

Bills Committee on Trade Marks Bill

Liberalizing Parallel Importation of Trade Mark Goods

Introduction

At the Bills Committee meeting held on 11 November 1999, the Committee requested the Administration to set out an assessment on the implications of liberalizing parallel importation of trade mark goods. This note sets out such an assessment.

Background

2. At the outset, it is important to reiterate that “parallel imports” are products that are legitimately produced and marketed abroad with the consent of the owner of the intellectual property right. They are not pirated or counterfeit products. The question is therefore whether these legitimate products should be allowed to be imported into another country or territory without the agreement of that owner or the exclusive licensee in the place of importation.

3. The Government’s fundamental position is that the free flow of genuine goods should not be impeded unnecessarily. The primary function of a trade mark is to indicate the origin of the goods or services: it should not be used as a “badge of control”. There is therefore no reason why parallel imports should be prevented if they satisfy other statutory requirements with respect to, for example, safety and health requirements.

Assessment

4. With the liberalization of parallel imports of trade mark goods, consumers stand to gain through paying less for essentially the same product in a more competitive market environment. Parallel importation emerges because of the existence of an exclusive licensee/supplier or a very limited number of licensees/suppliers in the place of importation, where the price of

the imported product concerned is set at a relatively high level, thus creating price-cutting opportunities for others. As an effective substitute to mainstream imports, parallel imports add to consumer welfare. In addition, they widen consumer choice where non-mainstream products not available under the exclusive licence arrangement may be made available.

5. A free market with minimal barriers will encourage investment. With the proposed liberalization, we expect that there will be an increase of businesses specializing in parallel imports, thereby boosting employment and the economy. We also anticipate that there will be a redistribution of the resources now concentrated on maintaining exclusive licence arrangements to other economic activities. With the free play of market forces, a new equilibrium will be achieved.

6. Overall, we believe that the economy will benefit from the liberalization of parallel imports of trade mark goods, which is in line with our free trade policy. Free trade is the bedrock of Hong Kong's success. Hong Kong has been rated by many international organizations such as the Heritage Foundation (HF) as one of the freest economies in the world. Our ability to continue to keep our markets open is important to our economic growth.

Conclusion

7. Globalisation of trade is an irreversible trend, particularly with the development of electronic commerce. With the advent of the information society as manifested in the phenomenal growth of the Internet, consumers will have access to information that enables them to circumvent artificial trade barriers with increasing ease. We should therefore not put the clock back by constructing an artificial barrier to stem the tide. Nor should we worry that opening up the market will bring adverse consequences to the economy. Liberalization of trade and hence more market competition will benefit individual consumers as well as the economy as a whole.

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