

AEB MEMORANDUM ON PARALLEL IMPORTS

In accordance with Clause 13 of Part 1 of Article 18 of Federal Law No. 46-FZ dated March 8, 2022 "On Amending Certain Legislative Acts of the Russian Federation," in 2022 the Government of the Russian Federation shall have the right to decide whether to make a list of products (or product groups) in respect of which certain provisions of the Civil Code of the Russian Federation on the protection of exclusive rights to intellectual property expressed through such products and the means of individualization with which such products are labeled may not apply. This provision actually partially legalizes parallel imports with respect to a certain product list.

In furtherance of this provision, Decree of the Government of the Russian Federation No. 506 dated March 29, 2022 "On Products (Product Groups) in Respect of Which Certain Provisions of the Civil Code of the Russian Federation on the Protection of Exclusive Rights to Intellectual Property Expressed in Such Products and the Means of Individualization with Which Such Products are Labeled May Not Apply" establishes that the Ministry of Industry and Trade of the Russian Federation shall, based on the proposals of the federal executive authorities, approve *the list of products (or product groups) to which the provisions of Subclause 6 of Article 1359 and Article 1487 of the Civil Code of the Russian Federation will not apply, provided that the said products (product groups) are put into circulation outside the territory of the Russian Federation by rights holders (patent holders), as well as with their consent (the "List")*.

Order of the Russian Ministry of Industry and Trade dated 19.04.2022 № 1532 approved the list of goods (groups of goods) in respect of which the parallel import is legalized, provided that these goods are put into circulation outside the Russian Federation by the right holders (patent holders), as well as with their consent (hereinafter - the List).

Thesis No. 1: In the long term, AEB is still against the legalization of parallel imports. At the same time the AEB understands the need for short-term measures taken by the Russian Government in connection with the current economic crisis.

For a considerable time, AEB has consistently stated its position that the liberalization of parallel imports will have negative consequences for the social and economic development of Russia, **which will remain relevant in the long term**. These include, in particular, the following risks:

- a decrease in the attractiveness of the Russian market (decrease in the volume of investments in the economy and the volume of legally supplied and manufactured products);
- the risk of unequal business conditions (rights holders invest a considerable amount of effort and money in promoting brands and products in the Russian market, while parallel importers simply use existing infrastructure);
- a slowdown in production localization on the part of rightsholders;
- an increase in the import of counterfeit products.

At the same time, the AEB expresses its understanding that the adoption in the current economic conditions of short-term measures on admission to the market of a number of goods without the consent of the rightsholders, while ensuring proper quality control of products, will contribute to the stabilization of the Russian market.

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Thesis No. 2: AEB's position on the temporary rules allowing for parallel imports

In this situation, the Russian government and the private sector face unprecedented challenges that require an emergency response. In this regard, we would like to note some of the most important aspects of this issue:

1. The measures currently being taken should be **temporary** in order to ensure the availability in the domestic market of the Russian Federation of only such products that are not imported under sanctions pressure, and the production of which has not been established or has been terminated/suspended in Russia.
2. The introduction of products into circulation is possible only in accordance with clearly established **criteria**. It is important to stipulate that parallel imports of products should not be allowed if any of the following criteria are met:
 - manufacturers have not stopped/suspended production in Russia and/or continue deliveries to the domestic Russian market;
 - the presence of importers authorized by a foreign rights holder in Russia.
3. If a company is unable to manufacture and/or supply products due to a lack of raw materials or packaging, for reasons beyond the company's control, such a company should be **given a certain period in which to resolve the situation**. Possible solutions:
 - establishing a reasonable period for resolving problems, during which this regulation will not apply;
 - establishing the possibility of maintaining priority if a similar (equivalent) product is being manufactured. To determine equivalence, the criteria contained in the laws on the contract system may be used. A product equivalent is an offer from a supplier to supply products with a trademark that differs from the brand specified in the documentation.
4. If a decision is made to allow parallel imports with respect to a certain product, it is important to provide a mechanism for its cancellation (including exclusion from the list of authorized products and **restoration** of the previous importation procedure if the rights holder provides evidence of the elimination of the grounds for permitting parallel imports). Besides, it is necessary to provide for the possibility of regular **review of the decision to allow parallel imports**.
5. Article 6 of the Law "On Protection of Consumer Rights" establishes the manufacturer's obligation to ensure the repair and maintenance of products, as well as the release and delivery to trade and repair organizations of spare parts in the amount and range necessary for the repair and maintenance during the period of production and after the end of production, during the service life of products.

Manufacturers of products imported by parallel importers may have no organization authorized by them (manufacturers) within the Russian Federation. In such cases, consumers will not have a real opportunity to exercise the rights provided for by the law to the repair and maintenance of products they have purchased due to the absence of an entity against which claims could be made. Besides, independent importers may import into Russia any products that are not intended by a foreign manufacturer for sale in the Russian market. In these cases, a foreign manufacturer (or its authorized organization) will have no actual opportunity to provide the repair and maintenance of such products due to the lack of necessary spare parts and/or consumables.

This problem is most relevant for products with long service lives (engineering, electronic, and other similar products).

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In view of the foregoing, it seems necessary to amend Article 6 of the Law "On Protection of Consumer Rights" in terms of defining the importer as an entity that must ensure the respect for consumer rights provided for in this article in relation to the repair and maintenance of imported products, in cases where a foreign manufacturer has no authorized organization in the Russian territory, as well as in relation to products imported by the manufacturer that are not intended by the manufacturer for sale in the Russian market (even if such manufacturer has an authorized organization in the territory of the Russian Federation).

6. In order to **combat the circulation of counterfeit (infringing) products**, as well as to verify the authenticity of imported products, it is necessary to stipulate that notice is to be sent to the rights holder when importing products registered in the Customs Intellectual Property Register (TROIS), and when importing products marked with trademarks entered in the register of trademarks of the Federal Service for Intellectual Property (Rospatent) as part of the *ex officio* procedure. We believe that notifying the rights holder, *without suspending the release period of such products*, of the importation of products containing intellectual property will allow, in the situation of legalization of parallel imports, to maintain a balance between the need to create alternative supply channels and the rights of parallel importers, on the one hand, and ensuring market protection against counterfeit products, on the other hand.

7. Please be informed that legislative changes aimed at legalizing parallel imports should not affect the current legislative rules on criminal, administrative and civil liability for the production/import, storage, distribution / offer for sale of products on which the rights holder's trademark is unlawfully placed / placed without the consent of the rights holder (counterfeit [infringing] products).

Thesis No. 3: AEB's position on the temporary rules allowing for parallel imports in relation to certain industries

Construction Equipment Committee position

In addition to the above-mentioned risks of the legalization of parallel imports, the importation of certain product groups, including agricultural, road construction, and special equipment may entail the risk of a safety breach during the operation of such equipment (due to the fact that it is a source of increased danger).

Moreover, as one of the consequences, we note the possibility of a decrease in the quality of maintenance service for such equipment (up to the impossibility of its implementation).

Taking into account the above-mentioned risks, we request that agricultural, road construction, and special equipment (self-propelled vehicles) not be included in the list of products allowed for parallel imports.

IT and Telecom Committee position

In addition to the risks of the legalization of parallel imports specified in this document, parallel imports of telecommunications equipment may entail both a decrease in the operational quality of communication networks in the Russian Federation and a decrease in the possibility of comprehensive maintenance for communication networks. These risks arise because with parallel imports:

- an equipment manufacturer, being a rights holder, will not be able to take responsibility for the quality of equipment functioning outside the contract territory, or to ensure compliance with the requirements of the warranty or any types of technical support;

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- an equipment manufacturer, being a rights holder, will not be able to provide support to ensure comprehensive certification of the equipment or the passing of the electromagnetic compatibility test;
- an equipment manufacturer, being a rights holder, will not provide users with access to license keys for managing technical capacity or functionality.
- The above provisions may result in the risk of unstable functioning of the critical information infrastructure of the Russian Federation.

Taking into account the above-mentioned risks, we request that telecommunications equipment for building mobile networks not be included in the list of products allowed for parallel imports.

Crop Protection Committee position

Thanks to the efforts of companies and the support of the Russian governmental authorities, the supply of chemical protection products to the Russian market has not been interrupted and continues, despite unprecedented transport and logistical obstacles and the pressure of external factors.

- CPPs are imported under Federal Law No. 109 dated July 19, 1997 "On the Safe Handling of Pesticides and Agrochemicals" and statutory legislation. The main documents required for the importation of a product are the Certificate of State Registration issued by the Ministry of Agriculture of Russia based on the results of state registration tests, the import license issued by the Ministry of Industry and Trade of Russia, the Declaration of Conformity, and others. The recipient/holder of the Certificate shall ensure the safe and effective use of the registered product.
- If parallel imports are legalized for CPPs, there will be a serious threat that the importer, not being a recipient/holder of the Certificate, will neither be able to ensure the safe and effective use of the imported product nor exclude risks to human health and the environment during its use.

In this regard, we believe that there are no grounds for accepting parallel imports of CPPs.

Health and Pharmaceuticals Committee position

The circulation of medicines in Russia is regulated by Federal Law No. 61-FZ dated April 12, 2010 "On the Circulation of Medicines" in terms of the requirements for their state registration, the introduction of medicines into civil circulation, quality control, pharmacovigilance, labeling, etc., which makes it possible to guarantee the effectiveness, safety, and quality of medicines for Russian patients.

- With the legalization of parallel imports, there is a risk that a component of this consistently built system will be weakened and could therefore potentially lead to the appearance of low-grade products on the market.
- Besides, due to the lack of clarity of the customs control mechanisms, if there are parallel imports (in particular, the ex officio rules), there will be an additional risk of mixing fake and/or counterfeit products among the original products, which in turn may also lead to damage to the health of patients.
- If there are parallel imports, the manufacturer will not be able to bear responsibility for the quality, efficacy, or safety of the medicine at any stage of circulation, since the medicine will automatically fall out of its control.
- To eliminate an inventory shortage of medicines, the appropriate temporary mechanisms have already been developed and applied, in particular, Decree of the Government of the Russian Federation No. 593 dated April 5, 2022 "On the Characteristics of Circulation of Medicines for Medical Use in the Event of an

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Inventory Shortage or the Risk of an Inventory Shortage in Connection with the Introduction of Restrictive Measures of an Economic Nature Against the Russian Federation."

- If, due to the need for extraordinary actions on the part of the Government of the Russian Federation, medicines are still considered for inclusion in the list in accordance with Decree No. 506 or are imported under Federal Law No. 64-FZ dated March 26, 2022 (import of registered medicines into Russia in foreign packages with a label in Russian), when making such decision, we propose to be guided solely by the criterion of an inventory shortage / risk of an inventory shortage of medicines and the impossibility of their supply by the manufacturer in accordance with existing legislation.

In view of the above risks, we request not to consider medicines for inclusion in the list of products for parallel imports.

Medical Devices Working Group position

Parallel imports of medical equipment, as well as consumables and spare parts for medical equipment, carry huge risks for the safety of medical personnel and patients and threaten to increase social tension in the country.

- In the absence of the ability of the manufacturer (rights holder) to fully control the supply of medical devices to the Russian Federation, a direct threat to the life and health of individuals arises:
 - the manufacturer will not be able to guarantee the quality or the maintenance (including warranty maintenance) of medical devices supplied as part of parallel imports;
 - the responsibility for the monitoring and corrective actions lies with the manufacturer's authorized representative (as a rule, the holder of the marketing authorization);
 - there is a high probability of importing medical devices that do not fully comply with the characteristics of similar medical devices that are registered by the manufacturer (rights holder) or its authorized representative in the Russian Federation in accordance with the requirements of Russian laws and the relevant registration documents for them;
 - the absence of an up-to-date IB database and, as a result, the impossibility of making mandatory modifications for the manufacturer.
- Compulsory restriction of products / creation of non-market preferences for manufacturers of medical equipment from other countries will be a demotivating factor for introducing innovative products to the Russian market. This may slow down the development and implementation of new methods of diagnostics and treatment, and subsequently lead to a decrease in the quality of medical care.

Due to the above risks, we request not to extend parallel imports to medical equipment, spare parts, consumables, or components for medical equipment.

Non-food FMCG Working Group position

Perfume and cosmetic products, household chemicals and hygiene products (disposable diapers, pads, wipes, etc.) are a special group of goods that can have a direct impact on human health. Most of the goods of these categories are subject to the procedure of conformity assessment by state registration before release into the market, and the manufacturer (a person authorized by the manufacturer) is responsible for the quality and safety of these products.

Perfume and cosmetic products (PCP) and household chemicals are a mixture of chemicals that are applied to or come into contact with the skin and mucosa. Hygienic products also come in contact with skin and mucous membranes when used. In order to prevent potential risks to the health of consumers for these

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groups of products, the legislation establishes strict requirements for product safety, precautions, requirements for the conditions of transportation and storage of products. In addition, the manufacturers of these product groups have their own strict internal requirements for the storage and transportation of products. The question of the possibility of compliance with all conditions ensuring the safety of products by parallel importers remains open, which jeopardizes the health of consumers and may cause damage to the business reputation of the manufacturer (rightsholder), to which consumers will direct their claims on product quality and safety.

At the moment, the perfume and cosmetics industry, manufacturers and importers of household chemicals and hygiene products are making significant efforts to maintain and expand the range, including by creating new designs to continue to supply the necessary products to the Russian market, to ensure the operation of enterprises and keep jobs. Parallel import will hinder these processes, as it creates unequal business conditions for manufacturing companies (rightsholders and authorized representatives of manufacturers, importers) and companies engaged in parallel import. In fact, companies engaged in parallel imports of perfumes, cosmetics, household chemicals and hygiene products will receive unjustified competitive advantages.

Parallel import of PCP, household chemicals and hygiene products increase the risk of counterfeit products entering the market. Counterfeit products are obviously unsafe for consumers and mislead them about the quality of products manufactured under well-known trademarks.

Thus, parallel imports may have negative consequences for consumer health, endangering the activities of companies that continue to operate in the Russian Federation, produce, import, and sell their products in the Russian market, export to EAEU member states, and create employment.

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