

## Chapter 3.

### Improving the evidence base on counterfeiting and piracy

*This study has highlighted some important, data-related issues. These include a lack of compatibility and completeness of existing datasets and need for greater harmonisation of data collection; information gaps concerning consumer behaviour, especially on substitution rates; and difficulties in quantifying certain impacts of counterfeiting, e.g. the effects on consumers' health and safety.*

Even though information on counterfeit and pirated trade has significantly improved in recent years, it still falls far short of what is needed for robust analysis and policy making. Further research on measurement techniques and data collection methods could help to refine the analysis and close the data gaps. The key data-related issues identified in this study refer to:

- Lack of compatibility and completeness of existing datasets, requiring greater harmonisation of data collection
- Information gaps on consumer behaviour, especially on substitution rates, requiring more surveys and experiments
- Difficulties in quantifying certain impacts of counterfeiting, e.g. the effects on consumers' health and safety, requiring more co-ordinated efforts

### **Lack of compatibility and completeness of existing datasets**

The existing datasets and frameworks for data collection could be used more for improving our understanding of many aspects of counterfeiting and piracy. Unfortunately, as the analysis revealed, these datasets and the frameworks for data collection are often inconsistent or incomplete.

As different taxonomies have been used to create individual datasets which means they are often incompatible. Trying to match them can be very laborious or even impossible. For example, on the one hand datasets on counterfeit seizures were created from the trade-related taxonomies (Harmonized System), while data on industrial activity relies on the International Standard Industrial Classification of All Economic Activities (ISIC) categorisation. Matching these datasets could potentially provide a wealth of additional information, for example about the production points of counterfeit products. Unfortunately this matching is often impossible due to incompatibility between ISIC and HS taxonomies.

To address this issue more consistency is needed in data collection and harmonisation processes. For example the Customs Enforcement Network (CEN), a reporting framework developed by customs agencies through the World Customs Organization (WCO), offers one of the most promising ways forward for improving information on infringement of counterfeit and pirated products. The framework establishes the parameters for reporting on seized/intercepted products. The WCO's Harmonized System, for

example, provides a coded nomenclature for over 5 200 items; using this, at the detailed six-digit level would provide much-needed specificity about the products being intercepted/seized.

At the same time numerous datasets turned out to be incomplete. For many years or categories the observations were simply missing. For example, even though the WCO noted that higher emphasis on the importance of CEN leads to a significant increase in the usage of the system, many countries are still inactive in reporting.

### **Information gaps concerning consumer behaviour**

In addition to the further development and harmonization of existing datasets, far more can and should be done to improve understanding of consumer behaviour surrounding their purchase of counterfeit goods. This in particular refers to the estimation of substitution rates, which are critical when analysing the effects of counterfeiting and piracy on rights holders, but difficult to develop using traditional economic and econometric tools.

There are two general ways to assess the substitution rate: surveys and economic experiments. Irrespective of the method chosen, the assumptions underlying approaches should be clear, as should the economic arguments; transparency is key. Outcomes should be evaluated in terms of reasonableness and, wherever possible, be subject to sensitivity analysis to determine how variations in key assumptions affect outcomes.

Surveys are a potentially rich source for developing information on substitution rates. Their strength is that they can be designed to provide information on a very wide range of factors; both quantitative and qualitative, while allowing for numerous controls (e.g. gender, age and/or income). However, they are sensitive to the way questions are constructed and rely on the willingness of respondents to provide accurate responses – this could be a concern as respondents might be reluctant to report fully on unlawful behaviour. Surveys must therefore be well designed and targeted in a manner that provides information on the characteristics that are key to the analysis. A clearly defined and measurable research objective is thus critical. In addition, to enhance their value, surveys should be standardised as much as possible. This would facilitate cross-country and cross-sector analysis. Finally, repeating surveys periodically would provide opportunities for following developments over time.

Apart from surveys, economic experiments can also be used to gauge customers' substitution rates. An economic experiment can be seen as a combination of a classical survey and a laboratory experiment. The experimental part arises from the fact that the "survey" includes some form of incentive schemes designed to reveal the preferences and/or behavioural traits of participants. In relation to counterfeiting and piracy, such mechanisms can be useful for revealing how participants in the experiment value fake vs. genuine goods; the results can be used to help determine what consumers are willing to pay for different counterfeit and pirated items under different circumstances.

The experiments are performed under controlled laboratory conditions in a transparent and context-independent way. During an experiment participants are essentially tested to determine under what conditions they would buy a counterfeit/pirated product. The information developed through such experiments can be used to estimate or predict reactions to changes in demand for a genuine good under different rates of piracy.

### **Difficulties in quantifying certain impacts**

There are several areas of counterfeiting and counterfeit trade for which no clear and commonly agreed methodology exists to gauge impacts. These include environmental harm due to the use of poor quality counterfeit chemicals, and adverse effects of counterfeits on consumers' health and safety.

There are numerous anecdotal reports on the adverse effects that counterfeit products can have on public health and safety or on the environment. The reports, however, have limited scope. A more systematic and extensive approach for developing data in this area is therefore needed. This has already highlighted in an OECD report on the economic impact of counterfeiting and piracy (OECD, 2008). The report presented a potential way of developing information on counterfeit medicine following Liang (2005). Under a "Patient Safety Reporting System", patients, medical practitioners and suppliers would provide inputs. Reporting would thereby not be restricted to professionals and rights holders, but would include consumers. To facilitate reporting, it was recommended that provisions be available for supplying input by email, the Internet (via web-based forms), mail or fax. While the focus of the system was

directed exclusively towards pharmaceuticals, it could be adapted for use more widely.

Another idea advanced by Forzley (2003) would be to build a better platform for general data development by providing a means for registering infringement-inflicted harm to consumers under public health disease classifications of unintentional injury. The first step in this direction would involve the introduction of codes for harm caused by counterfeit articles in the International Classification of Diseases (ICD). This should be followed by improvement of systems used to develop and monitor statistics on health and safety concerning transportation, food, drinks, drugs, and consumer products. These systems should register the infringement-inflicted accidents, injuries and deaths.

Some progress is being made on collecting data on effects in a more systematic fashion, particularly in the pharmaceuticals sector. An International Medical Products Anti-Counterfeiting Taskforce (IMPACT)<sup>1</sup> was recently created by the World Health Organization (WHO), which, among other things, has the goal of developing accessible and reliable information on the nature and extent of the problem. The taskforce has simplified the process and tools for reporting counterfeit medicine, and data collection is now facilitated by the Rapid Alert System (RAS)<sup>2</sup> which is a web-based reporting platform accessible to any interested party.

Despite these sectoral initiatives introduced over ten years ago, the methodological gap is still large. More co-ordinated effort is needed to develop frameworks to gauge these important harmful effects of counterfeiting on health, safety and the environment.

## Notes

1. WHO (World Health Organization) (2017), Substandard, spurious, falsely labelled, falsified and counterfeit (SSFFC) medical products web page, <http://www.who.int/medicines/regulation/ssffc/en> (accessed 11 April 2017).
2. European Commission (2017), Rapid Alert System for dangerous non-food products web page, [http://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/repository/content/pages/rapex/index\\_en.htm](http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm) (accessed 19 June 2017).

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- Liang, B. (2005), "Measuring the Impact of Counterfeit Drugs: Applying the Patient Safety Reporting System Approach", presentation at OECD/WIPO meeting on measurement of counterfeiting and piracy, 17-18 October.



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