



**Work Package 7**  
Trafficking of goods

# 7.3

## *Report on the state-of-the-art situation of trafficking of goods in EU countries*

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## 1. INTRODUCTION: TRAFFICKING IN GOODS IN GENERAL

Article 1 of the Treaty of Amsterdam (1997) establishes the European Union as an area of freedom, security and justice. One of the European Union's most important freedoms is the free movement of goods, including the related promotion of intra-community trade and the abolition of customs tariffs. Since the Treaty of Maastricht (1993), the movement of goods is no longer controlled within the European Union, but rather at its external borders. It is, however, not only the legal market that has benefited from the abolishment of internal controls: traffickers involved in illicit markets have also seen their possibilities to transport illegal goods within the European Union increase.<sup>1</sup> Trafficking in goods is a widespread problem within the European Union that causes enormous damage to national economies, legal markets, job markets, tax revenues, customs tariffs, human life, health and well-being. Many people are affected on a daily basis by illegal trafficking, be it as offenders, as consumers (with the knowledge that they are consuming a counterfeit or smuggled product) or as victims (affected trademark-holders, tax payers or someone buying a trafficked good without knowledge of it). Even though the clandestine nature of illegal markets makes it difficult to determine the extent of trafficking in goods in the EU should not be underestimated.

Illegal markets work on the basis of supply, demand and availability on the legal market.<sup>2</sup> They do not have as effective structures as legal markets, because the markets have to be hidden from law enforcement agencies. Instead, they are highly adaptable and respond promptly to changing consumer habits, law enforcement and prices.<sup>3</sup> Illegal activities can be: (1) production contrary to the law, for example: counterfeiting, factory overruns or looting of antiques; (2) illegal cross-border smuggling activities, which include importing illegally produced goods or goods without paying tax and customs duties; and (3) selling counterfeited, pirated or illegal goods to consumers at a retail level. The types of offenders range from one-time offenders smuggling small amounts to loose groups cooperating transnationally or hierarchically organised, highly profitable networks. Networked groups are usually linked via economic, family or ethnic ties. Crime networks cooperate around the world using global transport routes by different means.<sup>4</sup> Consumers reflect the range of actors found in modern society. Even though trafficking is classified as a crime, the purchase of smuggled cigarettes or other products is often socially accepted. European criminal policy is faced with extensive problems to tackle and prevent trafficking in goods. Instrumental measures of control and punishment rarely affect offenders as they are either active outside the EU or deal with such small amounts of goods — for example cigarettes — that they face little more than an administrative fine. Additionally, customs at the external European borders can only control goods on a random basis. As offenders try to cover up their tracks, it is difficult to detect illegal goods. To interrupt not only the supply but also the demand, normative measures should be taken into consideration to ensure consistence between the law and moral perceptions, and to persuade people to not do the wrong thing. The following chapter provides a more detailed description of product piracy as an example.

1. cf. Lithuanian Customs Criminal Office, 2013.

2. cf. Vander Beken, 2005, p. 158.

3. cf. Wehinger, 2011, p. 122.

4. cf. Fiedler, 2013, p. 277; cf. Tenbrock, 2007.

5. As WP 9 is about cyber-crime, WP 7 excludes all products that are commonly understood as part of this criminal phenomenon, for example software piracy, illegal downloads, illegal digital copies of media.

## 2. PRODUCT PIRACY

### 2.1 Overview

Product piracy<sup>5</sup> and counterfeiting are a widespread, well-known worldwide problem with a long history of at least 2000 years; they are currently linked to the growth

of international trade and international markets.<sup>6</sup> The legal markets of the European Union are assessed as a destination area for counterfeit/pirated products, although additional markets appear in Africa due to the need for goods and the wish to consume the same products as first world countries. Product piracy is regarded as a victimless crime that is increasingly attractive for traffickers.<sup>7</sup> The risk of detection is comparatively low and it enables obtaining high profits from low investments.<sup>8</sup>

## 2.2 Definition, scope and consequences

### *Definition*

The United Nations Economic Commission for Europe labels a counterfeit or pirated product as one that ‘infringes on an intellectual property right.’<sup>9</sup> Though not legally defined, the term ‘product piracy’ is regularly classed with intellectual property crime, which covers the counterfeiting and piracy of goods.<sup>10</sup> Product piracy can appear in several forms, for example trademark piracy, counterfeiting of patented inventions, violations of intellectual property rights, counterfeiting of trademarks, misuse of designation of origin labels.<sup>11</sup>

While counterfeiting involves the unauthorised imitation of a branded good, piracy is the unauthorised exact copying of an item covered by an intellectual property right.<sup>12</sup> In this context, Staake/Fleisch (2008) emphasised that a clear definition is needed to clearly differentiate the black market of product piracy and counterfeiting from the parallel trade/grey market, overproduction and the legal ‘white market’.<sup>13</sup> Parallel trade and grey market activities are situations “where goods are bought in one territory and distributed within another without the authorisation of the right holder in the receiving market.”<sup>14</sup>

In other words, parallel imports involve products produced legitimately by trademark holders for one selected market (e.g. USA) and imported to another market (e.g. EU), where they compete with goods legitimately produced for this market.<sup>15</sup> Factory overrun is described as the conscious decision to produce more of the original products than the agreed maximum quantity and/or does not observe territorial borders of sale.<sup>16</sup>

### *Scope*

Nearly every product can be counterfeited or pirated.<sup>17</sup> The following table demonstrates which kinds of products are particularly counterfeited:

**Table 1: Classification of counterfeit products** (cf. Jacobs, et al., 2001, p. 500)

1. Highly visible, high-volume, low-tech products with well-known brand names, such as toothpaste or sweets.
2. High-priced, high-tech products, such as computer games, audio/video entertainment or faked car parts.
3. Exclusive, prestige products such as well-known accessories, perfumes and other expensive gift items.
4. Intensive Research & Development, high-tech products such as pharmaceuticals.

An estimation of the scope of product piracy in general is impossible due to an extensive number of unknown cases. In 2013, the customs within the European Union registered 87 000 detected cases. Almost 36 million detained articles were concerned with a retail value of original goods of over EUR 768 million. The table below illustrates a selection of ten products sorted by the highest number of seized articles. The ten articles particularly include daily-use products for wearing, washing or working

6. cf. Chaudhry/Zimmerman, 2009, p. 7; cf. Meiwald, 2011, p. 6.

7. cf. Nitsche, 2007, p. 44.

8. cf. SOCA (Serious Organised Crime Agency), 2013; cf. Kirchner, 2009, p. 17; cf. IHK Erfurt, 2014, p. 109; cf. Plagiarius, n.d.

9. United Nations Economic Commission for Europe, 2007.

10. cf. Brun, 2009, pp. 2, 3; cf. Hetzer, 2002, p. 304; cf. Phau, et al., 2001, p. 47.

11. cf. Brun, 2009, pp. 2, 3; cf. Niemand, 2014, p. 2; cf. Patrignani, 2008, pp. 13, 14.

12. cf. Erd/Rebstock, 2010, p. 16; cf. europa.eu, 2010.

13. cf. Staake/Fleisch, 2008, p. 16.

14. Staake/Fleisch, 2008, p. 18.

15. cf. Bundesministerium der Finanzen - Zoll, 2012, p. 4; cf. Paradise, 1999, p. 30; cf. Meiwald, 2011, p. 23.

16. cf. Staake/Fleisch, 2008, p. 18; cf. Tödtli, 2011, p. 3.

17. SOCA (Serious Organised Crime Agency), 2013.

**Table 2: Seizure Statistics 2013**<sup>18</sup>

Product	Number of articles	Retail values of original goods
Clothing (ready to wear)	4 504 004	€ 85 322 321
Medicines and other products (e.g. condoms)	3 690 876	€ 11 974 020
Packaging materials	3 227 679	€ 3 946 258
Toys	2 788 944	€ 23 199 855
Body care items	2 018 190	€ 6 878 611
Shoes	1 705 587	€ 75 775 477
Office stationery	1 382 077	€ 1 968 940
Mobile phones, including parts and technical accessories	1 300 575	€ 27 677 390
Jewellery and other accessories	1 228 919	€ 20 582 738
Perfumes and cosmetics	1 108 537	€ 55 342 738

such as clothing, footwear, body care items, cosmetics, also medicine, office stationery or packaging materials. These products include luxury goods like jewellery and technical items like mobile phones or toys.

#### *Consequences*

Product piracy and counterfeiting affect legal business, distort international trade and undermine legitimate marketplaces.<sup>19</sup> They cause heavy costs for (1) companies, who pay for research, development and advertisement, while forgers only use their inventions, (2) retailers, (3) governments that loose taxes and duties and (4) the general public. Counterfeited products can be dangerous or a threat to public health.<sup>20</sup> Further consequences for companies concern cases of liability. In the case of product liability, the legal manufacturer has to prove that a counterfeited product is counterfeited and not produced by his factory.<sup>21</sup>

### **2.3 Structures and illegal activities**

Counterfeiting and distributing pirated goods requires different levels of expertise or techniques and attracts criminals of all types. Similar to legal markets, the supply chain and demand-side include manufactures, distributors, retailers and consumers.<sup>22</sup> Within the supply-side each function could be illegal and is permeable; for example an illegal manufacturer can distribute his products via legal distributors or retailers.<sup>23</sup> Offenders usually divide responsibilities and act internationally.<sup>24</sup>

The following graphic outlines the permeable structures at different levels on the supply-side as well as different kinds of consumers. Within the group of consumers, deceived and non-deceived consumers, the latter know that they are not buying the original good, need to be differentiated at a legal and illegal level. Similar to other trafficked goods, such as for example tobacco products, the product could be manufactured legally and then be illegally distributed or the product might be manufactured illegally in the first place.

#### *What are the offenders' activities?*

Illegal manufacturers either counterfeit a product or use factory overruns (see above). Factory overruns are especially fostered if the holder of the intellectual property rights produces in a far-away country with inadequate control measures.<sup>25</sup> It is often impossible to detect a good coming from a factory overrun. Sometimes prod-

18. cf. European Commission, 2014, p. 25 ff.  
cf. Kelly, et al., 2005, p. 83.

19. cf. Patrignani, 2008, p. 7;  
cf. Staake/Fleisch, 2008,  
p. 6; cf. Haie-Fayle/Hübner,  
2007; cf. Müller, 2012, p. 29;  
cf. Erd/Rebstock, 2010,  
pp. 11, 12; cf. Gebhard, 2014;  
cf. Blume, 2004, p. 5.

20. cf. Wildemann, et al., 2007,  
p. 7; cf. Meiwald, 2011, p. 21.

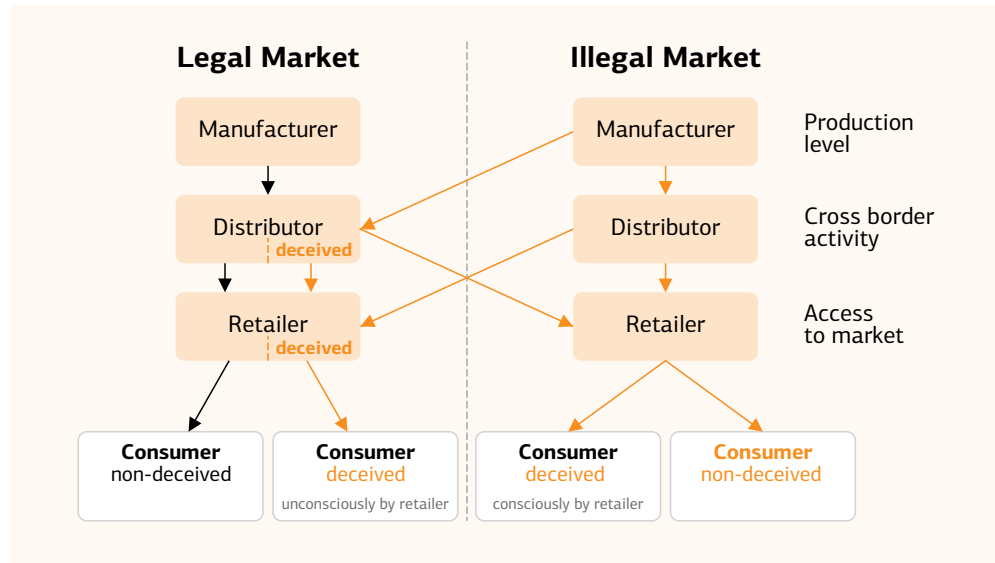
21. cf. Staake/Fleisch, 2008,  
p. 21.

22. cf. Staake, et al., 2009, p. 324.

23. cf. Lichtensteiger/Zenkhusen,  
2009, p. 79.

24. cf. Stephan/Schneider, 2011,  
p. 148.

25. cf. Kahl, 2012, p. 34;  
cf. Staake, et al., 2009, p. 321.



**Table 3: Distribution and supply chain overview**

ucts are counterfeited completely, from the content and package to security features, which makes it impossible to differentiate the imitation from the genuine product.<sup>26</sup> As regards the Plagiarius Action<sup>27</sup>, it is ambiguous as to who orders and supports the purchase within the European Union. Moreover, it is discussed whether even European companies order counterfeit products on their own to sell them profitably (cf. Plagiarius, n.d.). Stirnemann/Wächter suspected that European companies order counterfeit products in China and purchase them via the Internet.<sup>28</sup>

Not much is known about cross-border activities, but it is assumed that supply chains of illegal traders are oriented towards legal trade routes (cf. Spiess, 2009, p. 25), (cf. Patrignani, 2008, p. 38). An important part of the supply chain is access to markets in the countries of provenance or transit, consistently accompanied by corruption either through bribed staff members or bribed customers. According to Patrignani, the final entrance into the market depends on the effectiveness of the legislation in a given country.<sup>29</sup>

In general, products are often distributed through informal markets. Offenders use multifarious distribution channels: (1) Tourists purchase counterfeit products in the country of origin or a transit country and import them into the European Union. (2) Commercial sale can be divided into primary and secondary distribution. Primary distributors receive and store the product directly from manufacturers and distribute it to retailers. Secondary distribution uses intermediate parties between the major distributors and retailers to sell a product.<sup>30</sup> Usually, goods are distributed via well-organised international networks.<sup>31</sup> (3) Street markets, which, according to Staake/Fleisch, are not widespread in countries where product piracy is strictly enforced.<sup>32</sup> (4) In those countries Internet purchases are increasingly used as a distribution channel.<sup>33</sup> The Internet enables anonymity (it is possible to conceal the true identity thus limiting the risk of detection), flexibility and an extensive (global) market reach.<sup>34</sup> Counterfeit goods bought via the Internet and sent by postal services are seldom identified by customs authorities.<sup>35</sup>

#### *Excursus: China*

In the area of product piracy, China plays an important role as the main source country, where the economic activities of some villages are focused almost entirely on counterfeiting and piracy.<sup>36</sup> Globalisation and liberalisation have come together with the opening of Chinese markets and reforms. As a result, Chinese manufacturers have started to learn from several foreign investors.<sup>37</sup> According to Staake/Fleisch, the economy has developed 'from easy-to-manufacture goods to a wide range of simple to

26. 'Since 1977 the Plagiarius Action aims to inform the public about the problem of fake and plagiarised articles and the negative impacts they have on not only the economy as a whole but especially on small companies and individual designers' cf. Plagiarius.

27. cf. Stirnemann/Wächter, 2007.

28. cf. Patrignani, 2008, p. 39.

29. cf. Patrignani, 2008, p. 79; cf. Erd/Rebstock, 2010, p. 136; cf. Spiess, 2009, p. 21.

30. cf. Erd/Rebstock, 2010, p. 135.

31. cf. Staake/Fleisch, 2008, p. 11.

32. cf. European Commission, 2012.

33. cf. OECD - Secretary General, 2007, p. 14.

34. cf. Staake/Fleisch, 2008, p. 12.

35. cf. Müller, 2012, p. 29.

36. cf. Müller, 2012, p. 30.

37. cf. Staake/Fleisch, 2008, pp. 9, 10.

sophisticated products', 'from poor quality to a wide range of quality levels', 'from low quantity to mass production' and "from non-deceptive to deceptive counterfeiting".<sup>38</sup> For decades China has sought to become economically important. To achieve this aim the protection of intellectual property rights is balanced against the importance of expanding economically. Therefore, the Chinese authorities and government tolerate the violation of intellectual property rights despite international obligations.<sup>39</sup> In his report about product piracy in China, Blume explained that the protection of IP rights has improved in the last 25 years, particularly after China's accession to the World Trade Organisation (WTO) in 2001.<sup>40</sup> Winkler/Wang assume that the protection of IP rights is dependent on the development of key technologies which enable Chinese companies to draw on their own inventions.<sup>41</sup> Despite the Chinese WTO membership and the requirement to comply with the TRIPS agreement,<sup>42</sup> the lack of effective law enforcement and with it a lack of punishments is still a major problem.<sup>43</sup> Cases of product piracy are dealt with by the authority responsible for industry and commerce through an administrative proceeding.<sup>44</sup> Nevertheless, despite some positive developments, it is still difficult to enforce the administrative procedure against offences in China.<sup>45</sup> Product piracy is broadly accepted among the Chinese public as it enables developing countries to consume the same products as wealthy ones.<sup>46</sup> Even the Chinese Mafia is deeply involved in product piracy and counterfeiting. Organised criminals hold the reigns of counterfeiters and purchase the most important goods to support black markets.<sup>47</sup>

#### *What are the drivers for product piracy?*

The illegal market cannot exist without the legal market, as the success of the illegal trade is dependent on prices and availability on the legal market.<sup>48</sup> As regards the findings of most researchers, the illegal trade with pirated or counterfeit products is enabled by the following drivers: (1) high profits, (2) high tariffs and taxes, (3) globalisation and lower trade barriers, (4) expansion of channels and markets, (5) unsatisfied markets, (6) powerful worldwide brands, (7) ineffective laws, (8) weak international and national law enforcement.<sup>49</sup> In some areas, the illegal trade is supported by exclusive and expensive goods.<sup>50</sup> Further drivers are derived from the markets themselves. Markets are increasingly globalised and everyone would like to reduce production and distribution costs.<sup>51</sup>

#### **2.4 Transport structures and countries of provenance**

Although not much information is available about transport structures, it is assumed that supply chains of illegal traders are oriented towards legal traders and products are usually sent via a network of delivery service and different modes of transportation.<sup>52</sup> The goods are transported by air, rail, road and sea. As regards EU customs, most cases registered so far were transported by regular post, while most of the detained articles were transported by sea.<sup>53</sup> Regarding European Union customs enforcements, in 2013 nearly 97% of illegal goods were brought by freight traffic and 3% by passenger traffic.<sup>54</sup> Similar to other trafficked goods, the main points of entry into the EU are either via the Eastern European border or via international ports and airports.<sup>55</sup> If possible, traffickers select free-trade zones with a relative lack of controls or with ports of transit well-known for laissez-faire controls, for example in Singapore, Dubai and Malaysia. In the such free trade areas, the labels of goods can be changed to cover the countries of provenance.<sup>56</sup> Subsequently, it is nearly impossible to define where a product has been produced, to determine the country of origin and to trace back the offenders.<sup>57</sup>

Weak points of transport structures include the different standards of import controls at ports/airports worldwide.<sup>58</sup> Moreover, customs authorities can only perform

38. cf. Winkler/Wang, 2007, p. 113.

39. cf. Blume, 2004, p. 11.

40. cf. Winkler/Wang, 2007, p. 88.

41. cf. Blume, 2004, pp. 16, 22.

42. cf. Dudas, 2004, cf. Erd/Rebstock, 2010, p. 25.

43. cf. Bruhn/Groß, 2011, p. 444).

44. cf. Erd/Rebstock, 2010, p. 65, cf. Blume, 2004, p. 24 ff..

45. cf. Erd/Rebstock, 2010, p. 12.

46. cf. Zäuner, 2009, pp. 261, 262.

47. cf. Patrignani, 2008, p. 37.

48. cf. Chaudhry/Zimmerman, 2009, p. 18; cf. Kelly, et al., 2005, p. 83; cf. Spink, 2009, pp. 4, 30; cf. Niemand, 2014, p. 1.

49. cf. Zäuner, 2009, p. 261

50. cf. Patrignani, 2008, p. 78.

51. cf. Spiess, 2009, p. 25.

52. cf. European Commission, 2014, p. 20.

53. cf. European Commission, 2014, p. 19.

54. cf. Patrignani, 2008, p. 115.

55. cf. IHK Erfurt, 2014, p. 14.

56. cf. Spiess, 2009, p. 23.

57. cf. Maier, 2006, p. 4.

58. cf. Erd/Rebstock, 2010, p. 136.

- 59. cf. Lithuanian Customs Criminal Office, 2013.
- 60. cf. International Association of Ports and Harbors, 2013.
- 61. cf. Wildemann, et al., 2007, p. 30; cf. Tödttli, 2011, p. 5.
- 62. cf. IHK Erfurt, 2014, p. 14.
- 63. cf. Lichtensteiger/Zenkhusen, 2009, p. 89; cf. Gebhard, 2014.
- 64. cf. Zäuner, 2009, p. 264.
- 65. cf. Erd/Rebstock, 2010, p. 135; cf. Chaudhry/Zimmerman, 2009, p. 64.
- 66. cf. Erd/Rebstock, 2010, p. 135.
- 67. cf. VDMA, 2014, p. 16.
- 68. European Commission, 2014.
- 69. cf. European Commission, 2014, p. 24.
- 70. cf. Lichtensteiger/Zenkhusen, 2009, p. 80.
- 71. cf. Meiwald, 2011, p. 29; cf. Paradise, 1999, p. 21; cf. Blume, 2004, p. 47; cf. OECD - Secretary General, 2008, p. 66.

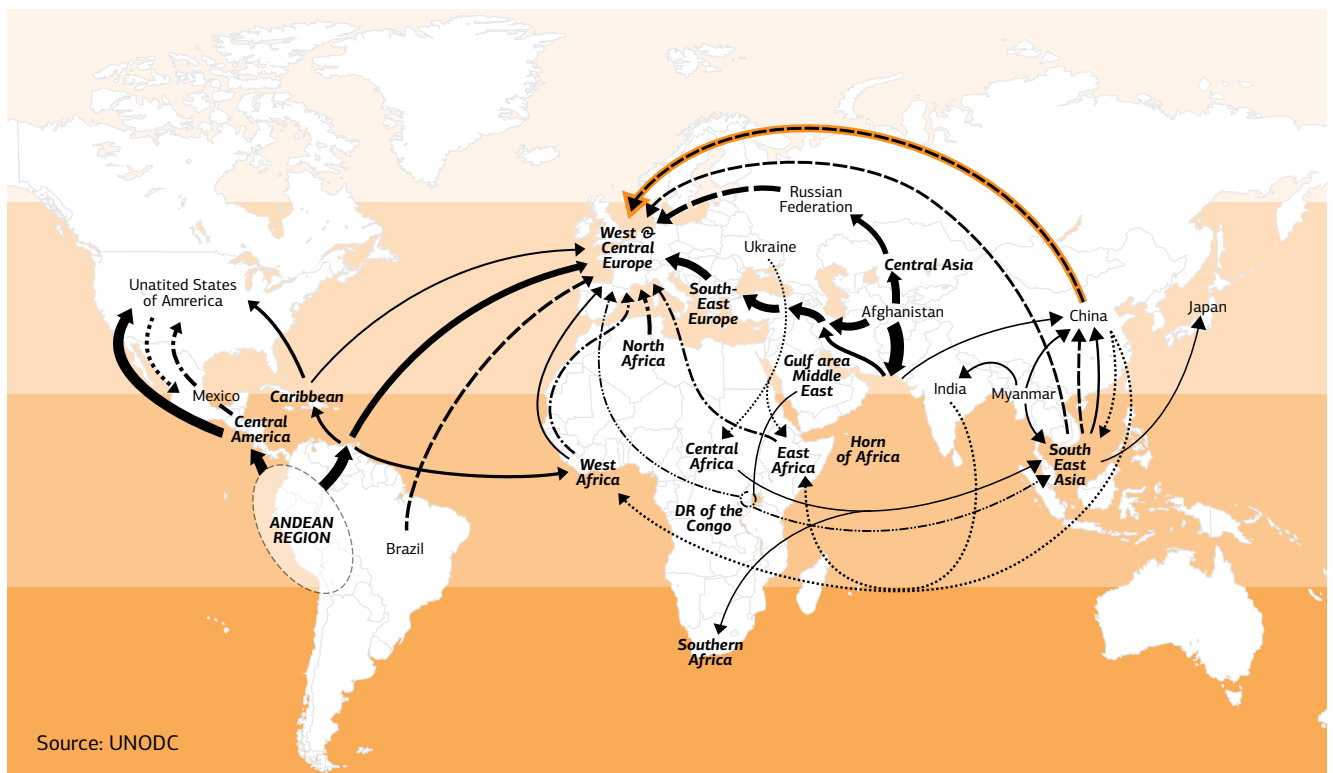
random checks on the basis of risk-analysis or through random samples due to the huge amount of containers traded daily.<sup>59</sup> Containerships enable the transport of large amounts of goods and are the preferred method of transport for pirated products, over longer routes.<sup>60</sup> Around 601 million containers were moved in 2012 in ports worldwide.<sup>61</sup> To obscure their illegal consignment, offenders change delivery companies, split shipments into small parts, hide illegal goods among legal ones, exchange legal and illegal goods or declare them falsely.<sup>62</sup> Additionally, small amounts are sent via post or courier services to reduce the risk of detection and possibility of tracing.<sup>63</sup> If illegal goods have crossed the European external border, cross-border trade without controls is possible within the European Union.<sup>64</sup>

The following overview, compiled by the UNODC (2010), provides an overview of the main illegal trade routes worldwide.

The countries of provenance are mainly China, which is still lacking in key technologies, Malaysia, Russia, Philippines and some African or South American countries.<sup>65</sup> Only a small portion of counterfeit products go from China to Europe, a higher number of products head to Southeast Asia, the Middle East, South America or even Africa.<sup>66</sup> Nevertheless, European companies suffer losses as they cannot sell their legal products in these regions.<sup>67</sup> Additional countries of provenance are Turkey and India.<sup>68</sup> As regards the European customs authorities, the countries of provenance for the small number of passenger traffic are mainly Morocco, Turkey and China.<sup>69</sup> Within the European Union, Italy, Germany, the United Kingdom, Spain and France seem to be the most popular destination countries (based on detained articles, which does not reflect the real markets).<sup>70</sup> The European Union is a destination particularly for shoes, clothes and cigarettes.

### 2.5 Offenders and consumers

The field of offenders and consumers is broad and all age groups and social classes are represented.<sup>71</sup>



Source: UNODC

Table 4: Main illegal trade routes worldwide (UNODC, 2010, p. 175).

### *Offenders*

Offenders regularly work together. In general, someone has to counterfeit or pirate the goods or make a factory overrun. The illegal good has to be transported across borders and purchased on the destination market. The group of offenders can be differentiated into small-scale offenders, groups working together, which includes companies and their partners, and well-organised groups, classed among mafia groups or terrorist groups.<sup>72</sup> Although counterfeiting and product piracy seem to be low-intensity criminal offences, they are often connected to serious crimes due to possible high profits and low risks of being detected.<sup>73</sup> Organised crime groups, like mafias (Italian, Turkish, Russian) or the Chinese triads, are involved in the production and distribution of counterfeit goods and work around the world.<sup>74</sup>

72. cf. Stirnemann/Wächter, 2007), (cf. IP Crime Group, 2013, p. 24.

73. cf. Patrignani, 2008, p. 116 ; cf. Haie-Fayle/Hübner, 2007; cf. OECD - Secretary General, 2008, p. 87.

74. cf. Plagiarius, n.d.

75. cf. Aschmoneit/Schneider, 2011, p. 4 ff.

76. cf. Staake/Fleisch, 2008, p. 48.

77. cf. Patrignani, 2008, p. 77.

78. cf. Marchetti/Shelley, 2009, p. 328.

79. cf. Haie-Fayle/Hübner, 2007; cf. Erd/Rebstock, 2010, p. 23.

80. cf. Matos, et al., 2007, p. 47.

81. cf. Nitsche, 2007, p. 43; cf. Bennett, 2009, p. 5; cf. Marchetti/Shelley, 2009, p. 328.

82. cf. Jiang/Cova, 2012, p. 4.

83. cf. Jiang/Cova, 2012, p. 5.

84. Their study is not representative and has some limitations: it includes students, who are usually a low-income group and susceptible to social influences. In general, the purchasers of counterfeit products reflect the whole range of society. cf. Wilcox, et al., 2009, p. 248 ff.

85. cf. Wilcox, et al., 2009, p. 253.

86. cf. Patrignani, 2008, p. 37.

87. cf. Matos, et al., 2007, p. 35.

88. cf. Karstedt/Farrall, 2006, p. 1011.

### *Consumers*

The group that enables product piracy are consumers.<sup>75</sup> But who are these people who knowingly buy counterfeit products? Consumers are a heterogeneous group that reflect society as a whole. As mentioned above, deceived consumers have to be differentiated from non-deceived consumers. While non-deceived consumers consciously decide to buy a counterfeit or pirated product, deceived consumers do not know that the product is counterfeit or pirated.<sup>76</sup> Staake/Fleisch pointed out that the illegal market is most profitable when consumers are not aware of the existence of counterfeit products.<sup>77</sup> To reach and deceive this group the product must 'be marketed as genuine and must attempt to penetrate the legal distribution chain'.<sup>78</sup>

## 2.6 Attitudes and justifications

But why do consumers buy counterfeit products in the knowledge that they are counterfeit? An argument which is regularly stated refers to economic reasons: counterfeited items look similar to the original but are much cheaper.<sup>79</sup> Consumers get a bargain, although usually with lower quality.<sup>80</sup> If people are satisfied with their purchase, they will probably buy counterfeit products again.<sup>81</sup> The bargain hunting mentality shines a light on the lack of public awareness about the consequences of counterfeiting and product piracy, although social concerns are seen as a factor inhibiting consumption.<sup>82</sup> A study conducted in China emphasised that people buy counterfeit products due to social reasons, because they cannot afford the real ones but want to be accepted by society by having that branded product everyone has.<sup>83</sup> Particularly luxury brands are goods one must have to reinforce social status and self-image.<sup>84</sup>

Wilcox et al. analysed attitudes towards luxury goods with regard to the social-adjusting function and value-expression.<sup>85</sup> The study goes beyond financial motivations and included value expressive attitudes, which are an important link to the FIDUCIA project to support the moral value of norms. According to their study, counterfeits can have a social-adjusting function and be used for self-presentation or self-expression, particularly, if the brand is conspicuous. In turn, the conspicuousness of a brand also influences people who refer to the quality or reliability of luxury goods to buy the original one.<sup>86</sup> Another reason for buying pirated or counterfeit products could be that the desired goods are not available on legal markets or only available at unrealistic prices.<sup>87</sup> It has been observed that consumers with lower integrity and lower ethical standards are more oriented towards buying counterfeit products and usually feel less guilty than others when they do so.<sup>88</sup>

The following table provides an overview of consumers' motives to buy or not to buy counterfeit products. The answers are mostly based on ten interviews conducted in 2005 by Staake/Fleisch about the reasons for buying counterfeit luxury goods.



### Consumers' motives to buy or not to buy counterfeit (luxury) products

Results from a survey conducted in 2005 (unless otherwise stated)

#### *Reasons for:*

- Good quality of counterfeits
- High prices of the genuine article
- High value for money
- Interest in counterfeits and the fun associated with having one
- Attractiveness of the brand and unwillingness to pay for it
- Motives of consumers: status conveyed by the product logo (cf. Phau, et al., 2001, pp. 45–46)
- Positive experience with counterfeit product (cf. Niemand, 2014, p. 186)
- Buying counterfeit goods is socially accepted (cf. Niemand, 2014, p. 186)
- Low risk, high profit (cf. Niemand, 2014, p. 186)

#### *Reasons against:*

- Limited availability
- Bad quality of fakes
- Missing warranty
- Better value for money of genuine articles in the long run
- Personal values
- Potential conflicts with the law (cf. Staake/Fleisch, 2008, p. 53).
- Feel obliged morally (cf. Niemand, 2014, pp. 191, 192).

#### *Justification*

Small-scale smugglers and consumers are regularly those who think of themselves as respectable members of society.<sup>89</sup> They do not consider themselves to be criminal. As these people have internalised rules of society and laws, they develop techniques to justify their deviant behaviour. Arguments of justification could be that people feel treated unfairly as a result of high prices or no access to the market. Sykes and Matza (1957) described five techniques of neutralisation: (1) denial of responsibility, (2) denial of injury, (3) denial of victim, (4) condemnation of the condemners and (5) appeal to higher loyalties.<sup>90</sup> Particularly the technique of 'denial of injury' plays an important role in the case of the small-scale purchasing or smuggling of illegal products like clothes or cigarettes. Moreover, the victim is denied, as no one is affected directly. Companies are seen as indirect victims that have enough money. It is conceivable that producers of counterfeit products in economically weak regions justify their actions through an appeal to higher loyalties, as they have to earn money for their livelihood.

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## 2.7 Measures and strategies

Tackling piracy and counterfeiting is a major challenge for policy makers, law enforcement agencies and the legal market, as product piracy and counterfeiting directly affect economic growth within the European Union and, with it, the job market. Patrignani pointed out that 'weak penalties and enforcement as well as a lack of awareness regarding the involvement of organised crime among civil society' are an extensive problem.<sup>91</sup> Already in 1991, Sielaff demanded an exchange of methods for detecting features of counterfeiting, public relations campaigns, the setup of special police units and disgorgement.<sup>92</sup> In their survey on 'Counterfeit goods in the UK', PwC asked the sample: 'What do you think should be done to stop counterfeiting?' They received the following answers: (1) Harsher penalties for counterfeiters, (2) stronger enforcement, (3) better education of consumers, (4) harsher penalties for consumers.<sup>93</sup> To tackle and prevent product piracy

89. cf. Sykes/Matza, 1957, pp. 667-669.

90. Patrignani, 2008, p. 6.

91. cf. Sielaff, 1991, p. 438.

92. cf. PwC, 2013, p. 16.

93. Europa.eu, 2011.

and counterfeiting, measures primarily concentrate on (1) criminalisation of counterfeiting and piracy, (2) consequent prosecution and (3) prevention, e. g. security technologies, cooperation between companies, but also public relations campaigns.

#### *Legislation*

Based on the importance of intellectual property for European businesses, the European Commission and the European Council have launched several Action Plans and Regulations in the last years e.g. the Action Plan to Combat Intellectual Property Rights Infringements 2012 or Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. One year later, the European Parliament and the Council launched Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights. The Directive focuses on the harmonisation of national law and the creation of a unitary right at a European level to ensure a similar level of protection within the EU. Additionally, the Directive aims to promote innovation and business competitiveness, to protect the job market and consumers, to prevent tax loss, destabilisation of the markets and the maintenance of public order.<sup>94</sup>

Already in 1994, the WTO adopted the Agreement on trade related aspects of IPR, which is legally binding on WTO members. It defines the minimum rights that must be protected and obligations for national governments to provide procedures and remedies under their national law including provisions for border control measures.<sup>95</sup> In 1995, the TRIPS agreement, referring to the protection of intellectual property rights, became part of the WTO system. In recent years, the European Commission has held negotiations with several countries worldwide about an Anti-Counterfeiting Trade Agreement (ACTA)<sup>96</sup> which refers to TRIPS and is controversially discussed within the EU.

An important legal instrument for trademark or rights holders is the ability to request customs officials to take action in cases where the suspicion exists that an intellectual property right has been violated.<sup>97</sup> Therefore, the Commission has developed a manual for lodging of applications for customs action.<sup>98</sup> The number of applications from right holders are stored in the European database COPIS, which is an EU-wide information system for customs officials on counterfeiting and piracy.<sup>99</sup>

#### *Law enforcement agencies*

Law enforcement agencies like Interpol, Europol, national police and customs authorities focus their activities on five central pillars: (1) (joint) operations on regional, but also international level to prosecute (organised) networks, (2) common, special trainings for officials, (3) international cooperation (for example data exchange), (4) information campaigns to raise public awareness and (5) technical measures to control goods and try to detect illegal ones.<sup>100</sup>

#### *Cooperation*

In the field of product piracy, companies are more committed than in other fields to combat the trafficking of goods due to the damage they suffer. Therefore, they invest in technical and sociological research (for example: BASCAP: Report on Consumer Attitudes and Perceptions on Counterfeiting and Piracy). They focus particularly on (1) cooperation with other industries and/or law enforcement agencies, (2) shared databases and (3) prevention through new technologies. Companies also use their economic power to ensure and insist on compliance of their suppliers with the law. As regards cooperation among manufacturers, companies and business partners Hormats and Passman emphasised that

94. cf. World Trade Organisation, 2013.

95. The ACTA seeks to establish a comprehensive, international framework, which should assist ACTA parties to combat the infringement of intellectual property rights effectively and to ban the undermining of legitimate trade and the sustainable development of the world economy.

96. cf. Krug, 2000, p. 138 ff.

97. The manual is available under: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/right\\_holders/manual-application-for-action\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/right_holders/manual-application-for-action_en.pdf).

98. cf. Dumortier, et al., 2010, p. 4.

99. cf. Interpol, 2013; cf. Europol, 2013; cf. World Customs Organisation, 2012/2013.

100. Hormats/Passman, 2012.

businesses can compel their suppliers and business partners to maintain a high-level of integrity and quality by introducing management systems and standards that hold supply chain participants accountable. Companies can use their purchasing power to ensure, and insist, that their suppliers avoid involvement with corrupt officials; do not steal trade secrets; reject counterfeit and pirated goods, and utilize genuine, high-quality components. A positive and mutually reinforcing series of actions all along the international supply chain can result.<sup>101</sup>

In 1980, the Anti-Counterfeiting Group (ACG) was founded by 18 brand owners in the United Kingdom. The group now represents around 160 organisations worldwide. ACG's tasks are to act

on behalf of consumers and legitimate business interests, in partnership with government and law enforcement agencies, and other rights organisations... to change society's perception of counterfeiting as a harmless activity.<sup>102</sup>

#### *Public relations campaigns*

Especially given the difficulties of law enforcement, missing knowledge of the law as well as the public perception that the risk of being prosecuted is low, it is important to raise public awareness and to install a strong proactive marketing.<sup>103</sup> The OECD assumed that 'tackling public attitudes can help, particularly in those markets where people deliberately seek out bargains' but added that awareness campaigns are less effective as long as consumers believe that they are buying a genuine item.<sup>104</sup> Niemand pointed to the importance of convincing people to buy the original product and to raise their awareness about the consequences of pirated and counterfeit products.<sup>105</sup>

### 3. CONCLUSION

It is estimated that the market remains stable despite of several measures. It is, therefore, vital to discuss whether current legislative acts and political actions are effectively tackling the trafficking of goods.

The FIDUCIA project works under the hypothesis that many European states focus on tougher laws and imprisonment to manage various crimes. Commonly, criminal policies and law enforcement agencies pay much attention to deterrence strategies and crime control. Compliance with the law should be obtained through deterrence strategies, which means that individuals are afraid of punishment. In the case of the trafficking in goods, customs agencies experience difficulties detecting counterfeit or illegal products. Their activities seem to be tilting at windmills. The criminal prosecution of offenders acting internationally is another problem. As mentioned above, smuggling is nearly impossible to detect. Offenders follow routes that display weak law enforcement, lax controls, corrupt systems and instable political conditions. As a result, it is difficult to enforce measures of surveillance and control to reduce supply. The borderless European Union allows goods and people to cross borders mostly without control. Due to the dichotomy of supply and demand, consumers play a crucial enabling role. In general, consumers are not afraid of being detected and punished. Instead, several illegal markets, like those dealing with piracy products, are socially accepted by consumers.

But how can compliance with these laws and rules be achieved? As such, it is assumed that besides rational choice theories, normative considerations play an equally important role in people's compliance with the law. Tom Tyler has pointed out:

<sup>101.</sup> Anti-Counterfeiting Group, 2008.

<sup>102.</sup> cf. Jacobs, et al., 2001, p. 506; cf. Stirnemann/Wächter, 2007.

<sup>103.</sup> cf. Haie-Fayle/Hübner, 2007; cf. OECD - Secretary General, 2007, p. 21.

<sup>104.</sup> cf. Niemand, 2014, p. 209.

<sup>105.</sup> Tyler, 1990, p. 3.

If people view compliance with the law as appropriate because of their attitudes about how they should behave they will voluntarily assume the obligation to follow legal rules.<sup>106</sup>

The objective of such strategies is to persuade people of the moral correctness of legal norms, so that they comply with the law. The first step covers informing about existing laws. The knowledge of legal rules is a precondition for deviant behaviour. Karstedt and Farrall (2006) warned of too many legal rules and emphasised that ‘too many rules and regulations decrease the legitimacy of norms and moral obligations’, which in turn normalises illegal behaviour.<sup>107</sup>

Trust-based policies including information campaigns can be used to inform about legal rules and to explain the dark side of illegal markets (e.g. connection of product piracy with exploitation of workers) as well as the reasons for paying the price, taxes and duties. Therefore, attempts should be made to change people’s view that in several cases high prices, taxes and duties are legitimate, justifiable and even necessary. Information campaigns could also be used to increase awareness of legal rules among people with a missing sense of guilt. Marcketti emphasised that the willingness to pay more for non-counterfeit goods increased directly with greater concern, knowledge and attitude towards counterfeit apparel goods.<sup>108</sup> If people could be persuaded softly, they would comply with the law not just because it is in their self-interest to avoid the risk of prosecution and bad quality, but also because they think it is the right thing to do.

Messner and Rosenfeld pointed out the need to strengthen social culture to overcome institutional anomie.<sup>109</sup> Therefore, on the demand level the interruption of the socially embedded acceptance of product piracy as part of everyday life could be an anchor for trust-based approaches. Without social acceptance, the self-perception of people, who see themselves as respectable citizens, totters and their behaviour is stigmatised. The stigmatisation of behaviour also interrupts techniques of neutralisation. If deviant behaviour is no longer accepted by society, a precondition, which according to Ajzen’s theory of planned behaviour leads to deviant actions, is missing as people’s intention to buy counterfeit clothes is implemented due to the acceptance (behavioural control). According to market rules, illegal markets could be diminished if demand declines. The goal of sellers (offenders) is high profit, which is impossible to gain without consumers.

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106. cf. Karstedt/Farrall, 2006, p. 1017.

107. cf. Marcketti/Shelley, 2009, p. 335.

108. cf. Messner/Rosenfeld, 2013, p. 97 ff.

109. cf. Ajzen, 1991, p. 182.

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