

# Parallel Importation of Patented Products in Pakistan: The Need for a Modern Patent Regime in Light of the Shanghai Cooperation Organization

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*Parallel importation of patented products, “first sale doctrine,” is an effective and efficient way of handling the importation of patent-protected goods. The national exhaustion idea is being used in Pakistan regarding patent exhaustion. Market competition and lower pricing phenomena are affected by this strategy. Case studies from the European Union (EU), the United States (US) and China are used to show how businesses can protect consumers’ rights by parallel imports. The US and China follow international exhaustion whereas the EU follows the regional exhaustion principle, which is comparable with Pakistan concerning the Shanghai Cooperation Organization (SCO). By finding lower-priced products, promoting international economic integration and regional collaboration with SCO, Pakistan can avail better investment opportunities. Case studies show result-oriented efforts regarding the implementation of the international parallel exhaustion strategy. Study recommends raising awareness and enhancing legal clarity, IP protection, and stakeholder input to ensure compliance with an international exhaustion system.*

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**I. Introduction**

Bringing authentic goods into a nation without the owner's permission of intellectual property, like patents, copyrights or trademarks, is known as parallel importation. This happens when goods are imported into a nation where costs are higher after being purchased in a country in which they are offered for less.<sup>1</sup> Under lower prices, consumers can obtain things at a reduced cost compared with what local wholesalers or retailers set. By contrast, products that are imported in parallel are authentic, not fakes. Despite being imported illegally, these products are produced by the original providers or with their consent.<sup>2</sup>

A key component of parallel importation is the patent exhaustion principle, sometimes called the "first sale doctrine." According to this theory, the patent holder's rights end with the product's initial sale. This idea can impact whether parallel imports are permitted on a national or worldwide level.<sup>3</sup> When a product is sold anywhere globally, its patent rights are considered exhausted under international exhaustion. This importation into foreign countries cannot be stopped by the patent holder. By contrast, under the doctrine of national exhaustion, the product's importation into various countries is still under the patent holder's authority.<sup>4</sup> The impact of parallel importation on patent holders includes revenue loss and market control. Due to competition from cheaper imports, inventors may see a decrease in sales and income. At that time, the patent holder also loses control over their products.<sup>5</sup> Diverse nations employ distinct strategies in terms of concurrent importing. Within the national

<sup>1</sup> Daria Proskurina, *Challenges of the Implementation of the Principle of Exhaustion of the Exclusive Right to a Trademark in the Conditions of Parallel Import*, 12(2) RUSS. L. J. 31-6 (2024).

<sup>2</sup> Lauren Grewal & Helen Sluis, *Hidden Barriers to Marketplace Disability Accessibility: An Empirical Analysis of the Role of Perceived Trade-Offs*, 51(1) J. CONSUMER RES. 66-78 (2024).

<sup>3</sup> Hua Gao, *Chinese Legislation and Theoretical Basis for Patent Parallel Import: Consideration of Parallel Import of Pharmaceutical Patents During the Pandemic*, 6(1) SCI. & SOC. RES. 71 (2024).

<sup>4</sup> Juan Correa & Matthias Lamping, *Implementation of Patent Flexibilities in Selected Latin American Countries 6-7* (Smart IP for Latin America Research Paper Series, Max Planck Institute for Innovation and Competition, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4834814](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4834814).

<sup>5</sup> Robert Merges, *Two Patent-Related Harms, Two Remedies: Injury to Market and Uncompensated Input Use 7* (UC Berkeley Public Law Research Paper, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4817822](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4817822).

exhaustion principles, some nations limit it, while others permit it over the universal exhaustion principles.<sup>6</sup> Concerning Pakistan, parallel import refers to the procedure of getting patented products into the country without the approval or consent of the intellectual property holder. This happens only in cases when Pakistani patented products, coming back to Pakistan for resale, are cheaper in any other country than in Pakistan.<sup>7</sup> We evaluate economic clout and its importance to Pakistan.

The Shanghai Cooperation Organization (SCO)<sup>8</sup> is a key regional intergovernmental organisation which has been gaining momentum in recent times. SCO was established in 2001 by Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.<sup>9</sup> Since managing security and border issues, SCO has widened its sphere to incorporate cultural interactions and economic collaboration. Pakistan and India joined SCO in 2017 as full members.<sup>10</sup>

Pakistan takes part in infrastructure projects, like the China-Pakistan Economic Corridor (CPEC), which supports SCO's objectives of improving accessibility and promoting regional integration.<sup>11</sup> Although SCO offers strategic and economic benefits, obstacles including member state's geopolitical rivalries and divergent national interests may limit the organisation's efficacy.<sup>12</sup> SCO has a significant role in promoting regional cooperation, economic integration and security, as seen by its increasing economic importance and relevance to Pakistan. Pakistan's SCO membership gives it a platform to improve infrastructure development, regional connectivity and commercial partnerships, all of which support the country's larger geopolitical goals.<sup>13</sup>

In regard to Pakistan's patent exhaustion regime, this research aims to analyse: What are the potential legal and economic ramifications of Pakistan implementing a modern patent exhaustion system under SCO's influence, particularly regarding the

<sup>6</sup> Markus Lang, *Boundless Protection: Legal-Technical Expertise and the Expansion of Patent Rights* 178 (Ruprecht-Karls-Universität Heidelberg, 2022), <https://archiv.ub.uni-heidelberg.de/volltextserver/35047>.

<sup>7</sup> Nadeem Haque et al., *Reforms for competitive markets in Pakistan* 4-5 (MPRA Paper No. 33990, 2011), [https://mpra.ub.uni-muenchen.de/33990/1/MPRA\\_paper\\_33990.pdf](https://mpra.ub.uni-muenchen.de/33990/1/MPRA_paper_33990.pdf).

<sup>8</sup> Vijesh V, *Economic Research Output Among the Shanghai Cooperation Organizations (SCO) Countries-A Scientometric Analysis*, 24(1) INQUIETUD EMPRESARIAL 1-19 (2024).

<sup>9</sup> Edward Lynch & Susanna Helms, *The Shanghai Cooperation Organization*, (Jan.-Feb.) MIL. REV. 26 (2024).

<sup>10</sup> Sarwat Rauf & Maira Tariq, *The Bilateral Engagement of India and Pakistan at Shanghai Cooperation Organization: Prospects and Challenges*, 7(1) NUST J. INT'L PEACE & STABILITY 20 (2024).

<sup>11</sup> Abdul Rab et al., *Exploring the Potential of the China-Pakistan Economic Corridor (CPEC): A Gateway to Regional Connectivity and Integration within the Shanghai Cooperation Organization (SCO)*, 6(2) PAK. J. INT'L AFF. 107-22 (2023).

<sup>12</sup> V. Pylypenko, *Economic Cooperation in the Shanghai Cooperation Organization Analysis*, (2) VESTNIK UNIVERSITETA 125 (2024).

<sup>13</sup> Rubina Ali et al., *SCO as a Passage to Regional Security: Future Developments and Opportunities for Pakistan*, 3(1) LIBERAL ARTS & SOC. SCI. INT'L J. 19 (2019).

parallel importation of patented goods? This paper is composed of six parts including Introduction and Conclusion. Part two will discuss Pakistan's current patent exhaustion regime and its challenges. Part three will examine parallel importation and developed nations including the US, the EU and China. Part four will tackle the role of SCO. Part five will make recommendations for Pakistan.

## II. Pakistan's Patent Exhaustion Regime and the Challenges

The national exhaustion principle is applied in Pakistan's existing patent exhaustion system. This indicates that the patent holder's rights are just fully utilised within Pakistan following the first approved sale of authorised patented goods.<sup>14</sup> Thus, it may still be illegal to import a protected good into Pakistan initially marketed elsewhere without the patent holder's permission, which would restrict the possibilities for parallel imports.<sup>15</sup>

### A. Law Governing Patent Exhaustion

The Patent Ordinance 2000,<sup>16</sup> amended in 2002, 2007 and 2010, is the main law controlling patents in Pakistan. The patent holder's sole rights are described in Section (60) Sub-clause of the law, which includes the ability to prohibit unapproved enterprises or parties from importing, selling, making or using patented products; and makes clear SCOpe of these rights and lists a few exceptions, some of which may deal with the right to an expiration of rights following the initial sale.<sup>17</sup>

### B. Pakistan's Principle of Exhaustion

Pakistan adheres to the national exhaustion principle under its present legal system. This principle indicates that the patent holder's rights end solely in the nation in

<sup>14</sup> Tianzhi Li et al., *On the Establishment of Patent Infringement Offense: A Perspective on the Expansion of Patent Rights*, 16(2) PAK. J. CRIMINOLOGY 1163-76 (2024).

<sup>15</sup> Nasir Zahid, *A Study of Health-Related Flexibilities in International IP Framework and Patent Law in Pakistan* 46-8 (unpublished Master's Thesis at Seoul National University, 2017).

<sup>16</sup> Patents Ordinance, 2000, <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/pk/pk001en.pdf>. This ordinance regulates patent related issues in Pakistan.

<sup>17</sup> Syed Gilani et al., *Enforcement of Trademarks and Copyrights under IP Law: A Critical Analysis*, 3(2) PAK. ISLAMICUS 34-50 (2023).

which the product is primarily sold. Consequently, the patent holder's rights are exhausted within Pakistan but not abroad upon the approved sale of patented goods in that country.<sup>18</sup> This effect safeguards patent holders' interests inside the domestic market by limiting parallel imports to a certain degree.<sup>19</sup>

### C. Global and Regional Context

Pakistan needs to adhere to global guidelines for the protection of intellectual property as a participant in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and as an active member of the World Trade Organization (WTO). TRIPS, however, gives member nations some latitude in choosing their national, regional or worldwide exhaustion policies.<sup>20</sup> The South Asian Association for Regional Cooperation (SAARC) and SCO are playing their role in Pakistan's intellectual property legislation because Pakistan has strong regional economic links with other member states of these organisations. If regional member states comply with patent exhaustion laws, financial convergence and trade might go more smoothly.<sup>21</sup>

### D. Challenges with the Current System

Pakistan's current patent exhaustion system has several difficulties, including the potential financial fallout for local businesses and patent holders, unclear legal and regulatory frameworks, concerns about consumer protection and intricate market dynamics.<sup>22</sup> Considering global best practices and the sway of regional institutions such as SCO, a prospective overhaul of the patent exhaustion regime may serve to alleviate these problems and establish a more powerful structure for intellectual property rights in Pakistan. Some of the key challenges are discussed as follows.

#### 1. Economic Consequences

The lower pricing of parallel imports results in fewer earnings for patent licensees.

<sup>18</sup> Rekha Rangachari et al., *It Is Not a BIT Race, It Is a BIT Marathon: Comparing Pakistan's and India's Evolving Approach to Investment Policy*, 39(5) J. INT'L ARB. 631-70 (2022).

<sup>19</sup> FREDERICK ABBOTT ET AL., INTERNATIONAL INTELLECTUAL PROPERTY IN AN INTEGRATED WORLD ECONOMY 852-76 (2024).

<sup>20</sup> Fayeze Alnusair et al., *Intellectual Property Rights and Fair Vaccine Distribution: A New Perspective on the TRIPS Agreement*, 6(2) CORP. L. & GOVERNANCE REV. 42-53 (2024).

<sup>21</sup> Nabila Jaffer, *The First Enlargement of Shanghai Cooperation Organization and Its Implications*, 34(2) REG'L STUD. 65-93 (2016).

<sup>22</sup> Muhammad Yasir, *Unlocking Business Opportunities: Assessing the Market Potential for Pakistani Products in Finnish Market* 22-46 (unpublished Bachelor's Thesis at JAMK University of Applied Sciences, 2023), <https://www.theseus.fi/bitstream/handle/10024/813993/Yasir%20Muhammad.pdf?sequence=2>.

This can have an impact on their total revenue and investment in innovation.<sup>23</sup> Market distortion may also result from patent holders' reduced capacity to regulate the cost and distribution of their goods during the market control phase.<sup>24</sup> Parallel imports pose a greater threat to local producers and authorised distributors, with the potential to lower prices and diminish their market share.<sup>25</sup>

## 2. Regulatory and Legal Difficulties

Ambiguities exist in the legislation controlling parallel imports and patent exhaustion, resulting in uneven application and interpretation. Uncertainties in the market might arise from ambiguities that lead to legal issues among authorised distributors, parallel importers and patent owners.<sup>26</sup> Guaranteeing that parallel imported goods adhere to regional safety, quality and labelling requirements is difficult. Oversight gaps arise from regulatory organisation's inability to adequately monitor and enforce compliance due to a lack of ability and resources.<sup>27</sup>

## 3. Problems with Consumer Protection

The surge in parallel imports increases the likelihood that fake goods will reach the market, making telling them apart from real goods more challenging for customers. Imported goods from abroad might not necessarily follow regional safety regulations, putting customers at risk.<sup>28</sup> Products imported in parallel frequently lack the same warranties and after-sale support as those acquired through approved channels.<sup>29</sup> Customers may therefore be left without options if flaws or problems remain. Customers may not receive the same level of happiness or trust from parallel imported products due to lower-quality customer care and support.

<sup>23</sup> James Brander & Barbara Spencer, *Intellectual Property Infringement by Foreign Firms: Import Protection through the ITC or Court*, 140(1) J. INT'L ECON. 103694 (2023).

<sup>24</sup> Daron Acemoglu, *Distorted Innovation: Does the Market Get the Direction of Technology Right?* 1-28 (National Bureau of Economic Research, Working Paper 30922, 2023), <https://www.nber.org/papers/w30922>.

<sup>25</sup> Peter Chacha et al., *Supply Chains in Times of Crisis: Evidence from Kenya's Production Network*, 173 WORLD DEV. 106363 (2024).

<sup>26</sup> Soumil Jhanwar, *Exhaustion and Parallel Imports in the New Indian Trademark Law*, 13(1) INDIAN J. INTELL. PROP. L. 118 (2023).

<sup>27</sup> Ibrahim Chit & Rohith Vasudevan, *Navigating Compliance: Strategic Approaches Across Industries An Examination of Organizational Structures and Responses to Regulatory Changes* 11-5 (unpublished Master's Thesis at Chalmers University of Technology, 2024), <https://odr.chalmers.se/items/7da84bd3-722d-4851-800f-42bd0cde4952>.

<sup>28</sup> LUCA GATTO & MARCO FILIPPO, EXPORT MANAGER: A PRACTICAL GUIDE TO DEVELOP FOREIGN MARKETS 30-9 (2024).

<sup>29</sup> Lei Xu et al., *Gray Marketing Phenomena in Global Supply Chains: Can Pricing Strategies Help?*, 187 TRANSP. RES. PART E: LOGISTICS & TRANSP. REV. 103541 (2024).

#### 4. Intellectual Property Issues

Patent holders cannot easily defend their rights against illegal parallel imports, resulting in infringement concerns. In circumstances involving cross-border trade, the expenses of litigation to protect patent rights might be very high.<sup>30</sup> Patent holders may be discouraged from engaging in R&D due to decreased revenue and market dominance, potentially stifling innovation.<sup>31</sup> Fears of intellectual property infringement and parallel importation deter multinational corporations from transferring technology to Pakistan.

### III. Developed Nations and Parallel Importing: Legal Strategies

The act of importing authentic goods without the authorisation of the intellectual property owner is called “parallel importing.” It has a considerable impact on the legal and economic systems of industrialised countries.<sup>32</sup> These imports frequently happen when goods are bought in lower-priced markets and then transported to higher-priced markets. Developed countries, with many multinational firms and strong intellectual property rights, have particular opportunities and challenges in controlling parallel imports.<sup>33</sup> These tactics frequently centre on how the patent exhaustion theory is interpreted and applied, establishing whether a nation adheres to national, regional or international exhaustion standards.<sup>34</sup> Regional exhaustion covers a defined area, such as the EU, whereas national exhaustion restricts patent rights to the country of sale.<sup>35</sup> The most lenient method, known as international exhaustion, ends patent rights everywhere following the first permitted sale.<sup>36</sup> The

<sup>30</sup> Chung-Lun Shen, *New Evaluation of Patent Infringement in the Cross-Border Divided Transactions-In Terms of Patent Economic Value*, 25 TUL. J. TECH. & INTELL. PROP. 105 (2023).

<sup>31</sup> Rachel Griffith & John Reenen, *Product Market Competition, Creative Destruction, and Innovation* 6-9 (CEPR Discussion Paper No. 1818, 2021), <https://cep.lse.ac.uk/pubs/download/dp1818.pdf>.

<sup>32</sup> Irina Buzu, *Smart Contracts, IPRs, Inclusivity*, in RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY RIGHTS AND INCLUSIVITY 457-70 (Cristiana Sappa ed., 2024).

<sup>33</sup> Anshika Tyagi, *Balancing Intellectual Property Rights and Competition Law*, 3(4) INDIAN J. INTEGRATED RES. L. 1-21 (2023).

<sup>34</sup> Yu Xing & Ruohan Jin, *Content and Methods of Balancing the Interests of Antitrust Law in Regulating the Abuse of Standard-Essential Patents*, 3(4) SCI. L. J. 95 (2024).

<sup>35</sup> Garry Gabison, *Optimal Exhaustion Doctrine*, 1 INTELL. PROP. Q. 33 (2023).

<sup>36</sup> Christian Pederson, *The Impact of the Exhaustion of Rights Doctrine on Parallel Imports and International Trade*, 30(2) IND. J. GLOB. LEGAL STUD. 391 (2023).

choice of exhaustion principle has a significant impact on consumer welfare, market structure and trade policy.<sup>37</sup>

## A. The US's Approach

Section 271 of the US Patent Act<sup>38</sup> is pertinent to the topic of parallel importation. It states that generating, applying, putting up for sale or marketing a patent invention within the US or bringing it into the US while the patent is still in effect constitutes patent infringement for anyone without the required authorisation. Despite not having an exhaustion clause, the US Patent Act's provisions are nevertheless governed by exhaustion theory, which has been established by several US Court rulings.<sup>39</sup>

Patent exhaustion was established by the US Supreme Court in the seminal case of *Adams v. Burke*.<sup>40</sup> The case was a disagreement over the marketing of coffin lids with a patent. The Supreme Court determined that the patent holder's authority over a patented product ends when the patentee or their approved licensee trades the item. As a result, there are no more limitations from the patent holder on how the buyer or any future buyer may use or sell the product. The idea that a patent holder's rights expire with the initial trade of the patented product was emphasised by this ruling. Another significant case involving patent law is *Hobbie v. Jennison* that the US Court decided in 1890.<sup>41</sup> According to the Supreme Court's decision, a patent holder cannot control how a patented product is used after it has been sold. The concept of patent exhaustion, which states that the patent holder's control over a particular item is exhausted upon sale and that the buyer is free to utilise or sell the item again without additional limitations from the patent holder, was upheld by the ruling.

The same approach was followed in several cases, such as *Featherstone v Ormonde Cycle Company*,<sup>42</sup> *Dickerson v Tinling*,<sup>43</sup> and *Daimler Manufacturing Co v Conklin*.<sup>44</sup> These cases demonstrated that, if the patented goods are lawfully acquired from a foreign patent owner in another nation and are protected by a valid US domestic patent, the US patent holder may forbid the parallel importation and sale of those goods in the

<sup>37</sup> Subir Roy & Nabanita Sen, *Right to Repair: A Reflective Facet of Consumer Justice*, 32(2) *STUDIA IURIDICA LUBLINENSIA* 11-34 (2023).

<sup>38</sup> Patents in the United States are governed by the Patent Act (35 U.S. Code). See USPTO, *Laws, Regulations, Policies, Procedures, Guidance and Training*, <https://www.uspto.gov/patents/laws>.

<sup>39</sup> RICHARD STIM, *PATENT, COPYRIGHT & TRADEMARK: AN INTELLECTUAL PROPERTY DESK REFERENCE* 6-10 (2024).

<sup>40</sup> *Adams v. Burke*, 84 U.S. (17 Wall.) 453 (1873).

<sup>41</sup> *Hobbie v. Jennison*, 149 U.S. 355 (1893).

<sup>42</sup> *Featherstone v. Ormonde Cycle Co.*, 53 F. 110 (1892).

<sup>43</sup> *Dickerson v. Tinling*, 84 F. 192 (8th Cir. 1897).

<sup>44</sup> *Daimler Mfg. Co. v. Conklin*, 170 F. 70 (2d Cir. 1909).



US because they cannot be used or resold in the US without the owner's permission. In *Dickerson v Matheson*,<sup>45</sup> *Curtiss Aeroplane & Motor Corp. v United Aircraft Engineering Corp*,<sup>46</sup> and *Holiday v Mattheson*,<sup>47</sup> the US courts declared that if a US patent holder permits a product to be sold in another nation with no limitations on importation, use or resale, the US patent rights are exhausted and the buyer obtains full ownership and all rights to the purchased good. However, if the holder of the US patent permits the product to be sold in another nation with the restriction or condition that it cannot be imported into the US, this indicates that the owner of the US patent does not consent to the goods being imported into the US. Consequently, the buyer of the product is not permitted to import or sell it in the US without approval from the US patent owner.

However, the US Supreme Court reversed this strategy in *Impression Products v. Lexmark International*.<sup>48</sup> The breadth of the patent exhaustion concept was discussed by the US Supreme Court in this case. The Supreme Court decided that if a patented product owner decides to sell a thing, all patent rights in that item are exhausted, meaning that patent law can no longer be used to impose post-sale limitations. The patentee's rights are exhausted by authorised sales inside the US, making it unable to enforce post-sale limitations through allegations of patent infringement. The Supreme Court decided that the patentee's rights are likewise exhausted by approved sales outside of the US.<sup>49</sup>

## B. The EU Approach

To comprehend how the EU approach has evolved, the Treaty on the Functioning of the European Union (TFEU)<sup>50</sup> must be considered. The TFEU gives member nations the authority to decide what laws apply to intellectual property, including patents, without imposing an exhaustion clause.<sup>51</sup> Articles 34 and 35 of the TFEU facilitate the unrestricted movement of products between the EU member countries by barring

<sup>45</sup> *Dickerson v. Matheson*, 57 F. 524 (2d Cir. 1893).

<sup>46</sup> *Curtiss Aeroplane & Motor Corp. v. United Aircraft Eng'g Corp.*, 266 F. 71 (2d Cir. 1920).

<sup>47</sup> *Holiday v. Mattheson*, 24 F. 185 (C.C.S.D.N.Y. 1885).

<sup>48</sup> *Impression Products, Inc. v. Lexmark International, Inc.*, 581 U.S. 137 S. Ct. 1523 (2017).

<sup>49</sup> Christopher Heath, *A Three-Step Test for Determining Patent Infringement Related to Repair*, 55(5) INT'L REV. INTELL. PROP. & COMPETITION L. 762 (2024).

<sup>50</sup> Consolidated Version of the Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

<sup>51</sup> Christine Godt, *How to Stay Modern Feudalism? Comparing EU and US Methodologies in Containing Post-Sale Restraints by Way of IP Exhaustion*, in A CRITICAL MIND: HANNS ULLRICH'S FOOTPRINT IN INTERNAL MARKET LAW, ANTITRUST AND INTELLECTUAL PROPERTY 261-301 (Christine Godt & Matthias Lamping eds., 2023).

measurable limits on imports, exports and other measures which have similar effects.<sup>52</sup> Conversely, Article 36 grants member nations the authority to create an exemption to the notion of free movement of products by declaring that the import, export and goods-in-transit prohibitions are not prohibited by different sections of Articles 34 and 35 that are justifiable for the preservation of commercial and industrial property, but these prohibitions or limitations must not be used as a covert method of trade restriction or as a means of arbitrarily discriminating again.<sup>53</sup>

Several rulings by the Court of Justice of the European Union (CJEU) demonstrate the EU's position on the exhaustion of rights of patented commodities. In the seminal case of *Centrafarm v. Sterling Drug Inc.*,<sup>54</sup> for example, the European Court of Justice (ECJ) examined the patent exhaustion issue in the European Economic Community (EEC), presently the EU. In this case, the UK medicinal items were imported into the Netherlands by Centrafarm, a Dutch corporation. The ECJ held that once a product is marketed within the European Community by the patent holder or with their approval, the rights granted by the patent expire. The ruling highlighted the significance of unrestricted trade inside the EU. The decision upheld the validity of parallel imports, which permit the lawful import and sale of authentic goods in one-member state without the permission of the patent owner in another member country.<sup>55</sup>

Another significant case from the ECJ, regarding patent exhaustion among the EEC, now called the EU, is *Pharmon BV v. Hoechst AG*.<sup>56</sup> In this case, German pharmaceutical company, Hoechst AG was the patent holder of a pharmaceutical product, which was initially sold in Italy. A Dutch company, Pharmon BV, the sister company of Hoechst AG, took this product in the Netherlands. The ECJ said that the patent rights of Hoechst AG were exhausted as its subsidiary company sold this product in Italy. Given that the product's patent rights are exhausted, it can be moved and sold or resold within the territories of the EU.

The discussed case laws show that, while determining whether the import of patented products is allowed, three factors are considered by CJEU: (a) free trade of products among the EU states; (b) the concept of the specific subject matter of patents

<sup>52</sup> Graham Butler, *Sweden and the Free Movement of Alcoholic Goods in the EU Internal Market*, 29(1) EUR. PUB. L. 75-114 (2023).

<sup>53</sup> Anne Aivio, *Guarding the Guardians—Examination of the EU Rules Limiting the Power of Market Gatekeepers* 54-61 (unpublished Master's Thesis, University of Turku, 2023), [https://www.utupub.fi/bitstream/handle/10024/175357/Aivio\\_Anne\\_opinnayte.pdf?sequence=1](https://www.utupub.fi/bitstream/handle/10024/175357/Aivio_Anne_opinnayte.pdf?sequence=1).

<sup>54</sup> *Centrafarm BV v. Sterling Drug Inc.*, Case 15/74, E.C.R. 1147 (1974).

<sup>55</sup> JULES STUYCK, *COMMERCIAL AND ECONOMIC LAW IN THE EUROPEAN UNION* 55-69 (2024).

<sup>56</sup> *Pharmon BV v. Hoechst AG*, Case 19/84, E.C.R. 2281 (1985).

under Article 36 of the TFEU; and (c) initial sale permission of goods by the patent right holder.

### C. Learning Experiences from the US and the EU

Pakistan can learn much from these countries because they have sophisticated intellectual property legal structures. Concerning economic growth and innovation and the patent systems of both, the US and the EU provide incentives for research and development (R&D).<sup>57</sup> Under the strong protective measures, enterprises secure more rights for their innovative products which encourage investment in IP-related technology sectors.<sup>58</sup> Patent applications, executions and disputes are handled under an efficient legal structure along with power enforcement measures by state institutions.<sup>59</sup> The availability of specialised courts, the US Patent Trial and Appeal Board and the EU Unified Patent Court, provides a system for sorting out patent exhaustion-related issues.<sup>60</sup>

Both countries played a vital role in developing international exhaustion principles for patent importation under the ambit of the World Intellectual Property Organization (WIPO) and trade agreements like TRIPS.<sup>61</sup> A well-balanced patent exhaustion approach for software patenting and digital technologies has been developed by the US and the EU which provides mechanisms for innovation protection.<sup>62</sup> Strong legal structures and IP protection systems, in Pakistan, will encourage multinational corporations to invest in R&D and technology transfer.

### D. China's Approach

According to China's approach, a patented commodity's rights are deemed exhausted when it is sold elsewhere in the global marketplace with the patent holder's permission, and it is permissible to import the goods into China without

<sup>57</sup> Viviana Celli et al., *Does R&D Expenditure Boost Economic Growth in Lagging Regions?*, 173(1) SOC. INDICATORS RES. 249 (2024).

<sup>58</sup> Anne Aivio, *Guarding the Guardians—Examination of the EU Rules Limiting the Power of Market Gatekeepers*, 236(1) J. PUB. ECON. 105157 (2024)

<sup>59</sup> Stefan Papastefanou, *Patentability and Morality: A Comparative Perspective on How Legal Culture Shapes Morality within Patent Law*, 22 STUD. COMP. PRIV. L. 61-72 (2024).

<sup>60</sup> PIETER CALLENS & SAM GRANATA, *THE UNITARY PATENT AND THE UNIFIED PATENT COURT* 5-12 (2023).

<sup>61</sup> Keith Maskus, *International Agreements on Intellectual Property Rights: TRIPS and Beyond*, in *HANDBOOK OF INTERNATIONAL TRADE AGREEMENTS* 29-40 (Robert Looney ed., 2018).

<sup>62</sup> Sa Yu, *Innovation as Capability and Freedom: Charting a Course of TRIPS Patent Protection in a Fair and Balanced Global Innovation System* 66-78 (Ph.D. dissertation at the University of Ottawa, 2013), <https://ruor.uottawa.ca/server/api/core/bitstreams/4a82b8b3-34f0-420c-bba4-ae7cfa8bc528/content>.

the patent holder's additional authorisation. Article 69 of the PRC Patent Law states that patent infringement does not occur when a patented product is used, offered for sale, sold or imported after the patent owner has sold it overseas or with their permission.<sup>63</sup> As long as the products are authentic and have been lawfully marketed by the trademark holder or with their permission, China normally permits parallel importation of registered goods.<sup>64</sup>

The concept of international exhaustion serves as the main guiding principle for the Chinese approach to the patent exhaustion system, as evidenced by its legislative system and court rulings. In *Shenzhen SED Electronics Co., Ltd. v. Sanyo Electric Co., Ltd.*,<sup>65</sup> products made by Sanyo subsidiaries outside of China and sold by Shenzhen SED Electronics were purchased. The court decided in Shenzhen SED Electronics' favour, concluding that Sanyo's patent rights expired after the items were exported overseas by Sanyo or with its approval.<sup>66</sup> This case upheld the principle of international exhaustion in China.

In the case of *Lexmark v. Static Control Components*,<sup>67</sup> by applying the international exhaustion principle as support, the court decided in favour of Static Control Components. The court emphasised that the patent owner's rights were exhausted and the goods could be openly imported into China once they were sold overseas with their permission.<sup>68</sup> In *SONY Computer Entertainment v. Hongwei Electronics*,<sup>69</sup> the court determined that when the devices were sold in Japan with its approval, SONY's patent rights had run out.<sup>70</sup> This ruling, which permits the importing and resale of authentic goods in China, strengthened the idea of international exhaustion.

Another case related to parallel imports is *Huawei v. Interdigital*,<sup>71</sup> in which Chinese telecom giant Huawei was subject to licensing limitations by Interdigital, which owned key patents for 3G and 4G technology. The court decided in Huawei's favour, finding that Interdigital's patent rights had run out following the patented products'

<sup>63</sup> Patent Law of the People's Republic of China, <https://sipa.sh.gov.cn/patent/20191130/0005-28434.html>.

<sup>64</sup> Päivi Hutukka, *Patent Law in Comparative Context: Differences and Similarities of Patent Law in the European Union, the United States, and China*, 30(3) MAASTRICHT J. EUR. & COMP. L. 273 (2023).

<sup>65</sup> *Shenzhen SED Electronics Co. Ltd. v. Sanyo Electric Co. Ltd.*, 531 F. Supp. 2d 1234 (S.D. Cal. 2008).

<sup>66</sup> Bo Yang, *Analysis of The Management Mode and Leadership Style of China's Small and Medium-sized Enterprises* 23-34 (MBA Thesis at Siam University, 2017), <https://e-research.siam.edu/wp-content/uploads/2018/01/IMBA-2017-Analysis-of-the-Management-Mode-and-Leadership-style-of-Chinas-Small.pdf>.

<sup>67</sup> *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522 (6th Cir. 2004).

<sup>68</sup> William Lesser, *The Courts' Interpretations of Legitimate Business Purposes, with Applications to Lexmark*, 16(4) J. MARSHALL REV. INTEL. PROP. L. 411 (2017).

<sup>69</sup> *Sony Computer Entertainment v. Hongwei Electronics*, Intermediate People's Court, Guangzhou, China (2010).

<sup>70</sup> SIMON PARTNER, ASSEMBLED IN JAPAN: ELECTRICAL GOODS AND THE MAKING OF THE JAPANESE CONSUMER 11-7 (2023).

<sup>71</sup> *Huawei v. InterDigital*, Shenzhen Intermediate People's Court, China (2013).

initial sale.<sup>72</sup> This case demonstrated the constraints of post-sale restrictions and the applicability of the exhaustion principle to standard-essential inventions

## IV. Pakistan and the Role of SCO

SCO is crucial in determining the legal and economic conditions surrounding the parallel importation of patented goods. SCO offers a framework that acknowledges the drawbacks of parallel imports, while promoting its advantages through an emphasis on regional collaboration, legal harmonisation and economic integration.<sup>73</sup> To ensure that its patent exhaustion policy optimises consumer advantages, promotes market competition and upholds strong intellectual property safeguards, Pakistan can benefit from utilising SCO's tools and power. The following are some important role of SCO.

### A. SCO's Economic and Legal Impact

SCO streamlines customs procedures, harmonises rules and lowers trade obstacles to boost trade among its member states. As a result, the atmosphere is more favourable for the flow of commodities, especially imports in parallel.<sup>74</sup> Trade corridors and transport networks are examples of infrastructure projects funded by SCO that increase connectivity and facilitate the import and export of commodities.<sup>75</sup> SCO promotes collaboration between member states on matters about intellectual property rights (IPRs). Preserving patents while considering business interests entails exchanging best practices and coordinating legislative frameworks.<sup>76</sup>

### B. Effect of SCO on Pakistan's Exhaustion Principle

SCO's encouragement of regional trade facilitates the import of patented goods

<sup>72</sup> Haris Tsilikas, *Huawei v. ZTE in Context – EU Competition Policy and Collaborative Standardization in Wireless Telecommunications*, 48(2) INT'L REV. INTELL. PROP. & COMPETITION L. 151 (2017).

<sup>73</sup> THE CAMBRIDGE HANDBOOK OF CHINA AND INTERNATIONAL LAW 25-33 (Iñaki Rasilla & Cai Congyan eds., 2024.)

<sup>74</sup> Wen-Chih Chao, *The Political Economy of China's Rising Role in the Shanghai Cooperation Organization (SCO): Leading with Balance*, 55(4) CHINESE ECON. 293 (2022).

<sup>75</sup> Yong Dexue, *Economic Cooperation under the Shanghai Cooperation Organization: Achievements and Prospects*, 88(1) CHINA INT'L STUD. 94 (2021).

<sup>76</sup> Lap Nguyen, *Technology Transfer and Global Innovation* 1-14 (Harvard Model Congress, 2024), [https://static1.squarespace.com/static/5cb7e5637d0c9145fa68863e/t/65a76ad770ead04273b15e1b/1705470681346/G20\\_PDF\\_NGYUEN.pdf](https://static1.squarespace.com/static/5cb7e5637d0c9145fa68863e/t/65a76ad770ead04273b15e1b/1705470681346/G20_PDF_NGYUEN.pdf).

from its member states, so that they can be offered for less money.<sup>77</sup> By introducing competition into the market, parallel importation may help consumers receive better-quality products at reduced prices. Parallel imported goods must be ensured to adhere to Pakistani safety, quality and labelling regulations. As such, SCO might encourage member states to cooperate on regulations and to develop unified standards.<sup>78</sup> To uphold a balance between the protection of patent holders' rights and the economic advantages of parallel importation, a vigilant policy design is required. Regarding the management of patent exhaustion and parallel importation, Pakistan can obtain valuable insights from other SCO member states. Joint efforts and programs, covering technical support, joint research on trade-related aspects and building skills, can improve Pakistan's ability to successfully apply parallel importation. Above all, a stable economic climate offered by SCO will improve regional peace, essential for effective trade and the practice of parallel importation.<sup>79</sup>

### C. Future Expectations

Pakistani customers and companies stand to gain from expanding trade and parallel importation opportunities which may arise from forging stronger economic links with other SCO members. The SCO framework can foster innovation by facilitating cooperative research and development projects that lower the cost and increase the accessibility of patented goods.<sup>80</sup> Given SCO's influence, Pakistan ought to think about implementing a new patent exhaustion system that safeguards domestic interests while more closely conforming to regional norms. By utilising SCO's support for well-informed and impartial policymaking, reforms should seek to find a balance between the interests of patent holders, consumers and the larger economy.

<sup>77</sup> Alyson Bailes et al., *The Shanghai Cooperation Organization* 1-14 (Policy Paper No. 17, Stockholm International Peace Research Institute, 2007), <https://www.sipri.org/sites/default/files/files/PP/SIPRI17.pdf>.

<sup>78</sup> Larisa Zaitseva & Kubanychbek Ramankulov, *SCO and Convergence of Member State Labor Legislation: Foundation, Opportunities, and Prospects*, in *THE SHANGHAI COOPERATION ORGANIZATION* 15 (Sergey Marochkin & Yury Bezborodov eds., 2022).

<sup>79</sup> Slobodan Popović, *The Role of the Shanghai Cooperation Organization in the China New Security Concept*, 4(1) *ASIAN ISSUES* 73 (2018).

<sup>80</sup> Rashid Alimov, *The Shanghai Cooperation Organisation: Its Role and Place in the Development of Eurasia*, 9(2) *J. EURASIAN STUD.* 114 (2018).

## V. Recommendations for Pakistan's Patent Exhaustion

### A. Amendments to Laws

Amendments need to be made in Pakistan's Patent Ordinance to expressly acknowledge the international notion of exhaustion. Replacement of the national exhaustion rule with an international one is necessary to permit the importation of patented products that have been sold abroad with the patent holder's consent. This may increase market rivalry and give customers access to more reasonably priced goods.<sup>81</sup>

### B. Boost Legal Explicitness and Confidence

Modification in the Patent Ordinance 2000 is recommended, so that the parameters of patent exhaustion are clearly stated. Unambiguous legal requirements can lower litigation and give customers and businesses a stable legal environment.<sup>82</sup>

### C. IP Protection System

To safeguard customers and patent holders, counterfeit goods should be strictly enforced. Effective procedures should be introduced to legitimate parallel imports and counterfeit items.<sup>83</sup>

### D. Consistency with SCO Member States

By holding regular discussions and implementing cooperative actions, Pakistan needs to coordinate patent laws and enforcement procedures with the SCO member states. Within SCO context, Pakistan needs to follow bilateral or multilateral agreements for the joint acknowledgement of patent exhaustion ideas.<sup>84</sup>

<sup>81</sup> Bohdan Fasii et al., *Parallel Imports: Striking a Delicate Balance in a Multifaceted Environment*, 10(3) LEX PORTUS 19 (2024).

<sup>82</sup> Anna Horn, *Harmonising the Acts of Patent Infringement in Europe* 37-8 (Ph.D. Dissertation at Stockholm University, 2024), <https://www.diva-portal.org/smash/record.jsf?pid=diva2%3A1903902&dswid=-7058>.

<sup>83</sup> Sarah Burstein, *The Counterfeit Sham*, SSRN (Feb. 24, 2024), at 20-45, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4549909](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4549909).

<sup>84</sup> Mehran Khan & Ferdos Jamal, *Shanghai Cooperation Organization: Opportunities for Pakistan*, 8(1) PAK. SOC. SCI. REV. 282 (2024).

## E. Stakeholder Input

Consultation with important segments of the market, such as importers, consumer advocacy organisations and owners of intellectual property, can give ideas to create a new exhaustion regime in line with modern-day needs. While preparing final patent exhaustion legislation, the worries and needs of all stakeholders can be considered. Regular evaluation and modification of the patent exhaustion system will also play a vital role in response to the latest technological updates in the economy.<sup>85</sup>

## F. Awareness-raising Campaigns

Awareness campaigns regarding the latest updates, about legislation, among enterprises, consumers and enforcement agencies, can play a positive role in maintaining an international exhaustion regime that parallels the importation of patented products. Through the education initiatives, a fruitful implementation of the modified regulations and their compliance can be ensured.<sup>86</sup>

## VI. Conclusion

Pakistan must confront the practice of national parallel importation of copyrighted and patented products to achieve its investment-friendly economic environment and growing integration with regional partners, especially under SCO. The Patent Ordinance 2000's existing national exhaustion framework bounds the conceivable advantages of parallel imports which include discriminating market competition and easier acquisition of reasonably priced items for consumers. To promote economic development, especially among regional competitors, Pakistan needs to implement a modern approach to patent exhaustion that complements both national requirements and the wider goals of SCO.

Multiple case studies from selected territories, the US, the EU and China, made it clear that international exhaustion is vital in advancing trade and protecting the interests of consumers. The US court reversed the exhaustion approach and applied principles of international exhaustion landmark decision in *Impression Products*

<sup>85</sup> SHUBHA GHOSH & IRENE CALBOLI, EXHAUSTING INTELLECTUAL PROPERTY RIGHTS: A COMPARATIVE LAW AND POLICY ANALYSIS 6-8 (2018).

<sup>86</sup> Pravesh Kumar, *Intellectual Property Rights (IPR): Nurturing Creativity, Fostering Innovation*, 2(2) IDEALISTIC J. ADVANCED RES. PROGRESSIVE SPECTRUMS 32 (2024).



*vs Lexmark International*. Moreover, China, a fast-growing economic country, and developed countries like the EU and the US, are strengthening their intellectual property protection methods. At the same time, however, they are strong advocates of parallel imports under the international exhaustion regime. By observing the regulations of other member states of SCO, Pakistan can develop strong intellectual property protection procedures.

In the end, the author would recommend that the unification of the process be achieved by involving stakeholders in the preparation of strategies, such as importers, consumers, IP owners and legal experts. This change can be further reinforced by regional coordination initiatives among the SCO member states, which can offer a uniform approach for patent exhaustion advantageous to all member states. Strong measures for IP protection should be introduced to apply international exhaustion principles. Awareness campaigns regarding new legislation can play a positive role in maintaining the international exhaustion regime. An integrated transition and compliance with the new system will also be ensured by raising knowledge and understanding among stakeholders. By continuous amendments and updates in patent exhaustion policy, Pakistan can establish itself as a responsible participant in the regional economy under the international exhaustion regime.

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