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## **Economic and Social Council**



**The problem of international smuggling  
and counterfeiting**

**Expert report**



# **Table of contents**

Glossary.....	2
Introduction.....	3
Chapter 1. The phenomenon of counterfeiting and smuggling.....	4
Chapter 2. United Nations policies implemented.....	7
Chapter 3. Other stakeholder`s polices.....	16
Conclusion.....	19
Bibliography.....	20

## Glossary

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**Copyright** - a type of intellectual property that gives its owner the exclusive right to make copies of a creative work, usually for a limited time.

**Counterfeiting** - a federal and state crime, involving the manufacturing or distribution of goods under someone else's name, and without their permission.

**E-commerce** - electronic commerce or the activity of electronically buying or selling of products on online services or over the Internet. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems.

**Fabrication** - illicit production of well-established market brands.

**Falsification** - production with imparted quality features embodying an original product or production accompanied with false information about its producer or constitution.

**Intellectual property** - is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others.

**Parallel import** - is a non-counterfeit product imported from another country without the permission of the intellectual property owner.

**Patent** - a form of intellectual property that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of years in exchange for publishing an enabling public disclosure of the invention.

**Shadow economy** - (also called the underground, informal, unseen or parallel economy) economic performance that includes not only illegal activities but also unreported income from the production of legal goods and services, either from monetary or barter transactions.

**Smuggling** - the illegal transportation of objects, substances, information or people, such as out of a house or buildings, or across an international border, in violation of applicable laws or other regulations.

**Trade secrets** - a type of intellectual property that comprise compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and which the owner takes reasonable measures to keep secret.

**Trademark** - a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others.

## Intorduction

In the last decades the vast majority of countries recognize shadow economy as a specific economic activity, existing outside established systems of governmental regulation, taxpaying and state supervision.

It is vital to underline that informal economy is not a solemn state plague, whereas illicit trade, unseen economy have always been accompanied with historical development of socio-economic progress. Nowadays, the problem of shadow economy, especially counterfeiting and smuggling are integral derivatives of market nature of the current societal trend. However, according to experts in the field like Russian economist D. Lomsadze and prominent German researcher of economic theory and shadow economy F. Schneider, state apparatus is directly responsible of hyper forms of counterfeiting and smuggling<sup>1</sup>. An additional complication towards the quandary is the fact that scales of such informal economic performance drastically differ across the Member States of the United Nations. The reasoning behind encompasses individual direction of evolution of domestic economies, national economy's conjuncture problems, specific processes of socio-economic institutions emergence.

To portray the facts in accordance with the mentioned above variety across UN Member States, the majority of the European Union Member States currently incorporate a shadow

economy share of 5-10% GDP, whereas in Eurasia it is approximately 47%<sup>2</sup>.

In overall, the necessity to precipitate further shadow economy expansion, especially counterfeiting and smuggling is an earnest challenge for the international community. The expert analytical society states the need to implement grounded steps towards vigorous counterfeiting and smuggling elimination alongside with substantial intellectual property rights featured with transnational inclination of the agenda<sup>3</sup>. The complications to the agenda of international counterfeiting and smuggling are the legal classifications of counterfeiting implying different judicial responsibility. There are cross-perplexed categories being at both ends of the issue with its derivatives. Therefore, here is the emphasis on the necessity to differentiate counterfeiting from smuggling.

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1 Friedrich Shneider. Size and Development of the Shadow Economy of 31 European Countries from 2003 to 2013

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2 Hassan Mai and Schneider Friedrich / Size and Development of the Shadow Economies of 157 Worldwide Countries: Updated and New Measures from 1999 to 2013/ Journal of Global Economics. 2020, p. 67

3 Hassan Mai and Schneider Friedrich / Size and Development of the Shadow Economies of 157 Worldwide Countries: Updated and New Measures from 1999 to 2013/ Journal of Global Economics. 2020, p. 67

## Chapter 1. The phenomenon of counterfeiting and smuggling

In order to go in depth of counterfeiting and smuggling analysis, it is vitally important to strictly determine the frames of the agenda that confines goods only. Goods are the objects of private law, which belong to domestic law systems. Thus, solid definition of goods is to be found in national legislature. Taking into account this trait it is relevant to illustrate of the goods definition from one of the democratic UN Member States legislature alongside mentioning the trend of the private law unification and following legal definitions similarity from one national legislature system to another. For instance, in the US Sale of Goods Act, 1930 goods are defined as every kind of movable property other than actionable claims and money, including stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale<sup>4</sup>.

In this manner, the agenda target goods as they are defined above and does not cover such international criminal law infringement of human-trafficking, drug-trafficking which are subjected to anti-human-trafficking or anti-drug laws or different forms of commercial law breaches concerning service-related issues.

<sup>4</sup> "Goods" under the Sale of Goods Act, 1930 - Lawctopus

### **The essence of a phenomenon**

In international economy there are several sides of the agenda, defined by expert society<sup>5</sup>:

- Goods with a trademark produced by non-existent companies or companies that simulate a trademark;
- Trademark with a false geographical reference;
- Intellectual property infringement or spread of goods without licencing corresponding the agreement with a copyright owner or registered company;
- Falsification – production with imparted quality features embodying and original product or production accompanied with false information about its producer or constitution.

The most counterfeited categories of goods in different forms are clothing and shoeing, food, cosmetics, jewellery, lathered products, toys, excised products and pharmaceuticals<sup>6</sup>. In its consequence this data is relevant:

1. General informal monetary activity: counterfeiting and smuggling of agricultural products, leading unregistered businesses – the most common reflexion on the matter.
2. Excised goods counterfeiting

<sup>5</sup> UN Conference on trade and development report "Mapping the impact of illicit trade on sustainable development", – URL: [https://unctad.org/meetings/en/Contribution/DITC2020\\_TRACIT\\_IllicitTradeandSDGs\\_full-report\\_en.pdf](https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_full-report_en.pdf)

<sup>6</sup> Friedrich Shneider. Size and Development of the Shadow Economy of 31 European Countries from 2003 to 2013 / Lomsadze D. Topical problems of the shadow economy

and smuggling: primarily alcohol and tobacco;

3. Industrial smuggling: illegal trafficking of oil and gas, electricity, chemicals, fossil fuels;

4. Counterfeiting and smuggling of fraudulent medicines with the emphasis on COVID-19 outbreak relevance;;

5. Counterfeiting and smuggling of cultural heritage.

Analytics elaborate on the following forms of counterfeits<sup>7</sup>:

1. Counterfeit;
2. Falsification;
3. Fabrication;
4. Imitators.
5. Parallel import.

In order to differentiate counterfeiting and falsifying of such goods, it is attributable to refer to international law legislation and private law standards<sup>8</sup>. Therefore, counterfeiting is generally a breach of intellectual property rights, while falsification is a breach of production technologies. Thus, counterfeit goods are able to bear a shape of falsified goods, but falsified goods are not counterfeited.

To point out, counterfeit might correspond to illegal usage of trademarks. Subsequently, counterfeit integrates

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<sup>7</sup> UN Conference on trade and development report "Mapping the impact of illicit trade on sustainable development", - URL: [https://unctad.org/meetings/en/Contribution/DITC2020\\_TRACIT\\_IllicitTradeandSDGs\\_full-report\\_en.pdf](https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_full-report_en.pdf)

<sup>8</sup> International institute for the unification of private law releases. - URL: <https://www.unidroit.org/about-unidroit/overview>

different elements in essence. Considering market pricing of counterfeits, it may surge or downslide. In this context, it is highly detectable that the main indicators of counterfeits are price, quality and a place of realization.

The third term that features counterfeiting is fabrication. The difference between falsification of goods and their fabrication is determined by applicability of fabrication to well-established market brands. Those are essentially the objects of fabrication. Fabrication extrapolates to those products that are competitive on the market and have a high level of customer loyalty. Despite falsified goods, fabrications are recognizable by low-pricing. The reasoning behind such price policy is the absence of advertising costs, certification and taxes. Consequently, a customer pursues a brand function admiration than quality credentials of the product, when obtaining a fabrication.

Deeming the issue of fabrication, there is a legal classification of such forms<sup>9</sup>:

1. The first one implies legally registered businesses. In this case a contract is concluded over a particular time frame or the volume of finished goods. Illegal production is released out of these contract frames. For instance, after the planned trademark production is done on a manufactory, illicit alcohol is produced during the night time or beyond the contract terms.

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<sup>9</sup> OECD. The Economic Impact of Counterfeiting and Piracy // Executive Summary. 2007.

2. There are legal manufactories which are not obligated to a trademark owner contract terms, but these producers hold technological means to produce similar quality goods.

3. There are legally registered production sites as well as unregistered ones that produce harsh fabrications of a particular brand. This is a common evidence of expanded unseen economy as these producers operate in organized sites of clandestine production (base-ments, garages and other forms).

4. There are participant in counterfeiting that finish the line of fabricating. Those stakeholders make the image of a finished product by not producing it but packaging. The fourth type of counterfeiting is a good-imitator. This embodies a product with similar design, copied trademark but essentially another product in itself.

5. The last type in global counterfeiting classification is parallel import. This is a type directly linked with logistics, thus smuggling. Analytics state that smuggling is an irreversible fraction of counterfeiting by registered sellers as freezing of counteragents relations lead to small flows of smuggling that are still meaningful for the market in a particular region.

Counterfeit's supply chain incorporates those launch pads:

- Open markets;
- Internet retailing;
- Street trading;
- Other unregistered trading sites.

### **Market laws of counterfeiting**

A key feature of counterfeiting and subsequently smuggling is the fact where these two offences interplay. In this manner, counterfeit products might be sold vastly in different regions, whereas falsifications of brands are congregated in particular regions. That marks the issue of global specialization in counterfeiting and smuggling. It follows a very marketable law where producing counterfeits on global margins virtually minimize the risk of non-supply, but orientation of particular "counterfeit brands" in particular regions increase the a profit of criminals.

Counterfeiting shares a quality of having a comparable price on its production. Thus, high price or above a market one is recognizable with originality accompanied by a row of sell-intermediaries. However, the price of an original product and its counterfeit might be equal in case there is a fusion of production elements. In particular, World Customs Organization reports of relatively small portions of alcohol and tobacco products are bought from an original produce in order to obtain the rights to sell alongside these dealers vend large counterfeit compounds of alcohol and tobacco products covered with the ones legally acquired<sup>10</sup>.

<sup>10</sup> World Customs Organization releases.  
– URL: <http://www.wcoomd.org/en/media/newsroom/2020/july.aspx>

## Chapter 2. United Nations policies implemented

The agenda is covered by several UN institutions and based on the conjuncture of the international legislature:

1. UN General Assembly Resolution 2920(XXVII) on exploitation of labour through illicit and clandestine trafficking.

The launching of international commitment to combat the problem of global smuggling and counterfeiting. The document created a framework for administrative data observance in the field of controlling illicit trafficking. It is currently the basis for national state strategies.

2. UN General Assembly Resolution 72/418 on promotion of international cooperation to combat illicit financial flows in order to foster sustainable development.

The Resolution reaffirmed several UN conventions on corruption and UN principle to foster sustainable development. The document noted the prospective aims for 2030 Agenda for Sustainable Development.

3. UN ECOSOC Resolution 2007/20 on international cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity related crime.

The Resolution considered to be targeted at anti-corruption efforts. The document serves as a cornerstone regulation, underscoring the need to harness synergies and create cooperation among the various information sources of state administrative controlling in the field.

4. UNHRC Resolution 1997/29 on Freedom of Movement and Population Transfer.

The Resolution is a key document in prohibiting smuggling and determining its direct interconnectedness with human rights abuse. The document serves as a founding regulative guidebook for UN Human Rights Council conclusions concerning mass exodus of people and goods as well as relating Sub-Commission resolutions.

5. UN Commission on Crime Prevention and Criminal Justice Resolution 20/6 on countering fraudulent medicines, in particular their trafficking / The Protocol to Eliminate Illicit Trade in Tobacco Products. Fifth session of the Conference of the Parties (COP) to the WHO FCTC.

The Resolutions produced by a specialized UN body on a contributory issue of the counterfeiting and smuggling agenda. The document is the guardian in re-enforcing international cooperation in the fight against trafficking by means of its provisions. Being based on its principles the Commission developed expert programmes by the year of 2017 for the Council of Europe, the Economic Community of West African States, the European Union, the International Council of Nurses, the International Criminal Police (INTERPOL), the New Partnership for Africa's Development, the World Customs Organization and the World Health Organization. It is hoped that this guide on the issue of fraudulent medicines will contribute to an increased number of national and international investigations and prose-



cutions of falsified medical product-related crime, which remains “a high profit low risk sector” for criminals.

Besides established framework UN resolutions UNHRC Resolution 1997/29<sup>11</sup> and UN ECOSOC Resolution 2007/20<sup>12</sup> there is a key performance list of UN activities in the area of combating counterfeiting and smuggling. The framework encompasses corresponding derivatives of the issue in accordance with SDGs<sup>13</sup>. Therefore, above mentioned guiding UN Resolutions comprise a matrix of a number of the UN Sustainable Development Goals (SDGs).

a. SDGs and illicit trade in the agri-food industry (donations)

b. SDGs and illicit trade in agro-chemicals and pesticides (promotes the Member States to establish regulative controls);

c. SDGs and illicit trade in alcohol and tobacco (Sociological approach, promoting WHO findings);

d. SDGs and illicit trade in counterfeit and pirated goods (due unification of private law according to UNIDROIT principles, taxpaying culture guidance and concerns for OECD).

<sup>11</sup> UNHRC Resolution 1997/29 on Freedom of Movement and Population Transfer. – URL: <https://www.refworld.org/docid/404350a94.html>

<sup>12</sup> UN ECOSOC Resolution 2007/20 on international cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity related crime. – URL: <https://www.un.org/en/ecosoc/docs/2007/resolution%202007-20.pdf>

<sup>13</sup> UN Conference on trade and development report “Mapping the impact of illicit trade on sustainable development”. – URL: [https://unctad.org/meetings/en/Contribution/DITC2020\\_TRACIT\\_IllicitTradeandSDGs\\_full-report\\_en.pdf](https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_full-report_en.pdf)

e. SDGs to eliminate distribution of fraudulent medicines;

f. Other SDGs targeting including fisheries, eco-economy, wildlife.

### **Agri-food industry**

Illicit trade in the agri-food sector comes in many forms and manifestations, ranging from economically-motivated fraud to large scale smuggling of agricultural products.

Food fraud is the international sale of sub-standard food products of ingredients for the purpose of economic gain. It impacts many different types of foods, including meat, dairy products, seafood, fruit juices, oils, honey, spices and wine. Common types of food fraud include substitution or dilution of the authentic ingredient with a cheaper product, non-technological flavour or colour enhancement using illicit or unapproved substance and substitution of ones species.

Agriculture constitutes a large portion of most economies` GDP and a healthy agricultural sector is vital to eradicating hunger and poverty. Together with food processing, food retail and food services, agriculture provides nearly 4 million jobs in the EU. ASEAN countries have witnessed phenomena; growth in agricultural production in recent years. Exports in ASEAN rose from 6 billion USD to 50 billion USD in the period of 1990-2014. This has led to an increase in incomes in the agri-industry across the region and considerable economic growth<sup>14</sup>.

<sup>14</sup> OECD. Illicit Trade: Converging Criminal Networks. Paris: OECD Publishing, – URL: [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade\\_9789264251847-en#.Wa2XY1JiRp8](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade_9789264251847-en#.Wa2XY1JiRp8)

Consequently, strong legal agricultural trade is crucial to achieving several SDGs, especially in developing and emerging economies. This, in turn, results in better quality of life, drives trade, investment and industrialization.

Conversely, illegal agri-food trade globally undermines farming and global food trade systems, destabilizes rural economies and jeopardizes production and delivery of fair, safe and sustainable food supplies.

Fake, substandard, smuggled and illegal agri-foods distort and destabilize food markets and cost the global food industry and estimated 30 – 40 billion USD per year<sup>15</sup>. For a legitimate company, this form of illegal competition reduces sales, employment opportunities and hampers investment. This is especially the case for small-scale food producers and those in developing countries.

In cases where illegal agri-food trade results in injury or harm, a corporation's economic sustainability can be severely damaged. A study commissioned by the Grocery Manufacturers Association estimates that one adulteration incident can cost a company between 2-15 percent revenues<sup>16</sup>.

<sup>15</sup> MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

<sup>16</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora). (2016). Interpretation and implementation of the Convention, Compliance and Enforcement: Actions to Combat Wildlife Trafficking, Seventeenth meeting of the Conference of the Parties, Johannesburg (South Africa), 24 September-5 October 2016. Retrieved from: <https://www.fws>.

Overall, in accordance with UN Conference on trade and development report "Mapping the impact of illicit trade on sustainable development, counterfeiting and smuggling in agri-industry"<sup>17</sup>.

- Undermines robust and resilient agricultural markets that support economic development and poverty reduction (SDG 1);
- Destabilized food security and undermines sustainable food production and access to food (SDG 2);
- Exposes consumers to harmful ingredients or deprives them of active beneficial ingredients (SDG 3);
- Deprives consumers of choice and ability to make educated and eco-friendly decisions (SDG 12);
- Illegal profits underwrite smugglers, breed corruption, subsidize wider criminal activity and threaten political and economic stability.

### **Chemicals and pesticides**

The commercialization of a legal input, such as a pesticide, requires regulatory controls to ensure that the chemical is dealt with safely, from development to disposal. Illegal pesticides are not subject to regulatory controls. Manufacturers of illicit agrochemicals sidestep the regulatory process and do not account for safety risks associated with the use of mislabelled, unregulated and unidentified substances. These risks extend to the treated crops and surrounding ecosystems and also to the foods ultimately consumed.

<sup>17</sup> UN Conference on trade and development report "Mapping the impact of illicit trade on sustainable development". - URL: [https://unctad.org/meetings/en/Contribution/DITC2020\\_TRACIT\\_IllicitTradeandSDGs\\_full-report\\_en.pdf](https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_full-report_en.pdf)

All chemicals have the potential to be toxic, and agrochemicals are no exception. If not handled properly they can harm rather than help the environment. Accordingly, governments of the UN Member States implement strong regulations to monitor the usage, handling and transport of chemicals<sup>18</sup>.

However, these regulatory controls are worthless when illegal pesticides are used in the place of legal products, especially when they contain banned and highly persistent organic pollutants. For instance, run-off and releases of the illicit products into waterways, rivers, seas and oceans can lead to widespread environmental contamination and harmful accumulation in humans, local animals and marine life.

In addition, criminals dealing in illegal pesticides facilitate the pollution of freshwater supplies by illegally disposing of harmful chemicals used in the manufacturing process. These practices circumvent safeguards and mechanisms required by governments are also often sold without warning labels or directions for proper usage. Illicit pesticides have also been reported to include false claims. Thus, even when illegal pesticides have been detected by authorities, their storage, destruction and disposal are beset with environmental risks and significant costs. Improper destruction may also pollute soils, groundwater or watercourses, with potentially devas-

<sup>18</sup> MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

tating and long-term effects on soil fertility, clean water supplies, marine life.

In accordance with UN Conference on trade and development report “Mapping the impact of illicit trade on sustainable development”, illicit trade in chemicals and pesticides undermines several SDGs<sup>19</sup>.

- By precluding agricultural productivity that can reduce poverty, create jobs and drive higher incomes (SDG 1);
- By limiting agricultural yields for local consumption on export, keeping millions of people undernourished and lacking food security (SDG 2);
- By presenting significant risks to human health via direct exposure to unsafe chemicals, food toxicity, and safety hazards associated with transportation and handling as well as jeopardizing water quality and the protection of water-related ecosystems from contamination (SDGs 3,6, 15).

### **Illicit trade in alcohol and tobacco**

This field affected with counterfeiting and smuggling is considered to be the most economically active. Therefore, it embodies the object for a complex and thorough analysis as it merges a vast international legislature to refer to.

Illicit trade in tobacco and alcohol is widespread, representing significant percentages of alcohol and tobacco consumption worldwide and stripping governments of billions of dollars in

<sup>19</sup> MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

tax revenues. According in particular to Euromonitor's 2019 Global Study on Illicit Alcohol, 1 in 4 bottles are illicit representing 25.8 percent of all global consumption<sup>20</sup>.

Illicit alcohol is one of the worst forms of harmful consumption globally. As such, it is the target of the WHO global strategy to reduce the harmful use of alcohol, which calls for inter alia the regulation of sales of alcohol beverages informally produced, their inclusion in tax systems and the promotion of cooperation among national and international authorities to exchange relevant information on the fight against illicit trafficking of alcohol<sup>21</sup>.

SDG Targets 3.4 and 3.5 call on the UN Member States to reduce by one third premature mortality from non-communicable diseases and to strengthen the prevention and treatment of substance abuse, including harmful use of alcohol<sup>22</sup>.

Several categories of illicit alcohol expose consumers to the harmful use of alcohol delineated in SDG Target 3.5, as well as to the premature mortality from non-communicable

diseases delineated in SDG Target 3.4<sup>23</sup>.

The main health risks associated with illicit trade in alcohol are created by counterfeit alcohol, fictitious brands and, to a lesser extent, home production<sup>24</sup>.

SDG Target 3.9 sets the objective of substantially reducing the number of deaths and illnesses from hazardous chemicals and includes the mortality rate attributed to unintentional poisoning as one of the key indicators to measure the health risks associated with its consumption. For example, the WHO has stressed the potentially detrimental effects on health posed by surrogate and home-made produced alcohol due to contamination with substances added either as a denaturant or inadvertently introduced during home-production<sup>25</sup>.

For developing countries, widespread smuggling and local production of illicit and counterfeit alcoholic drinks can have a particularly destructive effect on efforts to improve domestic resource mobilization in accordance with SDG Target 17.1 by denying the government a significant source of potential tax

20 OECD. Illicit Trade: Converging Criminal Networks. Paris: OECD Publishing. Retrieved from: [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade\\_9789264251847-en#.Wa2XY1JiRp8](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade_9789264251847-en#.Wa2XY1JiRp8)

21 OECD. Illicit Trade: Converging Criminal Networks. Paris: OECD Publishing, - URL: [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade\\_9789264251847-en#.Wa2XY1JiRp8](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade_9789264251847-en#.Wa2XY1JiRp8)

22 MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

23 MPACT. Alcohol related counterfeiting // Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

24 UNODC. World Wildlife Crime Report: Trafficking in protected species. Vienna: United Nations Office on Drugs and Crime. Retrieved from: [http://www.unodc.org/documents/data-and-analysis/wildlife/World\\_Wildlife\\_Crime\\_Report\\_2016\\_final.pdf](http://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf)

25 UN General Assembly. Tackling illicit trafficking in wildlife. A/RES/69/314. Retrieved from: [https://cites.org/sites/default/files/eng/news/pr/2015/UNGA\\_res\\_illicit\\_trade\\_wildlife.pdf](https://cites.org/sites/default/files/eng/news/pr/2015/UNGA_res_illicit_trade_wildlife.pdf)

income<sup>26</sup>. Generally, either illicit trade in alcohol or tobacco promotes informality, prevents small business from building legal operations and frustrates integration in the mainstream economy. In order to underpin such thes one-country statistic method of a developing world representation is relevant here.

**Appendix Figure 1: Peru – illicit alcohol market price evolution USD per liter of alcohol equivalent<sup>27</sup>**

Illicit trade in alcohol encompasses a wide variety of illegal activity that is typically characterized in UN analytics as<sup>28</sup>:  
 Smuggled alcohol: the one with original branding that has been illegally imported into a jurisdiction and sold, evading tariffs or customs. This includes beverages brought across the border via organized smuggling or in excess of the applicable traveller's regulated allowance. Smuggling of alcoholic beverages mirrors the illicit tobacco market and petroleum fuels theft, where criminals move products across borders with the applicable traveller's regulated allowance.

<sup>26</sup> MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimate-sCounterfeit.pdf>

<sup>27</sup> OECD. Illicit Trade: Converging Criminal Networks. Paris: OECD Publishing. Retrieved from: [http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade\\_9789264251847-en#.Wa2XY1JiRp8](http://www.keepeek.com/Digital-Asset-Management/oecd/governance/charting-illicit-trade_9789264251847-en#.Wa2XY1JiRp8)

<sup>28</sup> UNODC. World Wildlife Crime Report: Trafficking in protected species. Vienna: United Nations Office on Drugs and Crime. Retrieved from: [http://www.unodc.org/documents/data-and-analysis/wildlife/World\\_Wildlife\\_Crime\\_Report\\_2016\\_final.pdf](http://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf)

- Counterfeit alcohol: fraudulent imitations of legitimate branded products, including refilling, falsification and tampering. These beverages infringe the intellectual property rights of legitimate producers and present brand reputational risk and potential liability. It is often produced in illicit factories and sometimes substitutes lower grade alcohol not intended for human consumption such as denatured ethyl alcohol.

- Illicit artisanal alcoholic beverages produced following artisanal practices, including home production. Artisanal alcoholic beverages are considered illicit if they are produced for commercial purposes, and if their production and/or sale violate local law.

- Tax Leakage: legally produced alcohol beverages on which the required excise tax is not paid in the jurisdiction of production.

- Non-conforming alcohol: products that are not compliant with production processes, guidelines, or labelling legislation. They include products produced with industrial alcohol and products not meant for human consumption but diverted to the market for alcoholic beverages, i.e. pharmaceutical alcohol, perfume, mouthwash).

In light of everything, the main drivers of alcohol illicit trade might be distributed between three categories:

## Appendix Figure 2: Main factors of illicit alcohol expansion

When deeming the problem of illicit trade in tobacco it is much relevant to attribute to the World Health Organization, particularly Art. 1 of the WHO Framework Convention on Tobacco Control which also determines three major ways: smuggled, counterfeit and local tax evaded products. It is a global phenomenon, covering all continents and high and low income countries similarly<sup>29</sup>. The reasoning behind it is that cigarettes are highly taxed, easy transported and possess lucrative risk to reward ratio.

World Customs Organization International Network of Customs Universities states that in the beginning of 2010s illicit trade in tobacco is unacceptably high<sup>30</sup>.

Illicit trade in tobacco is driven by a set of market conjunctures. Consumers are willing to buy cheap products and save money. Criminals are willing to take advantage of high taxes which they evade to make high profits. Contributory factors include unbalanced fiscal policies, disparities in tax-driven prices between neighbouring jurisdictions, protectionist policies, corruption, weak enforcement, porous borders, lack of official controls in free zones, poor transit controls, inadequate or out-of-date legislation and sanctions, growth in illegal distribution networks, public tolerance.

<sup>29</sup> World Health Organization (WHO) Framework Convention on Tobacco Control

<sup>30</sup> International Network of Customs Universities / World Customs Journal, - URL: [https://worldcustomsjournal.org/Archives/Volume%206,%20Number%202%20\(Sep%202012\)/12%20Allen.pdf](https://worldcustomsjournal.org/Archives/Volume%206,%20Number%202%20(Sep%202012)/12%20Allen.pdf)

## Appendix Figure 3: Estimated global incidence of illicit trade in 2010<sup>31</sup>

However stringent requirements on legitimate trade may be, one thing remains certain. As long as the illicit trade in tobacco products provides high profits at low risk and there is a ready market of consumers, criminals will find a way to proceed illicit trade.

### Eco-economy breaches

The estimated annual retail value of illegal logging comprises from 52 USD to 157 USD billion, making it the world's most profitable natural resource of crime<sup>32</sup>.

Similarly another interconnected issue comes up in this fraction. Illegal, unreported and unregulated fishing is known as IUU is essentially an example of illicit trade in a global natural resource with significant economic, societal and environmental costs.

IUU has thus far been primarily viewed by governments as a lack of compliance with technical regulations. As a result, IUU is in many locations only lightly criminalized or treated as a minor infraction under national fishery codes with limited domestic resources assigned to monitoring or enforcing.

<sup>31</sup> Estimated Incidence of Illicit trade International Network of Customs Universities / World Customs Journal, - URL: [https://worldcustomsjournal.org/Archives/Volume%206,%20Number%202%20\(Sep%202012\)/12%20Allen.pdf](https://worldcustomsjournal.org/Archives/Volume%206,%20Number%202%20(Sep%202012)/12%20Allen.pdf)

<sup>32</sup> WWF. Living Planet Report 2016: Risk and resilience in a new era. Gland: WWF International. Retrieved from: [http://awsassets.panda.org/downloads/lpr\\_living\\_planet\\_report\\_2016.pdf](http://awsassets.panda.org/downloads/lpr_living_planet_report_2016.pdf)

For instance, developing countries of West Africa are estimated to be at risk from IUU catches, which comprise 40% higher than IUU reported catches<sup>33</sup>.

Illicit trade in eco-economy developing field is aimed at several SDGs infringements:

- Draining the economic viability of eco industries and destabilizing the livelihoods of those living and working in these fields (SDG 1).
- Jeopardizing global supply with a vital component of global food security (SDG 2).
- Economic instabilities threaten the industry's long-run contributions to GDP and employment; IUU is an unacceptable source of forced labour and other human rights abuse (SDG 3).
- Displacing legal employment opportunities, up to 80 percent in small- and medium- eco enterprises in developing countries, threatening tourism jobs by damaging protected forests and animal habitats (SDG 8).
- Posing a serious threat to peace and security and damaging public trust and institutional structures (SDG 16).

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33 Estimated Incidence of Illicit trade International Network of Customs Universities / World Customs Journal, - URL: [https://world-customsjournal.org/Archives/Volume%206,%20Number%202%20\(Sep%202012\)/12%20Allen.pdf](https://world-customsjournal.org/Archives/Volume%206,%20Number%202%20(Sep%202012)/12%20Allen.pdf)

### **Fraudulent medicines**

The global trade in illicit pharmaceuticals extends beyond the generally well-known problem of fabrications to include substandard, falsified, unregistered and unlicensed drugs as well as their theft, fraud, illicit diversion, smuggling and trafficking.

The problem of illicit pharmaceuticals applies not only to highly-publicized lifestyle medicines, but also lifesaving medicines, those are used to treat malaria, cancer, heart disease and other serious illnesses. The issue covers generic versions of perception drugs and increasingly to over-the-counter medicines.

Illicit trade in medicines is a major threat in public health. Public Health is defined as an area of national and regional (EU) regulative institutions. This fact signifies the importance of deterring such a problem. Expansion of fraudulent medicines diverts resources from already limited healthcare budgets, creates mistrust in government and presents economic and social challenges to pharmaceutical companies. The WHO has thus far generated statistics, reporting that the share of the counterfeit medicines on the market ranges from over 10 percent of total sales in developing countries to as little as 1 percent in developed ones by 2016<sup>34</sup>.

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34 MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimate-sCounterfeit.pdf>

In this sense, trade of fraudulent medicines breach these SDGs:

- Undermines the ability to treat and prevent disease, particularly for the weakest and most vulnerable in society (SDG 1).
- Preclude wider access to affordable, quality-assured medicines, including those used to treat malaria, cancer and heart disease (SDG 3).
- Undermines women's health by limiting access to safe and reliable contraception and degrades the integrity of health and family planning programs (SDG 5).
- Impairs the marketplace for genuine products, strains public health budgets and endangers jobs and economic activity (SDG 8).
- Hinders pharmaceutical innovation and investment in research and development of new drugs (SDG 9).
- Generates dirty productions, environmental shortcuts, disposing of toxic dyes and chemicals without regulatory oversight, ignoring the treatment of wastewater streams (SDG 12).
- Illegal profits from illicit pharmaceuticals realization finance organized criminal activity and threaten lives, social stability and peaceful communities (SDG 16).



## Chapter 3. Other stakeholder's polices

The first and foremost, for better understanding of the depth of the agenda, it is logically acceptable to part stakeholders. The first group incorporates the Member States and their methods. The second group includes International organizations associated with the UN as well as non-governmental organizations.

### Member States

In the fraction dedicated to the Member States of the UN policies there are particular countries and integrated bodies presented and their most successful polices globally endorsed are described.

Every year more than 11 million containers arrive into the U.S. by sea another 13 million come from road or rail and quarter billion packages enter the U.S. by air travel. It turns out a growing number of this shipment contains fabrications and other counterfeited goods. Most are coming from China<sup>35</sup>.

Homeland Security of the US issued a 2020 report saying the rise of e-commerce has led to greater trade facilitation, its overall growth, especially an increase of certain related business models to falsify online trafficking<sup>36</sup>. Consumers shopping on e-commerce platforms and online third-party marketplaces now face a significant risk of purchasing counterfeit or pirated goods.

<sup>35</sup> CNBC (website), - URL: <https://www.cnbc.com/world/?region=world>

<sup>36</sup> Combating Trafficking in Counterfeit and Pirated Goods. Report to the President of the United States January 24, 2020

The rising of e-commerce has filed counterfeiting around the world. According to the Organization of Economic Cooperation and Development (OECD), economic impact of counterfeiting has been mounting since 2016. Counterfeited goods come from more than 3 percent of all global trade<sup>37</sup>. In the following OECD report there is a prospect of job losses of 4.2 to 5.4 million by 2022 not regarding the impact by COVID-19 pandemic.

China which is the country that encompasses the vast number of illegal production and distribution of goods, according to OECD, pledged to reduce the number of counterfeit productions as part of the phase agreement with the USA.

The USA is implementing an executive order from January 2020 to prevent counterfeiting on e-commerce platforms. Legislation gives custom officers wider authority to seize products that infringe certain types of patents<sup>38</sup>.

When considering the role of Member States in combating international counterfeiting and smuggling detectable routes of such supplies according to internationally respected sources are relevant to explore.

<sup>37</sup> OECD Report. The Economic Impact of Counterfeiting and Piracy, - URL: <https://www.oecd.org/sti/ind/theeconomicimpactofcounterfeitingandpiracy.htm>

<sup>38</sup> Ensuring Safe and Lawful E-Commerce for US Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights, - URL: <https://www.whitehouse.gov/presidential-actions/ensuring-safe-lawful-e-commerce-us-consumers-businesses-government-supply-chains-intellectual-property-rights/>

There are two viable main streams according to above mentioned Lomsadze-Schneider analysis. These are transit points in Albania in Southern Europe, Baltic States and Belarus in Eastern Europe for illicit tobacco and alcohol, Morocco for the Western Europe and Southern Europe. There is an interconnected so called Turkish route which is served to smuggle goods from the Middle East and Central Asia<sup>39</sup>.

International hubs are also at risk of smuggling and filling up with counterfeit goods. For instance, the Amsterdam port in the Netherlands is such a case. It may be characterized as a legal zone for making illegal deals to sell counterfeited goods<sup>40</sup>.

#### **Appendix Figure 4: Main international smuggling routes by (map presented by Central Intelligence Agency)<sup>41</sup>**

In light of such problems the European Union has concluded an agreement with recognized traders to eliminate counterfeit by common efforts<sup>42</sup>. The EU is contributing towards development of detecting systems for preserving intellectual property rights by implementing such systems as Excise Movement

39 Friedrich Shneider. Size and Development of the Shadow Economy of 31 European Countries from 2003 to 2013.

40 Combating Trafficking in Counterfeit and Pirated Goods. Report to the President of the United States January 24, 2020

41 OECD Report. The Economic Impact of Counterfeiting and Piracy, - URL: <https://www.oecd.org/sti/ind/theeconomicimpactofcounterfeitingandpiracy.htm>

42 Joossens L., Merriman D., Ross H., Raw M. How eliminating the global illicit cigarette trade would increase tax revenue and save lives. Paris: International Union Against Tuberculosis and Lung Disease, 2009

and Control System (EMCS)<sup>43</sup>. Taking the experience of the EU into consideration, it can be underlined that the EU is pursuing the strategy of establishing controlling bodies innovated with automatic systems. Above that, the feature of the EU strategy is that it sliding towards more supranational approach rather than domestic state control. EU steps towards overcoming shadow economy intricacies by sub-regional (EU regulative) directive method.

#### **Agencies**

International Anti-Counterfeiting Coalition states that US businesses are going out of deals due to counterfeit expansion<sup>44</sup>. The main driver behind such an influx of counterfeit goods is a misguided impression of a consumer. The beneficiary of realized counterfeited goods is overwhelmingly organized crime that is running counterfeiting and smuggling networks.

In 2018 EUROPOL intercepted 13 million counterfeited drugs ranging from opioids to heart medications which substituted the loss over 180 million USD<sup>45</sup>. The agency concluded a seen

43 MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

44 MPACT. Counterfeit Medicines: An update on estimates 15 November 2016. n.p.: WHO, - URL: <http://www.who.int/medicines/services/counterfeit/impact/TheNewEstimatesCounterfeit.pdf>

45 EUROPOL drug trafficking combating (website), - URL: <https://www.europol.europa.eu/newsroom/news/%E2%82%AC79-million-of-illegal-products-seized-in-hit-against-medicine-traffickers>

rise in counterfeiting of medicines in recent years. Moreover, the pandemic has opened up a business opportunity for predatory criminals. Authorities around the world seized nearly 34 000 counterfeit surgical masks, making them the most commonly sold medical product online. Law enforcement officers identified more than 2 000 links to products related to COVID-19<sup>46</sup>.

INTERPOL is committed to supporting its 194 member countries to disrupt the illicit activities generated by the pandemic<sup>47</sup>. It coordinates regional and global operations to bring together police, customs and health regulators in order to cooperatively combine expertise in countering illicit trade. Police in member countries can use INTERPOL system of Notices to share critical crime related information and search identification of suspects, locations, commodities and illicit markets. INTERPOL additionally provides training and webinars to build the skills and knowledge of agencies in combating COVID-19 crime threats<sup>48</sup>.

The International Chamber of Commerce found small shipments lowers

<sup>46</sup> EUROPOL (website), - URL: <https://www.europol.europa.eu/newsroom/news/%E2%82%AC79-million-of-illegal-products-seized-in-hit-against-medicine-traffickers>

<sup>47</sup> INTERPOL release on Protecting cultural heritage through interagency cooperation, - URL: <https://www.interpol.int/News-and-Events/News/2019/Protecting-cultural-heritage-through-interagency-cooperation>

<sup>48</sup> COVID-19: The global threat of fake medicine. INTERPOL report, - URL: [file:///C:/Users/Hp/Downloads/20COM0356%20-%20IGGH\\_COVID-19%20threats%20to%20medicines\\_2020-05\\_EN.pdf](file:///C:/Users/Hp/Downloads/20COM0356%20-%20IGGH_COVID-19%20threats%20to%20medicines_2020-05_EN.pdf)

the risk of their detection<sup>49</sup>. Meanwhile Member States are being overloaded with the number of small shipments arriving daily with counterfeited goods. A rule that allows goods to enter tax-free has exacerbated the problem.

Another direction of combating counterfeiting and smuggling involves an emerging threat of illicit trade in cultural heritage. This is a challenge mostly tackled by outside the UN and much opposed by INTERPOL. Therefore, the analysis on this matter is set in this chapter of other stakeholders.

INTERPOL operations are aimed at tackling regional and global level crimes related to cultural property. The established law enforcement is to be in charge of this matter like Pandora and joint police-customs Athena operations. These programs provide the service with information on stolen works of art alongside intelligence analysis of the latest cultural property crime trends. Additionally, the issues of money laundering and fake cultural crimes are on the collective effort to protect cultural property after natural disasters as well as armed conflicts<sup>50</sup>.

<sup>49</sup> ICCBO releases (website), - URL: <https://iccwbo.org/dispute-resolution-services/>

<sup>50</sup> INTERPOL release on Protecting cultural heritage through interagency cooperation, - URL: <https://www.interpol.int/News-and-Events/News/2019/Protecting-cultural-heritage-through-interagency-cooperation>

## Conclusion

The problem of international counterfeiting and smuggling covers a wider issue of informal economy. It is a solid controversy of economic development and depends much on legislative regime which is subjected to political authorities. In this case economic stability, preservation of market completion is interconnected with democracy support which is under the monitoring of international institution like the United Nations.

International counterfeiting and smuggling of goods is a complicated and extensive agenda with a system of derivatives depending on types of production. There are certainly other spheres not mentioned in the report. The problem is exacerbated by an influence of globalization processes, which makes counterfeiting and smuggling more massive in scale and demands more enforcement from authorities. There is also a due effect of globalization creating and impetus of unification, establishing similar legislative patterns and administrative mechanisms to oppose expansion of counterfeiting and smuggling. The issue of private law unification, consequently comparative law analysis concerning the matter are beneficial for public procurement of the problem, extensive public awareness of it, forming a respectable tax culture in the Member States.

Moreover, counterfeiting and smuggling might be considered as irretrievable evidences of the market due to human nature, tax regimes and overall economic lifestyle in a community.

Evaluating the effectiveness of mechanisms to combat counterfeiting and smuggling there is a vivid state directive method with an inclination to technological and automatic detection enhancement as well as private sector cooperation like anti-counterfeiting campaigns by multinationals and agreements between firms and governments. These are deemed to be an applicable and efficient method of tackling the problem.

The current description of the agenda on international counterfeiting and smuggling contains UN fixed direction on tackling illicit production and trade. Those directions are complemented with international organizations efforts and Member States policies. Consequently, there is an attainment of the United Nations Economic and Social Council to define these non-mentioned spheres of the agenda to be tackled and comprise them in a following Resolution.

A final document of the UN ECOSOC is anticipated to reflect current sides of the problem which distort the agenda by COVID-19 pandemic making economic hurdles of the crises durable and more struggling as well as making a shift towards particular types of goods in counterfeiting like an increase in fraudulent medicines.

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