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**Parallel Importing of Trademarked Goods:
An Analysis of The Impact of The Principle of Free Movement of Goods
on A Manufacturer's Right for Protection for His Trademark**

Case: Mobil Oil oy ab

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Otsikko:

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Tutkimuksen tavoitteet:

Tutkimuksen tavoitteena oli selvittää EU:n tavaroiden vapaan liikkuvuuden periaatteen merkitystä valmistajan oikeudelle saada tavaramerkkisuoja tavaramerkkien rinnakkaistuontitapauksessa. Tähän liittyen tutkimus pyrki selvittämään EY:n kilpailulain vaikutusta immateriaalioikeuksien, erityisesti tavaramerkkien hyväksikäyttöön rinnakkaistuontia vastaan. Edellä esitetyn perusteella tutkimus pyrki selittämään, miksi rinnakkaistuonti yleensä on sallittava sekä nostamaan esiin tilanteet, joissa rinnakkaistuonti voidaan kieltää. Lisäksi tutkimus kartoitti, mitä keinoja tuotteiden valmistaja voi käyttää vähentääkseen rinnakkaistuonnista koituvaa haittaa. Tutkimuksen lähtökohtana oli, että rinnakkaistuonti on sallittava tavaroiden vapaan liikkuvuuden sekä avoimen ja esteettömän kilpailun periaatteiden nojalla.

Tutkimustapa:

Tutkimuksen empiirinen osuus käsitti rinnakkaistuonnin selvittämistä tutkimukseen soveltuvassa case -yrityksessä. Rinnakkaistuonnin olemusta tutkittavassa yrityksessä selvitettiin haastatteluiden avulla. Kokonaiskuva saatiin analysoimalla ja vertaamalla valtuutettujen ja lojaalien jälleenmyyjien, valtuutettujen mutta ei lojaalien jälleenmyyjien, rinnakkaistuojaan sekä yrityksen edustajien antamia tietoja keskenään. Oikeuskäytäntö selvitettiin käymällä läpi asiaan liittyvää EU:n oikeustapaustapausta.

Tulokset:

Teoreettisen tarkastelun tuloksena osoittautui, että rinnakkaistuonnin sallittavuutta käytännön tilanteessa määriteltäessä on otettava huomioon, paitsi kilpailulain immateriaalioikeuksia säätelevät artiklat, EY:n tuomioistuimen rinnakkaistuontitapauksia varten kehittämät tulkinnat näistä artikloista, ts. doktriinit tavaramerkkien yhteisestä alkuperästä, tavaramerkin olemassaolosta ja käytöstä, tavaramerkin erityisestä sisällöstä ja olennaisesta funktiosta sekä tavaramerkin konsumoitumisesta eli sammumisesta. Tuomioistuimen rinnakkaistuontitapauksissa noudatetun käytännön nojalla rinnakkaistuontia on pidettävä sallittuna, paitsi jos tavaramerkin erityinen sisältö, alkuperäfunktio, vaarantuu tai jos kuluttaja harhautuu tavaramerkin olennaisen funktion eli laatufunktion suhteen. Edellisen kaltainen tilanne voi tuomioistuimen mukaan syntyä: 1) rinnakkaistuoja vaihtaessa alkuperäisen tavaramerkin uuteen; 2) rinnakkaistuojaan pakatessa tavara uudelleen niin, että alkuperäfunktio katoaa; 3) rinnakkaistuojaan tuotteiden väärästä laadusta, tai

tuotteen muuttamisesta tai vahingoittamisesta johtuva kuluttajien harhaanjohtaminen;
4) rinnakkaistuonnista tavaramerkin omistajan liiketoiminnalle aiheutuva maineen olennainen huonontuminen.

Tutkimuksen empiirisessä osassa havaittiin, että tutkittavan yrityksen kohdalla puuttui riittävät perusteet tuotteen väärästä laadusta ja näyttö kuluttajien harhaanjohtumisesta. Myös emo- tytär- suhteista johtuva tavaramerkkien yhteinen alkuperä todettiin rinnakkaistuonnin sallittavuutta puoltavaksi tekijäksi. Tapauksessa oli otettava kuitenkin huomioon tavaroiden rinnakkaistuonti EU:n ulkopuolelta, jolloin tavaramerkkien yhteisen alkuperän ollessa kyseessä rinnakkaistuonnin sallittavuus jää epäselväksi.

Avainsanat:

rinnakkaistuonti, maahantuonti, tavaramerkkioikeus, oikeudenloukkaus

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1. INTRODUCTION

1.1 Background to the Study

Constant topic over the past 30 years has been the issue of parallel importation i.e., the unauthorised and unofficial resale of goods (e.g., Duhan & Sheffet, 1988; Bucklin, 1990; Cavusgil & Sikora, 1988; Cespedes et. al, 1988; Chard & Mellor, 1989; Lowe & McGrohan, 1989; Oliver, 1996; Pallari, 1994; Beier, 1995). The topic is causing controversy and dividing opinions between economic and judicial domains. More specifically, in the academic discussions parties have tried to find a balance between the two colliding issues prominent in the debate, namely intellectual property protection and free movement of goods. On the one hand lawyers, for example, have found parallel importation to be in full accordance with the principle of free trade. Above all, lawyers have maintained that parallel importation promotes the European Union (EU) -principle of free movement of goods to a healthy extent. They point out that on these grounds parallel importation is fully justified within the EU. On the other hand, multinational companies and their dealer networks believe that parallel imports are detrimental to their interests and have therefore argued against it, calling for protection for their industrial and intellectual property rights. However, attempts to prevent parallel importation by appealing to industrial and intellectual property rights have been declared contradictory with the principle of free movement of goods in the EEC Treaty. (e.g., Beier, 1995, 779; Chard and Mellor, 1989 71) Nevertheless, if free movement of goods rules could be applied without limit, the purpose of intellectual and industrial property rights would be rendered meaningless (e.g., Haynes, 1995, 122). Given the above, one may thus ask how far can the principle of free movement of goods, justifying parallel imports, prevail over industrial/ intellectual property owner's right to protection.

To illustrate, the joining of the EU and the resulting integration needs have raised mounting interest towards the issue of uniform trademark protection within the EU. The EU countries, which to date have had nationally distinctive trademark laws, are now considering a harmonisation of these laws, which would allow equal treatment for e.g., parallel importation (e.g., Loewenheim, 1996, 848). In law journals authors one by one view parallel import cases and comment on the decisions taken in the case law that has developed around parallel importation by the European Court of Justice (ECJ) (e.g., Beier,

1995, Grove, 1994, Hayenes, 1995, Kunze, 1991, Loewenheim, 1995, Shea, 1995 Rasmussen, 1995, Tritton, 1996). Equally, the issue has aroused attention in the Finnish press (Jokelin and Pietiläinen in Helsingin Sanomat and Riihonen in Kauppalehti both on 5.12.1995 and 29.12.1995).

1.2 Research Gap

A number of studies on the effects of parallel importation have been conducted in the United States, and the findings published reflect the US characteristics of parallel importation (e.g., Coggio, 1986; Duhan and Sheffet, 1988; Masulka and Gulas, 1987 all in Palia and Keown 1991). Parallel imports have taken significant shares of the sales of particular products and markets in the US (Chard and Mellor, 1989, 71). Based on the literature review, one can define studies on parallel importation into three groups: (1) One group of US studies has been concerned with the reasons for parallel importing. (2) Another group has dealt with strategies available for manufacturers in combating parallel importation. (3) Finally, one group described the legal and regulatory environment in the US which differs from that in Europe. In the US the aspects are addressed in relation to the Tariff and Lanham Acts and US Customs Service regulations, compared to the competition rules and intellectual property protection within the European Union (Sommers, 1994, 274).

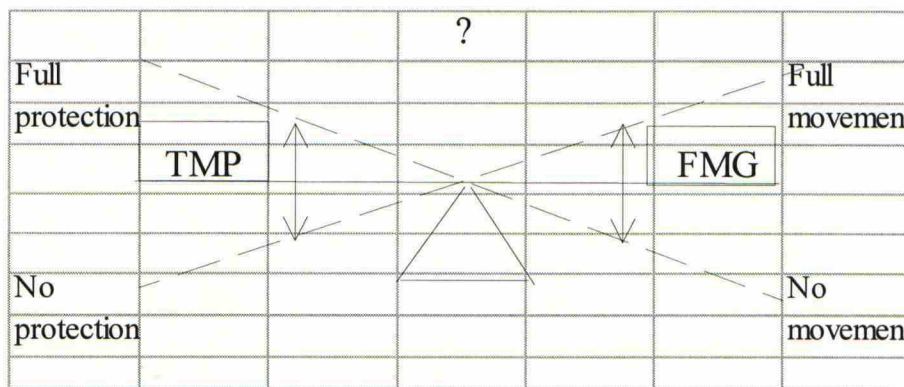
By contrast, in Europe the topic has raised research interest predominantly within judicial domains in individual countries in which parallel imports have held differing legal status due to nationally distinctive trademark laws. At the same time, there has been a limited amount of studies which would take into consideration the diverse forces affecting the issue of parallel importing of trademarked goods. Moreover, seldom have legal and economic aspects been combined and treated simultaneously. Notwithstanding, the two aspects are central for a full understanding of the varying viewpoints and should be taken into consideration. Furthermore, little information on parallel imports in individual European countries have been collected, with exception on pharmaceuticals¹(Chard and

¹ For example in the British market, for some brands over 10 per cent is taken by parallel imports. A similar situation is believed to exist in Germany, while in the Netherlands the share of parallel imports is believed to be even higher. (Chard and Mellor, 71, 1989)

Mellor, 1989, 71). Since there is, to date, no law developed solely for parallel importation, competition law and national laws on intellectual and industrial property have played key roles in court rulings. Some primary principles concerning parallel importation have been developed from these laws.

Parallel importation has raised the possibility that trademarks may not always be able to fulfil their traditionally recognised functions. More specifically, as demonstrated by Buckling (1990, 13), “Parallel importation has posed a conflict in two aspects of goodwill; proprietary goodwill of the trademark owner and psychological goodwill in the mind of the public. It has also raised broader questions concerning the role of trademark protection in the open economy.” The above statement thus reveals an interesting aspect: finding out how far can parallel importing be justified on the basis of free movement of goods, given that a manufacturer should be entitled to protection for his trademark. Figure 1 shows that if the free movement of goods principle were to be applied without limit, and parallel imports would be justified, trademark protection would not be of much help. If, on the other hand, a manufacturer enjoyed full trademark protection, parallel imports would not be allowed and the free movement of goods principle would be disregarded.

Figure 1 Finding the Balance Between Trademark Protection (TMP) and the Principle of Free Movement of Goods (FMG)



1.3 Purpose of the Study

The purpose of this study is to examine the relationship between trademark protection and free movement of goods for the legal status of parallel imports in the EU. Related to this, the study attempts to explain how EU competition rules, which promote free movement of

goods and free competition, affect the utilisation trademarks against parallel imports. In this setting the study finally aims to examine some approaches available for a trademark owner for minimising the negative impact of parallel imports. The paramount research questions can thus be defined as follows:

(1) How far can the principle of free movement of goods justify parallel imports, given a manufacturer's right for protection for his trademark?

(2) How can a manufacturer minimise the negative impact of parallel imports?

To elaborate the understanding of the subject, the study also pays regard to:

- What is the nature and scope of trademarks?*
- What are the reasons and forms of parallel importing?*
- What effects may parallel importing have on different parties in the distribution channel?*

In the empirical part the issue is examined within Mobil Oil which has been struggling with parallel imports for years. A case study is conducted in order to explore the recent scope and nature of parallel importer' business in the field. Finally, by adapting the existing theoretical discussion, an appropriate course of action for confronting parallel imports will be recommended.

1.4 Limitations to the Study

The issue of parallel importation is not merely restricted to trademarked goods; goods bearing patents and copyrights are also often subject to parallel imports. Especially pharmaceuticals offer lucrative business to parallel traders because of their great price differentials across countries. Nevertheless, patents and copyrights are subject to jurisdiction which in some perspectives differs from that of trademark law and, consequently, results in somewhat different treatment for parallel imports. Therefore this

study will not examine parallel importation of copyrights or patented products, but instead concentrates on parallel importation of trademarked goods.

Likewise, this study will not examine the impact of the EU competition rules on exclusive distributorships, but aims to look at the specific articles of the competition rules which control industrial property protection and their misappropriation against parallel imports, in particular. Contemplating both of the issues would fall beyond the appropriate limits set for the current study. Since there is relatively little prior research on parallel importing and trademark protection and, moreover, since very much interest centres around the topic recently, the researcher felt there was a need to focus on these aspects.

1.5 Definition of Parallel Importation

Parallel importation of goods, referred to as parallel imports, grey goods or diversion products, occurs when there is, in addition to the official and often exclusive distribution channel, a parallel route through which an unauthorised dealer (independent importing firms, retailers or individuals) imports the goods into the territory (Buckling 1990, 2). The terms grey goods and diversion products are actually misleading concepts since they fall beyond the scope of parallel imports. Parallel goods are genuine goods, which originate from the original manufacturer and thus are not in this respect counterfeit. What is grey or diverted, however, is the *route* by which they have been imported.

Parallel importation occurs particularly within luxury consumer goods and branded industrial items. Unauthorised importers obtain goods from third parties outside official channels at lower prices than manufacturers' selling price to authorised distributors. For example, in his empirical study of Finnish companies facing parallel imports Pallari (1994, 76) found that, on average, purchase prices at which parallel importers buy goods tend to be 5% lower than official prices. In addition to price competition, parallel traders take advantage of the goodwill built by distributors through advertising and sales promotion without having to incur these costs (Bucklin, 1990, 1). The goods they are selling have an identical appeal to customers as the authorised imports but may, once purchased, prove somehow inferior and cause harm for customers. It is therefore that the markets where parallel goods exist are called grey markets. Legal suits have been filed by

both manufacturers and distributors against parallel importers of such goods as automobiles, cameras, home electronics, perfumes, cosmetics, pharmaceuticals, sound recordings, audio visual products, spirits, batteries, semiconductors, stuffed toys and other branded products (Cavusgil and Sikora, 1988, 75).

Governments around the world have struggled with the question whether authorised distributors and manufacturers ought to be able to stop parallel importation. In Europe, however, the free movement of goods principal forms the major obstacle against its banning. In the same way, world-wide arguments for parallel imports stress that parallel imports encourages price competition and provide customers with the widest selection of products (e.g., Sommers, 1994, 269). On the other hand, opponents of parallel importation contend that such imports confuse and deceive customers competing unfairly with the established goodwill of authorised distributors as well as impair manufacturer's trademark rights (Sommers, 1994, 269).

1.6 Structure of the Study

After the introductory Chapter, the second Chapter of this study aims to define the basic functions of trademarks and the idea behind trademark protection. Thereafter, the phenomenon of parallel importing will be looked at in more detail; its causes and effects will be explained. The third Chapter derives a framework of competition rules which prohibit actions against parallel imports and aims to elucidate the justification of this prohibition in connection to the principles developed by the ECJ around parallel importing. Furthermore, the Chapter presents available strategies for manufacturers to combat parallel imports. Before the empirical discussion in the fifth Chapter, this study illustrates the methodology in Chapter four. Finally, Chapter six serves the concluding purposes for the present study.

2. TRADEMARKS AND PARALLEL IMPORTATION

Trademarks and other industrial and intellectual property rights play an important role in the debate over protection against parallel importation. That is to say, where the principle of exhaustion of industrial and intellectual property rights has not been applicable, industrial and intellectual property protection has been relied on so as to prevent parallel importation. (Chard and Mellor, 1989, 71) This results from the economic rationale behind trademark (and patent and copyright) laws which, as concluded by Chard and Mellor (1989, 69), is that they create and protect property rights which serve to promote economic efficiency.

However, at present an owner of industrial or intellectual property right within the EU may not be able to use that right to prevent the parallel importation of trademarked goods which has been authorised for sale in another country (Chard and Mellor, 1989, 69). This is a result of two forces; notably that of free movement of goods principle as well as a doctrine of exhaustion of intellectual and industrial property. The first part of this chapter will illuminate the nature and scope of trademarks as part of industrial and intellectual property rights and provide insight into trademarks' value adding attributes. Thereafter the chapter briefly presents the idea behind a Community Trademark. The second part of the chapter first explains the origins of parallel importation of trademarked products, and ends with sections which describe the apparent effects of parallel importation.

2.1 Trademarks As Part of Industrial and Intellectual Property

Trademarks along with patents, copyrights, industrial designs, semiconductor rights, databases and plant variety rights form a wider concept of intellectual and industrial property. These rights possess a common feature, exclusivity, which derives from the ownership of such rights. Exclusivity ensures an owner a sole right to commercially exploit goods, processes, or services protected by industrial and intellectual property within a defined territory (Tritton 1996, 283).

Furthermore, Tritton presents (1996, 284) that industrial and intellectual property rights can work as stimuli encouraging an owner towards innovativeness and progress in the society (he defines this as public justification), and permits the owner to reap greater

financial reward from the exploitation than if the owner had to compete in the open market (which according to him, constitutes a private justification). Trademarks can be publicly justified since they are necessary for prevention of confusion in the marketplace and since they encourage competition between rival concerns.

Compared to e.g., patents, the value of which derives from the intellectual creation and innovation being highly intangible of nature, the value attached to trademarks is merely commercial. Therefore, when referring to trademarks, the words industrial or commercial property are more appropriate and, accordingly, appear to be employed in the literature. As already defined, this study is interested only in trademarks and therefore other forms of intellectual property are not discussed further.

2.1.1 Functions of Trademark

The most essential function of a trademark is its guarantee of origin. In this function the trademark helps customers to identify goods of the same origin. (Loewenheim 1995, 836). In Oliver's (1996, 292) opinion, as indications of source, trademarks serve to inform the customer that a product comes from a particular place, region or country for which the product in question is renowned.

Kur (1992, 501) claims that trademarks nowadays tend to be more than simple names stamped on products to indicate commercial origin. In fact, Kur sees trademarks as means of communication, able to convey all kinds of messages to the public and thus, establishing a communication channel between trademark owners and customers. For customers a trademark is a guarantee that a product will meet their expectations. Chard and Mellor (1989, 70), too, admit that trademarks are pivotal in the international transfer of information. Chard and Mellor add that trademarks enable customers to identify products more easily, which imply reduced consumer search costs. A well-known trademark can thus serve as a considerable competitive advantage for its owner.

Trademarks can also provide goodwill for customers. A manufacturer has often put considerable effort and incurred heavy expenditures for the creation of such goodwill, for

example by advertising and sales promotion. It should therefore be justified that the owner, who succeeds in marketing high-standard products, could prevent competitors from free-riding on the reputation which he has built up. (Chard and Mellor, 1989, 73) Kunze (1991, 325) points out that, to play its role, a trademark must constitute a guarantee that all products bearing the mark have been manufactured under the control of a certain enterprise to which the responsibility of the quality can be attributed.

In terms of trademark's function, Bucklin (1990, 6) sees that the parallel import debate revolves around the central issue whether a trademark acts primarily as a channel through which economic returns flow to trademark owner, or as a beacon by which consumers are guided to products of their choosing. By tracing his conclusions from trademark protection, Bucklin thus presents that a trademark's normal role is to work as a device to the mutual benefit of buyers and sellers.

2.1.2. Scope of Protection

The ownership of a trademark implies that, after its legitimate registration, the owner has an exclusive right to use the mark for his or her products. The purpose of trademark protection is twofold. On the one hand, it is intended to give protection for its owner against infringements in that it prohibits any other party from using a similar or confusingly similar trademark on related products. According to Advocate General Jacobs: "Without trademark protection there would be little incentive for a manufacturer to develop new products or to maintain the quality of existing ones". (Advocate General Jacobs in Oliver 1996, 287) On the other hand, however, trademark's function is to protect consumer confusion (Bucklin, 1990, 11).

Contrary to the EU competition law, trademark laws are considered territorial, implying that they are restricted to the country where the formal and substantive requirements for protection are met (e.g., Lowenheim, 1995, 829). This means that since there is not to date a common law on industrial (or intellectual) property rights within the European Union, the Treaty of Rome establishing the European Union leaves Member States at liberty to maintain their own industrial property laws, but establishes certain minimum protection which each Member State must include in their respective laws. In the same way, each Member State must grant same protection regardless of the nationality of a trademark

owner (Pallari, 1993, 17). It is intended that a person acquiring national trademark protection in one Member State could acquire national trademark protection in other Member States as well (Beier, 1996, 773). In this way, the EU aims to make it easier to obtain protection and to harmonise national laws in order to avoid conflicts and eliminate even potential obstacles for free movement of goods in the internal market (Shea, 1995, 464). In practice, cases have shown that industrial (and intellectual) property laws prevailing in various Member States subordinate to the free movement of goods norm.

2.1.3 Exhaustion of Trademarks

Most countries have included in their trademark laws a principal of exhaustion of trademark rights. This means that a trademark owner's exclusive right to his or her trademark does not exist forever, but cease once a product bearing that mark has been put on the market for the first time by the manufacturer or by a third party, who is acting with his consent, for example affiliate, licensee, distributor, or agent. (e.g., Rasmussen, 1995, 174) In other words, after a product has been sold for the first time, a trademark owner cannot control the distribution of the product. It prevents an owner from being remunerated for more than once for the marketing of a protected good. From the point of view of competition law, the doctrine of exhaustion prevents an owner from hindering the free movement of goods and partitioning the common market (e.g., Loewenheim, 1995, 848).

Indeed, the owner loses all control as to the movement of the product within the area, which recognises the principal of exhaustion in the trademark legislation. However, if a product has been altered or damaged, in which case there exists legitimate reasons for the proprietor to oppose further commercialisation of the goods, most countries have included exemption for such situations. (e.g., Rasmussen, 174, 1995) Likewise, exemption is granted in situations where a parallel importer affixes a new trademark to the imported goods, or repackages them in such a way that the trademark's essential function, i.e. guarantee of origin is being impaired (Beier, 1995, 778 and Oliver, 1996, 176).

To sum up, the principal of exhaustion allows parallel importation to subsist as soon as the goods have been released into circulation, and as long as its objects i.e., the products and

trademarks are left intact. Since the coming into force of the directive harmonising the laws in this field, three different forms of exhaustion principle have been present in national laws: (1) national, (2) international and (3) EU -wide exhaustion. Because of the central role exhaustion has played in the decisions of parallel importation cases, the differences between exhaustion forms will be explained.

(1) National exhaustion

Traditionally, exhaustion was limited to national territories, and thus referred to as national exhaustion. It meant that once manufacturers had put products into circulation, *they lost control of these products only within their respective countries*. Yet manufacturers' trademarks justified them to ban parallel imports flowing from outside of their countries. Under national exhaustion manufacturers could price their products differently in different national markets, and prevent purchasers in low-price countries from reselling products in high-price countries (Rasmussen, 1995, 174). From the point of view of the EU competition law, this enabled manufacturers to partition national markets.

(2) International exhaustion

Before the ECJ and the Commission developed a doctrine of EU -wide exhaustion of rights to be implemented in the countries within the EU, some countries, for example Germany, the Benelux countries, Austria, Denmark, Sweden, and Finland had adopted in their trademark laws a principle of world wide exhaustion of trademark rights, known as international exhaustion (e.g., Rasmussen, 1995, 174; Shea, 1995, 463). This entails that a trademark owner cannot stop the importation of goods into the country recognising this principle if such goods have been marketed in any country in the world by the owner or with owner's consent.

(3) EU -wide exhaustion

To eliminate the partitioning of national markets within the European Union, the ECJ developed an EU -wide exhaustion principle, quite independent of the introduction of the principle of international exhaustion in some European countries. This principle prohibits the banning of parallel importation within the EU. (e.g., Shea, 1995, 463) According to the agreement of the European Economic Area (EEA), the Directive is to be extended to the EFTA countries joining the EEA (Rasmussen, 1995, 174). The exhaustion principle will therefore cover the whole EEA territory. In the EFTA/EEA countries the Directive should

have been implemented on 1. January 1994 with the coming into force of the EEA agreement. The wording of Article 7(1) stipulates that the exhaustion of rights covers goods which have been put on the market in the Community (now EEA) and establishes a principle of Community -wide exhaustion:

'The trademark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Community under that trademark by the proprietor or with his consent.'

Doubts have been raised as to the concept and scope of the exhaustion principle intended in the Directive. In Denmark and Germany, for example, it has been argued that countries recognising the principle of international exhaustion in their national laws should be able to maintain it, and that it should not be affected by Article 7(1) of the Directive. If, on the other hand, the principle of EU-wide exhaustion is mandatory and excludes international exhaustion, it would mean that a trademark owner can prevent importation of products put on the market by him or her or with his or her consent outside the territory of the EEA. That is, original products imported, for example, from the United States, Canada, Eastern Europe, the Far East and so on.

Some commentators have argued that the EU -wide exhaustion does not allow Member States to maintain a principle of international exhaustion. Others maintain that it lays down only a minimum requirement of EU -wide exhaustion, permitting individual countries to extend the principle (Shea 1995, 463). The question becomes important if there can be countries in the EU applying EU-wide exhaustion and, simultaneously, countries allowing international exhaustion. This can, depending on the factual situation, be of major economic significance to manufacturers and distributors of branded goods (Rasmussen, 1995, 174). Then it would seem possible for parallel importers to bring goods into EU by transporting them to a country which applied **international exhaustion**. Thus, since the goods then have entered legally into the EU, and since all EU-countries must allow imports from other EU-countries, the goods could be imported further to a country where **EU -wide exhaustion** was the rule. (Beier, 1995, 158) Thus, such ruling can hardly be appropriate if its contents could be pre-empted the way described.

The Commission itself, when giving the EU -wide exhaustion regulation, did not clearly state, how it meant to have it be interpreted. The Directive and its form was drafted over and over, as if the Commission was aware of the fact that countering interpretations might arise out of the regulation but, at that point, was not prepared to give its final stand. Under lively discussions is the possible future treatment of the exhaustion principle. However, a detailed analysis of it falls beyond the scope of this study.

2.2 The EU -Trademark

In the early years of the European Community there was considerable concern that the enforcement of trademarks could and would be used as barriers to trade between Member States i.e., that national trademark rights could impede free movement of goods and competition in the Community. This concern gave birth to the establishment of an EC Trademark, the work of which began as early as 1960's and 1970's by the European Commission. The mark was to be supranational and to provide territorial protection in all Member States. (Tritton, 1996, 144-145, Scheepbouwer, 1994, 175 in Cambell et al.)

The Community Trademark regulation, or CTM as it is more commonly referred to, finally came into force in early 1996. It is operating alongside Member State's national trademark registration systems, and provides for a single filing for a registration covering the whole of the Community as a single unitary territory. However, the introduction of such unique and common mark has been criticised lately. Unitary and indivisibility of CTM rights can pose problems of conflict with earlier marks in that any national registration of the same or a confusingly similar mark will be a relative ground for refusing registration. (Tritton, 1996, 145)

The regulation lays down basic principles as to who and what may qualify for applying for such mark, where one has to apply for CTM, what are the rights of CTM proprietors, as well as the grounds for refusal, and what is the relationship between CTMs and national trademarks, among other things².(Tritton, 1996, 144-150) In spite of the many obstacles one will have to overcome in order to obtain a CTM, the advantages of CTM compared to the existing trademark systems are obvious. In short, it provides for a more homogenous

² For a detailed discussion, see Tritton, 1996, 144 -).

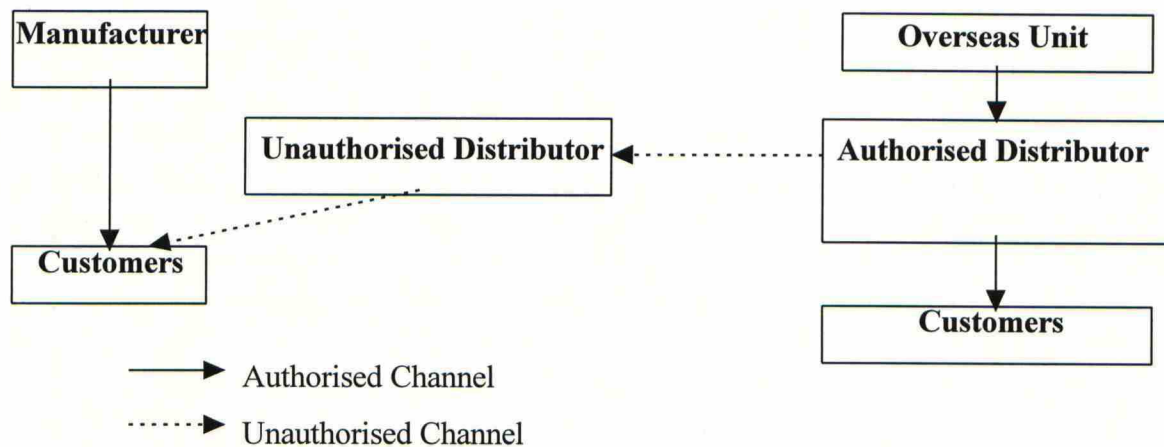
and far-reaching treatment for subsequent trademark cases involving also parallel imports. (Scheepbouwer, 1994, 186-189)

However, Groves (283, 1994) sees that although the introduction of the Community Trademark system along with harmonisation of national laws will improve matters between trademark protection and free movement of goods in the Common Market, a host of other difficulties will still remain to be solved.

2.3 Routes for Parallel Imports

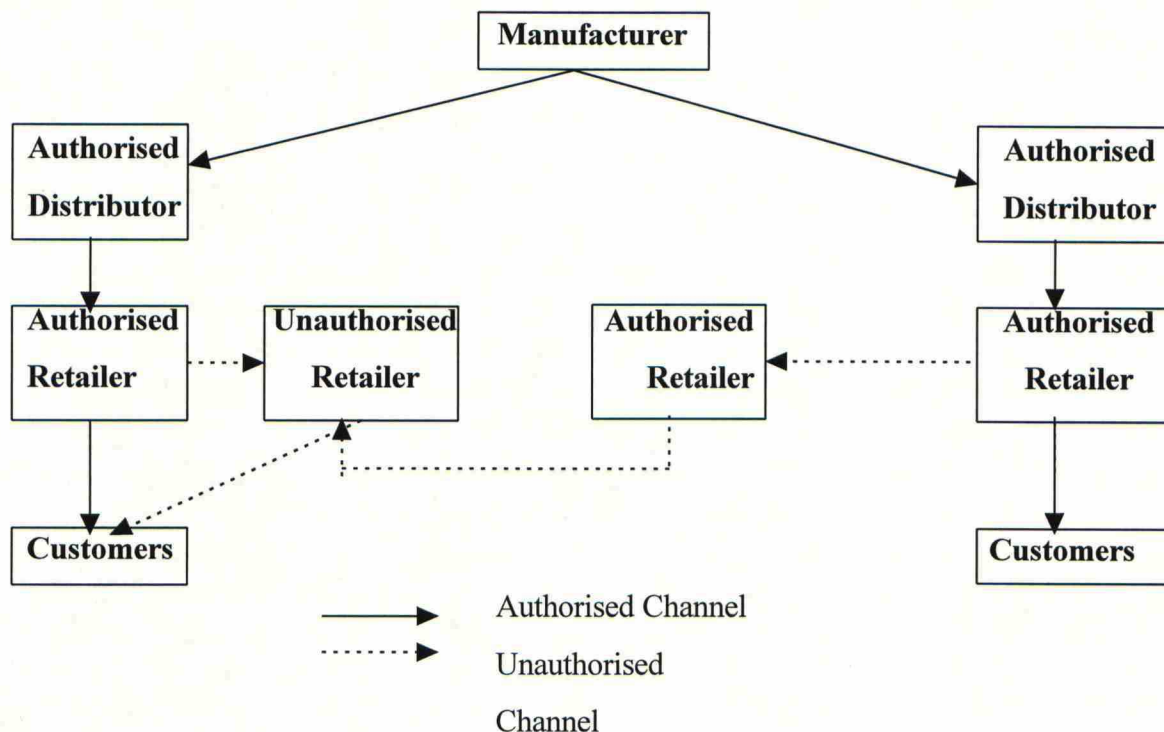
This section will introduce the routes through which parallel imports flow between countries. It has been agreed in the literature that there are numerous ways for parallel goods to move from one country to another. Still, researchers have been able to identify three routes which seem to occur most commonly.

The first, and according to Weigand (1991, 54) the most common route for parallel goods in the US, occurs where a foreign overseas unit of a domestic parent manufactures goods. The unit may be a subsidiary, joint venture or other entity with a common interest with the domestic company. As the Figure 2 shows, the foreign unit then sells to an authorised distributor in a nearby country. Somewhere in the authorised channel, due to weak channel marketing control, the product is passed into the unauthorised channel and exported to the domestic parent country where it competes with identical domestically produced goods.

Figure 2. Routes for Parallel Imports: Case 1

Source: Adapted from Weigand 1991, 54

Figure 3 illustrates the second case, in which a foreign e.g., a British manufacturer authorises, for example, a Finnish distributor or grants a license to a Finnish company to be the exclusive importer of a product bearing a British trademark. The Finnish company registers the trademark and becomes its legal owner in Finland. Believing it will be the sole beneficiary of its commercial efforts, the company develops the market for the product. The manufacturer often has similar distributors in various countries and, in its own country, a network of middlemen who take care of the distribution between the company and foreign importers. As in the first case, somewhere in the distribution channel a third party buys the product which was meant e.g., for the Spanish market and imports it into Finland where he or she resells it to a Finnish wholesaler or retailer. This results in bitter feelings for the Finnish distributor, especially if the product is put on the market at lower price than the authorised one.

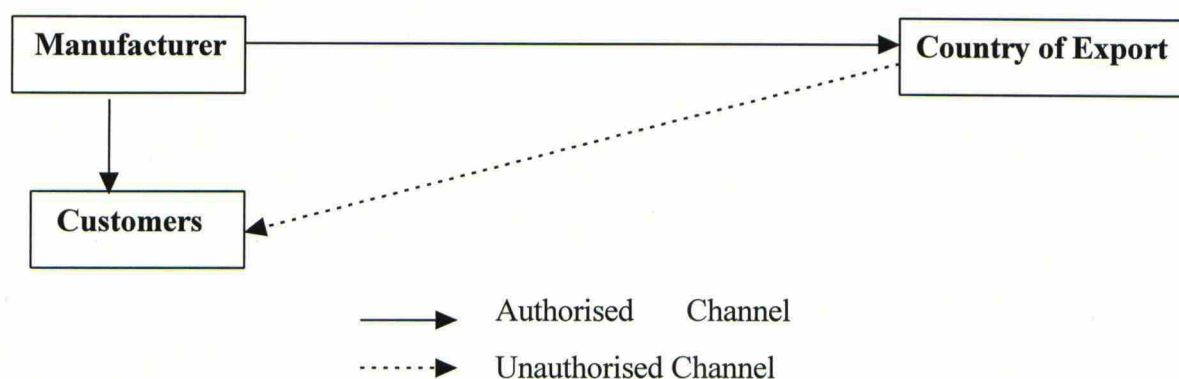
Figure 3. Routes for Parallel Imports: Case 2

Source: Adapted from Weigand 1991, 54

Pallari (1994, 12) points out that whether the importer is an independent enterprise or a subsidiary owned by the manufacturer may have a notable impact on the emergence of parallel importation. If the importer is a subsidiary, the manufacturer is prepared to respond to market imperfections more quickly and directly. This, in turn, weakens parallel trader's possibilities to operate successfully on the market.

Figure 4 depicts the third case, which occurs when branded goods are exported but then returned to the home market where they then compete with similar domestic merchandise. These imports are not true parallel imports because there are no authorised imports with which they would compete; still, they create similar effects. Re-imports, as they are called, can be either commercially motivated or purely personal. Personal re-importing in particular has grown in volume in present time due to increased international travelling. (Weigand, 1989, 20) For example, Finnish vacationers purchase Finnish nmt and gsm mobile phones in some European countries where they are cheaper and bring them back to Finland where they originate from.

Figure 4. Routes for Parallel Imports: Case 3



2.4 Underlying Causes of Parallel Importation

In the preceding section different routes for parallel imports were examined. To get a full picture of the origins of parallel importation, the examination next proceeds into the reasons why parallel importing occurs. A review of literature suggests that there are some basic factors giving impetus for parallel importation such as exchange rate fluctuation, opportunistic behaviour, price discrimination and distribution margin effect. These factors sometimes work alone, yet typically a combination of them leads to the development of the phenomena.

Exchange Rate Fluctuations

Fluctuating exchange rates can create substantial differences in the value of one currency compared to another. For parallel importers this means a possibility to buy goods in a low value currency country and then sell them in a country whose currency is stronger, thus allowing him wider profit margins. Thanks to the information systems of professional parallel importers which are close to perfect, it is very simple to follow changes in prices. (Simon, 1995, 4). Of course, the opportunity will only last as long as these conditions prevail. For example, during the high value of the US dollar in 1984 and 1985, parallel marketers imported Caterpillar excavators and loaders built in Scotland, Belgium, and Japan into the United States at prices 15% lower than those of the same equipment built in Caterpillar's own domestic plants (Czinkota 1993, 419).

Opportunistic Behaviour

Authorised distributors may sometimes break the loyalty made to the trademark owner and begin to sell to members outside the authorised channel. This can be very tempting, particularly if distributors aim to benefit from discounts often granted by manufacturers for large order sizes. By selling to outsiders, distributors are able to get rid of oversupply. According to Weigand (1989, 19), if sales are geographically remote, distributors may assume that sales are not made at the expense of their own full mark-up sales.

Price Discrimination

Arbitrage opportunities for parallel traders often emerge in situations where manufacturers can base pricing strategy on price discrimination by charging higher prices in high income markets and lower prices in markets with lower average income level. This often holds for upscale consumer goods because of their differentiated nature and the market power associated with them, which encourages considerable price discrimination (Malueg and Schwartz, 1993, 173). Parallel importer then obtains the goods in a lower price country and sells them to customers in a high price country, but at a lower price than the authorised trader, who purchased the goods directly from the manufacturer. Enormous price differentials exist between countries: for identical consumer products, prices typically deviate 30% to 150% (Simon 1995, 4). In drug and automobile markets, differentials are even more extreme. For example, a certain drug may cost five times more in Germany than in Italy (Simon, 1995, 4).

Distribution Margin Effect

The fourth factor influencing parallel importation is the opportunity to free ride on the expenditure of the conventional distributor. For this reason, the effect is termed as a free-riding effect by opponents of parallel importation. Authorised distributors add value to the products through advertising, display, servicing, inventory maintenance, and other marketing investments. Parallel importers then free ride on the value added in the authorised distribution channel. Lowe and McCrohan (1989, 48) suggest that this holds particularly if the value added exceeds the shipping costs of the diverted products entering the market.

To sum up, the four factors described form the principles that allow parallel importing to prosper. To these factors contribute such prevailing conditions as market size, purchasing power of customers as well as competitive pressures (Pallari 1994, 9). Cavusgil and Sikora (1988, 77) add elements such as disparity between supply and demand in national markets, unavailability of foreign-made products in particular markets, and relative ease with which products can be moved across countries. In conclusion, the bigger the markets and the wealthier the customers are, and further, the less penetrated the markets and the stronger the shortage of particular goods, the more lucrative are the markets for a parallel importer. For this reason, by increasing the supply and availability of goods, parallel importers can satisfy additional customer demand.

2.5 Positive Effects of Parallel Importing

Hence, by elaborating product offerings parallel imports accrue to customer benefit. In fact, parallel importing can also bring benefits to a manufacturer as well as other members in the distribution chain. The following overview sums up relevant positive economic effects of parallel importing from the viewpoint of endcustomers, manufacturers, authorised importers and resellers.

2.5.1 Customers

The most important advantage of parallel importing is its effect on prices. Partitioning markets by price discrimination becomes less attractive due to competitive pricing from parallel dealers. Enhanced competition increases economic efficiency and breaks down trade barriers created by companies themselves. Indeed, assuming that market forces are allowed to operate without hindrance, the outcome is stabilised prices and the creation of a single world market. (e.g., Pallari, 1993, 31)

Cespedes et. al (1988, 82) have found that as customers become more familiar with a product category, they tend to value less the support programs offered by manufacturers or distributors. Furthermore, they become increasingly price sensitive in buying. Instead of buying whole concepts, customers begin to prefer goods unbundled from services. If authorised sellers offer only entire packages with support features, parallel importers, who offer only the core product, can better meet customers needs.

2.5.2 Manufacturers

Cespedes et al. (1988, 76) argue that intense competition for big customers necessitates discounts on large order sizes. Should manufacturers refuse to offer volume discounts on orders, they will soon lose customers to competitors. For distributors' part, volume discounts induce for larger-than-needed purchases. Even if manufacturers in the short run could benefit from distributors' overordering by receiving incremental cash and sales volume, forecasting such fluctuating sales volume, however, is very difficult.

2.5.3 Authorised Distributors

As already pointed out, authorised distributors sometimes supply to parallel importers outside their own territories. By doing so, they may get rid of the products which are extra for them but which they need in order to qualify for volume discounts explained above. This also lowers the cost of goods sold as well as their inventory carrying costs (Cespedes et al. 1988, 75). In this situation, authorised traders could obtain obvious benefits from the existence of parallel importers.

2.5.4 Resellers

In literature, the effects of parallel importation on the retail and wholesale level in the territory where the parallel trader operates have often not been addressed. Perhaps the effects are not considered as significant as for other parties, and, accordingly, the effects on resale level have been neglected. Fortunately, however, they have received attention at least in Pallari (1994, 39). According to him, for wholesalers and retailers a parallel importer usually takes the role of an alternative supplier of goods. Sometimes the parallel channel may be the only possible channel for them through which to obtain the goods. This may hold for such states of affairs where the manufacturer is exercising strict policy in selecting the resellers, and those who do not fulfil the criteria are left outside of his network.

As the above discussion indicates, there exists a set of supporting arguments along with free movement of goods principle which can be used as the criteria for justification of parallel imports.

2.6 Negative Effects of Parallel Importing

This section incorporates the economic arguments against parallel importing presented in the literature. Again, as in the previous section, each party in the channel will be discussed in turn in the order followed above.

2.6.1 Customers

If unauthorised imports and parallel imports are identical, it is unlikely that any risk of consumer deception exists. In Hilke's (1987, 80), opinion, a risk arises however, if there are actual material differences (differences in services, other products included in the transactions, or variations in the product itself) between grey market goods and authorised imports, and which consumers are not aware of.

Hilke (1987, 80) suggests that customer confusion over parallel market goods causes both immediate and longer term injury for customers. Immediate injury results if customers pay for a characteristic that is not actually included in the product. Longer term injury occurs if customers dissatisfied with parallel imports cannot differentiate them from higher quality authorised products. In such circumstances customers might be unwilling to pay a price premium which is sufficient to cover incremental costs associated with producing or distributing the higher quality authorised imports. As a result, theoretically, the higher quality product might disappear from the market. However, such a result seems quite unrealistic in reality. Weigand (1985, 5) as well as Pallari (1994, 60) remind that often consumers are not even aware of the channels used in importing the products into the country. They get tempted by the lower price but do not realise what they may lose along with the purchase.

Parallel goods often have different design specifications compared to the authorised goods, due to the fact that they were originally intended to suit other country conditions. Weigand (1989, 22) adds that such goods may indicate lower break-down rates and be accompanied with a warranty which is valid only in the country of production. Chard and Mellor (1989, 73) emphasise that the goods may have travelled further they were meant to, and the quality may vary by the time of retail sale, particularly if the parallel trader takes less care in transporting, handling and storing. Cavusgil and Sikora (1988, 76) point out that complications may also arise in the legal arena. Accidents can occur if a product lacks

certain safety features required in the country of import. They raise thus a question whether the manufacturer can be held liable in such an event.

Even if parallel traders did care enough to provide with after-sales maintenance, they might not necessarily possess appropriate skills or have trained personnel to carry out the repair work, and the end result could be inferior to customer's expectations.

2.6.2 Manufacturers

It was suggested earlier that even if a manufacturer could benefit from parallel channels by gaining larger sales in the short run, forecasting sales volume which fluctuates due to unstable parallel sales can be very difficult. Therefore in the long run, parallel imports affect manufacturer's pricing policies by eliminating differences in profit margins accrued from different price areas. Cespedes & al. (1988, 79) argue that if manufacturers want to retain their market shares, they may be forced to adjust prices to a competitive level and consequently, satisfy with lower overall profits. Cavusgil and Sikora (1988, 76) support this argument and add that parallel imports may disrupt production and marketing plans, thereby increasing the cost of supply which is then reflected in prices paid by customers. Therefore, they suggest that the movement of parallel importation should be anticipated within the company already when developing a marketing strategy.

Bonnici (1993, 16) demonstrates that as a result from increased parallel practices in low price countries, manufacturers will find themselves selling more and more to distributors in low price countries and less to those in countries in which the margins are higher. According to Bonnici (1993, 16) the end result will be a stabilisation of prices in the various markets, thus eliminating the profits from price discrimination.³

For some products, e.g., industrial goods, after-sales service can be a prime source of revenue and earnings, yielding a much higher margin than the sale itself. According to Cespedes et al. (1988, 76) parallel importers who tend to unbundle product sales from service income, allow lower revenue stream on the product. Howell et al. (1986, 261) in

³ Note, that a stabilization of prices also eliminates the *raison d'être* of parallel importers. That is to say, parallel importing can be very lucrative in the short run, while in the long run its statutory purposes are undermined, unless the strategy is based on constant switching of products. (e.g. Pallari, 1994, 43)

turn, explain that where parallel importers' products are not covered by manufacturer's warranty, manufacturer is not responsible for providing any warranty-repair for such products. Nevertheless, a manufacturer unwilling to lose his customer goodwill, may have no other choice than direct the complaining customer to his service shop that perform warranty -repair.⁴

Parallel importation may also affect the evaluation of authorised distributors performance. Palia and Keown (1991, 47) demonstrate that a manufacturer, who is faced with declining sales in the distributor's market, easily assumes that the distributor is not taking enough sales effort. Consequently, parallel importation may hurt manufacturer-distributor relations and threaten long-term relations that support the foundation of a strong distribution system.

Free-rider aspects are commonly addressed in discussions on the effects of parallel importation. Fellner (1985, 58) for example, argues that it is unfair to allow parallel importers a free ride on the work and investments made by manufacturers in research and development and in testing and experimenting with new techniques and in building up a market. Not only do they spend money, but also take the risks. Chard and Mellor (1989,70) support the argument and contend that free riders who merely copy, impede manufacturers incentives to invest now for profit later.

Intellectual property owners are also concerned by the fact that allowing parallel imports could increase the occurrence of pirate goods and make it more difficult to detect them. Illicit copies may enter a country under a guise that they are parallel imports. It is assumed, as for example Warwick (1993, 576) points out, that it is more difficult to distinguish between parallel imports and illicit copies than to distinguish either of them from authorised goods.

2.6.3 Authorised Distributors

As it has been suggested, exclusive distribution contracts often contain terms by which distributors are obliged to arrange the market and create reputation for the product. Parallel

⁴ Note, however, that the EU exclusive distributorship and franchising agreements contain mandatory terms stipulating that a distributor/franchisee shall perform warranty repair on all similar products [including parallel imports] in the territory.

importers interest is largely based on this reputation which distributors have created. Distributors have devoted their time and carried large expenditures on pre-sale services such as advertising, product demonstration, show-room facilities, training and sales personnel. Naturally, they expect to be reimbursed for these costs. In general, it is difficult to make a separate charge to customers for the services and therefore their cost has to be covered by the sales price, suggest e.g., Chard and Mellor (1989, 73). They emphasise that parallel importers, who are able to sell at lower prices because they do not bear these costs, grab distributors customers and eat up their sales, making their business unprofitable. The argument is supported by Weigand (1991, 53) who maintains that parallel importation is likely to occur when there is a considerable difference between the transportation costs and the costs incurred by authorised importers in the country concerned in marketing such products. This is also what Lowe and McGrohan (1989) have argued.

Observations made of the purchase behaviour of customers indicate, that many customers make their selection as to the product at the authorised trader's expensive shop, but purchase the product from an unauthorised importer. Customers later turn to authorised dealer in need for side-items or spare-parts in which the parallel importer had not invested. As it follows, a parallel importer takes a free-ride on the investment made by an authorised importer. If authorised distributors continue to lose sales to free riders, distributors may become so frustrated with the situation that they lose motivation to push the products into the market. Consequently, they may abandon manufacturer loyalty and decide to enter the parallel market (Cespedes et al. 1988, 75).

2.6.4 Resellers

Again, in the resale level the studies on the effects of parallel importation have not received as much attention in the literature as other members in the channel. Logically one could assume that for resellers the main disadvantage is the same as for authorised importers, namely lost sales and reduced profits of the goods sold.

2.7 Summary

This chapter first dealt with the essential characteristics of trademarks. Thereafter the discussion proceeded to causes and effects of parallel importing on a manufacturer of

trademarked goods. The last section of this chapter described how parallel imports may affect different members in the distribution chain. Table 1 below summarises the negative and positive effects of parallel importing as presented above.

Table 1 Negative and Positive Effects of Parallel Importing

	Negative Effects of Parallel Importing	Positive Effects of Parallel Importing
Customer	<ul style="list-style-type: none"> • Deception of quality • Confusion over warranty and after sales repair 	<ul style="list-style-type: none"> • Lower prices • Wider product offerings
Manufacturer	<ul style="list-style-type: none"> • Elimination of profit margins from different price areas • Lower overall profits • Disruption of production and marketing plans • Threat to a manufacturer-distributor relationship • Free ride on the investment • Increased likelihood of illicit copies • Threat for the image 	<ul style="list-style-type: none"> • Unbundled core items • Incremental cash • Increased sales volume
Authorised Resellers	<ul style="list-style-type: none"> • Lost sales 	<ul style="list-style-type: none"> • Channel for extra orders
Resellers	<ul style="list-style-type: none"> • Lower prices • Frustration and demotivation to push the product • Free ride on the investment 	
Resellers	<ul style="list-style-type: none"> • Lower prices 	<ul style="list-style-type: none"> • Alternative purchasing channel

To conclude, parallel importing has grown in value due to improved transportation networks, developed communication and integrated international relations (Pallari 1993, 75). Finnish membership in the EU and the subsequent removal of tariffs and regulations has facilitated the entry of parallel imports from the European Union into our country. Increases in the volume of world trade over the past decades have generated growing interest among

manufacturers and trademark proprietors all over the world and heightened the need to take action against parallel importing.

3. LEGAL BOUNDARIES AND AVAILABLE MANUFACTURER STRATEGIES FOR COMBATING PARALLEL IMPORTS

As has been stated earlier, free movement of goods-principle affect manufacturers' rights for protection for trademarks. The EU competition rules were thus created to control the free movement of goods principle, in order to safeguard and facilitate an undisturbed movement of goods in the common market. However, these rules may sometimes entail a collision against trademark owners' rights.

Generally, where the selling of manufacturer's goods is organised through an exclusive distributor, potential anti-competitive actions against parallel imports often stem from contractual arrangements between a manufacturer and an exclusive distributor. As defined in section 1.4., the present study, however, observes the kinds of circumstances which entail a collision between the utilisation of trademarks and competition rules. For this reason, the relationship between exclusive distributorships and EU competition rules is not examined. EU competition rules contain articles which have formed the basis for court opinions over parallel importation cases involving conflicts between free movement of goods and industrial and intellectual property protection. The next chapter traces the relationship between these Articles and utilisation of trademarks.

3.2 Articles Prohibiting Actions Against Parallel Importers

Competition rules of the EU are to be found at Articles 85-94 of the EEC Treaty. Articles 85 and 86 set out the legal basis for controlling anti-competitive practices by companies, including the so called 'abuse of the dominant position' in Article 86, which is often present in parallel importation cases. The relationship between the free movement of goods and intellectual property rights, on the other hand, is dealt with in Articles 30, 36, 222 of the Treaty of Rome, establishing the European Union. Therefore this section will deal with Articles 86, 30, 36 and finally that of 222.

Article 86

Article 86 contains the concept of '*abuse of the dominant position by undertakings*'. Dominant position is close to a monopoly, which is also regulated in the national level. The terminology (dominant position) used in the Treaty better suits the purpose (than monopoly) because it avoids the need artificially to define the word 'monopoly' in terms of market share (Horner, 1987, 81). This Article prevents the most powerful companies from taking unilateral action which is anti-competitive. This will include most forms of action designated to put parallel importers out of action by exploiting property rights.

Oliver (1996, 254) reminds that three elements must be present before Article 86 is compatible: one, the undertaking must have a dominant position within the Common Market or a substantial part of it; two, the exercise of the industrial property right must be an improper exploitation thereof; and three, that exploitation must be liable to affect trade between Member States.

Article 30:

'Quantitative restrictions on imports and all measures having an equivalent effect [e.g. misapplying industrial property rights for the detriment of parallel importers] shall, without prejudice to the following provisions, be prohibited between Member States.'

As can be seen, Article 30 establishes the principle of free movement of goods. The ECJ has defined the wording of the Article that all measures which might hinder trade 'directly or indirectly, actually or potentially' are prohibited. Therefore, the ECJ has declared that manufacturers attempt to block parallel imports upon national intellectual and industrial property laws can be comparable to quantitative restrictions. (Rissanen & Korah, 1991, 182)

Article 36

Article 36 of the Treaty is of utmost importance because it contains an exception to the rule of the prohibition of restrictions on trade between the member countries, thus providing that:

'The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality,...or the protection of industrial or commercial property. Such

prohibitions or restrictions shall not, however constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.'

In other words, if the prohibition or restriction is justified on the grounds of protection of industrial or intellectual property, then it is not a prohibition or restriction contrary to the Treaty of Rome's free movement of goods provisions. An interesting question, however, arises as what would then be the kind of restriction meant by this Article.

In analysing the Article Tritton (1996, 288) makes two comments. First, he sees that "justified" in Article 36 would appear to mean that the **exercise** of intellectual property rights, so as to prevent imports, is not sufficient to bring such a prohibition within the scope of the Article 36. Justification can only be granted on the grounds of **protection** of industrial and intellectual property against infringements. Thus, the way industrial property can be utilised against the free movement of goods principle, seems considerably restricted. In the drafting of the Article 36, industrial and intellectual property rights have been considered as generating similar consequences as quantitative import restrictions (Rissanen & Korah, 1991, 182). Health (1993, 180) has summed up the kinds of conditions, in which an owner attains protection against parallel imports on the grounds of industrial property. According to him protection is granted a) if business reputation of a trademark owner is injured due to parallel importation of goods, b) where the matter involved stealing an idea (or a trademark) of an owner, c) or where consumers were misled by a false source of origin or by different quality standard.

Secondly, Tritton (1996, 288) denotes that even if the prohibitions or restrictions are justified for the protection of industrial and intellectual property, **they must not constitute a means of arbitrary discrimination or disguised restriction on trade between Member States**. Thus, literally, the scope of intellectual property owner's rights to exercise his rights is limited, and the above rules create an interlocking framework which makes the conditions highly favourable for parallel importers within the European Union.

Article 222

The last article to be commented on is Article 222 which provides that:

'The Treaty [of Rome] shall in no way prejudice the rules in Member States governing the system of property ownership.'

It thus states in relation to articles 30 and 36 and intellectual/industrial property that, in the absence of Community standardisation or harmonisation of laws, the determination of the conditions and procedures under which protection is granted is a matter for national rules. Notwithstanding the Treaty's weakness against national systems of property ownership, it may, nevertheless, be applied to the exercise i.e., utilisation of trademarks (Rissanen & Korah, 1991, 181).

3.3 The Doctrines Developed by the European Court of Justice (ECJ) Around Parallel Importation of Trademarked Goods

In its judgements concerning parallel importation, the ECJ has founded four doctrines which have become essential in trying to find an equilibrium between the competition rules and trademarks. As mentioned earlier, the Court has developed these doctrines on the basis of the Articles in the EU competition law reviewed above. Hence, these doctrines are:

- (1) The specific subject matter
- (2) The doctrine of common origin
- (3) The existence and exercise
- (4) The doctrine of exhaustion

The definition of the doctrine (4), i.e., that of exhaustion has already been explained in the previous chapter. Exhaustion, as well as the existence and exercise, specific subject matter and the doctrine of common origin, will now be discussed as interpreted by the Court in regard to parallel importing.

3.3.1 Doctrine of Exhaustion

Until the mid 1960's it was generally assumed that the creation of a Common Market did not affect the status of intellectual and industrial property right owners. The first remark to the contrary arose along with the case *Grundig vs. Consten* where the ECJ regarded that the exercise of trademarks so as to restrict competition is contrary to the Article 85 of the EEC Treaty. Soon after in *Deutsche Grammophon* the Court, however, developed a new doctrine of exhaustion of industrial and intellectual property rights. Instead of Article 85,

the Court based the doctrine of exhaustion on Articles 30 and 36. The Court thus concluded that utilisation of industrial and intellectual property rights so as to prevent parallel imports from one Member State to another was against free movement of goods principle if the particular goods had been put into market in another Member State by the owner or with his consent.

In Hag III the Court further defined the scope of the doctrine and decided that EU wide exhaustion could not apply in cases of expropriation, i.e. involuntary assignment of trademark. Two trademarks of common origin must be treated in this case as totally independent trademarks. (Kunze 1991, 320) In the light of the above this means that the party who has involuntarily been deprived of his trademark may oppose the importation of goods bearing the same but independent trademark.

3.3.2 Specific Subject Matter

In *Deutsche Grammophon vs. Metro-Grossmärkte* the ECJ for the first time considered the scope of Article 36 (Hayens, 1995, 122). There the Court stated that Article 36 permits prohibitions or restrictions of industrial and intellectual property to the extent that they are justified for the protection of rights that form the **specific subject matter** of the property.

In *IHT Internazionale Heiztechnik GmbH vs. Ideal Standard GmbH* the Court held that national trademark rules which allowed imports to be banned where they might be confused with domestic goods, were permitted under Article 36 (Case 9/93 in Groves, 1994, 285). It held that trademark's specific subject matter was to guarantee the origin of the goods. In other words, if customers were confused as to the origin, the specific subject matter of a trademark would be impaired.

Furthermore, specific subject matter was involved in *Deutsche Grammophon vs. Metro* where the ECJ declared that Article 36 only admits derogation from the rules on free movement of goods to the extent to which they are justified for the purpose of safeguarding rights which constitute a specific subject matter of such property (Case 78/70 in Haynes, 1995, 123). Finally, the court explained the meaning and interpretation of

specific subject matter of an intellectual property in the joined cases of *Centrafarm BV vs. Sterling Drug Inc.* and *Centrafarm vs. Winthrop*. There the court said that the specific subject matter was the exclusive right to utilise the mark for the purpose of putting products protected by the trademark into circulation for the first time, and that it is therefore intended to protect the trademark owner against competitors who would take advantage of the status and reputation of the mark by selling goods which improperly bear the same or similar mark (Oliver, 1996, 276).

Glas and Verbeke point out (1994, 164), that there is an important distinction between the specific subject matter of trademark and its essential function. The specific subject matter is defined from the point of view of the trademark owner, whereas the essential function stresses the interests of the consumer not to be confused as to the origin of the goods.

In *Keurkoop vs. Nancy Kean Gifts* the ECJ stated that Article 36 should be interpreted in such a way that "Protection is ensured for the legitimate exercise of the rights conferred by national legislation but is refused, on the other hand, in respect of any improper exercise of the same rights which is of such nature as to maintain or establish artificial partitions within the Common Market." Thus, here the Court established the limits as to the proper exercise of industrial and intellectual property rights.

In practise, however, as notified by Tritton (1996, 194), the court has failed to develop a proper theory of the specific subject matter of a right. Similarly, Glas and Verbeke (1994, 164), point out that the emphasis on the guarantee of origin as the essential function of trademark has often been criticised. Regardless of its origin, a trademark has often become in itself a carrier of a message, whereas the essential function is then merely to distinguish a product from another product. This can be seen to apply in industries where a limited group of companies each have several trademarks which can even lead to intrabrand competition between two trademarks which belong to the same company.

3.3.3 Common Origin

In *Van Zylén vs. Hag I* the Court created a much criticised doctrine of common origin. There the Court maintained that a trademark owner could not prohibit the import of goods legally bearing an identical trademark of the same origin (Case 192/73 in Haynes, 1995,

124). In other words, it allowed a coexistence of identical marks held by different proprietors if the marks (not the goods) have a common origin. However, showing inconsistency in the Court's opinion, the Court permitted in *Terrapin vs. Terranova* the holder of a trademark Terranova to oppose the importation of a product bearing a mark Terrapin of an unrelated producer, as a source of possible confusion. It thus permitted trademark rights to prevail over free movement of goods.

Commentators have complained continuously against the doctrine of common origin by maintaining that it implied an unjustified prejudice against the social and economic value of trademarks in comparison with other industrial and commercial rights which are not subject to equivalent ruling (Haynes, 1995, 124). *Van Zuylen vs. Hag (Hag I)* has therefore been reversed by the ECJ in the reverse situation in *SUCAL vs. Hag II*, i.e. the Court allowed a trademark proprietor to stop imports having a similar trademark. The Court considered that otherwise the basic function of a trademark would be endangered, and consumers would not be able to determine the origin of a trademarked product. (Kunze, 1991, 325) In general, this has meant a more limited concept of the common origin doctrine and, correspondingly, a better appreciation of the independent value of national trademark protections (Rissanen & Korah, 1991, 191).

The doctrine of common origin is in some literature (e.g., Glas and Verbeke 1994) referred to as parties economically or legally linked, suggesting that if a protected product is placed on the market by a party who is economically or legally linked to the owner of the right, then the owner's rights are exhausted. On the contrary, in cases of trademarks fully independent of each other, i.e., no links between the parties, the import of identically or similarly marked goods could be prevented (as the cases above have shown). Legal links are e.g., licensing arrangements whereby the licensor has control over the licensed products and the placing of them on the market. Economic links are links that result of belonging to the same group of companies. Lowenheim (1995, 843) points out that in such cases the function of trademark, namely, to indicate the origin of trademarked goods and, thereby, to suggest the consistency of quality, is not impaired.⁵ Furthermore, in such

⁵This is because the responsibility for the quality of the goods bearing the mark thus rests with two separate trademark owners. Consequently, the functions of trademark would be impaired if it were not possible to prevent imports of goods bearing the mark and marketed by the other trademark owner. (Loewenheim, 843, 1995)

circumstances there is no need to investigate whether one party actually permitted the other party to market the product; it is a general assumption. The doctrine of common origin was discussed e.g., in *Deutsche Grammophon*, *Terrapin vs. Terranova*, *Grundig vs. Consten* and in *Cetrafarm vs. Winthrop*. The doctrine was further developed in *Hag I* and *Hag II*.⁶

3.3.4 Existence and Exercise

In *Deutsch Grammophon vs. Metro* (Case 56/64), the Court drew a distinction between the existence and exercise of industrial and intellectual property rights. The ECJ has held that, in principle, the Treaty does not affect the *existence* of industrial/intellectual property itself. Nevertheless, the *exercise* of an exclusive right may be restricted by the Treaty. Exercise of the intellectual property may be contrary to the free movement of goods principle and may amount to abuse of a dominant position. It can be seen that the meaning this doctrine comes close to the Article 36 of the competition law, which prohibits arbitrary discrimination and disguised restrictions on trade. Therefore, automatic protection is not granted for the utilisation of intellectual property. (Loewenheim, 1995, 831, Pulkkinen, 1995, 1). The Court has been inconsistent in its use of the exercise and existence of rights. As criticised by Haynes (1995, 122), the distinction offers rather ambiguous guidance in resolving the conflict between free movement of goods and property rights. In fact, several authors have criticised the distinction between exercise and existence. They maintain that the existence of intellectual property rights are valueless if an owner is prohibited to use them. (For a detailed discussion see e.g. Tritton 1996, 291-) Recently, the doctrine has not been invoked much in the analysis of industrial and intellectual property cases under Article 36.

3.6 Strategies to Combat Parallel Importing

The above discussion indicates that manufacturers are relatively weak before legislative authorities in that they are compelled to follow the Courts' decisions. Where the Courts

⁶ Common origin had been first introduced for cases of expropriation of trademarks. In *HAG II*, the Court then extended the ruling to trademarks being of common origin but, due to a previous transfer, belonging to different trademark owners without any legal or commercial links to each other. (Loewenheim 1995, 843)

have taken the stand in favour of parallel importing, manufacturers have not been able to stop it. To cope with the situation, they have thus had to come up with other strategies.

There is quite a lot of previous research on the appropriate strategies used to confront parallel imports (Cavusgil and Sikora, 1988; Palia and Keown, 1991; Cespedes et al., 1988, Howell et al., 1986; Weigand, 1989 and 1991). This section presents some of them. As to correct timing for confronting parallel imports, Cavusgil and Sikora (1988, 77) suggest the manufacturer considered a threshold level as a starting point for the action. It is at this level that an incremental increase in parallel importers' share will substantially reduce the company's overall profits. According to Cavusgil and Sikora (1988, 77) strategies for implementation can be classified in two categories, namely (1) proactive and (2) reactive depending upon how urgent needs for action there exist. Reactive strategies aim to provide immediate relief from parallel imports while proactive strategies allow addressing the fundamental causes of parallel importers' practise (Cavusgil and Sikora, 1988, 81). Since all of the strategies have value for implementation in practise, a comprehensive discussion on the pros and cons will be provided in the following. Moreover, given the number of these potential strategy variables to choose from, a division of strategies into the two groups presented by Cavusgil and Sikora seems appropriate in this context.

3.6.1 Reactive Strategies

Often grey market imports grow unexpectedly to levels that require quick response. In this situation a company can resort to reactive strategies which include strategic confrontation, participation, price cutting, supply interference, promotional bursts, collaboration, and acquisition. These are now discussed.

Strategic Confrontation

Essentially, strategic confrontation provides remedy for the victimised dealer. The nature of the remedy is merely psychological. The role of the manufacturer is central in supporting and assisting the dealer to tolerate the existence of parallel importers in his territory. Through dealer education about the reasons of parallel importing, its dynamics,

and target areas as well as training on ways to counter parallel importing activities may contribute to acceptance and enhanced understanding of this threat. This releases dealers' energies for keeping the activity down to tolerable levels. Likewise, analysis and promotion of dealer strengths can facilitate the determining of proper strategies for a dealer against parallel importing. (Cavusgil and Sikora, 1988, 77)

Participation

Savusgil and Sikora (1988, 79) recommend that smaller and financially weak dealers should agree with the manufacturer that they participate in the grey market and purchase a specified number of parallel imported products. By participating in the grey market, dealers would be able to selectively match parallel importers prices and thus prevent a dilution in their market share. The retailers can maintain their normal transaction price with most customers, but have the flexibility to provide preferential treatment to customers who are opinion leaders in their community. Cavusgil and Sikora (1988, 79) emphasise that sound dealer-manufacturer communications are a requirement for the participation- strategy. A manufacturer should understand that proper implementation of this strategy can effectively curb parallel importation and contribute to higher profit margins. On the other hand, dealers must not abuse this privilege by using the grey market as their primary source of product. A corresponding strategy for the trademark owner, as Weigand (1989, 22) suggest, is to buy back himself parallel imported goods at discount outlets. This is what Matsushita, a producer of Japanese cellular telephones did when it sent its employees to the discounters to buy back most of the parallel imported telephones. The company confronted the inevitable bad publicity and explained that the substantially different technical qualities of the telephones justified such practice. (Weigand, 1989, 22)

Aggressive Confrontation: Price Cutting

Aggressive confrontation is characterised of precise and deliberate manoeuvres to quickly reduce local parallel importing activities through price adjustments. Since this approach is riskier than strategic confrontation, Cavusgil and Sikora (1989, 79) recommend that specific actions should be assessed to see if they fall within the company's range of comfortable business activities. In this setting, a dealer resorts to temporal price cutting to either match or beat the grey market price. As mentioned, this strategy is not riskless.

First, the participants of this strategy should be aware that irreversible profit loss may result if the parallel importer survives the attack or the attack lasts so long that customers begin to perceive the low price as normal. Secondly, the participants should not overlook legal aspects. The parallel importer may take legal action if he or she can prove that the price cuts were intended and implemented for the sole purpose of eliminating competition. (Cavusgil and Sikora, 1988, 79)

Supply Interference

This strategy implies that, after identifying the source of grey market importation, a financially strong dealer bids up the price of the goods to a level where the parallel importer cannot sustain a profit. Channels of supply can be interrupted at the wholesale or retail level by both dealers and manufacturers. (Cavusgil and Sikora, 1988, 80) Sometimes mere threats of announcement to terminate members in distribution chain may be enough to limit grey market activity. Cespedes et al.(1988, 79) remind, however that the manufacturer who selectively eliminates dealers runs the risk of being sued. Among the users of this strategy have been, e.g. Lotus Development Corporation, Hewlett-Packard, NEC Electronics, Leitz Inc., and Charles of the Ritz Group. In targeted areas this strategy may prove effective in the short term, but high cost and inability to curtail parallel imports at source are its major shortcomings.

Aggressive Confrontation: Promotion of Grey Market Product Limitations

Another strategy suitable for reducing grey market activity in targeted areas is promotional bursts. These are messages in media intended to identify product differences and tactfully build doubt about parallel imports. For example, IBM used this strategy by warning end-users that it would not accept warranty claims for its PCs purchased from parallel importers. Seiko and Rolex, respectively, used radio and newspaper ads to warn consumers that the manufacturer's warranty may not apply to products purchased through unauthorised channels. (Cavusgil and Sikora, 1988, 80)

Collaboration

"If you cannot beat them join them" is the idea behind collaboration (Cavusgil and Sikora, 1988, 80). This is an appropriate strategy when the dealer thinks parallel importing is a short term-problem, and will disappear as soon as there is a change in exchange rate. By means of collaborating with parallel importer, a dealer is able to temporarily maintain his clientele and avoid conflicts with a parallel importer. Nevertheless, employing this approach is not completely flawless. Problems may arise in the legal arena if e.g., the dealers are held liable for a restraint of trade or collusion. Similarly, if the retailers agree to sell only to designated customers, they thus agree not to compete, which is a violation against competition law.

Acquisition

Before the discussion proceeds to proactive strategies, this section finally presents acquisition as one of the potential strategies of reactive nature. Because of the high costs associated with it, this strategy does not appear to be employed until under extreme threat. For instance, a parallel importer who operates in a high-opportunity area where an authorised dealer has limited operations, may leave the latter no choice but acquisition. Cavusgil and Sikora (1988, 80) remind of the factors to be considered before deciding upon acquisition. Such factors are: (1) the financial ability and potential likelihood of the parallel importer to reopen under a different name after the acquisition is completed; (2) effect of the acquisition on the dealer's image; and (3) cost of the acquisition versus the cost of other alternatives. From a legal standpoint, acquisitions are save as long as they are not associated with attempts to monopolise. (Cavusgil and Sikora, 1988, 81)

3.6.2 Proactive Strategies

As suggested earlier in this Chapter, compared to reactive strategies, proactive strategies are more effective long term because the strategies aim to address the fundamental origins of parallel importation. Proactive strategies include product/service differentiation and availability, strategic pricing, dealer development, marketing information systems, long-

term image reinforcement, establishing of legal precedence, and lobbying. These will be discussed next.

Product/Service Differentiation and Availability

A manufacturer may reduce grey market activity effectively by designing products with exclusive safety, luxury, and functional features which appeal strongly to a certain market. In this way, a manufacturer can create brand preference over parallel imports. For example, a Scandinavian dealer may be reluctant to buy parallel imported tractors from South Europe because they may not be designed to operate in extremely cold weather (functional feature). Similarly, Remy Martin labelled its European-bound Cognac "V.S.O.P Superior" to make its "V.S.O.P." label, coming in from Hong Kong via parallel importers, less attractive (Weigand, 1989, 21). To illustrate service differentiation, a manufacturer can make his product more appealing than a parallel import through extended warranties or improved parts and service availability. (Cavusgil and Sikora, 1988, 81) In some cases a private labelling policy has been used to make exact price comparison impossible. Daiei, Japan's largest retail chain, uses the name "Coltina" for its Korean-made electronics products; other large chains such as Jusco and Seiyu also sell foreign merchandise under their own label. (Weigand, 1989, 21)

Strategic Pricing

Implications of price discrimination policies on parallel importing activity have already been explained in subsection 2.4.3. of this study. To sum up in brief, the larger the price differentials between different price areas, the higher will be the probability of expansion of parallel imports. Increased grey market activity chokes off some of the additional profit made through price discrimination. Therefore, companies have sometimes reduced their prices, thus pre-empting the sales that have gone to parallel importers. According to Weigand (1989, 21), this strategy is not, however, universally acclaimed by dealers because it results in lower gross margins; though it also brings a larger volume and a larger market share.

In addition, as Cespedes et al. (1988, 81) suggest, attention can be paid also to quantity discounts offered to authorised dealers. Narrower and more realistic discount policies could be executed so as to not provide incentives for over-ordering and selling on the grey market. On occasion, when a parallel importer competes on price, manufacturer should provide temporary price reductions to the authorised dealer in order to put the parallel importer out of business. Cespedes et al. (1988, 79) discuss the pros and cons of the so called one-price-for-all strategy. Although it can eliminate arbitrage opportunities and allow a supplier channel control, this policy often means selling at lower price to all customer classes with different buying needs and abandoning price discrimination. As one disk drive manager put it "While it [one-price-for-all] may be the answer in the short term, in the long term it can limit the manufacturer's access to new and growing market segments and discourage distributors from supporting a manufacturer that refuses to recognise distributors' market power." (Cespedes et al., 1991, 79)

Dealer Development

Immense influence for the reduction of grey market complications can result from long-term investment in dealer development. Cavusgil and Sikora (1988, 81) stress that strong dealers who aggressively and creatively market their goods are much more potent to respond to grey market attack in their territory. () It therefore pays for manufacturers to develop a strong distribution network. Through special dealer development programs e.g., Carterpillar has developed dealer skills and expertise in marketing, finance, service, data processing, and other areas. Moreover, human resource development consultants of the company provide training on effective management techniques, situational leadership and organisational development. Finally, special, decentralised district offices provide continuous support and guidance to the dealer and valuable marketing information to the manufacturer. Albeit such arrangement requires extensive resources, less affluent manufacturers may consider grey market informational seminars for their dealers. Such a program was implemented by Canon USA's Copier Division. The program increased dealers awareness of the long-term hazards of participating in the grey market. (Cavusgil and Sikora, 1988, 83)

Marketing Information Systems

Grey market movements in the global arena can be tracked by means of marketing information systems. (Palia and Keown, 1988, 75, Cavusgil and Sikora, 1988, 83) A commonly used method are warranty registration cards which are secretly coded to identify the original dealers who purchased the product. This way companies can identify where in distribution chain leakages occur. In Cavusgil and Sikora's (1988, 83) opinion, an information system ought to be designed to monitor the following factors:

- price differentials between authorised distributor and grey market channels;
- threatening levels of grey market activity in sales territories;
- sources of leakages in distribution system;
- specific product models that become the target of grey market importers; and
- profile of grey market customers.

Although building a reliable information system may take time, its benefits are granting. The system helps the companies to when, where and how to react to parallel importers before it is too late to avoid damage to company profits. (Cavusgil and Sikora, 1988, 83)

Long-Term Image Reinforcement

Investment can also be made on image building and promotion. Repetitive messages promoting the dealer's image and intangible services may discourage would-be grey market buyers. Cavusgil and Sikora (1988, 83) add that promotion can also be used to reassure current customers that they made the right choice by buying from a particular distributor. Image building can also revolve around symbolic intangibles that appeal to customers who have a need to affiliate with that image. These customers are usually very loyal to a particular distributor or manufacturer and, if appraised, they may not get trapped by parallel importers' lower prices.

Lobbying

Lobbying is a means by which an undertaking acts to push forward its ideas and increase its powers in the public. With regard to parallel imports, Cavusgil and Sikora (1988, 83)

suggest that lobbying can be done in three ways: (1) influencing exchange rate policy; (2) seeking protection against parallel imports; and (3) increasing non-tariff barriers through regulatory agencies. However, within the legal arena in the European context, parallel imports are allowed to exist and non-tariff barriers and all equivalent measures hindering trade are prohibited. The only way which remains for lobbying thus is influencing exchange rate policy. However, the relative powers of individual companies to influence on this factor are almost non-existing.

The preceding discussion dealt with a number of potential strategies for minimising the negative impact of parallel imports. A survey conducted by Palia and Keown (1989, 52) on US exporters to Asia Pacific revealed the most effective strategies used by US exporters. Among the top four were: (1) refusing all orders from non-appointed dealers and selling only to exclusive agents⁷; (2) adjusting prices to a competitive level for those resellers who compete with parallel importers; (3) providing a special promotional allowance to those resellers facing competition from parallel importers; (4) recognising warranties and guarantees only on products sold by the official resellers. The same survey also revealed six strategies perceived as least effective among US exporters. These were: (1) selling product in bulk and letting the importer/reseller package for the local market; (2) special packaging and special marking of the product; (3) product modification; (4) compensation of resellers for lost sales due to parallel importation. It is worth pointing out, that some of these strategies were recommended earlier in the above discussion, and that their ability to curb parallel imports should not be taken for granted. Therefore, when considering suitable alternatives for implementation, company-specific characteristics will have to be taken into consideration.

3.7 Summary

The EC Treaty in itself has been relatively weak in promoting the balance between international property protection and the free movement of goods. It is for this reason that the case law of the ECJ has been instrumental in advancing the principles. To sum up, the case law in this field can be divided into three phases reflecting the Court's changing attitude towards the issue. In the first few judgements the Court vigorously promoted the

⁷Note, that the EU competition rules prohibit discriminatory selling as being anticompetitive.

free movement of goods at all costs, thus emphasising strongly the importance of Article 30 which, as discussed in Section 3.2., outlines the principle of free movement of goods. In the second phase the Court gradually introduced the somewhat vague principles including existence and exercise as well as specific subject matter, which gave more account to industrial and intellectual property rights and meant a better appreciation of Article 36, granting an exception of free movement of goods for the protection of industrial and intellectual property. The third and the current phase is marked by even a better appreciation of the competing values and the economic importance of intellectual and industrial property rights. (Haynes, 1995, 125) The main ideas of the reviewed doctrines are summarised in Table 2 below.

Table 2 Doctrines Developed by the European Court of Justice

Doctrine of exhaustion	<ul style="list-style-type: none"> • As soon as the trademark owner has released the goods into circulation, parallel imports must be allowed.
Common origin Specific subject matter and common origin	<ul style="list-style-type: none"> • Where a party, who has economic or legal links with the trademark owner, places the product on the market, the trademark owner cannot stop parallel importation of such product into his or her country. • Protection against parallel importing may be given if trademark's specific subject matter, i.e., guarantee of origin is impaired or if customers are confused with the essential function, i.e., the quality of the goods.
Existence and Exercise	<ul style="list-style-type: none"> • Parallel importing may not, however, be opposed if it entails an improper exercise of trademark rights which is of such nature, as to maintain or establish artificial partitions within the Common Market.

Although greater value has been given to trademarks recently, manufacturers have not been able to count on trademark protection as preventing them against the threat of parallel imports. Therefore, as Cespedes et al. (1991, 80) recommend, accurate and timely information should be obtained on the existence and magnitude of parallel imports. Salespeople and distributors are often unreliable source of market information and therefore other sources of data, such as product serial numbers, warranty cards, and factory

rebate programmes are preferable in identifying the product's movement and sales volume to parallel dealers. Secondly, a company should re-examine its distribution policies and agreements. The third area needing close attention is pricing. Cespedes et al. argue that the pricing should favour quantity discount schedules that don't create incentives for customers (resellers) to overorder and later sell on the grey market. Forthly, Cespedes et al. recommend that a company should reassess its marketing priorities in the light of grey markets. If the reassessment conforms that increasing market share is a key objective, then the extent to which the grey market makes the product more available and augments volume becomes important in responding to distributors' complaints. Finally, since parallel importing affects manufacturing, marketing and sales, all these functions should be represented in setting priorities and choosing a course of action. The action to be taken should be co-operative meaning that both the manufacturers and the dealer should participate. Table 3 below summarises the available strategies dealt with in this chapter.

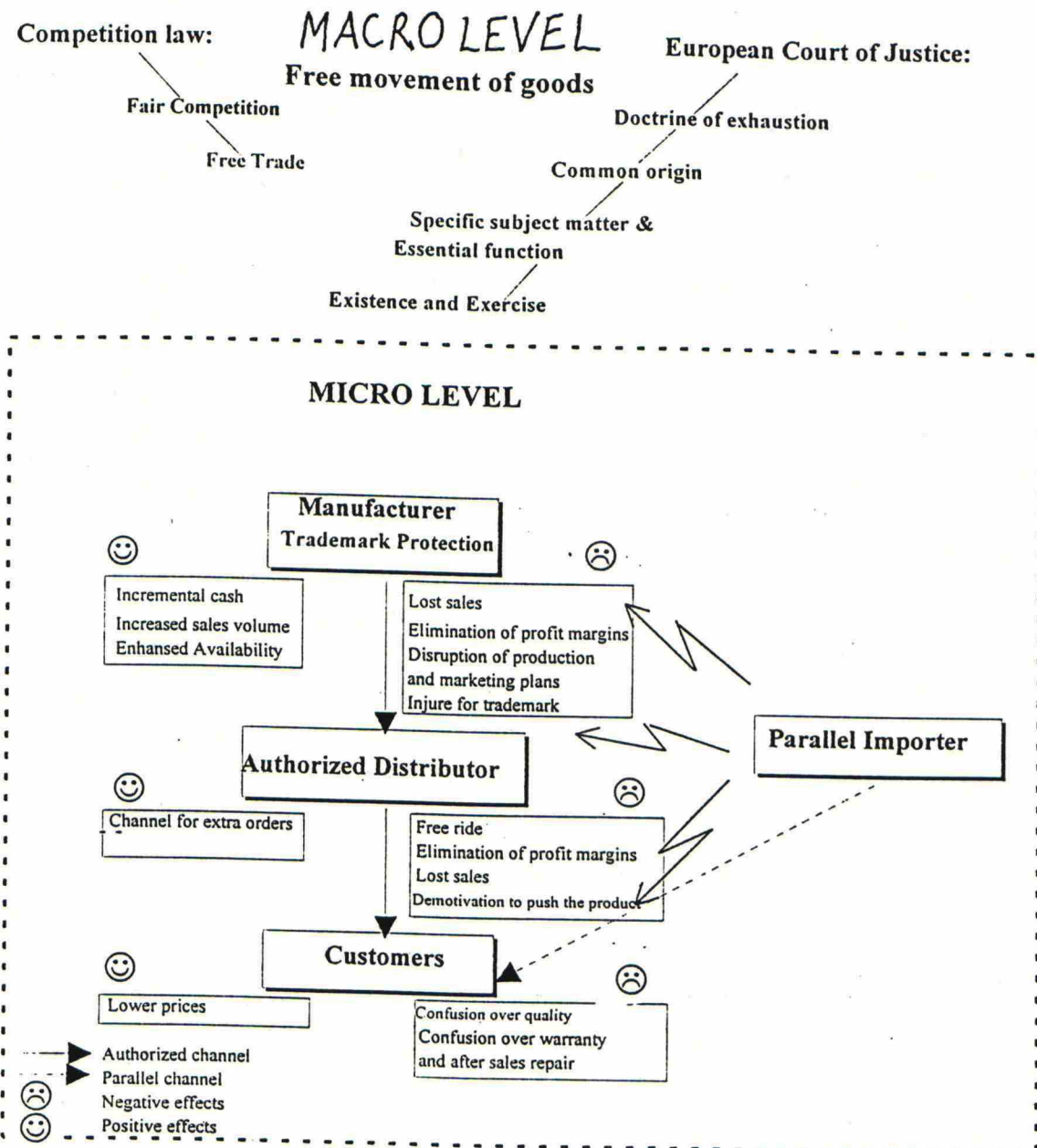
Table 3 Available Manufacturer Strategies to Combat Parallel Importing

Reactive Strategies	Proactive Strategies
<ul style="list-style-type: none"> • Strategic confrontation • Participation • Price cutting • Supply interference • Promotion of grey market product limitations • Collaboration • Acquisition 	<ul style="list-style-type: none"> • Product/service differentiation and availability • Strategic pricing • Dealer development • Marketing information systems • Long- term image reinforcement • Lobbying

3.8 Conceptual Framework

The purpose of this study is to find out how far can the EU principle of free movement of goods justify parallel importing, given a manufacturer's right for protection for his trademark.

Figure 6 Conceptual Framework



Can parallel imports be banned?

Court's judgement

Questioning:

Customer confusion over quality or the origin of the products

Court's reasoning:

No confusion

Confusion

- Strategies available for a manufacturer to combat parallel imports**
- | | |
|--|--|
| <p>Reactive strategies</p> <ul style="list-style-type: none"> Strategic confrontation Participation Price cutting Supply interference Promotion of grey market product limitations Collaboration | <p>Proactive strategies</p> <ul style="list-style-type: none"> Product/service differentiation and availability Strategic pricing Dealer development Marketing information systems Long-term image reinforcement Lobbying |
|--|--|

Parallel Imports are not permitted

As can be seen on the very top in Figure 6 depicting the conceptual framework for parallel importing, there are diverse forces which have to be taken into account when determining the legal status of parallel importing. Within the EU, the principle of free movement of goods, which promotes free trade and open competition, is the main force supporting parallel importing. With maximum freedom to compete, market participators are hoped to be directed by the power of consumers into increasing the quality of their products and keeping their prices down (Horner, 1987, 8). In addition, Figure 6 illustrates that the European Court of Justice (ECJ) has in the many cases on parallel importation examined the EU competition rules and, based on them, developed the doctrines of exhaustion, common origin, specific subject matter and exercise and existence, which serve as guideline for succeeding judgements (e.g., Hayens, 1995; Groves, 1994; Oliver, 1996; Glas and Verbeke, 1994; Tritton 1996; Kunze, 1991; Rissanen & Korah, 1991; Lowenheim, 1995). These doctrines define states or conditions under which parallel importing must be justified or may not be excluded.

Firstly, within the European Union the EU wide exhaustion of trademark rights affects trademark owner's rights to decide on the movement of his goods (e.g., Loewenheim, 1995; Rasmussen 1995; Beier, 1995; Oliver 1996; Shea 1995). His trademark rights are regarded as exhausted as soon as he, or someone else with his consent, has released the trademarked goods on the markets. Secondly, the doctrine of common origin states that economic or legal links, e.g., parent-subsidiary links, prevent opposing of parallel imports. The courts have decided this based on the assumption that there cannot be confusion over origin of the goods if the trademark owner and the party who puts the goods into market belong to a same group of companies. The third doctrine suggests that parallel imports may be prevented if trademark's specific subject matter, i.e., guarantee of origin or essential function, i.e., guarantee of quality to customers is impaired. Finally, according to existence and exercise, parallel imports may not be opposed if such opposing entails improper exercise of trademark rights, so as to maintain or establish artificial partitioning within the Common Market. Thus, due to the doctrine of exhaustion of trademark rights as well that of existence and exercise, free trade often outweighs the protection of a trademark owner's right as well as the protection of the public from confusion (Oliver,

1996). Therefore, the existence of these forces described often lead the courts to determine in favour of parallel imports. The EU principle of free movement of goods as well as the other forces described have to be considered as given macro level factors which determine the appropriate legal boundaries within which the different parties along the distribution chain may operate.

The middle part of the Figure 6 illustrates the micro level and shows both authorised and diverted distribution channels. The three strokes of lightning pointing to the manufacturer, authorised distributor and customers illustrate the harms of parallel imports for the authorised channel members. Given the negative effects parallel imports have on a manufacturer, he has a greater incentive to oppose parallel imports than to tolerate them. Yet manufacturers' trademark can protect him against parallel importing only if trademarks' specific subject matter, i.e., guarantee of origin is impaired, or if customers are confused over the essential function, i.e., the quality of the products. Because a parallel importer competes head on with manufacturer's official and authorised resellers, these resellers are likely to witness lost sales and reduced profits of the goods sold, and, similar to the manufacturer, have an incentive to stop parallel imports or enter themselves the grey market. Since parallel imports are often lower priced than authentic goods, customers can be seen to benefit from parallel importing. On the other hand, customers may be negatively affected of parallel imports if quality differences exist between parallel imports and authentic goods in terms of potential customer deception and confusion.

Thus, Figure 6 shows that protection against parallel importing within the European Union may be given in the case of which trademark's specific subject matter i.e., guarantee of origin is impaired, or if there is customer confusion over different quality. The kinds of circumstances where a customer may confuse with the product's commercial origin or quality and which may thus justify a ban on parallel imports are e.g.,: (1) a new trademark affixed by a parallel importer to the imported goods; (2) repackaging of goods on part of a parallel importer in such a way that trademark's guarantee of origin is impaired; (3) misleading customers by a different quality standard or altering or damaging of the product; (4) injury of trademark owners' business reputation e.g., if trademark has been stolen and is exploited by a parallel importer. However, parallel importing cases seldom

involve circumstances which would render the business unjustified as infringing the rights of a trademark owner and therefore, the legal status of parallel importing remains favourable.

For the owners of trademarks the general stand taken means a somewhat limited magnitude of manoeuvres for confronting parallel importers. As parallel importing cannot be stopped, trademark owners must carefully weight the pros and cons resulted from it. Consequently, trademark owners can resort to strategies presented on the bottom of the Figure 6, which aim at minimising the loss and help to tolerate the existence of parallel imports.

4. METHODOLOGY

4.1 Case Study Approach

According to Yin (1989, 19), the form of research questions is an evident determinant for the research strategy to be adopted. In fact, Yin (1989, 13) argues that case studies are particularly suitable (1) when “how and “why” questions are being posed; (2) when the investigator has little control over events; and (3) when the focus is on a contemporary phenomenon within some real-life context. As this study centres around the issue of industrial property owners' rights on the one hand, and the justification of parallel imports on the other, the pertinent research questions for the study were set as follows:

- (1) How far can the principle of free movement of goods justify parallel imports, given a manufacturer's right for protection for his trademark?
- (2) How can a manufacturer minimise the negative impact of parallel imports?

According to Yin (1989, 17), these types of research questions warrant the employment of an exploratory case study method. The first question is a “how” question - aiming to determine certain limits for a defined phenomena - which is explorative by nature and hence, affords a rationale for using an exploratory case study Yin (1989, 17). The second “how” question is an extension for the first “how” question. More precisely, it goes a step further in dealing with the implications traced by the first question. Thus, it

is assumed that the findings to the first question determine certain boundaries within which an actor (in this context a manufacturer) may operate. The second question then attempts to develop a strategy framework which aims to suggest *how* a manufacturer may operate within the defined boundaries. As Yin (1989, 19) suggests, a case study method is a very suitable research approach for how questions, in particular.

Given the two dimensional aspect (conflict of interest between manufacturers and parallel importers) this study adopts, a qualitative case study approach, which permits the researcher to analyse, contrast and compare, seemed particularly appropriate (Miles & Huberman 1994, 7). Furthermore, the apparent complexity of the research phenomena called for an in-depth investigation. In this setting too, a case study seemed to fulfil best the requirements of such puzzled context under study. Additionally, a notion that an in-depth investigation has a merit of reducing the chances of data misrepresentation and vulnerability supported the selection of the method.

Finally, the selected company Mobil Oil offered a suitable ground for a case study investigation, which will be highlighted in the next section. In summary, it can be concluded that the reasons attributable to the selection of the case study method were to be traced from the following factors: (1) research questions; (2) the research problem; (3) depth of analysis; and (4) type of case company.

4.2 Selection of Case Company

Reverting back to the research objective, which is to trace the relationship between trademark protection and the free movement of goods principle, and to define the legal status of parallel importing, a logical prerequisite was to find a company possessing a trademark and facing parallel imports. The researcher contacted a few companies operating in Finland which to her knowledge had faced the problem of parallel imports, and requested their willingness for an investigation. One of them, although itself reluctant to allow publicity within this sensitive area, suggested the researcher should contact Mobil Oil which it knew had tackled with the same problem. The researcher thus followed the advice and, as a consequence, negotiations with two marketing

managers showed that the company met the given criteria. Mobil Oil oy ab is a subsidiary of a global US corporation and a producer of lubricants under a Mobil Oil trademark. In Mobil Oil, due to parallel importers' practise, manufacturers and authorised retailers have been forced to witness lost sales and impaired business reputation for years now.

4.3 Data Collection and Analysis

The data for the case study analysis was gathered by conducting interviews, observing and reviewing relevant company material.

Interviews

Preliminary discussions with the management revealed a lack of research on parallel importing in the distribution channel. More specifically, management showed interest towards an investigation on the three different types of resellers and their motivations in the distribution chain. These were (1) loyal retailers who sold Mobil oil refined and packed in Finland, (2) opportunistic retailers who sold both Mobil oil refined and packed in Finland and parallel imported Mobil oil, (3) wholesalers who acted as parallel importers and retailers who bought from these wholesalers and thus sold parallel imported Mobil oil. In other words, the groups varied in importance to Mobil in terms of sales and reference value. In addition, as the theoretical part of this study indicates, to gain a holistic view of the different opinions and attitudes involved in the parallel import-debate, the managerial level i.e., the owners of the Mobil Oil trademark in Finland were also included in the case investigation.

Case units to the study were selected with the co-operation of Mr. Fogde, whose role with the researcher throughout the research process resembles that of a key informant (Patton, 1990, 173 and Yin, 1989, 89) He provided the researcher with additional sources of information and explanation for request. Each of the groups mentioned above were regarded as units of analysis having a particular interest for the study's purpose, and accordingly, were incorporated in the study (Patton, 1990, 53). Three interviews of each of the groups named were conducted, with exception of the group parallel importers where the researcher, despite of several attempts, was able to find but

two candidates willing for an interview. Therefore, a total number of eleven interviews was conducted⁸. Table 5 provides a summary of the interviewees.

Table 5 Distribution of Interviewees

Type of Interviewee	Name	Company	Job Title
Loyal Resellers	Jarmo Paasikivi	Auto Paasi	Tradesman
	Ted Lökström	Varakiri	Tradesman
	Ekku Uotinen	Lauttasaaren Autotarvike	Tradesman
Opportunistic Resellers	Eero Heinonen	Loviisan Autovaraosa	Tradesman
	Erkki Broman	Tapiolan Varaosakeskus	Tradesman
	Jukka Liittinen	Varaosa Liiteri	
Parallel Importers/ Resellers	Christer Lindberg	Biltema	Tradesman
	Kirsti Väänänen	Puupenni	Executive Officer
Representatives of Mobil Oil	Arto Luostarinen	Mobil Oil	District Manager
	Kari Mannermaa	Mobil Oil	Head of Sales Management
	Jarkko Stenros	Mobil Oil	Marketing Manager
	Total Number of Interviewees	11	

⁸Empirical data were not collected on the endcustomers of Mobil Oil. The reason stemmed from the purpose of the study and research questions which focused manufacturer-distributor relations instead of endcustomers.

Additionally, the embodiment of both loyal and opportunistic retailers in the case study analysis was considered to permit comparison and contrasting between the units of analysis, which would bestow a deeper insight into the essence of the issue under investigation.

As the aim of the empirical part is to collect data on the opinions, feelings and attitudes held in the field, utilisation of qualitative data seemed well supported. As Patton has noted, qualitative methods are particularly useful for capturing differences among units of analysis as well as for analysis done in depth and detail (1990, 104, 165). Furthermore, Miles and Huberman (1994, 10) note that due to the inherent flexibility of qualitative studies i.e., that data collection times and methods can be varied as a study proceeds, further confidence of the occurred events can be ensured. When collecting the data, the researcher took advantage of this notion by always adapting the set of research questions according to the interviewee characteristics. In fact, given the sensitivity of the topic, it was not only the questions which had to be adapted, but a whole different strategy was needed to approach the three groups in order to reach their consent for an interview. For example, contacting and interviewing parallel importers had to be carried out by emphasising the notion that there exists a favourable stand toward parallel importing. In addition, to be able to compare and contrast answers later, it was very important to be aware of these different characteristics prior to and in the course of an interview, and exercise utmost care in listening the voice of the field for a correct capturing of this data. Indeed, the qualitative data are able to convey particularly well the voice of “real life” since the data focuses on ordinary events in natural settings (Miles and Huberman, 1994).

As Patton (1990) advises, interviews were designed by using a general interview guide approach. The interview guides contained common topics for each of the four groups interviewed but the wording of questions were adopted according to particular characteristics of each group. The guides were sent to individual interviewees in advance to allow prior viewing of the topics. The guides also facilitated interviewees’ following of the subject areas in the course of an actual interview. The approach used enabled the researcher to word questions spontaneously and establish a conversational style (Patton, 1990, 283). Additionally, allowing spontaneity also for the respondents provided the researcher sometimes with access to new perspectives. In the course of

fieldwork interview questions were modified as well as some new ones framed when warranted by the obtained new information. To allow comparison and contrast of different opinions, same key subject areas were asked from all groups of interviewees interviewed. By doing so different, sometimes opposing views and opinions of the research phenomena were obtained. These were regarded as valuable perspectives which indeed widened the researcher's understanding of the matters.

Interviews were conducted at the premises of the individual interviewees; most often in respective retail outlets. In order to capture fully and fairly the words of the interviewees and maintain an interactive nature of interviewing, tape-recorder was relied upon as permitting the researcher to gain these advantages. However, it was never used without first asking the interviewee's permission. In addition to tape recordings, also verbatim notes were taken during the interview. Complete transcription of the recorded data as well as of field notes taken was carried out after the interview as soon as possible.

Observation and Company Material

Although the primary data collection method was interviewing, observation, several documents and company material was used as background information on the company. Capitalisation on multiple sources of evidence was considered to increase validity and comprehensives of the issue under study (Patton, 1990, 244). As a method used, observation was not deliberate, straight observing of events or processes but rather informal observation and reporting of the feelings and reactions as well as of the physical settings and social interactions that took place during the interviews (Patton, 1990, 239).

The analysis of the obtained data began already in the data collection phase. Insights and ideas that emerged during the interview process were written down for subsequent processing. Interviews were recorded and saved on tapes; each interview occupying one side of a tape. The tapes were labelled by interviewee names, interview dates and groups they represented. Thus, the researcher was empowered to refer back to direct interview quotations. In some measure, quality control occurred after transcribing the interviews. Typed transcription were reviewed in order to reorganise the interview replications and reduce abundant data before final analysis. Since all the interviews were conducted in

Finnish, the researcher had to translate the interviews in English. Although challenging, the researcher found the searching for suitable equivalent English expressions very enjoyable and rewarding a task. Throughout the data analysis, reference was made back to the corresponding literature.

4.4 Validity and Reliability

Yin (1989, 42) suggests that the quality of research designs should be judged according to construct validity, internal validity, external validity and reliability. The using of combination of data types i.e., interviewing, observation and written documents, contributed to the *construct validity* of the study. As Yin explains it, building construct validity to the study means that correct operational measures are established for the concepts being studied.

During the data collection process it was not always possible to check the interviewee's answers for the real state of fact or ultimate truth. Since there were many rumours moving around e.g., about the movement of parallel imported oil among the interviewees, data triangulation sometimes resulted in inconsistent and contradictory information. Therefore, as the researcher analysed this information, certain amount of assumption and inference took place, whereby the question of *internal validity* was addressed. Although internal validity generally refers to the problem of creating a causal relationship and concerns mainly causal or explanatory studies, Yin (1989, 42) suggests that in the case study context it may be extended to the problem of making inferences.

To avoid the pitfalls of *external validity* in case studies, Yin (1989, 43-44) recommends that the researcher should try to do analytical generalisation of the results to some broader theory, not other case studies. In the present study the theoretical framework served as a domain to which the study's findings were being generalised through replication.

The files of transcribed interview data, as well as original tape recordings and written documents constituted a formal, retrieval data base which served as a chain of evidence for an external observer and increased construct validity and *reliability* of the study.

Similarly, tape recorded data ensured that all important pieces of information were saved, whereby data losses and ambiguities could be avoided later on and a higher reliability level could be achieved. In addition, chain of evidence was established by providing citations to specific case study data base within the case study report itself (Yin, 1989, 98-99). To assure data accuracy, potential ambiguities of interview responses were always checked by asking the same questions from other interviewees. Moreover, should ambiguities have arisen on interpretation of individual opinions, the interviewees were contacted for further clarification of the given answer.

To increase the validity of the study some amount of data verification took place during the data analysis period. This was done by allowing the key informant to read through the last draft which enabled the researcher to correct potential errors and incorrectness before the final version. However, given the sensitive area of parallel importation, it is possible that the respondents acting as parallel importers had alarmed themselves with precaution and the need to secure their position. In the light of the above, their answers may contain some degree of bias, which in turn reduces the validity of data.

5. PARALLEL IMPORTATION IN MOBIL OIL: PERSPECTIVES FROM MOBIL OIL, LOYAL RESELLERS AND GREY MARKET RESELLERS

5.1 Mobil Oil - A Producer of Lubricants Under Mobil Oil Trademark

Mobil Oil is a leading oil, natural gas, and petrochemicals company with operations in more than 125 countries. Operating divisions, subsidiaries, and affiliates in various countries conduct their businesses under direction and control of their own management. *Mobil Oil oy ab*, which is an independent corporation since 1906, concentrates on the production and selling of lubricating oils under Mobil Oil trademark registered in Finland. Oils are produced on the basis of the quality standards set by its US parent.

In addition to the core product, lubricant, by-products (e.g., wax emulsions for wood particle board industry) are also produced. Since 1957, production facilities are located

in Naantali where 30 000 tons of oils are produced annually. Today 95% of all Mobil products sold in Finland are produced in Naantali.

5.1.1 Fully Synthetic Lubricants

The most important ingredient of lubricants is mineral oil. It consists of thousands of different components whose qualities and suitability for lubricating purposes vary to a large extent. In production of fully synthetic lubricants, components of even quality are separated from base oil. By combining these and appropriate additives, a product which closely meets the specified standards is being developed. Indeed, it is the synthesis which gives lubricants such superior qualities compared to basic mineral oils. Mobil Oil has over 25-years of experience of production of fully synthetic lubricating oils. Thanks to its competent product development, the company is able to supply automotive oils, industrial oils, as well as oils for marine and navigation. Automotive oils include oils for passenger cars, motor bikes and heavy transport vehicles, gears and rear axes, automatic gear-box oils as well as fully synthetic lubricating greases.

5.1.2 Production, Storage and Delivery

Crude oil for production of synthetic lubricants is imported for further processing from France and Great Britain to the facilities located in Naantali. Other additives which are needed in refining come from several well-known chemical producers. A typical lubricant consist of two different forms of crude oils and of 4 to 6 additives which are brought together and mixed up in blending plants according to a specific formula. Compounds can vary heavily in size; the smallest weight 1500 kilos whereas the weight of the biggest compounds can reach 600 thousand kilos. Crude oil and additives as well as saleable products are stored in containers and barrels.

The oil is packed in containers, packages, barrels and jugs and delivered to customers in tank trucks. In 1993, for example, the oil was packed in following ways:

- 450 pieces of 1000 litres containers

- 30 000 pieces of barrels
- 87 000 pieces of 20 litres jugs
- 900 000 pieces of 4 litres packages
- 100 000 pieces of 1 litre packages

It is mainly the 1 litre packages of Mobil lubricants which are subject to competition from parallel imports. The greatest concern for Mobil Oil Finland is the US produced product which parallel importers and grey market resellers purchase in the United States and bring to Finland where it competes with the official Mobil lubricants sold by loyal resellers. The oil comes in slightly different quality and a container, and is marketed here at a lower price than the official product produced in Finland.

5.1.3 Quality Check-up

To meet the quality expectations of its customers as well as the recommendations of automobile producers world-wide, Mobil Oil practices constant quality checking in the Mobil -laboratories in each of the operating countries. In Finland, all the stages of production, beginning from the acquisition of additives are controlled by automatic data processing. Samples taken of the different production processes in a laboratory locating close to the production facilities, guarantee a continuous quality check-up. The samples must be accepted before the production process may continue. To illustrate the careful quality check-up of Mobil 1 Rally Formula, the additives and the product itself have been checked up 18 times, and 32 examinations have been conducted before the product is packed for sale. In this way the high quality of Mobil products is being ensured.

As a recognition of the total quality of the products, the company has received quality assurance certificates awarded by the International Standards Organisation (ISO). In addition, the company conducts own total quality management by continuously observing the needs of customers and by meeting these needs.

In the course of years Mobil Oil has faced parallel importing of synthetic motor oils produced in some of the companies' foreign facilities. Not only have parallel importers

raised the issue of trademark owner's right to protection but, furthermore, parallel importers crabbing of retailers sales have caused bitter feelings amongst retailers. Since fully synthetic lubricants, in particular, have been found to be subject to parallel importing, the empirical part of the study thus concentrates on parallel importing of fully synthetic lubricants.

5.2 Distribution Channel of Mobil Lubricants

The selling of Mobil lubricants is organised through 8 Mobil Oil district managers who look for potential customers at the resale level and make sales contracts. However, there are no written contracts made with resellers, as indicated by one of the district managers in the following quotation:

“We, district managers select resellers. Generally, requests come from resellers but we may also offer them Mobil representation if we see potential candidates. Our agreements with resellers are made verbally.”

The fact that recruiting goes word-of mouth makes things simpler and less bureaucratic and it is therefore easy to understand as being the preferred practice. This is contrary to the literature, in which manufacturer-reseller relationships are often presumed to be based on written terms (e.g., Weigand, 1989). This may be due to the fact that in a number of previous studies the victim of parallel importation has not been a subsidiary of a foreign parent, but an authorised distributor for whom the foreign manufacturer has granted distribution rights in that territory. Under such an arrangement contractual ties based on written terms are customary.

The majority of Mobil Oil resellers are independent retailers who sell oil directly to endcustomers. Yet a minority, some 1-2% of Mobil Oil customers are wholesalers. Both types of resellers order the oil from Mobil Oil district managers or from the company's customer service department. Main retail customer groups are authorised car dealers, independent work shops and car spear parts shops. In these stores Mobil Oil occupies a share as high as 60 to 70% of the corresponding competitive motor oil brands. This is supportive of the fact that parallel importing often occurs within high selling brands which have a high customer preference.

In addition to its core business, producing lubricants in Finland, Mobil Oil imports some amounts of motor oils mixed and packed in Europe, for example in Sweden and France. Subject to own importing is, however, merely small 1 litre packages which contain oil of 0W40 viscosity. The reason for importing oil is explained to be the relative small production of 1 litre packages in Finland where oil is mostly in packages of 4 litters. Mobil Oil's own importing must be distinguished from parallel importing because the oils, prior importing, have been adapted to suit the Finnish conditions in the early phase of blending and packaging. Finnish and Swedish labels, for example, have been affixed on packages, whereas the labels on parallel imported Mobil lubricants appear to be in English or in some other language, signifying the country of origin.

5.2.1 Loyal Resellers - Their Selection and Support

Mobil Oil selects its resellers with care, which is well illustrated by a comment made by one company member:

“Certainly we must be assured of a reseller's capabilities to sell and market our products and be able to instruct customers of them. If a reseller does not fulfil requirements as to being able to reach reasonable sales levels, then instead of selling him directly, we will recommend him to buy the oil from wholesalers.”

The same interviewee noted that creditworthiness and solvency of a potential candidate play a role, too. Yet Mobil does not demand its resellers for minimum selling requirements. This is in line with the respective EU competition rules which stipulate that resellers may be selected according to qualitative criteria whereas quantitative requirements are forbidden (Article 85). The rules also state that all resellers fulfilling the criteria, which should be uniform for everyone, should be granted reseller rights. Instead of dictating the rules of the game, Mobil Oil prefers doing business planning with them in a co-operative manner, as commented by one company representative. In fact, co-operation was said to be the key word in the reseller policy within the company. This is in accordance with the literature which emphasises placing special weight on maintaining good dealer relations. Sound manufacturer-reseller links are likely to contribute for the overall success in business (e.g., Cespedes et al., 1988; Cavusgil and Sikora, 1988).

Manufacturer- reseller relations within Mobil Oil are nurtured in the field by district managers who do constant visits to the reseller outlets. Furthermore, according to the interviewed company members, loyal resellers are supported by e.g., joint advertising campaigns whereby ideas and costs are shared. In addition, resellers get advertisement material for point-of-sale advertising as well as training and information on products and markets. Moreover, they are able to get a variety of Mobil products of their choosing, and are thus provided with continuity and confidence of supply. This is illustrated in the following comment by a company member:

“We want to give them support so that they would succeed in the business in the best way. We do not intend to sell big volumes to our resellers, but instead make them sell a lot to end customers”.

Supporting loyal resellers was also strongly emphasised in literature. Building strength in the distribution network through trust and support was considered to be one step in the battle against parallel importers. (e.g., Cavusgil and Sikora, 1988; Cespedes et al 1988; Weigand, 1989) It appeared, however, that Mobil Oil did not want its loyal resellers to know too much about the issue of parallel importing because they feared that the loyal resellers might find it lucrative and go into grey markets. Yet open communication and a supportive attitude would be better assets to maintain them loyal to the company in the long term.

5.2.2 Loyal Resellers' Comments for Support by Mobil Oil

Although two loyal resellers mentioned the following benefits from staying loyal to Mobil Oil and selling only official oil: (1) confidence and continuity of supply; (2) no need for inventories; (3) marketing and advertising support; (4) discounts on volume purchases (e.g., Cavusgil and Sikora, 1988; Cespedes et al 1988; Weigand, 1989) one loyal reseller, however, did not seem quite convinced of the manufacturer's reward for loyalty. He commented the following:

“I cannot say how they reward us for our loyalty. I guess I should sometimes purchase parallel imported oil in order to find out how they react to it.”

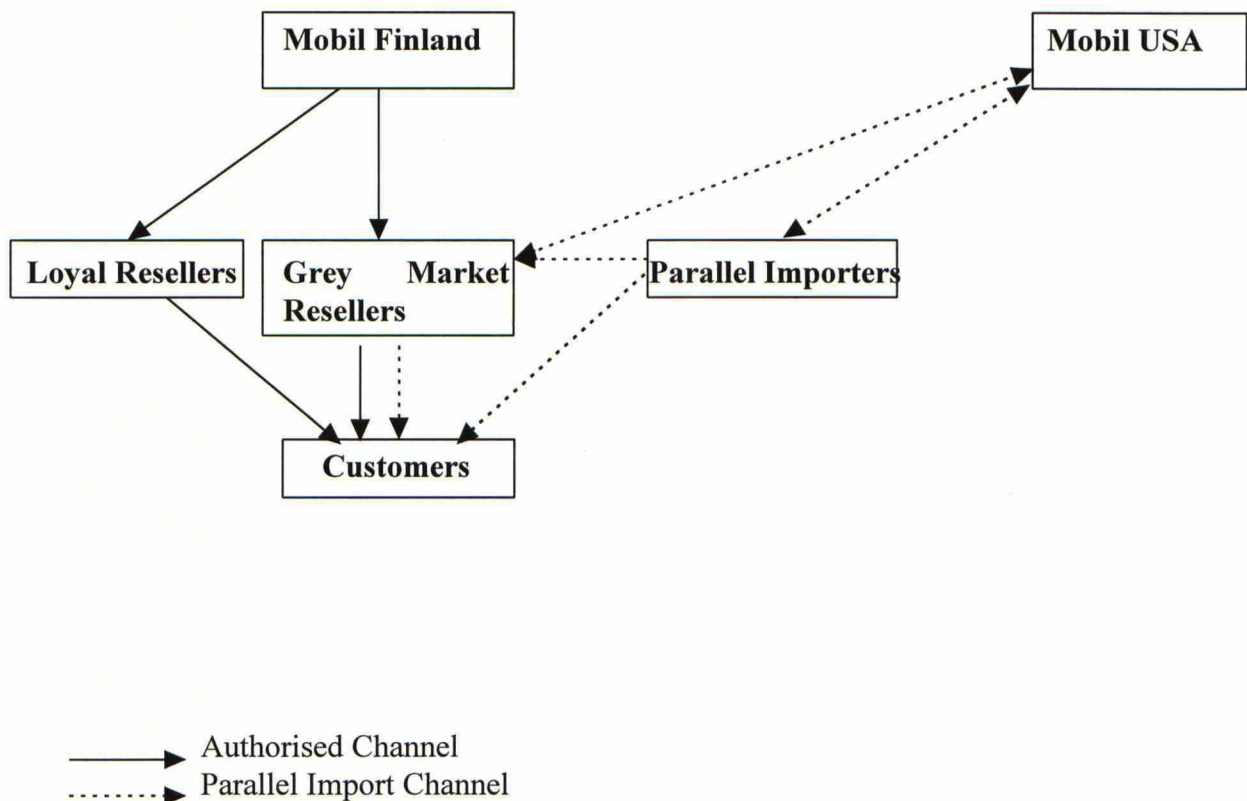
Admitting the fact that some are never contented, it seems, however, that loyal resellers could be made more aware of their importance to Mobil Oil. Based on the findings,

loyal resellers seemed to value an ongoing relationship with a manufacturer, which gives them a feeling of confidence and trust. Some gave credit for Mobil of the efforts to build a relationship based on co-operation. This is reflected in the answers of loyal resellers to the question where they were asked to indicate the order of importance concerning certain business aspects. Hence, manufacturers support and a relationship based on trust were valued much higher among loyal than among grey market resellers and parallel importers for whom the same question was posed. Worth noting is, however, that a product which is a high seller and has a good reputation was ranked the highest among loyal resellers. One may thus argue that Mobil Oil should continue to stress its role in supporting and assisting the loyal resellers. Similarly, Mobil Oil could educate its dealers about the reasons of parallel importing, its target areas as well as train them on ways to counter parallel importing activities. This may contribute to acceptance and enhanced understanding of the threat (Cavusgil and Sikora, 1988).

5.3 Parallel Importers and Resellers of Parallel Imported Mobil Lubricants

In spite of the numerous incentives which Mobil Oil offers to its loyal resellers, some have chosen to follow own, independent ways in oil resale business. More specifically, there are dealers who import Mobil lubricants from the US and either sell directly to endcustomers or resell the oil at the retail level. Figure 5 illustrates the authorised distribution channel and the channel for parallel imported Mobil lubricants.

Figure 5 Parallel Import Channel and the Authorised Distribution Channel for Mobil Lubricants



Hence, some retailers buy parallel imported oil from these dealers and, if resources permit it, some of these retailers may also have own import of Mobil Oil from the US or from the European countries. For example, Sweden, Italy, France, Greece and Belgium were mentioned as countries of import. According to literature, before this is profitable business, these resellers must be able to amortise the transportation costs in the goods sold and still be able to sell at competitive prices (Lowe and McGrohan, 1989). These types of dealers in the distribution chain of Mobil lubricants are called parallel importers and resellers of parallel imported oils. Parallel imported lubricants are found mainly in equipment stores and general repair outlets as well as in markets and discount stores where they pull in customers who look for low prices. This is in accordance with the literature which stressed that a cut-rate price for a popular parallel imported brand is often used as a big drawing card to get customers into the store (Cespedes et al., 1988). This is what makes parallel importing of well known brands so lucrative.

5.3.1 Routes for Parallel Imports of Mobil Lubricants

Two interviewed parallel importers mentioned their direct source of imports being the parent company's stocks in the US which can be found in various locations in the States. More typically, interviewed resellers of parallel imported oils operated as intermediaries between parallel importers and endcustomers. In addition to parallel imported oils, some resellers had also varying amounts of official Mobil lubricants in the assortment. On the contrary, some of them carried official lubricants at all times in the product assortment but had varying quantities of parallel imported oils. In fact, the literature explained this to be common for parallel importing business where saleable quantities vary in terms of fluctuations in availability.

Illustrative for parallel imported oil is the diverse intermediaries and big stocks on the way. This is in accordance with the literature. To illustrate, one big wholesaler told that he parallel imported Mobil lubricants (among other automobile products) from the US to the company's main inventories in Switzerland. From Switzerland the oil was imported in Sweden where it was stocked again for further delivery. One loyal reseller, in turn, had seen in person how the routing of oils deviated. According to him, discount stores in Europe often buy oil from small agents. In one discount outlet in Denmark, for example, he had personally seen Mobil lubricants which originated from Belgium and contained British labels as signifying its intended destination.

To summarise, there are thus two types of sellers of parallel imported lubricants (wholesalers and retailers), and parallel imports flowing to Finland originate, for the most part, from the US but to some extent also from Europe. In the remaining part of this study those retailers who resell parallel imports can also be referred to as grey market retailers as a distinction of loyal retailers. Both grey market retailers and parallel importers together can be referred to as grey market players. Figure 6 clarifies the division into these groups.

Figure 6 Division of Grey Market Resellers



5.3.2 Underlying Causes for Parallel Importing of Mobil Oil

Interview data reveal that *price* was the central determinant for commencing parallel importing for all the respondents. In literature, too, manufacturers price discrimination is generally seen as one of the key conditions allowing parallel importing to exist (e.g., Cespedes et al., 1988; Cavusgil and Sikora, 1988; Weigand, 1989) To illustrate, one reseller had been able to purchase oil at 50-100 % lower price than the price in the official channel. For this reseller the lower price meant enhanced competitiveness because it enables selling the oil cheaper than competitors. In fact, staying competitive and offering customers the same products at competitive prices as neighbouring competitors were important determinants for all grey market players. Lower price in turn enables higher volumes to be attained, a notion which grey market resellers also considered important. While it is the parallel importer who collects the biggest profits, resellers are still able to retain 10-15% margins, on average, of their sales to endcustomers. This reflects the general level of attainable margins suggested in the literature (e.g., Cespedes et al, 1988.).

In addition to low price, parallel importers and grey market resellers regarded *product's good reputation* and *high selling potential* as important contributing factors for their business. Finally, *the need to get rid of oversupply* had given impetus for grey market activities for some respondents. Moreover, product's purchase price as well as good reputation and high selling potential appeared to be key determinants when respondents were asked to indicate their order of importance concerning certain business aspect given. Worth mentioning is that satisfied customers were only ranked third important by grey market players. The literature gives support for this notion by explaining that

parallel importer's long term goal seldom is to satisfy customers (e.g., Wires, 1982). On the contrary, their motives often stem from self-seeking purposes.

5.4 Pricing Policies

This section and the following subsections deal with the issue of pricing. First, the pricing policy of Mobil Oil to its resellers will be looked at. Thereafter, resellers comments on the manufacturers' pricing will follow. Finally, the attention is turned to parallel importers' pricing of the oils to endcustomers. Comments from all types of interviewees will be included in the last subsection.

5.4.1 Mobil Oil Pricing Policy

The empirical findings demonstrate that Mobil Oil exercises a somewhat uniform resale pricing policy. Eventual price differentials between resellers may result from discounts on large order sizes, and sometimes also slight variations based on regional differences in competition are allowed. This is supported in literature where pricing in favour of large orders was perceived as being customary practice among manufactures (e.g., Cespedes et al., 1988). In the literature this policy is considered to reflect the scale and learning-curve economies inherent in large orders as well as the importance of maintaining big customers in the fierce competition. When asked how independently resellers are allowed to price the oil for endcustomers, one company representative commented:

“Resellers are free to determine themselves the resale prices. We can only give them recommendations on the levels at which it is possible to attain certain margins.”

The perception among company representatives was, however, that due to competition from parallel imports, the recommended price is being undermined by 30% by the resellers in the market. Furthermore, the price of Mobil lubricants to parallel importers and resellers of parallel imported oils is somewhat higher than the price for loyal resellers. This was explained to be due to the lower volumes which the grey market players purchase in comparison to the volumes purchased by loyal resellers, a notion whereby a higher price is warranted.

5.4.2 Loyal Resellers' Comments on Pricing

Loyal resellers readily admitted, that the price policy of the manufacturer favours the resellers who stay loyal to them and sell only Mobil oil which is refined and packed in Finland. As one loyal reseller put it:

“The ones who sell parallel imported Mobil oil will have to pay a somewhat higher price for official Mobil oils.”

Charging a higher price for resellers of parallel imported oils was seen by loyal resellers as a tool whereby Mobil Oil punishes grey market players. One may speculate, however, that this is false reasoning, since if and as soon as the price differences become substantial, Mobil Oil would run the risk of being sued of arbitrary price discrimination which is forbidden in law. Acting against the law was by no means in the company's interests.

5.4.3 Pricing of Parallel Imports; Comments from Parallel Importers, Company Representatives and Loyal Resellers

Parallel importers admitted that in the US they are able to buy the oil at substantially lower prices in super markets and large retail chains than from Mobil Oil in Finland. This was explained to be due to different pricing of Mobil lubricants in the US than in Finland and the value of dollar. In the literature these are generally stated factors giving impetus for parallel importing. In order to retain low price levels for their purchases, parallel importers said they switch suppliers if necessary. As quoted by one parallel importer, low price as well as the brand's good reputation are inherent key determinants to carry out the business:

“Pulling in customers is very easy if you hold a strong brand in the assortment and that's what Mobil is all about for us”.

For the many resellers, Mobil lubricants are the biggest sellers measured in sales units in the entire product assortment, occupying even 90% of all oils sold. For one grey marketer the relationship between parallel imported oils and official oils was 90% for parallel imports and 10% for official oil.

As the literature has suggested, characteristic for pull-in products is their low retail price. Although margins remain low, the business is compensated by sales based on high volumes and fast cycle times. (e.g., Cespedes et al., 1988) However, the prices of parallel imported Mobil lubricants are subject to great variations, as concluded by one *company representative*:

“Whereas some [resellers] sell 30-40% lower [than the official price level in the field] and take no margins, others base the business merely on reaping high margins and selling at price which is equivalent to our resellers’ prices”.

By way of contrast, *loyal resellers* are much more reluctant to believe in profits made by parallel importing. Their perception of attainable margins was 5-10 %. This is illustrated by an opinion of one loyal reseller, who said that parallel importing is not fascinating because, due to fierce price competition, it is nearly impossible to attain higher margins than 5 to 10 %. In addition, loyal resellers believe that if they turned to parallel importing, parallel importing could compensate only part of the business since other oils and the like would still have to be purchased from the manufacturer. One loyal reseller highlighted the developed, competitive wholesaling business in Finland which provides an excellent basis for resale operations. He therefore saw there no point in starting own importing but instead, regarded it as wasting of resources. Thus, it seems that resellers who remain loyal to Mobil Oil, have inferior perceptions of the attainable margins compared to grey market resellers who actually have earned them.

5.5 Differences of Parallel Imported Lubricants Compared to Lubricants Produced in Finland

It appears from the interview data that parallel imported lubricants differs from the oil blended and packed in Finland in quality, package and labelling. Mobil Oil oy ab stresses the fact that it exercises extreme quality policy by ensuring that their oils exceed international quality standards. Therefore, a superior formula has been selected for oils to be sold in Finland compared to oils sold elsewhere. In addition, the composition of additives which have been blended with the oil in Finland is quite unique, given the heavy seasonal fluctuations in the country’s temperatures. Viscosity and a so called API- classification (American Petrol Institute) indicate these characteristics and are to

be found on labels affixed in packages. The differences between official and parallel imported Mobil lubricants are now discussed in more detail.

5.5.1 Quality Differences

Viscosity refers to oil's endurance in low and high temperatures, indicating that oil which has a wide viscosity classification retains its fluid qualities both in low and high temperatures. *API*, in turn, tells about the quality of oil, i.e., the better the quality, the more the oil contains additives. Parallel imported oils, which have been produced and packed elsewhere, have different viscosity and API -classifications as the oils blended in Finland and, moreover, do not go through the same product tests as oils in Finland. Whereas oils blended in Finland normally contain such viscosity as 5 (endurance for low temperatures) w 50 (endurance for high temperatures), 0w40 or 10w40, typical viscosity of parallel imported oils sold in Finland appear to be 5w30, 10w40, 15w50. In principle, parallel imported lubricants contain less additives than the official Mobil lubricants do. Given this, one can argue that it is theoretically possible that a Finnish customer using a motor oil in Finland, which was blended e.g., in Florida to suit local temperatures, may find himself with a damaged motor, which results from the oils' inferior qualities compared to oils mixed and refined in Finland. In fact, one of the interviewed company representatives reported that such an incident had occurred. Yet the details were not familiar for him (and none of the other interviewed representatives could remember such an incident). He told that the customer was then directed to a reseller from whom he had bought the oil. The reseller in turn contacted the (parallel) importer for further claims and Mobil Oil "washed hands of the affair".

By way of contrast, parallel importers and grey market resellers regard the quality perspective as less relevant. The bigger the role parallel importing business plays to them, the more they seem to ignore these aspects which the manufacturer, as discussed earlier, wants to emphasise for customers. As response to the question "*How does parallel imported lubricants differ from the lubricants blended and packed in Finland*", parallel importers gave following answers:

- the slight quality difference (US oil compared to Finnish) does not matter, since weather conditions are approximately the same in both countries
- the oil sold in both countries is the same
- both oils are offered anyway, customers ought to know what oils they need at what season
- it is up to customers to decide what they need, and for many of them it is the low price what matters

These comments obviously reflect indifference of grey market players toward the quality aspect and its meaning for customers. This is in tune with the point made earlier that a less relevant impetus for grey marketers to operate is to meet the customers' needs.

5.5.2 Differences in Package and Labels

As mentioned earlier, parallel imported lubricants differ also in terms of package and labels. First of all, oils imported from the US are in package sizes of 1 quarter (0,946 litres) and secondly, the containers are not provided with Finnish and Swedish labels, which authorities require from manufacturers' oils sold in Finland. It seems quite odd that uniform treatment on behalf of the authorities is not a practice in this respect. Parallel importers themselves were quite indifferent towards the lacking Finnish translation, which the following comment well illustrates:

“Even though some [customers] may not understand English language, they still generally ought to know what they are buying.”

Although some grey market resellers said that labels are made translated more and more today, the reality in the market place was quite the opposite. This finding is supported by the earlier research in the area which found that the most common complaints from customers were that parallel imports lacked a warranty valid in the country of sale, or the instructions were in a foreign language (Weigand, 1991). The fact that the package size is slightly smaller, seems rather irrelevant in small purchases; the customer is getting almost the same amount of oil if he makes his selection for the 1 quarter lower priced parallel import. The meaning of size becomes more important however, if he

makes his purchase decision between a four litre official Mobil lubricant and four packages of 1 quarter parallel imported oil. Looking at the price as the only determinant, (as the customer is not many times aware of the different package size) the customer is very likely to pick up the four packages instead of the one. Yet, instead of four litres that he thinks he is getting, he actually gets 3,784 litres ($4 \times 0,946$). If the customer purchased 8 quarters, he would only be getting 7,568 litres, almost half a litre less than what he thinks. Thus, one can question the actual economic gains of the purchase.

Further, parallel imported lubricants lack safety instructions which are required for each type of oil sold by Mobil Oil. The assumption among the company representatives and loyal resellers was that parallel importers manage to avoid safety instructions by explaining that the oil they sell is the same oil as that sold by Mobil Oil oy ab. In other words, they free ride on manufacturer's investment in safety instructions. Several useless attempts taken by Mobil Oil to draw authorities' attention to the issue let one assume that authorities lack resources for sufficient controlling and intervening. On the other hand, the Finnish product protection law contains a notion according to which consumer goods must reach certain risk level in causing danger for health or property, before consumer authorities will take measures. The determination of the sufficient risk level is a matter of proven practise among consumer authorities (Wilhelmsson, 331). Nevertheless, in the spirit of fair trade, rules should be the same for all participants.

Finally, there have been doubts that some parallel importers declare oils in Finland under a false customs title. These assumptions emanate from the fact that relatively low import volumes have been registered in customs, which Mobil Oil has been able to detect. By declaring oils under false customs title, it is assumed, parallel importers possibly are avoiding certain oil charges which are 0,25 Fim per kilo + value added tax. One may thus ask, shouldn't parallel importers who resort to this, be held liable for a tax fraud?

5.5.3 Product Liability; Comments from Company Representatives, Loyal Resellers and Parallel Importers

Finnish product protection law specifies that a producer, seller, importer or a deliver of consumer goods must exercise all care necessary to avoid any danger for the health or

property of consumers (Wilhelmsson, 1991, 328). As soon as a parallel importer takes title to the goods, not only will he become liable for any defects in the goods but also for providing adequate information on the goods. When company members were asked about the issues of product liability, it appeared that *Mobil Oil* would withdraw from bearing the liability of parallel imported oils. *Loyal resellers* seemed to be well aware of this as well as of the manufacturer's full liability for official oils. Given the importance of customer satisfaction for loyal resellers, in an event that a complaining customer walked into the store, they would always first compensate the customer and settle the matter with the manufacturer afterwards.

Respectively, *grey market players*, although indifferent, seemed to be aware of the fact that they would be held liable if parallel imported lubricants caused harm for customers. Since all parties generally considered it rather theoretical that parallel imported oils would actually cause damage (due to differences in viscosity and quality), the researcher felt quite fascinated, as one of the grey market players told that he recalled one incident which had occurred years ago. According to him, a consignment containing 1080 containers of defective Mobil lubricants were once imported in Finland. The oils had solidified in low temperatures and caused harm for a customer. The customers had then complained about it, and the oil was made examined by the interviewee and found defective. The oil had been purchased in the US and originally intended for further import to South-America. Investigations revealed that the defect was due to some mistakes made in the blending phase. Customers were compensated; the reseller of the oil bore the liability and settled the matter afterwards with the parent company in the US. Both customers and the sellers quieted. What the mistakes were, in particular was not known for the interviewee. If it was the wrong additives mixed with the oil which had led to damage the motor, the incident could of course have happened in any blending plants. If, on the other hand, there had not been any actual mistakes as to wrong additives, but the formula had been suitable for the target country conditions, had it been imported in South America instead of Finland, then this can be regarded as valuable evidence for actual consumer confusion and harm from the different quality.

To summarise, parallel imported products often tend to be somehow inferior to authorised products, and therefore the fact that customers are easily harmed or deceived

by the quality of parallel imports is an important factor in the discussion of parallel imported goods. Indeed, as the literature has indicated, parallel importing has often been outlawed due to customer deception. The empirical findings, indicate however, that within the present case, actual complaints from customers due to quality differences have been scarce. Therefore the quality aspect, if measured by actual customer deception, may not merit a central role in the argument against parallel imports.

5.5.4 Analysis of the Quality Aspect

Based on these empirical findings, one can argue that the quality aspect becomes the key determinant for Mobil Oil oy ab in searching recourse to defending parallel imports. Secondly, the fact that Mobil US and Mobil Oil oy ab are in common ownership through parent - subsidiary links and own a trademark with common origin, must be taken into consideration. Economic links were referred to result from belonging to the same group of companies, which is characteristic for the present case. (e.g., Lowenheim, 1995). Thus, in this case the same trademark is applied by the same entity in differing countries to goods of differing quality. According to Tritton (1996, 325), in such circumstances it can be said that since customers can not confuse as to the origin of the goods, the trademarks essential function is no longer that of guarantee of origin but of quality. Accordingly, the criteria for judging likelihood of confusion over (different) quality is said to be a matter for national law (Groves, 1994; Beier, 1995). One can compare the situation of Mobil Oil with a case of *Ideal Standard* which involved similar circumstances. There the European Court of Justice (ECJ) said that the decisive factor in considering the function of a trademark is the possibility of control over the quality of goods and not the actual exercise of that control. Therefore, a national law which enabled a subsidiary of the group to oppose the marketing in the territory of that state of products manufactured by an affiliated company on grounds of quality differences would not be permissible under Articles 30 to 36. (Tritton, 325) This ruling would permit consumer confusion as to quality but not as to trade origin, the fact which has been criticised as inconsistent and illogical. Thus, according to this logic, if Mobil Oil Corporation pursues a policy of making products of different quality for different national markets, it must suffer the consequences of its policy, and accept the free movement of goods. However, as was judged in one case (*Francesco Cinzano GmbH*

vs. Java Kaffeegeschäfte GmbH in Oliver, 326, 1996), the importer may be required to indicate that the product differs from the other same branded product.

However, it is worth pointing out that no consistent approach in this respect exist. In *Colgate Palmolive vs. Markwell Finance* a UK court decided in favour of banning parallel imports on ground of quality difference. In this case it was clear that the difference in the quality of goods and the possibility of consumer confusion of a therapeutic substance, flour in toothpaste, was of paramount importance in the court's mind. (Tritton, 1996) Yet based on these opposing outcomes in courts' rulings, one can speculate if courts think that consumers of certain goods, e.g., toothpaste are more conscious of the differences between products than consumers of some other products, whereby different outcomes in court judgements could be explained.

5.6 Effects of Parallel Importing on Mobil Oil

The interview data showed that the company staff was mostly concerned of the negative effect of parallel imports on their pricing strategies. In addition, the staff perceived that injury to Mobil Oil trademark would occur every time there was customer confusion on account of price disturbance or different quality. These issues will now be discussed in more detail.

Prices

Given its straight effect on prices, parallel importing disturbs the general perception of the price level of oil hold by customers. Sudden fluctuations in prices of certain oil brand may confuse customers to an extent that they switch to competitor's brand where the price is more stable. According to company representatives interviewed, due to lower priced parallel imports in the market, Mobil Oil has been forced to check its prices for certain customers by granting discounts of high volume purchases. However, one of the representatives argued the opposite. He stressed that prices have not been lowered due to parallel importing, but merely because of pressures from other rival oil producers in the market. According to him, the main influence to adjust prices, however, comes from fluctuations in the dollar as well as from the price of crude oil in the world

market. Lately, the trend in the price of crude oil has been upwards. Apparently, all of the factors mentioned have an influence on pricing decisions. How much have parallel imports contributed to the decision is, however difficult to measure.

Trademark

Similarly, the interviewed company staff felt that grey market players impaired the Mobil Oil trademark and profited by the investment made by Mobil Oil. By investing in the trademark the company has created the image which Mobil Oil today holds in the minds of its customers, which is the superior quality of Mobil oils over all other brands in the market. 90% of the customers of Mobil Oil are brand loyal, which serves to illustrate how well Mobil Oil has succeeded in conveying this message. Their aim is to exceed quality standards so that customers can be ensured of the highest possible quality of Mobil lubricants. As one company representative denoted:

“If there was not such parallel importing, we would not have to waste our time for negotiations on price, but we would be able concentrate on strict business. Likewise, we would not have to take so much effort for convincing the resellers why they could benefit more from getting our bundle [product + services] than from buying parallel imports.”

Supportive comments were obtained by another company representative:

“We want to stay behind it [the message] and be able to control every detail relating to our brand. Parallel importers try to profit from our reputation. Often they are not even in the corresponding oil business themselves and therefore have not knowledge of the product. Some of them bypass taxes by claiming that the oil they import is subject to further import to some third country. After having sold the oil, it does not matter whether these people get caught.”

Company representatives were asked to define parallel importing according to certain criteria. Responses indicate that the staff considered parallel importing mostly as being an abuse against trademark rights. Secondly, it was regarded as an improper exercise towards customers, and thirdly as an improper exercise in trade. All representatives interviewed perceived it very difficult to estimate the eventual loss of parallel importing on the company's profits, which a following comment illustrates:

“It is difficult to estimate its effects on our sales because lost sales have been substituted by increased product awareness and desire to sell Mobil Oil. Yet parallel importing causes the biggest problems for our resellers and we therefore, of course, hope that it did not exist.”

Although the company has adopted a negative stand towards parallel imports, the comment reveals that parallel imports possibly have contributed to the renown of Mobil Oil. The fact that parallel imports may benefit a manufacturer is in accordance with earlier findings by Cespedes et al. (1988) who have found that grey market outlets help keep products price competitive and widely available. Indeed, Cespedes et al.(1988) suggest that in the short term, a grey market often appears to be exclusively the distributor's problem, while the manufacturer benefits from higher volumes thanks to parallel imports.

5.7 Reactions of Mobil Oil to Parallel Importing

The effects of parallel importing have been felt in the company level for years. Mobil Oil has tried to keep track of the volumes of parallel importing and find out where the leakages occur, which is illustrated in the comment by one company representative:

“There are countless ways for parallel imports. For us it is not so important where the oil comes from, but rather who has imported it. When we have found such importers and sellers, we have tried to talk to them sense and questioned the rationality of their business.“

If the attempts have proven useless, then Mobil has stopped supporting such customers. Tracking grey market players was explained to be carried out largely by word-of-mouth information through the distribution network. Yet literature suggests that more deliberate and extensive information systems have been implemented by several international companies facing parallel imports. These include e.g., product serial numbers and warranty registration cards that have been secretly coded to identify the original dealers who purchased the products. Such systems are said to help not only identify the brokers but also indicate the volume and type of product being imported. (Cavusgil and Sikora, 1988) However, due to the nature of oils, i.e., that motor oils are non-durable consumer goods, neither warranty nor after-sales services play a role in the marketing and selling of the oil. Yet given that official oils exceed all international quality standards, a fact which is strongly emphasised (e.g., on labels affixed on containers), manufacturer's guarantee for quality is part of the product itself.

To increase everyone's awareness of the issue, parallel importing has been discussed in many meetings within the company. Each of the representatives interviewed were of opinion that Mobil Oil is relatively weak before parallel importers. As mentioned earlier, Mobil Oil has also tried to make authorities pay attention to package requirements which parallel importers do not comply with. As long as authorities don't intervene, the representatives perceived, there is not much to be done for parallel importers. As one of them commented:

“Legislation is on their side and all what we can do is to reduce prices to competitive levels and stop giving marketing support for grey market players.”

However, as noted earlier, prior studies in the area have come up with a number of different strategies to combat parallel imports (Cavusgil and Sikora, 1988; Weigand, 1989; Cespedes et al., 1988; Howell and Britney, 1986). As previous research indicate, it seems to be very difficult to find legal justification for banning of parallel imports (e.g., Lowenheim, 1995; Beier, Kur, Oliver, 1996; Kunze). Therefore, by adapting these strategies multinational companies have been able to curb parallel imports at tolerable levels.

5.8 Grey Market Players' Perceptions of the Reactions of Mobil Oil towards Parallel Importing

In order to allow comparison, parallel importers were asked to describe how Mobil Oil had interfered with their business. As one parallel importer concluded:

“ Sometimes we get oil from Sweden, England and Spain but it is difficult because Mobil acts immediately when it finds out about it and blocks the channels. They want to keep the price level up and get mad because we do not obey their price proposals. We are in a serious conflict with them and therefore they have refused to sell us. Really, they are able to dictate the rules of the game (i.e., where their oil is sold and where not, and who is allowed to sell it). “

Support to these comments was obtained from other grey market players. Another one commented:

“Mobil Oil will increase the price on purpose if the sales volumes of parallel imported oil grow high.”

This parallel importer told that a reseller, whom he used to sell parallel imported oil, had been get caught by Mobil Oil and, as a result, Mobil Oil had stopped selling official oil to him. He continued:

“Resellers have to hide parallel imported oils, keep them under counter in case someone from Mobil Oil walks in to the shop. They are very strict with it, if they see parallel oil, they cut supply at once.”

In literature, supply interference was considered as a strategy often implemented by the US multinationals. Channels of supply can be interrupted at the wholesale or retail level with varying degrees of effectiveness. The major disadvantage of this strategy was said to be the inability to attack the source of the grey market imports. (Cavusgil and Sikora, 1988) One can argue that by using this strategy in so far as selectively terminating dealers, Mobil Oil may run in the risk of being sued on the basis of Article 30 or 85 of the EU competition law which prevents all measures likely to hinder trade.

The interview data from grey market players revealed that manufacturer's and loyal resellers' complaints to authorities had sometimes led to inspections at parallel importers' business premises. The ones who had been subject to such inspections said that inspections had always been groundless, and that further measures had not been taken. Moreover, grey market players told that representatives of Mobil Oil make regular visits at parallel importers' outlets and check carefully where the oil they sell originates from. One parallel importer gave a following comment:

“They warn us of selling any more of the (parallel imported) oil, but it is an obvious restraint of competition, and therefore, we will not have to listen to them.”

Another parallel importer highlighted the need for inspection for similar prices. He noted the following:

“Authorities have already paid attention to similar price structure of the oils in the market. Mobil's resellers are not free to fix prices as they ought to be, because in practice Mobil Oil compels them to obey prices set by Mobil Oil. Such cartels are forbidden and should be stopped.”

But as he continued:

“Loyal resellers fear to say a word of it to authorities because they are afraid that Mobil stops supporting them .”

In spite of the fact that parallel importers blame Mobil Oil for cartels, parallel importers said that they had not taken any measures against Mobil Oil, as the following comment indicates:

“We have thought about it here, though, but never done anything. It only makes matters more complicated.”

5.8 Effects of Parallel Importing on Loyal Resellers

The opinions of loyal resellers on parallel importing were not as strongly uniform as the opinions of the company representatives. In general, it seems that loyal resellers were somewhat less concerned of the threats of parallel imports to them. This is interesting, given the common perception of company representatives according to which parallel importing causes the greatest problems for loyal resellers. Nevertheless, it seemed that loyal resellers were more concerned of potential harms for customers than for themselves. As one loyal reseller noted:

“Parallel imported products deceive customers particularly if the product is technically (or chemically) complex and customers are not familiar with all the product’s characteristics. How should customers then know that the product is not the same as advertised by a manufacturer?”

Although loyal resellers felt that parallel importers take advantage of the product’s reputation and their marketing investments, they had seldom taken or considered taking action so as to hinder, let alone stop parallel importing. One reseller concluded as follows:

“It would be wasting of scarce resources. Resources must be focused on matters which are essential for the core business.”

Other loyal resellers had similar attitudes. Another loyal reseller thus denoted:

“In the old days I used to contact the manufacturer or the official importer when I found parallel imported oils in the market place or heard of them from customers. I have stopped doing so because I have seen that they [Mobil Oil] cannot do much about it. It bugs me when I see that the neighbour sells the same oil at lower price, and it is not even his main product.”

According to the opinions of loyal resellers, it would therefore be desirable if the manufacturer could stop parallel importing or minimise the problems. This could be done by lowering the price of their oils to an extent that customers would consider the

margin between their oils and parallel imported oils as trivial. Playing with price, however, is constrained by law which favours free trade and open competition. Yet, a one-price-for-all policy could be one way to counteract, but it calls for improved manufacturing systems, enhanced logistics and fine tuning of other functional areas as well as stringent cost cutting .

5.10 The Impact of the European Union to the Scope of Parallel Importing of Mobil Lubricants

The empirical findings demonstrate that there are quite opposite opinions on the effects of the EU on parallel importing. However, the interviewees seemed to agree on one thing, namely the alleviation of parallel importing since the 80's. This trend is apparent for importing of oils from the US, in particular. According to resellers and the interviewed staff, it is presumed to be due to levelling of international prices, which is reflected as lower attainable margins and thus reduced profits from the sale of parallel imports. Strikingly, however, some company representatives held quite different views of the reasons which have led to diminution of parallel importing. One interviewed company representative shared his customers' opinion that some parallel importers had stopped the business because the price for oil had *increased* on account of increased duty laid on products which have been imported outside of the EU.

The above finding that parallel importing has decreased is contrary with the literature in which parallel importing was predicted to have a prospering future. The literature thus argues that, as more manufacturers adopt global product strategies with uniform goods and even multilingual packaging for world markets, international grey markets in many goods may have a bright future (Cespedes et al., 1988). One can criticise this argument, however, as it overlooks the impact of prices to parallel importing. Supplier pricing policies and exchange rate fluctuations were cited to be the most common factors influencing parallel importing.

The findings also revealed that the interviewees were not knowledgeable about the judicial backgrounds to parallel importing. None of them was familiar with the unresolved stand of law towards international exhaustion, i.e., whether parallel imports

outside of the EU should be justified by law or not. In fact, they did not seem to know even the entire concept of exhaustion. One may have to accept that small, independent entrepreneurs generally lack knowledge on judicial aspects which are not relevant in the normal course of their business. However, a good command of law in the relevant field of ones business can guide through problem areas and help to get rid of mistaken beliefs.

Due to lack of real knowledge, many rumours about the present situation are moving around. To illustrate, one reseller told the following:

“The wholesale, from whom I used to purchase parallel imported oil, has been unable to obtain oil in the US because Mobil Oil has placed an embargo on parallel imports flowing to Finland. All wholesalers to my knowledge have given notice on the embargo.”

The reseller did not have any further details on the ultimate reason for placing the embargo. All he could tell was that the wholesaler in question had made his last purchase in spring -96 and that the volume of the import then had been huge. Strikingly, the discussions with the company staff did not reveal that such action would have been taken by Mobil Oil.

The researcher was able to ask the particular wholesaler for the matter referred. He did not admit (or did not want to admit) that embargoes or any such difficulties in obtaining the oil would have occurred. Instead, the wholesaler seemed very confident of the supply and commented:

“As long as we have dollars and the sellers have oil in stock we can be certain about getting oil.”

The researcher has reasons to believe that the wholesaler twisted the truth. This is because in the course of the interview process, another reseller confirmed what the first one had said. According to him, the wholesaler had not been able to import oil for over six months until very recently. He had heard of some precedent in Belgium or in Holland, which now enabled importing of oil again.

To add to these confusing rumours and ambiguities held among resellers, one reseller interviewed said that, as soon as Finland had joined the EU, parallel importing outside of the EU became forbidden. As an explanation he provided the following interpretation:

“The importers did not by directly from Mobil Oil US but from small agents who act as intermediary stocks of all kinds of goods and this was not allowed any longer. For example, one of our partners from whom we used to buy the oil, stopped importing because of these rumours. We do not know if he will start importing again because, due to these problems, the price also got higher.”

With these confusing opinions collected, the researcher could only make assumptions of the many motives and reasons which had led the interviewees to think and say the way they did. Behind the curtain were two forces which the researcher regarded as influencing heavily on what was said. On the one hand there was parallel importers' need to secure their position, and on the other hand, company staff's reluctance to reveal actions that the company may have taken against parallel importing. Keeping this in mind, the researcher aimed to make judgements as cautiously as possible.

In spite of the perceptions that parallel importing was no longer said to be as extensive as during the 80's, loyal resellers and company reps were of opinion that parallel imports appear regularly in the market. This is in accordance with the general perception. Thus, while some continue to do it year after year, others parallel import oils occasionally. Yet when some quit doing it, new opportunistic resellers appear in the market.

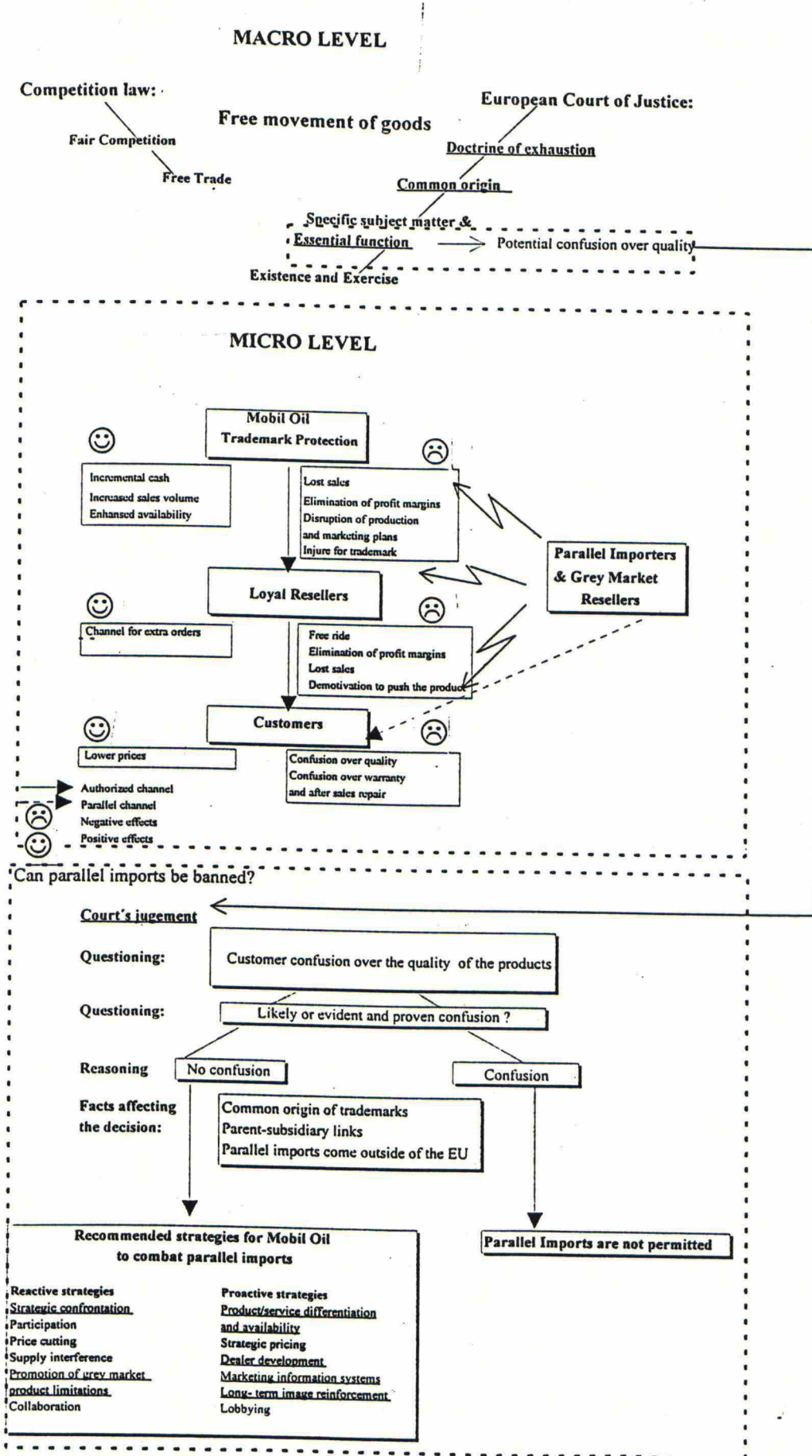
6. CONCLUSIONS

6.1 Major Findings

The purpose of the study was to determine how far can the principle of free movement of goods justify parallel importing, given the manufacturer's right for protection for his trademark. The focus was chosen due to a lack of an analysis which would take into consideration the various forces affecting the issue of parallel importing of trademarked goods. In addition, given the many negative effects parallel imports have on manufacturers as well on the authorised distributors, there was a need to illuminate this shadowy area. This study looked at the different forces and built a conceptual framework based on the findings. The conceptual framework thus suggested that due to

the principle of free movement of goods and promotion of free trade within the EU, a manufacturer of trademarked goods cannot ban parallel imports, unless consumers are misled by a false source of origin or by a different quality standard, i.e., unless trademark's specific subject matter or essential function for customers is impaired. (Health, 1993) The conceptual framework served as a base whereby the empirical findings were compared and an equivalent framework of parallel importing in Mobil Oil, in particular, was sketched as shown in Figure 8.

Figure 8 Elaborated Framework of Parallel Importing in Mobil Oil



As the Figure 8 illustrates, the empirical findings confirmed that the distribution channel of Mobil Oil was composed of different types of intermediaries with very different motivations and incentives to do business. There were thus actual parallel importers who obtained the product from the US or from the European countries where prices were favourable enough to allow sufficient margins to be attained. Grey market resellers purchased the product from parallel importers and supplied mainly endcustomers. Since both of these groups participate in the grey market, they were named grey market players, and are therefore presented in the same box in Figure 8. Grey market players counted on price arbitrage and free riding, whereas resellers, who appeared to be quite loyal for Mobil Oil, valued good manufacture-reseller relations and support from the manufacturer. Correspondingly, reseller policy of Mobil Oil seemed to favour building confidential relationship based on co-operation and trust. Further, it seemed that the so called loyal resellers were relatively satisfied with the support they were getting from Mobil oil and, although entirely aware of the harms caused by grey marketers to them, were not themselves attracted to buying oil from the grey market. This is contrary to what Cespedes et al. (1988) argue, i.e., that frustrated distributors may decide to enter the parallel market. One reason why loyal resellers did not perceive parallel importing appealing was because their perceptions of the attainable margins were much lower than what some parallel importers said they had been able obtain. Yet this was something Mobil Oil seemed to be afraid of and may have been therefore reluctant to share the problem of grey markets with its loyal resellers.

The findings revealed that parallel imported Mobil lubricants deviated from authentic oils in terms of viscosity classification - which in turn was found to indicate the quality of the oil - the labelling language, package size, and lacked safety instructions which were required for authentic Finnish Mobil lubricants. This was in tune with the general conception that parallel imports may not conform with the quality of the authentic goods, since their target markets are often characterised with differing conditions and customer needs (e.g., Cespedes et al., 1988; Weigand, 1989; Cavusgil and Sikora, 1988). The findings further showed that the parties did not agree that the lubricants were of different quality. The company and its loyal resellers regarded the difference as more critical than grey market players who felt almost entirely indifferent towards the quality aspect.

Additionally, the data indicated that some extent of customer confusion over quality had taken place, and that there had been complaints. However, it was difficult to prove the verity of the data, since no genuine evidence from customers was available (customers were not included in the case study). Likewise, without the opinion from customers it was impossible to assess whether customers would perceive the slight quality difference as a relevant factor in the purchase decision.

Related to the quality of parallel imported goods, attention was paid to the issue of product liability. As the company felt it, it would not concern Mobil Oil oy ab if problems concerning the quality of parallel imported lubricants were reported. This was in tune with the Finnish product protection law which holds the importer liable in such an event (Rissanen & Korah, 1991). As the findings indicated, parallel importers of Mobil lubricants were aware of their liability.

A central research question of this study concerned the justification of parallel importing on the basis of the principle of free movement of goods, given a manufacturer's protection for his trademark. As the upper part of the Figure 8 indicates, the findings revealed that the decision in the present case must be based on the ECJ doctrines of common origin, essential function as well as that of exhaustion. Thus, since there are common ownership ties between the Finnish subsidiary and the US parent, and since the two own a trademark with common origin, according to the doctrine of common origin, under such conditions, customers cannot confuse with the origin of the goods, and therefore, Mobil Oil oy ab could not bar the importation of the lubricants originating from the US. However, direct interpreting of the courts opinions in similar cases would seem to imply that, in the event of apparent quality differences and consumer confusion, parallel imports could be banned based on the assumption that trademark's essential function to customers is impaired (e.g., Oliver, 1996). Furthermore, stands taken by national courts as well by the ECJ show that consumer confusion over different quality of goods is regarded as a central determinant whereby imports, not only outside of the EU but also from the EU, could be disallowed (Oliver, 1996; Tritton, 1996; Kunze, 1991; Beier, 1995; Lowenheim, 1995). In the case of Mobil Oil, however, the existence of a sufficient base for argument over different quality remains ambiguous as long as the (Finnish) court's stand is missing. One may speculate, however, that due to lacking

consumer complaints over quality, the differences between the oils could be found insufficiently material to engender consumer confusion or cause harm for Mobil Oil's goodwill. The lower part of Figure 8 presents the reasoning both for as well as against of parallel imports. Given that there is no uniform treatment as to when the quality difference is sufficient, one may thus ask: is the likelihood of confusion enough or must it be evident and proven? Similarly, as discussed earlier, it can be questioned if consumers are more conscious of quality differences in certain products than in some others. There is no simple answers to these questions; up today finding an appropriate reasoning has been left for courts to decide case by case. Therefore, it rests in courts' judgement whether different quality and customer confusion exist in the Mobil Oil case. Under the free movement of goods principle, the movement of trademarked goods in the EU can be restricted if the mark is confusingly similar to a trademark having protection in some other EU -country and being independent, i.e., not of same origin, with that mark. At present, it remains ambiguous, however, whether parallel imports from outside of the EU can be stopped by appealing to British or some other national European trademark protection in such a case where both trademarks have common origin. (Rissanen ja Korah, 1991, 193). Apparently, this results from the fact, that the ultimate status of exhaustion has not yet been defined in the law. For the time being, Mobil Oil will have to continue tolerating parallel imports and accept the free movement of goods rules as well as principles of free trade and open competition.

The fact that the majority of parallel imported Mobil oils come from outside of the EU, shown in Figure 8 as a factor affecting the judgement, gives rise to further speculation. If all the parties to this case were purely European and operated under the influence of the EU wide exhaustion of rights, then the outcome of the court probably favoured exhaustion of rights, and consequently, the consideration of free trade might outweigh the protection of the public from confusion. Although community law was not applicable in the case, such an outcome was given by UK Court of Appeal in *Champagne Heidsieck et sie Monopole Sa vs. Buxton* (Oliver, 1996). In other words, the fact that parallel imported oil originates from outside of the EU might give less account for the principles of free trade and free movement of goods.

Likewise, one may speculate with the effects of the possible forthcoming regulation on exhaustion towards the countries outside of the Union. If the stand was taken towards EU

wide exhaustion as mandatory principle excluding international exhaustion, then Mobil Oil could stop parallel importation from outside of the EU. However, as long as the interpretation remains unsolved, and international exhaustion is allowed to exist in national trademark laws, based on the doctrine of exhaustion, Mobil Oil will have to permit parallel imports from outside of the EU.

In regard to non-Finnish labels on parallel imported oils, one can only speculate the reasons why consumer authorities in Finland have showed fairly little interest towards the issue. Regardless of product characteristics or a lack of any other differences attributable to consumer confusion, they should be able to interfere at least on the basis of consumer protection law. It would seem rightful to demand parallel importers for fulfilment of the same conditions as Mobil Oil has to comply with. In addition to Finnish labels and safety instruction, parallel importers could be asked to indicate that the quality and the viscosity classification of the imported oils differs from Mobil oils produced in Finland. Parallel imports would then be allowed if they were labelled or marked appropriately.

Due to the non durability of motor oils, the selling of oils did not seem to include such pre-sales and after-sales services as are typically characteristic to authentic products which grey market goods compete with (e.g., Howell et al., 1986). When considering plausible strategies against grey market threat, product differentiation based on these functions was not possible for Mobil Oil. However, the fact that Mobil lubricants produced in Finland exceed international quality standards and contain manufacturer's guarantee over quality, was perceived as an important factor in Mobil Oil, adequate to distinguish authentic lubricants from parallel imports.

Furthermore, the findings indicated that the Finland's joining to the EU has not brought about any considerable effects in the Finnish oil resale business. One reason to this may be that the oil resale business has traditionally held a strong foothold in Finland, which has made it a peculiar and powerful system capable to stand on its own. The fact that the status of international exhaustion within the EU remains unresolved in law, may have been liable of generating confusion and contradicting rumours among resellers and

manufacturers about the disturbances in importing of the lubricants. Generally, parallel importing of Mobil oils was not considered as being so extensive as in the 80's.

The empirical data showed that resellers are able to sell both official and parallel imported oils, which would have to imply that markets for both type of oils exist. From this statement one can derive the assumption that Mobil Oil endcustomers form two broad customer classes. On the one hand, there seem to be quality conscious endcustomers for whom the quality of the product and the knowledgeable resellers outweigh the meaning of price. On the other hand, there seem to be a relatively large customer group who use price as the very criteria for making the purchase and thus buy parallel imported oil from discount stores. Moreover, whereas some customers may be aware of the different quality in these oils, there are still customers who are not aware as well as customers who are entirely indifferent toward the issue of quality difference. However, since it is difficult to change the behaviour of the latter group, it probably pays to invest in retaining the quality loyal customers.

6.2 Managerial Implications and Recommendation of Suitable Strategies for Mobil Oil to Counter Parallel Imports

The empirical findings showed that Mobil Oil has deliberately pursued certain strategies to minimise the negative impact on parallel importing on the company. This section will review the available manufacturer strategies presented in Chapter 3, Section 3.6 and consider their suitability for Mobil Oil.

Strategic confrontation and *dealer development* are strategies already implemented by Mobil Oil to some extent. As the empirical data showed, Mobil Oil has tried to build strength in the distribution network by giving support for its loyal resellers e.g., in the selling function. Based on the findings, Mobil Oil should continue doing so and also support and assist its loyal resellers to tolerate the existence of parallel importers. Through special dealer development programs e.g., Carterpillar has developed dealer skills and expertise in marketing, service, finance, data processing and other areas (Cavusgil and Sikora, 1988). Adapting this strategy and being able to inform and educate the resellers about parallel importing means, however, that Mobil Oil would

have to enhance its own acceptance and understanding of parallel importing and stop quieting about it for its loyal resellers.

Moreover, proper acceptance of grey markets and sound manufacturer-dealer relations allow the implementation of *participation-strategy*. This means that Mobil Oil would agree with its smaller and financially weaker dealers that they purchase a specified number of parallel imported oils in the market. Loyal resellers could maintain their normal price for official oils with most customers but sell parallel imported oils at prices comparable to parallel importers' prices to those customers for whom price is the key determinant. Cavusgil and Sikora (1988) have argued that proper implementation of this strategy can effectively curb parallel importation and contribute to higher profit margins. However, loyal resellers must not abuse this privilege by using the grey market as their primary source of product.

One may argue that *aggressive price cutting* would be too risky a strategy for Mobil Oil since parallel importers may take legal action if they can prove that price cuts were intended and implemented for the purpose of eliminating competition. Furthermore, irreversible profit loss may result if the parallel importer survives the attack, or the attack lasts so long that customers begin to perceive the low price as normal (Cavusgil and Sikora, 1988). Similarly, as argued earlier, *supply interference* and termination of parallel importers in the distribution chain may be opposed by the legal authorities as being against article 85 of the EU competition law. Therefore it may not be a suitable strategy for Mobil Oil.

Correspondingly, *collaboration* as well as *acquisition* seem inappropriate strategies for Mobil Oil. *Collaborating with a parallel importer* is said to be suitable if parallel importing is a short-term problem and will disappear as soon as there is a change in exchange rates (Cavusgil and Sikora, 1988). However, dealers may be held liable for a restraint of trade or collusion. Although acquisition is safe from the legal standpoint, the high cost of acquisition and the existence of not just one but several parallel importers in the oil market are factors discouraging the selection for this option. Likewise, one may argue that *lobbying* by means of influencing exchange rate policy or increasing non-

tariff barriers through regulatory agencies will not be possible since the powers for individual companies to influence on these factors are almost non-existing.

When considering *strategic pricing* as an option to counter parallel imports, Mobil Oil will have to decide whether the larger volume and larger market share attributable to this strategy outweigh the lower gross margins which will result from price discrimination. Nevertheless, Mobil Oil should pay attention to quantity discounts it offers for its resellers. Discounts often are incentives for over-ordering and selling on the grey market (Cespedes et al., 1988). On the other hand, the one-price-for-all strategy is not a relevant option since, if effective, it should be implemented by the whole entity of Mobil Oil Corporation. Besides, price discrimination enables the manufacturer to maximise his returns from the ownership and exploitation of the intellectual property rights (Chard and Mellor,) As long as there are national variations in prices of oil, grey market players will continue to have incentives for the business.

On the other hand, appropriate strategies for Mobil Oil might be *promotion of grey market limitation* as well as *product differentiation*. Upon interest and resources to inform its customers, Mobil Oil could emphasise the differences for the public, e.g., by advertisement campaigns. Messages could stress the quality differences resulting from differing formulas between official and parallel imported oils. Mobil Oil could also differentiate its oils from parallel imports by e.g., remodelling the containers according to customers needs and wants by shape, colour or a special feature affixed in containers. Mobil Oil could do market research in order to find out the kind of design appealing to its customers. Further, the containers should indicate that the oil is official Mobil produced by Mobil Oil Finland and therefore exceeds all international quality standards. Although this will not stop parallel importing, at least it draws the attention of the customers who have been unaware of the fact that some Mobil oils sold in the market have been imported elsewhere and contain lower viscosity classification than Mobil oils produced in Finland. In this way, Mobil Oil could create brand preference over parallel imports. Furthermore, Mobil Oil could also invest in *long-term image building and promotion* to reassure current customers that they made the right choice by buying from loyal resellers who have the expertise to sell Mobil oils.

To summarise, it seems that *dealer development, strategic confrontation and marketing information systems*, which already have been implemented by Mobil Oil to some extent, help merely to tolerate parallel imports. Mobil Oil should continue monitor this activity and acknowledge its existence in the long term strategies. If grey market activity approaches critical levels, more aggressive strategies which Mobil Oil could consider, include *promotion of grey market limitation, product differentiation and long-term image building and promotion*.

6.3 Suggestions for Further Research

This study dealt with parallel importing from the viewpoint of manufacturers and resellers. Resulting from the purpose of this study, endcustomers were not included in the data collection. For further data triangulation, however, it would be interesting to incorporate endcustomer opinions in the analysis. However, a meaningful research design to gather sufficient customer derived data would seem to call for a whole different approach. Therefore, the embodiment of customers in the research design could be a task on its own, whereby survey might prove a plausible research method.

This study has showed that the principle of exhaustion of trademarks is a central determinant affecting parallel importing. Within the European Union, the EU wide exhaustion permits parallel imports to move freely between the countries. The probable extension of the EU wide exhaustion to international exhaustion and its consequences to the world economy could be a challenging field for further research. If the exhaustion is extended internationally, it would seem likely that the governments will come under pressure to try to deal with the problems of parallel imports. Parallel imports can be stimulated by price controls and currency devaluation, but if the European Monetary System is developed to an advanced stage, price controls will be harmonised in the European Union. While it will become difficult to influence parallel importing through price mechanisms, at the same time it means that the incentives for starting grey market activities on the basis of national price differentials will be reduced. The issue of pricing as well as the effects of the economic changes on parallel imports brought by the putting

into effect of the European Monetary System appear as other meaningful areas for further research.

REFERENCES

- Beier, Friedrich-Karl** (1995) *The Development of Trademark Law in the Last Twenty-Five Years*. International Review of Industrial Property and Copyright Law, No 6, pp. 769-781
- Berniz, Ulf & Tiili, Virpi & Pokela, Hannu** (1988) *Kansainvälinen Markkinaoikeus*: Gummerus Kirjapaino Oy, Jyväskylä
- Bonnici, Joseanne** (1993) *Distribution Agreements and the Competition Rules of the EEC*: University of Bergen
- Bucklin, Louis P.** (1990) *The Gray Market Threat to International Marketing Strategies*: Marketing Science Institute, Cop.
- Campbell, Denies & Harming, Hauberck J. & Keyzer Eric P.A.** (1994) *Trademarks: Legal And Business Aspects*: Kluwer Law and Taxation Publishers, Denveter, Boston
- Cavusgil, Tamers & Sikora Ed** (1988) *How Multinationals Can Counter Gray Market Imports*. Colombia Journal of World Business, Winter, pp. 75-85
- Cespedes, Frank V. & Corey Raymond E. & Rangan Kasturi V.** (1988) *Gray Markets: Causes and Cures*: Harvard Business Review, Vol. 4, July-August, pp. 75-82
- Chang, Tung-Zong** (1993) *Parallel Importation in Taiwan: A View form a New Emerged Country and a Comparative Analysis*. International Marketing Review, Vol. 10, No. 6, pp. 30-41
- Chard, J.S. & Mellor, C.J.** (1989) *Intellectual Property Rights and Parallel Imports*: The World Economy, Vol. 12 (1) pp. 69-83
- Czinkota, Michael & Ronkainen Ilkka** (1993) *International Marketing* pp. 417-421
- Donath, Bob** (1985) *Finessing Channel Conflict*. Business Marketing, Jan., pp. 102-103
- Duhan, Dale F. & Sheffet Mary Jane** (1988) *Gray Markets and the Legal Status of Parallel Importation*. Journal of Marketing, Vol. 52 (July 1988) pp. 75-83
- Fellner Christine** (1991) *The Future of Legal Protection for Industrial Design. A Report Commissioned by the Common Law Institute of Intellectual Property and the Intellectual Property Unit*: Queen Mary College, London: ESC Publishing Limited, Oxford
- Groves, Peter J.** (1994) *Trademarks in the EC: Recent Developments*. European Business Law Review, December 1994

- Guy, Wires (1987) *Rinnakkaistuonnin Lieveilmiöitä KV Foorumilla*. Suomen Tukkukauppa, Nro 7 pp. 6-8
- Guy, Wires** (1981) *Harmaatuonnille On Saatava Pelisäännöt*. Suomen Tukkukauppa, No 4 pp. 6-8
- Haynes, Rebecca** (1995) *Free Movement of Goods and Intellectual Property Rights: The EU and TRIPS Contrasted*. International Trade Law and Regulation, No. 4, pp. 122-127
- Heath, Christopher** (1993) *From "Parker" to "BBS" - The Treatment of Parallel Imports in Japan*. International Review of Industrial Property and Copyright Law, Vol. 24, No 2 pp. 179-189
- Hilke, John C.** (1987) *Free Trading or Free-Riding: An Examination of the Theories and Available Empirical Evidence on Gray Market Imports*. World Competition pp. 75-91
- Holopainen, Juha-Pekka** (1987) *Rinnakkaistuonti ja Sopimaton Menettely Elinkeinotoiminnassa*. Helsingin Yliopiston Kirjasto, Oikeustieteellinen Tiedekunta
- Horner, Simon** (1987) *Parallel Imports*: Collins Professional Books
- Howell, Roy D. & Britney, Robert R.** (1986) *Unauthorized Channel of Distribution: Gray Markets*. Industrial Marketing Management, Vol. 15 pp. 257-263
- Jokelin, Renny** (1996) *Merkkituotteiden Halpatuonti Voi Vähentää Tuntuvasti*. Helsingin Sanomat
- Joliet, René** (1991) *Trademark Law and the Free Movement of Goods: The Overruling of the Judgment in Hag I*. International Review of Industrial Property and Copyright Law, No. 3, Vol. 22 pp. 302-318
- Korah, Valentine & Warwick, Rothnie** (1992) *Exclusive Distribution and the EEC Company Rules*: London Sweet & Maxwell
- Kilpailuvirasto** (1992) *Kilpailunrajoitusten Arvionti ja Käsittely Kilpailuvirastossa*. Tiedonantoja 3/1992: Valtion Painatuskeskus, Hakaniemen Valtimo, Helsinki
- Kivi-Koskinen, Timo**, (1980) *Harmaata Tuontia - Harmaita Ongelmia*. Suomen Tukkukauppa, Nro: 8 pp. 6-7
- Kunze, Gerd F.** (1991) *Waiting for Sirena II - Trademark Assignment in the Case Law of the European Court of Justice*, International Review of Industrial Property and Copyright Law, No. 3, Vol. 22 pp. 319-333
- Lakimiesliiton Koulutuskeskus** (1983) *Tavaramerkki*. Lakimiesliiton Koulutuskeskuksen Julkaisusarja n:o 37: Vammalan Kirjapaino, Vammala

- Lowe, Larry S. & McGrohan Kevin F.** (1989) *Minimize the Impact of the Gray Market*. *The Journal of Business Strategy* Nov.-Dec. pp. 47-51
- Lowenheim, Ulrich** (1995) *Intellectual Property Before the European Court of Justice*. *International Review of Industrial Property and Copyright Law*, No. 6, pp. 829-850
- Malueg, David A. & Schwartz Marius** (1994) *Parallel Imports, Demand Dispersion, And International Price Discrimination*. *Journal of International Economics* 37 pp. 167-195
- Miles, Matthew & Huberman, Michael** (1994) *Qualitative Data Analysis. An Expanded Sourcebook*. SAGE Publications Inc. California
- Mäkinen, Pentti** (1990) *Keskuskauppakamarin Liiketalautakunnan Lausunnot 1982 - 1989*: Tamprint 1990
- OECD** Report of the Committee of Experts on Restrictive Business Practices (1987) *Restrictive Business Practices Relating to Trademarks*: OECD
- Oliver, Peter** (1996) *Free Movement of Goods in the European Community Under Articles 30 to 36 of the Rome Treaty*: Sweet & Maxwell, London
- Palia, P. Aspy & Keown, F. Charles** (1990) *Views of US exporters to the Asia Pacific Region*. *International Marketing Review*, Vol. 8 (1) pp. 47-56
- Pallari, Martti** (1994) *Rinnakkaistuontiin Liittyvät Kilpailunrajoitukset ja Vastuukysymykset*: Painatuskeskus OY Pikapaino, Helsinki
- Palemter, David** (1988) *Gray Market Imports: No Black and White Answer*. *Journal of World Trade*, Vol. 22, Oct., pp. 89-92
- Patton, Michael** (1990) *Qualitative Evaluation and Research Methods*. 2nd edition. SAGE Publications Inc. California
- Pietiläinen, Tuomo** (1996) *Kilpailuvirasto: Nokian On Korjattava Kaikki Kännykkänsä Takuutyönä*. Helsingin Sanomat
- Pulkkinen, Markku** (1995) *Immateriaalioikeudet Kilpailunrajoittamisen välineenä*. Kilpailuvirasto
- Rasmussen, Jesper** (1995) *The Principle of Exhaustion of Trademark Rights Pursuant to Directive 89/104 (and Regulation 40/94)*. *European Industrial Property*, No. 4, pp. 174-179
- Rissanen, Kirsti & Korah, Valentine** (1991) *EY:n ja Suomen Kilpailuoikeus*. Helsinki
- Shea, Nicholas** (1995) *Does the First Trademark Directive Allow International Exhaustion of Rights?* *European Industrial Property*, No: 10, pp. 463-465

Sihvonen-Punkka, Asta (1991) *Yksinmyynti- ja Yksinostosopimukset Taloustieteen Sekä Kilpailunrajoituslainsäädännön Näkökulmasta*. Kilpailuviraston Selvityksiä 4/1991: Valtion Painatuskeskus, Hakaniemen Valtimo, Helsinki

Riihonen, Risto (1995) *Harmaatuonti EU -Alueella Jopa Suotavaa*. Helsingin Sanomat

Simon, Hermann (1995) *Pricing Problems in A Global Setting*. Marketing News, Vol. 29 n:o 21 pp.4-5

Telster, Lester (1990) *Why Should Manufacturers Want Fair Trade?* Journal of Law And Economics, 33 pp. 409

Tritton, Guy (1996) *Intellectual Property in Europe*: London Sweet & Maxwell

Vapaavuori, Tom (1993) *Rinnakkaistuonti Yksinmyyntisopimuksissa EY:n Kilpailuoikeuden Kannalta*. Helsingin Yliopiston Kirjasto, Oikeustieteellinen Tiedekunta

Warwick, Rothnie A. (1993) *Parallel Imports*: Sweet & Maxwell of 183 Marsh Wall, London

Weigand, Robert E. (1991) *Parallel Importation Channels: Options for Preserving Territorial Integrity*. Columbia Journal of World Business, Spring pp. 53-60

Weigand, Robert E (1989) *The Gray Market Comes to Japan*. Columbia Journal of World Business, Fall 18 pp. 18-24

Wilhelmsson, Thomas (1991) *Suomen Kuluttajansuojajärjestelmä*. Helsinki, Lakimiesliiton kustannus

APPENDIX 1

Nimi:

Asema Yrityksessä:

Haastattelun aika ja paikka:

INTERVIEW GUIDE (REPRESENTATIVES OF MOBIL OIL)

1. Miten Mobil Oilin myynti on organisoitu?
2. Jälleenmyyjä politiikka ja suhteiden ylläpito, entä rinnakkaistuojaan nähden?
3. Rinnakkaistuonnin vaikutus toimintaan, miten vaikeuttaa toimintaa?
4. EU:n vaikutukset EU:n sisältä/ ulkopuolelta tulevalle rinnakkaistuonnille teidän kannaltanne?
5. Miten rinnakkaistuojaan sisäänostohinnat/ ulosmyyntihinnat, eroavat Mobil Oilin Suomen hinnoista?
7. Eroaako rinnakkaistuotu öljy Mobilin Suomessa jalostettuun öljyyn verrattuna, ja jos niin eroaa, niin miten ja onko tällä merkitystä kuluttajalle, onko tullut valituksia kuluttajilta?
8. Onko rinnakkaistuonti mielestänne
 - tavaramerkkioikeuteen liittyvä loukkaus
 - Sopimattomaan menettelyyn elinkeinotoiminnassa kohdistuva oikeudenloukkaus
 - Sopimattomaan menettelyyn kuluttajaa kohtaan kohdistuva oikeudenloukkaus
 - Muu oikeudenloukkaus, mikä?
9. Mahdolliset toimenpiteet rinnakkaistuonnin estämiseksi/ haittojen vähentämiseksi?
10. Mobil Oil tavaramerkin arvo ja hyöty yritykselle itselleen/ asiakkaille?

APPENDIX 2

Nimi:

Yritys:

Asema Yrityksessä:

Haastattelun aika ja paikka:

INTERVIEW GUIDE (LOYAL RESELLERS)

1. Valikoimassa olevien Mobil öljyjen hankintakanavat?
2. Suoraan valmistajalta ostamisen edut?
3. Suhteet Mobil Oiliin, millaista tukea toivoisitte saavanne?
4. Tärkeysjärjestys seuraavien liiketoimintaan vaikuttavien tekijöiden osalta?:
 - Tarpeeksi vaihtoehtoisia hankintakanavia
 - Valmistajan ja jälleenmyyjän väliset luottamukselliset suhteet
 - Myyvä tuote ja hyvä maine
 - Valmistajan tuki jälleenmyyjälle
 - Tyytyväiset asiakkaat
 - Tuotteen ostohinta
5. EU:n vaikutukset liiketoimintaan/ kilpailuasemaan?
6. Mobil Öljyjen rinnakkaistuonnin yleisyys Suomessa, arvio?
7. Onko rinnakkaistuonti
 - tavaramerkkioikeuteen liittyvä loukkaus
 - Sopimattomaan menettelyyn elinkeinotoiminnassa kohdistuva oikeudenloukkaus
 - Sopimattomaan menettelyyn kuluttajaa kohtaan kohdistuva oikeudenloukkaus
 - Muu oikeudenloukkaus, mikä?
8. Rinnakkaistuonnin omakohtaiset haitat ja rinnakkaistuoja vastaan aiotut/ toteutetut toimenpiteet?
9. Rinnakkaistuotujen öljyjen erot Mobilin Suomessa tuotettuun öljyyn ja mahdolliset valitukset asiakkailta?
10. Rinnakkaistuodun ja virallisen öljyn tuotevastuu?

APPENDIX 3

Nimi:

Yritys:

Asema Yrityksessä:

Haastattelun aika ja paikka:

INTERVIEW GUIDE (GREY MARKET RESELLERS)

1. Tuotevalikoimassa olevat moottoriöljyt (brandit, koot)?
2. Hankintakanavat ja niiden välinen ostosuhde?
3. Syyt rinnakkaistuontiin/rinnakkasituodun öljyn hankintaan ja myyntiin verrattuna Suomessa tuotetun öljyn myyntiin?
4. Rinnakkaistuodun öljyn sisäänostohinnan ero verrattuna Mobilta ostettavan öljyn hintaan /Ulosmyyntihinnan ero?
5. Rinnakkaistuodun öljyn mahdolliset erot kotimaiseen Mobileen verrattuna?
6. Haastateltavan ja Mobil Oil:n väliset suhteet?
7. Suomen liittyminen EU:un, onko vaikuttanut rinnakkaistuontiin?
8. Tärkeysjärjestys seuraavien liiketoimintaan vaikuttavien tekijöiden osalta:
 - Tarpeeksi vaihtoehtoisia hankintakanavia
 - Valmistajan ja jälleenmyyjän väliset luottamukselliset suhteet
 - Myyvä tuote ja hyvä maine
 - Valmistajan tuki jälleenmyyjälle
 - Tyytyväiset asiakkaat
 - Tuotteen ostohinta
9. Onko toimintaa yritetty vaikeuttaa (muut jälleenmyyjät, Mobil Oil) jos on, miksi ja miten?
10. Mahdolliset omat toimet häirinnän lopettamiseksi?
11. Mitkä seuraavat seikat ovat vaikuttaneet siihen, että olette ryhtynyt rinnakkaistuomaan Mobil öljyjä?
 - Valuuttakurssien heilahteluista johtuva tuotteen halvempi hinta ulkomailla
 - Isoista tuote-eristä eroon hankkiutuminen
 - Öljyn hintaerot johtuen kansallisista hinnoittelupolitiikoista
 - Tuotteen hyvä maine ja myyvyys
12. Rinnakkaistuodun tuotteen tuotevastuu?

APPENDIX 4

Nimi:

Yritys:

Asema Yrityksessä:

Haastattelun aika ja paikka:

INTERVIEW GUIDE (PARALLEL IMPORTERS)

1. Öljyjen hankintakanavat ja hankittujen erien määrät?
2. Mobil öljyn tärkeys tuotesortimentissa, suhde rinnakkaistuotuun Mobil öljyyn?
3. Asiakkaat ja toiminnan vaikutukset Mobilen asiakkaisiin?
4. Rinnakkaistuodun öljyn sisäänostohintojen ero vrt. Suomesta ostettavaan Mobil öljyyn, entä erot ulosmyyntihinnoittelussa?
5. Mahdolliset liikekumppanit jakelukanava tasolla?
6. Edut rinnakkaistuonnista?
7. EU:n vaikutukset toiminnalle?
8. Onko toimintaa yritetty vaikeuttaa, miten?
9. Omat mahdolliset toimenpiteet häirinnän lopettamiseksi?
10. Tärkeysjärjestys seuraavien liiketoimintaan vaikuttavien tekijöiden osalta?:
 - Tarpeeksi vaihtoehtoisia hankintakanavia
 - Valmistajan ja jälleenmyyjän väliset luottamukselliset suhteet
 - Myyvä tuote ja hyvä maine
 - Valmistajan tuki jälleenmyyjälle
 - Tyytyväiset asiakkaat
 - Tuotteen ostohinta
11. Mitkä seuraavat seikat ovat vaikuttaneet siihen, että olette ryhtynyt rinnakkaistuomaan Mobil öljyjä?
 - Valuuttakurssien heilahteluista johtuva tuotteen halvempi hinta ulkomailla
 - Isoista tuote-eristä eroon hankkiutuminen
 - Öljyn hintaerot johtuen kansallisista hinnoittelupolitiikoista
 - Tuotteen hyvä maine ja myyvyys
12. Rinnakkaistuodun tuotteen tuotevastuu?