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# EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS IN INTERNATIONAL TRADE

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## ABSTRACT

The doctrine of exhaustion of intellectual property rights ascertains the extent to which an intellectual property owner can control a product after its first authorized sale. The paper is an analytical study of the doctrine in the light of international trade, and its importance in a balance between the protection of intellectual property and the aims of free trade, market competition, and consumer welfare. It determines the manner in which different exhaustion regimes function and their effect on parallel imports, discriminatory pricing methods, and cross-border exchange of goods.

The paper also assesses the legal framework that the TRIPS Agreement under the World Trade Organization has provided flexibility to the member states to implement its own policies on exhaustion. This flexibility has resulted in diverse and often fragmented legal approaches in different jurisdictions causing uncertainty when it comes to international trade and difficulties in controlling parallel imports. The paper analyses critically the adoption of various exhaustion regimes by developed and developing countries depending on their economic interests, industrial capability, and policy priorities.

Through this analysis, the paper has identified that although national and regional exhaustion regimes can safeguard domestic industries, they can limit competition and affordable goods. International exhaustion, on the other hand, encourages trade liberalization and consumer welfare and can raise the issue of innovation incentives. The paper concludes that even though complete harmonisation is not feasible, modest and realistic harmonisation via transparency, sectoral flexibility and potent competition law can mitigate the trade barriers without compromising national autonomy and providing a balanced global trade system.

**Keywords:** Exhaustion of Intellectual Property Rights; Parallel Imports; TRIPS Agreement; International Trade; Competition Law; Consumer Welfare; Price Discrimination; Global Trade Regulation.

## INTRODUCTION

The doctrine of exhaustion of intellectual property rights refers to the principle that once a product protected by intellectual property is sold in the market with the authorization of the rights holder, the control of the owner over that particular product is considered exhausted. This means that after the first authorized sale, the purchaser is free to use, resell or distribute the product without seeking further permission from the intellectual property owner. In this way, the doctrine limits the extent of exclusive rights and promotes the free flow of goods in the market.

In the era of globalization, international trade has expanded rapidly, contributing to economic growth and improving consumer welfare by increasing the availability and affordability of goods. However, the operation of Intellectual Property Rights (IPRs) can sometimes restrict the free movement of goods, particularly when products protected by intellectual property are traded across national borders. This creates a conflict between the protection of exclusive rights of intellectual property holders and the objective of promoting free trade.

The significance of the exhaustion doctrine becomes more evident in the context of international trade, where different countries follow different exhaustion regimes. Broadly, there are three types of exhaustion: national, regional, and international exhaustion, each determining the extent to which rights holders can control the movement of goods beyond the first sale. These differences have a direct impact on the concept of parallel imports, which refer to the importation of genuine goods into a country without the consent of the intellectual property owner in that jurisdiction. While parallel imports can benefit consumers by providing goods at lower prices, they may also affect the market strategies and profits of intellectual property owners.

At the international level, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not prescribe a uniform rule regarding exhaustion. Instead, it allows member states the flexibility to adopt their own exhaustion regimes based on their economic and policy considerations. This lack of uniformity has led to differences in legal approaches across countries, creating complexities in international trade and raising important questions about the balance between intellectual property protection and free trade.

This article undertakes an analytical study of the doctrine of exhaustion in the context of

international trade and examines different global approaches to identify a balanced framework that promotes both intellectual property protection and free trade.

## **TYPES OF EXHAUSTION**

- 1. National Exhaustion:** National exhaustion means that intellectual property rights are exhausted only within the country where the first sale takes place. The IP owner loses control over resale within that country, but retains the right to prevent import of the same goods from abroad (parallel imports).

This approach protects territorial markets and allows right holders to maintain price differentiation across countries.

- 2. Regional Exhaustion:** Regional exhaustion extends the principle of exhaustion beyond one country to a group of countries forming a common market or economic union. Once a product is lawfully sold in any member state, the IP owner cannot restrict its movement within that region, but can still prevent imports from outside the region. This promotes free movement of goods within integrated markets.

- 3. International Exhaustion:** International exhaustion means that IP rights are exhausted globally after the first lawful sale anywhere in the world. Once a product is placed on the market by the IP owner or with consent, it can be imported and resold in any country without restriction. This approach promotes free trade and consumer welfare by allowing parallel imports.

## **LEGAL FRAMEWORK GOVERNING EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS**

The legal framework governing the exhaustion of intellectual property rights is primarily shaped by a combination of international norms and domestic legislation, with significant variation across jurisdictions. At the international level, the most relevant instrument is the TRIPS Agreement administered by the World Trade Organization. Article 6 of TRIPS adopts a neutral stance by expressly excluding exhaustion from the scope of dispute settlement, thereby allowing member states the freedom to determine their own exhaustion regimes. This flexibility was reaffirmed in the Doha Declaration on TRIPS and Public Health, which clarified that countries are free to adopt policies best suited to their public health and economic needs,

including permitting parallel imports. As a result, the international legal framework does not impose a uniform model but instead facilitates a pluralistic system where national, regional, or international exhaustion may be adopted.

At the domestic level, countries have developed distinct legal frameworks reflecting their economic priorities and policy considerations. For instance, India has largely embraced the principle of international exhaustion, particularly under Section 30(3) of the Trade Marks Act, 1999. This provision limits the rights of trademark owners once goods are lawfully put on the market, thereby permitting parallel imports. The position was judicially affirmed in *Kapil Wadhwa v. Samsung Electronics*, where the court upheld the legality of importing genuine goods from foreign markets. In the context of patent law, the principle is further reflected in Section 107A(b) of the Patents Act, 1970, which permits the importation of patented products that have been lawfully sold in another country, thereby recognizing parallel imports and limiting the patentee's control after the first authorized sale. This approach promotes consumer welfare by enabling access to competitively priced products and preventing artificial market segmentation.

In contrast, the United States adopts a more nuanced and sector-specific approach to exhaustion. In copyright law, the doctrine has evolved towards recognizing international exhaustion, as established in *Kirtsaeng v. John Wiley & Sons, Inc.*, where the Supreme Court permitted the importation and resale of lawfully acquired foreign editions of copyrighted works. In patent law, a significant development occurred in *Impression Products, Inc. v. Lexmark International, Inc.*, where the Court held that a patentee's rights are exhausted after the first sale, whether domestic or international, thereby strengthening the doctrine of international exhaustion in the United States. These decisions demonstrate a gradual shift towards limiting post-sale control by IP owners.

A distinct model is followed by the European Union, which applies the principle of regional exhaustion. Under this regime, once goods are placed on the market in any member state, the intellectual property rights are considered exhausted throughout the Union, thereby allowing free circulation of goods within the internal market. However, the rights holder may still prevent the importation of goods from outside the region. This position was clearly articulated in *Silhouette International Schmied GmbH v. Hartlauer Handelsgesellschaft mbH*. Further, in *Zino Davidoff SA v. A & G Imports Ltd*, the court emphasized that consent of the trademark

owner is essential for exhaustion within the EU, thereby reinforcing control over unauthorized parallel imports from outside the European Economic Area. The regional model thus supports economic integration while maintaining external trade controls.

Other jurisdictions, such as Australia and New Zealand, have adopted variants of international exhaustion in several areas of intellectual property law, particularly to encourage competition and reduce prices. Meanwhile, countries like Japan follow a more cautious or hybrid approach, balancing domestic market protection with limited acceptance of parallel imports. These variations highlight that the legal framework governing exhaustion is deeply influenced by national economic interests, levels of market development, and regulatory philosophies.

Across different forms of intellectual property, the application of exhaustion also varies. In copyright law, the doctrine enables the resale of lawfully acquired works without the authorization of the rights holder, thereby supporting secondary markets. In trademark law, exhaustion ensures that once goods are legitimately placed in commerce, their further distribution cannot be unreasonably restricted, provided there is no material alteration or impairment of the mark's reputation. Patent law, however, often adopts a more restrictive stance due to the need to safeguard innovation incentives, although statutory provisions such as Section 107A(b) of the Patents Act, 1970 in India indicate a shift towards accommodating parallel imports. Overall, the legal framework governing exhaustion of intellectual property rights is characterized by flexibility and diversity, with international law providing broad discretion and national systems implementing varied approaches, thereby balancing the exclusive rights of intellectual property owners with the imperatives of free trade, competition, and consumer access.

## **EXHAUSTION AND PARALLEL IMPORTS IN INTERNATIONAL TRADE**

The doctrine of exhaustion of intellectual property rights is intrinsically connected with the concept of parallel imports, particularly in the context of international trade. Parallel imports arise when genuine goods, once lawfully placed in a foreign market by the intellectual property holder or with their consent, are imported into another country without authorization. A major economic factor driving such imports is price discrimination, especially third-degree price discrimination, where the same product is sold at different prices across geographical regions based on consumer purchasing power, market conditions, and regulatory frameworks. This geographical segmentation of markets enables firms to maximize profits, but simultaneously

creates arbitrage opportunities that facilitate parallel imports.

Price discrimination in international markets is influenced by several interrelated factors. One of the most significant is socially responsible pricing, particularly in the pharmaceutical sector, where companies offer essential medicines at reduced prices in low-income countries to ensure accessibility. While such pricing policies are ethically justified, they unintentionally encourage parallel importation into higher-priced markets. Another factor is the expansion of global markets, where multinational corporations adopt differential pricing strategies to penetrate new regions and achieve economies of scale through increased sales volume. Additionally, the threat of compulsory licensing under international intellectual property law compels patent holders to supply products at lower prices in certain jurisdictions to avoid state intervention that would otherwise permit third-party production without consent. Furthermore, competition from generic manufacturers also drives price differentiation, as patent holders strategically adjust pricing across markets to maintain competitiveness and prevent market erosion. Parallel imports generally occur in two forms: passive and active. Passive parallel imports involve third parties independently purchasing goods in a foreign market and reselling them domestically, whereas active parallel imports arise when licensed distributors or foreign licensees exceed territorial limitations and introduce goods into unintended markets. Both forms significantly impact the pricing strategies and market control of intellectual property holders, as they disrupt exclusive distribution networks and lead to price convergence across markets. The extent to which such imports are permitted is directly determined by the exhaustion regime adopted by a country, thereby linking legal doctrine with trade practice.

The international legal framework governing parallel imports remains deliberately flexible. The TRIPS Agreement under the World Trade Organization does not impose a uniform rule on exhaustion, thereby allowing member states to independently determine their stance on parallel imports. This flexibility has been particularly significant for developing economies, which often rely on parallel imports as a mechanism to enhance access to affordable goods, especially life-saving medicines. The Doha Declaration on TRIPS and Public Health further clarified that member states have the sovereign right to adopt exhaustion regimes that support public health objectives, thereby legitimizing the use of parallel imports in situations of economic or health necessity.

A clear distinction can be observed between the approaches adopted by developed and

developing countries. Developed economies, which are typically net producers of intellectual property, tend to favour restrictive exhaustion regimes, such as national or regional exhaustion, in order to protect domestic industries and maintain higher price levels in premium markets. For instance, the European Union follows a regime of regional exhaustion, allowing free movement of goods within its internal market while restricting imports from outside the region. Similarly, the United States has historically adopted a cautious approach towards parallel imports in certain areas of intellectual property, reflecting its strong domestic innovation base.

In contrast, developing countries often support international exhaustion, viewing parallel imports as a tool to enhance competition and improve consumer welfare. These countries are generally net importers of intellectual property-protected goods and seek to eliminate barriers that restrict access to affordable products. Parallel imports serve as a mechanism to prevent anti-competitive practices, such as market partitioning and excessive pricing by exclusive distributors. At the same time, there are divergent perspectives within economic and legal scholarship. While some argue that unrestricted parallel imports may discourage investment in research and development by reducing profit margins, others contend that they promote efficiency, price stabilization, and broader access to essential goods.

The debate surrounding parallel imports is particularly significant in the pharmaceutical sector, where access to affordable medicines remains a critical issue in many developing countries. In such contexts, parallel imports enable governments and private entities to procure drugs from markets where they are sold at lower prices, thereby addressing public health needs without violating intellectual property laws. The flexibility provided under international agreements allows countries to determine what constitutes a national emergency and to adopt measures accordingly, including the importation of patented drugs from foreign markets.

Overall, the relationship between exhaustion and parallel imports reflects a broader tension between intellectual property protection and trade liberalization. While exhaustion limits the post-sale control of IP holders, parallel imports act as a practical mechanism through which these limitations operate in international markets. The absence of a harmonized global framework has resulted in diverse national approaches, each shaped by economic priorities, development status, and policy objectives. Nevertheless, the growing importance of global trade and consumer welfare continues to strengthen the role of parallel imports as a legitimate and necessary component of the international intellectual property regime.

## COMPARATIVE ANALYSIS OF GLOBAL EXHAUSTION REGIMES

The doctrine of exhaustion of intellectual property rights exhibits significant variation across jurisdictions, reflecting differences in economic priorities, levels of industrial development, and regulatory philosophies.

A comparative analysis of national, regional, and international exhaustion regimes reveals how countries balance the competing interests of intellectual property protection, free trade, and consumer welfare. These regimes directly influence the legality of parallel imports and the extent to which markets remain integrated or segmented at the global level.

The system of **national exhaustion** is characterized by strict territorial protection of intellectual property rights. Under this approach, the rights of the intellectual property holder are exhausted only within the country where the first authorized sale occurs, thereby allowing the rights holder to prevent imports of the same product from foreign markets. This model has traditionally been associated with jurisdictions such as the United States, where strong protection of intellectual property is considered essential for fostering innovation and investment. From a comparative perspective, national exhaustion enables firms to engage in price discrimination across markets, maximizing profits by charging different prices in different countries. However, this approach often results in higher prices for consumers and reduced competition, particularly in developing markets where access to affordable goods becomes a critical concern. Academic analyses suggest that national exhaustion tends to favour producer interests over consumer welfare, reinforcing market segmentation and limiting the benefits of global trade.

In contrast, the model of **regional exhaustion**, as adopted by the European Union, represents a compromise between protectionism and liberalization. Under this regime, intellectual property rights are exhausted once goods are placed on the market in any member state, allowing free movement of goods within the region. However, rights holders retain the ability to restrict imports from outside the region. This approach is closely linked to the EU's objective of creating a single integrated market, where barriers to intra-regional trade are eliminated. Comparative studies highlight that regional exhaustion promotes economic integration and competition within the region while maintaining external trade controls. Nevertheless, it has been criticized for creating a "fortress market" by preventing the entry of lower-priced goods from outside the region, thereby limiting global price convergence and restricting consumer

choice.

The most liberal approach is **international exhaustion**, followed by countries such as India. Under this regime, intellectual property rights are exhausted globally after the first authorized sale, regardless of where that sale takes place. This permits unrestricted parallel imports and promotes price competition across borders. From an analytical standpoint, international exhaustion aligns with the principles of free trade and globalization by facilitating the movement of goods and preventing artificial market segmentation. It is particularly beneficial for developing countries, where access to affordable goods—especially essential medicines—is a significant policy concern. However, critics argue that international exhaustion may weaken incentives for innovation by reducing the ability of rights holders to control pricing and distribution, particularly in high-technology and pharmaceutical industries.

A key distinction emerging from the comparative analysis is the divide between developed and developing economies. Developed countries, which are typically net exporters of intellectual property, tend to adopt national or regional exhaustion regimes to protect domestic industries and maintain higher profit margins in foreign markets. In contrast, developing countries, which are largely importers of intellectual property-protected goods, prefer international exhaustion to enhance access to affordable products and promote competition. This divergence reflects broader economic interests and underscores the flexibility provided under the TRIPS framework administered by the World Trade Organization, which allows member states to determine their own exhaustion regimes.

From a policy perspective, each exhaustion regime presents distinct advantages and limitations. National exhaustion offers strong protection to intellectual property holders but restricts trade and limits consumer access to lower-priced goods. Regional exhaustion facilitates economic integration within a defined group of countries but creates barriers to global trade. International exhaustion promotes competition and consumer welfare but may undermine the exclusive rights of intellectual property holders and reduce incentives for innovation. Comparative academic studies emphasize that no single regime is universally optimal; rather, the choice of exhaustion regime depends on a country's economic structure, development level, and policy priorities.

Furthermore, the effectiveness of an exhaustion regime must be evaluated in light of its impact on international trade, market efficiency, and public interest. In sectors such as pharmaceuticals,

international exhaustion plays a crucial role in improving access to affordable medicines, particularly in developing countries facing public health challenges. Conversely, in industries driven by high levels of research and development, stronger protection through national exhaustion may be necessary to sustain innovation. This highlights the need for a balanced approach that reconciles the objectives of intellectual property protection with the demands of global trade and consumer welfare.

The comparative analysis of global exhaustion regimes demonstrates that the doctrine operates as a flexible legal mechanism shaped by diverse economic and policy considerations. While national, regional, and international exhaustion each offer distinct benefits, their practical implications vary across jurisdictions. The absence of a harmonized international standard allows countries to tailor their exhaustion regimes to their specific needs, but it also creates legal fragmentation that can complicate cross-border trade. A nuanced and context-specific approach is therefore essential to ensure that the doctrine of exhaustion effectively balances the competing interests of innovation, trade, and access in the global economy.

## **CONCLUSION**

The doctrine of exhaustion of intellectual property rights plays a crucial role in balancing intellectual property protection with international trade, competition, and consumer welfare. The existence of national, regional, and international exhaustion regimes reflects differing economic priorities of states. While national exhaustion ensures stronger control for rights holders, it may restrict trade and raise prices. Regional exhaustion promotes internal market integration but limits global price benefits, whereas international exhaustion, followed by countries like India, encourages parallel imports and improves access to affordable goods. Parallel imports, as a consequence of exhaustion regimes, enhance competition and reduce market segmentation. However, the lack of a harmonized framework under the World Trade Organization has led to fragmented legal approaches and uncertainty in cross-border trade.

A uniform global regime is neither feasible nor practical due to differing national interests. Instead, a balanced approach based on limited alignment, transparency, and prevention of anti-competitive practices is more viable. Such convergence is likely to develop gradually through trade agreements, judicial interpretation, and market practices. In conclusion, the doctrine of exhaustion should be viewed as a flexible legal tool, where gradual convergence rather than strict uniformity ensures a balance between intellectual property protection, trade efficiency, and consumer welfare.

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