

Forum: General Assembly 4th Committee

Issue: The Question of Measures to Eradicate the Manufacturing and Trafficking of Counterfeit Goods

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Introduction

The trafficking and manufacturing of counterfeit goods is an ongoing international law and trade issue, that is especially important in this decade with countries being more interconnected than ever. Counterfeiting can affect anyone and it causes a considerable threat to everyday consumers, companies and the government. The trade of counterfeit goods is a multibillion-dollar business, and according to the OECD, the trade in fake goods accounts for up to 3.3% of world trade with some estimating the counterfeit business being worth 250 billion dollars each year, this sum increases significantly if pirated products and domestic counterfeited goods are included.¹ China is the leader in the production of counterfeited goods with around 80% of counterfeit goods come from China. The countries that are impacted most by counterfeit goods are the United States, France, and Italy, according to the UNODC in 2016. Counterfeiting doesn't just entail clothing and footwear. Counterfeits can include fake medical equipment, pharmaceuticals, currency, documents and foodstuffs. For example, according to Oceana, an advocacy group fighting to preserve the world oceans, up to 25% of the world's seafood is counterfeit² and according to Forbes, 80% of Italian olive oil is fake.³

Counterfeiting has grown immensely over the years and is an attractive business for many due to numerous reasons. The selling, manufacturing, and trafficking of illicit goods is generally low-risk since many countries don't have enough resources to effectively prosecute and investigate these cases. Penalties and sentences for crimes associated with counterfeiting are less severe than for example drug trafficking or other related crimes.⁴ The money gained from the trafficking of counterfeit goods is often used to fund organized crime or even terrorism.⁵

¹https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf

² http://usa.oceana.org/sites/default/files/global_fraud_report_final_low-res.pdf

³<https://www.forbes.com/sites/ceciliarodriguez/2016/02/10/the-olive-oil-scam-if-80-is-fake-why-do-you-keep-buying-it/#773b814f639d>

⁴<https://www.interpol.int/en/Crimes/Illicit-goods/Illicit-goods-the-issues>

⁵https://www.unodc.org/documents/counterfeit/FocusSheet/Counterfeit_focussheet_EN_HIRES.pdf

Forms of copyright

There are ways international trade organizations and governments try to prevent counterfeiting. For example, if a company has a recognizable word, logo or phrase, they can trademark it, which legally registers it to the company. Patents can be registered, to protect intellectual property. As well, copyright is used when creative work, like music, films and art work needs to be protected.

Definition of Key Terms

Counterfeit

To imitate something authentic, with the intent to steal, destroy, or replace the original, for use in illegal transactions, or otherwise to deceive individuals into believing that the fake is of equal or greater value than the real product. Counterfeiters aren't just the producers of the product. They are retail sellers and distributors as well.

Trademark

A trademark is or can be a symbol, word, or words that are legally registered by a company to represent that company or certain products

Patent

A form of intellectual property, in which a legal document is signed, preventing others from producing, using or selling an invention for a certain period of time, on the condition that the invention is publicly disclosed.

Copyright

The exclusive right given to a creator to reproduce their creative work for a certain period of time. The creative work can be in artistic, literary or musical form. Copyright prevents others from stealing, selling and reproducing someone's original work.

Dark web

The dark web are part of the internet that are encrypted, which cannot be found using ordinary search engines, and that is often used for criminal activity.⁶

Explanation of the Question

The Question of Measures to Eradicate the Manufacturing and Trafficking of Counterfeit Goods has been prominent among UN and international discussions for decades. The trafficking and

⁶ <https://dictionary.cambridge.org/dictionary/english/dark-web>

manufacturing of counterfeit goods can affect consumers from all over the world and pose a serious danger since counterfeit goods can include faulty machinery or harmful ingredients.

In order to eradicate the trafficking and manufacturing of counterfeit goods, countries need to work together on a global scale, not just locally. The trafficking and manufacturing of counterfeits typically involves multiple countries. For example the head of the crime operation may be in country A, the counterfeit product might be manufactured in country B, distributed through country C and sold in country D. Also the product might be sold online to every corner of the globe via a server in country E with finally all the revenue being delivered to country F. With one crime operation possibly being active and depending on numerous countries, it is ever so important for law enforcement officials in these countries to cooperate.

Pharmaceutical Industry

Counterfeit medicines are illegally manufactured, can include an incorrect amount of active ingredient or can be contaminated. Often counterfeit medicines are very similar to authentic medicine, which can make it almost impossible for consumers to notice a counterfeit. Numerous kinds of counterfeit medicines have been identified, including weight-loss medicines, painkillers, insulin, and even anti-cancer medicines. The selling and manufacturing of counterfeit medicines can be linked with criminal activities, such as the international trafficking of drugs or doping substances. There are numerous reasons for the manufacturing of counterfeit medicines. Counterfeit medicines are financially profitable and the risk of being caught is relatively low. Naturally, demand also increases the manufacturing of these medicines. Many may purchase counterfeit medicines out of financial need. In many countries there is little to no social security and many don't have medical insurance or funds to purchase costly pharmaceuticals.

Counterfeit medicines are more common in developing countries than developed countries. Counterfeit pharmaceuticals are especially present in Sub-Saharan Africa and a WHO report finds that Africa accounts for 42% of all cases of substandard or fake medical products. For example the presence of sub-standard or fake medicines in Africa have caused around 64,000 to 158,000 malaria-related deaths yearly according to the London School of Hygiene and Tropical Medicine, as well as countless of other deaths in Africa and all around the world.

Garment Industry

According to the OECD, the most counterfeited brands are Ray-ban, Rolex, Supreme, Louis Vuitton, and Nike. There has been a clear increase in counterfeit clothing and accessories with the rise of luxury brands. Many want to own branded clothes, but if they don't have the funds or want to spend the money, they may opt for the counterfeit version. It also varies how counterfeiters copy the product. Some counterfeiters try very hard to mimic the authentic product, making it hardly distinguishable. Some counterfeit goods are made to simply be an inexpensive alternative for the luxury product. People may think their impact is insignificant if they decide to purchase counterfeit goods, however the purchasing of counterfeits could be actively funding large criminal organizations and funding criminal activities such as money laundering, drug and human trafficking and even terrorism.

Entertainment Industry

Piracy is also a form of counterfeiting. Piracy is when copyrighted content is duplicated unlawfully. The pirated content is usually sold at a significantly lower price than the original. There are many forms of piracy including the pirating of CD's or DVD's, video piracy and cable piracy⁷. Piracy has become more widespread and significant with the growing presence of the internet.

Effects and threat to companies

The manufacturing, trafficking, and selling of counterfeit goods greatly affects companies. Companies can experience a loss in sales or profit margin, overproduction costs, fraudulent product warranty claims, and possible reputation damage due to faulty products and product liability claims.⁸ This means that companies are losing profit to manufacturers that most likely aren't paying taxes or following quality regulations⁹. However, it is important to note that companies don't always act in ethical ways either. Many companies have been known to sell a substandard version of their products for the markets of different regions. For example, sub-standard shoes or electronics may be produced and sold in parts of Asia or Africa. Companies may also sell products of inferior quality in outlet stores.¹⁰

Effect on the government and society

Counterfeiting leads to a significant drop in the amount of government, business and community tax revenue. When consumers purchase counterfeit goods, they most likely aren't paying sales tax and the people selling counterfeit products most likely don't pay corporation tax and income tax. These taxes are commonly used for funding public services such as roads, schools, hospitals, and infrastructure

⁷ <https://economictimes.indiatimes.com/definition/piracy>

⁸ <https://www.ddotdna.eu/how-counterfeiting-can-destroy-your-brand-business/>

⁹ <https://iccwbo.org/media-wall/news-speeches/5-ways-counterfeiting-hurts-society-and-what-we-can-do-about-it/>

¹⁰ <https://www.cbc.ca/news/business/outlet-stores-quality-1.3392279>

(ICC). Thus, counterfeiting can hurt the funding for social services. An increase in counterfeiting also leads to a decrease in jobs. According to the International Chamber of Commerce counterfeiting is projected to put 5.4 million jobs at risk by 2022.¹¹

The role of the internet in counterfeiting

In the era of heightened global connectedness through the internet, counterfeiting and apprehending counterfeiters has become even more complicated. The internet enables counterfeiters to sell their illegitimate products on various internet marketplaces without consumer inspection or safety checks and to reach people all over the world and do so anonymously. Manipulating and editing the product photos are easier than ever with the unlimited possibilities of photoshop and other photo enhancing tools. Due to the nature of the dark web, many counterfeiters choose to sell their products on this platform. The dark web is encrypted and requires special software, configurations or authorization to access it. This makes tracking down sellers extremely difficult for authorities. Using cryptocurrencies as a medium of exchange also helps counterfeiters remain hidden.

Key Member States and NGOs Involved and Their Views

China

China is one of the main member states involved in counterfeiting, with around 80% of all counterfeit goods coming from China.

United Nations Office on Drugs and Crime (UNODC)

The United Nations Office on Drugs and Crime is an office within the United Nations that works on combating illicit drugs and international crime. UNODC can assist member states in various issues such as organized crime and trafficking, corruption and crime prevention¹².

The International Criminal Police Organization (Interpol)

The International Criminal Police (Interpol) is a non-governmental organization that specializes in police co-operation and crime control but has done a large amount of work to prevent the trafficking of counterfeit and illicit goods. Interpol was founded in 1923. Interpol works among three crime programs, which are organized and emerging crime, counter-terrorism and cybercrime, however, they work very broadly and cover many other crimes as well. Interpol seeks to be politically neutral, within its policies

¹¹ <https://iccwbo.org/global-issues-trends/bascap-counterfeiting-piracy/>

¹² <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>

and work.¹³ Interpol has seized approximately 7.2 million counterfeit items, within its five operations and identified 651 suspects (INTERPOL).

World Trade Organization (WTO)

The world trade organization is the world only organization that works in maintaining peaceful trade between nations. It was formed on January 1st, 1995 under the Marrakesh Agreement. The agreement was signed by 123 nations. Their headquarters are in Geneva, Switzerland.

Timeline of Events

The number of resolutions and treaties signed, conferences and overall events relating to the question of measures to eradicate the manufacturing and trafficking of counterfeit goods are limited, compared to other UN issues, however below are a few important events that have had a positive impact on tackling the issue.

Date	Description of event
April 10, 1790	- U.S Congress passes the First Patent Act
	- Paris Convention for the Protection of Industrial Property
July 7, 1884	- United Nations General Assembly Resolution 39/248 is introduced, which later developed into the United Nations Guidelines for Consumer Protection ¹⁴
April 16, 1985	
January 1, 1995	- The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is put into effect
October 1, 2011	- Anti-Counterfeiting Trade Agreement (ACTA) is signed
	- China joins the World Trade Organization ¹⁵
November, 2011	- UNODC launch global anti-counterfeiting crime campaign “Don’t buy into organized crime” ¹⁶
January 14, 2014	

¹³ <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL>

¹⁴ <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

¹⁵ <http://news.bbc.co.uk/2/hi/business/1702241.stm>

¹⁶ <https://www.unodc.org/unodc/en/frontpage/2014/January/counterfeit-dont-buy-into-organized-crime---unodc-launch-es-new-outreach-campaign-on-250-billion-a-year-counterfeit-business.html>

UN Involvement, Relevant Resolutions, Treaties and Events

UN involvement has been limited on the issue of counterfeit goods compared to other current UN issues and resolutions passed on the issue have been limited. However, the UN has multiple draft resolutions on the topic and there have been numerous treaties and events relating to the topic.

- On April 16th 1985, The United Nations General Assembly introduces draft resolution 39/248 to state. The draft resolution was later expanded by the Economic and Social Council in resolution E/1999/INF/2/Add.2 on July 22nd 1999 and revisited again by the General Assembly in resolution 70/186 on 22nd on December 2015.¹⁷
- A multilateral treaty concerning intellectual property rights called the Anti-Counterfeiting Trade Agreement (ACTA) is signed on October 11th 2011. The treaty focuses on combating counterfeit consumer goods, pharmaceuticals and issues involving copyright infringement on the internet.¹⁸
- The International Convention for the Suppression of Counterfeiting Currency is a League of Nations treaty ratified on April 20th 1929 in Geneva, Switzerland. In this treaty states agreed to criminalize the counterfeiting of currencies.¹⁹
- The Council of Europe Convention on the Counterfeiting of Medical Products is an international criminal convention in which the main points are to criminalize the falsification of medicines and medical products, protect victims rights and encourage international cooperation. The convention was signed on October 28, 2011 in Moscow.

Possible Solutions

Ways companies can avoid counterfeiting

There are some ways companies themselves can avoid their products being counterfeited. Companies can get a skilled local lawyer to handle cases involving their counterfeited product. Cases may often be in the local language so this can help the case run smoothly. Since the majority of counterfeit products come from China, companies need to trademark their product there, after which they can officially take legal action against counterfeits, without this, one will have no legal rights over the product making it impossible to stop fakes. Registering the product with Chinese customs is also helpful in preventing the counterfeit products from ever leaving China. Investing in anti-counterfeiting technology may also help prevent companies from being counterfeited. Also updating products often may help

¹⁷ <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

¹⁸ <https://www.eff.org/issues/acta>

¹⁹ https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=556&chapter=30&clang=_en

prevent counterfeiting, since it would be difficult for the counterfeiters to keep up with constant change in the products.²⁰

Global cooperation

Like mentioned previously, since counterfeiting operations involve numerous countries it is crucial for officials, police and other authorities of these countries to work together in tackling the issue. The issue of counterfeiting can be partly tackled locally on a small-scale, however the global connectedness of these operations requires more large-scale cooperative action among police and government officials.

Authentication technology is currently being used to spot fakes. Some examples of these kinds of technologies are watermarks, serial product identifiers, marks only visible under UV-light, paper stock imbedded with microfibers which are very difficult to recreate and guilloches, which are commonly used on bank notes and very hard to recreate.²¹ Some companies, most commonly pharmaceutical companies also use various kinds of user verification, where the consumer can check themselves if a product is authentic.

Local authorities need to be empowered to focus on anti-counterfeiting. Local authorities can help with local anti-counterfeiting operations, learn more about international anti-counterfeiting efforts and monitor local marketplaces for counterfeit goods.

Something that could greatly decrease levels of counterfeiting is strict and follow-through legal action. One of the main motivators for counterfeiting is that it is extremely profitable but very low-risk, compared to for example drug trafficking. If punishments were more strict it may deter people away from counterfeiting. It is also important for companies to take legal action right away if their product is being counterfeited. Resources should be increased as well for anti-counterfeiting operations and legal proceedings, since many countries may be under-funded in this area.

It is also important for consumers to be educated on the matter and this has been done in the past for example with UNODC's global campaign "Don't buy into organized crime". Consumers need to be informed on the presence of dangerous counterfeit goods like cosmetics and medicines, as well as how to spot counterfeit items both online, in stores and in marketplaces and how a decision to buy a counterfeit product could affect their health, small businesses and governments as a whole.

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