



Business and Industry Advisory Committee to the **OECD**

Comité Consultatif Economique et Industriel Auprès de l' **OCDE**

INTERNATIONAL EXHAUSTION OF INTELLECTUAL PROPERTY RIGHTS

Submission of the Business and Industry Advisory Committee (BIAC) to the OECD to the OECD Joint Group on Trade and Competition

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BIAC appreciates the opportunity to present business views on the issue of international exhaustion of intellectual property rights, which are presented in the following summary and ICC paper (attached) on this issue.

Summary of ICC position regarding the international exhaustion of IP rights

In January 2000, ICC published a position paper regarding the exhaustion of IP rights. The conclusions drawn in that paper were based largely upon the results of a member survey, completed by companies representing a variety of industries in Europe, the United States, Latin America and Asia.

The paper highlights the importance of the debate on the exhaustion of rights for businesses as its outcome will determine the extent to which companies will be able to control the distribution of their goods, and their resale across different markets. The exhaustion issue affects businesses in different ways and to different degrees depending on their sector of activity, the market conditions in which they function and the geographical region in which they operate.

The majority of ICC members believe that, in the absence of a single global market, moving toward a system of international exhaustion would on balance be more harmful than beneficial to international trade and investment, and undermine the incentives provided by IPR to invest in innovation and brand reputation. Businesses have a legitimate interest – for reasons relating to commercial strategy, quality control, brand reputation and product safety etc - in controlling the distribution of their goods across different markets, and in ensuring that products tailored for one market are not sold in another. Moreover, consumer welfare may actually suffer under an international regime that permits parallel imports.

A small minority of ICC members favour international exhaustion. Proponents of this view believe that international exhaustion will lead to greater competition and increased consumer welfare. They note that the Internet will have an equalizing effect on markets and prices.

The majority view holds that:

- Limiting companies' returns on products sold internationally would reduce their willingness to invest in commercially risky products. Companies which invest in innovation and brand reputation need to recover the costs of their investments. The expected cost recovery drives the risk-taking associated with the development of new products and technologies. Financial returns on internationally successful products also help fund the development of products that may benefit social welfare, but are individually less profitable.
- Economic studies have shown that charging different prices to different users is necessary in order to achieve an appropriate rate of return and to supply low-margin markets that would otherwise not be served. If faced with a system of international exhaustion, IP owners might withdraw from the low-priced markets, standardize international pricing so that the previously low-priced markets will face higher prices, or reduce investment and service in certain countries. The result of any of the above would be to deprive consumers in certain markets of options they would have had under a differential pricing system.
- Permitting parallel imports could result in the importation of goods that do not meet the standards of IP protection in the importing country, as the standards of IP protection vary across countries.

The paper states that businesses are justified in treating different territories as separate markets because significant legal, regulatory, economic and cultural differences exist between different countries and regions. It also contends that there are legitimate reasons for businesses to differentiate goods - in terms of pricing, specifications and presentation - for different markets. These include varying technical and safety standards, physical and climatic conditions, market environments, costs and charges. Businesses have a legitimate interest in being able to prevent goods destined for one market from finding their way into another to ensure conformity to regulatory norms, to meet market expectations, enable quality control and orderly distribution, and avoid consumer confusion.
