Parallel Trade--

the case on pharmaceuticals

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Abstract

This paper discusses the general background, effects, legality on Parallel Trade and the pharmaceutical industry. While theories predicted parallel trade would lead to price intergration and ambigeous welfare effects, arguments for and against the issue continues. The legality of parallel trade is subject to extensive interpretations as determined by countries' choice of exhaustion doctrine. Parallel trade arguments on pharmaceuticals are even vigorous as health care problem is taken into account. A focus on European Union example suggests parallel imports in pharmaceuticals did not lead to price integration but product concentration and market segregation. However, one must be careful in generalizing these results due to many fundamental market differences.

Introduction

Parallel Trade (Imports) are genuine products brought into a country without the authorization of the copyright, patent or trademark owner. (Maskus & Chen, 2000)[1] Almost all countries engage in Parallel Trade (James Love, 1998)[2]. As Louise[3] had

[1]Keith E. Maskus and Yongmin Chen. (2000, Oct. 1). Vertical Price Control and Parallel Imports: Theory and Evidence [On-line]. World Bank Research. Abstract from: World Bank Working Paper Number: 2461.

[2]Home Page of Consumer Project on Technology. Health Care and Parallel Imports. [1998 Sept. 10] <http://www.cptech.org/ip/health/pi/> [2001, March 24].

[3]Louise Longdin. Parallel Importing Post TRIPS: Convergence and Divergence in Australia and New Zealand [Introduction]. The British Institute of International and Comparative Law [online] Available: http://193.62.18.222/LONGDINextract.htm [2001, Mar 26].

suggested: 'What to do about parallel importing has always been an issue which has deeply divided the world's trading nations and continues to be the subject of vigorous debate...' It is a topic that surely concerns everyone and every country. This controversial issue is of universal concern and is worth studying. This paper discusses the Parallel Trade issue—its general background, effects, legality and a focus on the pharmaceutical industry. In the following, the background of Parallel Trade including its occurance and coverage is discussed first. Followed by its effects and the 'two sides' arguments. Then, the legality question is analyzed with respect to different contexts. The fourth section presents the case on pharmaceuticals and its future development. The last section concludes.

1. Parallel Trade

Parallel Trade also refers to Parallel Imports. Sometimes, we would refer to it as "Grey Market" Imports. They are cross –border trade in a product, without the authorization of the copyright, patent, or trademark owner. One common misconception is that they are counterfeit goods but actually, they are not. They are the same products made by the same manufacturers. Examples of Parallel Imports include designer clothing, cosmetics, handbags, sunglasses, electronic goods, pharmaceuticals, ski equipment, automobiles, computers, pianos, musical CDs and toys. Almost all countries have trade in parallel

imports. Even for the US who "has been extremely aggressive in attacking parallel imports....on the other hand, parallel imports routinely flows into it for many goods."[4]

1.1 How does it exist?

Parllel Imports are generally exported from low-price market and resold at a higher price in another country.[5] For instance, the IPR holder (in country A) sells the license to the licensees or dealers where its market (country B) is of high demand, selling a higher price. On the other hand, the patent holder also sells the goods to another market (country C) with low demand resulting in lower price. Parallel Importers in country C grasp the arbitrage opportunities by importing the products into country B. Without the consent from the IPR holder, this type of imports is refered as "Parallel Imports"[6]

1.2 Why does it exist?

Two components constitute to the emergence of parallel import. Hence, I use the following formula to represent:

Price difference + Intellectual Property Right (IPR) = Parallel Import

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[4]Home Page of Consumer Project on Technology. Health Care and Parallel Imports. <http://www.cptech.org/ip/health/pi/> [2001, March 24].

[5]Home Page of. Pharmaceutical Research and Manufacturers of America (PhRMA). Health Care in the Developing World. <http://world.phrma.org/faq.html> [2001, March 24]

[6]Diagram in appendix section (Appendix I)

The difference in price creates the movement of goods—'import' from the high price country into the low price country. Together with the infringement of IPR—without the authorization of patent, copyright or trademark owner, it constitutes the case of "parallel imports".

1.2.1 Price difference

There are various reasons for the existence of price differences among different national markets: the differential status of a product's intellectual property rights standing in different countries; differences in inflation rates or exchange rates changes; differences in price attributable to national price regulatons which control prices of a gicen product at different levels; differences in per capita national income and tastes as reflected in demand and price differences across borders; different marketing and sales strategies of patent-holders and sales volume variations across markets and diffrences in regulatory systems, product liability laws and tax levels. It is often difficult to disentangle these factors and all may be present when trying to analyse price differences between the two or more countries. *(Bale, 1998)*

The survey results from the Comsumers' Association show that in eight out of nine cases they investigated, the UK and Europe pay more for branded goods than consumers do in the USA. Goods involved are wide ranging include Barbie doll, Colour Gameboy,

Nike sportshoes, Camel watches, whisky, cigarattes and many others. The long list of parallel goods is also given in their website.[7]

1.2.2 Intellectual Property Rights

Intellectual Property Rights (IPR) is a legal concept to protect the ideas of creative people from unauthorized copying or imitation. It covers patents, trademarks, copyrights and trade secrets.

2 Effects of Parallel Trade

Econmic theories have predicted (1) the effects on price and welfare and (2) the strategies practised by the manufacturers if parallel trade is allowed.

(1) According to Maskus and Chen (2000)[8], they predict that parallel imports would decrease price discrimination. With parallel trade, arbitrage would occur causing a rise in demand in low-price market and a decrease in demand in high-price market.

(2) Arbitrage would eventually stop when the two prices converge into one single price

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[7]CA Campaigns – Consumers' Association.Fighting for cheaper brands in the EU <http://www.which.net/campaigns/trade/survey.html> [2001, March 24].

[8]Source: Keith E. Maskus and Yongmin Chen. (2000, Oct. 1). Vertical Price Control and Parallel Imports: Theory and Evidence [On-line]. World Bank Research. Abstract from: World Bank Working Paper Number: 2461.

leading to "price integration" providing the transaction cost is low and close to zero. On the other hand, there would be trade-offs in the welfare effects in which parallel imports would benefit consumers in high-price country but hurt consumers in low-price country. In the extreme, the manufacturer, in order to prevent parallel trade effect, would not choose to supply to the low-price market, leaving the consumers in low-price market unserved. Thus, the conclusion is that if cost is low, there will be gains from permitting parallel imports but it's more sensible to ban parallel import if the cost is high.

(3) According to another study by Maskus and Ganslandt (2001)[9], they have two hypotheses regarding the strategic responses given by the manufacturers and the subsequent price changes if parallel trade is permitted.

Hypothesis 1: If the potential volume of arbitrage is unlimited, the manufacturing firm would deter parallel imports by reducing its price in the home market for products that are subject to possible parallel trade.

Hypothesis 2: If the potential volume of arbitrage is small, the manufacturing firm will accomodate parallel imports and the price in the home market would fall in the volume of actual parallel trade.

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[9]Keith E. Maskus & Mattias Ganslandt (2001, Feb. 7) Parallel Imports of Pharmaceutical Products in the European Union

2.1 Arguments for Parallel Trade

"Parallel importers argue that consumers should have the right to buy the goods at the lowest possible price and not at artificially inflated prices." (Knowles, 2000)[10] 'A patent right is a grant of a monopoly'[11]--Proponents of parallel trade views the 'intellectual property right' conceals monopoly power. Holder of IPR, as protected from competition of new entrants, often practise price discrimination—charge high price in high-demand market and low price in low-demand market. They use IPR as an excuse to impose exorbitant price. Thus, they stress that Parallel Trade plays an important role in decreasing price discrimination and assures an adequate level of price competition is maintained in international markets, in order to allow the application of comparative advantage to achieve efficiency gains.[12] Thus, contributing to a freer market.

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[10] Janet Knowles (2000, July 20). Parallel imports – the latest Eversheds National Bioscience Group [3 paragraphs].Pharmalicensing.[On-line].Available: http://www.pharmalicensing.com/features/disp/964100513_397701a14832b [2001, Mar. 25].

[11]Source: Lord Sydney Templeman(1998) Intellectual Property. Journal of International Economic Law (1998) 603-606. Oxford University Press.

[12]Source: Harvey E. Bale, Fr (1998). The Conflict Between Parallel Trade And Product Access And Innovation: The Case Of Pharmaceuticals. Journal of International Economic Law (1998) 637-653. Oxford University Press.

2.2 Arguments against Paralle Trade

On the other side of the table, those against Parallel Trade believe "The full protection of patents, trademarks and copyrights is essential today for innovation (especially the discovery and development of new medicines) and for the healthy expansion of the global trading system." (Bale, 1998) As trade is dependent on a continuous flow of innovative and improved products into the marketplace, they are afraid that the loss of protection and profit from Parallel Trade would hurt their research and development (R&D). They also aware the possibility of substandard products as quality inspection is less plausible for parallel trade.

3. Is Parallel Trade legal?

Countries vary considerably in their legal treatment of parallel imports, as determined by their choice of exhaustion doctrine. (Maskus and Chen, 2000) Exhaustion of Rights also refers as "first sale doctrine" under which, rights of the IPR holders to control distribution end upon first sale and thereby, permits parallel imports. According to Abbott (1998), there are in general three legal solutions to the parallel import question that legislatures, courts and commentators have laid out.

(1) A rule of international exhaustion of IPR, which depend on the relationship between the holder of the IPR and the party that places the good on a foreign market.

Whether or not the right is exhausted may depend on whether the party is the IPR holder, another entity in the same corporate group or a manufacturing licensee.

(2) International exhaustion applies unless the original marketer has given sufficient notice that the goods are not licensed for import into the country in question.

(3) No international exhaustion of right.

Different solutions apply to different contexts.

3.1 EU context

The European Union has a policy of regional exhaustion within its territory. (Maskus & Chen, 2001) (Bale, 1998) (Abbott, 1998) It permits producers to segregate primary markets on the basis of patent licenses. However, the vertical market is 'policed' by the first sale doctrine: First sales in any EU country 'exhaust' the patent holder's right to control the movement of goods to anywhere else in the Union but not from outside of the EU region. In effect, as the EU moves toward closer political and monetary union after the Maastricht Treaty, is redefining internal EU trade as domestic trade, thus maintaining the principle of territoriality of IPRs. It is a case which actually reinforces the priciple of IPR territoriality and distinction between 'national' and international exhaustion of IPRs.

3.2 United States context

Under US patent law, parallel imports are legal. In the special case of pharmaceuticals,

parallel imports are restricted under the system of regulation of health and saftey of pharmaceuticals, as in the case in several other countries, but not others. The US restrictions on parallel imports of pharmaceuticals have a basis in US FDA statutes, but not in US patent law. *(James Love, personal communication, May 19, 2000)* Furthermore, 'internal segregation' is allowed in the US domestic context.(Abbott, 1998) Similiar to that in the EU, it is also subject to the first sale doctrine.

3.3WTO context

Unlike EU or US, WTO does not have a clear stand on the parallel import issues, it takes a 'hands-off' approach and allow its member government to decide whether to allow parallel imports. As shown in this quote: "WTO is silent on the question of parallel imports, it's not the WTO's role to take a stand politically on issues such as these but to have provisions in international law, i.e. in the WTO agreements, which members negotiated and signed. On this particular issue, the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) says nothing except in Article 6..."by Peter Ungphakorn, a spokeman from WTO *(personal communication, April 2, 2001)*[13]

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[13]Refer to Appendix II

3.3.1 TRIPS

Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international standard governing protection of Intellectual Property Rights. Several rules related to the issues of parallel imports are lied down mainly in the TRIPS agreement.

(a) Patenting

'WTO members have to provide patent protection for any invention, whether a product (such as a medicine) or a process (such as a method of producing the chemical ingredients for a medicine), while allowing certain exceptions. Article 27.1.' Patent protection has to last at least 20 years from the date the patent application was filed. Article 28 states that a patent holder has the right to prevent others from making, using, selling or importing a product falling within the scope of the patent.

(b) Article 6 -- Exhaustion

"For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights."[14] In other words, even if a country allows parallel imports in a way that might violate the TRIPS Agreement, this

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[14]Source: WTO official website. Available: http://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm#art27.1

cannot be raised as a dispute in the WTO unless fundamental principles of non-discrimination are involved. Thus, the language in article 6 suggests that member government are permitted to decide for their countries how to handle parallel imports.

(c) Article 31 –Exceptions: Compulsory Licensing

Compulsory licensing is when a government allows someone else to produce the patented product or process without the consent of the patent owner. The term "compulsory licensing" does not appear in the TRIPS Agreement. Instead, it is only part of Article 31 "Other Use Without Authorization of the Right Holder"[15] since "other use" includes use by government for their own purposes.

With the use of Compulsory Licensing, government or court of law may grant a licence to a third party to use a patent, without the patent's holder's consent, under specified conditions, such as in the cases of national emergency or extreme urgency, or to remedy anti-competitive practices. Under Compulsory Licencing, parallel imports can be legal. In the field of pharmaceuticals, it is a crucial element in increasing the affordability and

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[15]Source: WTO official website
http://www.wto.org/english/tratop_e/trips_e/factsheet_pharm02_e.htm#art27.1

availablity of drugs while ensuring that the patent holder is compensated for the use of the patent. But some develping countries have been reluctant to use these options for fear of trade sanctions by the developed countries.[16]

3.3.2 Inconsistent with WTO ruling

The goal of WTO is to lower barriers to trade in goods and services in their international market thereby, enhancing global economic productivity. As shown in GATT--Articles XI and III--forbid measures which restrict imports or which discriminate and unfairly burden imports relative to domestic production. Thus, inconsistency arises as patent protection under TRIPS conceals monopolistic power. and price discrimination adding barriers to trade. Thus, inconsistency exists between GATT and TRIPS and between TRIPS's aim and WTO's main goal.

4. The case on pharmaceuticals

This industry largely relies on patents to protect its innovative products. Countries involve in extensive trade in parallel imports of pharmaceutical drugs are EU memebers and UK. Parallel traders usually target at the best selling products such as Prozac, Losec

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[16]Source: Cecilia Oh (2000, Nov. 1). TRIPS and pharmaceuticals: A case of corporate profits over public health [26-28 paragraphs]. The Guardian [On-line]. Available: http://www.cptech.org/pharm/belopaper.html [2001, Mar. 25].

and Seroxat. Price differences exist within market and across geographic boundaries. Within markets, prices may differ depending on different buyers' tastes and valuations. Across boundaries, there are different supply and demand patterns: demand differs in areas such as country's income level, disease patterns, drug prescribing practices, cultural preferences. Whereas supply differs in overall production and distribution costs, tariffs and taxes, labor costs, transport costs, regulatory requirements, level of infrastructure and quality standards.[17] Dr. K Balasubramaniam's (Health Action International) study of price for Amoxil (SmithKline Beechman's version) illustrated that the significant drug price difference worldwide--$8 in Pakistan, $14 in Canada, $16 in Italy, $22 in New Zealand, $29 in Philippines, $36 in USA, $34 in Malaysia, $40 in Indonesia, $60 in Germany.

4.2 Arguments against Parallel Imports in pharmaceuticals

The issues are three-fold: the focus on the nature of pharmaceuticals—its dependence on intellectual property right (IPR) protection, health risks for consumers as well as patients in less developed countries.

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[17]Pharmaceutical Research and Manufacturers of America (PhRMA) Health Care in the Developing World<http://world.phrma.org/faq.html [2001, Mar. 24].

(a) Dependence on IPR protection

Unlike other products, pharmaceutical relies heavily on patent protection on R&D as process of drug discovery is time-consuming, expensive and risky. A new drug will arrive at the market as a result of testing and screening out over 90 percent of all other potential new drugs. (Bale, 1998) Usually, the research and development period can last for more than a decade with cost covers several hundreds of million of dollars before a product can turn any revenue. The restricton on parallel trade encourages pharmaceutical innovation. For example, in the decade after the enactment of the Orphan Drug Act of 1983, which provided limited market exclusivity and tax credits for drugs for small patient populations, 99 drugs for rare diseases were marketed, up from 10 in the decade before enactment. Furthermore, pharmaceutical research and development increased by more than 600 percent in the decade after Italy's weak patent law was strenghened. [18]

(b) Health risk for consumers

Manufacturers or publishers are expressing their concern that parallel imports may be substandard products or even counterfeits, and may be difficult to support or service. This can involve production sites not approved by regulatory authorities. Thus, the

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[18]Examples from the Pharmaceutical Research and Manufacturers of America (PhRMA) Health Care in the Developing World<http://world.phrma.org/faq.html [2001, Mar. 24].

handling and storage of the medicines cannot be guaranteed to be safe. The inability to charge higher margins in some markets may undermine their ability to sevice products. This would create health risks for consumers like counterfeit antibiotic which increase the prevalence of drug-resistent infectious diseases. Furthermore, verification is difficult.

(c) Consumers in less developed countries

According to Malueg and Schwartz, permitting parallel importation may adversely affect developing countries. They believe that manufacturers, to prevent the loss of capacity in price discrimination, would choose to either raise the price in the developing countries or refuse to supply to these countries. Rather than suffering from the erosion of high prices in the developed countries market as a result of low priced parallel imports from developing countries. This would leave patients in the less developing countries unserved--"Grey market trade has led to reports of shortages of some medicines in Greece, as parallel trade has actually depleted national supplies."[19] Furthermore, as parallel imports undermine innovation, "WHO..fear..the threat of parallel trade takes away any incentive of vaccine and pharmaceuticals patent holdders to make significant concessions to poorer countries" (Bale, 1998)

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[19] Example from Pharmaceutical Research and Manufacturers of America, Parallel Import of Pharmaceuticals [3 paragraphs] available: http://www.phrma.org/intnatl/intellprop/parallel.phtml

4.3 Arguments for Parallel Imports in pharmaceuticals

In response to the undermining problem of R&D development, proponents of parallel imports believe it was possible to uncouple the exclusive marketing rights from incentives to fund R&D: government direct funding on healthcare R&D and mandatory reinvestment of healthcare R&D independent of patent are the alternatives.[20]

The quotation: "To the degree that governemtns have workable alternatives for promoting healthcare research and development, exclusionary policies are morally repugnant."[21] clearly express their stands.

Furthermore, in the case of pharmaceuticals, where prices differ signficantly by country, parallel imports can be a tool to enable developing countries to lower prices for consumers.

4.4 The European Union Example

Parallel imports exist in all EU Member States. It is estimated that up to fifteen percent of all pharmaceutical products sold in EU may be parallel imports. Currently, the

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[20]Source: <http://www.cptech.org/pharm/belopaper.html>

[21] Ralph Nader (April 29, 1999) US Pushes Free Market in Human Suffering, available: http://www.actupdc.org/africa/nader.html

main sources of parallel imports are countries such as Greece, Spain and Portugal but, when the EU expands, new entrants such as Hungary, Poland and the Czech Republic are likely to prove even more popular markets for parallel importers to obtain their stocks.[22]

(a) How does it work in the EU context?

The parallel imported pharmaceutical is first sourced from established national pharmaceutical wholesalers in the exporting country. If a parallel importer has applied, paid for and recceived PI-product licences in his country, these medicinal products are then transported into the receiving country, where they are adapted to the requirements according to national laws. The value that parallel trader is adding, varies but usually involves several product controls, relabelling or repacking, creating and inserting information leaflets, all in accordance to national requirements.[23]

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[22]Taylor Joynson Garrett (2001). Parallel Imports and Pharmaceutical Products [2,3 paragraphs]. Topical Issues. Intellectual Property [On-line]. Available: http://www.tjg.co.uk/topical/intellectual_property/ip_parallel_imports_0899.html [2001, Mar. 24].

[23]Source: Parallel Trade of Pharmaceuticals

(b)Effects

The effects can mainly summarized in four perspectives: price, product, market and gains.

(1) no Price convergence

According the Maskus and Ganslandt (2001)[24] empirical study on Sweden, the data fail to support the hypothesis that prices for products subject to parallel trade converge between the exporting and importing countries. Warwick's study using data from various EU states also arrive at similiar result—"Prices of drugs vary quite markedly from Member State to Member." "Despite 15 years of the workings of the 'pernicious' Community(regional) exhaustion rule, 'the market' is still fragmented. In many cases, this fragmentation results in quite substantial price differences." (Warwick, Ch8, pp474,477)[25]

(2) **Product concentration**

Maskus and Ganslandt (2001) also found that parallel trade sales in Sweden were dominated by four major firms. It is concentrated on a minority of the products in the sample but its share was considerable for up to 15 percent of major

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[24] Mattias Ganslandt and Keith E. Maskus. 2001, Feb. 7. Parallel Imports of Pharmaceutical Products in the European Union.

[25]Warwick A. Rothnie. 1993. *Paralle Imports*. Sweet & Maxwell.

drugs. It is supported by Warwick's findings as he wrote, "there is evidence to suggest that such parallel imports as occur are concentrated in particular products." (Warwick, Ch8,pp479)

(3) **no Market efficiency**

"Price controls within the EU member states as a distortion which is inconsistent with open market principles, yet not adequately accounted for by EU regulatory organs in the context of intra-Union exhaustion rules"(Bale, 1998) Thus, the community exhaustion rule is inefficent as it is a policy not based upon any economic grounds, but rather internal EU 'Single Market' politics and rhetoric.

(4) parallel traders Gain most

Maskus and Ganslandt found that parallel-importing firms exploit a price difference between the markets of approximately 21 percent of the original manufacturer's price in Sweden giving rise to considerable rent copared to the price effect in the home market.

One must be careful not to generalize the EU results to other countries as there are significant differences between markets. For instance, income disparity.

4.4 Futures of parallel trade in pharmaceuticals

Various recommendations discussed in the WTO Trade Briefing Paper No.4[26] provide us with insights on the future development of Parallel Trade in pharmaceuticals.

At national level, governmetnt should:

1. Develop effective national drug policies and promote the adoption of essential drug lists.
2. Focus on altenratives that promote research and development (R&D) for locally needed drugs. Patents are not the only means for promoting R&D nor do they ensure that needed drugs are brought to market. Trade agreements must be negotiated and interpreted in ways that will permit the adequate redress of that market failure.

For WTO implementation of TRIPS:

3. Public jealth, rather than commercial interestsm in the implementation of WTO Agrements and in particular must have primacy in the review of TRIPS to safeguard access to essential drugs

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[26] Trade, Patents And Health (1999, Augest). Consumers Internation. WTO Trade Briefing Paper No.4. Available: http://www.consumerinternational.org/roaf/wto-brief/brief4-e.html

4. WTO must remain flexible on TRIPS interpretation. The WTO must consider the impact on drug prices when interpreting the limits placed on compulsory licensing of medicines and parallel importing and trade pressures should not be used.
5. Provisions must be made to ensure that access to community medicines and local plants is maintained and protected as community medicines are an alternative for many poorer consumers world-wide.
6. WHO expertise must be recognised as WHO plays an essential role in helpin go countries comply with trade agreements, whilst protecting public health. It is suggested that a country engaged in WTO dispute resolution proceedings should be able to request a WHO report on the public health aspects of those policies under WTO review.

5. Conclusion

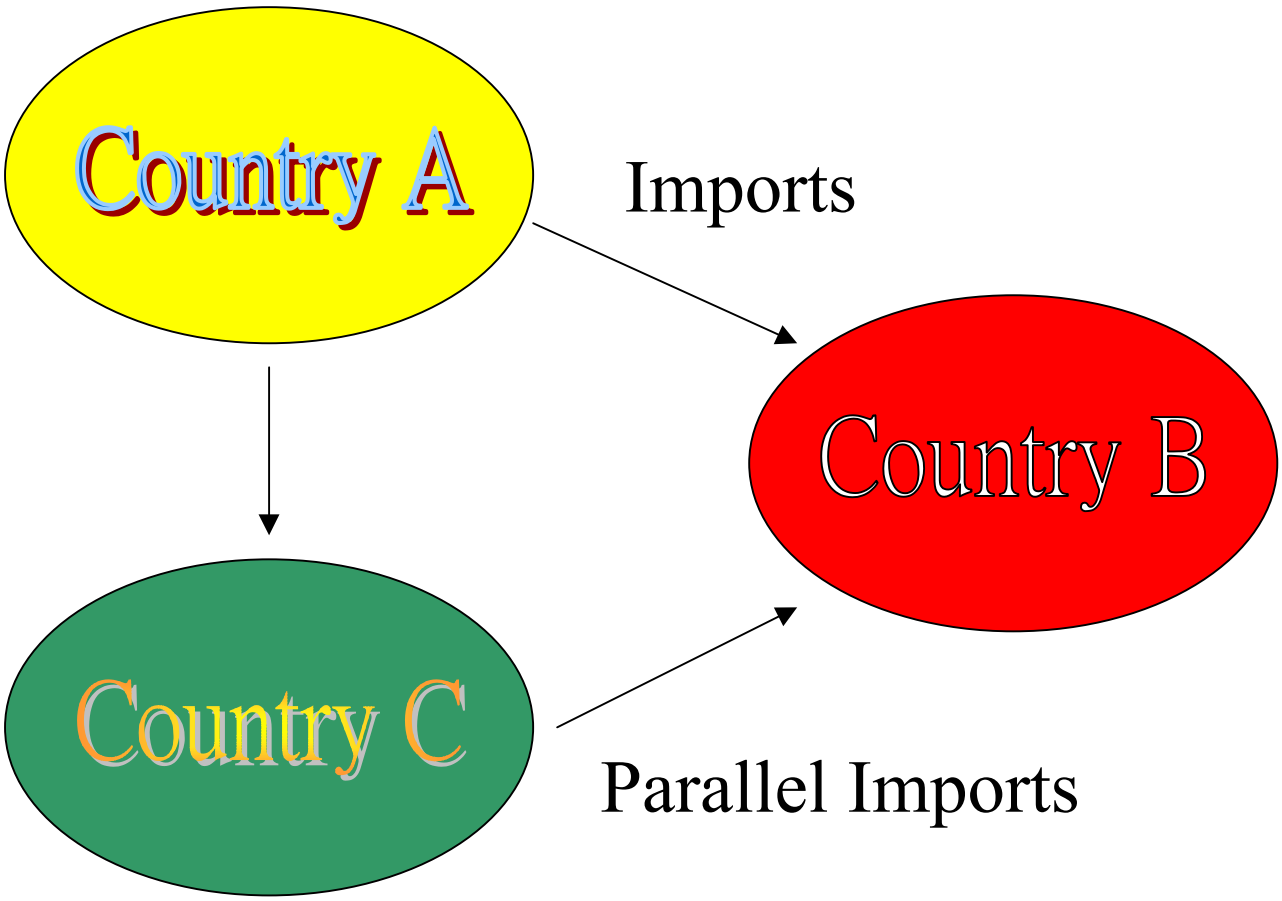
Substantial research findings suggest that Parallel Trade Issues is a complicated one, requiring extensive knowledge and comprehension. While, the welfare effect of Parallel Trade is ambigeous that depends on circumstances, conflict of interests between manufacturers on innovation and consumers in decreasing price discrimination continues. Future research topics tapping these areas are desirable. It is found that different countries have their own attitudes and jurisdictions on Parallel Trade with WTO taking a hands-off appraoch and the EU exercising community exhaustion of rights. For the

pharmaceutical industry, there are fierce arguments that involve natural conflicts between an intellectual property system which based upon the right to exclude use, and ethical and publuc health goals which seek to make care universally available. Recommendations aiming to take balance between the two are suggested

To conclude, it may be easier to understand this topic by putting oneself in the shoe of different interest parties and pursue their perspectives. One can often view this topic as debate at different levels: between IPR holders and parallel traders; between IPR system and public health goals (the case of pharmaceuticals) or between universality and territoriality exhaustion of rights. (EU and WTO) One can even view it as conflict of interests between developed and less developed countries.

Appendix

I) Diagram



II) E-mail communication

To: "'s985735@mailserv.cuhk.edu.hk'" <s985735@mailserv.cuhk.edu.hk>
Subject: FW: Enquiry on rules related to the issues of parallel trade
Date: Mon, 2 Apr 2001 12:52:05 +0200

Dear May

Thank you for your enquiry. The short answer is that the WTO is silent on
the question of parallel imports, and so far countries which do allow parallel imports have not had any problems in the WTO.

It's not the WTO's role to take a stand politically on issues such as these, but to have provisions in international law, i.e. in the WTO agreements, which members negotiated and signed. On this particular issue, the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
says nothing except in Article 6 which says:

"Article 6: Exhaustion
"For the purposes of dispute settlement under this Agreement, subject to the
provisions of Articles 3 and 4 nothing in this Agreement shall be used to
address the issue of the exhaustion of intellectual property rights."

i.e. parallel imports (which come under exhaustion of intellectual property
rights) cannot be brought to the WTO dispute settlement process unless the
dispute is about discrimination.

Experts do debate whether the TRIPS Agreement allows parallel imports but this has never been formally clarified. As I said, so far there is no problem.

Peter

Peter Ungphakorn
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WTO Information and Media Relations Division
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Fax: (41-22) 739 54 58
Website: http://www.wto.org

> -----Original Message-----
> From: Kwok Ki Huen [SMTP:s985735@mailserv.cuhk.edu.hk]
> Sent: 22 March 2001 09:18
> To: enquiries@wto.org
> Cc: s985735@mailserv.cuhk.edu.hk
> Subject: Enquiry on rules related to the issues of parallel trade
>
> Dear Sir/Madam,
>
> After reading the WTO website, it seems to me that WTO does not have
a
> clear stands on the issues of parallel trade issues. I would therefore
> like to ask the following questions.
>
> a) What's the stand that WTO hold towards the issues of parallel
> imports? For or Agaisnt or Neutral?
> b) Are there any rules or articles that related to the restrictions of
> parallel imports being set by WTO currently?
> c) If I would like to know more about how WTO deals with the global
> parallel import trade on pharmaceuticals, where can I get these
> information?
>
> Thanks very much for your kind attention, your reply would be of great
> help to me in writing my thesis. Looking forward to your reply soon.
>
> Yours Faithfully,
> May from Hong Kong

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- *Anonymous*, Parallel Trade of Pharmaceuticals

Homepages :

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