

PROVING THE OFFENCE OF IMPORTING UNCUSTOMED AND
PROHIBITED GOODS UNDER SECTION 135(1)(a) OF THE CUSTOMS
ACT 1967

RUDZIANI BINTI MD RUDZI

A Project Paper Submitted to the Centre for Graduate Studies,
Universiti Utara Malaysia
In Partial Fulfillment of the Requirement for the Degree of Master of
Commercial Law

PERMISSION TO USE

In presenting this thesis in partial fulfillment of the requirement for the degree of Masters of Commercial Law from Universiti Utara Malaysia, I agree that the University Library may make it freely available for academic purposes. I further agree that permission for copying of this thesis in any manner, in whole or in part, for scholarly purposes may be granted by my supervisor or, in her absence, by the Dean of the Ghazali Shafie Graduate School, College of Law, Government and International Studies. It is understood that any copying or publication or use of this thesis or part thereof for financial gain shall not be allowed without my written permission. It is also understood that due recognition shall be given to me and to Universiti Utara Malaysia for any scholar use which may be made of any material from my thesis.

Request for permission to copy or to make other use of material in this thesis in whole or in part, should be addressed to:

Dean Ghazali Shafie Graduate School of Government
UUM College of Law, Government and International Studies
Universiti Utara Malaysia
06100 UUM Sintok
Kedah Darul Aman
Malaysia.

ABSTRAK

Jabatan Kastam Diraja Malaysia adalah sebuah jabatan yang dipertanggungjawabkan dalam menguatkuasakan undang-undang yang melibatkan hal import dan eksport. Prosedur-prosedur pengimportan juga dikendalikan oleh pihak kastam. Kegagalan mematuhi undang-undang dan prosedur-prosedur yang telah ditetapkan akan mengakibatkan kesalahan terhadap Akta Kastam 1967 telah dilakukan dan pesalah berdepan dengan tindakan jenayah atau sivil. Oleh yang demikian, kajian ini menfokuskan kepada perbincangan mengenai peruntukkan undang-undang berhubung salah laku import dan prosedur-prosedur pengimportan yang dikendalikan oleh Jabatan Kastam Diraja Malaysia. Memandangkan kajian ini adalah sebuah kajian undang-undang, cara kajian tradisi akan dilakukan iaitu kajian perpustakaan yang melibatkan proses menganalisis dan menjelaskan peruntukan yang sedia ada bagi tujuan penambahbaikan. Hasil kajian ini merumuskan bahawa peruntukkan undang-undang mengenai import adalah mencukupi. Walaupun demikian, pelaksanaan undang-undang dan prosedur-prosedur yang terpakai memerlukan kepada penambahbaikan.

ABSTRACT

Royal Malaysian Customs Department is a department which is responsible in enforcing the laws involving imports and exports. Consequently, the import procedures are also handled by the customs authorities. Failure to comply with the laws and procedures specified by the department through its legislation and its subsidiary legislations will result in an offense being committed and the offender facing a criminal or civil action. This study was done to examine the extent of the law enforcement activities to eradicate illegal importation and smuggling offenses. Therefore, this study will focus on the description of the offense of illegal importation and the procedures relating to import applicable at present. Given that this study is a law research, the traditional method that is library based research is used. This involves the process of analyzing and clarifying the existing provisions for improvement. This research found that the law and procedures relating to import is complete and comprehensive. However, the implementation of the law needs improvement.

ACKNOWLEDGEMENT

“In the name of Allah, Most Gracious, Most Merciful”

Praise to Allah Almighty, for the blessing and for giving me the strength to complete this project paper. First and foremost, I would like to express my deep appreciation to my supervisor, Dr. Yuhanif bt Yusof for her constant guidance and assistance, endless support and wisdom in supervising my project paper throughout this semester.

I would also like to take this opportunity to thank all my lecturers for their continuous guidance and support throughout my studies. Further, my special thanks and love go to my beloved family, my father and my siblings who never stop loving and supporting me. Lastly, to all my friends at UUM and UIA for their support, the sharing of knowledge and inspiration in ensuring the completion of my studies.

Thank you for all the support and May Allah bless you all.

TABLE OF CONTENTS

TITLE PAGE.....	i
CERTIFICATION OF THESIS.....	ii
PERMISSION TO USE.....	iii
ABSTRAK.....	iv
ABSTRACT.....	v
ACKNOWLEDGEMENT.....	vi
TABLE OF CONTENTS.....	vii

CHAPTER ONE: INTRODUCTION

1.1	Research Background.....	1
1.2	Problem Statement.....	6
1.3	Research Questions.....	17
1.4	Research Objectives.....	18
1.5	Significance Of Study.....	18
1.6	Limitation Of Study.....	19
1.7	Scope Of The Study.....	20

CHAPTER TWO: LITERATURE REVIEW

2.1	Definition Of Import.....	22
2.2	Concerned In Importing.....	23
2.3	Prohibited Goods.....	26
2.4	Uncustomed Goods.....	33

CHAPTER THREE: METHODOLOGY

3.1	Research Design.....	40
3.2	Sources Of Law.....	41
3.3	Data Collection Method.....	42
3.4	Data Analysis.....	43

CHAPTER FOUR: ANALYSIS AND FINDINGS

4.1	Formation Of The Offence Of Import.....	44
4.1.1	<i>Mens Rea</i> Of The Offence.....	44
4.1.2	<i>Modus Operandi</i>	46
4.1.3	Who Is Concerned In Importing?.....	48
4.1.4	Goods Of Transit.....	53
4.1.5	Importing Contrary To Such Prohibition.....	56
4.1.6	Presumption As To Times Of Importation.....	59
4.1.7	Burden Of Proof.....	60

4.2	Procedures Of Import.....	63
4.2.1	Place Of Importation.....	63
4.2.2	Time Of Importation.....	64
4.2.3	Movement Of Goods.....	64
4.2.4	Arriving Vessels To Be Reported.....	65
4.2.5	Inward And Transhipment Manifest.....	65
4.2.6	Declaration Of Goods.....	66
4.2.7	Analysis On The Procedures Of Import.....	67
4.3	Suggestions To Improve Import Procedures.....	71
4.3.1	Improve The Operation Of The System.....	71
4.3.2	Additional Documents To Be submitted On Import.....	74
4.3.3	Compliance Management Structured.....	76
CHAPTER FIVE: DISCUSSION AND RECOMMENDATIONS		
5.1	Discussion.....	79
5.2	Conclusion.....	81
5.3	Recommendations.....	82
	BIBLIOGRAPHY.....	83

CHAPTER ONE

INTRODUCTION

1.1 RESEARCH BACKGROUND

Customs law, as a branch of public law in the internal legal order, has been evolved over centuries among countries conducting import and export trade. At the very beginning, the sources of customs law originated solely from municipal law, however, this has been changing ever since the creation of customs union in Europe in the nineteenth century. In the twentieth century, the sources of customs law multiplied due to emergence of an increasing number of bilateral and multilateral treaties concerning customs cooperation and assistance. Most important of all, the creation of World Customs Organization (WCO) and World Trade Organization (WTO), together with regional economic integration, has internationalized yesterday's national customs law into today's harmonized national customs law consistent with the rules of international economic law and international customs law.¹

The globalized world trading system has been accepted by nearly all members of international society within the framework of the WTO and inevitably has led to result such as the emerging harmonized and unified international tariffs regime in place of national ones. The law of customs procedure is another area to be internationalized within the framework of

¹ Chia Jui Cheng, *Customs Law of East Asia* (The Netherlands: Kluwer Law International, 2010), 37

The contents of
the thesis is for
internal user
only

BIBLIOGRAPHY

- Cheng, Chia Jui. *Customs Law of East Asia*. The Netherlands: Kluwer Law International, 2010.
- Customs Act 1967 (Act 235)
- Customs (Prohibition of Import) Order 2012 P.U. (A) 490
- Customs Regulation 1977
- Cook, Thomas A, Rennie Alston and Kelly Raia, *Mastering Import & Export Management*. United States of America: American Management Assosiation, 2012.
- Cowie, A P, ed. *Oxford Advanced Learner's Dictionary of Current English*. Oxford: Oxford University Press, 1992.
- Dato' Haji Matrang bin Suhaili. Welcoming Speech in the WCO Regional Workshop on Non Intrusive (NII) Image Analysis, Renaissance Hotel, Kuala Lumpur, March 5-9, 2012.
- Dato' Shaharuddin bin Ibrahim. Welcoming Address at The 6th IATA World Cargo Symposium, March 13-15, 2012.
- Fabio, Massimo. *Customs Law of the European Union*. The Netherlands: Wolters Kluwer, 2011.
- Hui, Andrew Chew Peng Hui. *Customs Offences*. Petaling Jaya: Sweet and Maxwell Asia, 2000.
- Investopedia. <http://www.investopedia.com/terms/import.asp>
- Ioppolo, Sebastian. *Importing and Exporting*. Singapore: McGraw-Hill Education (Asia), 2009.
- Johnson, Thomas E. *Export/Import Procedures and Documentation*. United States of America: American Management Assosiation, 2002.
- Kimberly Amadeo, *Imports*,
<http://www.useconomy.about.com/od/glossary/g/imports/htm>
- Koh, KL, CMV Clarkson and NA Morgan. *Criminal Law in Singapore and Malaysia*. Kuala Lumpur: Malayan Law Journal Sdn Bhd, 1989.

Mohd Afandi Md Amin, "Measuring the Performance of Customs Information System (CIS) in Malaysia," *World Customs Journal Volume 4 No 2*: 89, <http://www.worldcustomsjournal.org/media/wcj/-2010/2/Amin.pdf>

Mahfuzah Kamsah, "EDI Diffusion in Malaysia towards a Multiple Perspective Framework," *Journal of Scientific & Industrial Research* Vol 58 (March-April 1999): 242-252, [http://www.nopr.niscair.res.in/bitstream/123456789/17810/1/JSIR%2058\(3-4\)%20242-252.pdf](http://www.nopr.niscair.res.in/bitstream/123456789/17810/1/JSIR%2058(3-4)%20242-252.pdf)

Seyoum, Belay. *Export-Import: Theory, Practices, and Procedures*. New York: International Business Press, 1984.