



**PARALLEL IMPORT OF GOODS
INTO THE EAEU AND PARALLEL
RE-EXPORT OF GOODS
IN THE EAEU: OVERVIEW OF
CURRENT TRENDS**

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1. Parallel import of goods into Russia: Current status

More than two years has passed since Russia legalised parallel imports. This mechanism is being actively used to saturate the market with imported goods, and the Russian Government has decided to extend its operation into 2025¹.

Over this time, the use of parallel imports has exposed certain contradictions in legal regulation, the existence of a number of outstanding issues related to the use of the mechanism of parallel import, as well as ongoing risks for foreign rights holders.

Over the period from 2022 to 2023, goods imported into Russia as parallel imports were valued at USD 70 billion².

The key countries supplying goods into Russia as parallel imports are the countries of the Eurasian Economic Union (hereinafter the “**EAEU**”), Kazakhstan in particular, as well as China, Turkey, India, and the UAE.

According to information from the National Statistics Bureau of Kazakhstan, exports of goods from Kazakhstan to Russia rose by 7.66% from 2022 to 2023, from USD 9 billion to USD 9.8 billion³. In 2023 Turkish exports to Russia rose by 16.7% to USD 10.9 billion, compared to USD 9.3 billion in 2022⁴.

To date, the criteria for including goods on the list for parallel imports and for removing them from the list have not been made public. At the same time, in its activity the Ministry of Industry and Trade of the Russian Federation (hereinafter the “**MIT**”) is governed by the following criteria for assessing the need to add trademarks to or remove trademarks from the list of goods legalised for parallel imports (hereinafter the “**List**”):

- whether the products are manufactured locally in Russia and delivered to the retail network from such manufacturing facilities;
- whether foreign suppliers (manufacturers) continue to supply products or have terminated deliveries;
- whether there are equivalent products in Russia, and the output of such goods matches the demand from end users.

¹ <https://www.rbc.ru/economics/06/06/2024/6661d57c9a79477dff622841>.

² <https://www.vedomosti.ru/economics/articles/2023/12/21/1012361-obem-parallelnogo-importa>.

³ https://stat.gov.kz/ru/news/eksport-kazakhstana-v-strany-eaes-vyros-na-9-5/?sphrase_id=442479.

⁴ <https://data.tuik.gov.tr>.

From the time parallel imports were partially legalised, the most popular categories of goods for import have been electronics, clothing and footwear, children's goods, vehicles, industrial equipment, and goods in the beauty and health category⁵.

As time goes on, the structure of parallel imports undergoes changes: a contraction can be seen in the volume of imports into Russia of electronics (laptops, tablets) and also automobiles.

At present the list of goods for which parallel imports are permitted⁶ includes more than 50 commodity groups. Over the past year, the following have been added to the List:

- brands of clothing, footwear, headwear, and accessories (*Samoon, Taifun*, etc.);
- goods of the chemicals industry, for example ink (*Waterman's* etc.) and various cosmetics (*A-Derma, Avene, Ducray, Klorane*);
- vehicles (*ISUZU* etc.);
- motors and power units made by specific manufacturers (*CASE* etc.);
- toys, games, associated accessories (*EA Sports FC, Mortal Kombat* etc.).

For specific types of goods, the trademarks of Makita and other manufacturers were removed from the list.

2. Individual problems of the legal regulation of parallel imports into Russia

Until parallel imports were partially and temporarily legalised in 2022, any import into Russia of goods bearing a trademark protected in Russia without the consent of the rights holder for that trademark could be classified as an infringement of the exclusive rights of the rights holder, and the goods could be declared counterfeit in court and in a number of cases destroyed, while compensation could be collected from the offender in a fixed monetary amount of up to RUB 5 million (ca. EUR 49,000) or in a variable amount of twice the value of the counterfeit goods.

⁵ <https://www.rbc.ru/rbcfreenews/63a03d539a794723e774bb17?from=newsfeed>; <https://iz.ru/1518916/2023-05-26/nazvany-naibolee-populiarnye-dlia-parallelnogo-importa-tovary>.

⁶ List of Goods (Groups of Goods) in Respect of Which the Provisions of Articles 1252 and 1254, Clause 5 of Article 1286.1, Articles 1301, 1311, and 1406.1, Sub-Clause 1 of Article 1446, and Articles 1472, 1515, and 1537 of the Civil Code of the Russian Federation Do Not Apply, Provided These Goods (Groups of Goods) Are Put into Circulation Outside the Territory of the Russian Federation by the Rights Holder(s), and Also with Their Consent, approved by Order No. 2701 of the Ministry of Industry and Trade of Russia dated 21 July 2023 (hereinafter the "List").

After the partial legalisation of parallel imports of goods included on the List, the court could no longer grant such demands due to a direct legislative prohibition, pursuant to which: *“it is not a breach of the exclusive right to intellectual property or means of identification of the use of intellectual property, expressed in the form of goods [included on the List], as well as the means of identification with which such goods are marked”*⁷.

In connection with this, many media outlets erroneously state that since the law cited above was adopted, parallel importers are no longer subject to administrative or even criminal liability⁸. Similar information was posted in the news digest of the Federal Service for Intellectual Property (Rospatent)⁹.

Mr Rustam Tikhonov, Director of the Department of Strategic Development and Innovation of the Ministry of Economic Development, stated that *“the changes made to the law specify that not only civil, but also administrative and criminal liability do not apply to entrepreneurs (including those involved in the import, transportation, and storage of goods)”*¹⁰.

However, these opinions need to be clarified. Back in 2009 the Presidium of the Supreme Commercial Court of Russia (hereinafter the **“SCC”**) explained that administrative liability does not apply to parallel imports, i.e. the import of original goods bearing the trademarks of the rights holder¹¹. Something similar applies to criminal liability. Accordingly, no changes have occurred since 2009.

At present, if a parallel importer meets the main condition for the legalisation of parallel imports – showing that the goods being imported have been put into circulation outside the Russian Federation by the rights holder or with their consent – then they are exempt from civil liability. Here there is no consideration of administrative liability (Article 14.10 of the Russian Code of Administrative Offences, hereinafter **“CAO”**) or criminal liability (Article 180 of the Russian Criminal Code), since the goods being imported are genuine original goods.

However, if the parallel importer cannot meet this condition, then they may be open to civil liability. In addition, if the goods are not original goods, then the parallel importer may be subject to administrative liability, and in certain cases to criminal liability, for the illegal use of trademarks, since the original nature of the goods has not been pro-

⁷ Clause 3 of Article 18 of Federal Law No. 46-FZ dated 8 March 2022 “On Introducing Amendments to Certain Legislative Acts of the Russian Federation”.

⁸ <https://www.kommersant.ru/doc/5435386?ysclid=Izcp1nte9r759136401>; <https://tass.ru/ekonomika/15059925>.

⁹ <https://rospatent.gov.ru/ru/news/ria-28062022>.

¹⁰ <https://www.rbc.ru/economics/28/06/2022/62bb12029a7947b4a959aa1d?ysclid=Izco20vv3k311926643>.

¹¹ https://kad.arbitr.ru/Document/Pdf/bb378ade-8fcd-40bf-86be-23cada4a8ea7/b96b091c-8942-4f3d-b356-d33bd5986ccb/A40-9281-2008_20090203_Reshenija_i_postanovlenija.pdf?isAddStamp=True.

ved, and therefore it is not possible to talk of “parallel import”. The judicial practice of the Intellectual Property Court serves as confirmation of this¹².

Consequently, the wording in the law should de facto be read by rights holders as follows:

“It is not an infringement of the exclusive right to intellectual property or means of identification of the use of intellectual property, expressed in the form of goods [included on the List], and also of means of identification with which such goods are marked, provided that the given goods have been put into circulation outside the Russian Federation by the rights holder(s) or with their consent.”

3. Customs registers of intellectual property in the EAEU and the fight against counterfeit goods

The Customs Register of Intellectual Property (hereinafter “**TROIS**”) has proven to be one of the most effective tools for controlling imports and suppressing imports of counterfeit goods into Russia and the EAEU as a whole.

Each EAEU country has its own TROIS¹³. Although the legislative base for a single EAEU TROIS has already been prepared, the general information system, which is tasked with ensuring document flow between the Eurasian Economic Commission (which is to run the EAEU TROIS), applicants, and the customs authorities of the EAEU countries, is still in development¹⁴.

Therefore, to create a common defence against the import of counterfeit products throughout the territory of the EAEU, trademark protection must be extended to all five EAEU countries and these trademarks must be included in the national TROIS.

¹² Judgment No. S01-2807/2023 of the Intellectual Property Court dated 22 January 2024 in case No. A43-9280/2023; Judgment No. S01-1299/2022 of the Intellectual Property Court dated 19 October 2022 in case No. A40-222245/2021; Judgment No. S01-530/2023 dated 27 April 2023 in case No. A41-51820/2022; Judgment No. S01-2414/2022 of the Intellectual Property Court dated 1 February 2023 in case No. A33-14168/2022; Judgment No. S01-2407/2022 of the Intellectual Property Court dated 25 January 2023 in case No. A51-4937/2022; Judgment No. S01-2011/2022 of the Intellectual Property Court dated 30 November 2022 in case No. A27-709/2022; Judgment No. S01-1912/2022 of the Intellectual Property Court dated 20 October 2022 in case No. A51-1844/2022; Judgment No. S01-1299/2022 dated 19 October 2022 in case No. A40-222245/2021; Judgment No. S01-1271/2022 of the Intellectual Property Court dated 19 August 2022 in case No. A 72-16066/2021; Judgment No. S01-397/2021 of the Intellectual Property Court dated 24 June 2022 in case No. A57-15596/2020; Judgment No. S01-796/2022 of the Intellectual Property Court dated 14 June 2022 in case No. A52-5048/2021; Judgment No. S01-439/2022 dated 8 June 2022 in case No. A13-13172/2021; Judgment No. S01-599/2022 of the Intellectual Property Court dated 2 June 2022 in case No. A21-3352/2021; Judgment No. S01-533/2022 of the Intellectual Property Court dated 27 April 2022 in case No. A40-84838/2021.

¹³ <https://eec.eaeunion.org/commission/department/dobd/intelsobs/tamozhennye-reestry.php?ysclid=Izctjy-9a6f851722561>.

¹⁴ <https://eec.eaeunion.org/upload/medialibrary/b24/informatsionnoe-soobshchenie.pdf>.

It should be noted that, in practice, the implementation of this concept might be made more difficult by the conflict of EAEU law with national restrictions¹⁵.

The largest TROIS among the EAEU countries in terms of the number of contributed intellectual property items is the Russian TROIS, which has been used successfully by rights holders to protect their exclusive rights. However, the situation changed with the legalisation of parallel imports.

The following categories can be singled out in the mass of imported commodities:

- original goods imported by the authorised rights holders (manufacturers) as importers;
- original goods included in the List and imported by parallel importers;
- original goods not included in the List that are imported by parallel importers (counterfeit goods – legal fake);
- knockoff goods that are replicas of original goods included in the List (counterfeit goods - knockoffs);
- other knockoff goods (counterfeit goods – knockoffs).

It is often difficult for the customs authorities to determine the category of the imported goods without the participation of the rights holder.

In this regard, we turn to the customs statistics¹⁶ concerning the fight with intellectual property infringements during the period from 2021 (i.e., from the moment when parallel imports were legalised) to 2023, inclusive:

	2023	2022	2021
Number of administrative offences concerning intellectual property	365	563	888
Prevented damages to rights holders, RUB billion	3.7	5.5	7.2

¹⁵ For example, there have been refusals to include trademarks in the TROIS of the Republic of Belarus due to the rights holder being registered in a country that the Belarusian authorities deem to be an “unfriendly country” (EU, USA, etc.).

¹⁶ https://customs.gov.ru/storage/document/document_info/2024-03/04/id_2023.pdf.

It can be seen from the information provided by the Federal Customs Service of Russia (hereinafter, the “FCS”) that over the past three years the number of administrative offences concerning intellectual property fell by nearly 59% and the prevented damages to rights holders were reduced by almost 95% (i.e., nearly twofold!). It should be noted that at the same time the overall value of goods imported into the Russian Federation increased by 10% during 2023 year-on-year and reached the level of 2021.

Therefore, while the import volume has been maintained, a significant reduction in the number of identified intellectual property infringements and prevented damages to rights holders has been seen.

It is fair to assume that the deterioration in the performance of the FCS is attributable to the position taken by this state body. For example, FCS Letter No. 14-35/K-6207 dated 10 June 2022 “On Sending Clarifications” stated that “*in the case of goods included in the List¹⁷, participants in foreign trade activity do not need to confirm to the customs authorities the authenticity (originality) of the products that they are importing (including through the provision of certain documents for this purpose)*”.

If the rights holders, whose trademarks have been included in the TROIS, are not notified of all instances of the unauthorised import of their goods, an effective fight with counterfeit products is impossible.

4. The risks of a decline in the level of protection of the exclusive rights of foreign rights holders

Notwithstanding the likelihood that the customs authorities will fail to identify counterfeit goods in the mass of legal parallel import, rights holders were still able to identify these goods in Russia and protect their rights by filing a petition with the law enforcement agencies (the police) to instigate a case on an administrative offence, as stipulated by Article 14.10 of CAO.

However, Federal Law No. 192-FZ dated 22 July 2024 “On Amending the Code of the Russian Federation on Administrative Offences” introduced amendments to Clause 1 of Part 2 of Article 28.3 of the CAO that strip law enforcement officials (the police) of the authority to draft protocols on the administrative offences stipulated by Article 14.10 of CAO (Illegal Use of Means of Identification of Goods (Work, Services)).

¹⁷ The effective list of goods as of the date of the letter, approved by Order No. 1532 of the Ministry of Industry and Trade of Russia dated 19 April 2022 “On Approving the List of Goods (Groups of Goods) not Covered by the Provisions of Sub-Clause 6 of Article 1359 and Article 1487 of the Civil Code of the Russian Federation when the Indicated Goods (Groups of Goods) are Introduced into Circulation by the Rights Holders (Patent Holders) Outside the Russian Federation and also with Their Consent”.

The new wording of this clause will enter into force from 21 October 2024.

Accordingly, from this date the following parties will be entitled to draft protocols on the administrative offences stipulated by Article 14.10 of the CAO:

- customs officials (Clause 12 of Part 2 of Article 28.3 of the CAO);
- federal state supervisory officials tasked with protecting consumer rights (Clause 63 of Part 2 of Article 28.3 of the CAO).

For its part, the Plenary Session of the Russian Supreme Commercial Court explained in Judgment No. 11 dated 17 February 2011 “On Certain Issues Concerning the Application of the Special Part of the Code of the Russian Federation on Administrative Offences” that the customs authorities only have such powers in relation to goods imported into and exported from the Russian Federation, since there is a turnover of goods through the customs border in both cases. The customs authorities have not been empowered to protect intellectual property rights in respect of other goods.

Thus, after 21 October 2024 the rights holders will no longer be able to protect their rights by filing a petition with the law enforcement agencies (the police) to instigate a case on an administrative offence, as stipulated by Article 14.10 of the CAO. That being said, it remains to be seen how effectively the officials of Rospotrebnadzor will use their authority to prevent the violations specified in Article 14.10 of the CAO.

5. The position of the courts on certain parallel import issues

Some trends have been seen in court practice on disputes between parallel importers, foreign rights holders acting as importers, and the customs authorities. In most cases, the courts come out in defence of foreign rights holders, although we are starting to see cases where the courts support the parallel importers importing goods from the List of the Ministry of Industry and Trade (without considering the possible bad faith actions of the importers, but simply checking the validity of the formal references to the List). On the other hand, a trend is starting to emerge where, in case of a court dispute, the importer is unable to prove the authenticity of the imported goods within the framework of parallel import.

5.1 PROVING THE AUTHENTICITY OF AN IMPORTED GOOD

The Russian courts duly note that it follows from Russian Government Resolution No. 506 dated 29 March 2022¹⁸ that goods imported through parallel imports must be introduced into circulation by the rights holders outside Russia and with their consent, i.e., they must be original.

The Intellectual Property Court holds that the burden of proof that the good was introduced into civil turnover abroad and with the consent of the rights holder lies with the importer and the seller¹⁹.

In practice, it is difficult for a parallel importer to demonstrate the entire supply chain of an imported good, since there may be a significant number of intermediary contracts. Moreover, in those cases when the imported good is subject to sanctions, the parallel importer may not be interested in disclosing all the information on the supply chain.

In judicial practice, only a small number of cases involving parallel importers have disclosed the entire supply chain of the goods, thereby proving the authenticity of the imported goods. One example of interest is case No. A21-14475/2023 (Ludovico Martelli S.p.A.)²⁰. In this case, cosmetic products with the trademark “PRORASO” imported into Russia through parallel imports were sold on the Wildberries website.

The foreign rights holder demanded in court the recovery of compensation for an infringement of its exclusive right to the trademark and a prohibition on the use of the trademark “PRORASO” through the import, introduction into circulation in Russia, storage, wholesale and retail sale of goods with this trademark in the Russian Federation.

To substantiate its claims, the rights holder cited the counterfeit nature of the products, the importer’s lack of documents on the supply of the original goods through a chain of counterparties, and the lack of markings on the goods in accordance with Technical Specifications 009/2011 “On the Safety of Perfume and Cosmetic Products”.

The claims of the rights holder were dismissed. The courts supported the importer’s position, concluding that the importer had proved that goods were original goods, based on the submitted documents.

¹⁸ Resolution No. 506 of the Government of the Russian Federation dated 29 March 2022 “On Goods (Groups of Goods) not Covered by Certain Provisions of the Civil Code of the Russian Federation on the Protection of Exclusive Rights to Intellectual Property Expressed in these Goods and the Means of Identification with Which These Goods are Marked”.

¹⁹ Judgment No. S01-530/2023 of the Intellectual Property Court dated 27 April 2023 in case No. A41-51820/2022; Judgment No. S01-171/2023 of the Intellectual Property Court dated 15 February 2023 in case No. A21-4427/2022.

²⁰ Judgment of the Thirteenth Commercial Court of Appeal dated 5 July 2024 in case No. A21-14475/2023.

Previously, the Intellectual Property Court found in one case regarding a dispute with Sheremetyevo Customs Office that the actions of the parallel importer of Apple products were legitimate and dismissed the customs office's request to impose administrative liability on the importer²¹. In this case the importer had imported into Russia original iPhones that had been previously used abroad after repairs that involved the replacement of body parts and batteries and a factory reset of the devices. The court took account of the legalisation of the import of Apple products, stating at the same time that the replacement of certain parts of the smartphones did not affect their originality, did not lead to any deterioration in their functional and consumer attributes, in other words, does not serve as grounds for declaring the goods to be counterfeit.

5.2 APPLICATION OF LISTS OF GOODS AUTHORISED FOR PARALLEL IMPORTS

As indicated above, the original List of the Goods Authorised for Parallel Imports was approved by MIT Order No. 1532 dated 19 April 2022. The current List was approved by MIT Order No. 2701 dated 21 July 2023.

When resolving disputes in connection with the import of goods as part of parallel imports, Russian courts elaborated a number of positions which may, in our opinion, also be taken into account when courts assess the provisions of the current List, in particular:

- the provisions of MIT Order No. 1532 do not apply to counterfeit goods²²;
- the List approved by MIT Order No. 1532 is exhaustive and is not open to any expanded interpretation. Consequently, if a good is not included in the List, then the parallel import of such goods is illegal²³;
- if a trademark is included in the List and marked "an exception", then the provisions of the List do not apply to the imported goods²⁴;
- MIT Order No. 1532 does not have retroactive force; in other words, it only applies to actions (for example, import) taken after the order entered into force²⁵.

²¹ Judgment No. S01-2618/2022 of the Intellectual Property Court dated 28 March 2023 in case No. A41-31772/2022.

²² Judgment No. S01-2484/2022 of the Intellectual Property Court dated 9 February 2023 in case No. A51-10796/2022; Judgment No. S01-2407/2022 of the Intellectual Property Court dated 25 January 2023 in case No. A51-4937/2022; Judgment No. S01-1912/2022 dated 20 October 2022 in case No. A51-1844/2022..

²³ Decision of the Commercial Court of Novosibirsk Region dated 17 October 2023 in case No. A45-30333/2022 (upheld by the Judgment of the Seventh Commercial Court of Appeal dated 22 January 2024, the Judgment of the Commercial Court of West Siberian District dated 28 June 2024).

²⁴ Judgment No. S01-1299/2022 of the Intellectual Property Court dated 19 October 2022 in case No. A40-222245/2021.

²⁵ Judgment No. S01-171/2023 of the Intellectual Property Court dated 15 February 2023 in case No. A21-4427/2022; Judgment No. S01-2484/2022 of the Intellectual Property Court dated 9 February 2023 in case No. A51-10796/2022; Judgment No. S01-1271/2022 of the Intellectual Property Court dated 19 August 2022 in case No. A72-16066/2021; Judgment No. S01-599/2022 of the Intellectual Property Court dated 2 June 2022 in case No. A21-3352/2021.

5.3 PARALLEL IMPORTS OF MEDICAL PRODUCTS

The List includes different categories of goods authorised for parallel imports, but at the same time does not contain medical products under the general rule. Regarding the indicated number of categories of goods, a special clause was added: “except for goods registered as medical products”. At the same time, it should be borne in mind that the List includes certain categories of pharmaceutical products.²⁶

Accordingly, the case of OOO Roche Diagnostics Rus being considered by the Intellectual Property Court is of interest²⁷. The rights holder established that medical products under the trademarks “Roche” and “cobas” had been imported as parallel imports and supplied to a regional city hospital.

The Intellectual Property Court assessed the importer’s position that the contested goods were contained in the List approved by MIT Order No. 1532, stating the following:

- the contested goods, which are medical products for in vitro diagnostics, are not covered by the provisions of the MIT Order cited by the respondent importer during the hearing of the case;
- during the hearing of this case the authenticity of the contested good was not confirmed, and there was no evidence that it had been put into circulation;
- bear in mind that there is no accurate information on the original source and on how the goods arrived in the Russian Federation. This means that compliance with the special criteria for their storage cannot be reliably established, which gives rise to the high risk that the life and health of patients may be injured if the contested good is used.

Previously in the case of OOO Medtronic, the commercial court also confirmed the position that the medical products are not included in the list, which means that the import of the medical products into the Russian Federation without the consent of the rights holder is prohibited²⁸.

²⁶ 3002 12 000 9 Miltenyi Biotec; 3005 90 100 0 O.B., Carefree.

²⁷ Judgment No. S01-895/2024 of the Intellectual Property Court dated 20 June 2024 in case No. A21-2783/2023. At present (August 2024) the respondent (the infringer) has filed a cassation appeal with the Judicial Panel of the Russian Supreme Court, which is being studied by Judge R.A. Khatypova.

²⁸ Judgment No. 10AP-2775/2024 of the Tenth Commercial Court of Appeal dated 19 March 2024 in case No. A41-26717/2023..

6. Issue of the parallel re-export of goods into EAEU

One of the problems is the re-export of the goods imported into Russia as part of legal parallel imports into EAEU countries where parallel imports have not been legalised.

In accordance with Sub-Clause 4, Clause 1 of Article 25 of the Treaty of the Eurasian Economic Union (signed in Astana on 29 May 2014, hereinafter the "EAEU Treaty") under the customs union of EAEU member states goods may freely circulate between the territories of member states without the use of customs declarations and state controls.

Let us consider the following example in connection with this fact. The Apple trademark is protected in Russia and was entered in Russia's TROIS before 19 January 2025. At the same time, the Apple trademark has been entered in the MIT List. In other words, the import of certain goods marked with the Apple trademark without the consent of the rights holder is authorised.

An analysis of FCS practice shows that the customs authorities will not suspend the re-lease of Apple goods imported by unauthorised importers, even though the trademark is registered in TROIS. Here the principle "Parallel imports are stronger than TROIS" applies.

At the same time, however, the Apple trademark is also included in the TROIS of Kyrgyzstan. And while a good with the Apple trademark imported without the authorisation of the rights holder and released by the Russian customs authorities will be transported from Russia to Kyrgyzstan, under the general rule the Kyrgyz customs authorities will not act to protect the rights of the rights holder to its trademark, as the good has already been released into the customs zone of the EAEU and the customs declaration and state control of such goods do not apply to such goods under Sub-Clause 5, Clause 1 of Article 25 of the EAEU Treaty.

Nevertheless, the rights holder still has the right to apply the full scope of legal remedies against such goods in Kyrgyzstan or other EAEU member state where parallel imports have not been introduced.

This is the key conflict between national Russian (and Belarusian) legal regulation of parallel imports and the provisions of EAEU law, which may nevertheless be used by the rights holder to protect their rights and legal interests.

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