more difficult for foreign organisations in the current circumstances to prove their IPR in court.

The draft of a legislative act of the Russian Federation on the removal of restrictions on the use of IP incorporated in goods, the supply of which to Russia is restricted, also affects the IT sector, namely so-called «software piracy», which directly affects the nascent culture of public consumption of goods and services containing IPO, despite the fact that the measure is intended to be temporary and will not apply to products made by Russian manufacturers. However, people will be forced to buy goods of unconfirmed origin, which will further reinforce negative consumer habits. The possible negative image impact of parallel imports on international companies that continue their operation in Russia and Belarus must also be taken into account.

The measures taken reinforce the existing tendency in Russia and Belarus to circumvent IP rules and legislative measures (or to operate in the absence of them). For example, the issue of enforcement of IPR for developments in the field of medicine has been repeatedly highlighted in academic papers by various authors². The impact of sanctions has only made it stronger. A number of Russian cities have decided at the government level to replace some scarce drugs with generics³. Thus, further development of IP commercialisation and emphasis on it as an economic category will make IP protection issues more significant.

It is important to point out that the issue of intellectual property protection, taking into account external circumstances, does not lose its relevance. Sanctions and counter-sanctions are inherently political in nature, whereas the development and enforcement of IPR should be viewed from an economic perspective. To this end, two directions for the development of IP can be identified: the active continuation of work in the field of IP with a focus on its importance, usefulness and economic benefits from its commercialisation for both the public and the state

¹ Courts in Russia have begun to take sanctions into account in intellectual property cases [Electronic resource] // RBC Business Information Space. – 2022. – Mode of access: <https://www.rbc.ru/society/11/03/2022/622b22289a7947d6c1ad9737>. – Date of access: 17.04.2022.

² Losev, S.S. Compulsory licences and access to medicines / S.S. Losev // Science and Innovations. – 2020. – №8. – P.58-64.

³ In St. Petersburg it was decided to replace deficit drugs with generics [Electronic resource] // Interfax Information Group. – 2022. – Mode of access: <https://www.interfax.ru/russia/831129>. – Date of access: 19.04.2022.

under sanctions. Another direction of work is focusing on the economic protection of IP by the customs authorities and the operational and investigative activities they carry out, in particular by the Operational Customs.

Thus, despite a number of sanctions affecting the field of intellectual property and the lack of motivation for foreign companies to continue the process of commercialisation of goods containing IPR, in Belarus and Russia intellectual property continues to gain in value as a result of its protection and commercialisation. In this regard, it seems promising at the state level to continue further work on improving the legal culture of the use of goods containing IP among the population, including by ensuring the effective work of customs authorities. In the perspective of sanctions being lifted in the future, it will contribute to the resumption and strengthening of the integration of the Republic of Belarus into the world economy.
