

Overview – exhaustion of rights

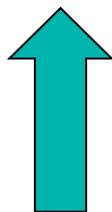
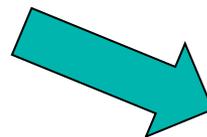
- Update of what has changed and what may still change post-Brexit in relation to the future of exhaustion of rights and parallel trade
- Focus on trade mark rights
- Addressing some practical scenarios



Pre-Brexit – EEA regional exhaustion



First sale in UK
with consent of
rights holder



Free
movement
applies to
EEA (of
which UK a
member)

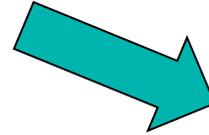


Free movement
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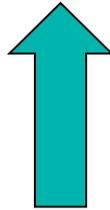
1 January 2021 – first sale in EEA



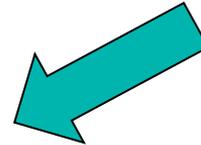
Consent to first sale in EEA



Asymmetry –
re-importation
permitted



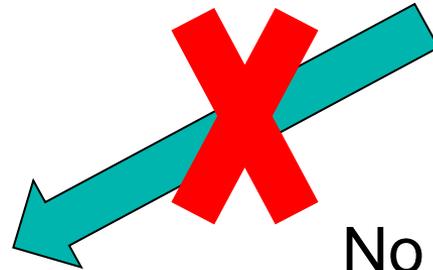
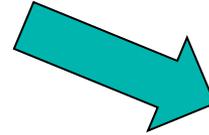
EEA exhaustion
applies



1 January 2021 – first sale in UK



First sale in UK to
UK distributor



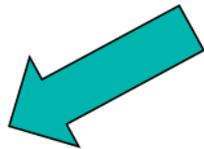
No consent to sell
into EEA -
asymmetry

GB and Northern Ireland

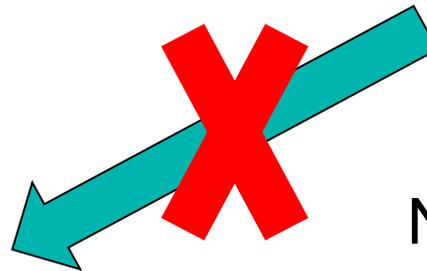
Northern Ireland protocol requires free movement



GB



Northern Ireland

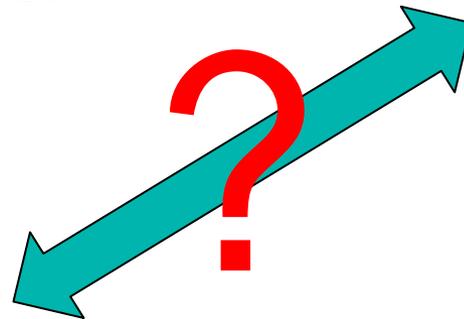


Northern Ireland protocol requires free movement – therefore can't stop onward sale to EEA territories



UK and the rest of the World

No international exhaustion – will depend on free trade agreements and TRIPS (compatible with most favoured nation clauses)



Future framework for the exhaustion

No clear UK Government position regarding UK – EEA and/or UK – “rest of World”/”World”.

Options:

1. Do nothing – keep asymmetry
2. National exhaustion – good for rights holders
3. International exhaustion – good for free trade
4. Regional - EEA (if member) or EEA+UK exhaustion if free trade deal agreed
5. Hybrid – some combination of the above possibly goods/sector dependent

Your speaker



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