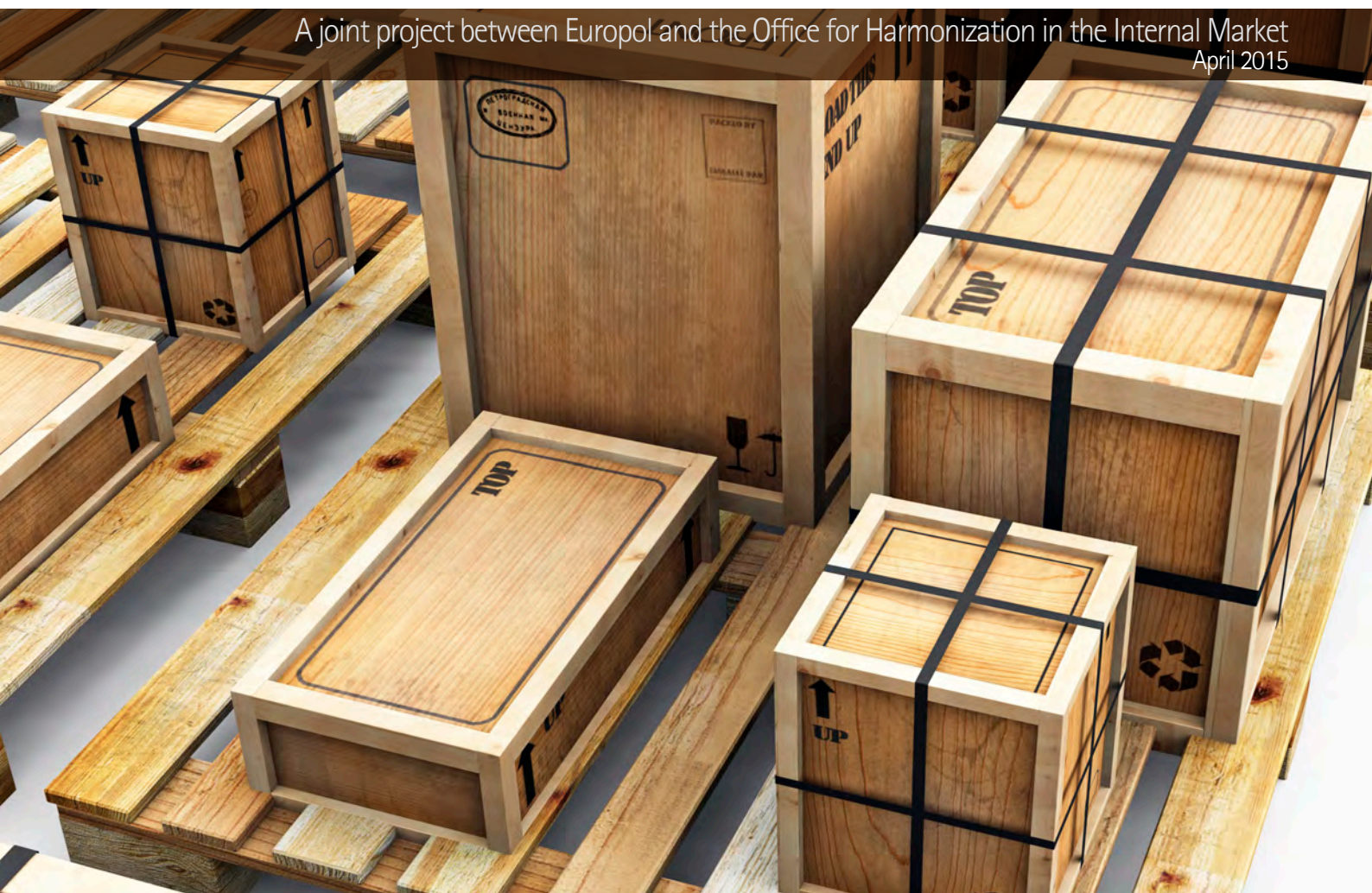




# 2015 Situation Report on Counterfeiting in the European Union

A joint project between Europol and the Office for Harmonization in the Internal Market  
April 2015





## 01 / Foreword

Intellectual Property Rights (IPR) help ensure that innovators and creators get a fair return for their work, encourage investment in research, and create growth and quality jobs. They also contribute to the health and safety of consumers by allowing them to make informed choices about the products they buy.

IPR intensive industries account for more than a quarter of all jobs and more than a third of GDP in the EU. This illustrates the value of these rights for the economy and society in the EU, as well as the scale of potential damage that can be caused when they are undermined.

The EU has acknowledged the need to protect consumers and safeguard intellectual assets simultaneously, in order to ensure that creativity and innovation continue to be major drivers of growth. In this context, Europol's Serious Organised Crime Threat Assessment (SOCTA) has identified commodity counterfeiting violating health, safety and food regulations and substandard goods as a new priority area in the EU policy cycle 2014-17.

However, despite the worrying growth in counterfeiting, its acknowledged links to organised crime and the damage it does to businesses and consumers, there is still no comprehensive picture of its criminal dimension in the EU.

This situation report, prepared by Europol and OHIM through the European Observatory on Infringements of Intellectual Property Rights, is a first attempt to capture a complex and dynamic reality. Relying essentially on contributions from Member States' enforcement authorities and the private sector, the report identifies the main traits of the phenomenon and provides illustrative case studies.

It also identifies the need to develop a more structured and systematic intelligence effort.

In this respect, Europol and OHIM are already strengthening their cooperation on IP crime through the European Observatory on Infringements of Intellectual Property Rights, and the results of this could be used to build a more complete picture and support operational initiatives in Member States<sup>1</sup>.

This is even more important, given the evidence that counterfeiting activities not only harm businesses and consumers but are also a source of funding for organised crime.

The ever-changing and complex setting of the digital environment also makes it difficult for enforcement officers to tackle this type of economic crime. However, addressing the financial basis of illegal web-shops through increased collaboration with advertising companies and payment processors could be a promising avenue.

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1 - Furthermore, OHIM is now implementing an innovative methodology to quantify the global economic impact of counterfeiting and piracy in the European Union through the Observatory, in collaboration with the Organisation for Economic Co-operation and Development (OECD).

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To address this digital challenge, OHIM will support Europol's efforts in the fight against the infringement of IP rights by (a) financing Europol initiatives intended to increase information and intelligence gathering and monitoring trends in the field of IP crime, with a special focus on the online environment and (b) providing easy and secure access to IT tools developed to facilitate the exchange of information between right holders and enforcement authorities. This will increase Europol's knowledge and capacity in this specific field, for the benefit of both national law enforcement authorities and right holders.



A handwritten signature in black ink that reads "Rob Wainwright".

Rob Wainwright  
Director of Europol



A handwritten signature in black ink that reads "António Campinos".

António Campinos  
President of OHIM



## 02 / Executive Summary

Counterfeit goods, especially goods that affect the health and safety of consumers and substandard goods have become an enforcement priority for Member States.

This report sets out to fill in information gaps for policymakers, practitioners, businesses and the general public.

It has been drawn up in partnership between Europol, the EU's law enforcement agency, and OHIM, the Intellectual Property Agency that supports the fight against counterfeiting, acting through the European Observatory on Infringements of Intellectual Property Rights.

The two agencies hope to contribute to a better understanding of the phenomenon by joining forces, and to provide a comprehensive assessment of the production and trafficking of counterfeit goods in the EU.

This report is based on quantitative and qualitative evidence from case studies, and it underlines that counterfeiting is now regarded by criminals as having lower risks and providing higher returns than drug trafficking. It has emerged as an ever-increasing and profitable transnational business in which organised crime networks manufacture and distribute counterfeit products widely, taking advantage of advances in technology and the rise of e-shopping and e-commerce.

The production of counterfeits is generally thought to be an external phenomenon. Indeed, customs statistics clearly indicate that the majority of source countries for counterfeits are outside the EU.

The main countries involved include not only China, which remains a major source although it is increasingly attempting to tackle its counterfeit production, but also other Asian countries that are specialised in certain categories (e.g. India for medicines, Egypt for foodstuffs, and Turkey for perfumes and cosmetics).

Transit points for transportation of goods from Asia to Europe, which act as major hubs for container traffic because of their large free trade zones (FTZs), have also become significant enablers for the activities of counterfeiters.

FTZs appear to be used increasingly as locations to change, document and relabel container loads, not only concealing the place of origin of the goods but also completing the manufacturing process by adding trademarks or packaging.

Counterfeiters are considered the main abuser of this world-wide infrastructure of 3 000 FTZs in 135 countries, including 82 in the European Union.

The projected growth of the Tanger Med Free Trade Zone in Morocco, only 15 km from the EU, could offer additional opportunities to criminal networks to export larger amounts of counterfeit goods to the EU in this context.

However, a new pattern seems to be emerging, with evidence of domestic EU production of counterfeit goods, which is now considered a better, cost-effective option with lower risks of detection by customs and has lower transport costs. The report cites examples of organised crime groups, mainly originating from EU Member States, which have joined forces in order to establish production sites for counterfeits within EU territory.



Large scale production of counterfeits, such as those as identified in the case studies, implies well-resourced and well-organised networks. These networks have links with other forms of crime such as fraud, document forgery, tax evasion and trafficking in human beings (mainly for labour exploitation) as well as with criminal groups, such as mafia-type organisations. In return, the profits generated by counterfeiting are also used to fund other criminal activities.

The production and distribution of counterfeit goods appear purely opportunistic and as such cannot be attributed to any particular crime group or nationality. The modus operandi and routes are adapted to suit the commodity and law enforcement activity, demonstrating counterfeiters' awareness of enforcement tactics.

One interesting aspect, supported by several case studies in the report, is that organised crime networks originating from different countries in and outside the EU are developing closer ties, having recognised the possible synergies of working together.

As is the case for legitimate businesses, distribution, is a critical issue for the operations of the counterfeiters, who use and abuse weaknesses in infrastructure and supply chains to cover their tracks and make detection more difficult.

Tactics used include the corruption of brokers between producers and distributors, who can earn more with counterfeits, and the encouragement of factory overruns, which is facilitated by the lack of factory inspections. This is accompanied by the falsification of documents, counterfeit trademark relabeling, repackaging of products and the abuse of certification labels such as the 'organic' designation.

It is hardly surprising that the internet is the most significant enabler for the distribution of counterfeit goods, because of its apparent anonymous character, its ability to operate across various jurisdictions, and its potential for presenting sophisticated replicas of official web shops.

In particular, the introduction by the Internet Corporation for Assigned Names and Numbers (ICANN) of the so called new 'generic Top Level Domains' (gTLDs) such as .sport, .fashion, .movie, .market, etc. may serve to confuse consumers performing online purchases even more, since it will be easier to deceive customers by selling counterfeit goods.

Counterfeit websites appear to benefit not only from revenues from sales but also to a certain extent from advertising revenues based on their popularity.

For this reason, good practices, which have proved successful in undermining the commercial profitability of illegal sites, such as the 'follow the money approach', targeting advertising revenues and payment intermediaries, could also be explored for web-shops selling counterfeit goods.

In the current environment, major online retailers and social media platforms are being forced to devote more resources to monitoring counterfeit activity.

The situation report highlights entry points where private operators and enforcers could leverage their interventions most effectively to tackle this 'low risk/high profit' crime area.



It also identifies a need for more innovative and inclusive global responses from public and private stakeholders that address both the demand and supply sides of this illicit trade.

This means building a comprehensive and proactive strategy to focus on raising current levels of awareness and to provide enforcers with the knowledge and tools they need to work together and take effective remedial action.

The evidence shows that an ever-increasing spectrum of everyday goods are being counterfeited, ranging from batteries, chargers, cosmetic and personal care products to electronic goods, household products, pesticides, food and beverages, and even medicines. However, the exact scope and scale of the counterfeiting business is not known and it is probably fair to assume that the reality exceeds all estimates and projections.



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## 03 / Methodology

The chosen methodology for this report comprised a mixture of quantitative (surveys) and qualitative analysis (review of existing literature, police/customs/industry information). Questionnaires were sent to both public and private sector representatives in the EU in February 2014. Europol sent the public sector questionnaire to Member States and partners with a request for recipients to distribute the document further to public bodies tasked with monitoring safety of food, agricultural or pharmaceutical items.

The Office for Harmonization in the Internal Market (OHIM) sent questionnaires to private sector stakeholders of the EU Observatory which, inter alia, include IPR owners, trade associations and groups that are active in the fight against counterfeiting.

There was an excellent response rate from the public sector with some 21 EU Member States contributing to the report. The private sector also provided information, although with some limitations, especially from some specific industries. Case studies were selected, based on these responses and data from Europol, to illustrate the various sectors affected by counterfeit goods, the production methods, modus operandi, routes and distribution channels used by criminal groups, the impact on private companies as well as economic factors in general and the links with organised crime and terrorism.

Relevant data was also collected during Europol and OHIM seminars (e.g. Pharmaceutical, Pesticides, Automotive, Sports Goods and Internet Knowledge Building seminars hosted jointly by Europol and OHIM) as well as one-to-one meetings with representatives from both public and private sectors. Open source data were carefully evaluated and utilised, where relevant.

Furthermore, the various factors that enable the production, transportation, sale and purchase of counterfeit goods (Facilitators and Enablers) were analysed, in order to identify points at which private industry and law enforcement can make the most effective interventions.



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## 04 / Introduction

The aim of this report is to inform the public, industry and other stakeholders, as well as policy makers and practitioners at EU and national level, about the current situation of criminal networks that are active in the production and distribution of counterfeited goods in the territory of the EU. This document will provide information on routes, entry points, criminal modus operandi and current activities of law enforcement and the private sector. The report will also show links between counterfeiting and other crime areas, using various case studies provided by EU Member States and private stakeholders.

In 2009, the European Observatory on Counterfeiting and Piracy was established by the European Commission, as part of its DG Internal Market and Services, to support the protection and enforcement of intellectual property rights (IPR) and to help combat the growing threat of intellectual property (IP) infringements that continually jeopardise the EU's position as a world leader in the areas of creativity and innovation.

Successively, Regulation 386/2012<sup>2</sup> entrusted the Office for Harmonization in the Internal Market (OHIM) with tasks related to the enforcement of IPR, including the setting up of the European Observatory on Infringements of Intellectual Property Rights (the Observatory). According to the Regulation (recital 20), the Office should facilitate and support the activities of national authorities and Union institutions relating to the enforcement of IP rights. Article 2 of the Regulation lists specific tasks and activities the Office should carry out to support national authorities and EU institutions in the fight against IP infringements. By way of example, Article 2.1(b) refers to improving understanding of the scope and impact of IP infringements while Article 2.2(k) indicates that the Office should work with national authorities and the European Commission to facilitate the exchange of information on IPR infringements.

The objective of Europol<sup>3</sup> is to support and strengthen action by the competent authorities of the Member States and to cooperate mutually in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States. Europol's competence covers organised crime, terrorism and other forms of serious crime that affect two or more Member States in such a way as to require a common approach by the Member States, due to the scale, significance and consequences of the offences. In March 2013, Europol Focal Point<sup>4</sup> 'COPY's' mandate to investigate counterfeit products was expanded to include substandard and dangerous goods.

Europol's Serious Organised Crime Threat Assessment (SOCTA) 2013 identified counterfeit goods violating, health, safety and food regulations and substandard goods as a recommended priority crime area as part of the EU Policy Cycle 2014-2017. Within the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT), EU Member States and EU Agencies participating in the priority area of counterfeit goods highlighted a need for a better intelligence picture on the production and trafficking of counterfeit goods in the EU.

In order to fill that gap in intelligence, OHIM and Europol were tasked with writing a Situation Report on Counterfeit Goods in the EU. This report will present detail on the scale and scope of product counterfeiting within the EU and will highlight practices and opportunities to detect, prevent and reduce the impact of counterfeiting.

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2 - Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights.

3 - Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA).

4 - Focal Points are teams formed by specialists and analysts supporting Member States' operations related to specific areas of crime that are included in the above Council Decision.

## IP and its value

The European study, 'Intellectual Property Rights Intensive Industries: contribution to economic performance and employment in Europe' (September 2013)<sup>5</sup>, carried out jointly by the European Patent Office (EPO) and OHIM confirms the major contribution that industries investing in IPR make to society, to economic performance and to employment in Europe. Key findings of the study reveal that approximately 89 % of the EU's total external trade and 39 % of total economic activity in the EU (EUR 4.7 trillion annually) is generated by IPR-intensive industries. In addition, approximately 26 % of all employment in the EU (56 million jobs) is provided directly by these industries, while a further 9 % of jobs in the EU stem indirectly from IPR-intensive industries. Moreover, average salaries in IPR-intensive industries are more than 40 % higher than in other industries.

This is an important contribution to the overall well-being of the EU and consequently, the continual rise in infringements of intellectual property rights constitutes a huge threat not only to the EU economy, but also to societies and innovative progress throughout the world.

## Impact and Scale of Counterfeiting

The joint study by EPO and OHIM on IPR industries provides compelling evidence. However, due to its ever-increasing value, IP has unfortunately offered an attractive opening to organised networks of counterfeiters and infringers, who have realised the potential of free-riding on the creativity, investment and innovation of others.

Counterfeiting has remained a major challenge over the past decade. For example, the Organisation for Economic Cooperation and Development (OECD) measured the economic impact of counterfeiting and roughly estimated that in 2007, international trade in counterfeit and pirated goods could have accounted for up to USD 250 billion, which is an amount that is greater than the national GDPs of 150 economies<sup>6</sup>. There is work currently underway by both OECD and OHIM to refine the methodology and produce updated figures on the economic impact of counterfeit and pirated goods.

A recent study that was commissioned by the International Chamber of Commerce<sup>7</sup>, which was carried out in 2010, indicated that EUR 10 billion and more than 185 000 jobs were lost in the EU due to piracy alone. Other studies have observed that profits from counterfeit goods production and trafficking may exceed those of illicit drug trafficking and production. According to the International Institute of Research against Counterfeit Medicines (IRACM), USD 1 000 invested will generate a return of USD 20 000 in the trafficking of heroin or a return of USD 43 000 for counterfeit cigarettes. With the same investment in counterfeit pharmaceuticals, crime groups can expect a return of USD 500 000. Interpol evaluates the annual turnover from pharmaceutical crime<sup>8</sup> as USD 75 billion. US authorities dismantled one illicit online pharmaceutical network that had earned USD 55 million in only two years.

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5 - 'Intellectual Property Rights Intensive Industries: contribution to economic performance and employment in the European Union', Industry-Level Analysis Report, September 2013.

6 - OECD 'Magnitude of counterfeiting and piracy of tangible products', November 2009.

7 - <http://www.iccwbo.org/bascap/id35360/index.html>.

8 - This figure includes diverted pharmaceuticals, parallel trade and substandard pharmaceuticals.



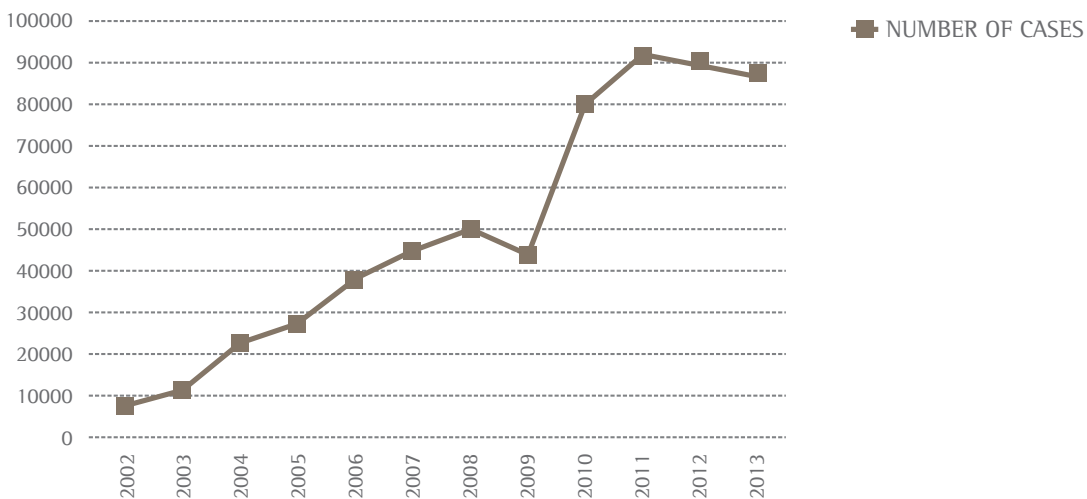
The UK<sup>9</sup> has mapped the scale of counterfeiting extensively and the following headline figures give an idea of the size of the market for only one EU Member State (MS).

- The UK's HM Revenue & Customs (HMRC) collects over GBP 34 billion per year in customs duties.
- In 2013/14, border officials detained 21 494 consignments of IPR-infringing goods at the UK border.
- The UK Police Intellectual Property Crime Unit (PIPCU) is currently investigating IP crime that has been worth over GBP 28 million since September 2013.

However, over the years there have been significant differences in opinion about the work carried out and it has often been argued that some reports are only limited snapshots in time, balanced toward specific sectors or industries and that, as a result, it has been impossible to accumulate figures from different studies to provide an accurate assessment of IPR infringements across the EU market. The conclusion being that 'there is no reliable or accepted method for estimating the size of counterfeiting (...) While different approaches (...) can provide useful insights towards understanding specific aspects of these markets, it appears that no single approach can accomplish a comprehensive estimation of scope, size and impact (...)'<sup>10</sup>.

Having said this, for the past decade, customs administrations in the EU have regularly recorded figures on detentions of infringing products and in 2013, they reported that national customs authorities had opened almost 87 000 cases, resulting in the detention of nearly 36 million articles, compared with 7 553 in 2002.

NUMBER OF CASES



Unfortunately, the figures do not reflect the scope of domestic manufacture and distribution or an estimate of the volume of counterfeit goods that have evaded border controls.

The conclusion is that while the exact scale of counterfeiting and piracy is not known it is internationally accepted that counterfeiting is a global phenomenon that has evolved significantly with the advent of better technology in all areas of the supply chain, such as manufacture, distribution, ordering and purchasing.

9 - UK Intellectual Property Office: IP Crime Highlight Report, 2013/14.

10 - RAND Europe Measuring IPR infringements in the internal market, 2012.

## Major threats

Regarding the breadth of the problem, poor quality counterfeit clothing and accessories of luxury brands were, until recently, the most commonly observed products. However, the involvement of sophisticated networks of criminals seeking to make enormous profits has led to mass production of high quality imitations. Criminal groups are no longer purely confined to the duplication of apparel and accessories. Counterfeited goods now include all sectors, such as pharmaceuticals, electronic goods, household products, cosmetics, automotive spare parts, pesticides, food and beverages, etc.

The European Commission (DG TAXUD) reports that in 2013, 25.2 % of the products detained were for daily use and would be potentially dangerous to the health and safety of consumers. These products can include harmful chemicals and substandard component parts that can have a major impact on consumers' health and safety.

Moreover, with improved and cheaper production methods and technology, counterfeiters have moved into the illegal production of everyday goods, endangering unsuspecting consumers: for example, cases of shampoo found to cause chemical burns to the scalp, cosmetics containing multiple unknown and sometimes toxic substances, and using unlicensed or counterfeited batteries and laptop or phone chargers has resulted in explosions and fires.

In terms of law enforcement, government, media and consumer attention, illicit pharmaceuticals have the highest profile. Criminal networks are aware of the demands of consumers and are ready to supply them. In many parts of the world, consumers need access to cheap life-saving drugs, such as anti-retrovirals to treat HIV/AIDS; anti-malarial medication; tuberculosis treatments; anti-cancer medication; diabetes treatments and so on.

Long-term dependence on life-saving pharmaceuticals and their inflexible nature make them an added attraction for criminal groups and a lucrative business with regular trade. In Europe, the majority of counterfeited pharmaceuticals are lifestyle drugs – to treat erectile dysfunction, slimming pills, arthritis medication, etc. There have been cases of counterfeit or substandard medicines entering the legitimate supply chain, but these are currently rare<sup>11</sup>.

The development of new and innovative pharmaceuticals is extremely costly. The National Academy of Sciences points out that the average cost of developing a new drug is more than USD 1.5 billion and the average time for drug discovery and development from target identification to approval is 10 -14 years<sup>12</sup>. Furthermore, they note, 'Today the failure rate from the time of target identification to regulatory approval of a new drug is 90 %. Half of the drugs fail even in phase III clinical trials'<sup>13</sup>.

However, the scope and scale of counterfeiting should not be considered in isolation as a one-off area in which criminals act. Links between IP crime and other criminality such as human trafficking, drug trafficking, corruption and money laundering is well-documented and has heightened the risks for both right owners and consumers. The emergence of organised crime groups in this arena, bringing long-standing networks and supply chains with them, has compounded the issue.

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11 - Peter Gillespie, a chartered accountant and pharmaceutical distributor, imported 72 000 packets of counterfeit medicines, i.e. more than 2 million doses. Approximately one-third of these shipments concerned medicines presumed to treat serious conditions such as prostate cancer, heart problems, and schizophrenia (Source: UK MHRA).

12 - National Academy of Sciences: Facing the Reality of Drug-Resistant Tuberculosis, 2012.

13 - National Academy of Sciences: Facing the Reality of Drug-Resistant Tuberculosis, 2012.





## 05 / Source and Transit countries

China – primary source country of counterfeit goods, but also a primary source country for the cheap production of legitimate goods,

Egypt, Greece, Ghana, India, Korea, Morocco, Malaysia, Turkey, – other source countries for consumer and luxury goods,

Transit countries – relabelling, manufacture, distribution, conceal point of origin, etc.

Free Trade Zones – in most cases, less customs/border Agency oversight,

Domestic EU production – on the rise.

### Source countries

Research carried out for this report shows that the source country for over two thirds of counterfeit goods circulating in the EU is China, and that most goods – both legal and counterfeit – are produced there. This is backed by the latest report from the European Commission (DG TAXUD), which identifies China as the country of provenance making up almost 73 % of suspected IPR infringing goods detained at EU borders in terms of value, but 66 % in terms of volume. The report states ‘China remains the main country of provenance from where goods suspected of infringing an IPR were sent to the EU’<sup>14</sup>.

Chinese interests have invested a great deal in the ownership of key shipping ports around the world, which are illustrated here as the ‘string of Chinese pearls’, to facilitate their global trade.



China’s COSCO Pacific Company holds a 35-year lease for the operation of Piraeus Container Port (Terminal 2) with a capacity for 2.6 million TEU<sup>15</sup>. Piraeus is a FTZ and expected to become a major import hub for Chinese goods and products into the EU. COSCO also holds the lease for Piraeus Port (Terminal 3) with capacity to handle 1.1 million TEU. In Antwerp, 3 out of 4 container docks are Chinese-operated.

14 - DG TAXUD ‘Report on EU customs enforcement of intellectual property rights: results at the EU border’, 2013.

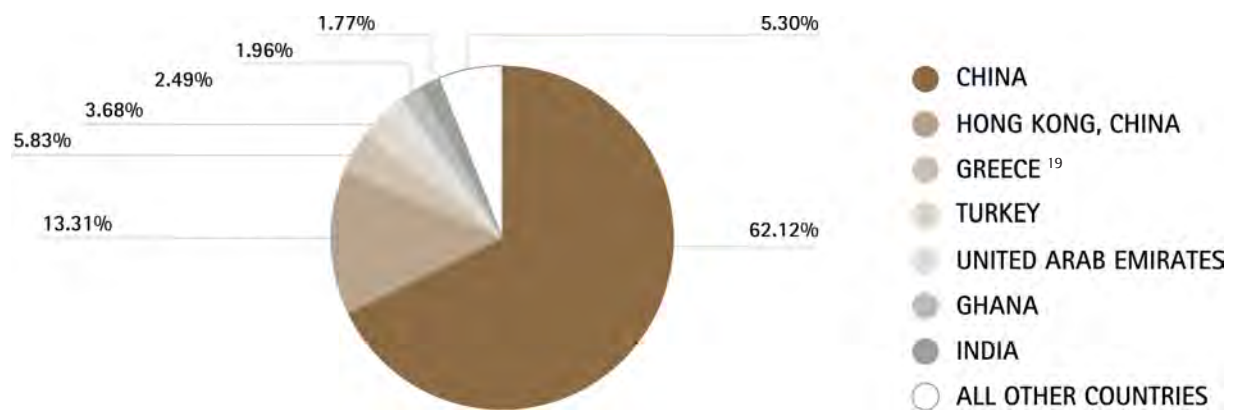
15 - TEU = twenty foot equivalent unit (standard measurement for containers).



However, the Chinese are making increasing attempts to tackle counterfeit goods production in their country. Their increased involvement in IP intensive industries (e.g. the new telecoms company Hua Wei) has led to a realisation of the importance of IP protection, particularly as their own brands are now being infringed. The 2008 National IPR Strategy; the PRC Trademark law effective from 1 May 2014, as well as a landmark test case<sup>16</sup> in 2005 holding landlords and vendors in markets selling counterfeit products jointly liable to pay compensation for losses and enforcement costs, demonstrate the increased commitment in China to tackling the production and sale of counterfeit goods. An example of this is the recent collaboration between police in Shanghai and City of London police in a case involving a Chinese agent, facilitating the manufacture and distribution of counterfeit clothing and accessories from China to an Organised Crime Group (OCG) in the UK.

The European Commission<sup>17</sup> highlighted priority third countries with the highest impact on the EU concerning counterfeit products. Priority one remains China. Priority two includes India for pharmaceuticals, Turkey for foodstuffs, Indonesia for weak legislation and corruption issues, and the Philippines for low rates of enforcement. The Commission's findings are roughly in line with detentions reported to DG TAXUD, whose latest report states, 'In terms of product category, other countries appear as country of provenance, notably Egypt for foodstuffs, Turkey for perfumes and cosmetics and Hong Kong, China for other body care items, mobile phones, memory cards and sticks, ink cartridges and electrical household appliances'<sup>18</sup>. Other provenance countries include: Ghana, Greece, India, Malaysia, Morocco, Republic of Korea and the United Arab Emirates (UAE).

According to DG TAXUD, customs authorities reported seizures of perfumes and cosmetics originating from Turkey worth a total of EUR 26.1 million in 2013. Turkey was the source country for 52 % of the overall seizures of these products.



### Transit countries

Items coming into Europe from the Far East and South East Asia mostly transit through Egypt, Hong Kong, Morocco, Singapore, or the UAE. These transit points are major hubs for shipping container traffic and have large FTZs. The World Economic Forum's (WEF) Global Agenda Council on Organised Crime singles out FTZs as an enabler for organised crime, and compares FTZs to offshore countries.

16 - WIPO Magazine Special Edition: 'Holding the Landlord Liable', February 2008.

17 - European Commission Staff Working Document 'Report on the production and enforcement of intellectual property rights in third countries' Ref: SWD (2013) 30final.

18 - DG TAXUD 'Report on EU customs enforcement of intellectual property rights: results at the EU border', 2013.

19 - As indicated by DG TAXUD, the EU Member State Greece is included in the table because it was reported, by customs authorities, as the last country of provenance in the relevant documentation.



Evidence suggests that organised crime groups frequently use FTZs to tranship, label and obscure the port of origin of illegal goods. There are approximately 3 000 FTZs in 135 countries<sup>20</sup>. They are 'designated areas within jurisdictions in which incentives are offered to support the development of exports, foreign direct investment (FDI), and local employment. These incentives include exemptions from duty and taxes, simplified administrative procedures, and the duty free importation of raw materials, machinery, parts and equipment'<sup>21</sup>. FTZs often have different levels of oversight and management across jurisdictions and due to exemptions, there can be a lack of transparency from businesses operating there. The development and expansion of new FTZs, in particular the Port of Tanger Med (15 km from the EU) will provide additional opportunities for OCGs to produce, manufacture, label, tranship and export counterfeit goods into the EU.

OCGs are exploiting the mechanisms put in place by governments to facilitate global trade and reduce barriers. BASCAP<sup>22</sup> highlights: 'such as the limited regulatory oversight in Free Zones; such as customs, tax and product regulations that do not apply or are rarely enforced; such as the limited inspections of containers in transit; and, the simple inaction of governments who may consider Free Zones to be immune from the laws that govern the rest of the economy'<sup>23</sup>.

As the declared point of origin of goods is often the key risk indicator for Customs administrations, counterfeiters will use FTZs as transshipment points to change and re-document container loads. Several reports analysing FTZs highlight the lack of IT system coordination between customs administration and the FTZs administration, allowing criminals to easily re-document shipments by concealing the origin, contents and destinations of shipments. The UAE is often shown as one of the main countries of provenance for counterfeit goods, even though manufacture may not take place there; as BASCAP notes, 'counterfeiters use FTZs in the UAE – particularly the Jebel Ali Free Zone (JAFZ) in Dubai – to disguise products' primary origin'<sup>24</sup>.

The JAFZ spreads over 48 km<sup>2</sup>, is home to 6 400 companies and expects to handle 19 million TEU per year. There are 54 companies listed in the Tobacco and Cigarettes category in JAFZ, even though the International Tax and Investment Centre has registered 9 cigarette manufacturing factories there<sup>25</sup>.

Counterfeiters are considered the main abusers of this infrastructure across the world. The WEF has singled them out as the main perpetrators, stating, 'counterfeiters use the transit or trans-shipment of goods through multiple geographically diverse ports as a means to disguise the nature of the product and make it more difficult for law enforcement to track this activity (...) counterfeiters also import unfinished goods and then further manufacture them in FTZs by adding counterfeit trademarks, or repackage or relabel the goods (...) complete manufacturing of counterfeit goods also takes place in FTZs'<sup>26</sup>.

There are 82 Free Zones in the European Union<sup>27</sup>, with none in Belgium, Luxembourg, Hungary, Austria, Slovakia or Sweden.

20 - World Economic Forum Global Agenda Council on Organised Crime: 'Organised Crime Enablers', July 2012.

21 - FATF Report: Money Laundering Vulnerabilities of Free Trade Zones, March 2010.

22 - In 2004, the International Chamber of Commerce (ICC) launched the Business Action to Stop Counterfeiting and Piracy (BASCAP) to combat product counterfeiting and copyright piracy worldwide.

23 - BASCAP: 'The role and responsibilities of FTZs', 2011.

24 - BASCAP: 'Controlling the Zone: balancing facilitation and control to combat illicit trade in the world's Free Trade Zones', May 2013.

25 - Europol Knowledge Product 'The UAE as a source of black market cigarettes', 2012.

26 - World Economic Forum Global Agenda Council on Organised Crime: 'Organised Crime Enablers', July 2012.

27 - Free Zones in existence and in operation in the Community as notified by EU MS to the Commission, 2012.

## Domestic EU production

Although the majority of counterfeit products in circulation in the EU are manufactured outside the EU, research for this report has highlighted domestic EU production originating from Belgium, the Czech Republic, Spain, Italy, Poland, Portugal, and the UK, as seen in the following case studies.

A Belgian OCG involved in counterfeiting wine infiltrated the legitimate supply chain, using cheap wine to refill expensive wine bottles. The wine bottles were filled at a legitimate bottling plant, but had the label 'mise en bouteille au chateau', indicating that the wine had been bottled at the production site –often an indicator of a high quality product. This OCG had significant financial resources, including several chateaux in France, front companies in Panama, and real estate investments in France and Monaco. The core members of the group consisted of family members, who employed chemical, legal, financial and accounting experts.

*Source: Belgian Customs*

A number of sites within Europe producing counterfeit goods show that imports from Asia may no longer be the most cost-effective option for counterfeiters wishing to avoid checks at external EU borders, thus lowering risks and transport costs. Even if counterfeiters are arrested, and production facilities seized, penalties are low, profit margins are high, and OCGs can move quickly to neighbouring EU MS to set up replacement production facilities after raids.

Four separate raids that took place over a two-year period on production sites of household goods in the Czech Republic identified a single, well-organised criminal network with the involvement of multiple nationalities: Czech (producers), Hungarian (components and expertise), Serbian (frontmen), Bulgarian (components), and German (distribution). The factories were legitimate producers of household goods, but were also producing counterfeit products using falsified logos of well-known brands. Items discovered included 120 000 bottles of dishwashing detergent, 44 tonnes of powder detergents (in bags or boxes), 17 000 bottles of shampoo, 8 200 bottles of liquid detergents (gels), as well as many more unfinished bottles, caps, labels, cartons, etc. Investigations found the factories were connected by components coming from Hungary and a Serbian citizen who was a frontman for the Hungarian import company. The third factory raided used illegal workers from former Soviet countries to produce and package the goods, showing clear links with other forms of criminality. Investigators stopped trucks heading to Slovenia and Germany with counterfeit household products and invoices showed the products had been sold to retailers in Germany, France, Austria, Poland, Slovenia and other countries.

*Source: Vis Probandi Limited*

The submission from the Italian Carabinieri's NAS<sup>28</sup> describes an OCG working across the EU. Production and retail took place in Italy and Spain, and the UK was where the criminal hub was detected. The right holder conducted test purchases and forensic analysis, which led to the discovery of an exceptionally high quality counterfeit product that had entered the legitimate supply chain through wholesalers selling directly to retailers. In this particular case, the bottles had been made in a local glass factory; however, EU MS law enforcement authorities have reported increasing seizures at EU external borders of empty bottles indicating a greater number of domestic production facilities for counterfeit goods than previously estimated.

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28 - Nucleo Anti-Sofisticazione. A department of the Italian Carabinieri.



A press release<sup>29</sup> on the NAS website from 13 December 2013, translated into English reveals that: thousands of counterfeit bottles of Moët & Chandon and Veuve Clicquot Ponsardin were discovered on the shelves of shops in Naples. The Carabinieri investigated the whole chain of production and marketing of products, finding cleverly counterfeited labels, packaging cartons, bottle caps and collars, stamps and bottling equipment – enough to place at least 50 000 bottles on the market. The bottles were purchased at a glass factory in Piedmont and were filled with poor quality sparkling wine and transported to a place in Castelli Romani. There, the goods were transformed with counterfeit labels and packed in cartons with counterfeit logos. The OCG used the help of an oenologist. In total, the seized goods amount to EUR 400 000 and the sale of these products would have resulted in profits of EUR 2 million. Nine members of the group are under investigation for receiving stolen property and using false documentation to evade tax, showing links between crime areas.

*Source: Italian Carabinieri NAS*

Guardia di Finanza officers identified a full supply chain originating in the province of Naples from seizures of counterfeit goods at illegal market stalls in Rome. Seven compounds were discovered, which included manufacturing lines, laboratories and tailors' shops producing counterfeit shoes and garments. Investigations uncovered a group of eleven people, with a hierarchical structure that had an extensive network of warehouses supplying market stalls and shops in Rome and southern Italy. The well-organised and extensive reach of the group meant it was able to successfully fight off strong competition from Chinese OCGs operating in the same region.

Over 120 000 items of counterfeit clothing and accessories were seized, along with 41 items of industrial (second-hand) production equipment. During the course of the investigation, officers also found 20 victims of labour exploitation.

*Source: Guardia di Finanza*

This case study demonstrates that groups involved in large-scale production of counterfeit goods need to be well-resourced and well-organised. Furthermore, the discovery of 20 victims of labour exploitation is evidence of links to other forms of criminality.

In some instances, raw materials from source countries enter the EU legitimately. However, reproduction labels of brand names are sent separately and attached to the finished articles in the EU. Once inside EU borders, these completed items can move freely across borders without any intervention from Customs or Border Agencies. In some cases, the entire production takes place in an EU MS, as shown in some of the case examples above and in the following chapter.

29 - [http://www.salute.gov.it/portale/news/p3\\_2\\_1\\_2\\_1.jsp?lingua=italiano&menu=notizie&tp=nas&tid=393](http://www.salute.gov.it/portale/news/p3_2_1_2_1.jsp?lingua=italiano&menu=notizie&tp=nas&tid=393);  
<http://www.paesenews.it/napoli-anche-lo-champagne-viene-taroccato-tre-arrestati-giro-di-affari-milionario/>;  
<http://napoli.repubblica.it/dettaglio-news/13:25/4439996>;  
<http://www.lastampa.it/2013/12/13/italia/cronache/vino-scadente-al-posto-di-champagne-maxi-sequestro-di-bottiglie-a-napoli-igFHOMA4btoS4pWv1XNQgJ/pagina.html>;  
<http://www.osservatorelazioale.it/index.asp?art=8712>;  
<https://it.finance.yahoo.com/notizie/alimentazione-nas-contraffazione-l-affare-100015395.html>;  
<http://247.libero.it/dsearch/veuve+clicquot+pondsardin/>.



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(Source: Vis Probandi)



## 06 / Supply Chain

To succeed in business, whether criminal or legitimate, there needs to be a robust and effective supply chain in place to order, manufacture, transport, store, distribute and sell the product. As national borders open for trade, the opportunities for counterfeiters are heightened and elements of the supply chain itself become facilitators and enablers for this crime area. These elements of the supply chain form part of the criminal infrastructure needed to produce and traffic counterfeit goods.

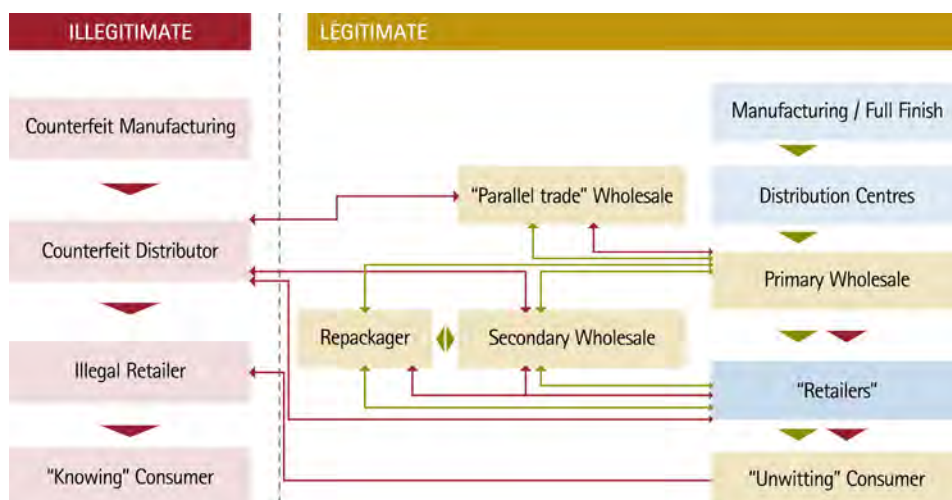
As counterfeiters look for new ways to expand their illegal businesses, the security of business supply chains becomes increasingly important<sup>30</sup>. There are a number of processes and infrastructures that allow for a successful supply chain, both legitimate and illegitimate, and this chapter will identify and review the factors that allow criminal networks involved in product counterfeiting to gain a competitive edge in the ever-evolving commercial arena.

Law enforcement authorities have noted that EU MS with secure supply chains, using only specific, licensed suppliers reduces the risk of counterfeit pharmaceuticals entering the legitimate supply chain. At present, the UK's system for example, which enables open competition, allows counterfeiters to enter the supply chain more easily as there is less supervision.

All companies producing and distributing goods need the following:

- bank account,
- company identity,
- workforce in source and destination countries,
- awareness of laws in source and destination countries,
- awareness of resources in public bodies for enforcement,
- awareness of consumer attitudes,
- experts (lawyer, property brokers, agents, accountants, etc.),
- utility companies (water, electricity, gas, rubbish collection facilities).

This table shows a possible example of legitimate supply chain infiltration by counterfeit goods.



30 - <http://www.ipso.gov.uk/ipctoolkit.pdf>.



The supply chain for all companies producing and distributing goods has the following components:

- raw materials,
- production site,
- storage,
- agent/broker,
- transportation and Documents,
- transshipment (usually in FTZs),
- storage and relabelling or repackaging,
- freight forwarding company or courier service,
- storage at destination,
- retail.

In this section, case examples relating to various points of the supply chain illustrate OCGs' methods, routes, criminal infrastructure, and how law enforcement is able to make interdictions.

## **Raw materials**

Raw materials for the production of most counterfeit goods are widely available.

EU MS submissions for this report note that for active pharmaceutical ingredients (APIs) and counterfeit pharmaceuticals, the countries of production are predominantly China and India, where the majority of licit APIs are produced. India is also one of the primary producers of licit generic<sup>31</sup> pharmaceuticals.

China is also a source country for the legitimate chemicals used in pesticide production; and a significant source country for the production of counterfeit pesticides. This would suggest that OCGs are able to source and produce counterfeit pharmaceuticals and pesticides in the countries that also produce and distribute the legitimate precursor chemicals.

The European Fine Chemicals Group (EFCG) states in their submission that the world market for APIs is USD 37 billion with Europe's share standing at USD 14 billion (38 %) supplying both innovator and generic customers. Currently, approximately 70 % of APIs consumed in the EU come from Asia – mainly China and India – where factories are rarely inspected for compliance with EU standards by EU authorities, placing EU compliant manufacturers at a competitive disadvantage. The Falsified Medicines Directive requires mandatory

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31 - The World Health Organisation defines a generic medicine as: A generic drug is a pharmaceutical product, usually intended to be interchangeable with an innovator product that is manufactured without a licence from the innovator company and marketed after the expiry date of the patent or other exclusive rights. Generic drugs are marketed under a non-proprietary or approved name rather than a proprietary or brand name. Generic drugs are frequently as effective as, but much cheaper than, brand-name drugs. Because of their low price, generic drugs are often the only medicines that the poorest can access. The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement does not prevent governments from requiring accurate labelling or allowing generic substitution. Indeed, it is argued that competition between drug companies and generic producers has been more effective than negotiations with drug companies in reducing the cost of drugs, in particular those used to treat HIV/AIDS. A brand name is a name given to a drug by the manufacturer. The use of the name is reserved exclusively for its owner.



inspections for all EU API sites, but none for non-EU API sites. A submission from Aschimfarma makes a recommendation for mandatory inspections by European Regulatory Authorities at non-EU manufacturing sites.

In this respect, the Stihl Group confirms in its submission that this is a problem that affects other manufacturers of other types of high quality goods, stating: 'In most cases counterfeits are at the same time substandard products, too. We have to and do observe all regulations, standards and norms for all our products, Chinese don't'. This loophole in the application of regulations allows counterfeiters to pick and choose locations with fewer restrictions for the production and distribution of counterfeit goods.

However, this problem is not unique to the EU, 'over 2 000 overseas production plants on the (US) FDA's inspection planning list have never been inspected by the agency<sup>32</sup>.

As regards false certifications, the Agenzia Italiana del Farmaco (AIFA), the Italian Medicines Agency, and law enforcement authorities received notice of illegal imports of active pharmaceutical ingredients (APIs), falsely labelled as 'Made in Italy'. Forensic tests showed the APIs originated from China, had unexpected impurities and posed a potential threat to public health. In order to gather more information on the company, officers analysed the history, manufacturing practices, compliance information, warehouse records and the business's import and export history in the customs database. By cross-checking all these data, officers discovered 50 tonnes of illegally imported and labelled APIs.

Source: Agenzia Italiana del Farmaco (AIFA)

This case study from AIFA demonstrates the lengths that smugglers and counterfeiters will go to in order to mirror, and in this case, infiltrate the legitimate supply chain. The study also highlights the significance of investigating illegal importations using existing databases and manufacturing practices, compliance history, analysis of supply chains, etc. – all methods of investigating elements of malpractice in legal business.

## Production site

a Moroccan OCG,

manufacturing base in northern Portugal,

distribution network across Spain,

use of private vans and parcel post,

sales in street markets,

seizures of counterfeit clothing and labels, firearms, cash, credit cards, false documents, and manufacturing equipment.

Clothing and shoes are the second most commonly detained type of article at EU external borders<sup>33</sup>. In 2013, a joint Spanish and Portuguese operation uncovered a criminal network comprised mainly of Moroccan nationals, specialised in the manufacture and distribution of counterfeit clothing and accessories.

32 - Michigan State University's Center for Anti-Counterfeiting and Product Protection: 'Assessing the risks of counterfeiting and illicit diversion for health care products', November 2013.

33 - European Commission, 'Report on EU Customs Enforcement of Intellectual Property Rights', 2013: 'In terms of cases, the top 3 categories are sports shoes, clothing and bags, wallets and purses'.

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A joint project between Europol and the Office for Harmonization in the Internal Market

The network was based in the north of Portugal, where the majority of Portugal's textile industry is located. Counterfeit garments, shoes, accessories and an array of labels (copies of luxury brands such as Chanel, Burberry, Hermes, Louis Vuitton, Lacoste, Adidas, etc.) were manufactured by the group.

This OCG also provided counterfeit goods to other OCGs. The counterfeit goods were transported by private van from Portugal to Spain and then further distributed through delivery companies to other areas around Spain for sale in street markets, through a network of associates of African origin.

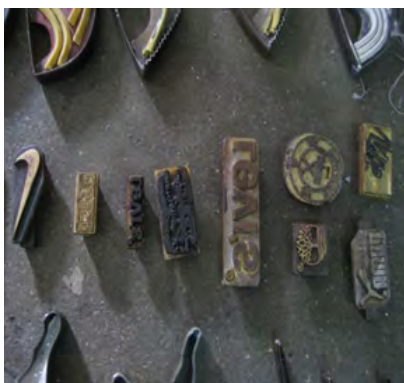
Thousands of counterfeit items were seized during multiple raids: factories were dismantled and money, firearms, computer software for engraving logos, sewing machines, plastic bags with fake logos and false documents were also discovered. A financial investigation discovered that the OCG had obtained over EUR 5.5 million in revenue. Most of the money had been reinvested in their home country (Morocco) and further investigation also found that the OCG had been using two mosques (and imams) to launder money in the guise of donations.

*Source: Spanish National Police and ASAE – Autoridade de Segurança Alimentar e Económica (Portuguese Food and Economic Safety Authority)*

This case illustrates the highly organised nature of groups involved in the production and distribution of counterfeit goods. The cross-border nature of the case also demonstrates the ease with which OCGs can move goods, personnel and money within the Schengen zone, especially in instances of production inside the EU. The image below shows identification documents and credit cards that were also discovered during the raids and shows the group's involvement in multiple crime areas.



(Source: Spanish National Police)



(Source: ASAE – Autoridade de Segurança Alimentar e Económica (Portuguese Food and Economic Safety Authority))



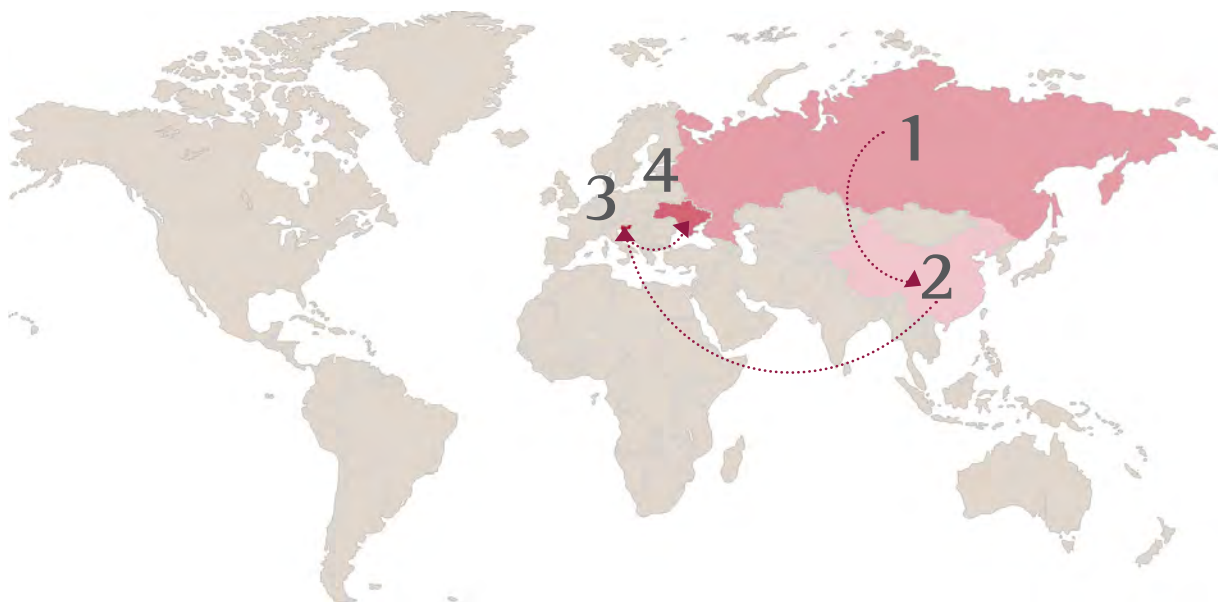
The discovery of firearms in one of the raids also shows the more violent side of the counterfeit goods market, and whilst often seen as a 'victimless crime', coercion and violence are often used to force retailers to sell the illegal products or force victims of human trafficking to work in the production and/or distribution of these goods.

### Agent/Broker

Producers and distributors rely on agents and brokers to facilitate the transportation of products from one country to another, for storage in warehouses, and for providing relevant paperwork to local authorities. There are examples of OCGs also acting as agents or brokers in the counterfeit product supply chain.

A Russian OCG acts as the agent for the purchase of precursor chemicals for manufacturing pesticides from China. These chemicals are shipped in containers into the port of Koper, Slovenia, and then transported by trucks to Ukraine where the final product is assembled, packaged, labelled and distributed.

*Source: Europol*



- 1 - Russian OCG
- 2 - Chemical manufacture in China
- 3 - Chemicals shipped to Port of Koper (Slovenia)
- 4 - Transported by truck to Ukraine for final assembly and packaging

Law enforcement authorities indicated a similar, well-established, route as that of the above case study for counterfeit pesticides arriving from China in the ports of Hamburg or Rotterdam (OCGs adapted their routes quickly, diverting goods to Rotterdam or Bremerhaven to avoid risk-profiling measures), which were sent on to Baltic ports in Latvia and Lithuania where the pesticides were in transit with a final destination of Ukraine or Russia.

Brokers play a key role in the counterfeit trade and constitute a weak point where counterfeit goods can enter the legitimate supply chain. In the case of pharmaceuticals, brokers can earn more money by diverting sales to countries where prices are higher.

Brokers will also divert trade when there are shortages and excesses, for example, if there is an excess of a medicine in France but demand is high in the UK, then the pharmaceuticals will be repackaged with translated instruction leaflets and their relevant labels and logos. It is possible for counterfeit pharmaceuticals to enter the supply chain at this point, as local staff may not be aware of the differences in blister packaging from one EU MS to another and assume it is genuine, repackage the items and place them on the legitimate market. It was by using this method that counterfeit Plavix entered the legitimate supply chain in the United Kingdom<sup>34</sup>. This has also been demonstrated in the Peter Gillespie case, where 2 million doses of counterfeit pharmaceuticals were imported from China by sea via Hong Kong, Singapore and Belgium, packaged as French medicines to be sold in the UK under the parallel distribution system.

### **False documents**

Documents play a key role in the transportation of counterfeit goods into the EU. All ships carrying containers that will enter the EU must provide 24-hour advance information on bills of lading. This enables customs officials to conduct the necessary risk assessments. Forged documents are used to conceal the contents of the containers or packages, to conceal the point of origin or are added to products to make them appear more genuine and certified for EU regulations and safety.

In February 2014, the largest single detention in the EU of counterfeit pharmaceuticals was recorded at Le Havre. Altogether, 2.4 million pills, capsules and powdered medicines were declared as containing Chinese tea. The cache was found to contain mainly glucose. The medicines were intercepted at Le Havre, en route to a shell company in the Balearics, with the intention of placing the medicines on the market in the Iberian Peninsula, the south of France and French-speaking Africa.

*Source: [www.naharnet.com/stories/126131](http://www.naharnet.com/stories/126131) and <http://www.iracm.com/en/2014/07/max-and-tony/>*

The UK Elliott Review, which was conducted as a result of the 'horsemeat scandal', outlines a case study concerning illegal operations in a cold storage facility. A shipping company notified the Department of Agriculture and Rural Development in Northern Ireland about a suspicious container arriving from Asia. At the cold storage facility, officers discovered 'Category 3 animal-by-product'<sup>35</sup> (CAT 3 ABP), a shrink-wrapping machine, packaging and labelling equipment and a huge supply of forged veterinary health marks purportedly originating from a variety of meat plants across the EU.

*Source: UK Elliott Review (Interim)*

This is particularly common in the food industry, with falsification of labels, certificates, etc. Submissions from Q Certificazioni s.r.l. (Italy), a private body authorised by the Italian competent authorities to monitor activity in the organic farming sector, and the CCPB (Italian organic certification body), reported cases of companies holding counterfeited certificates of conformity or false organic certifications.

34 - [http://www.pharmatimes.com/article/07-05-29/First\\_Zyprexa\\_now\\_fake\\_Plavix\\_found\\_in\\_UK\\_supply\\_chain.aspx](http://www.pharmatimes.com/article/07-05-29/First_Zyprexa_now_fake_Plavix_found_in_UK_supply_chain.aspx).

35 - Category 1 animal-by-products are deemed high-risk and consist of parts of the carcass that present a potential disease risk to humans. A Category 3 animal-by-product is eligible for use in pet food.





Italian food products are often the victims of infringements of geographical indications. Food products are also adulterated. It is common for seed oils to be mixed with chlorophyll and beta-carotene and with virgin or extra virgin olive oil. A hot iron brand is used to mark generic ham rind marketed as the more expensive Parma Ham.

*Source: Italian Carabinieri NAS*

Il Punto Coldiretti reported 'one-third (33 %) of the total agri-food production sold in Italy and exported as Made in Italy contains foreign raw materials'.

*Source: [www.ilpuncocoldiretti.it](http://www.ilpuncocoldiretti.it) 'Christmas Battle, German ham and Polish milk exposed' at Brenner 4 December 2013*

### Transshipment (usually in FTZs)

The port of Tanger Med is one of the largest ports in the Mediterranean and Africa and has been operational since 2007. Tanger Med is located on the Moroccan coast of the Straits of Gibraltar and is currently under expansion due to its strategic location, 15 km from the European Union. Its initial capacity was for 3.5 million containers but the development of 'Tanger Med II' includes two new container terminals with deep water capacity and capacity for handling 5 million containers and by 2015 is expected to reach full capacity: operating 8 million containers, 7 million passengers, 700 000 trucks, 2 million vehicles and 10 MT of oil products. Tanger Med is north of the Tangier Exportation Free Zone. The growth of the Free Port and Free Trade Zone in Morocco represents a future threat in terms of greater capacity for counterfeit goods entering the EU.

### Re-labelling or repackaging

Counterfeit products are often relabelled or repackaged to make them appear genuine. In terms of food and beverages, Europol's mandate has been extended to cover 'food fraud'<sup>36</sup>, which includes false labelling/declarations, use of fake branded labels, substandard goods, etc. EU MS have participated in OPSON (a joint INTERPOL-Europol operation targeting counterfeit and substandard food and beverages) with latest seizure data showing the widespread challenge for law enforcement in this arena.

The acknowledged threat to industry and consumers from the manufacture and use of counterfeit pesticides, fertilisers and chemicals is highlighted in this case study provided by the environmental crime department of the Hamburg police, who uncovered an illegal cross-border trade in repackaged illegal biocides and pesticides.

Importation of a highly toxic substance, nicotine sulphate, and the unlicensed pesticide Daminozid were discovered following the search of an import in Hamburg harbour. Investigators found 19.4 tonnes of nicotine sulphate, declared as calcium cyanamide (a licensed fertiliser, also known as lime nitrogen); in some cases, barrels containing nicotine sulphate had a counterfeit label affixed. Nicotine sulphate is so toxic and harmful that even a small dose can kill a human being.

The nicotine sulphate was distributed to buyers in Germany, the Netherlands and Poland; moreover, some of the chemicals were imported from Belgium, China, India (with evidence of transshipment), Portugal, Spain and the UK.

*Source: German Bundeskriminalamt (BKA)*

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<sup>36</sup> - In March 2013, Europol Focal Point COPY's mandate to investigate counterfeit products was expanded to include substandard and dangerous goods. The European Council also mandated 'Counterfeit goods, violating health safety and food regulations and substandard goods' as one of the key organised crime priorities for 2014-2017.



This case demonstrates the cross-border nature of counterfeit crime and the lengths criminals will go to, to obscure the country of origin. Following a financial investigation into the company trading in these chemicals, it was ascertained that profits over a two year period were at least EUR 1.2 million.

there has been a significant increase in the market for illegal and counterfeit pesticides;

lack of harmonisation in legislation and implementation is a key facilitating factor;

significant risk to crops, toxic substances also pose a threat to the environment and health;

due to their lack of traceability, illegal pesticides are especially at risk of being used as precursors for Home Made Explosives (HME)<sup>37</sup>.

*Source: Europol OC-SCAN Policy Brief 2521-93 November 2011)*

### Labels and products sent separately

Importing unbranded items is not illegal and therefore they cannot be intercepted or seized by customs/border agencies. OCGs are aware of legislation and work around it, by importing unbranded goods and then printing counterfeit trademark labels, which are applied before they are transported and sold.

The case study of the Camorra's import and distribution of substandard electrical products demonstrates the creativity and flexibility of this OCG.

The Camorra, based in Naples, Italy, organised the distribution and sale of counterfeit products such as electrical generators, drills, chainsaws, etc. The cheap, substandard equipment was purchased in China and shipped to the port of Naples for onward distribution via Italian vendors based across the EU. Prior to the sale, the labels of the cheap substandard product would be replaced by another, well-known brand such as *Hitachi*, *Honda*, *Husqvarna*, *Bosch* or *Stihl*.



(Source: Europol)

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37 - As demonstrated in the Hans Brevik case.



This criminal activity was extremely profitable and a team of two vendors could generate EUR 250 000 of profit within 2 to 3 months.

The Camorra started losing profits when law enforcement activity began, which resulted in the seizure of several products based on IPR infringements. In order to continue the importation and sale of substandard goods with the same profit margins, the Camorra registered its own trademark Boudech. When substandard products bearing the label Boudech were seized, they were considered legitimate products and therefore released for sale. Nonetheless, the products remained of cheap and substandard quality, resulting in significant health and safety concerns.



(Source: Europol)

Investigations in most EU MS uncovered multiple financial transactions, resulting in the freezing of assets of approximately EUR 3 million. During a series of raids in 20 EU MS and 3 non-member states, a total of 60 arrests were made and over 800 tonnes of counterfeit or substandard products were seized (estimated value EUR 12 million).

Source: Europol

The following case studies show OCGs importing the products and labels/packaging separately to evade detection by customs.

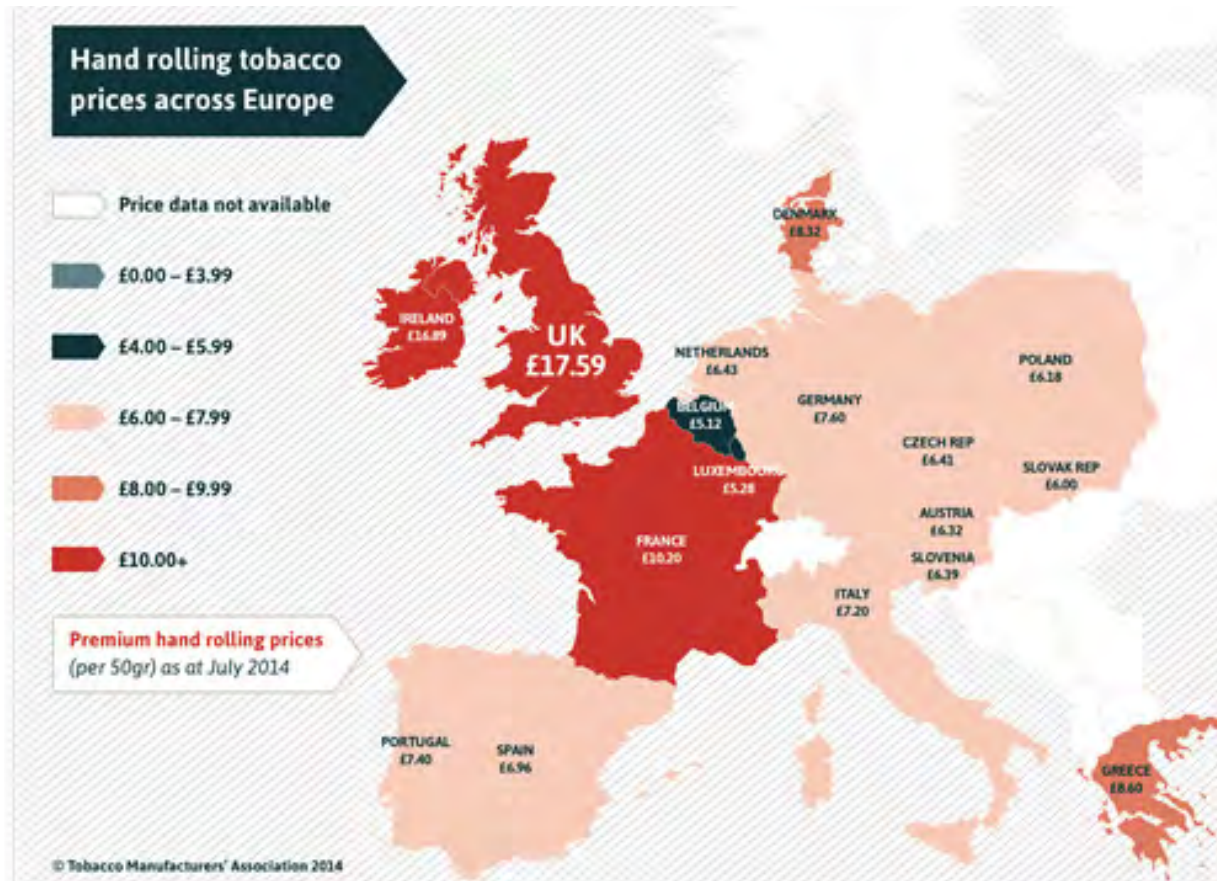
In 2013, Imperial Tobacco's anti-illicit trade team worked to uncover the scale of an international tobacco smuggling operation. Its findings clearly highlighted the complexity of the operation, which had its origins in China and used a network of Chinese nationals in EU Member States to facilitate the production, distribution and sale of finished articles through a network of 'cottage industries'.

In order to evade detection by supplying the finished article, in this case hand rolling tobacco, this OCG set about producing the component parts, such as pouches bearing the registered trademark Golden Virginia, as well as the tax stamps, holograms and tobacco. These were subsequently shipped in separate consignments to EU MS, predominantly the UK. Upon receipt of the component parts, members of the group would create the finished counterfeit product for sale to consumers on street corners, retail shops and open air markets.

Belgian customs officials detained 135 000 empty counterfeit *Golden Virginia* pouches at Brussels Airport along with 700 kg of tobacco, which had originated from China and were en route to the UK. These pouches had Portuguese health warnings on them, in an effort by the criminals to mislead consumers into thinking they were genuine, albeit smuggled, products. *Imperial Tobacco's* security analysts have since matched the forensic 'fingerprint' of the pouches to more than 20 separate seizures at UK airports since April 2012. Had these gone undetected, the number of pouches would have accounted for some 6.6 tonnes of illicit finished products.

Source: Europol

Research carried out for this report highlights that the UK is the main target for counterfeiters involved in the manufacture and distribution of tobacco related products. As can be seen from the map below, the sale of illicit tobacco products in the UK is far more profitable than other EU MS, due to the increased revenue levy in the UK.



Source: Imperial Tobacco

However, research has also established that in many EU MS, unlike most other IP related infringements, counterfeit tobacco products come under the banner of 'revenue' rather than generic counterfeiting of a trademark. Anecdotal information suggests that in many cases, if the items detained by Customs under the EU Border Regulations (608/2013) do not contain tobacco that can be charged as revenue, then the component parts such as the pouches are discarded and not dealt with in line with the regulations. Should this practice occur, the counterfeiter involved in this illegal trade would realistically be immune from detection and subsequent legal actions and the true scale of product counterfeiting in this sector, as well as the 'cost' to the industry, consumers and governments could be underestimated.

The *British Electrotechnical and Allied Manufacturers' Association (BEAMA)* identified 500 illegal manufacturing sites in China, producing circuit protection devices and wiring accessories. Some of these locations lacked appropriate safety requirements for workers.

In a factory raid in Wenzhou, China, BEAMA's investigators uncovered manufacturing facilities for counterfeit component parts, packaging and look-alike products where the original brand name had been changed.

Further investigation showed that the counterfeit labels are shipped separately from the counterfeit product, ready for assembly in their country of destination. In addition, investigators found counterfeit compliance certification marks and documents, security holograms, instruction leaflets and warranty documents.





ORIGINAL

FAKE



(Source: BEAMA)

### Transport (freight forwarding or courier service)

There are multiple transport modes available to legitimate businesses and counterfeiters alike:

- shipping containers,
- air freight,
- air courier,
- vehicles overland/ferries,
- passenger traffic.

Counterfeit products are increasingly being sent by post to 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. As law enforcement representatives pointed out during the recent OHIM-Europol Knowledge Building seminar on Counterfeit Pharmaceuticals, ‘perpetrators closely follow the work of law enforcement agencies and then adopt different methods of supply’.

Modus Operandi: OCGs are using stickers/stamps from international postal services to give the impression that the shipment comes from another EU MS, when in fact, the shipment has arrived from Thailand or India, a technique that is known as ‘drop shipping’. To prevent interception, products are imported into the EU in bulk into an MS with fewer controls, and the packages are then re-directed to Belgium, Germany or Spain with an EU postal stamp/sticker.

*Source: Belgian Federal Judicial Police*

Example: Lifestyle medicines are advertised in local newspapers or on the internet – using social networking sites or specialist sites. In Croatia, illegal distributors import the medicine directly from the UK using courier services, or import the medicines from Slovenia (where the medicine has been imported from the UK, again using courier services). In both cases, the country of provenance is India.

*Source: Croatian National Police*

Modus Operandi: Criminals will route postal packages containing counterfeit pharmaceuticals via Canada. This is because Canada is known for its high standards and high quality, giving consumers a false sense of confidence in the product.

*Source: Europol*

Criminal networks also use other forms of distribution, such as road haulage, market trading, wholesalers, etc.

## Storage at destination

Counterfeiters often use self-storage facilities to store counterfeit goods before distribution and retail. Self-storage units tend to have 24 hour access and contents of the units are not checked or monitored by the companies operating the service. UK Trading Standards established close relationships with major self-storage companies and launched an awareness campaign for companies and consumers using them. They also conducted a series of raids on self-storage units identified as being used by counterfeiters.

This example demonstrates the importance of carrying out investigations at various points of the supply chain, not only at the point of import (at EU external borders). It also illustrates that counterfeiters will not only use storage facilities for storing goods, but also perhaps carry out the manufacture in the units.

A Chinese OCG was identified as using two self-storage units – one as a dummy unit used to access the second. In the second unit Trading Standards officers discovered 100 000 counterfeit DVD covers, 45 000 DVDs, blank discs, 6 burning towers, a laptop computer as well as another computer.

*Source: UK Trading Standards*

This series of successful raids by UK Trading Standards shows an example of good practice which could be adopted by other EU MS' law enforcement authorities targeting counterfeit products.

## Retail

Retail strategies enacted by infringers display different approaches in the attempt to place counterfeit goods.

An undercover investigation by a UK newspaper identified a hidden shopping mall inside which there were what looked like empty buildings but were, in fact, over 20 black market shops, selling counterfeit branded products including: *Louis Vuitton, Jimmy Choo, Nike, Adidas, Gucci Prada and Chanel*<sup>88</sup>.

Anecdotaly, Route E70 (or A3) between Croatia and Serbia, which is also known colloquially as 'Route 66', has a series of open air markets selling counterfeit branded goods, but this has not been substantiated by any concrete evidence and remains an intelligence gap.



(Source: Google images)



## 07 / Additional Facilitators and Enablers

### Internet

major facilitator for the sale and distribution of counterfeit goods,

anonymous,

multi-jurisdiction,

spam,

payment processors,

advertising,

search engines,

social media.

The internet and e-commerce have become major enablers for the distribution and sale of counterfeit goods. Counterfeiters are able to function across multiple jurisdictions, evading capture, and are also able to take down and set up new websites overnight without losing their customer base. Consumers are drawn to e-commerce sites because they are available 24/7 and items are delivered directly to consumers' homes. Online shopping can also be cheaper than in retail shops, as there are no overheads in terms of rent, personnel, etc.

Some websites are of such high quality and sophistication that they rival (and in some cases are even better than) those of the rights holder.

REAL



FAKE



(Source: Europol)

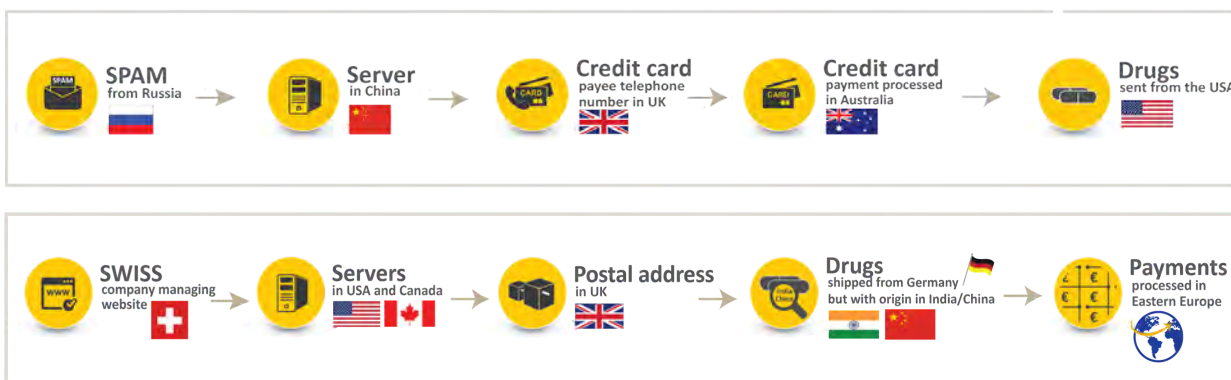


## 2015 Situation Report on Counterfeiting in the European Union

A joint project between Europol and the Office for Harmonization in the Internal Market

US Immigration & Customs Enforcement (ICE) discovered that a fake website selling counterfeit *Rosetta Stone*<sup>39</sup> products had provided the genuine *Rosetta Stone*'s helpline number. Consumers are also duped by the use of similar domain names to that of original rights holders.

Criminal networks operating e-commerce sites are able to remain anonymous and hard to track due to the use of false identities to register domain names and the use of proxy servers across multiple jurisdictions. OCGs make profits from the sale of counterfeit goods, but are also paid according to how much advertising revenue they can attract – depending on the popularity of their sites. (*The Digital Citizens Alliance*<sup>40</sup> published research showing that nearly 600 infringing sites had generated USD 227 million in advertising revenues in one year alone.)



Source: UNICRI

*Louis Vuitton successfully sued Akanoc Solutions Inc., Managed Solutions Inc. and Steven Chen for 'their role in hosting websites that directly infringed Louis Vuitton's trademarks and copyrights'. Although the websites did not directly sell the counterfeit merchandise, they listed an email address allowing customers to initiate a transaction. Louis Vuitton was able to prove wilful intent, as they had sent the defendants 18 notices of trademark and copyright infringement. The jury awarded Louis Vuitton USD 10.5 million in statutory damages for wilful trademark infringement of the 13 trademarks against each defendant, for a total of USD 31.5 million, plus USD 300 000 for statutory damages for wilful copyright infringement and infringement of 2 copyrights against each defendant, totalling USD 900 000<sup>41</sup>.*

*Source: US Court of Appeals for the Ninth Circuit*

Operation CREATIVE, spearheaded by the City of London's Police Intellectual Property Crime Unit (PIPCU), aims to tackle advertising revenues and payment processors facilitating e-commerce sites trading in counterfeit goods, a method also being used by several EU MS. As Michael Weatherley MP<sup>42</sup> states, 'the rationale is that by cutting the source of revenue for pirate sites, the opportunity for website owners to profit from such sites is greatly reduced and as a consequence, without advertising revenue or payment processing services, such sites quickly become commercially unviable'.

41- More details of this case can be found through the publication United States Court of Appeals for the 9th Circuit case number: 10-15909 D.C. No. 5:07-cv-03952-JW and No. 10-16015 D.C. No. 5:07-cv-03952-JW Opinion, 9 September 2011.

42 - Michael Weatherley 'Follow the Money: Financial Options to assist in the battle against online IP Piracy' A discussion paper, June 2014.



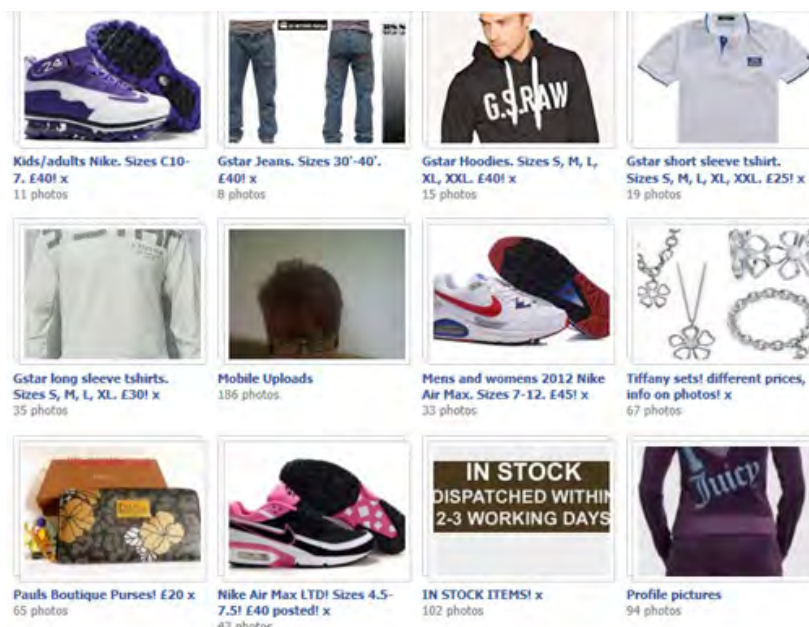
Alibaba recently confirmed that they took down 114 million websites in a period of only 10 months and have introduced the e-commerce site tmall.com<sup>43</sup>. Members of tmall.com have to pay a large deposit and agree to a code of conduct which, if they are found in breach, will result in the loss of their deposit. Other major online retailers, such as Amazon, are also improving monitoring to remove counterfeited products; eBay run *VERO Design Protocol*, a subscription service allowing rights holders to check items being sold and notify eBay if they are counterfeit, in which case eBay will then remove the listing.

Counterfeiters also utilise social media to promote and distribute their illicit goods. Facebook took down over 3 000 listings in a 2.5 day period. During this action, investigators noted that OCGs were using PayPal as their preferred payment method.

The use of social media such as Facebook to advertise and trade in counterfeit goods has increased significantly over the last two years. Traders openly publish albums on their Facebook page, containing images of available counterfeit merchandise, including: clothing, footwear, jewellery, handbags, purses, music, games, etc. Most traders operate a closed Facebook page and interested buyers need to make a 'friend' request to gain access to the albums. Once accepted as a 'friend', the customer can purchase counterfeit items using credit cards, PayPal, postal orders and cash.

In most cases, the trader will post items to consumers but some offer a collection and/or delivery service. Traders also hold 'open days' where they offer current and potential clients the opportunity to visit their home or trading location to browse and buy goods. Social networking allows consumers to recommend traders to friends and associates, resulting in some traders having in excess of 1 000 'friends' to whom they can sell items.

During investigations into traders engaged in this activity, rights holders found albums containing over 2 000 images of items (such as clothing, accessories, shoes) available for purchase. Some of the items are copied from Chinese websites and if purchased, are drop-shipped from China by post. In December 2013, a coordinated initiative by the UK Anti-Counterfeiting Group (ACG) saw 650 traders reported to Facebook for removal of infringing images and nearly 200 hundred additional traders were identified and targeted in the ACG's second operation in June 2014.



Courtesy of the Anti-Counterfeiting Group  
Source: the Anti-Counterfeiting Group (UK)

43 - In November 2010, Taobao Mall introduced an independent web domain, tmall.com, to differentiate listings by its merchants, who are either brand owners or authorised distributors, from Taobao's consumer-to-consumer merchants.

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Cases are often extremely complex, involving many different jurisdictions and, sometimes, a lack of knowledge or specialist understanding of the various components in these types of crimes by law enforcement authorities, prosecutors and the judiciary can allow OCGs to go unpunished.

The internet is an attractive option for purchasing goods that may be considered embarrassing to consumers, for example, lifestyle drugs (Viagra, etc.) or hair loss products, as it gives consumers and retailers a certain degree of anonymity. Consumers are targeted through the use of spam (unsolicited bulk emails) with embedded links to take them to websites selling counterfeit goods and counterfeit lifestyle drugs. The United Nations Interregional Crime and Justice Research Institute (UNICRI) reported that spam volumes around the world have reached about 250 billion messages per day and this plays a vital role in the trafficking of counterfeit goods online as it is an easy, cheap and anonymous method to advertise online goods.

Operation Vigorali, an investigation initiated by Spanish law enforcement authorities, led to the identification of several organised crime groups actively supplying consumers in Western Europe with counterfeit medicines online, which were manufactured in Asia, the contents of which posed a serious health hazard to the consumer. This led to a joint operation by authorities from Belgium, Spain, France, Cyprus, Hungary, Austria, Slovakia and the United Kingdom supported by Europol and Eurojust.

Austrian investigations showed the packages were received from China by Hungarian, Austrian and Israeli nationals living in Austria. The pills were repackaged and sent to consumers from post offices in different locations, with an instance of one criminal driving a vehicle across the Austrian border into Germany to send packages to German customers to evade detection. The UK also identified a similar modus operandi, of packages arriving with the final destination address enclosed. Members of the criminal syndicate would repackage the pills and then send the package with a UK postage stamp.

Links between different local criminal groups, websites and final beneficiaries of the illicit trade have been established thanks to investigations on financial flows.

The joint operation resulted in the arrest of 12 suspects, seizures of several million pills with an estimated value of EUR 10 million and the recovery of large amounts of cash, luxury sports vehicles and the freezing of more than EUR 7.5 million in UK bank accounts. A financial investigation is still underway and has already uncovered a complex and well-organised OCG.

*Source: Austrian National Police*

While cases of counterfeit pharmaceuticals entering the legitimate supply chain are currently rare, it remains an area of concern for EU MS due to the significant health and safety risks for citizens.

An Interpol led operation, Pangea VII, (supported by Europol) targeted fake pharmaceuticals sold online, leading to the removal of more than 19 000 adverts for illicit pharmaceuticals on social media platforms and the closure of over 10 600 websites. The operation also targeted rogue domain name registrars, electronic payment systems and delivery services. OCGs are aware of these regular joint action days across the globe and do not send packages of pharmaceuticals before and during the week of action. Once results from Operation Pangea are announced, 'normal' service is resumed.

*Source: Europol*



A 2008 European Commission working document<sup>44</sup> estimated the costs incurred to the EU from falsified medicines to a projected baseline cost until 2020 as:

- hospitalisations as a consequence of treatment using counterfeit medicines: EUR 1.8 - 22 bn,
- avoidable medical treatment at primary healthcare doctors: EUR 93m -1.1 bn,
- Quality Adjusted Life Years (QUALYs): combined life expectancy and quality of life<sup>45</sup>: EUR 7.65 -93 bn.

Operation In Our Sites, a joint effort by Europol and US ICE to tackle websites selling counterfeit products, has led to the seizure of more than 2 600 domain names since the operation started in June 2010. Banners alert consumers of the shutdown of websites when they attempt to access them following domain name seizures. These websites sell many different forms of counterfeit merchandise, such as clothing, accessories, shoes, and electronic goods.



Banner courtesy of the US National Intellectual Property Rights Coordination Center (placed on websites whose domain names have been seized in USA)



Banner courtesy of US IPR Center and Europol (placed on websites whose domain names have been seized internationally)

## Corruption

As shown above, the supply chain process for legitimate and illegal product manufacture is intrinsically the same. The only difference between them is that illegal businesses require the use of corruption and false documentation.

Corruption can take the guise of many activities such as the provision of gifts, donations to officials and family members, travel, entertainment, advance warning of raids, bribery of government and business officials with a view to inducing favours or ‘turning a blind eye’ to criminal transactions or false documentation. Criminal networks and individuals may use corruption to encourage factory overruns.

Since 1 April 2008, EU Member States have been able to grant companies ‘Authorised Economic Operator’ status (AEO), allowing reliable traders to move goods more quickly through customs controls. Member States may grant this status to any trader that meets common criteria (based on security systems, solvency and compliance). However, this programme may be vulnerable to corrupt practices.

44 - Commission Staff Working Document accompanying document to the proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source, 2008.

45 - Where 1 QUALY is equal to 1 year of life expectancy in full health.

There are many factors that create an environment for corruption including the recent economic crisis and resulting austerity measures that have seen public sector workers facing job cuts and pay freezes, which have made it easier in some EU MS for counterfeiters to bribe or corrupt public sector workers. Such activity may lead to the corruption of customs/border guards, thereby enabling OCGs to move goods across borders easily.

### Economic crisis

Austerity measures have resulted in lower salaries, pensions and living standards and, as a consequence, consumers may seek cheaper alternatives and in some cases they knowingly purchase counterfeit products. Austerity measures might also have pushed consumers onto the internet to find 'bargains' that seem like genuine products at cheaper prices. Austerity measures might have forced some small/medium sized businesses to cut corners and may have resulted in them wittingly/unwittingly sourcing counterfeit products or acting as accomplices to OCGs, enabling them to access the legitimate market.

Loss of tax and other duties from the manufacture and distribution of counterfeit goods may lead to fewer available resources for public services and thereby less public revenue for public health services. This in turn may also lead to increased susceptibility to counterfeit medicines, tobacco, food and alcohol.

Economic fluctuations can also have an impact on a country's purchasing power. For instance, during the start of the economic crisis in 2008, Lithuanian citizens experienced substantial price increases in pharmaceuticals that were linked to VAT increases<sup>46</sup>. During the height of the economic crisis, Greek citizens experienced shortages of crucial pharmaceuticals due to the government's inability to pay off debts to large pharmaceutical companies.

Rights holders have also been affected by the economic crisis, making cuts to parts of their businesses that do not manufacture or produce profits, including brand protection teams. This has an adverse effect on law enforcement authorities because rights holders cannot provide adequate support to detentions and investigations.

### Consumers

#### CONSUMER SURVEYS

##### Top 3 motives for consumption of counterfeit goods:

- price,
- easy access,
- social acceptability.

##### Top 3 deterrents:

- health and safety consequences
- threat of legal action
- links to organised crime

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46 - This is not confined to pharmaceuticals, the Spanish Observatory on Piracy (Observatorio de Piratería) noted during a recent survey that the majority of people purchasing illegal downloads had done so because of the VAT rise.





The level of product counterfeiting across the EU is sustained by consumer demand and by opportunities for criminal networks to profit from this crime. A recent OHIM study titled: 'European Citizens and Intellectual Property Perception Awareness and Behaviour'<sup>47</sup> found that 'a large majority of EU citizens display strong support for IP and yet consider that at a personal level, breaking the rules may be justified to cope with the consequences of limited purchasing power or to protest against an economic model driven by the market economy and premium brands'.

Eurostat research reveals 43 % of people aged 16-74 in 27 EU MS bought something on the internet in 2011, with the highest numbers in Germany, France and the UK (64 %, 53 % and 71 % respectively), whilst all purchases made online are included here (not just counterfeit purchases), the figures indicate high volumes of e-commerce. This may be linked to access to broadband, internet connections, computers, etc.

The latest DG TAXUD report<sup>48</sup> on cases and articles detained at EU external borders shows significant changes in destination countries from 2012 to 2013.

EU Member State	Number of cases %	Number of articles %
Estonia	-64%	-96 %
France	155%	147 %
Latvia	105%	-39 %
Malta	-16%	-713 %
Poland	5%	786 %
Portugal	62%	207 %
Slovenia	140%	-77 %
Slovakia	550%	85 %
Sweden	11%	98 %

A WIPO article<sup>49</sup> mentions the need to take cultural differences into account when designing awareness campaigns. In Hong Kong it is considered important to display the trappings of wealth, and to be seen with the right brand. However, there is a fear of being found with fake goods as this would mean a huge loss of face, 'if you wear fake clothes you're a fake person'.

## Political and enforcement priorities

Almost all EU MS consider drugs and human trafficking to be the dominant priorities in terms of fighting organised crime. In some countries IP Crime may feature low on the list of priorities for tackling serious and organised crime, resulting in: low allocation of resources; no specialised IP Crime Unit; a lack of interest in the crime area; as well as a lack of awareness and training for enforcement, judiciary and prosecution officials.

A lack of understanding or experience of the crime area may mean opportunities for using different forms of penalties (such as administrative sanctions, non-compliance penalties, etc.) are not utilised to their maximum effect against counterfeiters.

47 - <https://oami.europa.eu/ohimportal/documents/11370/80606/IP+perception+study>.

48 - European Commission 'Report on EU customs enforcement of intellectual property rights: results at the EU border', 2013.

49 - WIPO Magazine, Special Edition for the Fourth Global Congress on Counterfeiting and Piracy, February 2008: 'Culture Shock: comparing consumer attitudes to counterfeiting'.

However, the recent Council decision to include ‘counterfeit goods violating health, safety, food regulations and substandard goods’ as an EMPACT<sup>50</sup> priority has already raised the profile of this particular crime area among EU Member States.

### Penalties for counterfeiting

Penalties for the production or distribution of counterfeit goods are relatively low in some countries and provide an incentive for OCGs to enter this low risk, high profit crime area.

In particular, counterfeiting pharmaceuticals carries low penalties in some EU MS. As Slovakia noted during the joint OHIM-Europol Knowledge Building Seminar on Counterfeit Pharmaceuticals, sanctions amount to a less than three-year prison sentence. In Poland, the penalty for ‘pharmacrine’ is currently only two years.

### Storage and Destruction

The OHIM updates to ‘Costs and Damages’ and ‘Storage and Destruction’ of IP infringing products highlight the lack of harmonisation across the EU. For example, the proportion of legal costs that can be recovered by rights holders who are successful in civil proceedings vary widely from one Member State to another<sup>51</sup> :

EU MS	Average Percentage of costs recovered
Austria	50-70 %
Cyprus	50 %
Denmark	10-50 %
Estonia	100 %
Ireland	80 %
Italy	30 %
Lithuania	100 %
Luxembourg	10-30 %
Romania	100 %
Slovak Republic	100 %
Sweden	100%

In some EU MS (the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Italy, Lithuania, Netherlands, Portugal, Slovenia and Sweden) the onus is on rights holders to prove intentional or neglectful infringements of their trademarks in order to receive damages. Proving intent is not easy, so some rights holders may not proceed with civil litigation in those EU MS where burden of proof is required.

50- European Multidisciplinary Platform Against Criminal Threats.

51 - Figures from OHIM publications: ‘Observatory Update on Costs and Damages’ (2014) and ‘Observatory Update on Storage and Destruction’.



In most EU MS the infringer will bear the costs of destruction of the infringing goods in civil proceedings, however, rights holders are liable for storage costs (which may become prohibitively high, especially if the court proceedings take many months or if the rights holder is a small to medium enterprise). In terms of destruction costs, the State usually bears the costs in criminal proceedings, but in Customs proceedings, the rights holder bears the costs of destruction and storage.

The submission from the Premier League states, ‘the Premier League cannot comprehend why rights owners should be responsible for the costs of destruction and storage of infringing goods which have nothing to do with them and which directly infringe their rights. It is the equivalent of being presented with an invoice by the police after your home has been burgled’.

Regulations<sup>52</sup> concerning the costs of destruction in Customs proceedings may facilitate the entry of illicit goods back into the EU market, if rights holders are not prepared to pay. In some cases, destruction costs may be extremely high, depending on the nature of the items seized.

The Irish Department of Agriculture reported a seizure of 8 000 litres of illegal pesticides destroyed in August 2013 and 12 000 litres of pesticide seized in December 2013 – pending destruction as hazardous waste. The process of destruction and storage remains a contentious issue, as it has been found that seized products have re-entered the market place. At present, Regulation 608/2013 places responsibility for destruction and storage of counterfeit goods with the rights holder, the victim of IP infringement.

*Source: Irish Department of Agriculture*

This case study shows that when counterfeit pesticides are seized, they may not be disposed of quickly. This is due to the high component chemicals, which have to be disposed of in specialised environments (extremely low temperatures) and in some cases it costs more to destroy them than it does to produce them. In fact, some companies find destruction costs prohibitively high and have asked law enforcement authorities to stop seizing counterfeit products infringing their trademark, resulting in those counterfeits being released onto the market.

## Small Packages

Although the recently published EU Regulation 608/2013 applies a simplified procedure for small packages, allowing rights holders access to data on origin, provenance of goods, information on means of transport, places of transshipment, etc. the Regulation requires customs or border agencies to notify the brands to check whether goods detained are genuine or counterfeit. If brands do not reply within a given time frame, the goods can be released into the EU. There is evidence that certain brands do not reply in the time frame or take action if amounts seized are low, or below a specific threshold. There are many reasons for this, including lack of resources to cope with the influx of counterfeit products and cumbersome and time constraining procedures, both of which increase the financial burden on the brands to deal with products that they have not ordered.

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<sup>52</sup> - Regulation EU No 608/2013 Article 29 (Costs): ‘Where requested by the customs authorities, the holder of the decision shall reimburse the costs incurred by customs authorities, or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of goods, including storage and handling of the goods, in accordance with Article 17(1), Article 18(1) and Article 19(2) and (3)’.

Brands have to register or complete an application for action; DG TAXUD reported that of 1 400 new applications, only 380 have requested the small consignments procedure. One EU MS noted that a potential explanation for this is that some rights holders are concerned that they will not receive enough information under the procedure. However, it is also important to bear in mind that the vast majority of small packages is repeat traffic, so the information or intelligence will not be useful.

OCGs involved in counterfeiting may be aware of this policy and manipulate the system to their benefit. Such negative activity on behalf of the private sector could play a part in the increased availability of counterfeit goods in the EU. This is reflected in the Annual Report from the *Estonian Association for the Protection of IP*: ‘the majority of the holders of intellectual property rights still do not consider the implementation of such measures necessary in the case of small consignments of goods. In around 35 % of cases, customs released the goods being checked due to the fact that the representative of the holder of the rights *did not respond to the relevant application from customs or stated that the amount of goods was too small to deal with*<sup>53</sup> (emphasis added).

Other EU MS law enforcement agencies have expressed similar frustration at suspicious goods in small packages being detained but then released if no action is taken by rights holders. This can create the undesired effect of customs staff ignoring future detentions of suspicious goods relating to right holders that do not take action, in order to avoid wasting valuable resources and time and lead to a prioritisation of other forms of illicit traffic.

Many view the new regulations as an effective measure to control product counterfeiting, However, the processes required have placed an additional burden on rights holders, requiring specific data per trademark, as well as an additional administrative burden on customs regarding the recording and processing of data per small parcel.

## **Others**

Some members of private industry are unwilling to commit to enforcement activities or share commercial data with law enforcement authorities. This may be for a range of reasons, but rights holders tend to cite ‘commercial sensitivities’ as reasons for their reluctance and may be afraid of damaging their reputation if they acknowledge a counterfeit problem.

There are many private anti-counterfeiting organisations. Some are highly proactive and others seem to be mainly concerned with lobbying. The number of these organisations is large and it can be difficult for law enforcement and others to know which to approach for assistance. However, in a similar vein, there may be multiple law enforcement agencies, regulatory bodies and other public sector bodies trying to tackle counterfeiting, and the private sector may have difficulties in reaching the correct agency for assistance. There is also a danger that so many actors in both enforcement and private sector environments may not coordinate well and act in a disorganised way<sup>54</sup>.

Private sector partners also raised the issue that costs for civil litigation can be a major factor in decisions on whether to pursue a case or not, as costs/fees may vary significantly among EU MS and, as mentioned previously, recovery of costs for civil litigation fees vary widely from one MS to another.

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53 - Estonian Association of Intellectual Property and Technology Transfer Centre (EITK) Intellectual Property Rights Annual Report, 2013.

54 - <https://oami.europa.eu/ohimportal/documents/11370/80606/Inter-agency+cooperation+at+national+and+international+level>



## 08 / Organised Crime Groups

### Who are they?

The United Nations Convention against Transnational Organised Crime (2004) defines an organised criminal group as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences, in order to obtain, directly or indirectly, a financial or other material benefit.

UK law enforcement agencies conducted a mapping exercise to look at OCGs involved in the production and distribution of counterfeit goods as their primary source of income. The mapping exercise showed that there are a significant number of OCGs that have links with other crime areas, particularly drug trafficking, facilitation of illegal migration, human trafficking and money laundering, demonstrating that IP crime is not undertaken in isolation.

The OCG mapping provides evidence of the structured criminal organisation involved in IP crime. It needs to be well organised with international logistics, supply and distribution networks and subsequent money laundering facilities in place, whilst others already have access to these sorts of resources.

It is difficult to identify any OCG involved exclusively in the trafficking or production of counterfeit goods, as they are inevitably linked to other crime areas (which may have more prominence, such as drugs). However, as reported to Europol, national law enforcement authorities are aware of the following groups that are active in counterfeiting in the EU.

**A multi-national (Bulgarian, Czech, German, Hungarian and Serbian) OCG** involved in the production and distribution of washing powder, detergents and shampoo, (described in Chapter 5) shows the collaboration across nationalities and cross-border cooperation involved in the production and distribution chains.

**Albanian OCGs** are known to be involved in the illegal production of counterfeit cigarettes for sale throughout the EU; Albanian OCGs are also involved in smuggling marijuana and heroin along the same well-established routes. Demand for counterfeit cigarettes is high, exacerbated by low production costs but high retail prices and excise duties. The groups are structured along hierarchical lines.

These groups utilise forged documents making false declarations about the cargo, and hide goods in freight motor vehicles, or placed in bunkers. These groups also offer bribes to police and customs officers to turn a blind eye to illegal cigarette transports.

A Belgian OCG involved in the counterfeiting of wine has significant financial resources channelled through a Dutch corporation, as well as investments in real estate in Belgium, France and Monaco. The OCG also has shell companies in Panama. The core group is composed of family members, with other members holding specific functions (i.e. chemical, management, legal, financial and accounting experts). The group uses two legitimate businesses in the catering industry to distribute products and conceal proceeds of crime.

**Belgian, Dutch and German OCGs with Turkish roots**, are well organised and have strong links with Turkey (both linguistically and culturally). These OCGs facilitate the movement of counterfeit goods through the ports of Istanbul or Constanta into the EU. Commonly, the route used is Istanbul (entry point) to Bulgaria by truck, continuing to Romania overland, where the seals are broken. The consignment may be broken down and then transported by vehicle to Hungary and then to Germany or the Netherlands for sale. These groups have also been known to store counterfeit products in the port of Antwerp.



The Camorra, controlling most of Naples and its provinces, is involved in several crime areas, including the production and distribution of counterfeit goods. Law enforcement authorities are aware that they import raw materials and counterfeit products into the port of Gioia Tauro and affix labels printed in Italy.

The importation of unmarked goods is not a crime. However, the addition of counterfeit labels to a product infringes IP legislation. This is one of the methods OCGs use to evade external border checks in the EU. Once collected from the point of entry, the goods are labelled with locally printed counterfeited brand names and distributed easily around the EU.

The Camorra is known to collaborate with Chinese organised crime networks in the importation and distribution of counterfeit goods. The harbour of Naples is used almost entirely by Chinese shipping companies and it is one of the main entry points for finished (or materials used for) counterfeit goods, which are then distributed throughout the region of Campania and elsewhere in Italy.

Chinese crime syndicates tend to consist of one or more families, giving them a stable and close-knit structure. The groups do not have a homogenous and hierarchical structure, but are composed of separate groups interacting together – in a wider network that is relatively flexible and horizontal in structure. Chinese OCGs involved in distribution of counterfeit goods are considered to be highly mobile, specialised teams.

Chinese OCGs operating in Italy are known to have close relationships with the Camorra and they collaborate to import counterfeit goods. The Chinese diaspora communities across Europe are extensive and Chinese citizens have settled in areas traditionally associated with enterprise and industry, for example in locations known for the manufacture of clothing. It is believed that Chinese OCGs provide victims of human trafficking to work in textile workshops. There is a concentration of Chinese counterfeit businesses located in the provinces of Naples, Lombardy, Marche, and between the areas of Prato and Florence<sup>55</sup>, all of which are areas associated with the textile and fashion industries. Parts of Madrid and its suburbs have also been infiltrated by Chinese OCGs.

Chinese OCGs operate across Europe and utilise legitimate businesses to facilitate the movement of counterfeit products. For example, warehouses controlled by legitimate companies (owned by people of Chinese origin) are used to store counterfeits, which are then mixed with legitimate products. The majority of these companies are engaged in the import and sale of textile products, kitchenware, small appliances, etc.

In terms of money laundering, Chinese groups have established and developed collusive relationships with a network of money transfer agencies, enabling them to send large amounts of money to China. There are also examples of relationships between Chinese OCGs and corrupt shipping agents.

Chinese OCGs are also considered to be involved in the production and distribution of counterfeit pesticides, arriving from China in shipping containers at major ports in Belgium, Germany, the Netherlands, Slovenia, and others. However, due to recent successful law enforcement interventions in China, the networks have switched from 'market ready' products to the bulk importation of chemicals and active ingredients that are repackaged and labelled inside the EU (for an example, see Chapter 6).

There are also Chinese OCGs involved in the importation of raw tobacco leaves for the production of counterfeit cigarettes in illegal factories in Bulgaria, the Czech Republic, Poland, Romania and Slovakia. Furthermore, due to their size and sophistication, Chinese OCGs are believed to be involved in the production and distribution of counterfeit pharmaceuticals, which have penetrated the licit supply chains in countries such as Sweden and the UK<sup>56</sup>.

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55 - Italian Ministry for Economic Development

56 - Europol



Research identified a Moroccan OCG involved in the manufacture of counterfeit clothing, shoes and accessories in Portugal that was transporting the goods into Spain using trucks or vans. This group was also found to be in possession of firearms, ammunition and forged credit cards. The investigation is covered in more detail in Chapter 6.

Polish OCGs are known to be involved in the manufacture and distribution of counterfeit tobacco products.

One Romanian OCG is characterised as having strong cross-border links, with a mixture of Romanian and other foreign nationalities. The group also uses several commercial businesses to facilitate the transport and movement of counterfeit products. This group imports smuggled cigarettes from China in shipping containers and counterfeit luxury perfumes (various brands) from China and Turkey. The group uses the modus operandi of mixing legal and illegal products together.

A Russian OCG acts as a broker, ordering chemicals used in the production of pesticides from China. The chemicals are transported by container shipments and truck into Ukraine, where the pesticides are manufactured, labelled and packaged for further distribution across the EU.

Spanish & Portuguese OCGs manufacture and distribute counterfeit apparel in Portugal for distribution in Spain. There are also cases of collaboration between groups in the exchange and importation of anabolic steroids.

Turkish OCGs: one group identified imports millions of cigarettes and several tonnes of counterfeit perfumes into the EU, in container shipments using 'cover loads' (i.e. the counterfeit and contraband goods are hidden underneath legitimate products). The group is composed of a core group that makes use of complicit, legitimate transport and import/export companies to smuggle goods.

### Links to other crimes

In order to establish a manufacturing site and purchase raw materials to make counterfeit products, OCGs (or individuals) need a considerable amount of capital to start up. Proceeds from other crime areas may be used to commence production; however, proceeds of crime from production and distribution of counterfeit goods are also used to fund other criminal activities such as drug trafficking, weapons trafficking, etc.

Money laundering is often carried out through the use of legitimate business structures owned by an OCG but OCGs will also use these businesses to obscure their illicit activities. There are several known OCGs that own logistics and transportation companies.

OCGs use traditional and well-established trafficking routes for drugs or human trafficking to move and distribute counterfeit products as well as a variety of other illicit goods.

There are indications that OCGs involved in counterfeiting may use victims of trafficking in human beings to work in the production and distribution of these goods and in some cases, street gangs are used for distribution of products.

There are reports of potential links between OCGs involved in counterfeiting and terrorist groups but these are tenuous and inconclusive. It is more likely that sympathisers channel profits made from counterfeiting through third parties to fund terrorism, as may be inferred from the counterfeit clothing case example in

Chapter 6. Moreover, there were no submissions from EU MS confirming links between counterfeit goods financing terrorist activities. However, Interpol describes one of the most well-known cases of links between counterfeit goods and terrorism: the involvement of *Mokhtar Belmokhtar*<sup>57</sup> in the trafficking of counterfeit cigarettes across traditional trading routes from the Sahara desert to the Mediterranean Sea<sup>58</sup>. As the WCO's Illicit Trade Report (2012) points out, 'trafficking in cigarettes is, next to trafficking in drugs, assumed to be one of the main sources to fund terrorist activities in the sub-Saharan region where criminals involved in this trafficking closely cooperate with regional terrorist groups'.

Ernst & Young<sup>59</sup> report on several cases directly linking counterfeit goods and terrorism.

- 'The Real IRA has flooded Ireland with contraband cigarettes and counterfeit versions of popular brands.
- Combined IRA groups have reaped an estimated USD 100 million from cigarette smuggling over a five-year period'.
- 'According to New York's Police Commissioner, the Madrid train bombing incident was funded through the sale of pirated CDs'.
- 'The head of a French security agency, when interviewed, indicated that 'Afghan terrorist groups have been found to use the proceeds of duplicates of credit cards and counterfeit designer products'.
- 'Al Qaeda training manuals recovered in 2002 reveal that the organisation recommends the sale of fake goods as a means of fundraising for cells'.

One of the facilitating factors for the distribution of counterfeit goods is the use of false documentation to obscure the source/transit countries; however, this is also considered a crime area. OCGs will also forge packages, labels and instruction manuals to make the products appear genuine.

Counterfeit pharmaceuticals may have links to synthetic drugs production, as the production equipment is essentially the same for both. OCGs using spam to attract customers seeking lifestyle drugs or pharmaceuticals may also use malware and/or spyware to acquire customers' private data for fraudulent use in cases such as credit card cloning and fraud. Criminal networks may also purchase cybercriminals' skills to hack into systems to acquire commercial data or product details.

More common to the import/export of items such as tobacco and alcohol, OCGs evade taxes and excise payments for high value goods through misdeclarations, smuggling, etc.

Three companies in Italy were investigated for the trade in fraudulently labelled organic products, resulting in the discovery of VAT fraud and fake invoices. The three companies had sold products in Belgium, Germany, Spain, France, Hungary, the Netherlands, Austria and Romania. Italian investigators uncovered over EUR 10 million of VAT that had been evaded by these three companies and a total of over 700 tonnes of fraudulently labelled organic products produced

*Source: Guardia di Finanza*

OCGs need to employ experts such as: cyber experts, lawyers, accountants, technicians, chemists, engineers, etc. to succeed in producing high quality counterfeits as well as money laundering.

57 - Belmokhtar was linked to the 2003 kidnapping of 32 European tourists, the 2008 negotiations for the release of two Austrian captives and 2009 negotiations for the release of two Canadian hostages. He was also the leader of the 2013 raid on the In Amenas gas field in Algeria.

58 - Interpol trafficking and counterfeiting casebook, 2014.

59 - Ernst & Young & FICCI Cascade 'Counterfeiting, piracy and smuggling: Growing threat to national security', 2013.



# 09 / Future Considerations/Outlook/Challenges

- Growth of Tanger Med
- Misuse of certification labels
- Food, herbal supplements and doping products
- 3-D printers
- Internet

## Growth of Tanger Med

The current works to extend the size of Tanger Med as a FTZ and Free Port by 2017 will make it consistently larger than JAFZ in the UAE, which is considered one of the largest in the world. Whilst JAFZ is most commonly used as a transshipment area by counterfeiters, the proximity of Tanger Med (15 km) to Spain and its future extension will provide an opportunity for counterfeiters to tranship and prepare products for distribution in the EU.

The potential impact of this on customs authorities in Spain in particular could be enormous and this needs to be taken into consideration to ensure that future operational policies and procedures are effective.

## Misuse of certification labels

There are several organisations worldwide that offer certification in safety and quality and examples of their certification marks are shown in the graphic below. Counterfeiters regularly copy/forgo these certification marks and apply them to counterfeit products to make them appear genuine.



(Google images)

The food industry has seen a growth in the abuse of 'organic' labels attached to products that do not comply with the organic certification but have higher retail prices. The popularity of organic foods and higher retail prices is being exploited by unscrupulous traders. A large-scale fraud can provide enormous profits made through the use of fraudulent labelling. The value of organic production in the EU is estimated<sup>60</sup> at EUR 17 billion.



(Google images)

60 - Guardia di Finanza.

It is possible that other certification labels will see similar growth in the misuse of their labels in the future. One example of this is Fairtrade certification. In 2013, Fairtrade product sales reached GBP 1.5 billion in the UK alone, reflecting the growing willingness of consumers to pay an ethical price for goods. In order to ensure that workers in production countries get a fair deal, products carrying the Fairtrade certification mark are often more expensive than other non-Fairtrade products. The certification label can be easily replicated and affixed to products by experienced counterfeiters who want to sell products at higher retail prices and therefore it may be targeted increasingly by counterfeiting networks.



(Google images)

### Food, herbal supplements and doping products

Although not strictly related to counterfeiting, an increasing phenomenon in the EU, developing in parallel with increased demand for lifestyle drugs and organic foods, EU MS have started to see growing seizures of doping products and food/herbal supplements in parcel post.

The OHIM-Europol Knowledge Building Seminar on Pharmacrime highlighted the growing phenomenon of the use of doping products across the EU. Substances are mass produced in China, India and Thailand, as well as Moldova. Representatives at the seminar noted the difficulties in obtaining reliable information on products, methods and locations. MS noted that doping products have evolved in quality, making use of genetic products, masking agents and improvements in technology (some substances no longer have to be kept within a certain temperature range and can therefore be more easily concealed). As one EU MS pointed out, it is easy to become a producer as raw materials are easy to obtain and tablet press machines can be bought on the internet. This phenomenon allows individuals to become involved in counterfeiting doping products, not just highly organised crime networks.

*Source: OHIM-Europol Knowledge Building Seminar on Pharmacrime.*

A recent example is a new peptide hormone, GW1516 (also known as GW501516), a black market performance enhancing drug not released for general sale as serious toxicities and side effects were discovered in pre-clinical trials. This medicine is available for illegal purchase on websites as a tablet, liquid and in powder form.

Source: Belgian Customs



(Source: Belgian Customs)





## Raw materials for 3D printers

Counterfeiting of toner cartridges for inkjet printers is already a widely reported phenomenon. It is possible that as new opportunities arise with the inception of 3 D printing, counterfeiters will seek to expand into new markets. There are possibilities for counterfeiters to manufacture counterfeit spare parts with 3D printers, or to manufacture and/or distribute counterfeit raw materials for use in the printers.

## Internet

### IPv4/IPv6

Law enforcement faces severe difficulties in attributing crimes to end-users due to the bundling of multiple communication devices on single IP addresses. The structural solution for the shortage of IPv4 addresses is the transition to the internet protocol version 6 convention, which extends the number of available IP addresses almost infinitely. In view of the expansion of devices to be connected to the internet in the near future as part of the Internet of Everything concept, it is most desirable that the transition to IPv6 is fostered, promoted and stimulated as much as possible at policy level.

## Domain Name System (DNS)

The expansion of Domain Names to include new generic Top Level Domains (gTLD) such as .london, .food, .clothing and others, allows a more bespoke nature for industries. This expansion will give rise to a proliferation of registries authorising the use of these new domain names, creating opportunities for criminals to abuse the system and enabling them to remain anonymous more easily. It is also likely that criminals will abuse the system to sell counterfeit goods – the increased number of domain names will make it harder for right owners to monitor sales of counterfeit items – and harder for consumers to identify genuine websites.

## WHOIS

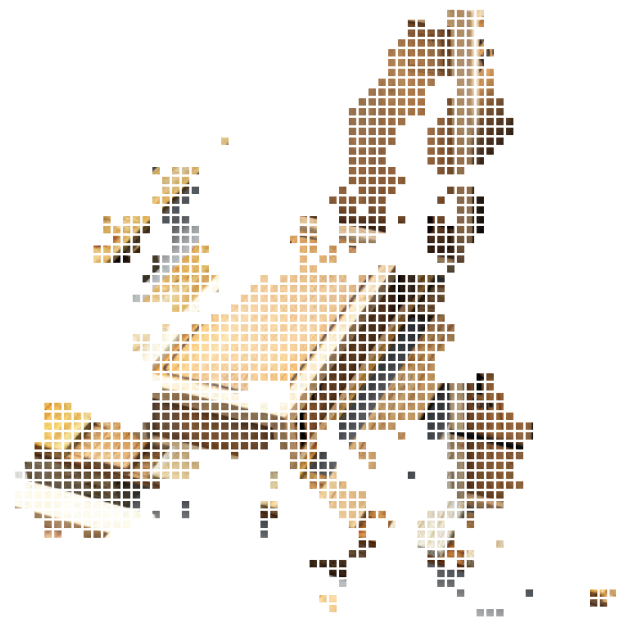
The Domain Name System WHOIS is a look up service allowing users to look up any generic domain (.com, .org) to find out the registered domain owner. This system will be replaced by an enhanced WHOIS called Web Extensible Internet Registration Data Service (WEIRDS). As the iOCTA<sup>61</sup> states: 'It produces a simple, easy-to-implement protocol, supporting internationalised registration data and, specifically for name registries, capturing the needs of internationalised domain names in the data model. It has also been conceived to provide security services that do not exist in the current WHOIS protocol, including authentication, authorisation, availability, data confidentiality, and data integrity.' However, WEIRDS will take time to implement and the current system, WHOIS, relies on registrars to keep accurate records.

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61 - Europol, Internet Organised Crime Threat Assessment, 2014.



# 2015 Situation Report on Counterfeiting in the European Union

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## 10 / Conclusions

This is the first situation report that carries out an extensive and in-depth review of counterfeit goods in the EU. There was clear support from EU Member States and the private sector to contribute to the research. However, data collection, reporting limitations and commercial sensitivities meant that some submissions did not provide sufficient detail to be included as case studies. In order to fill intelligence gaps in this threat area, it is incumbent on all relevant parties to identify and use appropriate reporting mechanisms.

Although the scope and scale of counterfeit products is not known, it is possible to infer that the extent of the activity is significantly higher than available figures suggest. Evidence from both private and public sectors clearly shows that large amounts of counterfeit products that had evaded detection at external borders are available in street markets and online. This is due in part to criminals using elements of legislation to their benefit, shown through several case studies whereby the commodity itself is shipped without branding, and labels and packaging are sent separately. Similarly, criminals are known to have registered their own intellectual property rights, allowing them to legally import products which are then turned into counterfeits at the point of sale through the exchange of branded labels.

Even though the majority of counterfeited goods originate from countries outside the EU, the intelligence sourced from the cases dealt with by the competent national authorities, seems to indicate that there is also a certain domestic/EU production. In fact, the experience gained by criminal networks, their contact with non EU facilitators or producers of materials and the avoidance of customs controls and inspections are 'push and pull factors' supporting the above assumption.

Training provided to customs authorities by right holders often focuses on the end product. This, albeit helpful, does not include a focus on the ancillary products such as warranty papers, certification marks, instruction manuals, labels, empty packaging, etc. Often, these items are overlooked, allowing counterfeiters to evade detection and assemble and package products for distribution.

The majority of these ancillary items are transported via post and courier facilities. Current border regulations are very effective in tackling the importation of the final, complete article. However, the implementation of border regulations due to the administrative burden on customs to process the detention of small packages has reportedly reduced their ability to maintain a high level of detection and detention of counterfeit goods and their ancillary items.

Other areas that may require increased focus include:

- **weak points in the supply chain:** brokers/agents, FTZs, and self-storage facilities all enable the distribution of counterfeit products across the EU. In particular, FTZs are misused by counterfeiters for the assembling, packaging and labelling of counterfeited goods, which are then shipped to their final destination;
- **weak points in enforcement:** small and medium enterprises have limited resources to manage the threat to their brands effectively and support law enforcement; limited law enforcement resources dedicated to tackling IP crime undermines the EU's ability to tackle this threat;
- **lack of investigation:** detention and destruction of counterfeit goods do not deter OCGs. Investment in the resources and time required to investigate prolific offenders would allow successful interdiction and prosecution of criminal networks;
- **e-commerce:** cooperation with payment processors and advertising companies to reduce the availability of funds to those involved in the sale of counterfeit goods online is necessary;

- **consumer awareness and education:** consumer surveys clearly indicate that the demand for branded products supersedes the perception of the threat from counterfeit goods. Closer consultation with consumer groups would enable a more effective awareness campaign;
- **awareness and training:** limited understanding and knowledge of investigators, prosecutors and judges in complex IP cases can prevent effective application of legislation.

There are multiple examples of good practice in tackling counterfeiting across the EU and beyond. In particular, Operation OPSON brings together a number of public and private sector agencies to address the threat from food and beverage counterfeiting and fraud. Working in partnership, this operation (led by Europol and Interpol) has resulted in a multi-agency, multidisciplinary approach providing an effective response to a common problem. The case study in Chapter 6 (Production Site) demonstrates excellent collaboration between a national police agency and a regulatory body (in different EU Member States), resulting in the successful interdiction of an OCG.

These examples of good practice show that sector-specific operations are highly effective through a coordinated, multi-agency response. However, research indicates that daily enforcement of IPR across the EU is piecemeal and fragmented, reliant on individual officers or departments with an interest in IP enforcement to tackle the phenomenon effectively.

Consideration should also be given to the creation of a multidisciplinary and multi-agency taskforce, similar to that of the US National IPR Coordination Center. This centre brings together all government and law enforcement agencies involved in the interdiction of counterfeit goods. Such a taskforce allows a targeted and inclusive approach to meet diverse operational and administrative objectives. Operation In Our Sites, coordinated by the above centre, targets websites and domain names that enable the sale of counterfeit goods. The centre was able to bring together relevant partners, including Europol, to broaden its mandate outside the USA, leading to an effective global response. This type of model, if it were implemented in the EU, could enhance the response in tackling organised crime's involvement in counterfeiting. In this respect, Europol and OHIM are strengthening their already ongoing cooperation on infringements of IP rights through the European Observatory on Infringements of Intellectual Property Rights. This is taking place by increasing sharing of resources, knowledge, good practices and tools, the results of which could be used to build a more complete picture and effectively support operational initiatives in Member States.



# 11 / Legal Framework

## Legal framework

Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 defines,

(1) ‘intellectual property right’ means,

- (a) a trade mark;
- (b) a design;
- (c) a copyright or any related right as provided for by national or Union law;
- (d) a geographical indication;
- (e) a patent as provided for by national or Union law;
- (f) a supplementary protection certificate for medicinal products as provided for in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products;
- (g) a supplementary protection certificate for plant protection products as provided for in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products;
- (h) a Community plant variety right as provided for in Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights;
- (i) a plant variety right as provided for by national law;
- (j) a topography of semiconductor product as provided for by national or Union law;
- (k) a utility model in so far as it is protected as an intellectual property right by national or Union law;
- (l) a trade name in so far as it is protected as an exclusive intellectual property right by national or Union law;

(2) ‘trade mark’ means,

- (a) a Community trade mark as provided for in Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark;
- (b) a trade mark registered in a Member State, or, in the case of Belgium, Luxembourg or the Netherlands, at the Benelux Office for Intellectual Property;
- (c) a trade mark registered under international arrangements which has effect in a Member State or in the Union;

(3) ‘design’ means,

- (a) a Community design as provided for in Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs;
- (b) a design registered in a Member State, or, in the case of Belgium, Luxembourg or the Netherlands, at the Benelux Office for Intellectual Property;
- (c) a design registered under international arrangements which has effect in a Member State or in the Union;



(4) **‘geographical indication’** means,

- (a) a geographical indication or designation of origin protected for agricultural products and foodstuff as provided for in Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (16);
- (b) a designation of origin or geographical indication for wine as provided for in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (17);
- (c) a geographical designation for aromatised drinks based on wine products as provided for in Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails (18);
- (d) a geographical indication of spirit drinks as provided for in Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (19);
- (e) a geographical indication for products not falling under points (a) to (d) in so far as it is established as an exclusive intellectual property right by national or Union law;
- (f) a geographical indication as provided for in Agreements between the Union and third countries and as such listed in those Agreements;

(5) **‘counterfeit goods’** means,

- (a) goods which are the subject of an act infringing a trade mark in the Member State where they are found and bear without authorisation a sign which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;
- (b) goods which are the subject of an act infringing a geographical indication in the Member State where they are found and, bear or are described by, a name or term protected in respect of that geographical indication;
- (c) any packaging, label, sticker, brochure, operating instructions, warranty document or other similar item, even if presented separately, which is the subject of an act infringing a trade mark or a geographical indication, which includes a sign, name or term which is identical to a validly registered trade mark or protected geographical indication, or which cannot be distinguished in its essential aspects from such a trade mark or geographical indication, and which can be used for the same type of goods as that for which the trade mark or geographical indication has been registered;

(6) **‘pirated goods’** means goods which are the subject of an act infringing a copyright or related right or a design in the Member State where the goods are found and which are, or contain copies, made without the consent of the holder of a copyright or related right or a design, or of a person authorised by that holder in the country of production;

(7) **‘goods suspected of infringing an intellectual property right’** means goods with regard to which there are reasonable indications that, in the Member State where those goods are found, they are prima facie,

- (a) goods which are the subject of an act infringing an intellectual property right in that Member State;
- (b) devices, products or components which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of any technology, device or component that, in the normal course of its operation, prevents or restricts acts in respect of works which are not authorised by the



holder of any copyright or any right related to copyright and which relate to an act infringing those rights in that Member State;

- (c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices relate to an act infringing an intellectual property right in that Member State;

(8) **'right-holder'** means the holder of an intellectual property right;

(9) **'application'** means a request made to the competent customs department for customs authorities to take action with respect to goods suspected of infringing an intellectual property right;

(10) **'national application'** means an application requesting the customs authorities of a Member State to take action in that Member State;

(11) **'Union application'** means an application submitted in one Member State and requesting the customs authorities of that Member State and of one or more other Member States to take action in their respective Member States;

(12) **'applicant'** means the person or entity in whose name an application is submitted;

(13) **'holder of the decision'** means the holder of a decision granting an application;

(14) **'holder of the goods'** means the person who is the owner of the goods suspected of infringing an intellectual property right or who has a similar right of disposal, or physical control, over such goods;

(15) **'declarant'** means the declarant as defined in point (18) of Article 4 of Regulation (EEC) No 2913/92;

(16) **'destruction'** means the physical destruction, recycling or disposal of goods outside commercial channels, in such a way as to preclude damage to the holder of the decision;

(17) **'customs territory of the Union'** means the customs territory of the Community as defined in Article 3 of Regulation (EEC) No 2913/92;

(18) **'release of the goods'** means the release of the goods as defined in point (20) of Article 4 of Regulation (EEC) No 2913/92;

(19) **'small consignment'** means a postal or express courier consignment, which,

- (a) contains three units or less; or,
- (b) has a gross weight of less than two kilograms.

For the purpose of point (a), 'units' means goods as classified under the Combined Nomenclature in accordance with Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff if unpackaged, or the package of such goods intended for retail sale to the ultimate consumer.

For the purpose of this definition, separate goods falling in the same Combined Nomenclature code shall be considered as different units and goods presented as sets classified in one Combined Nomenclature code shall be considered as one unit;

(20) ‘perishable goods’ means goods considered by customs authorities to deteriorate by being kept for up to 20 days from the date of their suspension of release or detention;

(21) ‘exclusive licence’ means a licence (whether general or limited) authorising the licensee to the exclusion of all other persons, including the person granting the licence, to use an intellectual property right in the manner authorised by the licence.

Sub-standard goods are defined as products which do not meet the criteria required by European and national law regarding its production, packaging, storage and distribution. It is a product of inferior quality compared with that which is legally required under European and national standards.<sup>62</sup>

A falsified medicinal product (both branded and generic) is defined by Directive 2011/62/EU of the European Parliament and Council of 8 June 2011 as,

Any medicinal product with false representation of:

- (a) its identity, including its packaging and labelling, its name or its composition as regards any of the ingredients including excipients and the strength of those ingredients;
- (b) its source, including its manufacturer, its country of manufacturing, its country of origin or its Marketing Authorisation holder; or
- (c) its history, including the records and documents relating to the distribution channels used.

The Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health CETS No., 211<sup>63</sup> (also known as the MEDICRIME Convention)

The above convention gives the following definitions:

- a) the term medical product shall mean medicinal products and medical devices;
- b) the term medicinal product shall mean medicines for human and veterinary use, which may be,
  - i. any substance or combination of substances presented as having properties for treating or preventing disease in humans or animals;
  - ii. any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis;
  - iii. an investigational medicinal product;
- c) the term active substance shall mean any substance or mixture of substances that is designated to be used in the manufacture of a medicinal product, and that, when used in the production of a medicinal product, becomes an active ingredient of the medicinal product;
- d) the term excipient shall mean any substance that is not an active substance or a finished medicinal product, but is part of the composition of a medicinal product for human or veterinary use and essential for the integrity of the finished product;
- e) the term medical device shall mean any instrument, apparatus, appliance, software, material or other article, whether used alone or in combination, including the software, designated by its manufacturer

.....  
62 - Definition provided by Europol.

63 - Signed by Armenia, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Moldova, Portugal, Russia, Spain, Switzerland, Turkey, Ukraine, Guinea, Israel and Morocco. Ratified by: Hungary, Moldova, Spain and Ukraine.



to be used specifically for diagnostic and/or therapeutic purposes and necessary for its proper application, designated by the manufacturer to be used for human beings for the purpose of,

- i. diagnosis, prevention, monitoring, treatment or alleviation of disease;
- ii. diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap;
- iii. investigation, replacement or modification of the anatomy or of a physiological process;
- iv. control of conception;

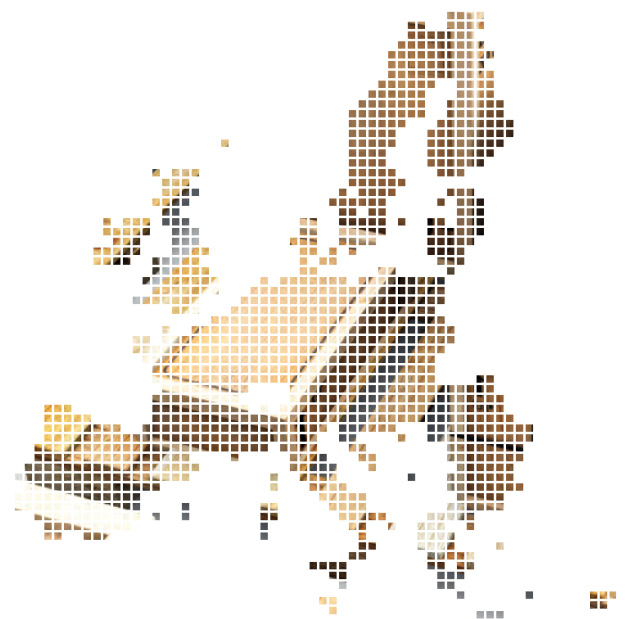
and which does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its function by such means;

- f) the term accessory shall mean an article which whilst not being a medical device is designated specifically by its manufacturer to be used together with a medical device to enable it to be used in accordance with the use of the medical device intended by the manufacturer of the medical device;
- g) the terms parts and materials shall mean all parts and materials constructed and designated to be used for medical devices and that are essential for the integrity thereof;
- h) the term document shall mean any document related to a medical product, an active substance, an excipient, a part, a material or an accessory, including the packaging, labelling, instructions for use, certificate of origin or any other certificate accompanying it, or otherwise directly associated with the manufacturing and/or distribution thereof;
- i) the term manufacturing shall mean,
  - i. as regards a medicinal product, any part of the process of producing the medicinal product, or an active substance or an excipient of such a product, or of bringing the medicinal product, active substance or excipient to its final state;
  - ii. as regards a medical device, any part of the process of producing the medical device, as well as parts or materials of such a device, including designing the device, the parts or materials, or of bringing the medical device, the parts or materials to their final state;
  - iii. as regards an accessory, any part of the process of producing the accessory, including designing the accessory, or of bringing the accessory to its final state;
- j) the term counterfeit shall mean a false representation as regards identity and/or source;
- k) the term victim shall mean any natural person suffering adverse physical or psychological effects as a result of having used a counterfeit medical product or a medical product manufactured, supplied or placed on the market without authorisation or without being in compliance with the conformity requirements as described in Article 8.



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## 12 / List of abbreviations

- AEO - Authorised Economic Operator
- AIDS - Acquired immune deficiency syndrome or acquired immunodeficiency syndrome
- AIFA - Agenzia Italiana del Farmaco (Italian Medicines Agency)
- API - Active Pharmaceutical Ingredient
- ASAE - Autoridade de Segurança Alimentar e Económica (Portuguese Food and Economic Safety Authority)
- BEAMA - British Electrotechnical and Allied Manufacturers' Association
- BKA - Bundeskriminalamt (German Federal Criminal Police)
- CAT - Category
- DG TAXUD - European Commission Directorate General Taxation and Customs Union
- EMPACT - European Multidisciplinary Platform Against Criminal Threats
- EPO - European Patent Office
- EU - European Union
- FATF - Financial Action Task Force (on money laundering)
- FDA - Food and Drug Administration (USA)
- FDI - Foreign Direct Investment
- FTZ - Free Trade Zone
- HIV - Human immunodeficiency virus
- HMRC - Her Majesty's Revenue & Customs (UK)
- ICC - International Chamber of Commerce
- IPC - Intellectual Property Crime
- IPR - Intellectual Property Right
- IRACM - International Institute of Research against Counterfeit Medicines
- MHRA - Medicines & Healthcare Products Regulatory Agency (UK)
- MS - Member State
- OCG - Organised Crime Group
- OECD - Organisation for Economic Cooperation and Development
- PIPCU - Police Intellectual Property Crime Unit (City of London Police, UK)
- PSI - Pharmaceutical Security Institute

QUALY - Quality Adjusted Life Year

SOCTA - Serious Organised Crime Threat Assessment

UN - United Nations

UNICRI - United Nations Interregional Crime and Justice Research Institute

UNODC - United Nations Office of Drugs and Crime

VAT - Value Added Tax

WCO - World Customs Organisation

WEF - World Economic Forum

WHO - World Health Organisation

WIPO - World Intellectual Property Organisation



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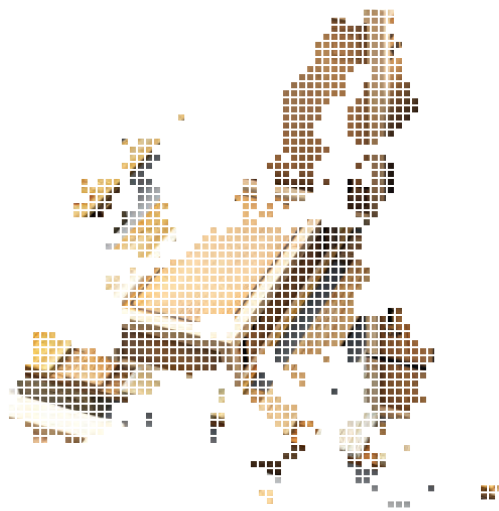
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