AIPPI

Summary Report

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2025 – Study Question

Exhaustion of trade mark rights

Introduction

This Study Question concerns several key aspects related to the exhaustion of trade mark rights know also as as the "*first sale doctrine*”. The exhaustion of trade mark rights and "*first sale doctrine*” will be jointly referred as exhaustion of trade mark rights. It will examine the causes and criteria that lead to the exhaustion of trade mark rights, focusing on how different legal frameworks address this issue. Additionally, the study will investigate the legitimate reasons for opposing further commercialization of trade marked goods. Issues related to the refurbishment, disassembly, refilling, and subsequent resale of trade marked goods shall also be analyzed, especially in the context of sustainability and the green economy. Furthermore, the question of who bears the burden of proof in cases involving the exhaustion of trade mark rights will be explored, assessing whether current legal practices ensure fairness and clarity in disputes between trade mark right holders and third parties.

The Reporter General has received Reports from the following Groups and Independent Members in alphabetical order: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, South Korea, Latvia, Luxembourg, Malaysia, Mexico, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Spain, Sweden, Switzerland, Independent Member of

Chinese Taipei, Turkey, Ukraine, United States, Vietnam, and the Netherlands.

43 Reports were received in total. The Reporter General Team thanks the Groups and Independent Members for their helpful and informative Reports. All Reports may be in AIPPI's library at www.aippi.org.

The Reports provide a comprehensive overview of national and regional laws, practices, and policies relating to exhaustion of trade mark rights, set out in three parts:

- Part I – Current law and practice
- Part II – Policy considerations and proposals for improvements of your Group's current law
- Part III – Proposals for harmonisation.

This Summary Report does not summarise Part I of the Reports received. Part I of any Report is the definitive source for an accurate description of the current state of the law in the jurisdiction in question.

This Summary Report has been prepared on the basis of a detailed review of all Reports (including Part I) but focuses on Parts II and III, given AIPPI's objective of proposing improvements to, and promoting the harmonisation of, existing laws. As it is a summary, if any question arises as to the exact position of a particular Group in relation to Parts II or III, please refer to the relevant Report directly.

In this Summary Report:

- references to Reports of or responses by one or more "Groups" may include references to Independent Members;
- where percentages of responses are given, they are rounded to the nearest 5%. The calculation is based on reports received by the deadline. Reports received after 7 May 2025 may not be reflected in the statics of this summary report.;

and

- in Part IV below, some conclusions have been drawn in order to provide guidance to the Study Committee for this Study Question.

I. Current law and practice

For the replies to Questions 1) to 11) set out in the Study Guidelines for this Study Question, reference is made to the full Reports. The Study Guidelines may be accessed in AIPPI's library at www.aippi.org.

II. Policy considerations and proposals for improvements of your Group's current law

Question 12: Adequacy of Current Law or Practice

12) Do you consider your Group's current law or practice relating to exhaustion of trade mark rights adequate, or do you consider that the law should be changed? Please answer YES or NO and explain.

38 Groups responded to this question. **Approximately 66% (25 Groups)** considered their current legal framework on exhaustion of trade mark rights to be **adequate**. These include: **Denmark, USA, Egypt, Canada, Argentina, Romania, Germany, Czech Republic, Indonesia, Italy, Hungary, Sweden, South Korea, Paraguay, France, Israel, Luxembourg, Switzerland, Turkey, Brazil, Canada, India, Vietnam, Finland, Belgium, Spain and Bulgaria.**

For example, the **French Group** emphasized that the law and case law strike the right balance between the principle of free movement of goods and the exclusive rights of trade mark holders. The **Swedish Group** noted that the regional exhaustion regime within the EEA provides a coherent and flexible approach that supports the internal market, despite practical challenges. The **Israeli Group** added that while current exhaustion principles are mostly derived from case law, a legislative foundation would offer greater legal certainty. The **Austrian Group** noted that generally, there is no need to change the current legal situation. However, it may be considered codifying the extensive settled case law. This would lead to greater legal certainty and would be easier to comprehend exhaustion standards.

Approximately 33% (13 Groups) expressed the need for changes or improvements. These Groups include: **Ecuador, Japan, Philippines, Chile, Mexico, Poland, China, Malaysia, Latvia, Australia, Taiwan (Chinese Taipei), Russia, India.**

The **Brazilian Group** identified a lack of clarity around whether trade mark holder consent must be explicit or may be implied, which leads to inconsistent judicial outcomes. The **Philippine Group** stated that the current national law lacks any provision on exhaustion, calling it "grossly inadequate." The **Egyptian Group**, while acknowledging that its national law adopts international exhaustion, recommended improvements to address digital trade and introduce safeguards against counterfeit and substandard imports. Similarly, the **Polish Group** expressed concern about the vagueness in defining market placement and consent, leading to non-uniform case law. The **Chinese Group** highlighted disparities in court rulings and advocated for unified legislative standards and exceptions to foster legal certainty in a globalized trade environment.

Question 13: Elements for Improvement

13) **Could any of the following aspects of your Group's current law or practice relating to the exhaustion of trade mark rights be improved? If YES, please explain.**

- a) **Causes of/criteria for exhaustion of trade mark rights.**
- b) **Legitimate reasons to oppose further commercialization of trade marked goods.**
- c) **Burden of proof.**

a) Causes/criteria for exhaustion:

18 out of 39 Groups (46%) indicated a need for improvement or clarification of the causes/criteria for exhaustion. Groups highlighting this issue include: **Brazil, Egypt, Chile, Argentina, Poland, Malaysia, Sweden, Vietnam, Philippines, Chinese Taipei, South Korea, China, Mexico, Australia, Luxemburg, Indonesia, Belgium, and Bulgaria** .

The **Swedish Group** cited uncertainty around whether rental, donation, or consignment qualifies as "placing on the market". **Brazil Group** noted that ambiguity regarding whether consent must be explicit or can be implied causes inconsistent rulings. The **Romanian Group** and others suggested codifying case law to provide greater certainty.

b) Legitimate reasons to oppose further commercialization:

Approximately 55% Groups raised concerns over unclear or incomplete rules. Groups include: **Austria**, **Brazil, China, Germany, Luxemburg, Indonesia, Bulgaria, Turkey, Chile, Egypt, India, Philippines, Australia, Russia, Vietnam, Malaysia, Argentina, Belgium, Latvia, Spain, and Finland.**

The **Brazilian Group** emphasized challenges in applying regulatory and quality control standards, particularly in pharmaceuticals. The **Turkish Group** supported broader discretion for judges and better integration of public health considerations. The **Mexican Group** requested clarification on environmental scenarios where repurposing or recycling should override exhaustion.

c) Burden of proof:

30% discussed the burden of proof, generally agreeing that the party invoking exhaustion bears the initial burden, but emphasizing important exceptions. The **Egypt, Chile, Argentina, Indonesia, Bulgaria, Sweden, Malaysia, Turkey, France, Poland, Belgium,** and **Philippines,** emphasized that burden-is the topic that should be discussed.

The **French Group** cited CJEU rulings (e.g., *Van Doren*, *Hewlett Packard*) to support shifting the burden to trade mark holders when they control relevant market data. **German Group** noted that automatic allocation of proof to defendants could result in unfair market fragmentation. While the **Canadian Group** raised the issue of practical difficulty in accessing proof from brand holders in parallel import cases.

Question 14: Sustainability and Green Economy Alignment

14) Do you consider your Group's current law or practice relating to

exhaustion of trade mark rights adequately address the goals of a green and sustainable economy, and how can legitimate reasons for opposing further commercialization be aligned to promote sustainability?

11 out of 37 Groups (30%) indicated that their legal framework **adequately supports sustainability goals** in the context of exhaustion of trade mark rights. These Groups include: **Denmark, USA, Canada, Austria, Romania, China, Japan, Australia, and Switzerland**.

The **Danish Group** pointed to the relevance of the EU Charter of Fundamental Rights, which recognizes sustainability and environmental protection as legal principles that influence IP law interpretation. The **Swiss Group** emphasized that evolving consumer perceptions around recycling and upcycling should influence how courts assess "impairment" of goods. The **USA Group** noticed that the goals of green and sustainability do not alter the basic principles of trade mark law.

Conversely, **26 Groups (70%)** either explicitly stated that the legal framework **does not** sufficiently support environmental objectives or failed to address the issue. Groups raising these concerns include: **France, Germany, Chinese Taipei, Sweden, Chile, Ecuador, Israel, Italy, Russia, Israel, Mexico, South Korea, Turkey, Belgium, Bulgaria, Philippines, Poland, Argentina, Indonesia, India, Egypt, Latvia, Czech Republic, Spain, Finland, Brazil**, **Malaysis, Paraguay, Sweden,** and **Vietneam**.

The **French Group** warned that over-expanding sustainability-based exceptions could endanger brand consistency and quality control, suggesting a cautious approach. The **Spanish Group** noted that where the subsequent commercialization affects the functions of the trade mark, the trade mark proprietor should retain the right to oppose such use, irrespective of whether the reseller's intentions relate to green economy or sustainability objectives (e.g., the removal of excess packaging or wrapping).

Many Groups underlined that there is no connection within trade mark exhaustion and the green and sustainable economy, including **Czech Group** that noted that there is no need for such regulation. Some Groups, however, advocated for explicitly aligning trade mark law with national refurbishing and circular economy legislation. The **Egyptian Group** suggested that rules could be improved to

distinguish between authentic, lawful reuse and potentially deceptive re-commercialization.

The **Swedish Group** acknowledged that while the principle of trade mark exhaustion aligns with the goals of a green economy in the context of traditional second-hand trade, it falls short when applied to newer sustainable practices such as recycling or upcycling. Trade mark holders can often oppose these activities on the basis of brand protection, prompting the Group to propose a legal balancing test that would incorporate sustainability alongside economic and public health concerns. They also urged alignment with the EU's Circular Economy Action Plan and called for CJEU and national courts to explicitly consider verified sustainability interests when assessing legitimate reasons to oppose further commercialization..

Question 15: Other Policy Considerations

15) **Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question? Please answer YES or NO and explain.**

Fewer than 33% of Groups (11 out of 37) answered YES providing additional policy suggestions or reform proposals. Groups that said „YES" are: **Egypt, Chinese Taipei, Chile, Japan, South Korea, China, Turkey, Mexico, Switzerland, Israel, Belgium**.

The **Swiss Group** recommended regulating exhaustion across all IP rights for consistency and adopting statutory provisions for trade mark exhaustion, currently developed mostly via case law.

The **Chinese Taipei, South Korean and Turkish Groups** proposed legislative reforms to balance trade mark protection with circular economy goals, particularly regarding resale, refurbishment, and upcycling.

The **Chinese Group** emphasized the need for explicit legislative provisions on exhaustion and parallel imports to reduce reliance on case-by-case adjudication and support legal certainty in cross-border trade.

The majority of Groups (26 out of 37 Groups approx. 67%) responded "NO", with many stating that either no policy gaps were identified or the issue fell outside the scope of national concerns at this time. Groups responding "NO" include: **Brazil, Denmark, USA, France, Germany, Austria, Argentina, Australia, Canada, Poland, Czech Republic, Sweden, India, Italy, Indonesia, Latvia, Russia, Philippines, Bulgaria, Romania, Hungary, Paraguay, Luxemburg, Malaysia, Spain, Ecuador.**

Many of these Groups considered the current laws balanced and effective, nevertheless some clearance would be helpful. The **Mexican Group** noticed that the sales through authorized licensees needs further consideration.

III. Proposals for harmonisation

Question 16: Need for Harmonization

16) **Do you believe that there should be harmonisation in relation to issues regarding exhaustion of trade mark rights? Please answer YES or NO.**

34 out of 39 Groups (87%) expressed support for the **harmonisation** of laws relating to the exhaustion of trade mark rights. The Groups who answered "YES" include: **USA, Egypt, Chinese Taipei, Chile, Canada, Argentina, Austria, Romania, Germany, Czech Republic, Latvia, France, Italy, Hungary, Japan, Australia, Philippines, Vietnam, India, Sweden, South Korea, China, Turkey, Brazil, Mexico, Poland, Luxembourg, Malaysia, Israel, Belgium, Spain, Ecuador, Finland, Bulgaria.**

These Groups cited key benefits of harmonisation: facilitation of international trade and cross-border resale; legal certainty and predictability or avoidance of market fragmentation or trade barriers.

5 Groups (13%) either opposed or expressed scepticism about harmonisation. These include the following Groups: **Denmark, Russia, Indonesia, Paraguay, Switzerland.**

Question 17: Causes/Criteria for Exhaustion

17) Should exhaustion of trade mark rights result from any of the following?

a) an act involving the transfer of ownership of goods bearing the trade mark, e.g. the sale of the good, donation or exchange agreement;

b) an act that does not involve a transfer of ownership but transfers the right to dispose of the goods, provided the trade mark holder receives remuneration reflecting the economic value of the goods, e.g. rental or lease;

c) an act such as placing the goods in the possession of a third party, where the third party does not have independent authority to dispose of the goods, e.g. where the goods are sold on consignment, or there is a retention of title clause over the goods until payment is made in full.

a) Transfer of ownership (sale, donation, exchange)

37 out of 39 Groups (95%) agreed that exhaustion should result from acts involving transfer of ownership, such as **sale, donation, or exchange**. Groups supporting this approach include: **USA, Egypt, Chinese Taipei, Chile, Canada, Russia, Argentina, Austria, Romania, Germany, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japan, Australia, Philippines, Vietnam, India, Sweden, South Korea, Paraguay, China, Turkey, Brazil, Mexico, Poland, Switzerland, Malaysia, Israel, Belgium, Spain, Ecuador, Finland, Bulgaria**.

The **Germany, French, Japanesa and Indian Groups** empahsised that transfer of ownership should be the decisive condition, as it reflects genuine market placement and justifies exhaustion.

b) Transfer of disposal rights without ownership (e.g., rental or lease)

13 Groups out of 39 (33%) supported this condition in some form, often with

reservations. Supporting Groups include: **Chile, Czech Republic, Latvia, Hungary, Australia, Mexico, Poland, Malaysia, Israel, Turkey, Egypt, Paraguay and Bulgaria.**

The **Czech Group** noticed that any act including the right to dispose should be enough to trade mark exhaustion. The **Belgian, Swedish and Germany Groups** stated that rental or lease lacks ownership transfer and therefore shouldn't exhaust rights.

c) Possession without independent authority (e.g., consignment or retention of title)

Only **9 Groups (23%)** considered this sufficient for exhaustion. These Groups are: **Chile, Latvia, Hungary, Australia, Israel, Paraguay, Turkey.**

Most Groups (e.g., Belgium, France, Germany) rejected this scenario, stating that mere possession without a right to dispose does not reflect a completed market transaction.

Overall, there was **strong consensus on option a)**, moderate and cautious support for b), and **widespread rejection of c)**.

Question 18: Types of Contracts Leading to Exhaustion

18) **Should exhaustion of the trade mark rights be caused by any of the following?**

- **a) a contract of sale,**
- **b) a contract of sale with an explicit reservation of ownership,**
- **c) a contract of cross-border sale within a business concern,**
- **d) an exchange agreement,**
- **e) a donation agreement,**
- **f) a distribution agreement,**

g) **a licence agreement,**

h) **a rental agreement,**

i) **a lease agreement,**

j) **a leasing contract,**

k) **handing over of goods to a forwarder, carrier, agent,**

l) **transit of goods,**

m) **other, please clarify.**

a) A contract of sale

97% supported that a sale contract should result in exhaustion of trade mark rights. This was widely regarded as the clearest example of genuine market placement that justifies exhaustion.

b) A contract of sale with explicit reservation of ownership

16 Groups (41%) including **Canada, Russia, Argentina, Czech Republic, Indonesia, Latvia, France, Hungary, Vietnam, Paraguay, China, Poland, Malaysia, Israel, Belgium, Ecuador** considered this a valid basis for exhaustion, though many applied conditions — namely that the acquirer must have full right to dispose of the goods.

c) A contract of cross-border sale within a business concern

About 51% (20 Groups) including **USA, Chile, Canada, Russia, Argentina, Czech Republic, Indonesia, Latvia, Italy, Hungary, Vietnam, South Korea, Paraguay, China, Mexico, Malaysia, Israel, Belgium, Ecuador, Bulgaria** supported this, especially where intercompany sales closely mirror real commercial transactions.

d) An exchange agreement

Approximately 80% agreed that an exchange, if voluntary and executed, can trigger exhaustion. Support came from **USA, Egypt, Chinese Taipei, Chile, Canada, Russia, Argentina, Romania, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japan, Philippines, Vietnam, India, South Korea, Paraguay, China, Turkey, Brazil, Mexico, Poland, Switzerland, Malaysia, Israel, Belgium, Ecuador, Finland, Bulgaria**.

e) A donation agreement

About 79% (31 Groups) endorsed donation as a valid act of exhaustion including **USA, Egypt, Chile, Canada, Russia, Argentina, Romania, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japan, Philippines, Vietnam, South Korea, Paraguay, China, Turkey, Brazil, Mexico, Poland, Switzerland, Malaysia, Israel, Belgium, Spain, Ecuador, Finland, Bulgaria**, **Turkey, Argentina, France, Latvia, Egypt** supported this scenario assuming it entails actual delivery and transfer.

f) A distribution agreement

Around 69% (27 Groups) considered this sufficient for exhaustion, particularly if it results in the goods reaching the market. Supporters included **Egypt, Chinese Taipei, Chile, Canada, Argentina, Czech Republic, Latvia, France, Italy, Hungary, Philippines, Vietnam, India, Paraguay, China, Turkey, Brazil, Mexico, Poland, Switzerland, Malaysia, Israel, Belgium, Spain, Ecuador, Finland, Bulgaria.**

g) Licence agreement

26 out of 39 Groups (66%) supported this under certain conditions, including unconditional support from 19 groups

The **Chinese Group** noted that if the license includes the right to sell, it is equivalent to the sales contract, and the exhaustion can be applied. However, if it only involves OEM, where the goods have not been circulated

into the market, the exhaustion does not apply. While the **German Group** noted that exhaustion of trade mark rights should not result from the mere conclusion of a licence agreement. However, exhaustion should occur if ownership of the goods bearing the trade mark is transferred to the licensee by the trade mark holder or with its consent.

h) Rental / Lease / Leasing agreements

Supported by **10–11 Groups (25–28%)** each.

Many Groups rejected this on grounds of insufficient transfer of ownership. The **Brazilian Group** noted that exhaustion occurs only if the lessee exercises purchase option and ownership transfers. The **Japanese Group** noted these typically do not involve transfer of ownership and thus should not trigger exhaustion.

k) Handing over goods to a forwarder, carrier, or agent

About **20% of Groups (8 Groups)** rejected this scenario due to lack of independent authority or ownership transfer. Only 10 % (4 Groups) accepted it.

l) Transit of goods

Around **83% of Groups (33Groups)** did not support transit as a cause for exhaustion. Supported by only 3 Groups.

Brazil, Korea, Switzerland, Poland emphasized that mere movement through a territory does not equate to product placement or legal access by consumers.

m) Other

A few Groups proposed additional scenarios such as**:** lease-to-own models may result in exhaustion upon title transfer (**Canada**); settlement agreement with consent to market products (**Italy**); consent-based exhaustion, regardless of contract form (**Australia**).

Summarising:

- High acceptance: a) contract of sale (97%).
- Broad support: d) exchange (80%), e) donation (79%), f) distribution (69%).
- Moderate acceptance: b) reservation of title (41%), c) cross-border sale in business concern (51%), g) licence (66%).
- Minority support: h–l (10–28%).
- m) Other: various context-dependent mechanisms identified by 7 Groups.

Question 19: Conditions for Exhaustion

19) Which of the following conditions must be met for the trade mark right to be exhausted when goods are put into the market?

a) goods should be put into the market exclusively by the trade mark holder or with its consent;

b) goods should be put into the market by an entity having a business relationship with the trade mark holder even without the trade mark holder's consent;

c) goods should be put into the market by the licensee or sublicensee even without the trade mark holder's consent.

a) Goods should be put into the market exclusively by the trade mark holder or with its consent

32 out of 39 Groups (82%) expressed strong support for this condition. Groups supporting this approach include: **France, Poland, Japan, Sweden, South Korea, Brazil, Czech Republic, China, Egypt, Switzerland, Chile, Mexico, Malaysia, Austria, Turkey, Italy, India, Latvia, Philippines, Indonesia, Germany, Argentina, Hungary, Finland, Belgium, Spain, Ecuador, Bulgaria,** and others.

All Groups emphasized that brand owners must retain control over the initial release of goods bearing their mark.

b) Goods should be put into the market by an entity having a business relationship with the trade mark holder, even without its consent

11 Groups (28%) supported this approach: **Chinese Taipei, Argentina, Czech Republic, Indonesia, Latvia, Italy, Hungarian Group, People's Republic of China, AIPPI Switzerland Study Group, Malaysia and Paraguay**.

The **Swiss Group** noted that placing the goods into the market by a company affiliated with the trade mark holder is deemed equivalent to placing the goods on the market by or with the trade mark holder's consent, if the trade mark holder or the affiliated company have organized themselves on an international level for the purpose of exploiting the trade mark rights. The **Chinese Taipei Group** noted that when trade mark holder licenses others or engages in business transactions, the exhaustion principle should still apply. The **German Group** noted that the cases where exhaustion of trade mark rights occurs even though the goods have been put on the market without the trade mark holder's consent should be the exception. This can be considered if the goods bearing the trade mark have been manufactured under the control of a single company that can be held responsible for their quality. In such cases, for example, if a subsidiary or a licensee puts the goods on the market, it seems reasonable to assume that the trade mark rights have been exhausted, even if the trade mark holder has not expressly consented to this.

c) Goods should be put into the market by the licensee or sublicensee, even without the trade mark holder's consent

30% of the Groups considered this acceptable under very limited conditions and specific contract terms.

The **Argentinian Group** noticed that the trade mark rights should not be considered exhausted in such situations if the goods, as originally placed on the market by the trade mark holder, have been substantially altered, or if they were specifically tailored by the trade mark holder for certain consumers or markets and are subsequently placed in a different market by the referenced entity, licensee, or sublicensee.

The **German Group** underlined that if a licensee puts the goods on the market without the consent of the trade mark holder, this should only cause the exhaustion of trade mark rights in exceptional cases like the goods bearing the trade mark

have been manufactured under the control of a single company that can be held responsible for their quality. In such cases, for example, if a subsidiary or a licensee puts the goods on the market, it seems reasonable to assume that the trade mark rights have been exhausted, even if the trade mark holder has not expressly consented to this.

The vast majority of Groups emphasized that **exhaustion should only occur when the trade mark holder authorizes the market placement**, to protect brand integrity and legal certainty. Support for b) and c) was **limited**.

Question 20: Nature of Consent Required

20) What should be required regarding the trade mark holder's consent to exhaust the trade mark right?

- a) **The consent must be expressed in a manner which unequivocally demonstrates the trade mark holder's intention to place the goods on the market in the territory concerned;**
- b) **The consent may be implied, but this does not allow a presumption of the existence of consent, e.g. it cannot be inferred from silence;**
- c) **The consent must exist at the time of putting the goods into the market;**
- d) **The consent may be expressed a posteriori.**

a) The consent must be expressed in a manner which unequivocally demonstrates the trade mark holder's intention to place the goods on the market in the territory concerned

23 out of 39 Groups (58%) supported this position. Groups include: **Egypt, Chile, Russian Federation, Austria, Romania, Czech Republic, Indonesia, France, Italy, Hungary, Philippine Group, Vietnam, India, Sweden, Brazil, Poland, Switzerland, Malaysia, Belgium, Spain, Ecuador, Bulgaria**.

The **French, Belgium, Indian and Swiss Groups** indicated that the consent must be clear. The **French Group** emphasized that the party invoking exhaustion must be able to demonstrate unequivocally that the trade mark holder consented to the marketing of the goods in question.

b) The consent may be implied, but this does not allow a presumption of the existence of consent (e.g., it cannot be inferred from silence)

27 out of 39 Groups (69%) expressed support for this, often as a supplementary position. Groups include: **USA, Independent Member - Chinese Taipei, Chile, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japanese Group, Philippine Group, India, Sweden, South Korea, Paraguay, China, Turkey, Switzerland, Spain, Ecuador, Poland, Malaysia, AIPPI Finland, Bulgaria**.

The **Chinese Group** noticed that the implied consent may be accepted; however, it should not be automatically inferred from the trade mark holder's silence, as silence may have many explanations and does not, on its own, indicate consent to trade mark rights exhaustion. It is therefore recommended to establish clearer criteria for evaluating implied consent. For instance, if the trade mark holder is aware that the goods are circulating in a specific market and does not act over an extended period, this inaction could be considered a sign of implied consent. Accordingly, the principle that "consent cannot be inferred from silence" might be reconsidered to allow such inferences when supported by sufficient indirect evidence suggesting the likelihood of consent.

The **Turkish and Swiss Groups** noticed that consent may be inferred from circumstances occurring before, during, or after the goods are placed on the market, provided that these circumstances clearly indicate that the trade mark proprietor has waived their rights.

c) The consent must exist at the time of putting the goods into the market

18 out of 39 Groups (46%) supported this condition. Groups are: **USA, Chile, Romania, France, Japanese Group, Philippine Group, Vietnam, India, Sweden, South Korea, Paraguay, Malaysia, Mexico, Spain, Ecuador, Poland, Finland, Bulgaria**.

The **Danish Group** emphasized that retroactive consent could generate uncertainty and undermine consumer trust. The **French Group** stated that consent

must precede or coincide with market introduction to qualify as exhaustion. The **South Korean Group** noticed that consent may be implied, but it should not be inferred from silence, and the principle that consent must exist at the time the goods are put on the market is preferable.

d) The consent may be expressed a posteriori

Only 19 Groups (48%) supported this option: **USA, Chinese Taipei, Russia, Romania, Germany, Czech Republic, Indonesia, Latvia, France, Hungary, Philippine, India, Turkey, China, Switzerland, Belgium, Spain, Finland, Austria**. These Groups argued that in some exceptional business arrangements, late formalization may still reflect a genuine prior agreement.

The **Belgian Group** noticed that it should be allowed express tge consent a posteriori, in order to establish consent, to rely on relevant facts and circumstances subsequent to the placing of the goods on the market. The **Spanish Group** noticed that consent may be given in any form and at any time, provided that it is unequivocal and relates to a specific good. The **Indian Group** emphasized that if the trade mark owner subsequently ratifies or acknowledges the placement of goods on the market, such action should be treated as implied consent, thereby resulting in exhaustion of rights.

The **Chinese Group** emphasized that post-factum consent to the distribution and use of trade marked goods should be valid, provided it is explicitly expressed and does not contravene mandatory legal provisions or public order. They proposed that such consent should be subject to a clearly defined time frame (e.g., a set period after the goods are placed on the market), and that standardized forms—such as written statements or public announcements—should be established for expressing it. Additionally, the Group recommended developing detailed rules on the legal effects of such consent, including whether it may have retroactive effect and under what conditions, to ensure a balanced approach that protects both trade mark holders and market participants.

Question 21: Role of Contractual Agreements

21) Should contractual agreements or practices override the principle of exhaustion of trade mark rights? If yes, which of the following:

a) **No, contractual agreements or practices should not override the principle of exhaustion of trade mark rights.**

b) **Through explicit contractual provisions (e.g., a clause explicitly stating "no exhaustion applies").**

c) **By indirect mechanisms, such as structuring the transaction as a service agreement rather than a sale.**

d) **By including explicit restrictions on the product itself (e.g., labeling it "not for resale").**

e) **other, please clarify.**

a) No, contractual agreements or practices should not override the principle of exhaustion

27 Groups (69%) expressed this position. Supporting Groups include: **Chile, Finland, Poland, Spain, Switzerland, Argentina, Australia, Belgium, Brazilia, Bulgaria, Canada, Czech Republic, Egypt, France, Germany, Hungary, India, Ecuador, Latvia, Luxembourg, Malaysia, México, Paraguay, China, Romania, Russia Sweden**.

The **French Group** maintains that contractual agreements or practices should not override the principle of exhaustion, as doing so would render the legal exception meaningless. However, it acknowledges that the application of exhaustion presupposes the rights holder's consent to market the goods in a manner that respects the trade mark and its image. If the essential contractual terms concerning the trade mark—such as its duration, visual identity, designated goods or services, product quality, or territorial scope (outside the EU)—are violated, this consent must be deemed withdrawn.

b) Through explicit contractual provisions (e.g., clause "no exhaustion applies")

4 Groups (10%) supported this option as a **limited exception**. Supporting Groups include: **Indonesia, Italy, Philippines and Germany**.

The **French Group** disagrees with this conception and underlines that The principle of the free movement of products would be called into question if it were legally

possible to allow the parties to decide explicitly that this exhoustion of trade mark does not apply. The **Germany Group** adds that third parties that have no insights into contractual agreements might be affected negatively if exhaustion could be limited by mere contractual provisions.

c) By indirect mechanisms, such as structuring the transaction as a service agreement rather than a sale

Supported by **only 4 Groups (10%)**: **USA, India, Italy, Philippines**. These Groups stated that form should not override substance, but in some legal systems, such structuring might be effective **if lawfully and clearly applied**.

The **German Group** notes that if, for example, a distribution agreement assigns a specific territory to an authorised dealer and the dealer is only permitted to trade outside the EU/EEA, the trade mark holder's consent does not extend to imports into the EU/EEA. As a result, exhaustion cannot occur in such cases.

d) By including explicit restrictions on the product itself (e.g., labeling it "not for resale")

Just **9 Groups (23%)** mentioned this approach: **Argentina, France, Germany, Indonesia, Italy, Latvia, Philippines, Sweden, China Taipei, Vietnam**, treating it as acceptable.

The **Swedish Group** acknowledges that, as a general rule, exhaustion should apply even to products labeled "not for resale." However, exceptions may be warranted in specific circumstances. In particular, where goods are clearly marked as "tester," "not for resale," or similar, and it is evident—e.g., from their small size or other features—that they are promotional items not intended for sale, such items should be excluded from the scope of exhaustion.

On the other hand, the **Belgian Group** noticed that where a trade mark holder affixes the mark to items such as testers or samples, labels them with terms like "demonstration" or "not for sale," and distributes them free of charge to promote the sale of goods, such items should not, in the absence of abuse or contrary evidence, be considered as having been placed on the market with the holder's consent. Similary, the **Latvian, Chinese Taipei** and **French Groups** notice that where such labeling clearly indicates that the products are not intended for market placement, a key condition for the application of the exhaustion principle is not fulfilled, and therefore exhaustion does not apply in such cases.

e) Other

Several Groups **Belgium, Indonesia, Turkey, Japan, South Korea, United States** marked answer e).

Questions 22–24: Legitimate Reasons to Oppose Further Commercialization

22) **What types of reasons should be deemed legitimate for prohibiting the use of a trade mark in relation to goods subject to exhaustion of trade mark rights?**

- a) **alteration or impairment of goods,**
- b) **harm to brand reputation,**
- c) **risk of consumer confusion,**
- d) **deceptive marketing practices,**
- e) **repackaging without notice,**
- f) **defects in goods,**
- g) **economic reasons, such as maintaining higher prices in certain markets,**
- h) **trade mark holder's subjective preferences about who resells their goods,**
- i) **other, please clarify.**

The majority of Groups selected several **commonly accepted legitimate reasons**, particularly those associated with quality control, consumer protection, and brand reputation. The responses, grouped by reason, are as follows:

a) Alteration or impairment of goods

Supported by **32 out of 39 Groups (82%)**, including: **USA, Egypt, Chinese Taipei, Chile, Canada, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japan, Australia, Philippines, Vietnam, India, Sweden,**

South Korea, Paraguay, China, Turkey, Brazil, Spain, Ecuador, Finland, Bulgaria, Belgium, Poland, Switzerland.

b) Harm to brand reputation

Cited by **32 out of 39 Groups (82%)**, including: **USA, Egypt, Chinese Taipei, Chile, Canada, Russian Group, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Philippines, Vietnam, India, Sweden, South Korea, Paraguay, China, Turkey, Brazil, Spain, Ecuador, Finland, Bulgaria, Belgium, Poland, Switzerland, Israel**.

The most **Groups** considered that impairment of goods, harm to brand reputation, and the presence of defects may constitute legitimate reasons to oppose further commercialization, even after exhaustion. They pointed to examples such as modifications that alter the trade mark, potentially diluting its distinctiveness or damaging the brand's reputation. The **Germa Group** adds that harm to the brand reputation should not be limited to luxury goods but should be applied a more broadly and also cover goods that are not luxury in the strict sense but that have a strong reputation amongst their customers.

c) Risk of consumer confusion

31 Groups (79%) selected this option, including: **USA, Egypt, Chinese Taipei, Chile, Russian Group, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Hungary, Japan, Philippines, Vietnam, India, Sweden, South Korea, Paraguay, China, Turkey, Brazil, Spain, Finland, Bulgaria, Belgium, AIPPI Poland, AIPPI Switzerland, Mexico, Israel**.

d) Deceptive marketing practices

Supported by **32 Groups (82%)**. **USA, Egypt, Chinese Taipei, Chile, Canada, Russian Group, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Hungary, Japan, Philippines, Vietnam, India, Sweden, South Korea, Paraguay, China, Turkey, Brazil, Spain, Ecuador, Finland, Bulgaria, Belgium, Poland, Switzerland, Israel.** It was highlighted that tactics implying false affiliation or origin must be blockable under exhaustion exceptions.

e) Repackaging without notice

Supported by **29 Groups (74%)** including: **USA, Egypt, Chinese Taipei, Chile, Argentina, Austria, Germany, Czech Republic, Indonesia, France, Italy, Hungary,**

Japan, Philippines, Vietnam, India, Paraguay, China, Turkey, Brazil, Spain, Ecuador, Finland, Bulgaria, Belgium, AIPPI Poland, AIPPI Switzerland, Israel.

The **Polish Group** emphasized that repackaging should only be permissible if all five conditions set by the CJEU are fulfilled, including necessity, preservation of product condition, proper labeling, notification to the trade mark holder, and no damage to trade mark reputation. Notification alone is insufficient without meeting the remaining conditions. Additionally, de-packaging may justify opposition if it removes essential information or harms the trade mark's image. These factors should be considered as legitimate reasons for opposing further commercialization.

f) Defects in goods

Supported by **27 Groups (69%)** including: **USA, Egypt, Chile, Canada, Russian Group, Argentina, Austria, Germany, Czech Republic, Indonesia, Latvia, France, Italy, Hungary, Japan, Australia, Philippines, Vietnam, India, Sweden, Paraguay, China, Brazil, Spain, Finland, Bulgaria, AIPPI Poland, Israel.**

The **Swiss Group** stated that trade mark holders should not be allowed to block second-hand sales of slightly defective but still usable goods, provided that defects are clearly disclosed. However, intervention may be justified if defects result from systematic issues or are not transparently communicated by the seller. Each case should be assessed individually.

g) Economic reasons (e.g., maintaining price tiers)

Supported just by **1 Group (2,6%).** Only The most Groups explicitly rejected this rationale, viewing it as anticompetitive or incompatible with free movement of goods.

Regarding point most Groups emphasized that economic reasons—such as maintaining higher prices in certain markets or thrade mark holder interest — should not be considered legitimate grounds to oppose further commercialization. Allowing such reasons would undermine the delicate balance that the principle of exhaustion aims to achieve between the trade mark holder's interests and competition law objectives, particularly the free movement of goods.

h) Trade mark holder's subjective preferences about who resells their goods

Rejected by nearly all Groups. Only **2 Groups (5%)** — **Indonesia and Poland** — considered this potentially valid reason.

i) Other

Some Groups marked this answer without providing any examples.

Concluding, the most widely accepted legitimate reasons are **physical alteration, brand reputation, confusion risk**, and **unauthorized repackaging**. Economic and subjective resale preferences were largely dismissed.

23) **Under what circumstances should a trade mark holder have the right to oppose the refurbishment, disassembly, refilling, or subsequent resale of trade marked goods when trade mark rights have been exhausted?**

a) alteration or impairment of goods,

b) harm to brand reputation,

c) risk of consumer confusion,

d) deceptive marketing practices,

e) repackaging without notice,

f) defects in goods,

g) economic reasons, such as maintaining higher prices in certain markets,

h) trade mark holder's subjective preferences about who resells their goods,

i) other, please clarify.

Most Groups agreed that several well-established justifications — similar to those in Question 22 — apply to refurbishment and resale. The most supported reasons are outlined below:

a) Alteration or impairment of goods - Supported by **81%**.

b) Harm to brand reputation - Supported by **81%**.

c) Risk of consumer confusion -Supported by **81%**.

d) Deceptive marketing practices - Supported by **81%**.

e) Repackaging without notice - Supported by **68%**.

f) Defects in goods - Supported by **76%**.

g) Economic reasons (e.g., maintaining price control) - Supported by **2%**.

h) Trade mark holder's subjective preferences - Supported by **3%**.

i) Other (clarified by some Groups):

The **French Group** emphasizes that operations such as refurbishment, disassembly, or refilling should be permitted when aligned with goals of sustainable development, provided brand rights are respected. The key criterion should be whether consumers are clearly informed and whether the perception of the product's origin is preserved. Regarding recycled goods, if such practices harm the brand's image or create confusion, this constitutes a legitimate reason to oppose further commercialization. However, resale of second-hand goods, where the products were initially placed on the market by or with the trade mark holder's consent, should not, by itself, justify opposition.

According to the **Chinese Taipei Group**, while the principle of trade mark exhaustion aims to ensure the free circulation of goods and limit the trade mark holder's control over genuine products, it should not apply in situations where goods have been processed or altered in a way that may compromise their original quality or damage the trade mark holder's reputation. In cases involving refurbishment, disassembly, refilling, or resale, which could potentially result in counterfeit goods or infringe upon trade mark rights, the trade mark holder should have broader grounds to object or impose restrictions.

The **Indian Group** emphasized that if trade marked goods are altered, refurbished, or impaired in a manner that affects their identification with the original brand—

such as by removing brand marks or replacing original components—the trade mark holder should be entitled to oppose their resale. This is particularly relevant where such changes mislead consumers into believing the modified goods are still endorsed by the manufacturer. For instance, a luxury watch refurbished with non-original parts would no longer meet the brand's quality standards, thereby justifying the trade mark holder's objection.

The **Japanese Group** noted that a trade mark holder should have the right to oppose resale or refurbishment when their quality management authority is undermined—for example, by violating a manufacture territory limitation clause. Similarly, if goods are placed on the market without reflecting the trade mark holder's genuine intention, this may justify intervention despite exhaustion.

In summary, there was a **strong convergence** around core trade mark doctrines: physical modification, deception, and reputational damage justify enforcement even after exhaustion. However, **economic interests or vague preferences were broadly rejected** as insufficient grounds.

24) Under what circumstances should a trade mark holder have the right to oppose the debranding, rebranding, cobranding, or subsequent resale of trade marked goods when trade mark rights have been exhausted?

a) alteration or impairment of goods,

b) harm to brand reputation,

c) risk of consumer confusion,

d) deceptive marketing practices,

e) repackaging without notice,

f) defects in goods,

g) economic reasons, such as maintaining higher prices in certain markets,

h) **trade mark holder's subjective preferences about who resells their goods,**

i) **other, please clarify.**

The responses to this question mirrored those in Questions 22 and 23, but with stronger emphasis on consumer perception and brand association.

a) Alteration or impairment of goods - Supported by **77%**.

b) Harm to brand reputation- Supported by **79%**.

c) Risk of consumer confusion - Supported by **77%**.

d) Deceptive marketing practices - Supported by **77%**.

e) Repackaging without notice - Supported by **66%**.

f) Defects in goods - Supported by **71%**.

g) Economic reasons (e.g., maintaining price tiers) - Supported by **2%**.

h) Trade mark holder's subjective preferences - Supported by **4%**.

i) Other:

The **Belgium Group** noted that in sectors such as pharmaceuticals, medical devices, or chemicals, rebranding or debranding may be subject to strict regulatory restrictions. Additionally, if such actions infringe copyrights, patents, or other intellectual property rights, the trade mark holder may have legal grounds to object. Furthermore, if resale occurs in breach of a legally binding distribution agreement, the trade mark holder may invoke contractual grounds to oppose it.

The **German Group** noted that debranding, where the trade mark is removed and the product is resold without reference to it, does not constitute trade mark infringement, so the issue of exhaustion does not arise. Rebranding after altering the product can be considered an unacceptable modification that the trade mark holder may oppose. Cobranding may be acceptable if it does not suggest a commercial link between the new brand and the original trade mark holder. In the case of refilling, resale may be allowed if the original mark remains visible and there is no risk of consumer confusion about the origin of the content.

In summary, there was strong consensus around **alteration, deception, confusion, and harm to reputation** as the core triggers for enforcement. Commercial motives and personal resale preferences were again firmly rejected as insufficient.

Question 25: Green Economy Considerations

25) **Should considerations related to the green and sustainable economy influence the assessment of legitimate reasons for altering the condition of goods? If so, in what circumstances?**

a) **In a situation where customization was requested by customers on their own goods the rights to which have been exhausted in accordance with the law, i.e. the customer has bought the goods and then approached a third party for customization;**

b) **In a situation where the commercialization of the customized goods the rights to which have been exhausted in accordance with the law, occurs after modifications are made to the goods, and the modifications were not made due to a customer request, but as a business model, i.e. a business buys several of the goods, modifies them, and then sells the modified goods to the public.**

c) **Other, please clarify.**

There was broad support among the Groups for taking into account sustainability-related considerations when assessing legitimate reasons for altering the condition of trade marked goods. However, views diverged regarding the scope and conditions under which such considerations may affect the principle of exhaustion.

a) **In a situation where customization was requested by customers on their own goods the rights to which have been exhausted in accordance with the law, i.e. the customer has bought the goods and**

then approached a third party for customization;

A majority of 24 **out of 39 Groups (61%)** supported allowing alterations requested by customers on goods they legally own. These Groups included **Argentina, Belgium, China, France, Germany, India, Israel, Poland, Switzerland, and others**. Many of them emphasized that the exhaustion of trade mark rights entails that the consumer should have freedom to alter their own property without infringing trade mark rights, provided there is no further commercial exploitation and no consumer confusion is created. The **Belgian Group** noted that the mere offering of customization services should not be opposed by the trade mark holder as long as no commercial connection is implied.

b) In a situation where the commercialization of the customized goods the rights to which have been exhausted in accordance with the law, occurs after modifications are made to the goods, and the modifications were not made due to a customer request, but as a business model, i.e. a business buys several of the goods, modifies them, and then sells the modified goods to the public.

12 Groups (30%) supported the acceptability of alterations made as a business model, where goods are modified and then sold to the public. These included **Germany, France, India, Japan, and Sweden**. The **German Group** stated that such modifications may be legitimate where they fulfill an "objective need" aligned with sustainability goals. However, several Groups stressed that such commercial alterations may still impair the functions of the trade mark and should only be allowed under strict conditions. The **Swedish Group** emphasized the importance of incorporating a proportionality test that would assess whether the business model offers genuine environmental benefit and avoids greenwashing.

c) Other, please clarify.

8 Groups (20%) submitted or endorsed additional considerations, with several highlighting the need for a nuanced and case-specific approach. The **French Group** expressed strong caution against allowing sustainability arguments to generally limit trade mark rights, warning that such developments might open

the door to political and social concerns that undermine the core function of trade marks. The **South Korean Group** supported the inclusion of sustainability factors but called for clear criteria to avoid legal uncertainty. The **Belgian Group** proposed that if sustainable reuse (such as upcycling) is to be permitted, it should be accompanied by disclaimers and compliance with specific conditions to prevent consumer deception.

The **Canadian Group** underlines that such alterations may be acceptable provided there is no misrepresentation suggesting that the modified product is associated with or endorsed by the trade mark holder.

The **Egyptian Group** emphasidz that in any case, the key factors should be consumer protection, transparency, and striking a balance between safeguarding brand reputation.

In conclusion, while there is a strong tendency to support customization in private, consumer-initiated scenarios, commercial resale of altered goods remains contentious. Sustainability considerations may play a role in balancing trade mark enforcement and environmental goals, but most Groups emphasized the need for safeguards to protect brand integrity, consumer protection, and legal certainty.

Questions 26–27: Burden of Proof

26) Which party should bear the burden of proof to demonstrate that the trade mark rights were exhausted, solely the party invoking trade mark exhaustion, or generally the party relying on the trade mark rights?

A clear majority of Groups (**33 out of 39, or 84%**) stated that the party invoking trade mark exhaustion should bear the burden of proof. This view was supported by, inter alia, **Argentina, Belgium, Brazil, Czech Republic, Egypt, France, Germany, India, Japan, and Poland. Many of these Groups** noted that this approach is consistent with general civil procedural rules: the party asserting a fact (i.e., exhaustion) must prove it.

Only one Group (**Australia**) expressed the view that the burden should lie with the trade mark holder.

Several Groups (e.g., **France, Poland, Canada, Switzerland, Spain**) took a more nuanced position, recognising that although the initial burden lies with the party invoking exhaustion, it may shift under certain circumstances. This could occur, for example, when the evidence lies primarily within the control of the trade mark holder, or where the risk of market partitioning is substantial.

27) Could the burden of proof shift to the other party, and if so, under what circumstances?

There is **broad consensus** across Groups that burden shifting is appropriate in some cases. **36 out of 39 Groups (83%)** (excluding **Australia, Russia** and **Japan**) agreed that **the burden may shift to the trade mark holder** under certain conditions.

Some Groups provided detailed conditions under which such a shift should be permitted. For instance:

The **Belgian Group** noted that an adjustment of the burden of proof may be appropriate where (1) the products do not contain any marking that would allow third parties to identify the intended market; (2) the defendant had previously obtained written assurances from suppliers that the products could be lawfully marketed within the EEA; and (3) the trade mark holder refuses to assist in verifying the place of first sale, despite being in a position to do so and having received a substantiated request from the reseller. However, such an adjustment should not amount to a complete reversal of the burden of proof.

The **Brazilian Group** stated that the burden of proof should shift to the trade mark holder in certain circumstances—for example, when a distributor or reseller presents initial evidence indicating that the goods were sold through legitimate channels, thereby creating a presumption of exhaustion. In such cases, it is reasonable to require the trade mark holder to rebut this presumption by proving that the goods were placed on the market without their consent or originated from unauthorized sources.

The **German Group** proposed a conditional approach to shifting the burden of proof. Where disclosing the supplier would enable the trade mark holder to demonstrate partitioning of national markets within the scope of a free trade

agreement, the party invoking exhaustion should first bear the burden of showing the existence of an exclusive or selective distribution system. If this is established, the trade mark holder should then prove that the goods were initially placed on the market outside the relevant territory without their consent. If that is demonstrated, the burden would return to the party invoking exhaustion to prove that the goods were subsequently imported into the territory with the trade mark holder's consent.

The **Polish Group** acknowledged that the burden of proof could shift to the trade mark holder under certain circumstances. This may be justified where requiring proof of product origin from the party invoking exhaustion would give the trade mark holder disproportionate control over distribution, potentially leading to international monopolies and harming competition. However, the Group emphasized the need for clear and objective criteria for such a shift, criticizing the current EU concept of "market partitioning" as too vague. Any harmonized international standard should be precise and consistent with general civil procedure rules, allowing flexibility based on the facts of individual cases.

In conclusion, while the general rule favours placing the burden of proof on the party invoking exhaustion, vast majority of the Groups supported a flexible and balanced approach that also considers practical limitations, transparency obligations, and the broader objectives of the internal market.

Questions 28 and 29 Others

28) Please comment on any additional issues concerning any aspect that you consider relevant to this Study Question.

Several Groups emphasized the growing relevance of sustainability in the context of trade mark exhaustion. The **Chilean, Finnish, Turkish, and Swedish Groups** highlighted the need to adapt the legal framework to better accommodate green practices, including the destruction or repurposing of goods. The **Chinese Taipei and Chinese Groups** discussed challenges related to parallel imports, particularly where ownership of trade marks differs across jurisdictions, and questioned whether ownership transfer is necessary to trigger exhaustion. The **Paraguayan Group** recalled its national law recognizing the first sale doctrine, while the **USA Group** called for greater clarity and harmonization between the concepts of "putting into the market" and the "first sale" doctrine. **Swedish Group** also pointed to inconsistencies between exhaustion rules across different IP rights (trade mark,

copyright, design) and proposed further investigation. The **Belgian, Canadian, Hungarian, Israeli, and Philippine Groups** reported no additional concerns, while others submitted no comments.

29) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers.

Below are examples of the sectors cited: apparel industry, food industry, and automotive sector, consumer goods, retail, and technology sectors, electronics and IT, pharmaceutical industry, FMCG and e-commerce platforms.

IV. Conclusions

The national and regional Reports submitted by 43 AIPPI Groups and Independent Members reveal a broad consensus on the importance of ensuring a balance between the legitimate interests of trade mark holders and the principles of market integration and consumer protection in the context of the exhaustion of trade mark rights. The following points summarize the most significant findings of the Study Question:

Current legal frameworks are generally considered adequate, but with room for improvement.

Approximately 66% of Groups (e.g., Denmark, USA, Canada, France, Germany, Austria, Sweden, Israel) consider their current laws adequate. Conversely, approximately 33% of Groups (e.g., Brazil, Philippines, Poland, China, Mexico, Chile, Malaysia, Latvia) call for clarification or reform, particularly regarding legal uncertainty on trade mark holder consent, inconsistencies in national jurisprudence, and the absence of specific exhaustion provisions.

There is significant demand for clearer rules concerning causes and criteria of exhaustion.

18 out of 39 Groups (46%) highlighted ambiguity concerning acts such as rental, donation, or consignment and whether they qualify as market placement. A similar number of Groups (approx. 55%) identified the need for greater clarity on the legitimate reasons to oppose further commercialization, especially in areas such as public health, product integrity, and sustainability.

12 Groups (30%) addressed the burden of proof issue, emphasizing the need to define when it may shift to the trade mark holder.

The interface with sustainability remains contentious.
Only 30% of Groups (e.g., Denmark, Canada, Austria, China, Switzerland) believe their law supports sustainability objectives.

70% of Groups (e.g., France, Germany, Sweden, Poland, Spain) emphasized that current frameworks either do not account for sustainability or require further alignment with circular economy principles.

Some Groups (e.g., Sweden, France, Egypt) proposed adopting legal balancing tests or referencing external sustainability standards.

There is broad support for harmonisation, especially in international trade contexts.
87% of Groups (34 out of 39) favour harmonisation. These Groups (e.g., USA, China, Poland, Argentina, Sweden, Belgium) cited legal certainty, predictability, and reduction of market fragmentation as the main benefits.
A small number of Groups (e.g., Denmark, Indonesia) were sceptical, citing existing EU harmonisation or national legislative sufficiency.

Clear trends were observed in relation to the types of contracts and acts that trigger exhaustion.

There was near-unanimous support for exhaustion triggered by acts involving the transfer of ownership (sale, donation, exchange).

Moderate support (33%) was expressed for acts not involving ownership transfer (rental, lease), and only 23% accepted mere possession (e.g., consignment).

In relation to contracts, the most supported types were: sale (97%), exchange (80%), donation (79%), and distribution (69%). Transit and transfer to a forwarder or carrier were overwhelmingly rejected as causes of exhaustion.

Consent of the trade mark holder is central to exhaustion.

The vast majority of Groups emphasized that exhaustion should only occur when the trade mark holder authorizes the market placement, to protect brand integrity and legal certainty. **82% of Groups** expressed strong support that the goods should be put into the market exclusively by the trade mark holder or with its consent to

be exhausted. Majority of the groups declined the scenarios of trade mark exhaustion without trade mark holder's consent.

58% of Groups require clear and unequivocal expression of consent to place goods on the market.

69% accept implied consent but only under clear and specific circumstances. There as acceptance that consent may be inferred from circumstances occurring before, during, or after the goods are placed on the market, provided that these circumstances clearly indicate that the trade mark proprietor has waived their rights.

48% support the notion that consent may be expressed a posteriori, generally under restrictive conditions. It was underlined that consent should not be inferred from silence.

Most Groups rejected the idea that contractual arrangements should override exhaustion.
69% stated that exhaustion should prevail over any contractual agreements. Only a minority supported exceptions via explicit contractual clauses, indirect mechanisms, or product labelling (e.g., "not for resale").

Legitimate reasons for intervention after exhaustion are widely aligned.

Between 77–82% of Groups supported the following as legitimate grounds for enforcement:
a) alteration or impairment of goods,

b) harm to brand reputation,

c) risk of consumer confusion,

d) deceptive marketing practices,

e) repackaging without notice.

Justifications based on economic motives (2%) or subjective preferences (3–4%) were overwhelmingly rejected.

Refurbishment, resale, and rebranding raise similar enforcement concerns.

Groups strongly supported (76-81%) the right to oppose such activities when they damage brand reputation, mislead consumers, or involve unauthorized alteration.

However, resale of second-hand goods and customization at the request of the consumer were largely accepted, provided they do not mislead or impair product identity.

Sustainability-related alterations received qualified support.

61% of Groups supported customization of goods at the request of customers. 30% also supported resale after modification as part of a sustainability-driven business model, though under strict safeguards.

Several Groups (e.g., France, Sweden, Belgium) emphasized that sustainability considerations must not override brand protection without clear criteria.

Burden of proof rests initially with the party invoking exhaustion, but may shift.

84% of Groups agreed that the burden lies with the party invoking exhaustion. However, 83% (36 out of 39) stated that the burden of proof may shift to the trade mark holder in specific circumstances, such as where verifying information is under the owner's control or there is a risk of market partitioning.

Groups including Belgium, Germany, Brazil, and Poland proposed structured burden-shifting mechanisms.

Additional concerns highlight legal fragmentation and cross-IP consistency.

Groups such as Chile, Finland, Sweden, and Turkey noted the growing interaction between trade mark law and sustainability.

Groups from Chinese Taipei and China addressed inconsistencies in cross-border exhaustion scenarios.

The USA Group emphasized the need to clarify and harmonize the concepts of "first sale" and "putting into the market."

The Swedish Group pointed to the need for harmonisation across different IP rights (e.g., trade marks, copyright, design) regarding exhaustion.

In conclusion, while the principle of exhaustion remains a cornerstone of trade mark law, the Reports reveal a pressing need for clarification and measured harmonisation, particularly in relation to consent, burden of proof, and the integration of sustainability goals. The Study Question highlights a strong commitment to ensuring that exhaustion frameworks remain robust, balanced,

and capable of addressing new commercial, technological, and environmental realities.