

Chapter 1. The trade in fakes: Setting the scene

Introduction

Globalisation, policies for improving trade facilitation and the rising economic importance of intellectual assets are important drivers of economic growth. These intangible assets in the global context have shifted the attention of industry and policymakers to intellectual property (IP). For modern industries, IP is one of the key value generators and enablers of success in competitive markets, and for policymakers it plays a crucial role in promoting innovation and driving sustained economic growth.

However, this rising importance of IP in the globalised world has created new opportunities for criminal networks to free ride on others' intellectual assets and pollute trade routes with counterfeits. The recently observed broadening scope and magnitude of counterfeiting, in particular in the context of trade, is seen as a significant economic threat that undermines innovation and hampers economic growth.

In order to provide policymakers with reliable empirical evidence on this threat, the Organisation for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO) joined forces to develop an understanding of the scale and magnitude of the problem of IP infringement in international trade. The results published in a series of reports that provided a general overview of this threat: *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (OECD/EUIPO, 2016^[1]), *Mapping the Real Routes of Trade in Fake Goods* (OECD/EUIPO, 2017^[2]) and *Trends in Trade in Counterfeit and Pirated Goods* (OECD/EUIPO, 2019^[3]).

Apart from these core reports, subsequent studies have deepened our understanding on specific aspects of trade in counterfeit goods. These include *Trade in Counterfeit Goods and Free Trade Zones: Evidence from Recent Trends* (OECD/EUIPO, 2018^[4]); *Why Do Countries Export Fakes?* (OECD/EUIPO, 2018^[5]); *Misuse of Small Parcels for Trade in Counterfeit Goods* (OECD/EUIPO, 2018^[6]); *Trade in Counterfeit Pharmaceutical Goods* (OECD/EUIPO, 2020^[7]) and *Misuse of Containerized Maritime Transport in Counterfeit Trade* (OCDE/EUIPO, 2021^[8]).

Altogether, these reports provide robust evidence of the significant volume of trade counterfeiting and piracy. They also document the large extent of this threat to efficient business and the well-being of consumers worldwide and point to the damages it causes by reducing firms' revenues and undermining their incentives to innovate.

The existing studies triggered great policy attention on combating counterfeit and pirated trade. This has been paralleled by increased efforts by the private sector to raise awareness of this threat. However, the existing dataset is becoming dated, and this could hamper understanding of the recent trends linked to trade in counterfeit goods.

In addition, several recent developments could also affect the current state of the trade in counterfeits. This includes the boom in trade in small parcels, which has been boosted by the COVID-19 pandemic.

What is more, the lockdowns and border closures of the on-going sanitary crisis has created – and will continue to create – further impacts on the illicit trade in counterfeit goods. These impacts occur through several direct and indirect transmission channels, including such phenomena as shifting consumer demand, changing priorities in customs controls and re-shaping trade routes.

This report provides policymakers with updated information on the trade in counterfeit and pirated goods. It measures the scale of counterfeiting using of the methodology developed in the (OCDE, 2008^[9]) report and updated in (OECD/EUIPO, 2016^[1]). This methodology is used with a new set of world data on seizures of counterfeit and pirated goods, leading to a set of objectives and a robust illustration of economy- and industry-specific patterns in the trade of counterfeits.

The authors stress that the quantitative analysis predates the COVID-19 pandemic. It is clear the pandemic has largely reshaped both licit trade and the trade in counterfeit goods. While some initial effects on counterfeiting having already been observed, the longer-term impact is expected to emerge gradually. Given the fast pace of change, a precise quantitative analysis of this has not yet been possible. Nevertheless, discussions with law enforcement officials and industry representatives, along with monitoring ongoing law enforcement actions, have shown that the main impact thus far has been an accelerated transition to e-commerce, with a boom in offers of counterfeits online (OECD, 2020^[10]); (UNICRI, 2020^[11]).

This study largely draws on statistical data on counterfeiting and piracy, which due to their nature are largely incomplete and limited. Consequently, the quantitative results presented in this study illustrate only certain parts of counterfeiting and piracy. Despite this, the methodological apparatus was tailored to the available dataset to ensure the conclusions are clear and based on fact.

Scope of the study

Counterfeiting and piracy are terms used to describe a range of illicit activities related to the infringement of intellectual property rights (IPRs). Following the (OCDE, 2008^[9]), (OECD/EUIPO, 2016^[1]) and (OECD/EUIPO, 2019^[3]) studies, this report refers to the definitions as described in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Consequently, this report focuses primarily on the infringement of copyright, trademarks, design rights and patents. The term counterfeit used in this report refers to tangible goods that infringe trademarks, design rights or patents, and the term pirated describes tangible goods that infringe copyright.

Three relevant aspects should be kept in mind in this context:

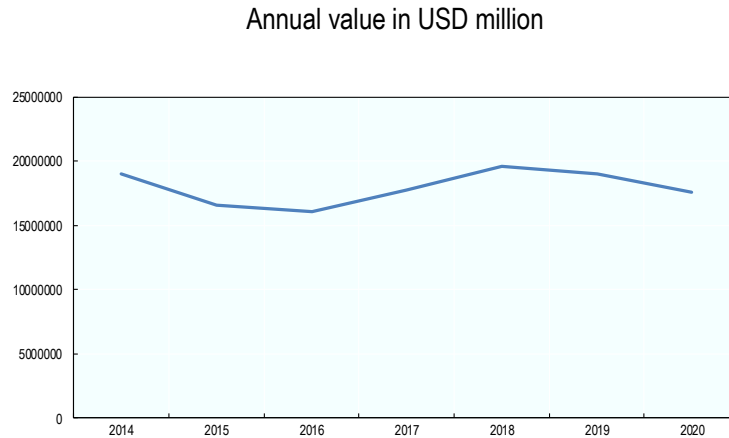
- This wording is used for the purpose of this report only and does not constitute any definition outside its scope.
- This study does not include intangible infringements, such as online piracy or infringements of other IPRs.
- Substandard, adulterated or mislabelled products, for example pharmaceuticals, that do not violate a trademark, patent or design right, for example, and replacement automotive oil filters and head lamps that are made by firms other than the original equipment manufacturer (OEM) (provided the replacement parts do not violate a patent, trademark or design right) are beyond the scope of this study.

Trends in global trade prior to the COVID-19 pandemic

Markets for infringing products develop dynamically and have been affected by several economic developments over the past ten years. Some of these major patterns are likely to shape the overall economic background for the evolution of the trade in counterfeit goods.

Following a decrease from 2014 to 2016, world trade grew by almost 22% from 2016 to 2018 and then decreased 2.7% from 2018 to 2019.

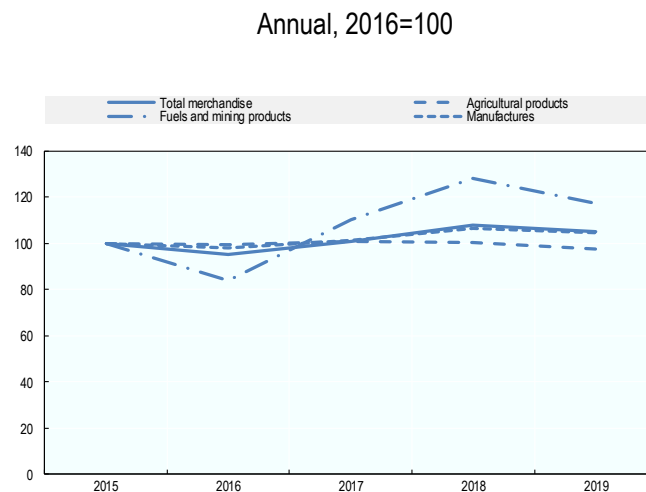
Figure 1.1. World trade flows, merchandise trade



Source: WTO (2021), *Statistics on merchandise trade*.

Looking at world trade by sector, the increase in global trade was driven by fossil fuels and mining goods, with slower growth in both agricultural products and manufacturing. (Figure 1.2.).

Figure 1.2. Index of world trade by sector



Source: WTO (2021), *Statistics on merchandise trade*.

The slow growth in commodity trade mostly halted in 2018. However, in 2019 the volumes of trade were still higher than in 2016 across all sectors that suffer from counterfeiting, for example, machinery, chemicals, food, textiles and office equipment.

Table 1.1. Index of world trade by main product category

Annual, 2016=100

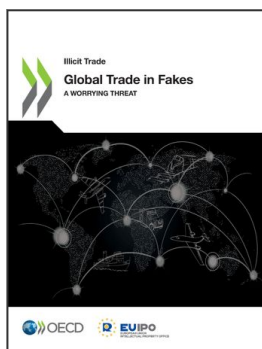
Sector	2017	2018	2019
Agricultural products	108.95	113.99	112.68
Food	108.39	112.97	112.81
Fuels and mining products	128.17	159.95	151.19
Fuels	130.23	168.72	158.09
Manufacturing	108.79	117.86	115.57
Iron and steel	120.94	136.85	121.58
Chemicals	109.29	122.79	120.76
Pharmaceuticals	105.16	117.97	124.27
Machinery and transport equipment	109.69	118.12	115.40
Office and telecom equipment	113.65	123.38	118.83
Transport equipment	106.30	110.96	108.30
Textiles	105.06	111.21	108.77
Clothing	104.53	111.10	110.96
Total merchandise	110.58	121.85	118.51

Source: WTO (2021), *Statistics on merchandise trade*.

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