International Trademark

Association Position Paper

On

Parallel Imports

August 2015

International Trademarks Association

Position Paper

on

Parallel Imports

Defining Terms

"Trademarks"

Any word, name, symbol, or device, or any combination thereof, used to identify the goods of one party and distinguish them from the goods of other parties, and to indicate the source of the goods. Often used interchangeably with "mark" to identify either a trademark or a service mark.

"Parallel Imports"

Refers to goods put on the market abroad by the owner or with the consent of the owner of the applicable intellectual property rights – copyright, patent or trademark – that are subsequently imported into the domestic market without consent of the owner of the right(s).

The terms "parallel imports" and "gray market goods" are often used synonymously; however, in some jurisdictions, the term "gray market goods" may be used to refer to goods sold outside of authorized trade channels rather than outside of authorized geographic regions. To avoid any ambiguity, only the term "parallel imports" will be used in this Position Paper.

The debate over parallel imports focuses on the extent to which a trademark owner should be able to maintain control over its own brands by using its trademark rights in a country (or a region) to restrict the importation of goods into that country (or region) after the goods have been put on the market somewhere else by the trademark owner, or with its consent, or by another person (whether or not related to the owner) who owns rights in the jurisdiction where the goods originated.

"National (or Regional) Exhaustion of Rights"

"National Exhaustion" is the principle that, once goods in relation to which the trademark is used have been put on the market in a particular country by a trademark owner or with its consent, a trademark owner has only "exhausted" its trademark rights in relation to those goods in that particular country. If the same goods are subsequently sold in another country, the trademark owner can rely on its trademark rights in that other country to prevent the further sale of the goods (absent consent to such subsequent sale). In some areas of the world, particularly the

European Economic Area ("EEA"), this concept applies regionally (that is, across a group of countries which form part of a single trading area).

"International (or Global) Exhaustion of Rights"
"International Exhaustion" is the principle that, once goods in relation to which the trademark is used have been put on the market by a trademark owner or with its consent somewhere in the world, the trademark owner has exhausted its trademark rights in relation to those goods everywhere in the world.

"Material Differences" Approaches
Some countries will exclude parallel imports only if they are materially different than the goods that the trademark owner has authorized to be put on the market in that country. This is referred to as a "material differences" approach. Countries employing a material differences approach may differ in what they consider to be material, and may impose additional rules or restrictions as discussed further below.

Background

The important role played by trademarks in assisting consumers and businesses is summarized below.

Consumer perspective
Throughout the world, trademarks serve to assist consumers in identifying the specific product they are looking for and may have already purchased for years, and/or in finding a branded product that is intended to deliver a certain level of quality, service and consumer satisfaction, which is backed up by a reputable manufacturer and local distributor and appropriate warranties. Safety issues may also play a role in a consumer's decision to acquire the respective product.

Consumers around the world have specific wishes and needs based on cultural, language, environmental and other market conditions in their territory. Trademark owners design their products, packaging, sales and distribution networks to meet such specific wishes and needs.

Business perspective
Businesses wish to assist the consumer in identifying the sought-after product, quality and satisfaction, as it also benefits the business by encouraging repeat purchases, as well as new purchases from consumers who become familiar with the trademark. Well-designed products that are of consistent quality generate goodwill, and goodwill enhances the value of the trademark, which in turn typically generates more sales and supports additional research,

marketing and product innovation. Ultimately, in a free competition market, a trademark allows a business to differentiate itself from competitors and other market players.

Legal perspective

Consumers ought to be protected against being confused or deceived into purchasing a product which is not the product they intended to purchase. Confusion or deception can arise in many ways, as described further below. Businesses ought to be protected against the violation of their intellectual property rights, and in particular, from the potential damage that parallel imports may cause to their trademark's goodwill.

Given the nature of trademarks, it is apparent that goodwill can be built up differently in each country in which the trademark is used. For this reason, it is inherently illogical to say that the goodwill is "exhausted" in every country once the trademark has been used in just one country.

Parallel imports

Parallel importers typically acquire goods in one country or region, and then import them into another country or region and ignore that products are often designed to meet specific tastes, needs, environmental, cultural, language, and other market conditions in a specific country or region.

Pricing

Against this backdrop it can be no surprise that there is usually no such thing as one price for each product worldwide. In fact, pricing around the world may differ for a number of business reasons such as different design features and/or characteristics, different market conditions, increased costs of production or distribution given the size of the local market, etc.

The business model used by parallel importers typically focuses on one thing only: acquiring goods in one jurisdiction for one price and selling them in another jurisdiction for a higher price; and parallel importers can do this without being burdened by any of the overhead costs incurred by the trademark owner or its authorized distribution channel(s). For instance, the parallel importation business model does not require parallel importers to assist consumers in acquiring the actual product they are looking for (i.e. the one designed for the jurisdiction in which they live), or to maintain the goodwill associated with the trademark, or to invest in product research and development, or to offer the warranties, guarantees, after sales service and product information that are supplied by the trademark owner and its authorized distribution channel.

Why are Parallel Imports a Problem?

Parallel imports are problematic for both trademark owners and consumers for a number of different reasons. For trademark owners, parallel imports often lead to an inability to control the quality of their goods. Often products may be tailored to the specific tastes and needs of a particular market. If goods intended for foreign consumers are sold without authorization in another market, the trademark owner loses the ability to ensure that consumers are receiving goods designed for their consumer preferences and needs and potentially to satisfy governmental regulations.

In addition, packaging, manuals and instructions may be in a foreign language, and may lack domestic telephone numbers and other contact details for customer support. In the case of electronic goods, issues may arise with goods manufactured for use in countries with different electrical standards. Products may emanate from a country with different environmental protection laws or waste packaging laws, or may be formulated for conditions that exist in some countries but not others, such as hard water or tropical weather.

Consumers who buy parallel imports may not be able to use or enjoy these unauthorized products because of these differences, and may also be left without recourse. Such differences are often material to the purchasing decision, and lead to confusion over whether the products are authorized by the trademark owner. This likelihood of confusion leads to disappointment and can have a real economic impact.

Both trademark owners and consumers may suffer financially as a result of parallel imports. Consumers may find they have wasted money on differently formulated products that do not meet their expectations based on their past experience with the similar product formulated for sale where they live. Additionally, equipment produced for other markets may not carry a valid manufacturer's warranty in the jurisdiction where it is purchased, and may not be serviced as readily as products manufactured for that jurisdiction. Moreover, trademark owners may find their relationships and contractual obligations for distribution of their goods in each jurisdiction to be harmed by the sale of parallel imports, and the loss of sales by these distributors can impact on future research and product innovation.

The Current Position Worldwide

There is currently no international treaty or consensus dictating a standard of national (or regional) exhaustion, or international exhaustion. The Paris Convention does not address the issue. The agreement on Trade Related Aspects of Intellectual Property (TRIPs) is deliberately neutral on the subject. Article 6 of TRIPs reads:

"*For the purposes of dispute settlement under this Agreement … nothing in this Agreement may be used to address the issue of the exhaustion of intellectual property rights*".

A review of the laws of many countries throughout the world by INTA's Parallel Imports Committee found that as of 2014 a majority favored international exhaustion**.**

Asia Pacific Position

With respect to Asia Pacific, various countries, including China, South Korea, Singapore, Japan, Hong Kong, Taiwan, Australia, New Zealand, South Africa, allow parallel imports with some limitations, e.g. provided that there is no misrepresentation as to the origin, quality or purpose of the products, the products themselves have not been altered, modified or damaged, or that the trade mark has been applied with the consent of the trade mark owner etc. In India, the question of whether its trademark law adopts the principal of international or national exhaustion is pending adjudication before the Supreme Court at the time of writing this paper.

Europe

Most of the European states are members of the European Union (or of the European Economic Area including, apart from EU, also Norway, Iceland and Liechtenstein) and consequently they adopted the rule of regional exhaustion set forth in the legal acts of the EU. This rule means that the trademark owner can't object against further trade in goods with the trademark which were introduced to the market of European Economic Area by the trademark owner or with its consent. It is a necessary condition for the functioning of the internal market founded on the rule of free movement of goods.

The EU also applies a form of material differences approach with respect to movement of goods within the EU. More specifically, within the EU, material differences may amount to "legitimate reasons" enabling a trademark owner to prohibit the movement of goods between member states in case they amount to risk to public health or public order, provided that such differences have not been introduced specifically so as to carve up the market; but it is not necessary for a trademark owner to show the presence of material differences in order to prevent the entry of branded goods into the EU from elsewhere in the world. Subject to the issue of consent (discussed below), a strict rule of regional exhaustion is applied.

Among the remaining European states there are different approaches to the rule of exhaustion. Some of the states adopted the rule of international exhaustion, such as Switzerland, Serbia, Bosnia and Herzegovina. The remaining states adopted a rule of national exhaustion, including Russia (following modification resulting from regional exhaustion in relations with Kazakhstan and Belarus), Turkey and Ukraine.

Egypt/United Arab Emirates

Other countries such as Egypt and the United Arab Emirates, adopt the principal of international exhaustion without limitation.

Latin America

Various countries in Latin America, including the Andean Community region (Peru, Ecuador, Colombia, Bolivia), Mexico, Paraguay, Uruguay, Argentina, Chile, Costa Rica, Salvador, Guatemala and Netherlands Antilles, allow parallel imports with some limitations, such as provided that the products have not been altered, modified or damaged, the products have paid taxes, the products have health registrations, etc. Other countries such as Anguilla, Aruba, Bermuda, Haiti, Jamaica, Cayman Islands, Guyana, Trinidad and Tobago and Venezuela do not regulate parallel imports. Although Mercosur's[1] regulations include a provision that could be interpreted as sustaining the principle of international exhaustion, one of its Member States, Brazil, expressly establishes the national exhaustion of rights, with some exceptions.

North America

The United States and Canada each apply a material differences approach, although they differ greatly in what they consider to be material.

US courts prohibit parallel imports of goods affiliated with the trademark owner if they are materially different from those marketed in the US. Material differences may relate to, for example, formulation, fragrance, color, calories, lot code removal, size, fill volume, packaging, language, warranties, guarantees, labeling, instructions and the inability to control the quality of the goods as they travel through the distribution chain (in cases where the trademark owner in fact does so). US Customs and Border Protection ("CBP") will exclude parallel imports upon the advance filing and approval of a specialized application if the differences are physical and material. This is called the *Lever* rule protection and is available to the owner of a trademark that is registered with the USPTO and recorded with CBP, even if the owner is a foreign company or the owner is a US company and the foreign goods are manufactured by a corporate affiliate. *Lever* rule protection is also available to a trademark owner who has recorded its trade name with CBP, provided that the trade name is displayed on the parallel imports. The importer may comply with the *Lever* rule, however, by affixing a certain disclaimer to the goods which allows for their importation.

[1] Mercosur is a sub-regional bloc comprising Argentina, Brazil, Paraguay, Uruguay and Venezuela. Its associate countries are Chile, Bolivia, Colombia, Ecuador and Peru, and its observer countries are New Zealand and Mexico.

In Canada, the trademark owner may also be able to stop parallel imports if they are materially different from those marketed in Canada, but the standard of materiality of physical and other differences is much higher than in the US: only those physical and other differences that are likely to cause a health risk to consumers or the public good would likely be sufficient to enable the trademark owner to object to parallel importation.

INTA's Position

INTA's position is that consumers should not be confused or misled when seeking to purchase trademarked products. Further, consumers' expectations as to product quality and satisfaction should not be undermined by parallel imports anywhere in the world.

As a consequence INTA:

- Disapproves of parallel imports, except between countries that are in recognized regions with truly harmonized markets;
- Approves of "national exhaustion" or, in appropriate cases, "regional exhaustion" of rights;
- Disapproves of "international (or global) exhaustion" of rights, except in circumstances where the trademark owner has positively consented to the importation of goods bearing its trademarks. Such consent will usually be express, but may be implied from circumstances that unequivocally demonstrate that the trademark owner has renounced any intention to enforce its rights;
- Advocates that in those countries that currently follow international exhaustion, and in which political or other conditions make it infeasible to move to national exhaustion, at the very least a "material differences" standard should be adopted in order to exclude parallel imports that are materially different than their authorized domestic counterparts.
- Advocates that, in disputes concerning parallel imports, it should be for the parallel importer or subsequent trader alleging consent to prove it and not for the trademark owner to demonstrate its absence.

INTA believes that this position is in the best interests of consumers, trademark owners, and the general public, as it helps ensure for orderly markets in which consumers are given the ability to distinguish products and can have confidence in the products they are buying, and in the fact that the trademark owners stand behind the products in their jurisdiction. In short, INTA believes that national (or regional) exhaustion of rights provides the most benefit to consumers, is beneficial to innovation and encourages thriving trade.

The only benefit that parallel importers claim to provide is lower prices. As discussed further below, research shows that parallel importers will sell their goods at the highest prices they can command to maximize their profit, and that there is often little to no difference in the price between the parallel imports and authorized goods. Even when there is a material price difference, there are usually other "costs" to consumers that, if known, would impact significantly on the purchasing decision and cause harm to consumers. These other costs include, but are not limited to, potential differences in product formulations or features, potential health and safety risks, and potential absence of warranty or after-sales services.

In order to ensure orderly markets and consumer protection, INTA notes that the material differences approach is a useful first step for those jurisdictions that have yet to adopt a national or regional exhaustion approach. A material differences approach may be adopted by incorporating in their laws on consumer protection and intellectual property at least the following provisions, which should apply to all parallel importers:

- Prohibiting trade where the goods originate from an entity which is not owned or controlled by the trademark owner, unless the entity obtained the trademark owner's express consent to trade in the goods;
- Prohibiting trade where the goods are materially different from those traded under the same brand in the jurisdiction: material differences may include formulation, fragrance, color, calories, lot code removal, size, fill-volume, technical functions, packaging, language, guarantees, labeling, manuals, instructions and ability/inability to control the quality of the goods through the distribution chain (in cases where the trademark owner in fact does so); and
- Prohibiting trade where the parallel imports are offered alongside or otherwise entwined with counterfeit goods.

Support for INTA's Position

1. Consumer benefits in brands are undermined by parallel trade

Trademarks provide a number of important benefits for consumers and the general public. As noted above, trademarks identify the goods of one party and distinguish them from the goods of other parties, and indicate the source and quality of the goods. When making purchasing decisions, a consumer does not want to be misled or confused, which happens each time a consumer purchases a parallel import believing it is the same as the local authorized product (but sold at a lower price), or that it comes with the same warranty or the same after-sales service as the local authorized product.

Benefits to consumers arising from INTA's recommendations include:

- **Reassurance** that the branded product is reliable, of a certain quality;
- Receiving the expected quality and **satisfaction** from the purchase;

- **Confidence** that the branded product is the same as that purchased previously and is equally **suitable for their needs**;
- **Trust** in the quality or value which the brand signifies to them;
- In many cases, **convenience** of wide availability; and
- **Expectation** that the branded product will be backed by the trademark owner with quality guarantees or after sales service.

2. Trademark owners' investment in brands is threatened

Trademark owners invest in the promotion, development and protection of their brands in order to attract consumers with the benefits described above. In the same way, they invest in R&D and maintenance of quality on their products which are marketed under the trademark.

After trademark owners have built, with this investment, a valuable brand with good consumer association, they are encouraged to expand into new markets which may not otherwise be serviced, including R&D into the best product formulations or specifications for the new market. Brand extension into new products also receives investment, to the benefit of consumers.

If the return on this investment is undermined by parallel imports, the investment will inevitably fall away, leaving:

- Less choice and availability for consumers;
- Less R&D for new products and a consequential slow-down in innovation;
- Less customization of products to satisfy/answer specific market demands and preferences;
- Less expansion into new geographic markets (especially those where global exhaustion prevails); and
- Less trade and its associated benefits.

3. The economic analysis favors national (or regional) exhaustion

It is a common misconception that parallel imports are always cheaper for consumers than the goods marketed directly by the trademark owner. Research shows this to be an over-simplification.

A. Parallel traders do not aim to deliver consistent quality and satisfaction to the consumers. Parallel traders will sell the goods at the highest market prices they can command. Their aim is to maximize their profit, not altruistically benefit consumers. Studies indicate that the average decrease in price for consumers for parallel imported goods globally is from 0% to 2%. Further, parallel imports which may initially be marketed at a lower price are often used only as a "carrot" to attract customers and prices soon rise.

B. Tax variations between countries can obscure the true price differential. Legitimately traded goods are subject to payment of local taxes and duties (such as VAT or GST levied in many countries and regions including Latin America, Asia Pacific, Europe, Canada, and Australia and in some countries the copyright levies). Parallel imported goods (especially those marketed in small quantities on the internet) may avoid the payment of such taxes. This skews the price comparison, and from a public policy perspective, the avoidance of taxes should not be permitted.

C. Trademark owners' pricing reflects their past and future investment. Trademark owners' pricing must necessarily reflect the investment which has been made in R&D, marketing and distribution (all benefits for the consumer), not just the base price of manufacturing the product. Parallel importers do not need to reflect such investments. They "free ride" on the trademark owners' investment. Trademark owners may choose – or indeed be forced – to retreat from a market if they cannot recoup the investment cost of producing their product; and/or they may be discouraged from investing in new products, to the detriment of consumers.

D. Local distributors and resellers of the trademark owner may also be adversely affected. Their investments – for the benefit of consumers – in local marketing, information and provision of after-sales service or warranties are undermined by parallel importers who made no similar investment and who provide no service to consumers.

E. A low pricing and service policy in a developing country may be aimed at benefiting a particular disadvantaged group of consumer or section of society, such as the supply of drugs to regions of Africa at special low prices and a specifically designed service. If pharmaceutical companies repeatedly find such drugs being diverted and imported into more developed countries which do not have such a significant health problem, they will be discouraged from maintaining an ethical low pricing strategy and service policy in countries that need it.

4. Packaging, quality, suitability and environmental issues

Parallel importers often alter the packaging of goods, or import and sell goods intended for another market which uses different packaging. Contrary to the obvious consumer interest in health and safety, parallel importers also frequently remove tracking codes (which allow goods to be traced more easily in the case of product recall, for example); or over-sticker information as to product expiry, origin, ingredients and other mandated information. In the case of food, pharmaceuticals, cosmetics and other product this raises obvious health and safety concerns, and is often in violation of consumer packaging legislation.

The promise and composition of trademarked products frequently vary from region to region, and many differences are not price-related but rather preference-related. For instance, in the case of foods and cosmetics, not all product formulations suit all markets or consumer preferences. In addition, delays in delivery of parallel imported goods (old stock, or long and inefficient distribution channels) can erode the quality of the original product, which again raises potentially serious health and safety issues, not to mention serious harm to the trademark owner arising from consumers who are dissatisfied with the product and/or unhappy that the product does not comply with certain regulations (e.g. environmental).

Some examples include the following:

- Lack of regulatory or marketing approval for sale of the relevant product in the import country, e.g. sanitary regulations in South America;
- Unworkable consumer helpline or consumer care-line phone number(s) in the import country;
- Fundamental formulation or recipe variations according to consumer or cultural tastes - an example is abrasives in toothpaste - silica, calcium carbonate or bicarbonate of soda which are very regionally specific and don't sell well or at all "out of region", thereby misleading consumers and damaging brand confidence; another example is bromide in bread, which is permitted in some countries but not in others (for example, Peru);
- The same risk could be applied to any food products under international brands where the recipes used will always vary according to local culinary norms;
- The taste of many products can vary depending upon the market for which they are intended – for example, top selling European brands of toothpaste in Indonesia taste of cloves, not mint. Trademark owners research local flavor preferences and tailor their product accordingly;
- Face cream formulated for the humidity of the tropics is inappropriate for the northern European consumer;
- A DVD player purchased in the US will not play DVDs sold in the UK or Australia;
- Motor lubrication oils are radically different for the Middle East and Scandinavia;
- Excessive heat while shipping can ruin the taste and fizz of soft drinks;
- Parallel imported products may enter a country from a jurisdiction with different environmental protection laws or packaging waste laws that do not meet the needs of the country of import;
- Personal care or cleaning products sold for use in some countries are formulated to meet hard water conditions which do not exist in other countries.
- Fake pharmaceutical products are part of parallel imported shipments.

5. Consumer unhappiness/dissatisfaction

As noted above, trademark owners work hard to build up an expectation of quality and value in their products. These include not only the quality of the product itself but the quality of the sales channel and purchase experience and the quality of the warranty and after-sales services. If these expectations are not met, consumers who expect such quality become dissatisfied. These expectations cannot be met in the case of parallel imports when there is:

- No after sales service;
- No warranty or guarantee honored;
- Incomplete or missing product information or instructions;
- Differences in the quality or formulation of the product since it was intended for another jurisdiction;
- A foreign language on the packaging, instruction or manuals that cannot be read by the consumer;
- Packaging that makes (or omits) claims as to reusability, recyclability, etc. which are inaccurate;
- Information that is relevant to diabetes or allergy sufferers or other relevant health information that is omitted (e.g. because it was not required in the originating country);
- Pharmaceuticals that may not comply with local requirements and may endanger consumer health;
- Pharmaceuticals that may become dangerous if and when the cooling (i.e. climate control) chain is broken;
- Packaging for pet medicine that bears incorrect directions for the climate conditions in the country of import.

In addition, there is the potential for significant health issues if medicine or beverages do not meet local governmental requirements, emergency telephone numbers on the packaging for medicine are missing or inaccurate, directions are inapplicable, or the product is stale or otherwise rendered ineffective

6. An easy road for counterfeiters

There is evidence that parallel imports are sometimes mixed or entwined with counterfeit goods. Cases are not often publicly reported, however, since businesses that are 'caught' selling counterfeit goods often claim that they thought they had got a "good deal" on some parallel imports, and they typically reach a confidential settlement with the trademark owner to avoid the public embarrassment of being associated with the sale of counterfeit goods.

Counterfeits are also a serious scourge on global trade and consumer safety and protection, and huge amounts of money as well as other resources are invested by trademark owners and governments to fight the problem. There is also evidence suggesting that proceeds from counterfeit sales fund organized crime. Recently fake pharmaceuticals seem to have been part of a parallel import shipments. The European Medicines Agency (EMA) and the German Health Authorities issued respective warnings concerning some oncological drugs.

On top of that, counterfeits are linked to tax evasion as counterfeiters do not pay taxes and therefore governments are also incurring significant losses due to tax evasion which will indirectly impact the general welfare of the society and in particular the consumers.

The international exhaustion principle has the unfortunate effect of facilitating the sale of counterfeit goods, since it would be prohibitively expensive for governments and trademark owners to investigate each shipment of parallel imports, to determine if that shipment also includes counterfeit goods. Accordingly, any public interest that may exist in permitting the "free trade" in parallel imports needs to be weighed against the clear public interest in preventing the sale of counterfeit goods. Further, any legal regime that facilitates the sale of counterfeit goods should be discouraged.

7. Global trade should be encouraged and nurtured with appropriate regulation

Global exhaustion – where goods travel freely everywhere – is a worthwhile goal which may be possible (indeed even preferred) if and when the world has global mechanisms to protect consumers and trademark owners, including:

- Global market access for all;
- Global regulations;
- Global consumer protection;
- Global environmental protection; and
- Global enforcement of IP rights.

Until then, the unregulated adoption of the international exhaustion principle allows unscrupulous parallel importers to thrive, puts consumers at risk, harms trademark owners and discourages R&D, product innovation, and trade.

Burden of Proof

In order for a parallel importer to defend an allegation of trademark infringement by a trademark owner in jurisdictions where national or regional exhaustion applies, it has to be proven that the trademark owner consented to the importation of the branded goods. This raises two potentially contentious legal and procedural issues:

1. Which party has the burden of proving consent; and
2. What constitutes "consent"?

INTA favors the view that the parallel importer, who is alleging "consent", should bear the burden of proving consent. Moreover, the parallel importer must establish that the consent was clear and unequivocal. This is the position that has been reached in the EU after considerable legal debate and judicial analysis, and it also accords with the position in many countries where the grant of a license by the owner of an intellectual property right is to be interpreted restrictively, in favor of the rights owner.

It is the view of INTA that it is manifestly unreasonable to create a presumption that a trademark owner has consented to parallel importation of its goods, or to rely on national contractual or other doctrines of implied or indirect consent. In fact, it is reasonable to create a presumption that a trademark owner has not consented.

This presumption could be open to rebuttal by the importer proving either that the trademark owner has expressly approved the importation in question, or that there are circumstances which unequivocally demonstrate that the trademark owner has renounced any intention to enforce its trademark. Any such renouncement or waiver should be shown to be unequivocal, and not merely by implication, that is, by putting the goods in commerce anywhere in the world. Such a rule is more in line with the realities of global trade in today's marketplace.

Conclusion

Parallel importers should not be permitted to mislead or confuse consumers and undermine their expectations with respect to the quality and suitability of the products they purchase. In no way is such confusion in the public interest.

There is currently no international treaty or consensus dictating a standard of national (or regional) exhaustion or international exhaustion. Most countries appear to favor international exhaustion. For the reasons discussed herein, INTA advocates the adoption of national (or regional) exhaustion, which provides clear benefits to consumers as well as protection for the investments made by trademark owners and their distributors in each jurisdiction.

INTA recognizes that there is amongst the public generally, and in many governments and legislatures, a negative attitude towards the principle of national (or regional) exhaustion, in the largely mistaken belief that parallel imports are of significant benefit to consumers. In this Position Paper, INTA hopes to have dispelled this misconception and point out that the principle of national (or regional) exhaustion brings significantly more benefits to consumers, trademark owners and local distributors, as well as continued R&D, marketing investments and trade throughout the world. However, in those countries that currently follow international exhaustion, and in which political or other conditions make it infeasible to move to national exhaustion, at the very least a "material differences" standard should be adopted in order to exclude parallel imports that are materially different than their authorized domestic counterparts.

Research

In reaching the position set out in this Position Paper, the Parallel Imports Committee has considered the contents of a number of reports and studies in relation to parallel imports and trademark exhaustion, including those listed below:

- NERA Report for the EU Commission: "The Economic Consequences of the Choice of a Regime of Exhaustion in the Area of Trademarks", February 1999
- AIM Position Paper: "Parallel Trade – Consumer Benefit or Consumer Loss?", April 1999
- Max Planck Institute: "Parallel Imports and International Trade", June 1999
- European Commission: "Exhaustion of Trademark Rights – Working Document from the Commission Services", December 1999
- International Chamber of Commerce: "Exhaustion of Intellectual Property Rights", January 2000
- AIPPI Q.156: "International Exhaustion of Industrial Property Rights", March 2001
- OECD Joint Group on Trade and Competition: "Synthesis Report on Parallel Imports", June 2002
- Rob Pink, et al, The Grey Market, Full Survey Report, A KPMG Study in Cooperation with the Anti-Gray Market Alliance (2002)
- London School of Economics Special Research Paper: "The Economic Impact of Pharmaceutical Parallel Trade", January 2004
- Imperial College London, funded by the Economic and Social Research Council: "Intellectual Property Rights: Trading in Pharmaceuticals", March 2004
- Jen-Hung Huang, Bruce C.Y. Lee, and Shu Hsun Ho, Consumer Attitude Toward Gray Market Goods, 21 International Marketing Review 6, 598 (2004)
- National Intellectual Property Rights Coordination Center, Intellectual Property Violations: A Report on Threats to United States Interests at Home and Abroad (2011)