

Chapter 1. Mapping the real routes of trade in fake goods

Parties that trade in counterfeit and pirated products tend to ship infringing products via complex trade routes in order to cover their tracks. These complex routes are a formidable obstacle for enforcement authorities; mapping the trade routes for fake goods is therefore essential for developing effective policies to counter this threat. This chapter describes OECD research which assesses the complex routes associated with the global trade in counterfeit and pirated goods. The chapter provides an overview of the key issues and the methodology used.

Introduction

The broadening scope of trade in counterfeit and pirated goods¹ is currently an issue of high importance and increasing policy priority. For firms, counterfeiting and piracy have adverse impacts on sales and profits. For governments, they imply potentially severe revenue, economic, health, safety and security impacts. In addition, trade in counterfeit and pirated goods raises serious governance challenges, as it provides revenues to criminal groups, allowing them to benefit from highly profitable counterfeiting and piracy operations.

In order to improve the factual understanding of counterfeit and pirated trade, and to formulate evidence-based policy messages, the OECD and the European Union Intellectual Property Office (EUIPO) together carried out a comprehensive economic assessment of the problem, and of the main governance gaps that are allowing this trade to occur (OECD/EUIPO, 2016). It found that imports of counterfeit and pirated goods were worth USD 461 billion in 2013, or around 2.5% of global trade. Developed economies seem to be targeted especially: fake goods amounted to up to 5% of the value of overall imports to the European Union.

The analysis carried out in the OECD-EUIPO report led to the identification of the key provenance economies of counterfeit imports into the European Union. However, it did not indicate the nature of these provenance economies, especially whether they were producing counterfeit products or playing a transit role in their trade.

Parties that trade in counterfeit and pirated products tend to ship infringing products via complex trade routes. While the use of transit points is not uncommon in international trade, counterfeiters have additional incentives to use such routes. These include the ability to camouflage the original point of departure, to establish distribution centers for counterfeit and pirated goods, and to repackage or re-label items. In addition, while imports of counterfeit goods are, in most cases, targeted by local enforcement authorities, goods in transit are often not within their scope, which means they are less likely to be intercepted.

Precise information about the economy of origin is essential for efficient enforcement. Hence, complex trade routes become a formidable obstacle for enforcement authorities, as the economy of origin is concealed through the various transit points. Consequently, a mapping of trade routes in fake goods is essential for developing effective policies to counter these illicit activities. The overall good quality of available data on trade in counterfeit goods enabled a quantitative exercise to be carried out to shed light on which provenance economies are more likely to be producers of infringing goods, and which are more likely to be the transit points.

This study assesses the complex routes associated with the global trade in counterfeit and pirated goods. This chapter provides an overview of the key issues and the methodology used, while Chapter 2 presents the findings for ten main sectors particularly vulnerable to counterfeiting. These sectors span a wide range of IP-intensive, tradable goods, including fast-moving-consumer goods such as foodstuff or cosmetics, to business-to-business products, such as spare parts and computer chips. Chapter 3 summarises the main findings and outlines the next steps for deepening the investigation into trade in fake products.

Trade in fake goods: what we know

When deciding to engage in the illegal production of counterfeit or pirated goods, those involved need to decide: 1) what products will be counterfeited or pirated; 2) where the products will be produced; 3) where the infringement will take place; 4) which geographic markets will be targeted; and 5) how products will be shipped to end markets without being intercepted. The factors driving these decisions include the profitability and magnitude of potential markets for candidate products, technological and logistical factors associated with the production and distribution of the products, and the risk and consequences of detection by law enforcement bodies (OECD, 2008).

Recent analysis indicates that the range of products being counterfeited and pirated is broad, including high-end consumer luxury goods such as watches, perfumes and leather goods; business-to-business products such as machines, chemicals or spare parts; and common consumer products such as toys, pharmaceuticals, cosmetics and foodstuff (OECD/EUIPO, 2016). Every product protected by intellectual property laws can be counterfeited; there are records, for example, of seized counterfeit fresh fruits and other foodstuff. Some counterfeit products, such as pharmaceuticals, spare parts and toys, can be of low quality, and can create significant health and safety threats.

Counterfeit and pirated products originate from virtually all economies, on all continents. The largest source of infringing products that are seized while in international commerce, however, is East Asia, with the People's Republic of China, and Hong Kong, China together accounting for over 80% of the seizures made by other countries during 2011-13 (based on OECD/EUIPO, 2016). The markets for infringing products that are traded internationally, on the other hand, are global, led by the United States, European Union (EU) and the Middle East.

Data on seizures help reveal the distribution networks that are used to ship products to end markets. During 2011-13, an average of almost 62% of seizures worldwide involved postal shipments (OECD/EUIPO, 2016). Air transport and sea followed, accounting for slightly more than 20% and 9%, respectively; vehicle transport accounted for about 7%. Other modes (including rail and pedestrian traffic) were negligible.

The number of seizures, however, is only part of the story. A closer examination of EU experience shows that while the number of sea seizures accounted for 3% of the total in 2013, they accounted for 74% of the total number of items seized, and 51% of the total value of seizures (Table 1.1). The implication is that bulk shipments are more likely to be moved by vessels; each sea seizure yielded an average of 12 300 items, compared to 16 items per post seizure.

Table 1.1. EU seizures, by means of transport, 2015

| Transport means | Number of seizures | | Number of items seized | | Retail value | |
|------------------|--------------------|------------|------------------------|------------|--------------|------------|
| | Number | % of total | Number | % of total | Value (EUR) | % of total |
| Air | 14 970 | 18.5 | 4 865 259 | 12 | 845 943 | 18.5 |
| Express services | 5 418 | 6.7 | 2 199 781 | 5.4 | 87 155 307 | 13.6 |
| Post | 57 185 | 70.5 | 893 059 | 2.2 | 57 790 226 | 9 |
| Rail | 2 | 0 | 21 | 0 | 4 500 | 0 |
| Road | 1 073 | 1.3 | 2 647 606 | 6.5 | 52 852 967 | 8.2 |
| Sea | 2 450 | 3 | 30 122 949 | 74 | 325 459 380 | 50.7 |

Source: European Commission (EC) (2015), *Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border*, https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf.

In terms of trends, the share of small shipments, mostly by postage or by express services, is growing (OECD/EUIPO, 2016; WCO, 2016). This is apparently due to the shrinking costs of such modes of transport and the increasing importance of Internet and e-commerce in international trade. For traffickers, small shipments reduce the risk of bulk losses in the event of interception (in a shipping container, for example), but criminal groups are also becoming adept at evading postal checks (Europol/OHIM, 2015). They are, for example, using stickers/stamps from international postal services to give the impression that shipments have come from another EU member state, when in fact they may have arrived from Thailand or India. This technique is known as “drop shipping”. To prevent interception, products are imported into the European Union in bulk into a member state with fewer controls, and the packages are then re-directed to Belgium, Germany, Spain, or other EU member country with an EU postal stamp/sticker. In a related technique, criminals route postal packages containing counterfeit pharmaceuticals via Canada, which is known for its high standards and high quality, thereby giving consumers a false sense of confidence in the product.

Why are the trade routes of counterfeit trade so complex?

The use of complex trade routes with transshipment points is standard practice in all international trade. This is done for a number of reasons. For instance, there are many ports that are not directly connected with one shipping line, and many shipments therefore need to be broken down and shipped in several legs. Change of mode of transport during the journey is another reason for transshipment, for example from vessel to road transport or from rail to vessel. Other reasons include consolidation (combining small shipments into a large shipment) and deconsolidation (dividing a large shipment at into smaller ones).

Just like trade in legal goods, trade in counterfeit products also involves complex trade routes, but complexity is used to escape enforcement. Trade routes in counterfeit and pirated goods are constantly being adapted by counterfeiters to avoid detection (Box 1.1). Criminal organisations play a major role; they have effectively transformed counterfeiting into a veritable illicit mass production and distribution enterprise involving extremely complex distribution networks (UNICRI, 2011). Finding ways to disrupt these networks has proven difficult.

Box 1.1. Methods used by counterfeiters to avoid detection

As in other types of customs violations, offenders trying to trade counterfeit products use every possible way to avoid detection. Putting counterfeit goods deep in containers, mixing them with legitimate goods or putting them behind legitimate goods are classic and easy ways of trying to deceive customs. False import/export declarations, for example that report “non-name” products, are also a widely popular method.

Further to these traditional concealment schemes, new types of *modus operandi* are being observed. New methods include sending parts of counterfeit items individually and assembling them in final markets, or sending final products separately from their logos, packaging and other trademark-infringing material. These new trends are confirmed with available data that report a significant growth of trademark infringing packaging, labels and holograms.

Source: WCO (2014), “Section 3. IPR, health and safety”, in WCO (2014), *Illicit Trade Report: 2013*, www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/illicit-2013-_en_lr2.pdf?db=web; OECD/EUIPO (2016), *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, <http://dx.doi.org/10.1787/9789264252653-en>.

The complexity of distribution networks reflects to the extensive use of in-transit operations. An analysis of counterfeit and pirated imports into the European Union identified a set of important intermediary transit points (OECD/EUIPO, 2016). Some of these – such as Hong Kong, China and Singapore – are important hubs of international trade in general. Other transit points include economies with weak governance or with a strong presence of organised criminal or even terrorist activity. The analysis shows significant changes from year to year, as traffickers exploit new governance gaps. This reflects the ability of counterfeiters and criminal networks to quickly identify weak points and gaps and consequently leverage opportunities for subterfuge.

The in-transit operations are generally located in special economic zones which governments have created to stimulate foreign investment and exports. The zones, commonly referred to as free trade zone (FTZs), are designated areas that lie outside the customs jurisdiction in the economies concerned and are not subject to customs duties or most other customs procedures that would otherwise apply to imported merchandise (OECD 2008). Such zones range in size from single warehouses to massive complexes comprising thousands of businesses, and even whole harbours. Permitted activities can include the storing, assembling, packaging and manufacturing of goods, principally for export.

The number and importance of these zones have grown significantly over time. In 1970, 30 countries had 80 zones with exports totalling USD 6 billion (FATF, 2010). The number has now grown to over 3 000 zones in 135 countries. The zones have a significant economic impact, accounting for over 68 million direct jobs and over USD 500 billion of direct trade-related value added. In addition to customs benefits, the zones can provide other incentives to investors, including tax-free advantages and free capital movements (Box 1.2).

Box 1.2. Profile of Jebel Ali Free Trade Zone

The Jebel Ali Free Trade Zone (Jafza) in Dubai was created in 1985. It is currently operated by DP World, which is a publicly traded company specialising in marine terminal management. The zone has grown from a small operation of 19 companies into a business community of over 7 000 companies from more than 100 countries, employing over 144 000 workers. It accounts for more than 32% of the United Arab Emirates' foreign direct investment, and more than 50% of Dubai's exports. For investors, location in the zone offers:

- 100% foreign ownership
- 0% corporate tax for 50 years (a concession that is renewable)
- no restrictions on capital repatriation
- 0% import or re-export duties
- 0% personal income tax
- no currency restrictions
- no restriction on foreign talent or employees
- ability to mortgage premises to a bank or financing company
- onsite customs.

In order to form a company within the zone, investors are required to choose between i) a Free Zone Establishment, which is essentially a limited liability company (LLC), with one shareholder; ii) a Free Zone Company, which is an LLC with up to 50 shareholders; iii) a Public Listed Company, which is an LLC which could offer shares to the public; or iv) a branch of a company, which is 100% owned by its corporate parent (which is located outside the zone) and bears its name. Operating licences are required, their nature depending on the type of activities to be carried out.

Sources: See <http://jafza.ae/about-us/history-vision-promise/#gs.wx0Bk04Jafza>, <http://jafza.ae/about-us/why-dubai-why-jafza/#gs.rTFoRIM> and <http://web.dpworld.com/about-dp-world/>.

One of the key developments over the past several decades has been the growing number of privately owned, developed and operated FTZs worldwide (FIAS, 2008). The FIAS study indicates that 62% of the 2 301 zones in developing and transition countries that were analysed in 2008 were developed and operated by the private sector, compared with less than 25% in the 1980s. According to the study, the rise in the role of the private sector reflects the fact that such facilities can be profitably operated on the part of developers, which can reduce the burden such zones place on government resources.

The characteristics of these zones are as attractive to organised crime and counterfeiters as they are to legitimate traders. The evidence that free trade zones are misused by counterfeiters has been growing over the past years (Box 1.3; WCO, 2016). The particular benefits of transhipment to counterfeiters and criminal elements include the following, each of which is discussed in turn below:

- the capacity to obscure the real origin of cargoes
- the ability to manipulate counterfeit products
- the light regulation of zone businesses.

The real origin of cargoes can be easily obscured

Country of origin deception may be needed to undermine the targeting systems used by law enforcement to target counterfeit products (UNICRI, 2011). To this end, counterfeiters can divert cargoes several times in order to pass through different transit points. In the process, fraudulent or misleading documentation can be generated to hide the true nature of operations from law enforcement. Zones provide a low-cost vehicle for doing this as customs inspections are generally absent and items can be moved into and out of zones duty-free.

Box 1.3. Examples of in-transit intellectual property activities

Evidence of IP in-transit issues has been documented in a number of reports in recent years. The WCO, for example reported on a number of shipments from China in 2015 that made in-transit stops on their way to final markets. This included counterfeit toys shipped through Ukraine to Russia and three containers of personal electrical items (including curling irons and hair dryers) intercepted by Uruguay on their way to Paraguay. In Singapore, customs detained a consignment suspected to contain trademark-infringing hard disk drives and anti-virus software product keys. Following up on this information, the police conducted an operation at the importer's storage premises, finding more than 243 000 trademark-infringing goods, including hard disk drives, mobile phones and accessories, memory cards and computer software product keys; the products, which were seized, had an estimated street value of about SGD 11 million (USD 7.9 million / EUR 7 million).

Spanish customs seized 29,000 bottles of counterfeit shampoo in 2015. In addition, 200 000 empty bottles and production materials were seized, with a total value of over EUR 1.2 million. The Spanish authorities had received indications that the suspected product was arriving from the United Arab Emirates via the Netherlands, and was destined for a warehouse in Spain. Once the investigations had been initiated, Spanish officials were able to verify that the Spanish company was a real business, with the capacity to manufacture and distribute fake products. In order to make their activity seem legal, the suspects had set up a company in Spain and several others abroad (in the United Arab Emirates and Cyprus), with a view towards dispersing their activities in order not to draw attention to their business. The legally declared activity of the Spanish company was the wholesaling of dress accessories.

Source: WCO (2016), "Section 3. IPR, health and safety", in *Illicit Trade Report: 2015*, www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2015-en.pdf?db=web

Counterfeit products can be manipulated

Counterfeit products can be brought into zones with relative impunity, and then be manipulated to facilitate shipments to end markets. This could include carrying out counterfeiting operations, through, for example, illegally relabelling an item with a protected trademark. It could also include breaking down cargoes into a series of smaller shipments so as to lower suspicion and, if intercepted, lower the risk of a rights holder taking action. Counterfeit products could also be reshipped in containers with a large number of genuine items, so as to complicate law enforcement targeting schemes.

Zone businesses are only lightly regulated

The establishment and operation of companies in zones are often not subject to the same regulatory oversight as companies in the rest of the jurisdictions concerned, which can make it easier for zone users involved in criminal activities to support their illegal

operations. Most zone authorities, for example, operate separate company formation services that differ from those that exist in the rest of the jurisdiction, and market the ease of setting up a legal entity in a zone to attract business (FATF, 2010). Many zone authorities request little or no ownership information from the companies interested in setting up in the zone. As a result, it is simpler for legal entities to set up zones and hide the name(s) of the true beneficial owners. The possible lack of regulations governing money laundering would also benefit criminal elements. Finally, the situation is further affected by a lack of co-operation and co-ordination between private zone operators and customs officials, and the relaxed oversight by competent domestic authorities (FATF, 2010).

What are provenance economies?

The difficulty of determining whether a given economy produces counterfeit goods, or is a point of transit, has resulted in the coining of the term “provenance economy”. This term was used in the OECD-EUIPO report (2016) following the OECD methodology developed in 2008.

A provenance economy is an economy detected and registered by a reporting customs agency as a source of an item that has been intercepted in violation of an IP right, whatever the amount or value concerned. Put differently, a provenance economy refers to both those economies of origin where the actual production of infringing goods is taking place, as well as those economies that function as ports of transit through which infringing goods pass on route to the destination economy.²

Building on the OECD-EUIPO study, this report analyses which important provenance economies are more likely to be producers of infringing goods, and which are more likely to be transit points. This is done for the main product categories that suffer from counterfeiting.

Importantly, the quantitative exercise presented in this report is not a straightforward task, since it refers to clandestine operations for which little robust data are available. The methodological framework presented below therefore necessarily relies on a set of assumptions and limitations. For transparency reasons, all these assumptions and data limitations are clearly spelt out in the presentation of the framework; links to relevant literature and evidence that supports them are also provided.

How to map the real routes of trade in fake goods?

Information on the magnitude, scope and trends of counterfeit and pirated trade is critical for understanding the nature of the problems being faced and how the situation is evolving. Information is also essential for designing and implementing effective policies and measures to combat illicit operations. In response to this problem, the OECD embarked on this project to “chart” the routes in trade in fakes, to determine the main producers of fakes, and to identify the key transit points.

The identification of the key producing economies and transit points for counterfeit and pirated goods performed in this report is done at the industry level. The industry classification used is the 96 two-digit product modules included in the Harmonized System (HS), an international commodity classification system developed and maintained by the World Customs Organization (WCO).³ A complete description of the HS product categories can be found in Annex B.

From the 96 two-digit product modules available in the HS commodity classification system, 10 product categories have been selected and constitute the focus of this study (Table 1.2). The selection was based on two criteria. First, these product categories were identified in OECD-EUIPO (2016) as the most sensitive to global counterfeiting and piracy; that is they have a high General Trade Related Index of Counterfeiting (GTRIC-p). Second, data on the industrial activity of these product categories are of sufficient quality to provide robust information on potential producing economies.

Table 1.2 lists the ten selected product categories and the estimated value of global trade in counterfeit goods for each of them, both in absolute (USD billion) and relative terms (% of world imports within the product category). This approach has two advantages. First, the product categories together constitute 63% of the global trade value of counterfeit and pirated products estimated in the 2016 OECD-EUIPO report (USD 284 billion of the global estimate of USD 461 billion). Second, the scope of goods studied is very wide, ranging from foodstuff, pharmaceuticals, common consumer goods and luxury products to business-to-business goods.

Table 1.2. Estimated value of global trade in counterfeit goods, 2013

| Product category | Value in USD billion (EUR billion) | % of world imports |
|--|------------------------------------|--------------------|
| Foodstuff (15/21) | 11.90 (8.72) | 1.2% |
| Pharmaceuticals (30) | 16.20 (11.87) | 3.3% |
| Perfumery and cosmetics (33) | 5.25 (3.85) | 4.7% |
| Articles of leather, handbags (42) | 8.54 (6.26) | 11.5% |
| Clothing and textile fabrics (60/61) | 27.70 (20.30) | 11.0% |
| Footwear (64) | 13.30 (9.75) | 10.5% |
| Jewellery (71) | 40.90 (29.97) | 4.8% |
| Electronics and electrical equipment (85) | 121.00 (88.66) | 5.3% |
| Optical, photographic and medical apparatus (90) | 29.20 (21.40) | 5.2% |
| Toys and games (95) | 9.72 (7.12) | 11.0% |

Note: The estimated value of global trade in counterfeit and pirated goods for each product category reported in this table is based on the General Trade Related Index (GTRIC) methodology developed in OECD-EUIPO (2016). For each category, the corresponding HS code is indicated in brackets.

The mapping method

The determination of the main producer economies of fakes and the key transit points relies on statistical data on seizures of counterfeit and pirated goods, complemented with international trade statistics and industrial activity data. A more detailed description of these data and of all the related limitations is presented in Annex A.

A quantitative methodology draws on these data to determine the producers and transit points in trade of fake goods in the following ten product categories: foodstuff; pharmaceuticals; perfumery and cosmetics; articles of leather and handbags; clothing and textile fabrics; footwear; jewellery; electronics and electrical equipment; optical, photographic and medical apparatus; toys and games.

For each product category the methodology first determines the top economies of provenance for counterfeit goods in trade in this product. It does not distinguish whether

these economies are producers or transit points of fake goods in these categories, however. The methodology relies on two sets of statistical filters to distinguish producers from transit points (see Annex B for more details):⁴

1. A filter that looks at the production capacities of a given economy in a given sector. Intuitively, production of each good relies on certain skills or resources and also exhibits certain returns-to-scale properties. Consequently, economies tend to specialise in production of certain goods. We assume that only economies that have sufficient productive capacity for legitimate goods are able to leverage this capacity to produce counterfeits.
2. A filter that checks the degree to which a given economy specialises in re-export of a given product, e.g. through development of an advanced logistical infrastructure, or by virtue of its convenient geographical location. Where these factors facilitate transit of genuine products, they can also facilitate transit of fake products in the same categories.

Both filters are applied to distinguish the producing economies from the key potential transit points for each analysed industry. Intuitively, if an economy is *not* a significant producer of a fake good and at the same time is a large re-exporter of this good in legitimate trade, then it is likely to be a transit point. Similarly, economies that are identified as provenance economies that are significant producers of a given good but are insignificant re-exporters are likely to be producers of these fake products.

These filters are well grounded in the economic trade literature and are used to assess the specialisation and complexity of a given economy (Hidalgo and Hausmann 2009 and 2011).

This exercise results in a list of producers and a list of transit points. Together with the information on the place of seizure, this allows maps of trade in fake goods to be developed for each product category, showing the key producer economies, main transit points and main destinations.

Box 1.4. Data limitations and future needs

The analysis carried out in this study has highlighted some measurement and data-related issues. Two in particular stand out:

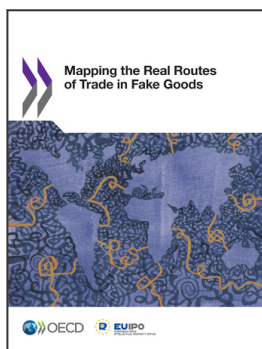
1. Even though the information on counterfeit and pirated trade has improved significantly in recent years, more could be done to improve and expand information on this phenomenon. This is particularly important for non-OECD economies, where the available information is imprecise and/or incomplete. Adoption of measurement techniques and data collection methods that are currently employed in the OECD countries could help to further expand the geographical scope of the analysis.
2. Data on industrial production are relatively old and incomplete for many sectors and economies. Moreover, for those cases where data are available, they are often reported using different reporting schemes. Consequently, the analysis is done at a relatively high level of aggregation (i.e. two-digit level), which reduces the precision of matches between both datasets. Further research on measurement techniques and data collection methods could help to further refine the analysis.

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From:
Mapping the Real Routes of Trade in Fake Goods

Access the complete publication at:
<https://doi.org/10.1787/9789264278349-en>

Please cite this chapter as:

OECD/European Union Intellectual Property Office (2017), "Mapping the real routes of trade in fake goods", in *Mapping the Real Routes of Trade in Fake Goods*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264278349-5-en>

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