

## ARTICLE

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### DOES KAZAKHSTAN NEED PARALLEL IMPORT?



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Does Kazakhstan need parallel import? Private opinion.

It is no longer news that regional principle of the exhaustion of trademark rights has been established since January 1, 2012 in Kazakhstan and in the entire Customs Union (CU). In other words, it is allowed to prohibit the import of original goods into Kazakhstan if they are intended for sale in other countries. Such import may be regarded illegal if it is done without trademark owner's consent.

Parallel import is legally allowed from all countries participating in the CU, but at the discretion of trademark owner can be prohibited from outside the CU. Further we will discuss in particular import of goods from outside the CU.

Since the beginning of 2017, a significant number of trademarks have been included in the Customs Register of Kazakhstan and the exclusive rights to import goods are exercised by companies that own such rights.

At the same time, a significant number of people which are disagree with this situation appeared, attempts are being made to challenge the right to comprehensive protection of intellectual property, it is argued that the monopoly on trademarks should not exist in the form in which it is currently established in Kazakhstan and the Customs Union. It is said that the legislation needs to be amended and it should be done on the basis of new legislative acts of the Customs Union. The legality of the ban on the

import of goods for those who have not been granted this right is disputed.

In this case, the general principle of the protection of intellectual property is the ground for determining the legality of the import of goods, this principle is first of all depends on the desire and will of its owner: to prohibit or not to prohibit the use of his property, to permit the use of trademarks by all companies or only some. In the case of the import of goods bearing a trademark - who should be allowed to import goods into the countries where the trademark is registered in his name.

Not all companies decide to use the right to prohibit parallel import - in Kazakhstan 120,070 trademarks were registered as of December 31, 2012 and only 215 of them were included into the Customs Register as of March 20, 2013 and it is registration in the Customs Register that gives grounds for the application of customs measures on suspension of goods.

### **Which companies are interested in hindering parallel import?**

First of all, those which work in Kazakhstan, invest money, deliver goods, and create production facilities, subsidiaries and joint ventures, export products, which value the level of protection of intellectual property and use the right to protect intellectual property rights provided by the legislation.

There is an opinion that neither the regional principle of exhaustion of rights, nor the national one is needed in Kazakhstan and parallel import should be allowed as this result in immediate decrease in the cost of imported goods and will contribute to the development of competition.

### **What kind of competition and how will it contribute?**

Parallel import will allow the unhindered import of goods produced abroad, presumably at prices lower than those offered by producers and their official representatives. It will also allow re-export of Kazakh goods if they are sold cheaper in other countries than in Kazakhstan. In the absence of control over the movement of all goods by the owner, there will be more opportunities to import counterfeits, which will be even cheaper, however of lower quality.

Thus, competition among sellers who import goods with one trademark will increase, however isn't it more important to promote the development of competition among producers of goods under different trademarks?

### **How will this affect producers and trademark owners?**

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They will not be able, as now, to fully control the use of their intellectual property by the third parties, control the sales of their products in different markets, and plan supplies and sales. They will not have one of the important incentives to locate their production in Kazakhstan, since their own products from other countries will be imported here, and the export products produced by their Kazakhstani factories will be able to return to Kazakhstan instead of being distributed in other countries and hinder the production of new goods.

Due to the weakening of customs control, the Kazakhstani market will be more attractive for counterfeiters, and the income from the sale of these counterfeits will be received not by the owners of trademarks, but by infringers of their rights, the presence of counterfeits on the market will undermine reputation of producers.

### **How is this consistent with the development of the economy of Kazakhstan?**

The programs of industrial and innovative development of our country provide for the growth of our own production of goods, their export and a decrease of volume of exports of raw materials and semi-finished products. In the result of the implementation of these programs, Kazakhstan should become an industrialized country and an exporter of high-tech products and for which Kazakhstan should be able to protect its producers.

### **Can permitting parallel import stimulate these programs to be implemented effectively?**

Obviously not, since such a permit would stimulate the production of goods in other countries and only their sale in Kazakhstan. The purchase of these goods is carried out for foreign currency, which will need to be obtained from other sources. What sources if not to establish your own production? Issues of the level of intellectual property protection are always among the most important in assessing the investment attractiveness of a country and attracting foreign investors is now one of the priorities. Permitting of parallel import weakens the ability to protect their intellectual property, in particular, trademarks and copyrights, that is, their economic interests, and this does not sound good for the country's rating. The rating, in turn, determines the decision "to invest to this country or invest". If not Kazakhstan, then in this other place goods will be produced, which can then be freely imported into Kazakhstan, however is it good for Kazakhstani consumers, including businessmen and employees of production companies and those who provide them with services?

Of course, Kazakhstani producers are also companies with foreign participation located in Kazakhstan, paying taxes to the Kazakhstani budget and increasing the number of jobs for Kazakhstanis.

The question will already be different: not to choose among well-known producers to buy goods in Kazakhstan, but how to make money in order to buy such goods.

The choice of banning or permitting parallel import can, in particular, be reduced to the question of whether we support production or trade. Increase in quality and guarantee of reliability or cheapness of goods of daily demand? When delivering complex equipment, the question of parallel import is not usually raised, products are bought from the producer or through its official channels and not from intermediaries “where it is cheaper”.

As mentioned above, a regional principle of exhaustion of rights has been adopted within the framework of the CU, that means parallel import is possible within the framework of the CU, which also reflects the common approach and joint efforts of the participating countries to protect and develop their economies, to solve common issues of transition from so-called countries-exporters of raw materials and semi-finished products to a community of exporters of high-tech products. In the near future, with the entry of new members into the CU, the territory of the CU will expand and parallel import will be possible from these new territories, however with its restrictions from outside the CU.

Thus, when forming an opinion about what is useful for Kazakhstanis and Kazakhstan, it is necessary to take into account the balance between immediate benefits and long-term benefits, between diverging interests of consumers and industry, our current interests and interests of our children and grandchildren, take into account interests and benefits of development of the country.

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