A special report on changes in the illicit trade of counterfeit products brought about by the pandemic and technological change.

As is the case with nearly all trade patterns, illicit trade in counterfeit goods has experienced a transformation during the COVID-19 pandemic of the past two years. Supply-chain bottlenecks, significant shifts in demand, and the explosion of e-commerce have led to new opportunities for this trade.

This special report will take a closer look at some of the developments and the challenges they pose to industry and law enforcement.
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I illicit trade in counterfeit goods remains a significant issue in EU trade and is most prevalent in product categories that show a large discrepancy between production costs and consumer prices. This can include watches, fake luxury handbags, and even fake COVID vaccines.

In 2019, counterfeits amounted to 5.8% of all imports into the European Union, according to a study by the EU Intellectual Property Office (EUIPO) and the OECD, an organisation of primarily higher-income countries.

Counterfeit goods violate a trademark, a patent, or another intellectual property right. For example, a smartphone with an Apple logo posturing as an iPhone but not produced by Apple, medicines, or car parts.

The large variety of possible counterfeits and the illegal nature of their trade makes it difficult to study.

“I am sometimes jealous watching the work of my colleagues at the labour directorate of the OECD and the access to quality data they have,” OECD illicit trade expert Piotr Stryszowski told EURACTIV, explaining that most of the data for the study of illegal counterfeits trade are based on partial information from law enforcement and customs authorities.

This data, however, is not free of biases. For example, some customs officials might know how to identify a fake watch but might be less able to identify counterfeit car parts. With millions of trademarks and patents registered worldwide according to the world intellectual property organisation, it is impossible to be on the lookout for all trademarks simultaneously.

**LUXURY GOODS MOST LIKELY TO BE COUNTERFEITED**

Despite some limitations, statistics can provide a rough picture of which goods are counterfeited and where they come from.

From 2017 to 2019, the counterfeited goods most often imported to the EU were luxury goods like watches, footwear, leather articles and handbags, jewellery, perfumes, and cosmetics. Toys and tobacco
were also common. In contrast, counterfeited pharmaceuticals and mechanical appliances were less so.

Luxury goods, tobacco, are popular items to counterfeit as they are relatively cheap to produce but can command a high market price if the correct name is attached to them.

“The criminal networks that operate in [the trade of counterfeited goods] are smart. They look for high profits and low risks,” Stryszowski told EURACTIV.

For example, one of the critical differences between smuggling counterfeited tobacco, and smuggling narcotics is that, while both products are addictive and harmful, the smugglers of prohibited drugs face more severe punishments if caught.

**WHAT CHINA, BENIN, AND TURKEY HAVE IN COMMON**

Statistics on illicit trade also unveil the most common sources of counterfeited goods.

While, globally, China is the undisputed number one country of provenance for counterfeited products, it shares the top spot with countries like Benin, Hong Kong, Senegal, and Turkey when it comes to EU-bound counterfeits.

Globally, the trend hints at a growing trade in counterfeit goods. According to Stryszowski, there are two main reasons for this: the first being a side effect of a welcome development.

“When societies get wealthier, consumers spend more on products with trademarks than on things like bread,” he told EURACTIV.

A second reason for the rise in the trade of counterfeit goods could also be attributed to authorities lack of focus on the matter, Stryszowski noted.

**NEW DEVELOPMENTS**

While the underlying drivers of counterfeit goods trade have not changed in the past years, the pandemic has shaken up the market.

For example, fake COVID certificates began to flourish the EURACTIV network reported and in 2021, the WHO warned of fake COVID vaccines.

“We can observe these shocks, but it’s really hard to guess what will be in the future,” Stryszowski said. In addition to new products that can now be counterfeited, the pandemic also led to shifts in the supply chains and a boost in e-commerce.

Moreover, quarantines meant that enforcement was reduced, according to Stryszowski.

All these developments create a complex picture and the lasting legacy of the pandemic on trade in counterfeit goods remains to be seen.
Deterrence and social pressure should play a more significant role in the fight against counterfeits given the economic damage they cause the EU, according to the executive director of the European Union Intellectual Property Office (EUIPO).

Christian Archambeau is no stranger to status symbols. The first thing he says, when asked to present the EUIPO, which he heads as executive director, is that “it is the largest decentralised agency of the European Union.”

A particular affinity to status is probably a good thing, as an essential part of Archambeau’s job is to save wealthy Europeans’ status symbols from being devalued by a flood of cheap counterfeits from abroad.

“We are the regulatory agency that is managing the system of intellectual property for what concerns trademarks and designs in the European Union”, Archambeau says.

**SELF-FUNDED AGENCY**

EUIPO annually registers some 200,000 trademarks and 110,000 Community designs. These are not just luxury handbags and watches, but a myriad of things that their designers and inventors deemed worthy of protection such as electric appliances, pesticides or spare parts for cars.

It costs around €850 to register a trademark in Europe for ten years and about €300 to protect a design for five years.

Overall, the revenues of the EUIPO amount to €300 million a year, allowing the agency to be self-funded.

“We do not cost a single penny to the European taxpayer,” Archambeau says.
Since 2012 the EUIPO also hosts the European Observatory on Infringements of Intellectual Property Rights to fight against counterfeiting and piracy. One of the main objectives of this observatory is to study the extent of counterfeit trade.

According to Archambeau, it is important to acknowledge the damage imported counterfeits inflict on the EU economy. His agency estimates that the value of counterfeit products imported to Europe reaches around €120 billion annually.

“This generates a loss in sales of up to €80 billion per year,” Archambeau says.

“670,000 legitimate jobs are lost to this and also €50 billion a year in taxes and social charges that are related to those sales and jobs.”

**ORGANISED CRIME**

The EUIPO chief is worried about where this money ends up. “What we see is that this business of counterfeiting is very often linked to organised crime,” he said.

“It’s a way of recycling proceeds from other forms of crime into something that is more palatable.”

According to Archambeau, counterfeiters are quick to adapt to new trends.

“We have seen a trend in personal protective equipment, and we have seen a big increase in medicines of all sorts,” Archambeau told EURACTIV.

Moreover, he said that, due to the lockdowns, many more counterfeit headphones, computers, video screens and televisions were being traded.

**DETERRENCE AND PRESSURE**

Archambeau is afraid that not enough is being done against counterfeiting, noting that the prevalence of counterfeit products in EU imports is increasing. Although he welcomes the fact that intellectual property (IP) violations were put back on a list of 10 priorities in the fight against crime by European police authorities, he wants more deterrence.

“The profits made from counterfeit products are extremely high, and the risk taken by people that exploit this is very low because the sentences for a breach of IP rights is very small,” Archambeau says.

“You very rarely go to jail for infringing on IP rights. You get a fine if we’re lucky.”

But deterrence alone won’t do the job, according to Archambeau. Instead, he argues for social pressure.

“When I was young, everybody smoked everywhere and all the time. Now it has become socially unacceptable in certain spaces,” he says.

“What we need is that the use of counterfeit products is also becoming something that is no longer socially acceptable.”

Archambeau is not afraid that this social pressure might stigmatise poor people who rely on cheap consumer goods. He offered the example of the music industry, which has successfully fought online piracy and provided affordable legal streaming services. Archambeau argues that this can also be replicated for physical goods.

“But obviously, I mean, if you want to buy your Rolex watch, you will need to have the money to pay for it,” he says.
As consumption patterns shifted online during the pandemic, e-commerce also became a key channel for trade in counterfeit products, posing a challenge to platforms and law enforcement.

It might be difficult to remember those days, but e-commerce was already growing fast in the years before the pandemic, with sales volumes rising by 82% from 2016 to 2019. When the pandemic hit in 2020, growth accelerated even more, increasing sales volumes by 25.7% in one year while the rest of the economy was partially shut down.

Not only did this massive shift in consumption send supply chains reeling under pressure and prices soaring, it also presented opportunities for counterfeit traders to expand their market.

“The organised crime groups that are behind counterfeiting look for high profits, and for them, the pandemic is like ‘wow, e-commerce is open, let’s go for it!’,” OECD illicit trade expert Piotr Stryszowski told EURACTIV.

A 2021 report by the European Union Intellectual Property Office (EUIPO) and the OECD found that “some 63.9% of seizures of counterfeit items involved mailed items.”

However, because these counterfeits are usually sent in small parcels, hiding in a stream of identically looking, legitimate parcels, generally only small quantities are found.

“While customs officers in a port sometimes find an entire container full of counterfeited goods, they have to open up every parcel they want to control individually with their cutters,” said a spokesperson of the Belgian customs authorities who spoke to EURACTIV about the challenges they face.

This is why the total value of seized counterfeit items sent by mail amounts to only 10% of the total goods seized globally.

**FIGHTING COUNTERFEITS ON THE GROUND AND IN THE ETHER**

Counterfeited products find their
way across the internet in different ways. Some use big platforms like Amazon or Alibaba; others use small webshops that are easily established.

This complexity means that there is not a straightforward solution to the problem.

The Belgian customs authorities, for example, have begun shutting down websites that were selling counterfeited goods. However, they can only do this for the sites with an URL that ends with .be or .eu. Although such a takedown can interrupt a counterfeit trader for some time, nothing stops them from restarting the same website with another URL.

When it comes to big e-commerce platforms, shutting down the website is not viable for the police. In these cases, customs officials have to physically turn up in warehouses, cutters in hand.

Meanwhile, the e-commerce platforms themselves have been pressured into taking proactive steps.

“We [...] have strict rules and sophisticated systems in place which assist us in identifying listings that violate our policies, and we take corrective action when we become aware of violations,” Alibaba told EURACTIV in emailed comments. Amazon did not want to comment but referred to a blog post in which it hailed its cooperation with law enforcement agencies.

In emailed comments, Europol told EURACTIV, “cooperation with the private sector, including with e-commerce platforms, is an important aspect in the fight against intellectual property crime.”

‘KNOW YOUR BUSINESS CUSTOMER’

EUIPO-chief Christian Archambeau commended the platforms for having introduced some counterfeiting programs. His own agency is looking at giving platforms access to material and tools that would allow them to identify counterfeits more easily.

“[The platforms] are also under pressure from the authorities because, for example, in Europe, we see good progress being made on the Digital Services Act,” Archambeau told EURACTIV.

The Digital Services Act (DSA), which is currently being negotiated between the European Parliament and EU member state governments, might introduce a ‘Know Your Business Customer’ (KYBC) principle.

This principle would force platforms to verify sellers’ identity to ensure legal accountability if they sell illegal goods over the platform.

Whether the DSA and its KYBC principle will be implemented in Europe will become clear in the coming months. In the meantime, it is up to cutter-wielding customs officials to stem the flow of counterfeit products disguised as innocent parcels.
The complex task of controlling containers for counterfeit

By János Ammann | EURACTIV.com

With only a fraction of EU-bound containers controlled for counterfeits, a large majority of counterfeited products are guaranteed to find their way to European buyers.

Globally, 53% of all counterfeited products seized by customs authorities were shipped by sea, according to OECD data. Even though sellers of counterfeited products increasingly use mail delivery as e-commerce booms, containerised shipping remains the number one conveyor belt for internationally traded counterfeits.

This dominance is aided by technological developments the shipping industry has been through in recent years.

Container ships have grown in size and can transport more containers than ever before. All of the fifty largest container ships currently in use have been built in 2017 or later.

The largest ships can hold nearly 24,000 containers at once. When these containers are unloaded in a European port, it is impossible to check all of them for counterfeited goods.

Instead, customs agencies have to decide which containers should be inspected more closely.

X-RAYS OF LITTLE HELP

“We rely on big data and artificial intelligence to determine the risk of each container,” a spokesperson of the Belgian customs authorities told EURACTIV. To maintain the efficacy of those predictive models, the authorities were unwilling to explain precisely how these predictive models worked.

Nevertheless, the spokesperson said these predictive models checked all containers based on their customs declarations and data from past custom seizures. Moreover, she added that the risk evaluation also depended
on tips and information from other customs authorities.

The risk indicators usually used by customs officials, however, are “less efficient for this type of illicit trade” a Europol spokesperson told EURACTIV in an emailed statement. The spokesperson argued that because counterfeit usually took the same trade routes as legitimate products, the two were hard to distinguish based on the data gathered from customs declarations.

Some ports like Antwerp also have large scanners for containers that allow for a much quicker, if not as thorough, look into the container. However, “it is difficult to detect counterfeit goods through automated X-ray inspections,” the Europol spokesperson said, adding that physical and visual inspection was necessary.

**ONE IN A HUNDRED ARE CONTROLLED**

Even with scanners and predictive computer models, many counterfeited items enter Europe under the radar. With so many containers that need to be handled, only those considered a top risk can be opened, according to OECD illicit trade expert Piotr Stryszowski.

For example, according to the Belgian customs authorities, about 1% of all containers that arrive in the port of Antwerp are opened and checked. From these 1%, many are primarily checked for drugs rather than counterfeits, taking the number of containers controlled primarily for counterfeits to well below 1%.

Meanwhile, the European Union Intellectual Property Office (EUIPO) and the OECD estimate that 5.8% of all goods imported into the EU are counterfeits. Thus, most counterfeits shipped into the EU are guaranteed to stay undetected at the border.

With the pandemic, the job of law enforcement has become even more challenging. As supply chains were disrupted and different kinds of counterfeited products began to be traded internationally, the predictive power of the customs authorities’ risk indicators became even less meaningful.

“Customs authorities rely a lot on past experience to determine which container or parcel they should open,” Stryszowski told EURACTIV. But with the “big bang” of the pandemic, “past experience becomes null and void,” he added.

Customs authorities, the EUIPO, and Europol try to overcome these difficulties by working closely with the industries most affected by counterfeited goods. Producers of luxury products, for example, inform authorities about their usual ports of entry into the EU so that if those products appear in another European port, authorities can be pretty sure that they are counterfeits.

Nevertheless, this cooperation can only alleviate and not fundamentally reverse the inherent connection between legitimate and illicit trade. Most measures that are designed to make trade easier and more frictionless also clear obstacles for the illicit trade of counterfeits. If more containers cross borders faster due to bigger ships and more efficient processes, this will also allow more counterfeit to cross borders more effortlessly.
When China imposed a lockdown on the city of Wuhan and its 11 million residents in January 2020, few could imagine the global turmoil that would follow. The deserted streets and fear that characterized the start of the COVID-19 pandemic feel like a distant memory.

Lucine Ovumyan is the Senior Vice President of Corporate Affairs & Communications at JTI

Unfortunately, some things have proved less fleeting. The pandemic has worsened and entrenched longstanding societal issues; many honest, hard-working people are struggling to make ends meet, and we are more divided than ever. Inequality and a breakdown in trust make it harder than ever to find common ground.

Solving these issues requires everyone’s involvement, including the tobacco industry. Yet as a tobacco company, we often face calls for our exclusion from public debate; this is counterproductive. The systematic exclusion of JTI ignores the many positive contributions we make; it also erodes trust in policymaking. That’s because preventing open and transparent discussion across all interests and views destroys faith in policymakers, who believe they should pick and choose with which legitimate organizations they engage.

Our extensive Anti-Ilicit Trade efforts are illustrative of our solution-oriented approach. Illicit trade has a tremendous negative impact on society. The loss of revenue needed to be compensated by law-abiding people is significant, as is the effect...
on consumers lured into buying sub-standard, illegal products.

We invest considerable resources to stop the flow of these untaxed goods and the organized crime groups who profit from them. We also provide information to law enforcement agencies to assist them in tackling the illegal trade of tobacco products. In 2021, the information we provided to Law Enforcement Agencies led to the seizure of nearly 3.3 billion illicit cigarettes and the closure of 20 illegal factories and 33 warehouses.

The European Anti-Fraud Office, EUROPOL, the UK’s HMRC, and other police and customs agencies in Europe see the value in openly and transparently engaging with JTI on matters concerning the illegal tobacco trade. Yet, despite our strong partnerships, illegal trade remains a major problem. Too often, it is viewed as a victimless crime that is difficult for governments to tackle.

A report by KPMG estimates that in 2020, smokers in Europe purchased 34.2 billion illegal cigarettes. That equates to a staggering €8.5 billion tax loss for governments. Globally, the World Bank estimates lost revenue at $40 to 50 billion per year. To put this into perspective, criminals are the third-largest player in the tobacco industry.

The economic toll of the pandemic and rising living costs have only increased the demand for cheaper and sometimes illegal goods. Motivated by illicit profits, criminal gangs have redoubled their efforts, and illegal tobacco factories have proliferated in Western Europe.

Besides the economic cost, there is a human toll. This is not a harmless act of “getting one over on the taxman,” but a vicious cycle that allows criminal gangs and networks to thrive. According to the Transnational Alliance to Combat Illicit Trade (TRACIT), organized crime groups rely on forced labor to manufacture illegal cigarettes. And according to the Center for the Analysis of Terrorism, the counterfeiting or smuggling of tobacco products has been the fastest-growing source of revenue for terrorist groups for the past ten years.

It’s why we have long advocated for a more holistic and evidence-based approach to combat illicit trade. Balanced regulation and effective enforcement are crucial to curb illegal trade. It is a view echoed by a French Parliamentary report (the Woerth report) published in September 2021 that examined tobacco consumption and the impact of taxation. It estimated a loss of €2.5 to 3 billion in excise duties per year for the French state, as consumers sought cheaper, illicit cigarettes.

Clearly, excessive fiscal measures are ineffective. They fuel the demand for cheaper products and drive law-abiding consumers to become complicit with criminality. Governments must explore measures that allow consumer confidence to grow and avoid the temptation to spend on illicit products.

Concurrently, greater cooperation between government agencies and law enforcement is needed at both an international and national level, along with a concerted effort to increase the fines and punishments for those producing, distributing, and selling illegal tobacco. Otherwise, it will continue to be a high profit, low-risk source of revenue for criminals. Better cooperation also means stepping up enforcement at borders and improving information sharing between the tobacco industry and law enforcement.

There are no easy wins in our efforts to stem the flow of illicit trade – organized crime groups are formidably adaptable and highly motivated. But neither are we powerless; taxpayers and governments have much to gain from combatting illicit trade.

We calculated that a 1% reduction in illicit tobacco in Lithuania would net the government an extra €1.7 million per year in excise tax and VAT. Imagine what we could achieve at a regional level if a 1% reduction in a small country like Lithuania can achieve such tremendous gains. At a time when so many honest and hard-working people are struggling to make ends meet, the additional revenue would go some way to help governments provide essential services.

But the problem is far broader than illicit tobacco. Personal Protective Equipment, medicines, luxury goods, food – the scale of the illicit trade and the cost to society are staggering. We can no longer choose to ignore the problem while criminals line their pockets. Unless we act, we will continue funding terrorism, bonded labor, and other criminality to the detriment of society, especially the most vulnerable.