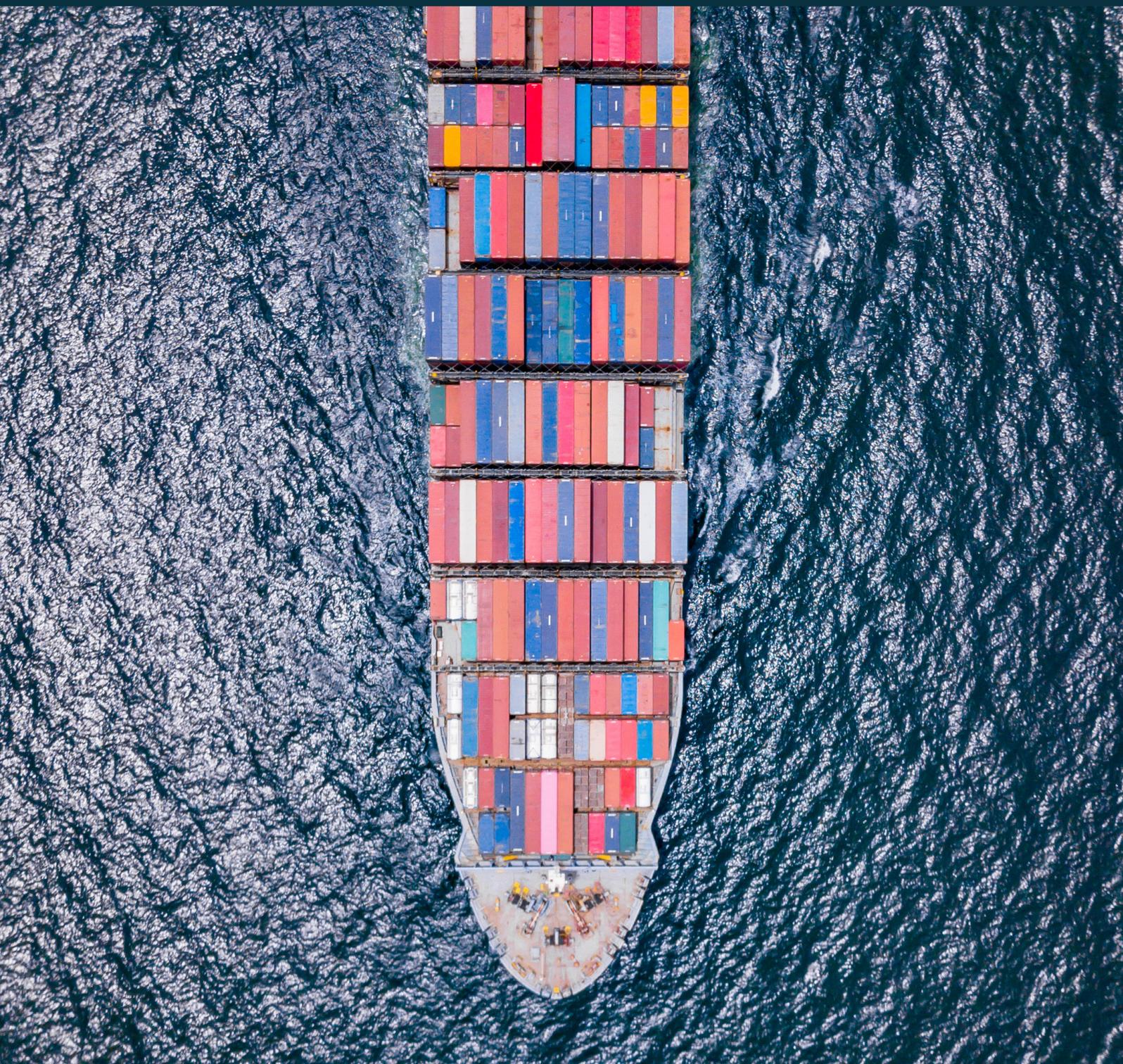


Misuse of maritime shipping in illicit trade

T.O.R. of the project



Context

In December 2018, the status of the OECD Task Force on Countering Illicit Trade (TF-CIT) was elevated to an official body of the Organisation. Subsequently, in March 2019 TF-CIT members discussed the future direction of the TF-CIT in light of this latest transformation. Following the meeting, several industry stakeholders submitted additional comments on future work of the TF-CIT.

Based on the discussion at the March 2019 Task Force meeting and points raised by Member Country Delegates, and taking into account additional industry comments, one particular project is particularly relevant: **a thorough review on the misuse of containerized maritime shipping in the global trade of counterfeits**. Given its importance in global counterfeit trade, this transportation mode is an area of continued concern requiring further attention.

The project

Based on existing analyses, traffickers continue to use all available modes of transport for illicit trade. Reports indicate that there are a larger number of individual seizures in small shipments (through air-travel and road transport); however, seizures from commercial maritime container shipping continue to dominate in terms of volume and value of goods seized.

A number of risk-assessment and targeting methods have been adapted for containerized shipping, and customs administrations have robust policies in place to target illicit containerized trade of narcotics, hazardous and prohibited goods. However, it appears that the illicit trade in counterfeits has not been the focus of international efforts. Shipments of counterfeits are commonly perceived as a “commercial trade infractions” rather than criminal activity.

Consequently, the existing enforcement efforts may not be tailored adequately to respond to this risk. Customs may not check for counterfeits with the same scrutiny as other illicit goods. Freight forwarders, carriers and shipping companies may also not have the right systems in place to implement anti-counterfeiting policies to identify exporters and importers of fakes. Due to the relatively low-priority given to gathering intelligence and information on counterfeit shipping methods, counterfeits remain “low risk and high reward” for opportunistic criminal networks.

A tailored project is envisaged to address this risk. It would start with a factual report, paralleled by a stakeholder dialogue to gather factual, expertise and intelligence and scope relevant governance gaps.

The report

The report will be carried out jointly with the European Observatory on Infringement of Intellectual Property Rights of the EUIPO, in the context of the Memorandum of Understanding signed by the OECD and EUIPO on 23 March 2017.

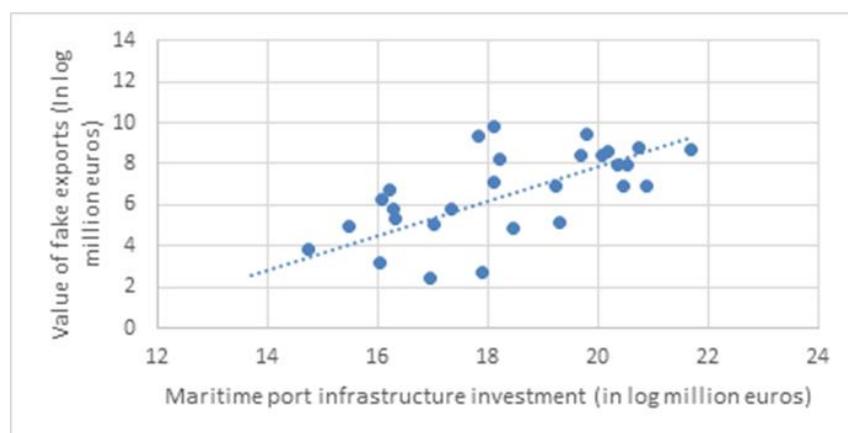
The report would provide additional empirical evidence about the misuse of container ships in trade in counterfeits, and about the governance and economic drivers as well as policy gaps that enable them.

A tailored quantitative analysis would deepen our understanding drivers and motives of counterfeiters and pirates to misuse maritime transport in their operations. The report would establish links between the intensity of trade in counterfeit goods via container ships from a given economy (origin and transit) and indicators on its degree of the quality of its maritime infrastructure, logistic facilities, and relevant economic and governance and measures.

For example, preliminary quantitative checks showed that the value of maritime port infrastructure investment is positively correlated with the volumes of exports of fakes (Figure 1). This finding could suit a good point of departure for deeper, nuanced analysis, controlling for overall volumes of trade passing through that port and taking into account specific destination economies, product categories as well as the whole range of governance and economic factors.

Figure 1. Value of imports of fakes from a given provenance economy against the value of maritime port infrastructure investment in that provenance economy

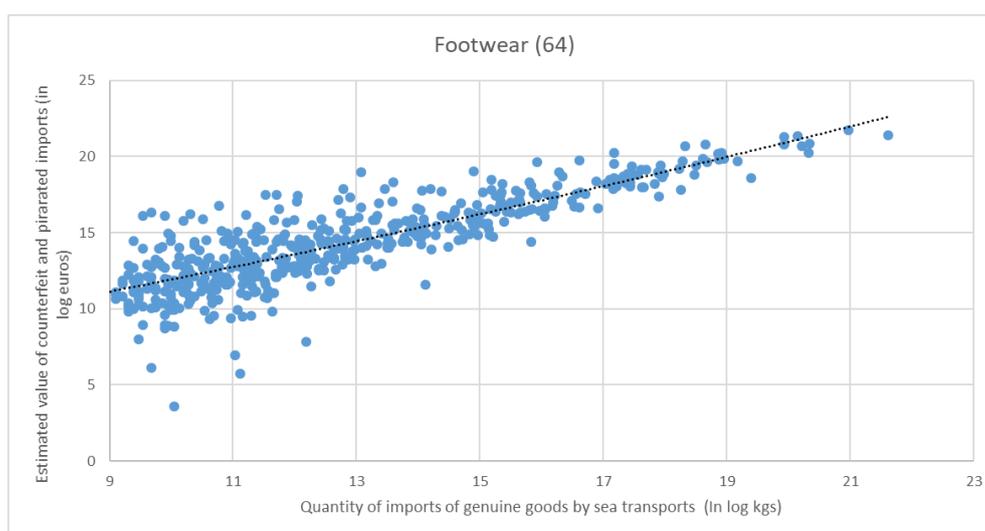
2016



In addition, the quantitative analysis in the report could also look at specific product categories, on specific trade routes, looking specifically on trade in container ships, and building on OECD/EUIPO (2017)¹ approach. For example, figure 2 plots the estimated value of fake shoes imported by each EU economy from outside the EU, against the quantity of imports of genuine footwear (by sea transport). Repeating such exercise for several product categories would allow to identify specific sea routes that tend to be misused, and to check what factors could be associated with this phenomenon.

Figure 2. Value of imports of fake shoes by specific sea routes and value of trade in shoes on that routes

2016



To reiterate, the report would contain the following elements:

- Discussion highlighting background on marine containers and seizures of counterfeits, in the context of the overall increase in container traffic during the past decades
- Description of product-specific intensities of “counterfeit trade” in container ships, compared with licit trade.
- Detailed analysis of main trends in illicit trade in counterfeits (e.g. dissimulation methods in containers, type and volumes, detection techniques, common legal concerns, health and safety issues for enforcement officials, various methods such as the practice to issue bills of lading from shipper to shipper or from declarant to declarant thereby hiding the real consigner and consignee).
- Review of known hubs in sea trade in counterfeit goods highlighting trade routes and intensity of misuse of selected shipping lines, freight forwarders, carriers, brokers or harbours.
- Qualitative and quantitative analysis of socio-economic environment (trade and governance indicators) that will result in scoping of policy gaps, including:
 - The on-going policy and legislative initiatives as well current practice related to data collection, reporting and information exchange.
 - Co-operation modes between private sector (right owners as well as cargo operators) and enforcement authorities.

¹ OECD/EUIPO (2017), *Mapping the Real Routes of Trade in Fake Goods*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264278349-en>.

- Review of Customs policies in place and presentation of specific institutional arrangements at national and international levels for targeting and analysis of goods.

Data Sources

The quantitative analysis will be based on data referring to seizures of counterfeit goods, supplemented with relevant data on maritime transport.

The primary input to the analysis is the database on customs seizures of counterfeit goods. This database brings together data from three separate datasets from the World Customs Organization (WCO), the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD) and the US Customs and Border Protection Agency (CBP). The database includes detailed information on seizures of IP-infringing goods made by customs officers in 99 economies around the world, between 2011 and 2016. For each year, there are more than 100 000 observations in the database; in most cases, each individual observation corresponds to one customs seizure.

The overall economic data points for trade of exchanges via container ships will be based on specialized datasets on trade maritime trade volumes and values. Such data would come from OECD International Transport Forum (OECD/ITF) and Comext.

The OECD/ITF collects on an annual basis from all its member countries relevant data on transport including those that will be used for the analysis: (i) data on investment and maintenance spending on transport infrastructure collected from the "ITF Investment in Transport Infrastructure" questionnaire, (ii) data on transport statistics from the "Trends in the Transport Sector" survey. These are official data, collected from Transport Ministries, statistical offices and other institutions designated as official data sources.

Comext is a statistical database on trade of goods managed by Eurostat, the Statistical Office of the European Commission. Trade statistics follow the value and the quantity of goods exchanged between the Member States of the EU (intra-EU trade) and between the Member States and third countries (extra-EU exchanges) in general and by transport modes (including maritime transports). They constitute the official source of information on the imports, exports and the trade balance of the EU, its Member States and the euro zone.

Additional data could be derived from international organizations that deal with Maritime Transport (e.g. International Maritime Organization, UNCTAD Review of Maritime Transport Series, OECD for Maritime Transport Cost database), as well as from national and regional trade reports, e.g. Eurostat Maritime transport statistics and US BTS Maritime Trade and Transportation database.

Stakeholder dialogue

In parallel to the desk research, analysis will also rely on qualitative evidence gathered by EUIPO as part of its cooperation with enforcement authorities, and in consultations with the industry and policy experts during targeted working meetings. Such meetings would gather additional, qualitative intelligence on the following aspects:

- Customs / enforcement techniques for containers discussion of challenges for enforcement (e.g. data exchange, co-operation with shippers and right holders, legal barriers, practical challenges, budgetary issues, etc.)
- Discussion of key advantages and disadvantages of container ships from the counterfeiter's point of view.

These meetings will be an opportunity to launch a dialogue with stakeholders on determining the key governance gaps that enable misuse of containerized maritime transport in illicit trade. They will also seek to identify the way the OECD spectrum of possible legal instruments could be leveraged to move the policy agenda in addressing these gaps, and to minimize the use of containerized maritime shipping in trade in counterfeit and pirated goods. A dialogue would also offer opportunity to integrate the developed evidence with the existing initiatives to combat illicit trade (such as the International Chamber of Commerce (ICC) launched “Know Your Customer” initiative).