

**ASSOCIATION
OF EUROPEAN BUSINESSES**



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The position of the Association of European Businesses concerning parallel imports

The Association of European Businesses (AEB) considers it extremely important to express its position concerning the new initiative of the Russian Government to liberalize parallel imports, which was announced on April 12, 2013 during the meeting under the chairmanship of I.I. Shuvalov, first Deputy Chairman of the Government of the Russian Federation, which has been widely discussed on different levels.

The parallel imports issue is inseparably associated with the “exhaustion of rights” principle which means that after the marketing of particular marked goods by the rights holder himself or with his consent, the rights holder cannot later control (or prohibit) its further resale, as well as any other form of its commercial use. In Russia the, national exhaustion of rights principle is applied – the holder’s right is exhausted only after the goods are put into circulation within Russia. In addition, Russia, as a member of the Customs Union, ratified the Agreement on common regulatory principles in the security and protection of intellectual property rights which determine for member countries of the Customs Union a regional exhaustion of rights principle for a trademark. AEB favors the preservation of current legislation on the supranational and national levels. From the point of view of Denis Khabarov, a partner at law firm Baker and McKenzie, *“a change in legislative control, stipulating the transition from national/territorial exhaustion to international may have a negative impact on the mechanism of trademark protection in Russia. It also should be noted that the economic effect of such a step, based on the data from research carried out within similar discussions in the European Union and in Russia, at the very least, appears to be somewhat unobvious, especially in the long run. Obviously, this issue demands at least considerable additional developmental work.”*

AEB notes that to protect the rights holders’ interests, the international principle of exhaustion of rights was changed into a national principle in 2002. Reverting back to the international principle of exhaustion of rights eleven years later would cause a factor of instability in the legislation.

AEB stresses that almost everywhere parallel imports are not allowed unconditionally. Even in the USA, frequently referred to by supporters of parallel imports, there is no principle of exhaustion of rights in a pure form.

AEB points out that a liberalization of parallel imports will lead to negative consequences for the development of the Russian economy and for the further localization of manufacturing in Russia. Frank Schauff, AEB CEO, says: *“the largest investors in the Russian economy feature among the members of AEB, including manufacturers of cars and commercial vehicles, automobile component parts, home appliances, chemical products, pharmaceuticals and other companies with production facilities across Russia. Parallel imports will slow down the localization of foreign manufacturers’ production facilities in Russia and may result in a fall in investment appeal of the Russian market for investors.”*

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Even now significant economic losses of the government caused by “grey” production, including parallel imports themselves¹, are measured in billions of dollars. AEB predicts that, in the event of the liberalization of parallel imports, domestic industrial production will stop growing and even may begin to fall back, which will inevitably lead to a fall in jobs and payment of taxes and levies to the budget. Moreover, in the event of liberalization of parallel imports effective operation of these mechanisms of intellectual property rights protection will become impossible.

Aleksander Tynkovan, President of the company M.video, states that *“together with the government, market participants have created an effective mechanism for protecting trademarks over the last 5-6 years. Owing to this it became possible, to a considerable extent, to blanch over international economic activity and switch to direct imports, to build more warehouses and plants, and create hundreds of thousands of new jobs. Legalization of parallel imports will render all these efforts pointless and, consequently, plants and factories will be built abroad. We consider that changing the national principle of exhaustion of trademark rights will eventually lead to irreparable consequences for Russia’s economy and its citizens.”*

The AEB Working Group of Tire Producers points out that *“in recent years international tire manufacturers have already invested considerable funds into the country’s economy and continue to increase production capacity and improve the infrastructure. Parallel imports will slow down the localization of foreign manufacturers’ (rights holders) production facilities in Russia, and it will reduce the market for legally produced goods in Russia, which does not correspond with the objectives of the Russian Government concerning the development of the industrial sector and the transition from an economy that focuses on the export of raw materials and the import of consumer goods to a high-tech, innovation-based economy.”*

AEB also notes that the liberalization of parallel imports will threaten fair competition in Russia among market participants and may lead to mass imports into Russia of counterfeit goods made abroad and sold at a lower price: companies may face a situation when goods bearing their own trademarks will be imported into the Russian Federation fully legally, as such trademarks may be registered in any other country (if the Russian rights holder holds no international registration or registration in such a country).

And finally, the consumer will suffer because, for example, there will be significant rise in the risk of import and the subsequent purchase by consumers of goods that are not designed for the Russian market and which might present a serious health hazard. The consumer will be deprived of the opportunity to receive after-sales, guarantee and other services, and, in place of timely access to new releases, will encounter an influx of obsolete models and faked goods.

AEB believes that the argument in favor of developing competition appears untenable as the current national principle of the exhaustion of intellectual property rights does not restrict the most effective type of competition: competition between brands, the level of which on most consumer markets is reasonably high. The other argument in favor of the legalization of parallel imports—the fall in prices—likewise fails to stand up to scrutiny, as any such fall would be short-lived, due to unscrupulous competition, a failure to provide the consumer with after-sales, additional and other services.

¹ Thus, according to Denis Sugrobov, Head of the Principle Administration for Economic Security and Counter-Corruption Activities at the Russian Ministry for Internal Affairs, “across Russia the damage from ‘grey’ products will reach 3 billion dollars”. Source: RBC 10/10/2012

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