

ДРТ

ДЕЛОВЫЕ РЕШЕНИЯ И ТЕХНОЛОГИИ

BUSINESS SOLUTIONS AND TECHNOLOGIES



BST Consulting Parallel import

ООО "BST Consulting", July 2022

Foreign approach to legalisation of parallel import



EU

The regional (EU) principle of exhaustion of trademark rights is applicable



China

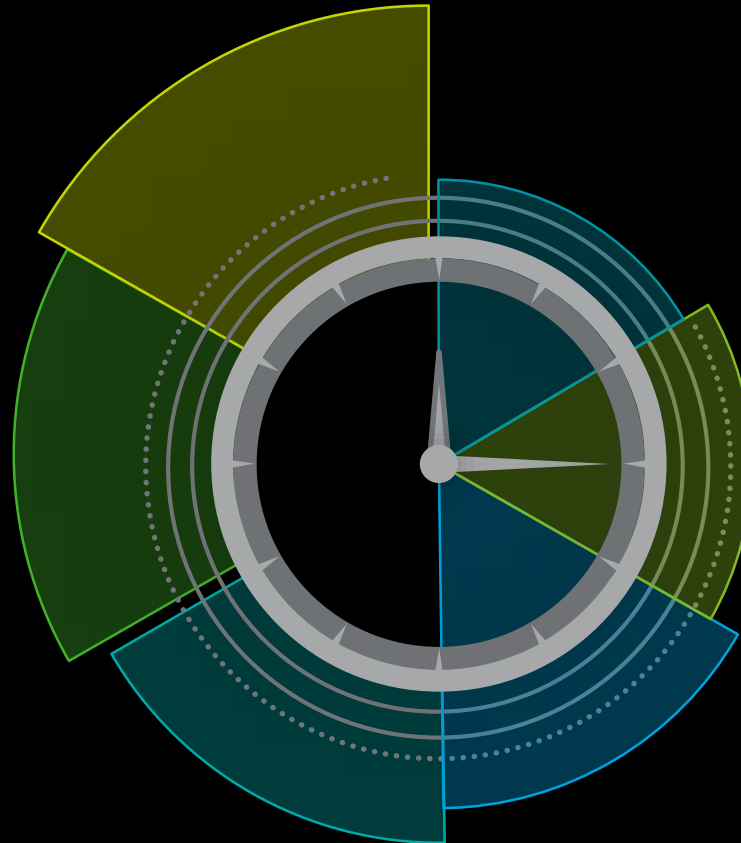
The principle of international exhaustion of trademark rights is applicable



Hong Kong

The principle of international exhaustion of trademark rights is applicable

Exemption: a situation where “the goods have been modified or deteriorated after being put on the market, which may have an adverse impact on the trademark reputation”



USA

The principle of international exhaustion of trademark rights is applicable

Exemption: Parallel imports are significantly different from those sold by the trademark owner in the United States.



Indonesia

Parallel import of patented products is not allowed

Exemption: the ban does not apply to pharmaceutical products



Singapore

Parallel import is allowed

Exemption: the ban applies to pharmaceutical products

Parallel import legalisation regulations



Federal Law No. 46-FZ of 8 March 2022

The Russian Government determines a list of goods that are out of scope of the Russian Civil Code's provision on the protection of intellectual property rights, including trademarks.



Russian Government Resolution No. 506 of 29 March 2022

The Russian Ministry of Industry and Trade is authorised, following proposals of federal executive authorities, to approve a list of products (product groups) that are out of scope of Item 6 Art. 1359 and Art. 1487 of the Russian Civil Code, provided that such goods are put on the market outside Russia by trademark owners and upon their consent.



Order of the Russian Ministry of Industry and Trade No. 1532 of 19 April 2022

The Russian Ministry of Industry and Trade approved the list of products (product groups) that are out of scope of Item 6 Art. 1359 and Art. 1487 of the Russian Civil Code, provided that such goods are put on the market outside Russia by trademark owners and upon their consent.

Order of the Russian Ministry of Industry and Trade No. 1532 of 19 April 2022: details



Items included in the list*

- The list includes 96 product groups (includes **automotive components**);
- The **EAEU commodity classification codes and/or trademarks** from a hostile state;
- The list of items for parallel import includes both products essential for the operation of production facilities and a wide range of consumer goods.



Changes in the list of products

- The list is **not exhaustive**;
- The list of products is subject to **periodical** reviews (e.g., **once every 2-3 months**);
- The main criterion for changing the list is the brand's decision to **continue its operation in Russia**.



Grounds for including in the list:

- Protection of the interests of domestic consumers in light of foreign companies exiting or suspending their operations in Russia;
- Maintaining business continuity of Russian companies in light of the existing logistics challenges and restrictions on the supply of certain types of industrial products;
- Ensuring the availability of foreign products that have no equivalents in Russia.

* The list is published on the governmental website: <http://publication.pravo.gov.ru/Document/View/0001202205060001>

Responsibility for parallel import and legislative initiatives

Responsibility for parallel import



Civil liability:

- Liability for illegal use of trademark (Article 1515 of the Russian Civil Code)

Administrative liability:

- Violation of copyright and related rights, invention and patent rights (Article 7.12 of the Russian Code of Administrative Offenses)
- Illegal use of brand identity (Article 14.10 of the Russian Code of Administrative Offenses)

Criminal liability:

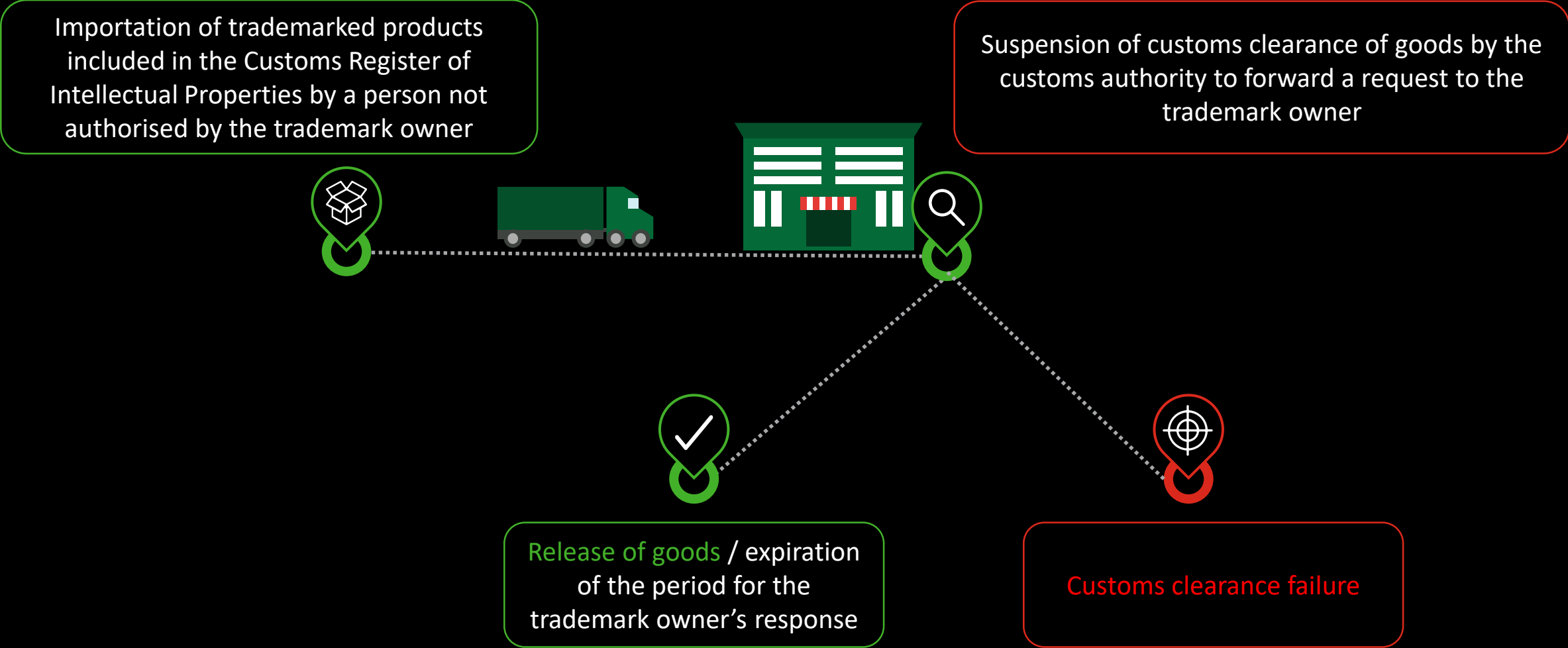
- Violation of copyright and related rights (Article 146 of the Russian Criminal Code)
- Illegal use of brand identity (Article 180 of the Russian Criminal Code)

According to the Law No. 127049-8 “On Amendments to Article 18 of Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation” (**accepted on 28 June 2022**), the use of intellectual property, in particular goods permitted for parallel import, and related trademarks shall not be considered a violation. Administrative and criminal prosecution is not provided.

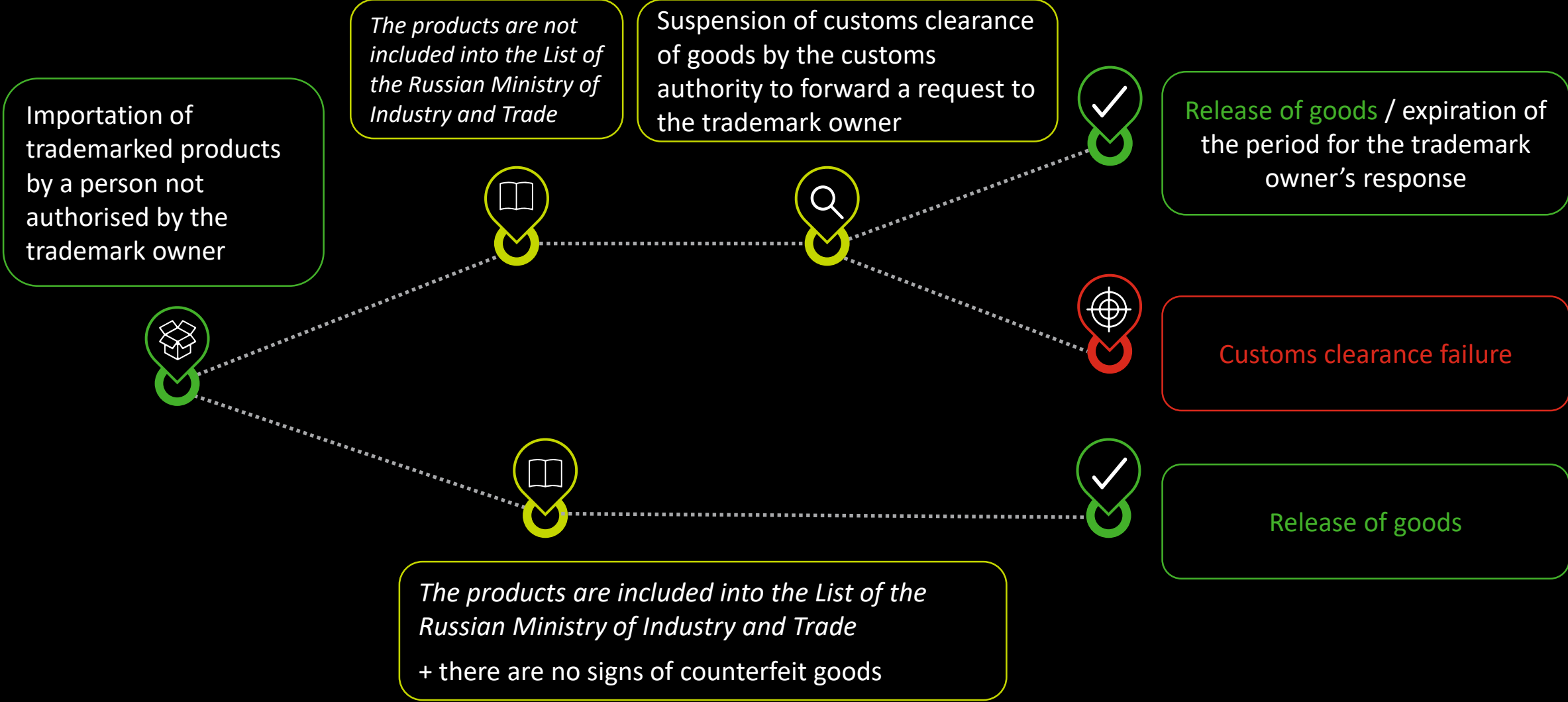


Law No. 127049-8

Actions to protect intellectual property rights taken by customs authorities until parallel import is legalised



Actions to protect intellectual property rights taken by customs authorities after parallel import is legalised



Verification of compliance for parallel imports



The applicant or a person authorised by the applicant are required to present conformity documents verifying compliance with technical regulations for customs declaration purposes



The applicant may authorise another person authorised to act as a declarant to submit conformity documents to the customs authorities together with the customs declaration (subject to certain conditions)



- Simplified procedure for obtaining approvals in 2022
- Ability of obtaining approvals in other EAEU member states

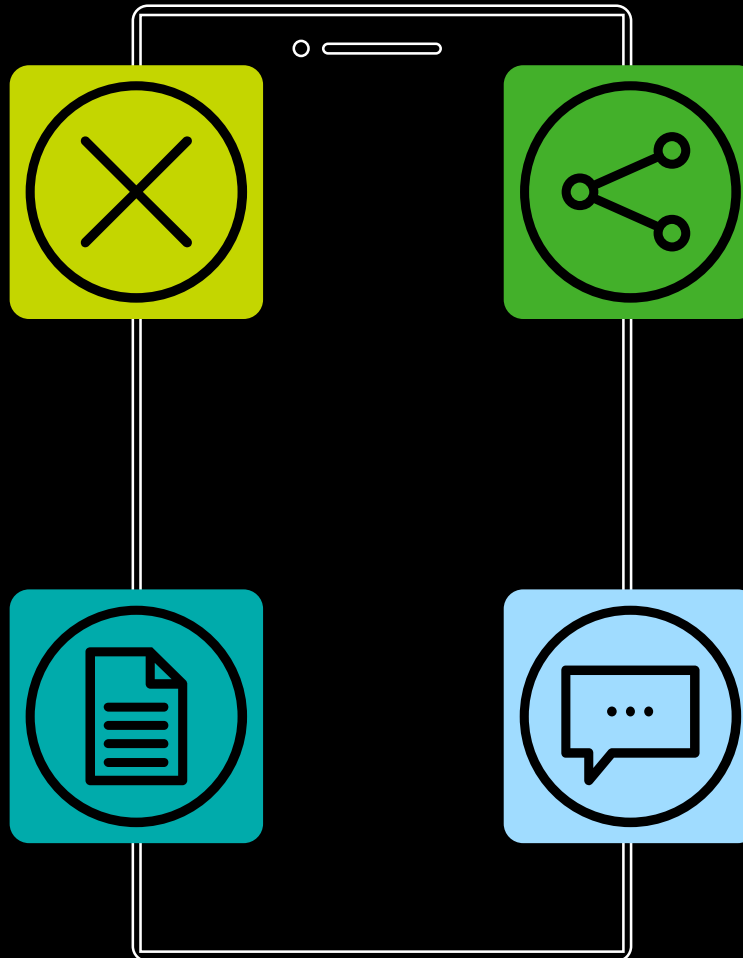
Consumer rights protection

Amendments to consumer protection laws are not required

According to Rospotrebnadzor, the existing dispute resolution mechanisms provide for the observance of the interests of all parties in full

The rights of customers must not be violated

The consumer protection law does not make differences between goods imported under various procedures, thus customers should still have the right to protect their interests



Warranty maintenance

The same supply chain participants (including manufacturers) will be responsible for warranty maintenance of parallel imports

The expert community

suggests to:

- shift responsibility for maintenance services and repairs to importers
- stipulate the temporary nature of such measures

The expert community requests for exceptions for some companies.



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