



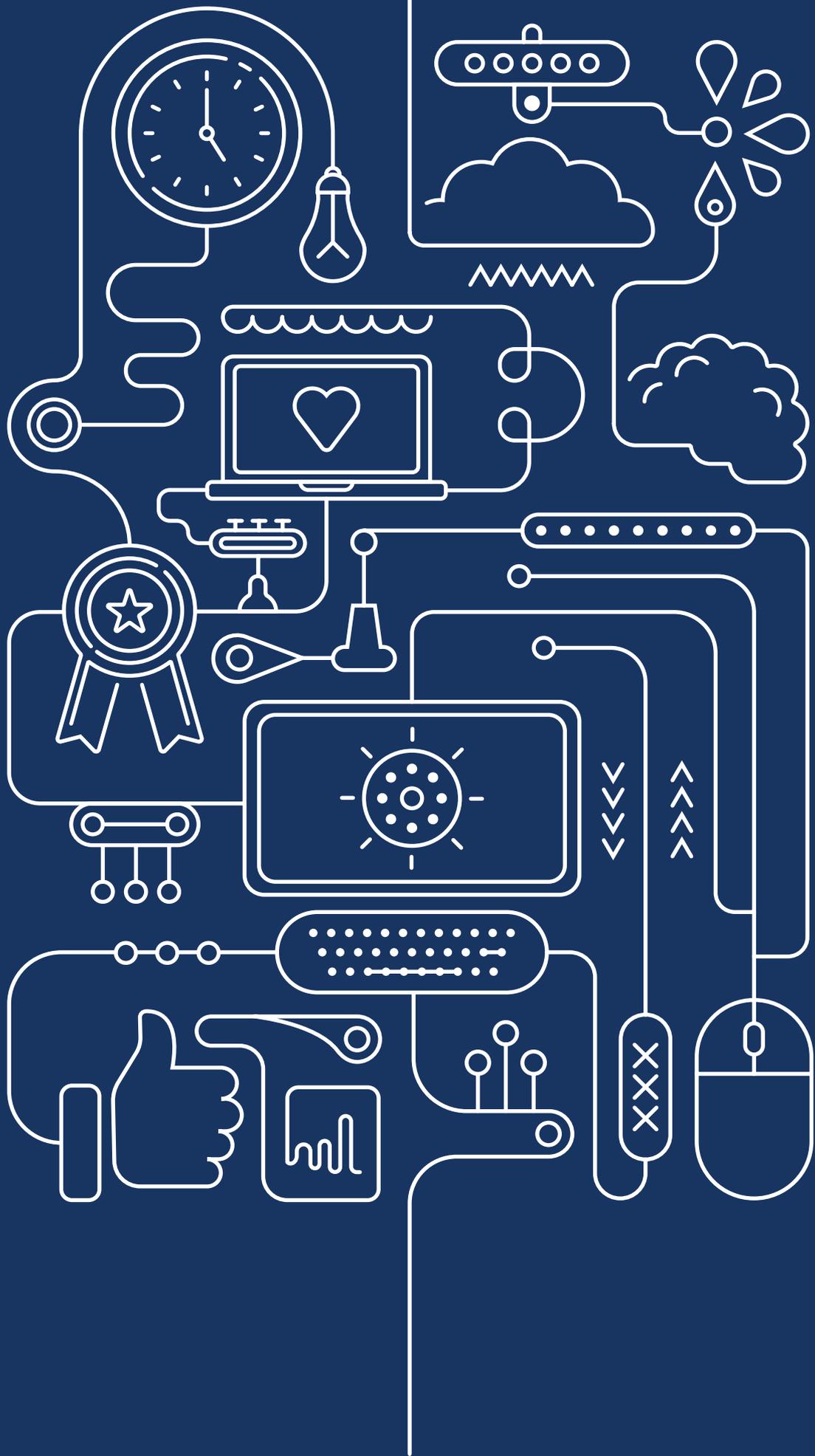
Intellectual  
Property  
Office

# Consultation on the UK's future exhaustion of intellectual property rights regime



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# Ministerial Foreword

The intellectual property system has always been required to strike a balance between the protection offered to creators and investors, and the need to allow fair competition, wide consumer choice and fair market pricing. This balance is expressed through many parts of the IP system: in the term of available protection, in the definition of infringing acts and applicable sanctions, and through the principle of exhaustion of rights.

At its simplest, the principle of exhaustion sets a limit on the ability of IP rights holders to control the distribution of goods protected by those rights. For many years as members of the EU single market the UK has considered first sale within the European Economic Area to be the point at which the control of a rights holder expires. This approach has allowed the trade of goods on the secondary market to flourish between EEA countries, while retaining the ability of rights holders to prevent imports into the EEA of goods that they have sold elsewhere in the world.

As of 1 January 2021 however, the UK is no longer bound by the EU legal framework, and no longer a member of the single market. This means that we need to look again at how the principle of exhaustion should work for the UK as a standalone sovereign nation.

There are a number of options that are outlined in this consultation document, and we recognise that the choice of a new regime will be a difficult and possibly contentious one. But the UK now has the regulatory freedom to choose our own exhaustion of IP rights regime and it is right to examine carefully whether the current arrangements best serve UK interests. It is our hope that with your help, and with the evidence you can provide we can find the balance which best serves the needs of the UK economy, the UK public and the UK as a whole.

**Kwasi Kwarteng MP**

**Secretary of State for Business, Energy and Industrial Strategy**

# Executive Summary

“Exhaustion of IP rights” underpins the system of parallel trade. Parallel trade is the import and export of IP-protected goods (for example, anything from books, car parts to medicines) by secondary market actors. The movement of goods on the secondary market is usually on a wholesale/resale basis and forms an integral part of many supply chains. At present, parallel goods can move from the EEA into the UK but may not be permitted to move in the other direction.

Now that the UK has left the EU, it is consulting on the future of the UK’s parallel trading system. It is seeking evidence to understand what the most appropriate exhaustion of IP rights regime would be and how any change should be implemented.

The government welcomes businesses, representative organisations, civil society organisations, legal practitioners, creators and consumers to contribute to this consultation.

## Introduction

Now that the United Kingdom has left the European Union (EU), the UK government (the government) is making use of its regulatory autonomy to engage in a programme of work to support the UK's independent economic and political future. Underpinning this will be the development of our intellectual property (IP) system in line with our domestic priorities, alongside the development of new trading relationships with the rest of the world.

One important issue that intersects IP rights and trade of goods is the principle of exhaustion of IP rights.

## This Consultation

The government needs to make a decision on the most appropriate exhaustion regime for the future. There are a number of options available which will need to be tested through consultation, with evidence and views required on what regime should be implemented on a permanent basis, and if there is to be a change, how a new regime should be implemented.

The government has published this consultation to seek evidence and views on these issues.

## What is exhaustion of intellectual property rights and parallel trade?

IP rights protect intellectual creations. For example, copyright would protect a book, a trade mark may protect a logo created to represent a brand, a patent may protect a new invention and a design right may protect the look or arrangement of a particular product. IP rights make it easier to take legal action against anyone who steals or copies intellectual property.

IP rights can be infringed if another person carries out certain actions without the rights holder's permission. These actions include copying, selling and importing a product (or good) protected by IP rights. This means that holders of IP rights are able to control distribution of an IP-protected good (for example, a medicine protected by a patent or a shoe protected by a trade mark or a book protected by copyright) because infringement would occur if the distribution was not authorised by the rights holder.

The right to take legal action against infringement is constrained by a system known as exhaustion of IP rights. Once a good has been placed on the market in a specific territory by, or with the consent of, the rights holder, the IP rights that protect this good are considered to be "exhausted". This means that the right to take legal action against infringement has been lost. As a result, there is a loss of the right to control distribution and resale of physical goods. A basic example is if a person buys a book, then the copyright is considered exhausted in the market in which it was purchased. This means that the author of that book (the rights holder) cannot stop the person from then selling the book to another person within the region that the book was put on the market.

The system of exhaustion of rights means that distributors and other traders are able to move goods (including parts that make up goods) around a specified territory without the rights holder's permission. This supports a market of secondary sales of legitimate goods, also known as parallel trade. Trade in parallel goods is well established in the UK economy, and there is parallel trade of goods in everything from biscuits to automotive parts to toiletries. It is important to be aware that parallel trade is the trade of genuine physical goods, not counterfeit goods or purely digital content (such as a download of a song or game).

## Definition of parallel trade

There are a number of terms to describe parallel trade that are often used interchangeably. For example, other terms include “secondary goods” or “grey goods”. It has been reported that some sectors (such as fast moving consumer goods) use the term “transnational trade” to describe the system of trade of parallel goods.

In some sectors, “parallel goods” are considered a subset of “grey goods”. In these sectors, grey goods have been described as those goods that have been made legitimately but are not put into the market legitimately. For example, in this context grey goods may describe goods made as a result of manufacturing over runs that do not pass quality control and so are not intended for the market but are put on the market by a person other than the rights holder. Another example is goods that have been originally sold in large packs but then are repackaged and re-sold in smaller quantities.

For the purposes of this consultation, the government defines parallel goods as goods that are lawfully manufactured by the rights holder or under licence and are lawfully first placed on the market then moved across territorial borders. The terms “parallel trade”, “parallel goods”, “parallel imports” or “parallel exports” will be used throughout to describe these goods.

- Q:** Is there parallel trade in your sector?
- Q:** If so, how do parallel imports from the EEA impact on your organisation in terms of (a) choice, (b) availability of supply and (c) competition in your marketplace?
- Q:** If you are able to, please provide the current volume or value of total imports to your organisation in the UK. If possible, please estimate the percentage of the total imports accounted for by parallel imports?
- Q:** In your business, how do you exert control over supply chains?
- Q:** For your business or organisation, how do right holders become aware and seek to stop their products being parallel imported from outside the EEA without permission?

## Why is exhaustion of IP rights needed?

Exhaustion of IP rights is needed to balance the trade-off between the benefit and cost of IP rights. As noted above, IP rights are exclusive rights granted to the holders and they give the holder exclusive rights to use and access their creations or inventions, preventing others from using or copying without permission.

The benefit of IP rights is that they incentivise individuals to invest in inventions or creations in order to access an exclusive market and recoup their investment. Without this exclusive access, there would be less innovation as there would be no opportunity to seek sufficient return. Inventions or creative works would be imitated by others who would enter the market and take their share of the profits such that no firm or individual would be willing to be the first person to enter the market and invest. Therefore, IP rights ensure individuals can seek reward for research and development investments. This encourages innovation which is a crucial driver of economic growth.

However, IP rights also come at a cost. By giving rights holders exclusive access to a product they become monopolists. While this may allow rights holders to recoup research and development investments, it also allows them to set prices for their products which may be above the optimum level for efficiency and welfare, to the detriment of consumers.

This IP rights trade-off is accepted as innovation contributes to the growth of the economy. However, it is also important that the monopolistic powers and subsequent detrimental effects on welfare do not outweigh the benefits of innovation. Additionally, IP rights, if too strong, can also stifle innovation. This is because increasingly, innovation involves building on existing knowledge and innovations.

Therefore, there is a benefit to limiting how far the reach of these exclusive rights extend to balance this cost-benefit trade-off. This can be done in two ways. First, it is possible to limit the term (length of protection) of IP rights. Secondly, it is also possible to limit the reach of IP rights by limiting the control of distribution: this is exhaustion.

## Current legislation and treaties

The concept of exhaustion has built up over many decades. When the UK was part of the EU, the UK was part of the EU's regional exhaustion regime. The principle of exhaustion of rights is derived from the provisions concerning the prohibition of qualitative restrictions in the Treaty on the Functioning of the EU (and the EEA Agreement) as interpreted by EU case law and was specifically recognised in various EU Directives as implemented into domestic legislation. As a result of domestic legislation concerning EU exit this principle continues to have the same effect in domestic law as it had before the end of the implementation period (the UK's unilateral application of the EEA regional regime). In particular, the principle of exhaustion is relevant to section 7A of the Registered Designs Act 1949, sections 18 and 27 of the Copyright, Designs and Patents Act 1988 and section 12 of the Trade Marks Act 1994.

Case law relating to exhaustion includes *Silhouette v Hartlauer*<sup>1</sup>. In this case, the European Court of Justice held that EU member states were not free to have an international exhaustion regime (in which parallel goods can be moved into a country from any other country) and that they must have the regional EEA regime only. As a result, EU member states need to maintain a regional EEA exhaustion regime and no exhaustion of rights can occur for goods placed on the market in a third country (i.e. not a member state). Although *Silhouette* related to trade marks the principle set in this case applies to other IP rights.

As the UK has now left the EU, the government is looking to decide on a future exhaustion regime. The freedom to choose an exhaustion regime is granted by Article 6 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement and is affirmed by the Doha Declaration.

The government is aware that there may be an interaction between exhaustion of IP rights and the Crown Dependencies of the Bailiwicks of Jersey and Guernsey and the Isle of Man. In addition, while the British Overseas Territories may have their own distinct legal systems, there may be an interaction between the UK's choice of exhaustion regime. The government would welcome views on the impact on the Crown Dependencies or British Overseas Territories of the UK's choice of exhaustion regime.

**Q:** Do you have any views on the government's assessment of UK legislation and international treaties that are relevant to the UK's choice and implementation of an exhaustion regime?

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<sup>1</sup> *Silhouette v Hartlauer*, C-355/96, 16 July 1998

## Scope of this consultation

Exhaustion affects all of the four main IP rights (copyright, designs, patents and trade marks). This means that the government is interested in responses from owners and users of all of these rights. However, it is important to note that exhaustion of IP rights in purely digital goods (such as music or books bought and downloaded from an online store to be used on a mobile device) is not included within the scope of this consultation. As well as digital goods, counterfeit products are out of scope of this consultation. This is because parallel trade is the trade of legitimate physical goods, not counterfeits.

**Whether a country accepts parallel trade from other countries is a matter for that particular country, so this consultation focuses on parallel imports to the UK only. As the UK government has no direct control on the exhaustion regimes of other countries, parallel exports are out of scope.**

Please note the government does not consider that Geographical Indications are within scope of this consultation. In addition, the government does not consider that Plant Variety Rights (PVR) are within the scope of this consultation. This is because the UK's PVR system is a consequence of the UK's membership of the UPOV Convention (International Union for the Protection of New Varieties of Plants).

## Parallel trade and the UK Economy

The annual US Chamber of Commerce's Global Innovation Policy Center (GIPC) Index provides a measure as to the strength of IP regimes. It places the UK second, narrowly behind the US. Notable strengths included the cross-sectoral enforcement environment and cross-industry government cooperation. The exhaustion regime impacts on a large range of people; particularly as IP rights-intensive industries are an integral part of the UK economy.

The European Union Intellectual Property Office (EUIPO) and European Patent Office (EPO) September 2019 report provided an analysis of the economic performance of IP rights-intensive industries in the EU. In the two years before the EU Referendum (2014-16), IP rights-intensive industries contributed 42.6% to GDP at approximately £811 billion and accounted for 28.1% of UK jobs at over 8.4 million jobs.

Key sectors that have been identified as IP rights-intensive and affected by parallel trade are fast-moving consumer goods (FMCG), luxury goods, print and publishing, pharmaceuticals and automotive. This list is not exhaustive, but these sectors are particularly influenced by parallel trade and therefore likely to see more of an effect from the exhaustion regime. As well as the above sectors, in general, exhaustion of IP rights is likely to affect rights holders and distributors who deal in parallel goods. In particular, small and medium-sized enterprises (SMEs) are likely to be affected but they may not be aware that they are trading in parallel goods.

### Price differences and parallel trade

One of the most common reasons for parallel trade is taking advantage of the price differences between two markets (known as arbitrage). Parallel trade enables businesses to purchase goods in one country where the goods may be cheaper, parallel import them into another country where the same goods would generally be more expensive and then sell them at the higher price.

Using parallel trade to take advantage of price differentials can be complex as businesses must account for other costs such as the cost of transporting the goods to the target country and exchange rate fluctuations. While price differences are the most common reason cited for parallel trade, there are many variables which must be considered when considering this course of action.

The extent to which price differentials can be taken advantage of is dependent on the choice of exhaustion regime in the target country. If a country has an exhaustion regime where IP rights are considered exhausted once the goods are placed on the market anywhere in the world (therefore allowing parallel imports from any country), then it would be likely that businesses would exploit the differences in prices. On the other hand, if the country has an exhaustion regime where IP rights are considered exhausted once goods are placed on the market in that country only (therefore prohibiting parallel imports from other countries), then it would not be possible to exploit the price differences because no parallel trade across borders would be possible.

**Q:** Are there international price differentials for goods in your sector? If yes, what are the factors that influence differences in prices between countries?

## Current exhaustion regime

Before the UK left the EU, the UK was a part of the EU's regional exhaustion of IP rights regime. In this regime, the IP rights in goods legitimately first placed on the market anywhere in the EEA would be considered exhausted in the rest of the EEA. This included the UK as it was previously party to the EEA Agreement. This meant that goods could be both parallel imported into the UK from the EEA and parallel exported out of the UK to the EEA.

The UK left the European Union on 31 January 2020 and the transition period ended on 31 December 2020. Since 1 January 2021 the UK no longer takes part in a reciprocated EEA exhaustion regime. At present, the UK is unilaterally participating in the EEA regional exhaustion regime. This means that the IP rights in goods first placed on the market in the EEA are considered exhausted in the UK. Therefore, these goods can be parallel imported into the UK without the rights holder's permission. The IP rights in goods first placed on the market in the UK are not considered exhausted in the EEA. As a result, the rights holder may stop the parallel export of these goods into the EEA. Anyone wanting to parallel export goods to the EEA should obtain permission from the rights holder before exporting the goods.

- Q:** Are you or your business/organisation aware of the change to the UK's exhaustion regime that came into effect on 1 January 2021 following the end of the transition period?
- Q:** What are the costs and benefits of the current regime to your organisation? For example, in terms of choice and availability of suppliers, prices paid and regulatory standards.
- Q:** If possible, please provide examples if your business:
  - a.** has prohibited or has considered prohibiting parallel exports or
  - b.** has been prevented from parallel exporting from the UK to the EEA since 1 January 2021.

## **Feasibility study on whether it was possible to assess the scale of parallel trade in the UK**

In 2018 the IPO commissioned Ernst & Young to carry out a feasibility study (“Feasibility Study”) into whether it was possible to measure the scale and extent of parallel trade. There were three elements to the Feasibility Study: a review of economic data and literature on parallel trade, stakeholder interviews across a number of sectors, and a telephone survey of businesses. The central finding from the Feasibility Study was that there is very little data on parallel trade. Efforts to engage businesses highlighted that their awareness and understanding of the issue of parallel trade was limited.

Consequently, there are gaps in the government’s knowledge about the extent of parallel imports to the UK. The Impact Assessment that accompanies this consultation document brings together evidence from academic research. However, there are still evidence gaps and the government is seeking evidence and data from businesses and consumers to support policy decisions in this area.

Using existing academic research, the government has an understanding of how different parties are affected by a particular exhaustion regime. The government also has data on the value of UK imports and exports along with sectors that are IP rights intensive. However, the government has little data on the value and scale of parallel imports to the UK and seeks further information (see Annex 3).

This consultation document intends to provide a framework for policy makers to gather the information necessary to assess the costs and benefits of the different options for the UK’s future exhaustion regime as presented below. Both quantitative and qualitative information in response to the questions are welcome.

## Options for the UK's future exhaustion regime

The UK now has the opportunity to choose its future exhaustion of IP rights regime and decide how to implement any change.

There are four options for the UK's future exhaustion regime. A summary of the options is set out in the table below followed by a more detailed explanation. The government appreciates that the arguments for and against these options are complex and finely balanced.

| Option | Type of regime  | Inbound parallel import of goods   | Outbound parallel export of goods  |
|--------|---|--|--|
| 1      | UK's unilateral application of a regional EEA regime, otherwise known as a "UK+" regime | Only automatically permitted from EEA countries (assuming there is separate authorisation for regulated goods such as medicines) | Not automatically permitted except to countries with an international regime |
| 2      | National  | Not automatically permitted from any country   |  |
| 3      | International   | Automatically permitted from any country (assuming there is separate authorisation for regulated goods such as medicines)        |  |
| 4      | Mixed <sup>2</sup>  | Ability to parallel import will depend on any decision on treatment for a specific IP right, good or sector                      |  |

<sup>2</sup> There may be various interpretations of what would be considered a "mixed" regime, but the government considers a mixed regime that treats a specific IP right, good or sector in a different manner.

## Unilateral EEA or UK+ regime

One potential option is to “do nothing” and maintain the existing regime which came into force on 1 January 2021.

In this option the UK would continue to unilaterally apply a regional EEA regime, which the government refers to as a “UK+” regime. In practical terms, this means that there would be no change to the position on parallel imports – that is, parallel imports from the EEA into the UK would continue to be allowed. However, as at present, parallel exports from the UK to the EEA could be prohibited. This option would be the least costly for businesses reliant on EEA for supply of goods and raw materials, whilst continuing to provide the same level of choice for UK consumers.

As there is no guaranteed reciprocity from another EEA member state, it may not be possible to export parallel goods to other EEA countries.

The government considers this UK+ regime to be compatible with both the Trade Related Aspects of Intellectual Property Rights agreement (TRIPS) and the General Agreement on Tariffs and Trade (GATT). In particular, the government considers that this regime is compatible with the Most Favoured Nation (MFN) provision in TRIPS. This is because the purpose of this provision is to prevent discrimination on the basis of nationality rather than where goods are placed on the market. The UK+ regime does not engage the MFN principle as exhaustion is not determined by the nationality of the IP owner or business moving the goods, but the location where the relevant goods are placed on the market.

## National regime

If the UK were to hypothetically adopt a national exhaustion regime, the IP rights in goods would be considered exhausted only in the UK once they were put on the market in the UK. Accordingly, businesses would not be able to parallel import goods from outside the UK. This regime could mean that IP rights would become perceived as stronger, as it offers rights holders greater control over the trade of their goods. There is potential that it could also reduce supply and choice for consumers. By reducing trade of parallel goods, it is possible for rights holders to be able to segment international markets in terms of price, quality and consumer preferences. This means that they might be able to introduce goods specific to the UK’s needs.

From a consumer perspective, a national regime may lead to reduced consumer choice as parallel imports would not be allowed. In addition, prices of goods may increase as there would be potentially fewer goods in the market and IP rights holders would have more control over their goods. Finally, as there would be fewer parallel goods entering the UK, there would be less resource needed to ensure that the goods met UK regulations.

Further details on costs and benefits of a national regime can be found in the Impact Assessment.

## Interaction with Northern Ireland Protocol

The government does not consider a national regime to be reconcilable with the Northern Ireland Protocol which preserves the position that parallel goods may move from the Republic of Ireland and other EU member states into Northern Ireland without restriction. The option of a national regime is therefore only included in this consultation for completeness and to gather what evidence is available on economic impact.

## International regime

If the UK were to adopt an international regime, the IP rights in goods would be considered exhausted in the UK once they had been put on the market in any other country. This means that these goods could be parallel imported into the UK from any country in the world without the rights holder's permission. Parallel exports from the UK to other countries could still be stopped by the rights holder because other countries may not consider the IP rights in the goods to be exhausted. In this way, an international regime is similar to the UK+ regime in that exhaustion of IP rights after the first sale of goods may not be recognised by other countries. The difference between an international regime and the UK+ regime is that under an international regime, parallel goods could be imported from the EEA and any other country in the world.

From the perspective of the rights holder, they would lose control of the parallel trade of their goods after those goods had been first placed on the market anywhere in the world. From the perspective of the parallel trader, they would be able to parallel import goods from all over the world but not necessarily export them. This regime could cause IP rights to be perceived as weaker than if there was a national regime.

From a consumer perspective, an international regime could increase consumer choice and supply as goods could be parallel imported from anywhere in the world. This may also mean a reduction in prices of goods. On the other hand, there is a possibility of consumer confusion as goods may come onto the UK market that were intended for other countries' markets. For example, the same books may have different titles in different English-speaking countries or some companies may choose to change product formulations for different countries' markets. There may also be a consumer safety issue due to different regulatory standards in different countries.

Another aspect of an international regime is that if there was an increase in parallel goods, then there is a possibility that shipments of legitimate parallel goods could be used to mask counterfeit goods. However, as the UK has been importing parallel goods from the EEA, this has already been a risk. Moving to an international regime may increase this risk as parallel imports would be accepted from more countries.

If the UK were to adopt an international regime, one possible issue is that goods intended for "Least Developed Countries" may be parallel imported into the UK as they would be sold cheaper in those countries. This may affect the availability of these goods in the developing countries. It has been suggested that access to goods such as pharmaceuticals and educational books may be impacted by the implementation of an international regime in the UK.

A more detailed discussion of the costs and benefits of an international regime can be found in the Impact Assessment.

## Mixed regime

Some countries have “mixed” regimes where a specific good, sector or IP right are subject to one regime and all other goods, sectors and IP rights are subject to a different regime. For example, Switzerland has a regime in which most goods can be parallel imported but there is a national regime for medicines. In addition, within the last few years, Australia has experimented with parallel import restrictions on books.

Theoretically, some form of mixed regime could be adopted by the UK. However, any formulation of a mixed regime would need to be in line with the provisions of the Northern Ireland Protocol.

A mixed regime may be complex and may present challenges for businesses and consumers to understand. In particular, if there was a different regime for a particular type of IP right, this could be complex because many goods are protected by multiple IP rights. As an example, if there was a UK+ regime for patents and an international regime for trade marks, designs and copyright, it could be more difficult for businesses to determine where the rights in, for example a hairdryer, are exhausted (and therefore where the goods could be moved or sold without rights holder’s permission). This is because the hairdryer could be protected by a patent, a trade mark and a design.

If the government were to decide on having different treatment for a specific sector, good or IP right, evidence would be needed to demonstrate why different treatment would be beneficial to the UK and how it would align with legal obligations.

## Feasibility of options

At present the government does not have a preferred option for the UK's future exhaustion regime. The government will assess all options in light of representations and evidence received, but as discussed in more detail above, the government is mindful that it has entered into treaties which will limit the options available to it.

Based on the outline of the different options discussed in this document, the government believes there are three options that are more readily reconcilable with the Northern Ireland Protocol. These are: (a) a continuation of the unilateral regime that came into force on 1 January 2021, otherwise known as the UK+ regime; (b) an international regime; and (c) a mixed regime.

- Q:** Do you have any views on the government's assessment that the Northern Ireland Protocol will mean that the regime ultimately selected by the UK government will need to allow parallel imports into Northern Ireland from the Republic of Ireland and other EEA countries?
- Q:** If the government was able to change from the current unilateral regional regime (UK+ regime), would your business or organisation prefer a model which either allowed parallel imports from anywhere in the world (without the rights holder's permission) or prohibited parallel imports into the UK (unless the rights holder's permission is obtained)? Please outline the regime your business or organisation would prefer and explain the benefits, costs of change and risks of that change.
- Q:** Of the 4 options that the government is assessing, which exhaustion regime would you be most opposed to for your business or organisation? Please explain the reasons and set out the costs to your business or organisation and risks of that change.
- Q:** Is there clear and verifiable evidence in favour of different treatment for specific sectors, goods or IP rights to the UK economy?
- Q:** What new activities would your business have to undertake if the government changed the current exhaustion regime? What would be the costs and benefits of such activities?

## Other factors related to exhaustion of IP rights

As well as parallel trade, exhaustion of IP rights can affect several other factors. This section sets out some of these factors and how they may be affected by different exhaustion regimes.

### Licensing, territorial rights and contracts

As IP rights are inherently territorial, IP rights holders often seek to control the use of their IP in different countries by using licensing. If the exhaustion regime was to change in a particular country, the licensing a rights holder has carried out would be affected. For example, should international exhaustion be introduced in a country, the licence holder in that country may not be willing to pay as much for a licence if the goods are able to be parallel imported from other countries and sold more cheaply. The licence holder would not have as much control as they did and so not be able to make as much profit. In turn this would reduce the profit of the rights holder as they may not be able to receive as much for the licence as previously.

In another example, should national exhaustion be introduced in a country, the licence in that country could become more valuable because there would be no parallel importation of the goods. The licence holder would therefore have more control over the goods and so the licence would be worth more. As a result, the rights holder may have an increased profit as they would be able to charge the licence holder more for the licence.

With respect to contracts, contracts between suppliers and sellers commonly include clauses about what can be imported and exported into a particular area. These contracts would take into account the current exhaustion regime. However, should the exhaustion regime change, these contracts may need to be renegotiated, causing a cost to the businesses involved.

### Products made from component parts and transformed goods

Some products may require complex supply chains which rely on use of components and spare parts sourced from the secondary market or take goods and transform them into different goods. Depending on the exhaustion regime implemented, there may be impacts on the manufacturing of such complex products. Businesses may rely on back and forth cross-border movement of products at different stages of the manufacturing process.

One example of this is within the fashion sector. Within this sector, various goods, such as fabric with patterns protected by copyright and created garments protected by design rights, are moved across borders in order to manufacture a completed product. Another example is within the automotive spare parts sector, in which products are made up of various goods protected by patents. These goods can be sourced from different countries or the finished product may be transported across borders. The choice of exhaustion regime will have an effect on both of these examples.

If a national regime was chosen, it would be difficult to move these goods across borders because various rights holders' permission would be needed each time the goods were moved. If an international regime was chosen, movement of these types of goods would be easier. This is because rights holders' permission would not always be needed, depending on the exhaustion regimes of the other countries.

## Transit goods

Goods are often moved across borders but not put on the market in a particular country. How this interacts with exhaustion is a matter for the countries the goods are ultimately being exported from and imported to. For example: at present goods may be imported from France into the UK and not put on the market but stored. Then, they can be exported again from the UK to The Netherlands to be put on the market there. In this case, the exhaustion regime would be a matter for French and Dutch law (ultimately governed by EU law) rather than the particular exhaustion regime the UK chooses. Therefore, it is likely that the UK's exhaustion of rights IP regime would not stop these goods moving across borders.

## Consumer choice and potential consumer confusion

Parallel trade can affect both consumer choice and confusion depending on the exhaustion regime a country chooses. For example, some companies may choose to create different versions of the same good for different countries' markets due to preferences in those areas. In an international exhaustion regime, parallel importation of these different versions of the same goods into a country may be allowable therefore causing consumer confusion as the product may not be the same each time (e.g. it may have a different flavour). On the other hand, this will also increase consumer choice as there may be more types of the goods available for purchase. In a national regime, parallel imports of these different versions of the goods may not be allowable therefore reducing both consumer choice and consumer confusion.

## Potential effect on innovation

The choice of exhaustion regime can affect levels of innovation. For example, under a national regime, parallel trade is limited to within the UK only. This means that rights holders have more control over the distribution of their goods and, as a result, IP rights would be considered to be strong. This means that people may be more likely to innovate or create goods that can be protected by IP because they would have more protection and a higher return on their investment into the time taken to innovate or create. In an international regime, rights holders would have less control over the distribution of their goods. This means that IP rights may be considered to be weaker and people may be less likely to innovate or create. This is because they would have less protection and return over their investment.

## Interaction with unregistered design rights

Although the principle of exhaustion of IP rights affects all of the four main IP rights, there may be a particular interaction with unregistered design rights. Protection arising from an unregistered design depends on where the design was first disclosed. If a design is first disclosed in the UK, it is protected as an unregistered design in the UK. However, in that same case, first disclosure in the UK means the design is not considered new by the EU and so it is not protected as an Unregistered Community Design (UCD). The opposite is also true (i.e. a design first disclosed in the EU, gains protection as an UCD, but is no longer considered new in the UK and so is not protected as an unregistered design in the UK).

This means that there may be an issue relating to how exhaustion of IP rights works with respect to unregistered designs. For example, if a product which is protected as a UCD in the EU is first put on the market in the UK, the rights in that good may not be considered exhausted in the EEA. Therefore, permission from the rights holder would be needed to parallel export the good from the UK into the EEA, despite the product not being protected as an unregistered design in the UK. Another complication is that UCDs are an EU right, so protection as a UCD does not extend to EEA countries, whereas the exhaustion of IP rights regime for other IP rights does extend to EEA countries.

This issue does not appear to apply to copyright because protection is automatic and there is no requirement for the work to be new, so copyright protection can be obtained in all of the territories. The issue also does not appear to apply to registered rights (patents, trade marks and registered designs) because there is the opportunity to apply for these rights in other territories due to grace periods and priority periods.

If a national regime was chosen, parallel trade across borders would be limited and so this issue is unlikely to occur. Should any other regime be chosen, this issue is likely to continue to occur.

**Q:** Please outline any other issues that the government should consider when deciding on what exhaustion regime to implement, including economic, trade, consumer or societal impacts.

## Implementation

If, after consultation, a decision is made to adopt any regime other than the current unilateral regime (or UK+ regime), the government will need to consider the length of any changeover period and any other transitional provisions. Any change to the exhaustion regime would require businesses and organisations to adapt and make any required changes to their supply chains and other aspects of their business model. The government is therefore seeking views on how any change to the UK's current exhaustion regime should be implemented.

- Q:** If the government were to change its exhaustion regime, what factors would affect the amount of time your business or organisation would need to implement a change? This may include but is not limited to changes to supply chains, contracts, product development, manufacturing processes or investment decisions. Please provide information to support your comments.
- Q:** If the government were to change its exhaustion regime, what length of time would your business or organisation need to implement the change (for example, 1 year or 3 years)? Please provide information to support your answer.

## How to respond to this consultation

Please feel free to answer the questions that are relevant to you or where information is available. There is no requirement to provide answers to all questions.

The government is seeking evidence that is open and transparent in its approach and methodology<sup>3</sup>. The government is aware that some individuals and small businesses and organisations face particular challenges in assembling evidence, and we will assess their contributions understandingly.

## Closing date

This consultation will run for 12 weeks. It commenced on 7 June 2021 and will close at 23.45 on 31 August 2021.

A response form document is available on GOV.UK. Once completed please email submissions or comments to: [IPExhaustion@ipo.gov.uk](mailto:IPExhaustion@ipo.gov.uk)

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<sup>3</sup> Please see further information from the World Intellectual Property Organisation on "Guidelines to using evidence from research to support policy making" at <https://www.wipo.int/publications/en/details.jsp?id=4460&plang=EN>

## Next steps

After this consultation closes the government will assess responses to this consultation. The government will note all responses and publish a response document in due course but will not respond to comments on an individual basis. The information obtained will inform a government decision on the UK's future exhaustion regime and an accompanying impact assessment. Final stage impact assessments and policy decision announcements are generally published on GOV.UK.

## Data protection

A summary of responses to this consultation will be published on [GOV.UK](https://www.gov.uk). The government considers it important in the interests of transparency that the public can see who has responded to government consultations and what their views are.

By responding to this consultation, you acknowledge that your response, along with your name and/or organisation may be made public when a response to the consultation is published in accordance with the access to information regimes. These are primarily the Freedom of information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

Additionally, information provided in response to this consultation, including personal information or commercially sensitive information, may be made available to the public on request in accordance with the requirements of the [Freedom of Information Act 2000](https://www.gov.uk/guidance/freedom-of-information-act-2000) (FOIA) and the [Environmental Information Regulations 2004](https://www.gov.uk/guidance/environmental-information-regulations-2004) (EIR).

If you wish to highlight that information is confidential or sensitive, please advise us in writing when you provide your response. If there is a request to make any confidential information publicly available, we will consider the request on a case by case basis in line with any request to maintain confidentiality.

The government may also publish consultation responses in response to any FOIA/EIR requests on [GOV UK](https://www.gov.uk).

Please read the [privacy statement](#) and for more information.

## **Annex 1 – Impact Assessment**

The government has published an accompanying Impact Assessment to this consultation document.

|  |   |  |  |  |
|--|---|--|--|--|
| <b>Title:</b> Consultation Stage Impact Assessment on the UK's Future Regime for the Exhaustion of Intellectual Property Rights<br><b>IA No:</b> BEIS004(C)-21-IPO<br><br><b>RPC Reference No:</b> RPC-BEIS-IPO-5047(1)<br><b>Lead department or agency:</b> Intellectual Property Office (an executive agency of the Department for Business, Energy and Industrial Strategy) | <b>Impact Assessment (IA)</b>               |  |  |  |
|  | <b>Date:</b> 07/06/2021                     |  |  |  |
|  | <b>Stage:</b> Consultation                  |  |  |  |
|  | <b>Source of intervention:</b> Domestic     |  |  |  |
|  | <b>Type of measure:</b> Primary legislation |  |  |  |
| <b>Contact for enquiries:</b><br><a href="mailto:IPExhaustion@ipo.gov.uk">IPExhaustion@ipo.gov.uk</a>  |   |  |  |  |

## Summary: Intervention and Options

### Cost of Preferred (or more likely) Option (in 2019 prices)

| Total Net Present Social Value | Business Net Present Value | Net cost to business per year | Business Impact Target Status |
|--------------------------------|----------------------------|-------------------------------|-------------------------------|
| £m                             | £m                         | £m                            | Qualifying provision          |

#### What is the problem under consideration? Why is government action or intervention necessary?

Now that the United Kingdom has left the European Union, the UK government is making use of its regulatory freedom to decide its future exhaustion of intellectual property rights regime. The UK is currently unilaterally participating in the European Economic Area ("EEA") regional exhaustion regime without reciprocation. This means that the IP rights in goods first placed on the market in the EEA are considered exhausted in the UK. These goods can be parallel imported into the UK without the rights holder's permission. However, goods exported to the EEA from UK will need rights holder's permission as the IP on these goods is not considered exhausted by the EEA member states.

#### What are the policy objectives of the action or intervention and the intended effects?

UK participation in the EEA regional exhaustion regime ceased on 31 December 2020, and the government now intends to make a decision on the most appropriate regime for the future. In making this decision, the government's objective is to preserve a balance between incentivising innovation and the creation of new technology, products or cultural works while enabling competitive markets, consumer choice and fair access to IP-protected goods for the benefit of society.

#### What policy options have been considered, including any alternatives to regulation?

Option 1: UK unilateral application of an EEA regional exhaustion regime ('Do nothing' option but this is still a possible option).

Option 2: A national regime where parallel imports into the UK would not be permitted without the rights holder's permission. Rights holders would be able to prevent the re-sale to the UK of any IP-protected goods that were not first placed on the market in the UK.

Option 3: An international regime whereby parallel imports from any country would be permitted. This option would also include unreciprocated continuity of parallel imports from EEA member states.

Option 4: A "mixed" regime may consist of a different regime for a specific good, sector or IP right.

|   |                     |                     |                      |                     |
|---|---------------------|---------------------|----------------------|---------------------|
| Does implementation go beyond minimum EU requirements?  |                     | N/A                 |                      |                     |
| Is this measure likely to impact on international trade and investment?   |                     | Yes                 |                      |                     |
| Are any of these organisations in scope?  | <b>Micro</b><br>Yes | <b>Small</b><br>Yes | <b>Medium</b><br>Yes | <b>Large</b><br>Yes |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?<br>(Million tonnes CO <sub>2</sub> equivalent) N/A |                     | <b>Traded:</b>      |                      | <b>Non-traded:</b>  |

|                    |  |             |
|--------------------|--|-------------|
| Economist signoff: | Stephanie Dales - Acting Deputy Director Europe and Trade Analysis | 7 June 2021 |
|--------------------|--|-------------|

## Background

### Intellectual property rights' role in innovation and creativity

'Intellectual Property' (IP) refers to creations of the mind. This includes inventions; literary and artistic works; and symbols, names and images used in commerce. IP is protected in law by rights such as patents, designs, copyright and trade marks, which enable people to earn recognition or financial benefit from what they invent or create.

IP rights exist to incentivise innovation through the offer of a temporary monopoly to creators and inventors. Investment in creativity and innovation leads to new products and services, through which businesses and individuals make an important contribution to UK economic growth. However, creativity and innovation involve cost to individuals and businesses, such as lost earnings or investment in research and development. IP-rich goods and services are typically difficult to bring to market but easy for others to copy. Such costs and risks can therefore discourage investment in innovation and creation. Granting inventors and creators exclusive rights helps to reduce such risk and so stimulates investment in innovation and creativity.

IP industries play a vital role in the growth of the UK economy. In 2014-16, IP right-intensive industries generated an estimated 43% of UK GDP and 28% of UK employment, or more than 8.4 million jobs<sup>1</sup>. UK businesses continue to invest significant resources in intellectual property. In 2018, almost half of UK firms' investment (£169 billion) was in intangible knowledge assets, rather than tangible assets like plants or machinery<sup>2</sup>. For 2014, just over half of this investment was protected by formal IP rights<sup>3</sup>.

### What is exhaustion of intellectual property rights?

Exhaustion of IP rights limits a rights holder's power to control the distribution of a good<sup>4</sup> after it is placed in a market. The principle under which "limits" are imposed is known as the "Principle of Exhaustion"; this means that after a good has been placed in the market by the rights holder or an authorised licensee, they are unable to prevent the subsequent sale and redistribution of that good in that market or region.

The exhaustion regime of a country or region grants rights holders and their authorised licensee the ability to control parallel trade. Some countries give the IP rights holders the right to exclude goods sold abroad from importation, a situation referred to as *national exhaustion*. Others permit parallel imports, where parallel distribution channels exist outside the control of the rights holders. This is the case of *international exhaustion*. The European Union (EU) and other members of the European Economic Area (EEA) pursue an intermediate policy of *regional exhaustion*, under which IP rights owners may exclude parallel imports from outside the EEA geographical area but such trade is legal inside the region.

Exhaustion can mitigate and limit the strength of intellectual property rights, by providing access to and availability of goods to consumers and businesses through a system of parallel trade<sup>5</sup>. Parallel trade occurs where goods sold abroad at a lower price are reimported by a distributor and can compete with domestic goods. Parallel imports can affect the degree of competition that rights holders and their licensees face, and their ability to price discriminate geographically, making it harder to charge different prices in different markets.

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<sup>1</sup> EUIPO report, available at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/IPR-intensive\\_industries\\_and\\_economicin\\_EU/WEB\\_IPR\\_intensive\\_Report\\_2019.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/IPR-intensive_industries_and_economicin_EU/WEB_IPR_intensive_Report_2019.pdf), (2019)

<sup>2</sup> ONS, 'Developing experimental estimates of investment in intangible assets in the UK: 2016' (2019)

<sup>3</sup> Goodridge, Haskel and Wallis, 'UK Intangible Investment and Growth' (2016)

<sup>4</sup> There are no rules on exhaustion relating to digital goods

<sup>5</sup> WIPO Standing Committee on the Law of Patents: Twenty-First Session; Geneva, November 3 to 7, 2014, "Exceptions and limitations to patent rights: exhaustion of patent rights" ([http://www.wipo.int/edocs/mdocs/scp/en/scp\\_21/scp\\_21\\_7.pdf](http://www.wipo.int/edocs/mdocs/scp/en/scp_21/scp_21_7.pdf))

## **Problem under consideration and rationale for intervention**

Now that the United Kingdom has left the European Union, the UK government is making use of its regulatory freedom to decide its future exhaustion of intellectual property rights regime. The UK is currently unilaterally participating in the EEA regional exhaustion regime without reciprocation. This means that the IP rights in goods first placed on the market in the EEA are considered exhausted in the UK. Therefore, these goods can be parallel imported into the UK without the rights holder's permission.

The government intends to make a decision on the most appropriate exhaustion regime for the future. There are a number of options available which will need to be tested through consultation, with evidence and views required on what regime should be implemented on a permanent basis, and if there is to be a change, how any new regime should be implemented.

## **Rationale and evidence to justify the level of analysis used in the IA**

For this consultation stage impact assessment, the government has been unable to quantify the impact due to a lack of available data. Economic evidence on the impact is limited as there are no similar international examples where a country has left a regional exhaustion regime. Existing economic literature provides some evidence for certain sectors, but there is no evidence on what happens when a country changes its exhaustion regime across all IP rights simultaneously. Furthermore, parallel imports are legal and entail trade in legitimate goods, and apart from certain sectors such as pharmaceuticals, where regulators must track the origins of medicines that may affect public health, there is very little data collected on the scale of parallel imports into the UK.

This makes measuring the economic impact of a potential change to the exhaustion regime challenging. The Intellectual Property Office (IPO) commissioned Ernst & Young (E&Y) in 2019 to carry out a feasibility study to assess if it was possible to measure the scale and extent of parallel trade. The findings from the report highlighted that it was difficult to measure the scale of parallel trade into the UK. Efforts to engage businesses highlighted that their awareness and understanding of parallel trade was very limited.

While this impact assessment brings together evidence from both commissioned and academic research, there are still significant gaps which the government is looking to address in this consultation. Therefore the government has carried out a qualitative assessment of the costs and benefits and sought to describe who will be affected.

As part of the consultation, the government will seek to gather the evidence to identify the size of the market for parallel imports, and how different sectors and parties might be affected. The government will also continue to engage with sectors affected, to identify how parallel trade affects them and what data is available. The consultation document will ask specific questions around:

- how different businesses and sectors are affected by parallel imports;
- what information businesses can provide on the costs and benefits of different exhaustion regimes (including the current unilateral regime); and
- what the perceived opportunities and risks associated with different exhaustion regimes are.

## **Scope of the analysis**

To be consistent with the Green Book and wider government approach, this impact assessment focuses only on the costs and benefits to the UK. The government does not consider the impacts of this policy to non-UK businesses or rights holders affected. UK businesses that export goods are out of scope of our assessment; this is because goods exported are dependent on the exhaustion regime of the destination country or region: in other words, the UK cannot directly affect how other countries treat UK exports.

Finally, this assessment does not look at the impact on imports for purely digital goods and services as they are not impacted by the exhaustion of IPR rights which relates to genuine physical goods.

## **Description of options considered**

There are four policy options:

- Option 1: UK unilateral application of an EEA exhaustion regime (“Do Nothing”).
- Option 2: Move to a national regime.
- Option 3: Move to an international regime.
- Option 4: Move to a “mixed” regime.

The government does not consider a national regime to be readily compatible with the Northern Ireland Protocol. This option is included in this consultation for completeness and to gather what evidence is available on economic impact.

All policy options are assessed against the “Do Nothing” option which, itself, is a potential option (“the counterfactual”). At this stage, the government does not have a preferred option.

## **Policy objective**

The government needs to make a decision on the most appropriate exhaustion of IP rights regime for the future. In making this decision, the government’s objective is to preserve a balance between incentivising innovation and the creation of new technology, products or cultural works while enabling competitive markets, consumer choice and fair access to IP-protected goods for the benefit of society. The government must also consider impact on wider government priorities, including the principle of unfettered access between the markets of Northern Ireland and Great Britain.

## **Who is likely to be affected?**

The exhaustion regime affects a number of actors in the transaction of goods. From the rights holders’ perspective, the choice of exhaustion regime affects their ability to control the supply of their good into a market. For firms using goods protected by IP procured from another firm as part of a production process, there will be several implications for the operation of the supply chain. For consumers, the choice of exhaustion regime determines the size of the market, the prices they pay and the choice of products available to them.

The list below, although not exhaustive, sets out how different parties are affected by the exhaustion regime and parallel trade:

- Distributors: engaging in international trade involves significant fixed costs for firms, in terms of finding suppliers, meeting regulatory requirements in import markets, and dealing with customs and taxes. These costs need to be spread over large volumes, implying that parallel imports are largely done in bulk at the wholesale level<sup>6</sup>.
- IP rights holders and authorised licensees: through the control over distribution, they can control the supply of their goods to a geographical market. Rights holders can be businesses that own IP rights or are licensed to use them. They can also be businesses that are specialist IP inventors who do not manufacture their invention, but rather license their IP to others to make and sell their product.
- Manufacturers: may have complex supply chains which rely on IP goods. The manufacturing of complex products may entail the back and forth cross-border movement of products at different stages of the manufacturing process.

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<sup>6</sup> See NERA ‘The Economic consequences of a choice of a regime of exhaustion in the area of trademarks’, (1999)

- Retailers: can play a vital role in the sale of parallel imported goods. Cross-border retailers (including online retailers) may source from multiple markets to achieve the best price from higher volumes, as well as taking advantage of any price differences. Others, such as pharmacists, rely on parallel imports of medicine to bring in products at lower prices than are available in the UK market. For certain goods, rights holders maintain a strong control over their distribution channel by selecting retailers that can sell their products, with the view to maintaining brand image and exclusivity, for example, high-end luxury goods.
- Consumers: are often unaware whether a good contains an IP right or where it comes from. Although consumers can purchase lower priced goods from other markets directly, there are often large costs that inhibit this, for example, transportation costs.
- Government regulation: regulation can determine the extent to which certain goods can be imported, for example, businesses need a licence to parallel import medicines into the UK.
- Others: parties affected may include demand for IP legal services. IP is a complex area and rights holders often use legal services to draft agreements to help maintain and control the use of their IP right.

The Ernst and Young report found that groups involved in parallel trade are difficult to identify. This is because the awareness of parallel trade is low; in many cases parallel trade is so ingrained in business models and supply chains that many businesses are not aware that the goods they buy and sell are parallel goods. The government would therefore welcome consultation responses from groups and businesses not yet captured in this list who anticipate impacts as a result of any potential change in policy.

### **Main drivers of parallel trade**

There are several factors that motivate parallel trade<sup>7</sup>. Price differentials or the opportunity for arbitrage between different markets is the most identified reason, but there are others which can either enable or restrict parallel trade:

- Transportation costs and exchange rate differences play a vital role in determining the extent to which parallel imports are profitable<sup>8</sup>. Where transport costs are high and/or exchange rate differences are small, they will limit the extent to which parallel trade occurs.
- Price control in certain sectors by government can also create parallel trade opportunities. This is an important factor driving parallel trade in the pharmaceutical sector where the use of price caps keeps prices comparatively low in some countries.
- Promotional expenditure on advertising and marketing can also play a contributing factor to parallel trade. Authorised dealers often invest in these activities and the costs of doing this can be high. However, parallel importers do not incur these costs, but still benefit from the investments made. Consequently, they can purchase and sell products from abroad to UK consumers at a lower cost than the authorised dealers<sup>9</sup>.
- Differences in product quality can also provide arbitrage opportunities to enable parallel trade. Rights holders may deliberately target different quality products for different markets. Distributors may see opportunities to move products across markets to earn a profit, i.e. to target lower quality product in an otherwise higher-priced market.

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<sup>7</sup> See IPO's Ernst and Young feasibility study (2019)

<sup>8</sup> See NERA 'The Economic consequences of a choice of a regime of exhaustion in the area of trademarks', (1999)

<sup>9</sup> NERA, 'The Economic consequences of a choice of a regime of exhaustion in the area of trademarks', (1999)

## Which sectors are affected by parallel imports?

The extent to which a sector will be affected by an exhaustion regime will depend on the scale of parallel imports. Whilst there is a lack of data on the scale of parallel imports, we can use total imports as a proxy measure to identify the sectors or products most vulnerable to parallel imports. This figure also could be considered an upper bound for the scale of parallel imports.

The total value of all goods imported (N.B. not just parallel imports) to the UK was £426 billion in 2020<sup>10</sup> and there were around 246,000 businesses importing goods into the UK<sup>11</sup>. Imports of cars (£26 billion), medicinal and pharmaceutical products (£24 billion) and clothing (£20 billion)<sup>12</sup> were the product commodities which accounted for the largest values.

From discussion with stakeholders, the government believes the following sectors are also particularly affected by parallel imports: fast moving consumer goods, print and publishing, music and film, defence and luxury goods.

## What are other countries doing?

The UK's main trading partners (excluding the EEA countries) in the main have an international exhaustion regime for IP rights, with some reservations for certain goods and IP rights:

- USA: has an international regime for copyright and patents. The USA has a national regime for trade marks but with parallel imports allowed in certain situations.
- China: has an international regime for patents and copyright. Exhaustion of IP rights related to trade marks is not covered in IP law.
- Japan: has an international regime for patents, trade marks and copyright.
- India: has an international regime for patents and trade marks. For copyright law, the principle of international exhaustion does not apply to cinematographic films and sound recordings.
- Switzerland: Switzerland does not form part of the EEA and has adopted a bespoke approach. For patented goods (e.g. medicines) where the price is determined by public authorities, a national regime applies. For trade marks, it has adopted a system based closely on the EEA regional regime. For copyright it employs an international regime except for audio visual works for which it has a national regime.

Generally, exhaustion of rights for design right protection matches the regime for other IP rights. For the countries mentioned above the government is not aware of an example of a specific carve out for designs.

While there is very little evidence on the effect from countries changing their IP regime, this impact assessment highlights some case study examples from Australia, New Zealand and Sweden.

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<sup>10</sup> ONS trade statistics 2020

<sup>11</sup> HMRC UK Importer and Exporter Population 2020

<sup>12</sup> ONS trade statistics 2020

**Case study: New Zealand and Australia, changes to exhaustion regime for copyright 1991-2003**

- There is empirical analysis on the impact of relaxing restrictions on parallel imports for certain copyright products in New Zealand and Australia. Australia changed its exhaustion regime for copyright over a period from 1991 to 2003, whilst New Zealand changed its regime in 1998 and 2003.
- Australia has maintained a partial restriction on the parallel import of books, designed to delay the competition that local retailers faced from the release of new books into the market. As a consequence, a large difference in retail book prices between the Australian and New Zealand market emerged, with Australian consumers paying a higher price on average of 10% (NZ\$3.06 per book).
- The removal of restriction on parallel imports of books in New Zealand did not appear to have significant negative effects on the domestic publishing industry. The number of new books published by domestic authors annually remained constant, whilst the number of authors employed increased overall.
- Similarly, the removal of restriction on computer software did not have a negative impact on the domestic industry.
- The Australian and New Zealand economies are net importers of copyright products, whilst the UK copyright market is larger and the UK is a net exporter of copyright protected goods. Therefore, there should be an avoidance of direct comparison between the UK and these countries.

*Source: Deloitte Access Economics 'The Costs and Benefits of Preventing Parallel Imports into New Zealand' (2012)*

**Case study: Sweden, removing the restriction on parallel imports of patented medicine, 1995**

- Before 1995 Sweden prohibited parallel import of pharmaceutical drugs, but on entry into the EU in 1995 it was required to adopt an EU-wide regional exhaustion regime. Research looked at the impact on drug prices from parallel imports of brand-name pharmaceutical drugs.
- Research showed that parallel imports increased substantially after Sweden joined the EU, both in terms of actual sales and number of licences granted to parallel importers. From 1995 to 1998, parallel import sales had grown to 1.0 billion SEK, which corresponded to 6% of the total market and 226 approvals to import pharmaceutical products.
- Analysis showed that prices of drugs subject to competition from parallel imports fell relative to other drugs over the period 1994-1999. Econometric analysis showed that competition from parallel importers led to significant reduction in manufacturing prices between 12 and 19%. Furthermore, manufacturers' prices continue to fall where they faced increased competition from parallel importers.

*Source: Ganslandt and Maskus 'Parallel imports and the pricing of pharmaceutical products: evidence from the European Union' (2004)*

## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

### **Option 1 (baseline): UK unilateral application of an EEA regional exhaustion regime.**

At present, parallel imports from the EEA into the UK are permitted. The current exhaustion regime forms the baseline counterfactual to assess other options against.

The government will consider each option below against option 1 as a baseline.

### **Option 2: National regime**

In a national regime, parallel imports into the UK from anywhere in the world would not be permitted without the rights holder's permission. Rights holders would be able to prevent the re-sale within the UK of any goods that were not first placed on the market in the UK, thereby restricting the parallel import of goods from any other country.

The government considers that any trade of goods between Northern Ireland and the Republic of Ireland must take into account the principles of the Northern Ireland Protocol. In addition, movement of goods within the UK will involve additional complexity to take into account the principle of unfettered access for goods.

#### *Benefits to rights holders and their licensees*

A move to a national regime from a unilateral regional exhaustion regime is likely to benefit rights holders by granting them greater control over the distribution of products within the UK market. Rights holders could potentially maintain higher prices in the UK than in other markets by being able to exert greater control over the supply of their goods. They may see increased market share and return from their investment and this may encourage them to further invest in innovation and creativity.

A national regime would further strengthen rights holders' and their licensees' ability to maintain the exclusivity of their brand. In some sectors, rights holders maintain control over their distribution channel by selecting retailers that can sell their products, often as a means of maintaining brand image and exclusivity, for example, high-end luxury brands. Preserving the appeal of such goods requires an ability to maintain their high prices: a move to a national regime would strengthen rights holders' or their licensees' ability to control the supply of their good and therefore its price.

Moving to a national regime may further help to strengthen the ability of rights holders and their licensees to take enforcement action against infringement. In particular, the remedies available under a national exhaustion regime are likely to be more extensive than under the unilateral regional regime.

Finally, rights holders often target different quality products to meet regulatory standards in different markets. A move to a national regime from a unilateral regional regime would enable them to exercise greater control over their products and help them to preserve the regulatory needs around quality and safety of their product.

#### *Benefit to businesses*

A move to a national regime would further help licensees obtain the full benefits of their promotional activities. In some sectors, rights holders may license their product to businesses to sell on the condition they invest resources in promotional and pre and post-sale services. Often with the view to generate demand, sell more output and provide better services to consumers. A move to a national regime would help to ensure that licensees were able to benefit from their promotional investments and that parallel importers were not able to free ride on their investment

by importing goods from abroad and selling them at a lower price. Furthermore, a national regime may further incentivise businesses to invest in building the local market and to provide pre and post-sale services to the benefit of local consumers<sup>13</sup>.

### *Cost to businesses*

The move to a national regime would allow rights holders to stop parallel imports of their products or potentially impose additional costs on businesses parallel importing their products into the UK. In particular, a move to a national regime may lead to increased costs for businesses. Such costs may include:

- Restricting the ability of businesses to source goods from a broader geographic area may directly limit the choice of suppliers for a product. Businesses may face reduced choice which may lead to higher costs. This may lead to disruption of normal business operations, which might compromise the competitiveness of businesses, particularly in the short term.
- One-off transition cost, which includes costs associated with understanding legislation and changing suppliers. This may include legal costs associated with reorganising existing supply contracts.
- Additional ongoing costs. This may include search costs associated with identifying the rights holder and seeking their authorisation to parallel import to avoid the risk of litigation.
- Additional transaction costs to businesses, such as search costs and increased time needed for delivery. High transaction costs act like a tax on purchases of a good, leading to a fall in quantity demanded and ultimately increasing costs. These costs may be incurred by both businesses and consumers<sup>14</sup>.

### *Impact on business competition*

A move to a national regime may also lead to reduced competition amongst businesses such as wholesale distributors, large multi-country retailers and businesses sourcing products and components globally. This is because rights holders only release their goods via authorised distributors, who may benefit from increased profits and market share at the expense of unauthorised distributors. This may result in certain businesses not being able to compete and deciding to leave the market. Should sufficient numbers of businesses leave the market who are an important source of competitive constraint, then it may result in increased prices and reduced choice for consumers.

### *Benefit to consumers*

A move to a national regime from a unilateral regional regime may result in increased consumer benefits from purchasing a product which was developed specifically to meet their needs and also meets UK regulatory standards around quality and safety<sup>15</sup>. If rights holders create and innovate more under a national regime, then consumers may also benefit from more innovative and creative products entering the market.

### *Cost to consumers*

The move to a national regime from the current unilateral regional regime:

- May adversely impact on consumers in terms of availability of goods and the price paid. The impact will vary between sectors, and consumers may be affected negatively.
- There may be increased delays in receiving supplies of IP-protected goods.

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<sup>13</sup> A.Katz, 'The economic rationale for exhaustion: distribution and post-sale restraints' (2014)

<sup>14</sup> Deloitte Access Economics 'The Costs and Benefits of Preventing Parallel Imports into New Zealand', (2012)

<sup>15</sup> A.Katz, 'The economic rationale for exhaustion: distribution and post-sale restraints' (2014)

- The NHS has been one of the largest beneficiaries of the regional exhaustion regime, being able to source cheaper medicines in comparison to prices in the domestic market. A trade association, representing a majority of the total UK parallel import market value, has claimed that in 2019 the savings from parallel imports to the NHS was estimated to be around £110 million. The government would welcome further information on the impact on medicine supply resilience.

#### *Other costs*

There may also be increased legal costs to rights holders and to the government in taking enforcement action against unauthorised imports or sales of IP goods. A move to national exhaustion regime will provide rights holders with the ability to more closely control distribution of their products. Rights holders and their licensees may face additional costs of monitoring and tracking authorised imports. Furthermore, government agencies may see increased demand associated with ensuring goods imported are authorised by rights holders.

#### *Overall likely impact*

In aggregate, consumers and importing businesses and businesses that rely on goods with IP as source of their supply chain may lose from a move to a national regime from the current unilateral regime, whilst rights holders may gain. The aggregate impact to the UK economy is difficult to ascertain as it is dependent on the extent to which the restriction to parallel imports results in net transfer from UK consumers and business to UK rights holders.

### **Option 3: International regime**

IP rights would be considered exhausted in the UK once they had been first put on the market in any other country. This means that these goods could be parallel imported into the UK from any country in the world without the rights holder's permission. An international regime would continue to allow imports from the EEA countries, but this would be extended to cover any other country.

#### *Benefit to businesses*

A move to an international regime from the current unilateral regional regime may bring additional benefits to some businesses as they may be able to access a larger international market of suppliers: with increased choice, competition and lower prices. Businesses would be able to parallel import goods from all over the world thereby benefiting from increased availability of suppliers and variety of products.

The increased competition amongst suppliers may put downward pressure on existing domestic supplier prices. Even in sectors where parallel imports do not arise, the existence of the threat of parallel imports may itself be sufficient to keep domestic supply prices from increasing.

Manufacturers that have a complex supply chain and import components that contain IP rights are particularly likely to benefit from a move to an international regime. Under the current exhaustion regime, the import of components sourced outside the EEA without the rights holder's permission may trigger an IP infringement claim. However, a move to an international exhaustion regime could remove such risk to manufacturers and sellers of equipment containing IP rights.

#### *Cost to businesses*

A move to an international regime from the unilateral regional regime may result in authorised licensees seeing increased competition from parallel importers, who are able to free ride on licensees' investment in promotional and marketing activities. Faced with increased competition from parallel imports, these businesses may see little return from their promotional and marketing investment and in the long run may decide to cut back on such investment.

Moving to an international regime from the current unilateral regional regime, may result in increased parallel imports of goods by retailers. However, retailers selling imported goods may

have to provide the same warranties as they currently do for goods that are not parallel imports, but with less recourse to the initial manufacturer. This may create additional legal uncertainty and increased legal costs to retailers.

### *Benefits to consumers*

A move to an international regime may positively impact on consumer welfare in terms of increased availability of goods, competition and lower prices paid. As highlighted above, increased competition amongst suppliers may put downward pressure on existing domestic prices. Even in sectors where parallel imports do not arise, the existence of the threat of parallel imports may itself be sufficient to keep domestic consumer prices from increasing.

The main benefits to consumers will arise as a result of changes to business supply and distribution (see above section on benefits to business) and these impacts will vary between sectors. Furthermore, the extent to which consumers benefit will depend on price elasticities for a product and the market structure within different sectors.

### *Cost to consumers*

A move to an international exhaustion regime may increase consumer search costs. Intellectual property rights such as trade marks help to reduce consumer search costs. Brands sell different products in different countries under the same trade mark. For example, the same brand of an alcoholic drink may have a different formulation to reflect different tastes. Similarly, for books, UK consumers may expect content that is tailored to the UK market. Consumers therefore may have to spend more time identifying the product intended for them. There may be a loss to consumer welfare in purchasing a product that is not intended for their market.

Consumers may also lose access to pre or post-sales services as authorised distributors could cut investments in marketing and consumer support services if they feel parallel importers are free riding off their investments, this is particularly the case for high value consumer goods<sup>16</sup>.

If the move to an international regime discourages rights holders from investing in innovation and creativity, then consumers' product choice may be lower than otherwise would have been the case.

### *Cost to rights holders*

A move from the unilateral regional to an international regime may result in:

- A negative impact on the incentives to innovate, create and invest in R&D. If IP rights holders believe their returns could be limited in the UK market, they may invest less than they otherwise might have in ideas, new products and services for the UK.
- Limiting the strength and value of IP rights. It would limit the rights holder's scope to segment markets across countries and price discriminate between different countries. The restriction on the ability to parallel import would open the domestic market to greater competitive pressures and reduce or constrain their ability to increase prices. This increased competition and impact on prices would particularly affect sectors which currently face significant parallel importation from the EEA.
- Rights holders responding by choosing to strengthen their distribution chain with stronger contractual arrangements or vertical integration with downstream distributors. Such changes are likely to lead to an increased cost of managing their supply chain particularly in the short term.

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<sup>16</sup> A.Katz, 'The economic rationale for exhaustion: distribution and post-sale restraints', (2014)

### *Other costs*

Moving to an international regime may lead to increased costs on existing regulators to protect consumer welfare. This would be of importance for sectors where existing regulation seeks to protect against consumer harm. For example, there could be an increased demand on the Medicines and Healthcare products Regulatory Authority (MHRA) to verify applications for parallel imports of medicine that meet UK standards. The increased demand and the associated costs could increase with the scale of parallel imports.

### *Overall likely impact*

In the long run, consumers and some importing businesses and businesses that rely on goods with IP as source of their supply chain may gain from a move to an international regime from the current unilateral regime, whilst rights holders may lose. The aggregate impact to the UK economy is difficult to ascertain.

## **Option 4: Mixed regime**

An exhaustion regime may consist of a different regime for a specific good, sector or IP right than for other goods, sectors and IP rights. For example, Switzerland has a different exhaustion regime for pharmaceutical products. A regional or international regime is applied to all products except for patent protected products (e.g. medicines) where the price is determined by public authorities in which case there is a national regime. A mixed regime could implement a combination of other regimes described in this consultation provided that they are reconcilable with the Northern Ireland Protocol.

### *Potential benefits of a mixed regime*

Mixed regimes are chosen to afford additional protection to encourage the growth of certain sectors that are strategically important to the economy.

It is difficult at consultation stage to describe or assess the potential benefits without knowing the precise form of a mixed regime. First, a mixed regime could take many different forms depending on the regimes applied to different sectors, IP rights and/or goods. Second, there could be unforeseen interactions between the different elements of a mixed regime, for instance when a product is subject to two or more different IP rights to which different exhaustion rules could apply. Therefore, the analysis of this option is less well developed than others in this assessment. The government welcomes further evidence to develop our assessment of this option.

### *Potential costs of a mixed regime*

Affording additional protection to a certain sector may restrict the means by which suppliers compete which could inhibit competition between suppliers. This reduced competitive pressure may be detrimental to the consumer in terms of price or quality. Such regimes may require further regulation and monitoring to mitigate this loss.

Compared to the baseline option, a mixed regime may lead to increased complexity for businesses. They will need to assess the relevant exhaustion regime for the product they are seeking to import, which may be difficult to ascertain where they comprise different components or types of IP protection. This in turn may lead to increased transaction costs as businesses seek to understand which good, IP right or sector they may parallel import. It will also increase the search costs associated with identifying the rights holder to seek their authorisation to parallel import to avoid the risk of litigation.

From a regulatory perspective, a mixed regime is potentially more costly to administer than the current regional (and uniform) regime. It may lead to increased litigation to understand supply and distribution implications where different products or IP areas have different rules, particularly for products which have uses in more than one industry sector or are protected by more than one type of IP.

### *Overall likely impact*

In aggregate, consumers and importing businesses and businesses that rely on goods with IP as source of their supply chain may incur costs from a move to a mixed regime from the current unilateral regime, whilst rights holders may gain. This is the least certain option in terms of the underpinning analysis. The aggregate impact on the UK economy is ambiguous as it will depend on the impact to a specific good, sector or IP right to which the mixed regime applies.

The government welcomes evidence on impacts of different treatment for a specific sector, product type or IP right. The benefits of a mixed regime would need to be weighed against potential additional complexity as well as the impact on competition, choice and price.

### **Impact on small and micro businesses**

Small and micro businesses may be less able to deal with a potential change to the exhaustion regime and therefore could be disproportionately affected, mainly because they have significantly fewer resources available to cope with regulatory change and ongoing compliance costs. Any increased cost may compromise their efficiency. For example, a move to a national regime would increase the transaction costs for parallel importing firms. Such a change could cause disruption to their business operations and their ability to compete.

Small and micro businesses are an important source of dynamic innovation and creation within the UK economy, and contribute to growth and trade. There are large fixed costs and risks involved in expanding into international markets, as a result small and micro businesses often employ licensing and syndication agreements to expand into foreign markets. An international regime may deter these firms from expanding abroad if there is a risk that the goods for international markets could be parallel imported back into the UK market to compete with domestic goods.

The government expects that wholesale parallel distributors would be particularly affected. In the absence of the breakdown of parallel trading firms by company size, the government assumes they have a similar distribution as for general distributing firms of all sizes. Initial analysis shows that most distributors (over 90%) can be classified as small (having fewer than 49 employees). The government would encourage respondents to indicate the size of their business by number of employees in their response to the consultation to assist in refining this initial assessment.

### **Wider impacts**

Whilst the choice of exhaustion regime is a UK domestic policy decision, there may be international ramifications. It is possible that other countries may respond to the UK's decision to select a specific exhaustion regime.

### **Monitoring and Evaluation**

The evaluation strategy will be set out at the time of policy change.

## Annex 2 – Response form

After you have read the consultation document, please consider the questions below. There is no expectation or requirement that all questions are completed. You are welcome to only answer the questions that are relevant to you, your business or organisation.

A copy of this response form is available to download from GOV.UK.

There are two sections on this form:

- A.** Questions arising from this consultation
- B.** Information about you, your business or organisation

When you are ready to submit your response, please email this form and any other supporting documentation to [IPExhaustion@ipo.gov.uk](mailto:IPExhaustion@ipo.gov.uk).

The closing date for responses is at 23:45 on 31 August 2021.

### Section A

#### Parallel trade to and from the UK

- Q1:** Is there parallel trade<sup>4</sup> in your sector?
- Q1a:** If so, how do parallel imports from the EEA impact on your organisation in terms of (a) choice, (b) availability of supply and (c) competition in your marketplace?
- Q2:** If you are able to, please provide the current volume or value of total imports to your organisation in the UK. If possible, please estimate the percentage of the total imports accounted for by parallel imports?
- Q3:** In your business, how do you exert control over supply chains?
- Q4:** For your business or organisation, how do right holders become aware and seek to stop their products being parallel imported from outside the EEA without permission?

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<sup>4</sup> The government defines parallel goods as goods that are lawfully manufactured by the rights holder or under licence and are lawfully first placed on the market then moved across territorial borders.

## Prices

**Q5:** Are there international price differentials for goods in your sector? If yes, what are the factors that influence differences in prices between countries?

## UK's current exhaustion regime

**Q6:** Are you or your business/organisation aware of the change to the UK's exhaustion regime that came into effect on 1 January 2021 following the end of the transition period?

**Q7:** What are the costs and benefits of the current regime to your organisation? For example, in terms of choice and availability of suppliers, prices paid and regulatory standards.

**Q8:** If possible, please provide examples if your business:

- a. has prohibited or has considered prohibiting parallel exports or
- b. has been prevented from parallel exporting from the UK to the EEA since 1 January 2021.

## Assessment of options for the UK's future exhaustion regime

The government is assessing other regimes compared to the current UK+ regime (option 1): (2) national regime, (3) international regime, or (4) a mixed regime<sup>5</sup>.

**Q9:** If the government was able to change from the current unilateral regional regime (UK+ regime), would your business or organisation prefer a model which either allowed parallel imports from anywhere in the world (without the rights holder's permission)<sup>6</sup> or prohibited parallel imports into the UK (unless the rights holder's permission is obtained)<sup>7</sup>? Please outline the regime your business or organisation would prefer and explain the benefits, costs of change and risks of that change.

**Q10:** Of the 4 options that the government is assessing, which exhaustion regime would you be most opposed to for your business or organisation? Please explain the reasons and set out the costs to your business or organisation and risks of that change.

**Q11:** Is there clear and verifiable evidence in favour of different treatment for specific sectors, goods or IP rights to the UK economy?

**Q12:** What new activities would your business have to undertake if the government changed the current exhaustion regime? What would be the costs and benefits of such activities?

<sup>5</sup> Please see 'Options for the UK's future exhaustion regime' section in the consultation document for descriptions of the different regimes.

<sup>6</sup> That is, an international regime.

<sup>7</sup> That is, a national regime.

## Overall impact on consumers, society and the economy

**Q13:** Please outline any other issues that the government should consider when deciding on what exhaustion regime to implement, including economic, trade, consumer or societal impacts.

## Implementation of any change

**Q14:** If the government were to change its exhaustion regime, what factors would affect the amount of time your business or organisation would need to implement a change? This may include but is not limited to changes to supply chains, contracts, product development, manufacturing processes or investment decisions. Please provide information to support your comments.

**Q15:** If the government were to change its exhaustion regime, what length of time would your business or organisation need to implement the change (for example, 1 year or 3 years)? Please provide information to support your answer.

## Legal

**Q16:** Do you have any views on the government's assessment<sup>8</sup> of UK legislation and international treaties that are relevant to the UK's choice and implementation of an exhaustion regime?

**Q17:** Do you have any views on the government's assessment<sup>9</sup> that the Northern Ireland Protocol will mean that the regime ultimately selected by the UK government will need to allow parallel imports into Northern Ireland from the Republic of Ireland and other EEA countries?

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<sup>8</sup> Please see 'Current legislation and treaties' section in the consultation document outlining the relevant legislation and treaties.

<sup>9</sup> The government considers that the Northern Ireland Protocol preserves the position of allowing parallel goods to travel into Northern Ireland from the Republic of Ireland and any other EU member state.

## Section B: Respondent information

- Q1:** Please give your name (name of individual, business or organisation).
- Q2:** Are you responding as an individual, business or on behalf of an organisation?
- a. Business – please provide the name of your business
  - b. Organisation – please provide the name of the organisation that you are responding on behalf of
  - c. Individual – please provide your name
- Q2a:** If you are responding on behalf of an organisation, please tell us the name of the group and give a summary of the people that you represent.
- Q3:** If you are an individual, which of the following statements best describes you?
- a. Academic
  - b. Employer/employed in the private sector
  - c. General public
  - d. Law professional
  - e. Professional in another sector
  - f. Public sector official
  - g. Other – please specify
- Q4:** If you are responding on behalf of your business or organisation, which of the following statements best describes your business or organisation? Please select all that apply
- a. Academic institution
  - b. Distributor of goods
  - c. Distributor of licensed goods
  - d. IP rights holder
  - e. Manufacturer reliant on IP-protected goods
  - f. Retailer
  - g. Trade body representing 'IP rights holders'
  - h. Other – please specify
- Q5:** If you are responding on behalf of a business or organisation, which of the following best describes your organisation?
- a. UK only based organisation (if so, please specify whether your organisation's head office is based in England, Scotland, Wales or Northern Ireland).
  - b. Multinational organisation based in the UK (if so, please specify whether your organisation's head office is based in England, Scotland, Wales or Northern Ireland).
  - c. Multinational organisation based in an EEA country outside of the UK, which operates in the UK (if so, please specify the country your organisation's head office is based in).
  - d. Multinational organisation based in a non-EEA country outside of the UK, which operates in the UK (if so, please specify the country your organisation's head office is based in).
  - e. Other (please specify)

- Q6:** If your business or organisation trades in IP protected goods, which one of the following best describes the destination of IP goods?
- a. Trade with EEA countries only
  - b. Trade with non-EEA countries only
  - c. Trade with both EEA and non-EEA countries
- Q7:** If your business or organisation trades in IP-protected goods, which one of the following best describes your organisation's trade?
- a. Importer of IP-protected goods
  - b. Exporter of IP-protected goods
  - c. Importer and exporter of IP-protected goods (both finished goods and transformed goods)
- Q8:** Which one of the following best describes the sector of your business or organisation?
- a. Agriculture, forestry & fishing
  - b. Automotive or Aerospace
  - c. Business administration
  - d. Civil society
  - e. Construction
  - f. Creative industries
  - g. Distribution
  - h. Education/Academia
  - i. Finance
  - j. Food and drink
  - k. Health (human or animal)
  - l. Information technology
  - m. Production/Manufacturing
  - n. Public administration & defence
  - o. Retail
  - p. Transport & Storage
  - q. Wholesale
  - r. Other – please specify

- Q9:** How many people work for your business or organisation across the UK as a whole?  
Please estimate if you are unsure.
- a. Fewer than 10 people
  - b. 10–49
  - c. 50–249
  - d. 250–999
  - e. 1,000 or more
- Q10:** The Intellectual Property Office may wish to contact you to discuss your response.  
Would you be happy to be contacted to discuss your response?
- Q11:** If you are happy to be contacted by the Intellectual Property Office, please provide a  
contact email address.
- Q12:** Would you like an acknowledgement of receipt of your response? Yes/No

## Annex 3 – Data table

In addition to the questions in this consultation, the government currently holds some of the information listed in this table but would welcome further information on these topics if it is available. If you are providing information in relation to this table, please mark any information to correspond to the numbered section as below and include attachments with your response form in your email to [IPexhaustion@ipo.gov.uk](mailto:IPexhaustion@ipo.gov.uk)

| THE ECONOMY                              |   |
|--|---|
| i  | Openness of UK economy to trade and the extent of trade in IP-protected products.   |
| ii                                       | Value of the IP-protected sector in the UK economy.   |
| iii                                      | Value and scale of parallel trade to the UK economy (including parties involved in parallel trade and effects on those parties).  |
| iv                                       | Prevalence of parallel importation in the UK economy (including number of affected businesses and number of jobs).  |
| CONSUMERS                                |   |
| v  | Current welfare impacts on consumers from parallel importation: price, availability of choice, quantity and quality consumed.   |
| vi                                       | Opportunities for arbitrage based on UK consumer price levels in relation to the rest of the world.   |
| vii                                      | Potential impact on consumers following a change in the UK's exhaustion regime: change in price, availability of choice, quantity and quality consumed.   |
| BUSINESSES THAT RELY ON PARALLEL IMPORTS |   |
| viii                                     | Transition activities and associated costs of moving to a new exhaustion regime, e.g. legal fees.   |
| PRACTICES BY RIGHTS HOLDERS              |   |
| ix                                       | Management of first sale of goods by rights holder (or licensee): information on supply controls or sale through wholesalers.   |
| x  | Costs of current controls on distribution channels (e.g. monitoring and legal enforcement costs).   |
| INTERNATIONAL COMPARISONS                |   |
| xi                                       | Evidence on impact in countries which changed exhaustion regimes (for example, change in the US on textbooks, change in copyright in Australia and New Zealand and change on pharmaceuticals in Switzerland). |



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