Turkey
Turquie
Türkei

Report Q205

in the name of the Turkish Group
by Hülya ÇAYLI, Esra DÜNDAR LOISEAU, Onder OZDEN and Omer DÜNDAR

Exhaustion of IPRs in cases of recycling and repair of goods

Questions

I) Analysis of the current statutory and case laws

1) Exhaustion

In your country, is exhaustion of IPRs provided either in statutory law or under case law with respect to patents, designs and trademarks? What legal provisions are applicable to exhaustion? What are the conditions under which an exhaustion of IPRs occurs? What are the legal consequences with regard to infringement and the enforcement of IPRs?

In Turkey, exhaustion of IPRs is provided in statutory laws, more specifically in each of three Decree Laws regarding the protection of patent, trademark and industrial design rights, as well as in Act No. 5846 on Artistic and Literary Works. Each of the afore-said laws envisages a specific article on exhaustion of the related right.

a) According to Article 76 of Decree Law No. 551 Pertaining to the Protection of Patent Rights (hereafter "DL 551"), rights conferred by a patent shall not extend to acts exercised with regard to a product under patent protection after said product has been put to sale in Turkey by the right holder of the patent or with his consent.

b) According to Article 24 of Decree Law No. 554 Pertaining to the Protection of Industrial Designs (hereafter "DL 554"), the acts relating to a product in which a design is incorporated or to which it is applied fall outside the scope of protection of the design after the product has been put on the market in Turkey by the holder of the design right or with his consent.

c) According to Article 13 of Decree Law No. 556 Pertaining to the Protection of Trademark Rights (hereafter "DL 556"), the acts related with a product bearing the registered trademark shall not constitute a breach of the rights conferred by a registered trademark, where such acts have occurred after the product has been put on the market in Turkey by the proprietor or with his consent. However, the proprietor has the right, whilst it falls within the provision of the preceding paragraph, to oppose further commercialization of the goods, especially where the conditions of the goods are changed or impaired by third persons after they have been put on the market.

d) According to Article 23 of Act No. 5846 on Literary and Artistic Works (hereafter "Act 5846), the right of importing the copies reproduced abroad with the consent of the author and benefiting from these copies by distribution exclusively remains with the author. The copies reproduced abroad shall not be imported without the permission of the author and/or the person who holds the right of distribution. Provided that the right of rental and the right of public lending are possessed by the author, exercising the right of distribution afforded to the right holder by the resale of certain copies after the first sale

or distribution in the national borders of those copies that will result to assignment of the author's ownership shall not violate the right of distribution inured to the author.

It is seen from the terms of the abovementioned articles that in Turkey the approach for the application of the principle of exhaustion is similar in the case of each IPR. In order for a right to be exhausted, a product to which a right is attached has to be introduced on the market in Turkey by the right owner or by a third person but under the consent of the right owner.

In the case that an IPR is not exhausted:

– An exclusive licensee can also institute civil proceedings against infringers. Several remedies or sanctions are applicable in criminal and civil law proceedings of all above-mentioned IP related Decree-Laws.

– In a judgement issued in criminal proceedings, the court may hand down an imprisonment sentence and/or a monetary fine and/or the foreclosure and sealing off of the premises used as the work place and/or the suspension of commercial activities.

– In a judgement issued in civil proceedings, the court may issue one or more orders for preliminary injunctive measures. Also, a court may order the seizure and confiscation of counterfeit goods as well as of all material and equipment used for the manufacture of counterfeit goods. Also, it may award a compensation for material and/or moral damage.

2) *International or national exhaustion*

Does the law in your country apply international exhaustion for patents, designs or trademarks? If yes, are there any additional conditions for international exhaustion compared to regional or national exhaustion, such as a lack of marking on products that they are designated only for sale in a specific region or country or the non-existence of any contractual restrictions on dealers not to export products out of a certain region? What is the effect of breach of contractual restrictions by a purchaser?

If your law does not apply international exhaustion, is there regional exhaustion or is exhaustion limited to the territory of your country?

In case your country applies regional or national exhaustion, who has the burden of proof regarding the origin of the products and other prerequisites for exhaustion and to what extent?

Under Turkish law, it is the system of national exhaustion that is applied.

While the concept of precedence is not applied by the Turkish Judiciary in a systematic manner, it is generally accepted by the 11th Chamber of the Supreme Court, whereby once goods are put to sale and marketed in commerce in Turkey by a right holder or an authorized user, the rights vested on said marketed goods are exhausted globally, as if the principle of international exhaustion were applicable in terms of Turkish law.

As a result of such manner of assessment, the parallel import of original goods of the same kind bearing the same IPRs is allowed by third parties who are not authorized by the right holder, despite the fact that there are sole distributors or licensees of those protected rights and goods in Turkey. This interpretation of the Law by the Court results in a contradiction between the literal meaning and the implementation of the above-discussed provisions.

According to Turkish Code of Civil Procedure, the burden of proof always lies with a claimant. An exception to this general principle is laid out in Article 84 of DL 551, which stipulates that if a patent is a process patent, any product or substance having the same properties shall be deemed to have been obtained by the process of the patent concerned, unless a defendant may prove the contrary.

3) Implied license

Does the theory of implied license have any place in the laws of your country? If so, what differences should be noted between the two concepts of exhaustion and implied license?

Under Turkish law, the theory of implied license does not exist. Turkish law requires that a license is granted in writing explicitly to the licensee.

Even the mere silence of a license agreement on the issue of repair or recycling cannot be construed as grant of implied license on those issues, unless the IPR owner's intent to give the licensee the right to repair or recycle the products also is expressed positively in the agreement or the factors taken into consideration in finding implied consent unequivocally evidence that the IPR owner has renounced his intention to enforce his exclusive rights.

4) Repair of products protected by patents or designs

Under what conditions is a repair of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "repair" in this context?

Under Turkish Law, there is no definition of the term "repair". In the doctrine, the term "repair" is defined as the act of restoring something damaged, worn or faulty to its original condition suitable for the intended use of the product.

Under Turkish Law, there is no provision concerning repair of patented products. On the contrary, there is a specific provision concerning the repair of design-protected products in DL 554, which provides a 3 year protection to spare parts, as opposed to a maximum protection period of 25 years granted to design registrations. In this sense, since protection of spare parts is very common in Turkish practice, repair of spare parts (either design-protected or not) is also relevant.

The following factors are also worth considering:

a) If a spare part bears novel and individual characters, it shall enjoy the 25-year protection granted to any product design. For example, the steering wheel and the seat designs of an automobile are, in principle, in this group.

b) Designs of "must-fit" parts are not protected. According to DL 554, designs that must necessarily be produced in their exact form and dimensions in order to enable the product in which the design is incorporated or to which it is applied to be mechanically assembled or connected with other products fall outside the scope of protection.

c) According to Article of DL 554 titled "Use for Repair Purposes", designs of "must-match" parts, namely spare part designs that are dependent on the visual representation/ appearance of the complex product, are granted a limited protection of 3 years. Upon the expiration of the term, third parties are allowed to use those designs provided that:

    i) three years have expired after the first launch of the product that is designed or on which the design is applied,

    ii) the designed product (the spare part) is the part of a complex product (i.e. an automobile) and its visual representation / appearance shall depend on this complex product,

    iii) the spare part design is used for repairs to bring back the original appearance of the complex product,

    iv) the public is not misinformed with respect to origin of the product used for repair (the spare part).

As always, the conflict of interest between the IPR owners – in exploiting their monopolistic and exclusive IPRs – and the public – in reaching spare parts for the repair of their purchased products – is considered and weighed in the determination of permission to repair of design-protected products or spare parts.

Turkish Law endeavours to solve this conflict of interest by granting an exceptional protection to "must-match" parts while on the other hand limiting such protection to 3 years thereby providing the public the opportunity to freely produce and reach those parts upon the expiration of the protection term, so that free competition and consumer interests are not adversely affected.

5) Recycling of products protected by patents or designs

Under what conditions is a recycling of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "recycling" in this context?

Under Turkish Law or in doctrine, there is no definition for "recycling".

However, there are some case law examples in relation to this concept. In two different but similar cases, the 11th Civil Chamber of the Supreme Court has issued judgments in respect of recycling of clutch parts of automobiles as follows:

In the first case, the Court decided that the defendant's acts of removing the plaintiff's trademark printed on the used clutch sets and re-selling them under their own company's trade name would have constituted a breach of trademark rights if the trademark had been impaired. However, since the Court found no impairment of the trademark, it ruled that the act constituted unfair competition only due to reasons that the defendant had (i) misinformed and misled the consumer by giving the impression that the goods were unused while they were in fact used and worn-out, (ii) removed the original trademark of the plaintiff and placed his trademark on top of the original in a primitive way, due to which the underneath original trademark was still visible.

In the other case, the Court declared that infringement and unfair competition was committed on the basis that the defendant had replaced the discs bearing different trademarks inside used clutch sets and created false impression that the used goods were not worn-out, which caused unjust enrichment via plaintiff's reputation

According to one judge of the Civil Court of Intellectual and Industrial Property Rights of Istanbul, one of the main factors to be weighed in determining whether or not recycling of the protected goods is permitted is whether the intention of private use or commercial use prevails in the rank of exploitation of that good. In compliance with the above opinion, courts render their decisions in the direction of non-violation of the IPRs, if the recycling purposes are attained only to meet the private needs of the consumer. If the said purposes are aimed at commercializing the protected goods by means of recycling, then the volume of the goods is taken into account.

Another factor is the issue of deceiving of the public. For example, if someone collects consumed goods from the market and resells them after recycling without informing the public that the goods are recycled, unfair competition is committed, but an infringement of the IPRs is not, due to the reason that IPRs are exhausted upon first sale of those goods in the market.

One of the factors that may change the outcome in the above scenario is the large volume of the resale of those recycled products. If the volume has detrimental effects over the market share of the genuine holder of the IPRs, then the Court may decide on existence of unfair competition.

From a separate point of view, when deciding on issues of infringement of IPRs and unfair competition, the Courts take into consideration the matters of public health and conservation

of the environment. In this regard, the Courts refer to EU Directive No. 2000/53 as well as Turkish environment law, such as the Regulation on the Control of Waste Batteries and Accumulators by underlining the fact that recycling should be undertaken in a way that pollution and other adverse effects on public health are avoided.

Finally, justified fair use without the permission of the IPR holder is recognized in the Decree-laws as being allowed

6) Products bearing trademarks

Concerning the repair or recycling of products such as reuse of articles with a protected trademark (see the examples hereabove), has your national law or practice established specific principles? Are there any special issues or case law that govern the exhaustion of trademark rights in your country in case of repair or recycling?

Turkish law has no statutory provisions concerning the use of third party's trademarks on repaired or recycled products.

In practice, as mentioned under question 5, certain principles on the subject of infringement or unfair competition were established about the repair or recycling of products concerning the use of a third party's trademark. In summary, these are;

a) commercial purposes,

b) resale in large volumes,

c) misleading of the public,

d) adverse effects on public health and environment,

e) adverse effects on the market share of a IPR owner,

f) disparagement of the goods,

g) detriment to consumer interests.

Cases are being examined based on their concrete facts from the perspective of unfair competition. For example, courts take the opinion that resale of recycled genuine products in large volumes may constitute unfair competition; despite trademark rights may have been exhausted. In addition, courts examine whether repaired or recycled goods bearing the trademark are impaired or adversely modified when they are offered for resale. In the affirmative, they also uphold the infringement claims.

7) IPR owners' intention and contractual restrictions

a) In determining whether recycling or repair of a patented product is permissible or not, does the express intention of the IPR owner play any role? For example, is it considered meaningful for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use?

The express intention of the IPR owner would play a role in such determination, but only within the scope of an existing contractual relation between the IPR owner and a third party. In other words, a marking as mentioned above would not be binding on the general public. If the IPR owner signs a contract with a third party for the sale of the goods, a clause stating that the product is to be used only once and disposed or returned after one-time use may become an enforceable clause of that contract. However, contracts are relative and any party who is not a party to that contract will not be bound by its terms.

At this point, we may underline the fact that clauses of a contract, which obstruct or restrict competition or adversely effect public interest or public health, will not be enforceable.

b) *What would be conditions for such kind of intentions to be considered?*

Such conditions must be expressly stated in the contract, but as mentioned above, those conditions should not obstruct or restrict competition or adversely effect public interest or public health.

c) *How decisive are other contractual restrictions in determining whether repair or recycling is permissible? For example, if a license agreement restricts the territory where a licensee can sell or ship products, a patentee may stop sale or shipment of those products by third parties outside the designated territory based on his patents. What would be the conditions for such restrictions to be valid?*

Contractual restrictions would be valid and binding for the licensee, or a sub-licensee who may have acquired the goods from a licensee. However, such restrictions will not be enforceable against unrelated third parties in the same territory. In accordance with the principle of exhaustion of rights, a third party who legally possesses patented goods in a territory may ship those products outside that designated territory. The Turkish Group believes that the faith of the goods upon their arrival to the destined territory would depend on scope of the patentee's rights in that territory in accordance with the national laws of that territory.

d) *Are there any other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions?*

The Turkish Group does not think that there are other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions.

e) *How does the situation and legal assessment differ in the case of designs or trademarks?*

The legal assessment does not differ in the case of designs or trademarks.

8) *Antitrust considerations*

According to your national law, do antitrust considerations play any role in allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks?

The Turkish group believes that antitrust considerations play an important role in this respect. Among the Decree laws listed under question 1 however, only DL 554 (on designs) contains relevant provisions. The first clause of DL 554 states, as one of the purposes of the law, the creation of a competitive environment. Moreover, similar to the EU Directive, DL 554 provides no protection to "must-fit" spare parts, and a limited three year protection to "must-match" spare parts, provided that (a) the designed product is part of a complex product and its appearance is dependent on the complex product; (b) the use is for the purpose of restoring the complex product to its original appearance; and (c) the use of the product does not mislead the public. This express limitation of protection demonstrates that Turkish Lawmaker considers the need for a balance between the rights of the IPR owners and spare part manufacturers.

The Turkish group believes that the Turkish Lawmaker carries the burden of balancing the interests of the IPR owners and the consumer public. On one side of the balance are the economical advantages of a competitive market, which reduces prices and provides the consumer a variety of selection of goods and services. On the other side of the balance is the need for compensating the IPR owner for its investment as well as for encouraging him for the development and creation of new products and services.

Another example which demonstrates the importance of antitrust considerations in Turkish law is the Block Exemption Communiqué on Vertical Agreements and Concerted Practices

in the Motor Vehicle Sector Communiqué No: 2005/4 adopted by the Turkish Competition Board. The Communiqué aims to allow providers flexibility in setting up the distribution and servicing network to;

a) strengthen the position of authorized sellers and services vis-à-vis the provider;

b) ensure that manufacturers of spare parts were involved in competition;

c) clear the way for independent repairers to constitute an alternative for consumers by means of facilitating their access to the technical information, equipment and diagnostic devices related to maintenance and repair services.

Consequently, the Turkish Group believes that the above examples display the importance of antitrust considerations for the purpose of balancing the interests of the respective parties in Turkish law.

9) Other factors to be considered

In the opinion of your Group, what factors, besides those mentioned in the Discussion section above, should be considered in order to reach a good policy balance between appropriate IP protection and public interest?

There are no other factors to be considered in due respect.

10) Interface with copyrights or unfair competition

While the present Question is limited to patents, designs, and trademarks as noted in the Introduction above, does your Group have any comments with respect to the relationship between patent or design protection and copyrights or between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods?

The Turkish Group believes that there is a significant relationship between patent or design protection and copyrights and between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods. The Turkish courts also acknowledge this relationship and have ruled in more than one occasion that the issue of exhaustion of rights should be taken into consideration in conjunction with the unfair competition provisions of the Turkish Commercial Code. For example, as mentioned in the answer to question 5, the 11th Chamber of the Supreme Court has ruled that, in case the original trademark is not totally and effectively removed from the recycled goods, use of the product by a third party will create unfair competition, regardless of the fact that a separate and undisputed trademark was affixed on the recycled goods.

Although there is no question that IPRs are exhausted upon first sale of the products in Turkey, the Turkish courts have repeatedly raised the question as to whether the use by the third party deceives the public, creates unjust gain or adversely effects public interest or public health. In those cases where the answers to the preceding questions are positive, the courts have ruled that unfair competition exists. In other words, the party who wants to stay within the protection afforded by the exhaustion of rights principle must take preventive measures to ensure that the repute of the original trademark is not hampered, no unjust gain is achieved from its notoriety and the public is not deceived or misled.

In connection with the relation between design protection and copyrights, DL 554 states that rights conferred by the Decree Law does not cause prejudice to the protection conferred by Act 5846 (on copyrights). Besides, in Act 5846, as mentioned in the answer to question 1, even if the right of distribution over the copies of the work is exhausted upon the first sale, the rights of rental and lending remains with the author. Therefore, whereas a design-protected good is also protected as a work, the right holder/author has the opportunity to oppose to the rental or lending of the design-protected goods based on his copyrights while in fact he

would not have been able to do so solely based on his design rights. Respectively, according to the Turkish Group, the preceding reflects the close interface between design protection and copyrights.

11) Additional issues

In the opinion of your Group, what would be further existing problems associated with recycling and repair of IPR-protected products which have not been touched by these Working Guidelines?

The Turkish Group finds no untouched problems from the perspective of Turkish Law and practice.

II) Proposals for uniform rules

1) What should be the conditions under which patent rights, design rights and trademark rights are exhausted in cases of repair and recycling of goods?

The Turkish Group believes that the following conditions should be taken into consideration in determining the exhaustion of IPRs in cases of repair and recycling of goods:

a) the goods must have been put to first sale by the IPR owner or by third parties under consent of the IPR owner;

b) The goods should not be impaired or changed in a way to adversely affect the IPRs;

c) Parallel import or resale of those goods should be allowed based on the type of exhaustion being implemented in that jurisdiction where those goods are put to sale;

d) Exhaustion of IPRs should be limited to the specific goods put to first sale in the jurisdiction, but not for goods of the same kind bearing the same IPR.

2) Should the repair and the recycling of goods be allowed under the concept of an implied license?

The repair and the recycling of goods should not be allowed under the concept of an implied license, since The Turkish Group is of the opinion that, due to their monopolistic feature, exclusive rights should not be conferred upon third parties without their owners' express intention in this regard.

Therefore, the explicit and written consent of the right owner for repair or recycling of goods should become part of a license agreement in order to accept that the licensee has also obtained the relevant rights.

3) Where and how should a line be drawn between permissible recycling, repair and reuse of IP-protected products against prohibited reconstruction or infringement of patents, designs and trademarks?

The Turkish Group believes that a line should be drawn between the two sides of the balance by taking into account the following criteria:

a) purpose of use; commercial vs. personal;

b) volume of use;

c) effects of use on the market share of the IPR owner;

d) whether goods are impaired, adversely modified or disparaged;

e) applicability of fair use principle;

f) effects of use on consumer interests, public health and environmental concerns.

4) *What effect should the intent of IPR holders and contractual restrictions have on the exhaustion of IPRs with respect to recycling and repair of protected goods?*

The Turkish Group believes that necessary steps should be taken to ensure that the intent of IPR holders with respect to recycling and repair of protected goods becomes part of a contract, where possible, since the contractual obligations are likely to force third parties to act in line with the IPR holders' intent. While the Turkish Group is aware that entering into a written contract may not be practical, or even possible, in many transactions, the Group considers e-commerce to be a good exception in this regard, since every customer would electronically enter into a written contract with the IPR holder.

5) *Should antitrust issues be considered specifically in cases of repair or recycling of goods? If so, to what extent and under which conditions?*

The Turkish Group believes that antitrust issues should be in the main focus of every discussion regarding the issue of repair or recycling of goods. The important factor is the balancing act between the IPR owners and the consumer public. Undoubtedly, competition and a free economy will be beneficial for the public, and care should be taken to prevent monopolistic situations, while sufficient protection is granted to IPR owners.

6) *The Groups are invited to suggest any further issues that should be subject of future harmonization concerning recycling, repair and reuse of IP-protected products.*

In July 1959, shortly after the creation of the European Economic Community (EEC), Turkey made its first application to join. The EEC's response to Turkey's application was a suggestion for the establishment of an association until Turkey's circumstances permitted its accession.

The ensuing negotiations resulted in the signature of the Agreement Creating An Association Between The Republic of Turkey and the European Economic Community (the "Ankara Agreement") on 12 September 1963. This agreement, which entered into force on 1 December 1964, aimed to secure Turkey's full membership to the EEC through the establishment of a customs union in three phases, which would serve as an instrument to bring about integration between the EEC and Turkey. Following the implementation of the Ankara Agreement, EEC and Turkey have executed an Additional Protocol in 13 November 1970 by which Turkey has entered into the transition period (the 2nd phase of security of Turkey's full membership). By way of this Protocol, Turkey has actually entered into the borders of European Economic Community countries.

As a matter of fact, in 1995, after 22 years, the EU-Turkey Customs Union Joint Committee has established Decision 1/95 for the entrance of Turkey into Customs Union for the purposes of free movement of goods between EU countries and Turkey.

Whilst the above fact, within the scope of Decision 1/95, contrary to the Ankara Agreement and Additional Protocol prohibiting any restriction which may have detrimental effects to this principle of free movement of goods there is no provision underlying the principle of regional exhaustion. This shortcoming has caused Turkey to replace the term of "in the Community" with "in Turkey" at the time of adoption of EU Acquis in the section of "Exhaustion of Rights" in all of IPR Decree-laws.

However, as the Turkish Group, we are of the opinion that this amendment does not reflect the accurate and de lega ferenda principle of exhaustion, namely "regional exhaustion" that should be adopted in Turkish law and implemented within the borders of Customs Union. Therefore, we propose the harmonization of EU Directives and Turkish law in a way that will provide the adoption of regional exhaustion for the provision of free movement of goods used in all cases, including the cases of repair and recycling within the Customs Union.

7) Based on answers to items 1 to 6 above, the Groups are also invited to provide their opinions about how future harmonization should be achieved.

No further opinions than those expressed above.

Summary

The Turkish Group

a) sees a contradiction in the statutory law, which regulates national exhaustion of IPRs, and the practice of the Courts, which render judgments according to international exhaustion principle, and proposes the harmonization of EU Directives and Turkish Law to replace the principle of national exhaustion with regional exhaustion for the provision of free movement of goods within the Customs Union;

b) believes that repair or recycling of IP-protected product should not be allowed under the concept of implied license, since the contracts bind its parties only based on the principle of relativity;

c) sees significant interface between the exhaustion of IPRs and the principle of unfair competition in determining whether or not repair or recycling of an IP-protected product is admissible in the concept of exhaustion of rights;

d) finds an irrevocable integrity between antitrust issues and repair or recycling of goods and embraces the foundation of a balance between the separable interests of the public and the IPR owners.

Résumé

Le Groupe turc

a) voit une contradiction entre les dispositions législatives, qui établissent l'épuisement national des droits de PI, et la pratique jurisprudentielle, qui fait application du principe de l'épuisement international, et propose, en ce qui concerne la disposition légale relative à la libre circulation des marchandises au sein de l'Union douanière, l'harmonisation de la législation turque avec les directives de l'UE et le remplacement du principe de l'épuisement national par celui de l'épuisement régional;

b) estime que la réparation ou le recyclage de produits protégés par la PI ne devraient pas être autorisés en vertu de la notion de licence implicite, étant donné que le contrat de licence ne lie que les parties à ce contrat, conformément au principe de la relativité contractuelle;

c) voit une interface significative entre l'épuisement des droits de PI et le principe de la concurrence déloyale permettant de déterminer si oui ou non la réparation ou le recyclage d'un produit protégé par la PI est compris dans la notion d'épuisement des droits,

d) voit une communauté indissociable d'objectifs entre le droit de la concurrence et le phénomène de réparation ou de recyclage de biens et prône l'établissement d'un équilibre entre les intérêts divergents du public et des titulaires de droits de PI.

Zusammenfassung

Die türkische Gruppe

a) sieht eine Unstimmigkeit zwischen dem Gesetz, das die nationale Erschöpfung des gewerblichen Eigentumsrechtes reguliert, und der Praxis des Gerichtes, das seine Urteile nach dem

internationalem Erschöpfungsgrundsatzes festsetzt, und schlägt die Harmonisierung von den EG Richtlinien und den Türkischen Gesetzen vor, um den nationalen Erschöpfungsgrundsatz mit dem regionalen Erschöpfungsgrundsatz für die Bestimmung der freien Bewegung von Waren im Zollunion zu ersetzen;

b) glaubt daran, dass die Ausbesserung oder das Recycling von Produkten die unter gewerblichen Eigentumsschutz stehen nicht unter dem Konzept der implizierten Lizenz erlaubt werden sollten, da die Verträge seine Parteien nur auf die Grundlage von Grundregel der Relativität binden;

c) sieht eine bedeutungsvolle Schnittstelle zwischen der Erschöpfung der gewerblichen Eigentumsrechte und dem unlauteren Wettbewerb Prinzip in der Bestimmung ob die Ausbesserung oder das Recycling von einem Produkt unter gewerblichen Eigentumschutz in Beziehung zu dem Begriff die Erschöpfung der Rechte akzeptabel ist oder nicht;

d) findet eine unwiderrufliche Vollständigkeit zwischen den Antitrust Themen und der Ausbesserung oder das Recycling von Waren und umfasst die Grundlage von einer Balance zwischen den trennbaren Interessen der Öffentlichkeit und der Besitzer von gewerblichen Eigentum Rechten.