

Evaluation on Effectiveness of the Parallel Importation Policy in Korea: Luxury Apparel Brands

한국의 병행수입에 따른 정책의 유효성 평가: 럭셔리 의류브랜드

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Abstract

연구의 목적은 병행수입제도의 정책운용적인 관점에서 고가품 수입의 큰 비중을 차지 하고있는 럭셔리 의류 브랜드를 중심으로 병행수입제도 도입 이후 현 시점에서 공정경쟁의 관점에서 병행수입의 문제점 추출과 대안을 도출함으로써 정책적 시사점을 제시하고자 한다. 연구 방법은 문헌조사와 in-depth 인터뷰를 실시하였다.

연구 결과 제도적 측면에서는 병행수입제도 도입 당시 병행수입과 직접 관련된 지적재산법과 독점규제법 사이에는 전용사용권자의 보호와 규제라는 입법적 목적이 서로 다른 이유로 병행수입 도입 여부에 대한 논란이 있는 것으로 나타났다. 이러한 논란의 해결방안으로 관세법 고시에 의한 우회적 도입을 결정한 정부의 방침에 대해 제도적 측면에서의 문제점으로 저작권 침해 기준의 결여, 상표권 침해 기준의 모호, 세관절차에 있어서의 문제점 등이 추출되었다. 럭셔리 의류 산업적 측면에서 병행수입제도는 수입물품의 가격인하를 선도하여 소비자 이익 증진에 기여하는 반면에 명품의 유통경로가 다양해짐에 따라 위조상품의 처벌실적이 증가하고, 이월상품과 overrun된 제품의 저가수입 등의 문제점이 야기되고 있다. 이에 대한 정책적 해결방안으로는 공정거래법의 개정을 통한 병행수입 허용기준의 보완, 지적재산권법에 병행수입허용 규정 명시, 소비자 관점에서의 병행수입 제품에 대한 정확한 정보의 전달 등의 내용 보완이 이루어져야 한다.

본 연구의 시사점은 정책당국에게 경쟁조건인 Global Standard라는 견지에서 제도적 운용의 개선이 시급히 이루어져야 하는 논거와 토대를 제공하였다. 또한 전용사용권자와 병행수입업체에는 정보의 비대칭성에 의존한 판매전략을 지양하고 소비자 보호와 적정한 상표권 보호의 합리적 조화가 궁극적으로 생존의 핵심전략임을 인식시켜 줄 수 있는 계기를 마련해 주었다.

Key words: parallel importation, luxury apparel brand, original product, exclusive agent, parallel importer; 병행수입, 럭셔리 의류브랜드, 진정상품, 전용사용권자, 병행수입업자

I. Introduction

The Korean government strives to establish a market structure for practical market mechanism based on free competition. To achieve this end,

they will positively begin to set up government policies to ensure free competition led by market demand and supply. All kinds of possible measures will be taken by the government to build the market-based economic system that will maximize consumers' welfare.

Globalization is being accelerated to allow companies to freely move their products and capital to any place in the world and conduct their business anywhere in pursuit of business optimization. In addition, international trade regulations are being expanded and modified to accommodate local policies of a nation as well as company practices. Each and every company is encouraged to compete with each other under fair competition, equal conditions and regulations. Principle of equality for fair competition offers a logical framework and comes up as a necessary issue for discussion in trade negotiations on competition policy(Hwang, 1995).

From this standpoint of competitive strategic policy, parallel importation was allowed since November 6, 1995 in Korea to generate the following positive effects which can be categorized into two key points. First, it would promote price competition, thereby leading to a price decline for those famous luxury brands with high consumer recognition. Second, the system of parallel importation will provide a wider opportunity of choice for consumers due to existence of various products of different prices, quality and services. These two points will ultimately create rational consumer consumption.

However, the most significant problem posed by the parallel importation is that whether or not it infringes upon the rights of a trademark owner or exclusive agent with the right of using the original trademark. A third party and parallel importers could enjoy a free ride and convert a brand name that a trademark owner or sole agent has built with much endeavor investing money and time. Debate over parallel importation has arisen because of ambiguities in both the regulations governing trademarks and interpretation of related regulations (Duhan & Scheffet, 1988).

This study is designed to verify the parallel importation introduced in Korea in the light of policy strategy within the apparel industry, aiming to identify the problems thereof and present the best possible solutions along with strategic issues to be surfaced. The process of verification is based on the analysis of the overall situation of past practices as to how they had perceived and dealt with the parallel importation issues in various aspects connected with the regulations on intellectual property right, laws enacted to control monopoly, the Customs Act, etc.

II. Background

Parallel importation means that a third party imports genuine and legally trademarked articles that are distributed and sold in a foreign state into his country without permission of the trademark owner or exclusive agent with the right of using that trade mark in his country. Original product in this context indicates a product that is distributed in a third country with the authentic trademark attached by a person or company that has the exclusive right of using such a trademark.

An exclusive agent with the right of using the trademark can represent the following: a trademark owner in a foreign country who is also the internal trademark owner; a person related by affiliation(owning more than 30% of company stocks as a largest investor); an importing agency; or a party who has acquired the right of usage from the trademark owner of a foreign country or by an exclusive agent(The Fair Trade Commission, 1998).

The background as to why Korea has introduced the parallel importation system is as follows: The issue was raised in Korea, in April 1995 when Korea Price Costco directly imported a great deal of Levis

blue jeans from Price Costco in America. The Korean legal sole agent of Price Costco in America demanded to withhold custom clearance of the blue jeans imported for the reason that the Korean sole agent as an exclusively nominated trademark user, had been legally registered with the Patent Bureau. No compromise had been reached at that time and the customs clearance had been held until the government permitted parallel importation.

The related government authorities in handling parallel importation were the Patent Bureau, the Customs Service, the Fair Trade Commission and the Financial and Economic Department. Their respective functions are as follows:

- The Patent Bureau: Authority in charge of trademark registration and management
- The Customs Service: Authority to hold back customs-clearing for goods in violation of trademark law during customs clearance
- The Fair Trade Commission: Authority for total coordination and management of all these factors in a bid to maintain market order and to make judgment on what effects are caused for the benefits of consumers and to set up strategic policy.

In July 1995, above-referenced government authorities had discussed the pros and cons of parallel importation and established a basic line of policy to allow this system in Korea. Afterwards, starting November 6, 1995, the government initiated implementation of the parallel importation system(The Customs Service, 1995).

1. Current Status of Parallel Importation

The parallel import records of each item category from November 1995 to August 1997 is indicated in Table 1 below. Among the amounts, apparel segment takes the lion's share by reaching US\$15,215,000 in 366 cases.

Meanwhile, parallel importation records increased from US\$1,513,922(34 cases in 1995) to US\$42,563,885(1,130 cases in December of 2000). The records show that a considerable increase had been made in the year 1997, which seems to have been affected by a drastic rise in general consumption(see Table 2). But after 1998, the import figures decreased owing to slowed-down consumption caused by the IMF crisis that occurred at the end of 1997. However, consumption of luxury goods has been on the steady increase,

Table 1. Records of Parallel Importation per Item

(Unit: US\$ 1,000)

Commodity	1995(Nov. - Dec.)		1996(Jan. - Dec.)		1997(Jan. - Aug.)	
	Cases	Amounts	Cases	Amounts	Cases	Amounts
Apparel	16	837	315	4,676	366	15,215
Ski - related	2	9	21	3,178	6	157
Golf clubs	4	71	72	2,131	15	600
Watch	1	107	9	552	19	1,929
Shoes	-	-	7	225	22	1,620
Handbag	3	60	1	156	39	4,544
Musical instruments	-	-	-	-	16	1,132
Bags	-	-	2	11	51	1,022
Others	8	430	47	666	124	3,990
Total	34	1,514	474	11,595	658	30,199

Source: The Korea Customs Service, 1997.

affected by the widening gap between haves and have-nots, thus causing a steep increase in the total volume of parallel importation.

Table 2. Parallel Importation Amounts(Unit: US\$)

Year Records	Cases	Amounts	Major Items
1995 (Nov.-Dec.)	34	1,513,922	Apparel, Handbag, Golf club
1996	474	11,594,716	Apparel, watch, Ski, Golf club
1997	1,260	62,847,399	Apparel, Handbag, Scarf, Golf club
1998	569	24,295,516	Apparel, Handbag, Cosmetics, Golf club
1999	860	31,069,133	Apparel, Handbag, Golf club
2000	1,130	42,563,885	Apparel, Handbag, Bags

Source: The Korea Customs Service, 1997.

The number of brands registered at the Customs Service in 2000 reached about 1,329 as shown in Table 3, among which about 170 brands were prohibited for parallel importation. The decision of the Customs Service to allow parallel importation was restricted to those item categories

registered at the Customs Service according to the regulation of the reporting system and the right of trademark. Of those registered, luxury fashion brands accounted for an overwhelming majority.

2. Status of Luxury Apparel

General propensity to consume was clearly characterized by both extremes of the rich and the non-rich after the foreign currency crisis(IMF) hit Korea at the end of 1997. The spending gap between the high- and low-income brackets during the 4th quarter in 1997 was at 3.6 point. It increased to 9.9 point, which is equivalent to 2.8 times, during the 4th quarter in 2000. Such a result shows that the high-income bracket took the lead in consumption, helping the costly luxury market to grow rapidly. Furthermore consumers' preference of worldwide famous brands also rose(Samsung Economic Research Institute, 2001).

Accordingly, major department stores in Korea, one of the main distribution channels, have invited foreign luxury brands in great numbers for them to undergo a transformation into top-notch stores, as well as relocate and reorganize existing brands of each floor(Fashionbiz, Aug. 2000).

In the meantime, the import volume of luxury

Table 3. List of Registered Brands

(Unit: US\$ 1,000)

Nations	Numbers of brands	Major brand names	Items
Korea	410	SUMSUNG, LG, KOLON	Apparel, Shoes, etc
U.S.A.	464	POLO, COKE, PLAYBOY	Apparel, Cosmetics, Bags etc
Japan	120	ASICS, YAMAHA, HONDA	Golf club, Shoes etc
France	73	CHANEL, DIOR, HERMES	Apparel, Perfumes, Bags etc
Germany	83	ADIDAS, BOSCH, HUGO	Shoes, Glasses Frames, etc
U.K.	70	REEBOK, PARKER, DUNHILL	Apparel, Bags, Shoes, etc
Italy	56	GUCCI, FILA, PAOLOGUCCI	Apparel, Perfumes, etc
Others	53	PRADA, ROLEX	Apparel, Watch, etc
Total	1,329		

Source: The Korea Customs Service, 2000.

items has been on the steady increase following the trend of consumers seeking after luxurious goods. Current statistics show that importation of consumer goods has decreased as shown in Table 4, while the total volume of apparels, golf clubs, cars, jewelry articles has increased remarkably.

Table 4. Import Status of Luxury Goods

(Unit: US\$ million)

Articles	1 st half of 1999	1 st half of 2000	Increase Rate(%)
Motorcars	25	62	143
Golf product	35	54	55
Cigarette	45	80	78
Liquor	87	126	45.1
Household electric appliance	299	538	80.2
Apparel	246	495	100.4

Source: The Korea Customs House, 2000.

With the increasing demand of imported luxury articles, sales rate has continuously been on a steep rise as indicated in Table 5, with the exception of the period directly following the foreign currency crisis in 1998. Lately, it has shown a 35% increase, representing a whopping growth.

The total market for imported luxury brands amounted to approximately one trillion Won, out of which about 35% had been handled by these four major department stores(Samsung Economic Research Institute, 2001).

The increase rate of sales figure of luxury brands in the year 2000 marked 8.6% to 365% compared

with the number in 1999 as shown in Table 6.

Imported luxury apparel brands in this context represent products with long traditional heritage and made with professional craftsmanship to guarantee good quality and having gained high public recognition.

Table 6. Sales Figures of Department Stores of Major Luxury Brands(Unit: Korean Thousand Won)

Sales Brands	Total Sales in 1999	Total Sales in 2000	Increase Rate (%)
BURBERRY	47,639,771	58,172,728	22
LOUIS-VUITTON	23,416,070	34,412,405	47
CARTIER	20,098,874	30,159,254	50
FERRAGAMO	11,614,848	20,286,221	74
CHANEL	18,803,440	18,411,157	109
OILLY	14,349,899	15,583,992	8.6
GUCCI	10,765,251	16,191,673	50
PRADA	8,033,725	13,888,923	73
MISSONI	11,813,978	14,236,287	21
GIORGIO ARMANI	2,508,990	11,661,662	365
Total	159,044,846	233,004,301	82

Source: Related Business Field

Prevailing tendency shows that consumers buying foreign luxury brands are expanding from the wealthy classes to the general public. With the permission of parallel importation and increasing demand for foreign luxury brands, importers are purchasing such products via diverse routes at lower prices and distributing them into conventional markets, shopping malls, Internet shopping malls,

Table 5. Sales Fluctuation of Luxury Brands at 4 Major Local Dept. Stores

Year	1996	1997	1998	1999	2000
Growth rate from the previous year	+66%	+8.9%	-13.9%	+13%	+35%

*4 major department stores: Galleria Myungpoom-guan, Shinsegae, Lotte, Hyundai(excluding luxurious general merchandise)

*Lotte: excluding Chanel and Ferragamo brands.

Source: Samsung Economic Research Institute, 2001.

home shopping networks, discount stores and specialized shops, through which distribution of foreign luxury articles are being extended (Fashionbiz, July, 2000).

III. Method

For this study, extensive literature reviews and in-depth interviews have been conducted. As for literature, various documentary records and materials in possession by corporations of related industries as well as government authorities and precedents of judicial records were collected and analyzed. Interviews were conducted with the government authorities concerned, exclusive agents, parallel importers and specialists in this field.

IV. Results

1. Problems in Parallel Importation

The government's response to parallel importation did not indicate an attempt to solve the root of the problem, but to come up with a short-term proposal. As is obvious in the increased margin of the importers and in the increased imports of the consumer goods, the problems in parallel importation system need to be dealt with not only in terms of simple short term solutions but with taking strong measures to prevent the abuse of the trade regulations, and thorough the much needed introduction of a competition policy.

1) Trademark

A question arises regarding the adequacy of the revised customs regulation, whether it infringes the trademark right on parallel importation. The current law considers importing and exporting of the merchandise with affixed trademark on the

merchandise or the cover of the merchandise as the usage of the consent violates of the trademark. Therefore, parallel imports without the consent of the domestic trademark right holder violates the trademark law. The Customs Law withholding the merchandise that violates the trademark law is based on such decisions as to whether it violated the law or not.

2) Customs Service

As the revised Customs Law allows certain types of parallel importation, the following questions arise: Does it violate the trademark law and the customs law?; Is the government exercising the ungranted legislative power?; When the revised Customs Law takes the expiring trademark law for its basis, the reason why the expiring trademark law is applied to domestic trademark right holder, its comparable relations, and even to the domestic importing agency is questionable. Moreover, even if the expiring trademark law is to be applied, it is uncertain that it can be applied individually to each country. In addition, when the original trademark right holder cannot prohibit others from parallel importing due to the expired trademark right, such uncertainty remains as the same basis is to be applied to affiliated companies and the importing agency that has different legal characteristics.

In order to be able to recognize both domestic and international expiration of the trademark right, it is vital to clarify its extent through revision of the trademark law. Although the revised customs regulation is intended to protect interests of trademark owners and consumers, these two parties run into conflicts of interest at times, and therefore the above regulation poses got limits in satisfying both parties on occasion. However, the interests of the trademark right holder and the

consumer may conflict, and the revision of the Customs Law displays its limitation in adjusting the interests in conflicts and regional extent of the trademark law.

3) Customs House

The Korean Customs Law allows both the trademark holder and official authority to withhold customs clearance. In addition, the Korean Customs Law requires the trademark right holder to report his/her right. However, regulation of the official authority by the revised Customs Law becomes difficult since the trademark holders are only required to report the trademark title, and the name and address of the trademark right holder.

When parallel importation is permitted, it is required that the importer should report to the Customs House the following data:

- the trademark title
- the name of the trademark holder
- the address of the office
- the name of the country where the trademark originated
- the name and addresses of the companies that would use the trademark

In addition, all information related to the risk of violating the right would have to be also reported in order to determine whether the trademark holder is the original holder him/herself, an affiliated

company, an importing agency, or the party with exclusivity of the trademark right. The special circumstances and the relationships such as that between parent company and subsidiary company should be reported to make it possible for the authorities to regulate. It is a difficult task even for experts to decide whether or not parallel importing is violating the trademark right.

4) Increased imports of counterfeit products and overstocked goods

Since parallel importation has been introduced, imports of counterfeit products and overstocked brand-named items have greatly increased (Chosun Ilbo, 1996). The number of seized counterfeit products have increased from 7 seizures involving 400million won in 1995 to 222 seizures involving 155,294million won in 2000(Table 7). Such sharp increase is due to insufficient regulations to fully monitor the parallel importation system. In case of popular brand names, it takes a long time to distinguish counterfeits from originals, and even when counterfeits are found, it is impossible to track the exporter(Chosun Ilbo, 1996).

More than half of parallel importers purchased merchandise from foreign local dealers, and the rest imported their merchandise from foreign wholesalers or retailers(Table 8). As Table 9 shows, most of the importers' import overstocked

Table 7. Seizures of counterfeit products

(Unit: Korean million Won)

Year	1995	1996	1997	1998	1999	2000
Cases	7	8	29	27	91	222
Amounts	400	800	236	9,701	94,425	155,294

Source: The Korea Customs House, 2000.

Table 8. Route of merchandise imported by parallel importers

Goods	Normal	Carryover	Overstocked	No comment
Numbers	4	2	4	9

Source: Korea Consumer Protection Board, 1996.

Table 9. Classifying parallel imported goods

Imported From	Manufacturer	Shopping Malls	Dealers	Discount Stores	No comment
Numbers	-	2	6	2	9

Source: Korea Consumer Protection Board, 1996.

merchandise was to be sold at large discount stores and wholesalers(Korea Consumer Protection Board, 1996).

5) Information Asymmetry

Information Asymmetry means that information is not shared equally among those involved in transactions. This is due to providing inaccurate information for one's own self-interest. Therefore, it is vital that accurate information about parallel imported goods is translated to consumers. There are advantages of parallel importation system such as the creation of competition, and there are disadvantages. Under the parallel importation system, mass imports of OEM merchandise may occur. In addition, insufficient after-sales service may also cause problems.

The U.S. Chamber of Commerce and Industry's report stated that it was common for parallel importers to purchase overrun illegal goods manufactured by manufacturers whose contracts were no more valid, and goods that have been intentionally over-produced(US Customs Service, 1999). Such problems originate from the parallel importers trying to purchase less costly goods to stay competitive in prices.

2. Policy Suggestion in the Apparel Industry

The parallel importation system was introduced in April, 1995 and took effect on November 6, 1995. Adapting a new system in such a short period of time exposed faults in the system.

1) Imported luxury apparel industry

Since November of 1995, imported luxury clothing goods have taken the largest portion among parallel imported goods. The present report shows a large increase from 34 counts of parallel imports involving \$1,513,922 in 1995 to 1,130 counts involving \$42,563,885 in 2000(The Korea Customs House, 2000). In addition, the demand for quality brands in clothing along with the sale in domestic shopping malls increased greatly. As the number of routes for imports increased under the parallel importation system, imports of counterfeit products along with their seizures have increased dramatically. Moreover, information asymmetry causing cheap imports of overrun items and carryover items, along with insufficient after-sales services system worked in disinterest of the consumers.

2) Legal System

A policy device complementing the extent of parallel imports is to be provided. Although the government found its basis on the Customs Law, finding a matching precedence in practice has not been an easy task. This is displayed as the same precedence that has not been found in the U.S. although the two countries have very similar regulations.

Parallel imports should be based on the law since it limits the property right for the public's interest. The parallel importation system finds its extent in Customs Law, yet there are legal limitations. When the parallel importation system was first introduced, the need for a clear legal

enforcement was discussed.

The Customs Service emphasized the need for clearer legal regulations. However, the parallel importation system took effect without any revisions of either the trademark law or the Customs Law. Therefore, in order to minimize any conflicts among trademark right holders and consumers and to adjust the extent of the trademark right, revising the trademark law is adequate rather than leaving it to the Customs House.

Since the parallel importation system was introduced, expected promotion of competition emerged only partly. A broad price competition cannot take place because only a small number of brands are imported under the parallel importation system. Although parallel imported goods stay competitive in prices, they show weakness in acquiring new products and providing a variety of sizes and sorts.

In addition, parallel importers' tactics to be competitive in prices rather than qualities may play a role in inviting counterfeit products. Despite the increased importing routes, the limited number of markets restricts its realistic contribution in consumers' options to purchase.

Recent advancement in manufacturing counterfeit products makes it harder to distinguish original goods from counterfeit products. Therefore, requiring more information from trademark right holders and rewarding the informant, who is granted anonymous status, are recommended.

The parallel importation system may lower the price of imported goods. However, it also can promote the imports of low quality goods and an insufficient after-sales service system. Therefore, requiring the Manufacturer's Certification to be included and attaching the label that states, "This product is not the product as authorized by the

United States trademark owner for information and is physically and materially different." to pass the Customs House is recommended as an import policy.

Most importantly, there are parts that need to be eased as well as tightened. Information regarding the merchandise and its trademark needs to be provided to consumers because the image of the brand name does not only effect the interest of the trademark holder but it also affects the consumers' interests.

V. Conclusion & Implications

The market economy system intends to maximize consumers' welfare. The Korean parallel system partially succeeded in stabilizing the price of luxury goods and expanding consumers' choice. However, there is still a long way to go to achieve the originally intended effects.

Due to the fixed price range of high quality goods, it is very difficult to lower prices of such luxury brands. This may only cause a decrease in the marginal profit of the importing company.

More importantly, the expected broad range of price competition was not found because only a small number of foreign brands are parallel imported. In addition, intended price competition has been diminishing as the price gap between private importing companies and parallel companies has been on a decrease. It also displays its faults in creating competition with a variety of goods and offering new models.

The Korean parallel importation system provided a new distribution channel that converted potential consumers to real consumers. In order to achieve its intended purpose of creating more consumers, tightening some policies may be needed. This study contributes to the basis of the global

standard of competition and awareness of necessary revisions in the current system. Moreover, it recommends both exclusive agents and parallel importers to abandon their tactics that rely on information asymmetry. Moreover, protecting both the consumers and trademark right holders is a vital part in surviving in today's competitive world.

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