

UNIVERSITI TEKNOLOGI MARA

**PARALLEL IMPORT OF DISPENSED MEDICINES: AN ANALYSIS
OF THE LAWS AND PRACTICE IN MALAYSIA**

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ABSTRACT

Through the rapid growth of technology, communication and transportation that shade the countries geographical boundary, parallel import has becoming an important issue for international trade and management. Parallel import is the import and resale in a country, without the consent of the patent holder, of a patented product that has been legitimately put on the market of the exporting country under a parallel patent. This study examines the law governing the practice of parallel import and observes the fundamental factors that persuade consumers' attitude towards parallel import in Malaysia and other countries. Some laws and regulations that are discussed in regards of parallel import are Trip Agreements, Doha Declaration, Patent Act and Free Trade Agreement. This study is aims to analyse the provisions on parallel import where the issue of non-counterfeit product imported from another country without the permission of the intellectual property owner will be analyse. The law will not only protect the right of original manufacturer, it will also prevent customer from consume hesitant prescribed dispensed medicine. The study adopts a qualitative method where the Poison Act 1952, Customs Act 1967, Patents Act 1983, Sale of Drugs Act 1952, Trade Mark Act 1976, Control of Drugs and Cosmetics Regulations 1984, Custom (Prohibition of Imports) Order 1998, Customs Duties Order 1996 and Customs Regulations 1977 are analysed and interviews are conducted with the Custom officers and officers from Pharmacy Department (National Pharmaceutical Control Bureau and Pharmacy Enforcement Unit). The research reveals that, there are loopholes in the laws and policies as there is no specific provision for parallel import to control the parallel importation of dispensed medicine in Malaysia. The research suggests ways to improve the laws on parallel import of dispensed medicine in Malaysia.

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CHAPTER 1: GENERAL INTRODUCTION

1.0 Background of Study

Nowadays, better education and technology access are encouraging more people to browse the internet looking for cures and self-medication, putting themselves at great risk of seriously worsening their health.¹ The self-medication is done by parallel importing the medicines advertised via internet networking without any advice from any doctors or pharmacists.

Medication errors can be committed by the patients themselves² and the self-medication done is one of the common causes of medication errors. Types of medication errors includes unauthorized drug, dose and dosage form, drug preparation, deteriorated drug and lack of monitoring can contribute to, or cause, a patient's death.³

It was reported on 5 December 2006 that Datuk Seri Dr. Chua Soi Lek, the Minister of the Ministry of Health (hereinafter referred to as MOH) at that time raised his hesitation on the increasing number of consumers importing medicines via online while; the risk of self importing the medicines is high.⁴ This statement also implied that by the parallel importation done through online, there are risks that consumers might get wrong information about the products imported by them and they might also get inappropriate treatment if they make use of those products without any advice from their doctors. This situation will also lead to medication errors as mentioned previously. It is dangerous to continue importing medicines without prescription through the internet as the internet is unfiltered and contained many confusing and cross-purposed information which might be wrong.⁵ If people find the wrong information and believe in the wrong information given, there can be negative consequences to their health.

People in some countries nowadays can self-medicate by ordering drugs online but it is proven to be dangerous as it can interfere with other medications prescribed to them by their doctors or pharmacist. On the other hand, they trust on the information given because there is the same medicine as published in the internet that had been registered

¹ "Internet Self-Cures Dangerous", *The Star* 18 March 2007.

² Milton Lum, "Reducing Medication Errors", *The Star* 14 August 2011 (The writer is a doctor and a member of the Board of Medical Defence Malaysia).

³ Ibid.

⁴ "Tak Selamat Beli Ubat, Alat Solek di Internet", *Bernama* 5 December 2006.

⁵ "See the Doctor Before it's Too Late", *New Straits Times* 16 June 2010.