



PARALLEL IMPORTS AS A SPHERE OF CONFLICT BETWEEN THE INTERESTS OF CONSUMERS AND RIGHT HOLDERS

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Abstract

Parallel imports refer to the circulation of original (non-counterfeit) goods outside official distribution channels. The legal sensitivity of this phenomenon is associated with the doctrine of exhaustion of trademark rights: after a product has been lawfully placed on the market, the right holder, to a certain extent, loses the ability to control the дальнейшее distribution of a particular copy of the goods. The article analyses the current legal regulation of parallel imports in the Republic of Uzbekistan, as well as international approaches to this issue, including the provisions of the TRIPS Agreement and the materials of the World Intellectual Property Organization (WIPO).

Keywords: Parallel imports, exhaustion of rights, trademark, competition, consumer protection, abuse of rights, Republic of Uzbekistan, TRIPS.

Introduction

Parallel imports, as a form of circulation of genuine goods outside official distribution channels, occupy a special place at the intersection of intellectual property regulation and competition policy. Their legal nature is rooted in the doctrine of exhaustion of exclusive rights, under which—after a product has been lawfully placed on the market—the right holder, within certain limits, loses the ability to control the further distribution of a particular item.



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At the same time, parallel imports inevitably create a conflict of interests among the key market participants. On the one hand, consumers' interests are associated with a broader choice, lower prices, and improved access to goods. On the other hand, right holders and authorized distributors seek to preserve control over distribution channels, maintain investment models, ensure product quality, and protect the business reputation embodied in the trademark.

The legal complexity of parallel imports lies in the fact that the object of dispute is usually not counterfeit goods, but original products placed on the market with the consent of the right holder and later sold outside agreed territorial and contractual frameworks. In such circumstances, the exhaustion principle evolves from a technical rule of intellectual property law into an instrument for reallocating market power.

As a result, a fundamental practical question arises: does restricting parallel imports genuinely protect the functions of the trademark and consumer interests, or is it in fact used as a means of maintaining territorial monopoly and price segmentation in markets?

This article aims to analyze parallel imports as a field where private and public interests collide, to identify the limits of permissible enforcement of exclusive rights, and to substantiate the need for more precise calibration of the exhaustion mechanism in order to strike a balance between IP protection, competition development, and consumer welfare.

This is precisely where the interests of consumers and right holders intersect. On the one hand, there is the protection of intellectual property (brand reputation, quality, investments, service). On the other hand, there is the protection of market monopoly (control over prices and channels, "closing" the market to parallel supplies).

The key rule is Article 1107¹ of the Civil Code of the Republic of Uzbekistan: the use of a trademark by other persons is not an infringement if the goods were lawfully placed into civil circulation by the right holder itself or with its consent.¹

¹ Civil Code of the Republic of Uzbekistan (Article 1107¹ "Exhaustion of the Exclusive Right to a Trademark") — National Legislation Database (Lex.uz). <https://lex.uz/docs/180550?twolang=1&utm>



A similar formula is found in the Law of the Republic of Uzbekistan “On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods” (the current versions on Lex.uz reflect the same logic: “placed on the market by the right holder or with its consent”).²

It is important to emphasize that the phrase “placed into civil circulation...” is essentially a statutory implementation of the exhaustion model. However, without special clarifications (the territory of first marketing, “legitimate reasons” to prohibit further marketing, and the specifics of sensitive product categories), disputes inevitably shift to courts and administrative discretion.

At the WTO/TRIPS level, Article 6 of TRIPS effectively removes the exhaustion issue from TRIPS dispute settlement: states themselves choose a national/regional/international exhaustion regime. WIPO, in its surveys on exhaustion, explicitly describes the three basic regimes and confirms that there is no single international standard; it also highlights risks associated with parallel imports stemming from differences in packaging, warranty, and distribution channels.³

The conclusion for Uzbekistan is that the legislator enjoys broad discretion in shaping the rule—provided that the regulation is proportional, predictable, and does not become a cover for anti-competitive practices.

As a rule, the right holder does not dispute that the goods are “genuine.” The right holder disputes that:

- it does not control the conditions of sale (storage, transportation, shelf life/expiry);
- reputational losses are shifted to it if the consumer encounters problems;
- the market investment model (marketing, training, service network) is undermined if anyone can “import cheaper” without bearing those costs.

² Law of the Republic of Uzbekistan “On Trademarks, Service Marks and Appellations of Origin of Goods” — Lex.uz (current versions). <https://lex.uz/uz/docs/6936>

³ Standing Committee on the Law of Patents Thirty-Second Session Geneva, September 26 to 30, 2022 DRAFT REFERENCE DOCUMENT ON THE EXCEPTION REGARDING THE EXHAUSTION OF PATENT RIGHTS https://www.wipo.int/edocs/mdocs/mdocs/en/scp_34/scp_34_3.pdf?utm_



WIPO's applied materials on trademarks directly link parallel imports to the exhaustion doctrine and indicate that the issue strongly depends on the national approach and may involve warranty, packaging, and channels.⁴

A major concern arises when a trademark is used not as a means of identification and consumer protection against confusion, but as a tool to preserve price discrimination, protect an exclusive importer from competition, or block "grey," yet genuine goods without demonstrating actual harm.

Conversely, a fully "open" parallel import regime without safeguards may weaken consumer protection in sensitive categories (medicines, medical devices, safety-critical goods).

This is why developed legal systems often rely on a construction whereby exhaustion operates as a general rule, but the right holder may object on the basis of legitimate reasons (for example, deterioration of the goods, changes to packaging, or a risk of misleading consumers). In the EU, the debate is particularly visible in pharmaceuticals (repackaging/relabelling), where courts have developed a set of conditions for lawful conduct by the importer (the well-known "BMS conditions" from the Bristol-Myers Squibb line of cases).⁵

In this connection, it is recommended to introduce into the Civil Code of Uzbekistan a special provision on exceptions to trademark exhaustion. The exhaustion principle should not apply to:

- goods that have been substantially modified or improved after first being placed on the market;
- goods that pose risks to health and safety (including medicines and medical devices) where there is no evidence of compliance with national requirements;
- goods for which the right holder has documented evidence of bilateral or regional agreements on market allocation.

⁴ Making a Mark An Introduction to Trademarks for Small and Medium-sized Enterprises Intellectual Property for Business Series Number 1 <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-900-1-en-making-a-mark-an-introduction-to-trademarks-for-small-and-medium-sized-enterprises.pdf?utm>

⁵ OPINION OF ADVOCATE GENERAL JACOBS delivered on 19 November 1998 (1) Case C-379/97

Upjohn SA, Danmark vs Paranova A/S

<https://infocuria.curia.europa.eu/tabs/redirect/juris/document/document.jsf?cid=540877&dir=&docid=44215&doclang=en&mode=req&occ=first&pageIndex=0&part=1&text=&utm>



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Introducing a dedicated Civil Code article establishing exceptions to the trademark exhaustion principle is necessary for the following reasons.

First, the current exhaustion principle in its general form does not allow for meaningful differentiation between product categories and the nature of risks associated with their circulation. The same legal regime applies to ordinary consumer goods and to medicines, medical devices, and technically complex products, which can threaten public health and safety.

Second, the absence of exceptions deprives right holders and the state of effective tools for response where, after first marketing, the goods have been substantially altered, modernized, or refurbished—potentially affecting their quality, functional characteristics, and the reputation of the trademark.

Third, codified exceptions would help distinguish good-faith parallel imports from cases involving abuse of the exhaustion principle. This would increase legal certainty for importers, customs authorities, and courts, and reduce the risk of arbitrary enforcement of trademark protection measures.

Fourth, introducing exceptions would better balance IP protection, public interests, and competition development. Exhaustion would remain the general rule, while restrictions would apply only in clearly defined and legally justified cases.

As a result, these changes would improve the quality of enforcement, protect consumer health and safety, prevent abuses of exclusive rights, and create a more stable and predictable model for regulating parallel imports.

The exception for health- and safety-sensitive goods functions as a regulatory safeguard: parallel imports remain possible, but only with proof of compliance with national requirements. This is consistent with the logic of WTO/WIPO: states are free to choose the exhaustion regime and introduce sectoral or situational rules. If goods have been materially altered after first marketing, the dispute is no longer primarily about the distribution channel, but about whether the brand's guarantee function is preserved. The exception enables the right holder to prevent scenarios where, under its mark, a materially "different" product is circulated while the consumer perceives it as the original.



From a competition perspective (and to maintain the credibility of reforms), it is essential that a “market allocation agreement”»⁶ does not automatically become a basis to restrict parallel imports: in a number of jurisdictions, such agreements can be viewed as anti-competitive.

At the same time, Uzbekistan has its own competition regulation (including the updated Law “On Competition”). For the norm to operate as a true balancing mechanism, legal systems typically add:

Burden of proof on the right holder (if it seeks to restrict circulation after exhaustion, it must prove the “legitimate reason”);

Proportionality of measures (if the risk can be mitigated through labelling, instructions, or proof of compliance, an import ban should not be the first and only response);

Separation of “channel ≠ quality”: the mere fact that a channel is “unauthorized” should not automatically mean an infringement.

Parallel imports thus inevitably sit at the junction of private-law brand protection and the public goals of competition and consumer welfare. The current Civil Code rule on trademark exhaustion sets a general principle. International law (TRIPS) leaves states free to choose the exhaustion regime, allowing Uzbekistan to calibrate the balance in a targeted manner.

Accordingly, codifying exceptions to exhaustion in the Civil Code may produce three key effects:

protection of consumers where risks are real (health/safety; critical labelling and compliance);

protection of the trademark’s functions (where goods are altered or no longer meet brand-based expectations);

predictability and reduced abuse (the right holder cannot automatically block genuine goods solely due to the channel yet can respond to proven risks).

As a result, such changes would improve the quality of enforcement, ensure the protection of consumer health and safety, prevent abuses of exclusive rights, and

⁶ Law of the Republic of Uzbekistan “On Competition” (current versions/updates 2023) — Lex.uz.
https://lex.uz/ru/docs/6518383?utm_source



establish a more stable and predictable framework for regulating parallel imports.

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