

**Topic  
Brief 2**

**Cheap imports and  
intellectual property**

## Brief 2



**When the products imported are of different quality from those normally sold in the UK under the trade mark, consumers can be deceived in what they purchase.**

# Cheap imports and intellectual property

## Current situation

If a trade mark owner puts or consents to its goods being put on the market within the EEA (European Economic Area) then those goods can circulate freely in the EEA.

On the other hand, if the goods are put on the market outside the EEA, then they can only be imported into the EEA if the trade mark owner has consented to such import. There may be situations where the trade mark owner has not consented, for example where the specification of the goods varies from market to market or where wholesale prices differ. In cases where there is no consent, the trade mark owner should be able to stop the parallel import of these goods.

## Benefits and disadvantages for society

### Benefits

- Traders import goods when there is a price differential between markets. This can lead to lower prices for consumers.

### Disadvantages

- The overall return for the trade mark owner is less (note that consumers are always free to buy competing branded or unbranded goods).
- The trade mark owner loses control of how the goods are sold. This can have a detrimental effect on brand image (e.g. position in the marketplace) and quality (e.g. where the supply chain does not have quality controls in place).
- When the products imported are of different quality from those normally sold in the UK under the trade mark, consumers can be deceived in what they purchase. This lowers the reputation of the product and in some cases there can be real dangers because of safety issues, for example with pharmaceuticals.

These factors can lead to companies being less likely to invest in the development of branded products. This will have an effect on the quality and variety of products available. It will also affect jobs in higher cost economies such as the EEA.

In addition, the price differential may not always be large. The importer will want to maximise his profit, meaning the price benefit to the consumer may be small or non-existent.

At the end of the day, the policy issue – rather than the interesting legal issue of what constitutes “consent” – is whether the potential benefit of cheaper (imported) products compensates for a reduction in the incentives to invest in development of branded goods and the reduced competitiveness of higher cost economies and the jobs within them.

### Suggested links for further reading

- Parallel imports/Gray Market – International Trademark Association (INTA) Topic Portal<sup>6</sup>
- Position paper on parallel imports – International Trademark Association (INTA) – July 2007<sup>7</sup>
- Pharmaceutical parallel trade in the UK – Panos Kanavos and Paul Holmes: April 2005<sup>8</sup>
- Briefing paper: “Parallel trade – helping to make modern medicines more affordable in Europe” – European Association of Euro-pharmaceutical companies (EAEPC) – 2004
- Combating counterfeit, falsified and substandard medicines: defining the way forward – Charles Clift in a Chatham House briefing paper – Nov 2010<sup>9</sup>

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6 <http://www.inta.org/Advocacy/Pages/ParallelImportsGrayMarket.aspx>

7 <http://www.inta.org/Advocacy/Documents/INTAParallelImports2007.pdf>

8 <http://www.civitas.org.uk/archive/pdf/ParallelTradeUK.pdf>

9 [http://www.chathamhouse.org/sites/default/files/.../1110bp\\_counterfeit.pdf](http://www.chathamhouse.org/sites/default/files/.../1110bp_counterfeit.pdf)