1. Gauging the scale and effects of counterfeiting and piracy

This chapter lays the methodological groundwork for the study. It places in both quantitative and relative perspective the reliance of the Italian economy on IP, as well as the considerable damage caused by infringement. It goes on to introduce two distinctions: that between counterfeit products smuggled into Italy and IPR infringements on Italian right holders; and that between primary and secondary markets for counterfeit and pirated goods. The chapter concludes by outlining the seven categories of effects of this illicit trade, each of which will be examined in detail in the discussion that follows.

Throughout the world, intellectual property (IP) has been a driving force behind economic growth, high-paying jobs, economic competitiveness, innovation, and creative expression. IP also provides the incentive to create, invest in, and commercialise new inventions, products and services, while supporting artists and authors in disseminating their works.

Alongside this remarkably positive story of economic growth, ingenuity and creativity, however, there is the far less positive story of IP theft and the harm it does. It is essential to understand the threats posed, both at the macro level – their global scope and magnitude – and at the micro level – the nature of the complex schemes used by illicit actors to accomplish IP theft on a commercial scale. Without that understanding, and a firm grasp of the impediments to effective IP enforcement, developing and implementing an effective strategy to tackle these threats is practically impossible.

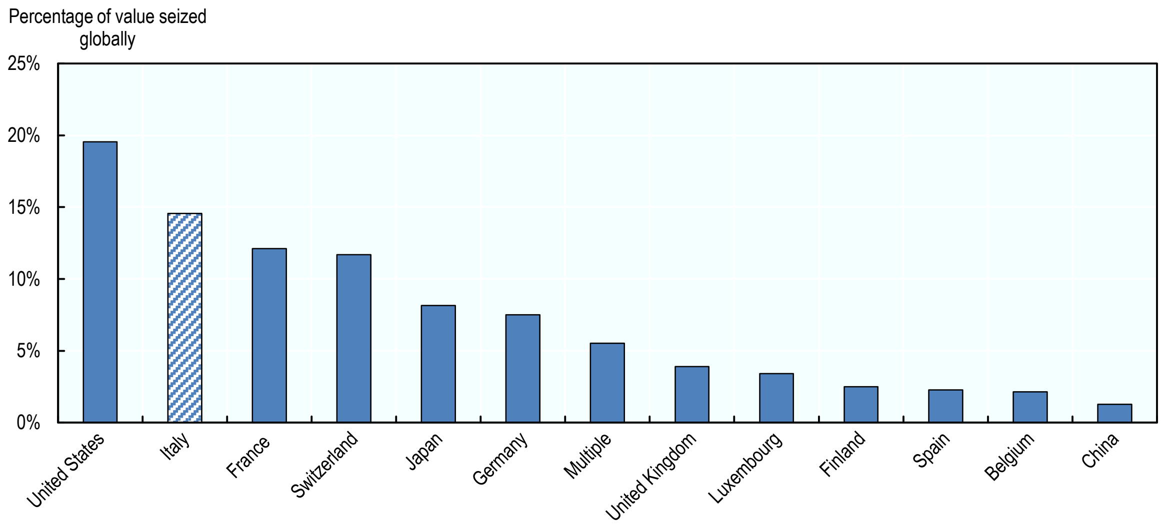
The entire Italian economy relies on some form of IP, as recent quantitative studies have shown OHIM (2013). Virtually every industry either produces or uses it, which means the Italian economy is characterised by an IPR intensity far above the EU average. In 2010, IPR-intensive industries contributed to 40.8% of Italian GDP and 26.8% of employment in Italy. With respect to trademarks only, the country ranks fourth in the EU in terms of the total number of trademarks registered during that same year; Italian trademark-intensive industries contributed to 36.1% of Italian GDP, and 21.5% of Italian total employment. These important industries rely on the recognition and effective protection of a variety of intangible assets and products of the human intellect.

Italian IPR-intensive industries are highly globalised, which contributes to their being a major driver of the country's economic growth. The Italian economy is an active participant in global value chains: in 2009, the country's exports represented 3.8% of total world exports in value added terms, which is slightly above Italy's share in gross exports and imports OECD (2013). Numerous Italian IPR-intensive industries actively participate in global value chains through exports in manufacturing, by sourcing intermediates from abroad. These include industries such as chemicals, machinery, electrical equipment and textiles.

The high IPR and trademark intensity of the Italian economy, combined with its high degree of integration within the global economy, highlights the potential for damage caused by counterfeiting and piracy, and calls for hard analysis of the phenomenon. This is especially relevant when the threats of counterfeiting and piracy[1] are growing worldwide OECD/EUIPO (2016).

Italy is one of the countries whose companies are most affected by global counterfeiting and piracy. In fact, according to OECD/EUIPO (2016), Italy ranks number two on the list of economies whose rights holders suffer from counterfeiting, directly after the United States and ahead of France, Switzerland, Japan, Germany and the United Kingdom (see Figure 1.1).

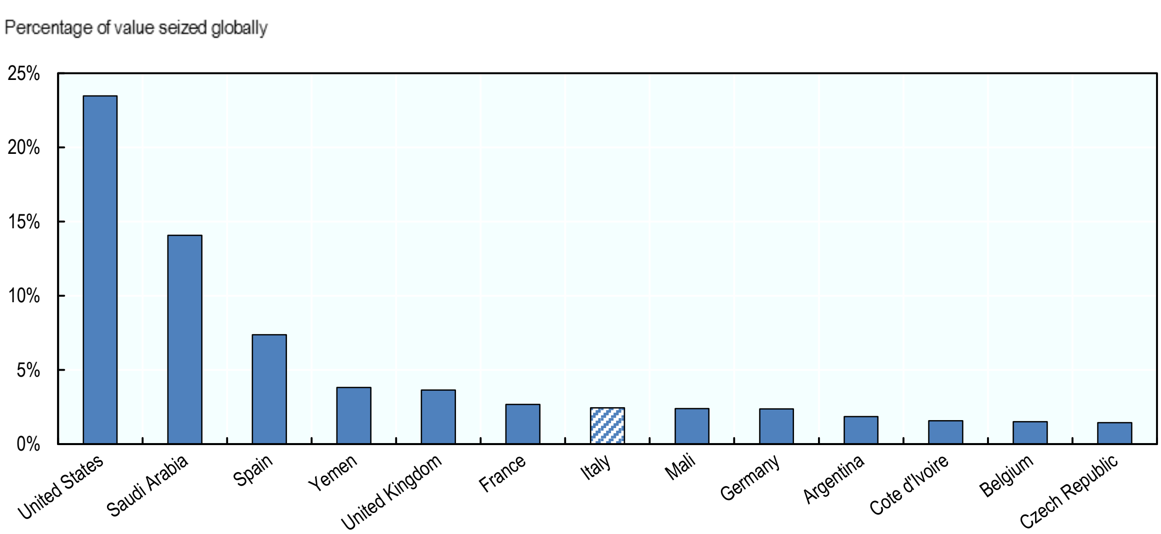
Figure 1.1. Top economies of origin of right holders whose IP rights are infringed, 2011-13



Notes: The term "multiple" refers to seizures of IP-infringing products for which right holders are registered in multiple economies. Data are based on the value of global customs seizures of counterfeit and pirated products from 2011 to 2013.
Source: OECD/EUIPO (2016).

At the same time, the OECD/EUIPO (2016) report shows that some 2.4% of the total value of counterfeit and pirated world imports was shipped to Italy between 2011 and 2013. This ranks Italy as the seventh destination economy in the world for counterfeit and pirated products (Figure 1.2).

Figure 1.2. Top destination economies for counterfeit and pirated products, 2011-13

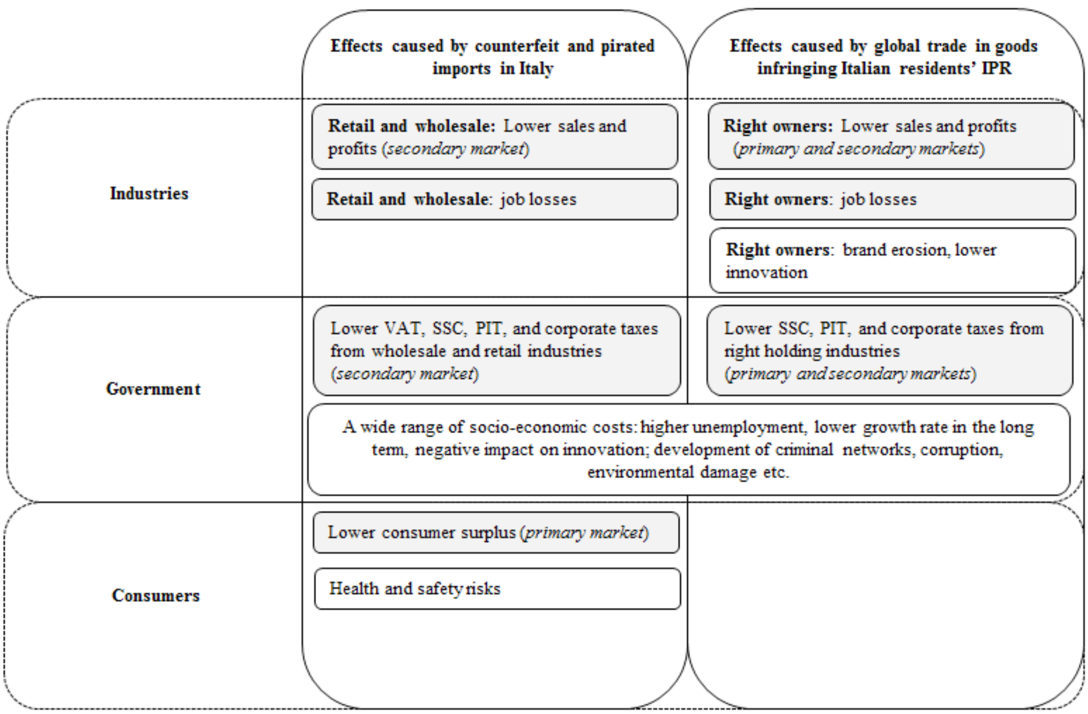


Note: Data are based on the value of global customs seizures of counterfeit and pirated products from 2011 to 2013.
Source: OECD/EUIPO (2016).

The effects of the global trade in counterfeit goods on the Italian economy can be assessed from two perspectives (see Figure 1.3):

- the effects of counterfeit products smuggled into Italy on consumers; industries, including manufacturing, wholesale and retail; and on the Italian government
- the effects of IPR infringements on Italian right holders, and consequently on the manufacturing industry and government.

Figure 1.3. How counterfeit trade affects Italy – its consumers, industries and government



Notes: Grey indicates areas for which quantitative analysis of impact is possible (with varying degrees of robustness in the final results). White indicates areas for which quantitative analysis of impact is not currently possible. VAT refers to value-added taxes, SSC to social security contributions, PIT to personal income taxes.

Three important things should be kept in mind when analysing these impacts. Firstly, the methodology refers to the notion of *primary and secondary markets* for counterfeit and pirated goods. That is to say, it distinguishes between fake products that deceive consumers (primary markets) and those that are openly sold as fakes to consumers (secondary markets – see OECD/EUIPO, 2016). The markets for deceptive and non-deceptive products have significantly different characteristics, and these differences have important implications in the overall assessment.

Secondly, whereas in primary markets consumers pay the full (or approximately) retail price for a fake product thinking it is genuine, consumers knowingly purchasing IPR-infringing products in secondary markets are likely to pay a lower price, and would not necessarily have substituted the fakes for the genuine goods given the choice. Obviously, these differences in price and substitution rates have different implications for estimating lost sales and lost taxes, and for the valuation of consumers' detriment (the price premium unjustly paid by consumers in the belief they are buying a genuine product).

Thirdly, there are other impact areas that are hard to measure quantitatively, or are likely to occur only in the long term; these are therefore excluded from the analysis. They include, for example, the negative effects of counterfeiting and piracy on consumer health and safety, on the environment, on the proliferation of criminal networks, and on long-term innovation and growth.

In sum, there are seven categories of effects that this study quantifies. Four of them are the effects of counterfeit and pirated products smuggled into Italy: 1) loss of consumers' welfare; 2) loss of sales; 3) loss of jobs for the retail and wholesale sector; and 4) lower tax revenues. These four categories are described in detail in Chapter 2.

The three remaining areas are effects caused by global trade in counterfeit and pirated products that infringe Italian IPRs, and are described in Chapter 3. They are: 5) lower sales for IPR owners; 6) job losses for the Italian manufacturing industries; and 7) lower tax revenues.

The methodological framework developed to calculate all these effects, as well as the data used, is presented in detail in the Annex A. Note that it takes account of the "double-counting" issue, which arises from sales of fake products in Italy that infringe the IPRs of its own residents.

Chapter 4 summarises the main findings of the report, and provides suggestions for future research.

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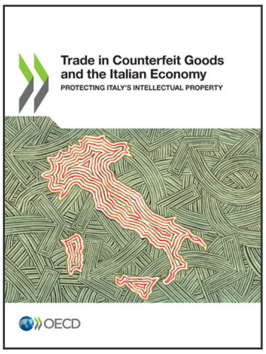
Note

[1] For the purposes of this report the term "counterfeit and pirated" refers to physical goods that infringe trademarks, copyrights, patents or design rights.



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