High Level Risk Forum

Proposed joint OECD - EUIPO work on Trade in Counterfeit and Pirated Goods:
2017-2018 and beyond

5th OECD Task Force meeting on Countering Illicit Trade

28 - 29 March 2017
OECD Conference Centre

The OECD-EUIPO report on trade in counterfeit products was launched at the 2016 meeting of the TF-CIT. During the discussions at that meeting delegates identified several potential areas of future research. Building on these conclusions, both OECD-EUIPO are offering to continue their joint work on selected areas of economic impact on trade in counterfeit and pirated products. This document introduces a proposal for the future work in the context of the Programme of Work and Budget for 2017-18 in the area of countering illicit trade and counterfeiting as referred to in the programme of work for area 4.3.1. GOV/PGC(2016)9REV2.

Stéphane Jacobzone (stephane.Jacobzone@oecd.org), +33145248556
Piotr Stryszowski (Piotr.Stryszowski@oecd.org), +33145249130

JT03411256

Complete document available on OLIS in its original format
This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
Background

1. Trade in counterfeit and pirated goods\(^1\) is a major challenge in an innovation-driven global economy. Policy makers are placing renewed emphasis on combating counterfeit and pirated trade, as it raises two equally valid policy concerns:
   - A public governance concern, given the impact of crime and illicit trade activities on good governance, public safety and the rule of law, which has been behind the setting up of the Task Force on Countering Illicit Trade (TF-CIT) in the context of GOV’s High Level Risk Forum on the public governance side.
   - A concern for the impact on innovation, intellectual property rights and legitimate competitive advantage of rights holders.

2. In order to improve the factual understanding of counterfeit and pirated trade, and to formulate evidence based policy messages the OECD and the EUIPO\(^2\) have embarked on a joint research project to provide quantitative evidence on this threat, and of the main governance gaps that facilitate it or act as a driver.

3. The first, joint OECD-EUIPO study that was published in April 2016 during the TF-CIT meeting assessed the value, scope and trends of trade in counterfeit and pirated tangible products. It found that imports of counterfeit and pirated goods are worth nearly half a trillion dollars a year, or around 2.5% of global imports, and that the total value of imported fake goods worldwide was USD 461 billion in 2013. Developed economies seem to be more targeted; up to 5% of goods imported into the European Union are fakes.\(^3\)

4. The successful launch of the joint OECD – EUIPO report on “Trade in Counterfeit and Pirated Goods” has triggered the attention of numerous public stakeholders. Consequently a number of potential follow-up topics were put forward at the April 2016 TF-CIT meeting for consideration to be analysed during the 2017-2018 biennium, including: (i) the role of Free Trade Zones in the process of illicit trade, (ii) postal and courier/express distribution streams of illicit trade, as well as analysis of illicit trade conducted through the Internet, and (iii) selected in-depth quantitative investigations in the area of trade in counterfeit and pirated products.

5. Building on these proposals, and on the conclusions of the TF-CIT, both OECD-EUIPO will continue their work on selected areas of economic impact on trade in counterfeit and pirated products (i.e. tangible products that infringe trademarks, designs or copyrights).

6. This work will study the quantitative aspects of counterfeiting and piracy and will deepen the understanding of this threat. It will rely on the following key inputs:
   - First, on the rich and detailed database on counterfeit seizures that was built for the purpose of the study (see Box). In addition the recently signed Memorandum of Understanding between the World Customs Organisation and the OECD will serve as a platform for access to additional datasets on customs seizures. Consequently, the initially static database will gradually become a panel with a multi-year span that will enable new areas of quantitative analysis.

---

\(^1\) Goods that infringe trademarks, copyrights, patents or design rights.

\(^2\) European Union Intellectual Property Office.

Second, on state-of-the-art methodological frameworks for gauging various aspects of the negative impact of counterfeiting and piracy. For example the on-going joint OECD-EUIPO research that investigates the role of provenance economies in trade with counterfeit and pirated goods will result in establishing of an economic methodological framework to study counterfeit trade that could be in turn re-applied as input for further studies in this area.

### Box 1. Database on seized counterfeit and pirated products

The database on customs seizures is the critical quantitative input to this research. The database was constructed from three separate datasets received from the World Customs Organisation, from DG TAXUD of the European Commission, and from the US Department of Homeland Security. The database includes detailed information on seizures of IPR-infringing goods made by customs officers in 99 economies around the world between 2010 and 2013. For each year there are more than 100 000 observations in the database (in most cases one observation corresponds to one customs’ seizure).

The database contains a wealth of information about the IPR-infringing goods that can be used for quantitative and qualitative analysis. In most cases for each seizure the database reports: date of seizure, mode of transport of fake products, departure and destination economies, general statistical category of seized goods as well as their detailed description, name of legitimate brand owner, number of seized products and their approximate value.

The database contains confidential information that refers to customs’ operations. Consequently, only the results of analysis based on the database (not the database itself) can be disclosed to the general public.

### Scope of co-operation during the 2017-2018 biennium

7. During the 2017-2018 biennium work will be organized in four main parts, presented below.

#### Part 1. The role of the Internet in counterfeit trade, including postal/courier/express distribution streams.

8. The OECD-EUIPO study concluded that sizes of seized shipments with counterfeit and pirated products tend to be small. Shipments with fewer than ten items accounted for about 43% of the total number of shipments, on average. Postal parcels are the most popular conveyance method of counterfeit and pirated products.

9. The large volume of small shipments sent by mail or express seems to be related to the recent fast growth of the Internet, and particularly e-commerce solutions. For enforcement authorities, postal and express shipments containing counterfeit products tend to be more difficult to detect and to detain. Consequently, the misuse of e-commerce for counterfeiting purposes imposes an additional significant burden onto enforcement authorities.

10. The role of the online environment and e-commerce in the context of counterfeiting of physical goods is nuanced, as the online environment is very dynamic and industry-specific. Even though e-commerce offers businesses great productivity-enhancing tools, it also provides a powerful platform for counterfeiters and pirates to cost effectively engage large numbers of potential consumers.

11. This part will employ the existing data on counterfeit seizures to better understand the dynamics involved. It will primarily rely on the main databases, with particular focus on the information on mode of transport and size of shipments. This will be complemented with sample checks of key websites identified as sources for counterfeit and pirated products.
Issues to be analysed:

- In-depth check of main websites that offer counterfeit and pirated products. Identification of their methods of shipments offered.
- Charting of key trade routes in small shipments containing counterfeit and pirated products (by method of shipment: post / express), including:
  - Identification of key origins of goods.
  - Identification of main transit points in small shipment trade in counterfeit goods.
  - Determination of main destination economies.
- Analysis of products that are shipped in small shipments by size of shipment and by method of shipment (post / express).
- For selected transit points: analysis of key enabling factors for them to become hubs in small shipments in counterfeit trade.

Part 2. The role of Free Trade Zones in the process of counterfeit trade.

12. The analysis carried out in the OECD-EUIPO (2016) report indicates that parties engaging in the trade of counterfeit/pirated products tend to ship infringing products via complex trade routes, with intermediate transit points. This is done for reasons including camouflaging the original point of departure, establishing distribution centres for counterfeit and pirated goods, and repackaging or re-labelling goods.

13. Free Trade Zones are frequently listed on the list of such transit points. While imports of counterfeit goods are, in most cases, targeted by local enforcement authorities, goods in transit are not within their scope, which means they are less likely to be intercepted.

14. This part will study in-depth the available information to present the role of free trade zones in counterfeit and pirated trade. Building on the dataset developed in the main study it will examine the scope and volume of counterfeit and pirated trade in the context of select free trade zones. It will also scan the key enablers of counterfeiting and piracy in free trade zones, such as more relaxed oversight, softened customs controls and a lack of transparency.

15. Issues to be analysed:

- Identification of FTZ that act as transit points in counterfeit trade.
- For a set of key FTZs, detailed charting of trade routes, including:
  - Determination of key source economies of counterfeit trade to given FTZs.
  - Mapping of main destinations of counterfeit trade from given FTZs.
  - Identification of main counterfeit product categories traded though given FTZs
  - Assessment of main modes of transport of fake products from / to given FTZs.
- Analysis of key enabling factors for these FTZs to become hubs in counterfeit and pirated trade.
Part 3. Counterfeit and pirated trade: quantitative scorecard

16. Information developed during the main OECD-EUIPO study shows that virtually any economy in the world can be the provenance of counterfeit and pirated trade, either as a place that produces infringing goods or as a point of transit through which infringing goods pass. This is supported by a descriptive analysis of the dataset of customs seizures that identified 173 provenance economies of counterfeit and pirated products.

17. The report highlights that some of these provenance economies are more important sources of infringing goods than others. This could be because they are important producers of IP infringing goods or because they are strategic points of transit. In addition, some provenance economies can specialize in a certain types of goods, in certain modes of transport, etc.

18. This part will provide some additional precision in assessing quantitatively the role of economies in trade in counterfeit and pirated goods. This analysis will depart from the General Trade-Related Index of Counterfeiting for economies (GTRIC-e), which indicates the relative propensity of importing infringing goods from different provenance economies. This analysis will present a fuller quantitative picture of counterfeit trade at economy level, and determine why the counterfeit profiles look differently for economies that otherwise seem similar.

19. Issues to be analysed:
   - Development of a set of economy-specific indicators that capture different aspects of counterfeit trade.
   - Quantitative macroeconomic analysis of these indicators with other available socio-economic datasets to explore and to explain observable differences at the economy level.

Part 4. Counterfeit and pirated trade – the updated picture and current trends

20. The main goal of the joint OECD-EUIPO (2016) report project was to assess quantitatively the volume, scope and trends of trade in counterfeit and pirated products. This was done using the so-called GTRIC methodology that used customs data on seizures as the key input. The main goals of the GTRIC methodology were: (1) to establish indices of product categories and economies that captured their likelihoods to be counterfeit or to export counterfeit and pirated products, and (2) to estimate the total volume of counterfeit and pirated trade.

21. The quantitative analysis relied on data on customs seizures from the period 2010-2013, consequently the key results in the report refer to 2013.

22. This part will re-employ the GTRIC model presented in the OECD-OHIM (2016) report, using new datasets on global trade flows, and customs seizures, to provide an updated picture of counterfeit trade. To the extent possible it will employ the 2016 seizure data from the existing sources such as World Customs Organisation (WCO), the DG TAXUD of the European Commission or the US Department of Homeland Security. This part will also seek to employ new data on counterfeiting and piracy from enforcement authorities to refine and to calibrate the new results.

23. The updated quantitative information on counterfeit trade can be also leveraged to analyse recent trends and dynamics. Changes in the types of products being counterfeited, and the regions where counterfeiting and piracy are taking place will be highlighted.
24. Issues to be analysed:

- The updated GTRIC analysis.
- Time analysis based on the updated GTRIC combined with the OECD-EUIPO (2016) report findings. This will look at changes in the types of products being counterfeited, and the regions where counterfeiting and piracy are taking place.
- The European Union case study that introduces a local context charting the counterfeit imports into the EU.

Beyond 2018

25. Towards the end of the 2017-2018 biennium an evaluation will take place, which will (i) assess the quality impact of the four topics outlined above, and (ii) precisely define the scope for analysis for the 2019-2020 biennium. These projects could potentially focus on the following impact areas:

- **Damaging economic effects of counterfeit and pirated trade.** This project will look at the negative effects of counterfeit and pirated trade on industry (retail and rights holders), governments and consumers. It will provide an excellent macroeconomic complement to the set of microeconomic, sectorial studies that have been being developed by the EUIPO over the past years.

- **Charting the routes of counterfeit trade.** Building on the OECD-EUIPO on-going project on charting trade routes (production vs. transit) this research would deepen our understanding of decisions taken by counterfeiters in designing their trade routes. This part would investigate the importance of proximity of destination markets (e.g. by gravity model equations), impact of new regional free trade agreement on counterfeit trade as well as dynamic analysis of evolution of counterfeit trade and the determination of potential quantitative factors that could shape them.

- **Counterfeit and pirated trade – the updated picture and current trends (2020).** This part will again re-employ the seizure data from the existing sources such as World Customs Organisation (WCO), the DG TAXUD of the European Commission or the US Department of Homeland Security. This part will also seek to employ new data on counterfeiting and piracy from enforcement authorities to refine and to calibrate the new results. This part will produce the third update of the GTRIC indices on counterfeit trade that will refer to the 2016-2019 time period. Consequently its results will be also applied to analyse recent trends and dynamics. Changes in the types of products being counterfeited, and the regions where counterfeiting and piracy are taking place will be highlighted.

**Methodology**

26. Work will build on the general econometric methodology and data on counterfeit seizures (see Box) that will be updated and also combined with other available relevant data on counterfeiting and piracy. Work will also rely on existing economic analysis and surveys, and integrate subsequent desk research to the extent that it is useful.
27. The project will be undertaken as an activity of the OECD Task Force on Countering Illicit Trade in the context of the OECD High Level Risk Forum. Other relevant OECD bodies, including the Committee on Industry, Innovation and Entrepreneurship (CIIE), will be kept apprised of, and consulted during the work. TUAC and BIAC will be invited to participate in the project, and co-ordination will be pursued with other international bodies that are active in analysing, setting and enforcing the anti-counterfeiting/piracy policy (such as the WCO, WIPO, Europol and Interpol).

28. The project will be carried out and completed in accordance with the usual OECD rules and procedures regarding the proper evaluation and monitoring of projects.