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# MONEYVAL

**Committee of experts on the evaluation of anti-money laundering measures  
and the financing of terrorism**

## Typology research

Money laundering and counterfeiting<sup>1</sup>

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<sup>1</sup> Adopted by MONEYVAL at its 27<sup>th</sup> Plenary meeting (7-11 July 2008)

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## 1 INTRODUCTION

1. Counterfeit trade is highly profitable, and is made easier by technological advances including digitisation and miniaturisation of instruments of copying, prompting some to call it “the crime of the 21st century”. It is not possible to estimate how much of this affects Council of Europe member States directly, but the International Chamber of Commerce (ICC)<sup>2</sup> estimates that businesses lose a total of US \$600 billion to counterfeiters each year, including fake products moving across borders as well as those produced and sold domestically and those traded on the internet<sup>3</sup>.
2. The range of counterfeit products extends well beyond designer clothing and consumer goods. Today, everything from bootleg copies of software to improperly produced baby formula, pharmaceuticals and aircraft parts can be counterfeit, and such products are now for sale in virtually every country and affect every major product sector. Particular concern is expressed by the media, politicians and public about physical safety-related counterfeiting, and this is an important part of the consumer detriment generated. The economic harm to legitimate producers is also high, even if one accepts that when estimating that impact, it is analytically mistaken to assume that most purchasers of counterfeits would have bought the legitimate products at full market price. Counterfeiting undoubtedly undermines innovation and economic growth.
3. Criminals need to launder profits from counterfeiting once they pass the subsistence and leisure expenditure levels; but some also reinvest the proceeds of other criminal activities in counterfeiting. This is technically laundering but of course, unless they can find some way of representing their counterfeit activities as legitimate, such criminal reinvestment is not itself a wholly successful laundering device, since the income and wealth are not thereby cleansed from an official viewpoint.
4. In particular, organised crime groups – mostly of a looser networked rather than hierarchical nature, except where the latter are particularly strong - are believed to be heavily involved in the counterfeit products trade<sup>4</sup>. Money deriving from counterfeit goods sales may be invested in industrial technology or plant improving production capacities of such goods or may be used for the purchase of other counterfeit goods for further distribution/sale: such refinancing may avoid the need for laundering unless there are controls on purchasing the technology which require the establishment of a business front. Often those involved in counterfeit products are involved in other forms of criminality, including tax fraud, drug trafficking and violations of labour, health and safety rules as well as immigration rules. There is some indication that some terrorist groups are also involved in counterfeiting and piracy as a means of financing their activities. Finally, the growth of the internet has provided counterfeiters and pirates with a powerful mechanism through which to advertise and sell fake products, though unless they use eBay and PayPal, their businesses may also need to be authorised by merchant acquirers for one of the card schemes – Visa, MasterCard, and American Express - if they are to receive payment at sufficient levels to generate serious money. If they fail to do the latter, their threat to society is lower, even if in aggregate counterfeiters may do a huge trade.
5. Unfortunately, the money-laundering aspect of counterfeiting has received very modest attention to date, being for example barely mentioned in various studies and reports on counterfeiting, and

<sup>2</sup> ICC is a non-profit, private international organisation that works to promote and support global trade and globalisation. It groups member companies from over 130 countries. See <http://www.iccwbo.org>

<sup>3</sup> See [http://www.tax-news.com/archive/story/ICC\\_Urges\\_G8\\_To\\_Take\\_Action\\_Over\\_Counterfeiting\\_xxxx27420.html](http://www.tax-news.com/archive/story/ICC_Urges_G8_To_Take_Action_Over_Counterfeiting_xxxx27420.html)

<sup>4</sup> See, for example, Tim Phillips (2007) Knockoff: the Deadly Trade in Counterfeit Goods, Kogan Page.

having little prominence in strategic analysis of counter-counterfeiting approaches. Nor do the prominent academic, journalistic and law enforcement texts on the subject generate much light on money laundering techniques, beyond the fact that funds are usually repatriated.

6. MONEYVAL has chosen to develop research on this subject because it felt a need to increase understanding on money laundering associated with counterfeiting and to raise awareness of the methods used to launder the proceeds. The project aimed at <sup>5</sup>:

- making an assessment of the characteristics of the counterfeit market in responding countries and identifying and analysing links between the counterfeit products industry and other forms of serious crime (i.e. organised crime, terrorism, corruption, etc);
- examining case examples of laundering of proceeds from counterfeiting and of the involvement of money launderers in the counterfeit products industry as well as the techniques used; and
- identifying, as relevant, any issues for consideration as to anti money laundering (AML) policy and practice in this area.

7. The present report is the result of work carried out by a small project team gathering experts from Cyprus, Belgium, Malta, Poland and Romania. Information was gathered from the replies<sup>6</sup> to the questionnaire (see annex 6.4) and the report contains a number of cases which were provided by participating MONEYVAL and Financial Action Task Force (FATF) members. In addition, the presentations made and the discussions held during the workshop organised in the framework of the 2007 Typology exercise of MONEYVAL (30 -31 October 2007, Becici, Montenegro) usefully complemented the analysis of the responses to the questionnaire. This workshop involved representatives from the following countries:

- |              |              |   |
|--------------|--------------|---|
| • Armenia    | • Hungary    | • Romania                                     |
| • Azerbaijan | • Latvia     | • Russian Federation                          |
| • Bulgaria   | • Lithuania  | • Republic of Serbia                          |
| • Croatia    | • Malta      | • Slovenia                                    |
| • Cyprus     | • Moldova    | • “the former Yugoslav Republic of Macedonia” |
| • Estonia    | • Monaco     | • Ukraine                                     |
| • France     | • Montenegro | • United Kingdom.                             |
| • Georgia    | • Poland     |   |

8. The discussions were facilitated by the project leader (Theodoros Stavrou, Cyprus), assisted by project team members, professor Michael Levi from Cardiff University, and the MONEYVAL Secretariat. The workshop involved experts from financial intelligence units (FIU), customs and law enforcement authorities or judicial officers experienced in money laundering and counterfeiting issues.

9. Gathering relevant data and information on money laundering associated with counterfeiting has proved to be a challenge. This study focuses on the reasonably ‘known knowns’, and points up gaps

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<sup>5</sup> The project also looked at vulnerabilities both at regulatory and operational level, throughout the process of detection, investigation, prosecution, conviction and confiscation which enable counterfeiting and ML to develop and compiled additional findings regarding best practices to combat counterfeiting (see annex 6.3).

<sup>6</sup> Replies were received from 18 MONEYVAL members and 2 FATF members (Armenia, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, France, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, Poland, Romania, Slovenia, “the former Yugoslav Republic of Macedonia”, and Ukraine).

in our knowledge so that intelligence collection processes can be instituted to learn more systematically about the phenomenon in the future.

## 2 OVERVIEW OF THE PHENOMENON OF COUNTERFEITING AND SELECTED ASPECTS

### 2.1.1 *Scale of the phenomenon*

10. There are no reliable figures of the global market in counterfeit and pirated goods, given that this falls outside the mainstream economy. International analysis carried out on World Bank data indicates that international trade in counterfeit and pirated products had been as much as USD 200 billion in 2005<sup>7</sup>. This total does not include domestically produced and consumed counterfeit and pirated products, or the significant volume of pirated digital products being distributed via the Internet. More recent international trade estimates range as high as \$600 billion, or about 7 percent of world trade.
11. As regards European Union countries, Customs statistics from past years show that counterfeiting and piracy continue to be an alarming threat in Europe. Interventions by customs officials at European Union level have significantly increased (an increase of almost 17% of customs seizures in 2007 compared to 2006)<sup>8</sup> and the increases of seizures in most product sectors may reflect a rising problem of counterfeiting as well as greater resources being devoted to dealing with it.

### 2.1.2 *The market for counterfeit products*

12. The market for counterfeit products is usually described as being divided into two important submarkets: the *primary or deceptive market* where consumers purchase such products believing that they have purchased genuine products and the *secondary or non-deceptive market* where consumers knowingly purchase counterfeit products. It is generally believed that the primary market is smaller than the secondary one in volume. The policies and measures to combat counterfeiting in these two markets differ as well as the difficulty of laundering (which is less for apparently legitimate businesses).
13. It is also believed that criminals take into consideration a variety of factors before choosing a specific product to be counterfeit: the profit to risk ratios, the size of the market targeted, its nature and type of products likely to optimise their benefits, the technological and logistical aspects related to the production and distribution of these products, the sanctions potentially incurred, etc.
14. The types of products that are most commonly sold in retail shops are designer clothing, bags and footwear; they include also toys, pharmaceuticals, beverages, tobacco, jewellery and perfumes. In addition, open informal markets tend to be more common in developing economies and are easier for counterfeiters to penetrate, as distribution is more decentralised and less regulated, thus providing lower risk opportunities for trading counterfeit products. Such markets include mobile vendors, bars, clubs and open street markets or tourist areas. The products typically include CDs/DVDs, clothing, and personal accessories.

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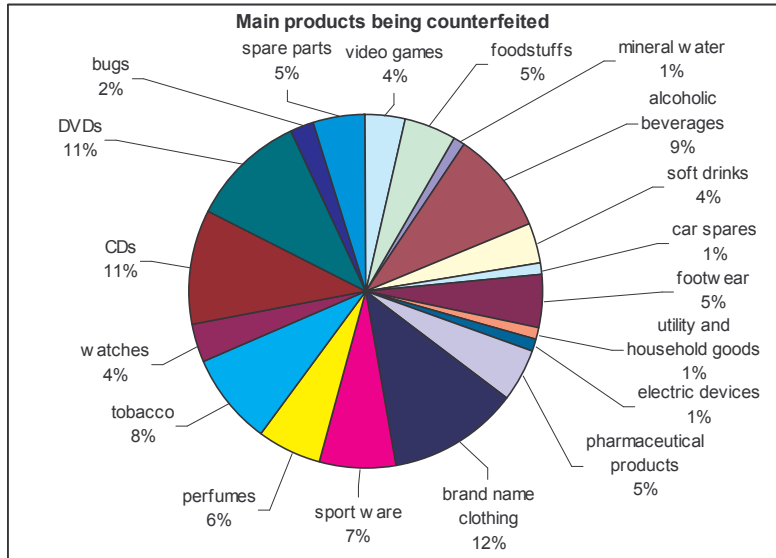
<sup>7</sup> OECD Report, Part II

<sup>8</sup> [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm)

15. Some responses suggested that counterfeit products, which have traditionally been sold largely on open markets, are increasingly finding their way into legitimate distribution systems, and thus onto the shelves of established shops. This might be attractive to businesses with marginal profitability that are in danger of going ‘bust’ anyway; but otherwise, the sale of such products as genuine would be commercially counter-productive unless they were of comparable quality to the official goods<sup>9</sup>.

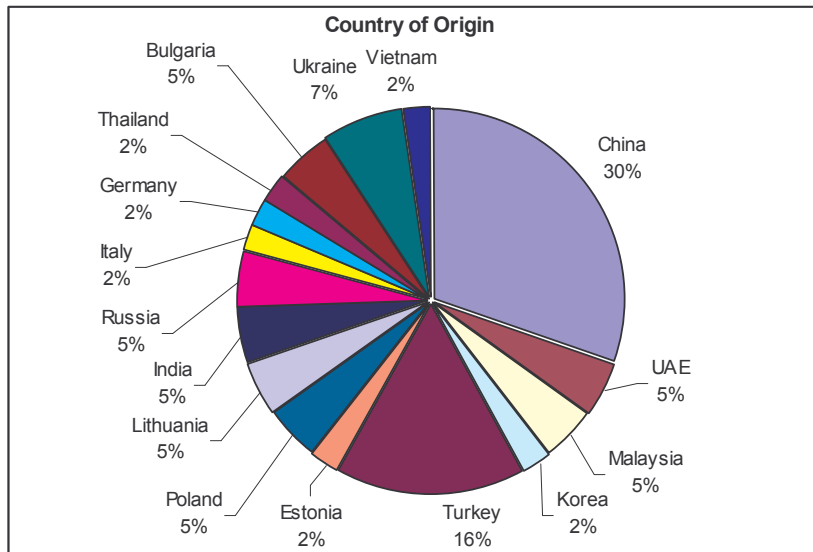
2.1.3 *General overview and characteristics of the phenomenon in responding countries*

16. In many countries, the sale of counterfeit products is commonplace, whilst in a few countries like Liechtenstein and Monaco it is either non-existent or insignificant. Most counterfeit products are mainly produced in other countries, and only the selling of the products takes place within the borders of the respondent countries. There is only one exception: DVDs, CDs and video games.
17. The pie chart below shows the principal types of products being counterfeit according to the responses received. The main products identified as counterfeit and reported in the questionnaires are CDs, DVDs, brand name clothing and alcoholic beverages.



18. As regards the DVDs, CDs and video games - the only counterfeit products which appeared to be produced locally – these do not require any significant productive capacity since they are usually small businesses operated by one or two persons, though there are some larger production places which distribute via migrant salespeople.
19. From the 20 replies received, it appears that the majority of the identified counterfeit products seem to originate from China (30%), Turkey (16%) and Ukraine (7%), with other countries being somewhat bunched behind.

<sup>9</sup> Imagine the annoyance of someone paying full price for a Rolex watch and finding that the shop sold a counterfeit: the firm would soon be out of business.



20. The distribution of counterfeit products takes place mainly mostly in shops and open markets, but DVDs and some other products are sold in the streets by illegal migrants, sometimes operating under threats from local crime bosses which prevent them from quitting the business<sup>10</sup>. Another major channel to distribute counterfeit goods is through seasonal trade fairs and markets, where individual hawkers sell the counterfeit goods to innocent clients.
21. As to the persons involved in counterfeiting activities, it is indicated that primarily these are the citizens of the reporting countries and citizens of neighbour countries. Foreigners often mentioned are the Chinese, Turks and Russians, from the first two of which countries counterfeit products most commonly originate.
22. Three countries reported cases where companies were involved; six countries were unaware of any corporate involvement; eleven countries did not supply any information. According to responses, counterfeit products are mainly produced in third countries and only the sale of the products takes place within the borders of Council of Europe countries.
23. The majority of the countries indicated that the price of counterfeit products is significantly lower than that of the genuine ones. However Denmark and Romania stated that in some cases, counterfeit products are sold as genuine at prices equal to the price of the original products. The demand for other counterfeit products is high, mainly due to the low price: if enforcement drove the price up, there might be less demand, but this might not generate significantly more profits for legitimate producers, if a significant proportion of those who buy counterfeits could not afford to pay for the genuine ones.
24. According to the answers to the questionnaire, various techniques are used to import counterfeit products, such as:
- Importation of goods without trademarks, and imprinting of the trademark after the goods had been imported to Europe
  - Smuggling of the stamp-printing plate
  - Importation of goods with false labels of well-known brands (importation of counterfeit goods)

<sup>10</sup> Hsiao-Hung Pai (2008) Chinese Whispers: The True Story Behind Britain's Hidden Army of Labour.

- Importation of goods with false documentation
  - Use of postal freight and express freight as means of transport from Asia.
25. One country provided a list prepared by Customs officials of factors which could indicate the doubtfulness of the operations or deals:
- Systematic international transfers over the amounts declared
  - Declaration of a higher amount than actually imported or exported
  - Import, export, receiving or sending of false counterfeit money
  - Import from countries with high risk of producing counterfeit goods
  - Imports of goods that are often counterfeit (e.g. golden and silver articles, luxury fashionable clothes, sound and video carriers, etc).
26. The USD and the EURO are the most favoured currencies used for the acquisition of counterfeit products.
27. There were only a limited number of responses regarding the payment methods most commonly used, but from those limited data (and bearing in mind also the limited knowledge of what happens to the proceeds of intellectual property (IP) theft even within respondent countries), it seems that cash payments, electronic payments (Paypal) and bank transfers are equally used, whilst (cash) money transfer services are less preferred. One cannot rule out that the companies producing the counterfeit material may require that payments be made through the regular banking system as a guarantee that the funds paid are genuine, and to be within legal parameters vis-à-vis their tax position. This is possible because in many countries where counterfeit products are produced, there is no copyright or anti piracy legislation, or the controls over such products are lax and inefficient.
28. The bodies which are vested with the authority to investigate such cases are mainly customs, police and the General Prosecution offices. In the case of the United Kingdom, a prominent role is played by local Trading Standards departments, acting both in response to consumer complaints and more proactively. In many European countries, an intelligence-gathering and prosecution-stimulating role is played by private sector bodies such as the Federation against copyright Theft (which collects evidence according to police investigative standards) and by pharmaceutical and other industry bodies.
29. All data about crime are the product of reporting and recording processes, and this is particularly so for crimes that do not have victims in the conventional sense. In the particular case of intellectual property crimes and, *a fortiori*, the laundering of the proceeds thereof, the number of cases investigated differs greatly between Council of Europe countries and it is not sensible to deduce trends from the patterns of recorded cases. However, many countries are concerned about the phenomenon, and rising affluence means that even those countries historically renowned as producers of IP violations have a more ambivalent position when they begin to produce legitimate things of their own that have an IP value.
30. There are almost no funds frozen, seized or confiscated. According to the replies received most countries have never investigated a case of money laundering involving counterfeit products. This comes as a surprise, since the replies indicated quite a number of cases investigated regarding counterfeit products. Since the manufacture and sale of counterfeit products is illegal, the proceeds thus derived are illegal and those dealing in such proceeds (including the 'primary offenders' themselves) are liable to be prosecuted for money laundering and the proceeds confiscated or recovered according to national legislation. If the national reports are accurate, this happens very

seldom (though confiscation proceedings may follow conviction for primary counterfeiting and other offences).

31. The responses did not confirm that proceeds derived from other illegal activities are invested in the manufacture or trade of counterfeit products. It is unknown whether this reflected actual low reinvestment, or the lack of investigative follow-up.

### **3 THE PHENOMENON OF COUNTERFEITING IN RELATION TO MONEY LAUNDERING, ORGANISED CRIME AND FINANCING TERRORISM**

#### **3.1 Counterfeiting and money laundering**

32. According to the European Commission, “the steep rise in EU Customs' seizures shows that counterfeiting is a dangerous and growing phenomenon”. “The reasons for the explosion of counterfeit products stem essentially from the high profits and comparatively low risks involved, particularly when it comes to penalties in some countries, and from a general global growth in industrialised capacity to produce high quality items. Fake DVDs are a good example: profits are higher than for an equivalent weight in soft drugs whilst the penalties if detected are much lower”<sup>11</sup>.
33. It is now possible to mass produce counterfeit goods, and either to specialise in this or merge them with other legitimate stock, making accounting for profits easier in the eyes of bankers. If the offenders wish to generate greater legitimacy by paying tax (thus laundering the funds in the popular fuller but less frequent sense), the tax authorities will probably neither notice nor complain. Thus if a counterfeiter manages to introduce one consignment in 10 of his containers of fake cigarettes, he will still make a successful return on his investment. Counterfeiting on this scale provides criminals with a useful means of income and laundering their criminal proceeds via reinvestment (the second, more legalistic definition of laundering) or fuller legitimisation. Moreover, though there is no clear evidence on how often this happens, consignments may contain not only counterfeit products but also other illegal goods.
34. It is extremely difficult to determine exactly the selling price of counterfeit goods, due to the variety of their nature, their quality, and the markets for which they are destined. But usually, the price of the counterfeit products is significantly lower than the market value of the original product. It is also difficult to clearly identify and assess the consumption of counterfeit goods, which are, by definition, prohibited and whose trade belongs to the underground economy. But because of their moderate prices and generally acceptable quality, counterfeit products are generally in high demand among consumers. So the total turnover, the total profit (net of business expenses, corruption, etc), and the distribution of that profit are all unknown, nor is the savings ratio of offenders known, making the total value of intellectual property (IP) crime laundering very imprecise.
35. Counterfeiting seems to be a profitable investment yielding its profits from dirty money originating from illegal trafficking and from other sources. Well-organised networks produce, import and sell counterfeit goods. Sometimes they are part of larger entities for which counterfeiting is a low risk source of revenue, accompanying other international criminal activities such as prostitution or different kinds of illegal trafficking (arms, narcotics, etc). Criminal organisations need to launder

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<sup>11</sup> Communication from the Commission to the Council, the European Parliament and the European economic and social committee on a Customs response to latest trends in Counterfeiting and Piracy, COM(2005) 479 final.

money from counterfeiting, but they also use counterfeit products as means to re-invest the proceeds of other criminal activities. For instance, a large part of cigarette smuggling is done by the Sicilian mafia, which is well organised and uses countries such as Belgium to transit Chinese counterfeit cigarettes to the United Kingdom<sup>12</sup>.

36. As in any other criminal activity from which illegal proceeds could be derived, counterfeiting is identified in all three stages of the money laundering procedure i.e. the placement, layering and integration stages.
- *Placement Stage:* is the physical disposal of the initial proceeds derived from the trading of counterfeit products into the financial system. This physical disposal could apply by depositing small funds in multiple accounts or by using many people to deposit small amounts (smurfing), funds may be sent to foreign jurisdictions via money service providers: the most common local practice may be to mix legitimate proceeds with illegal proceeds. The problems of Know Your Customer implementation and the non-traceability of cash payments are the key areas of money laundering/terrorist finance in this stage.
  - *Layering Stage:* is the separation of illicit proceeds from the counterfeit trading, by creating complex layers of financial transactions in order to disguise the audit trail. In this case, multiple wire transfers could be done in different bank accounts. Usually, offshore centres are also used. Criminals may also launder illegal funds by using a combination of transactions in different financial sectors i.e. the banking sector, the security sector or the real estate sector in order to confuse the authorities about their true financial profile. Funds can be used to repay loans, buy shares or invest in real estate. The key vulnerabilities arise from the difficulties of following and connecting up international transactions, especially where one jurisdiction along the pathway may be uncooperative.
  - *Integration Stage:* in this stage laundered proceeds from counterfeit industry are re-entered back into the economy in order to be used for legitimate further investments. A part of these proceeds are reinvested in the counterfeit industry in order to assist the expansion and the existence of the operations. The main vulnerabilities here are the difficulties of showing the connection with the predicate offence, especially where there has been no live financial investigation which tracks the continuity of the laundering process in ways that courts would find to be an acceptable standard of proof (which varies between the member States).
37. There appears to be nothing inherent in intellectual property crimes that make the laundering of proceeds from counterfeiting different from laundering the proceeds of other offences in those jurisdictions where profits are earned. Unlike prohibited drugs, they can look like legitimate products, making the identification of transactions related to their sale or movement as ‘suspicious’ harder for those who follow Know Your Customer rules. They can also simulate the ‘transfer pricing’ adopted by many ordinary businesses. Street traders and others in the largely cash business who wish to deposit funds in financial institutions can claim that these are ordinary business profits; those who do not can either store the funds in cash (risking their loss to other criminals if not protected enough) or convert them into other commodities (like diamonds, gold, etc. or other low-volume, high value products) just as other criminals do.

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<sup>12</sup> Belgian Senate, Question no. 3-3675 by Mr. Vandenberghe of 9 November 2005.

### 3.2 Reasons why money laundering in relation to counterfeiting succeeds

38. Money laundering has two meanings, which it is important to distinguish. The first popular sense refers to the cleansing of the proceeds of crime so that they look legitimate if scrutinised: this is the end point of the classic three stage process of placement, layering and integration (though not all laundering goes through these stages). The second, more technical legal, sense relates to any concealment or use of crime proceeds, whether or not the funds are thereby legitimised. Laundering in the first sense is much rarer than the second.
39. There are various reasons why money laundering in relation to counterfeiting succeeds. One of them is that it takes place across borders and it is therefore difficult to establish with precision in the country of purchase the end destination of the financial flow. The financing of counterfeit trade is also usually of an indirect nature, whereby money launderers pay the manufacturers of the counterfeit goods via third parties. In many cases, the funding is further attenuated by unrecorded movements of cash.
40. All of these are made easier by the relatively low attention in law-making, investigation and mutual legal assistance given to IP violations, other than by the victim corporations who wish to protect their profits and their reputations. Counterfeiting is an attractive crime for offenders generally, including for the reinvestment of the proceeds of crime (which is itself laundering). Many forms of IP can be produced with minimal start up costs, making IP crime accessible to larger numbers of people. It can also be sold in semi-legitimate contexts, making it less dangerous than drugs (though counterfeiters, like all other criminals, can be victims of extortion by other offenders).
41. The task of this review is made harder by the fact that those who do enforce laws – and even many private sector bodies – see their primary task as being to eradicate counterfeit production and seize counterfeit goods rather than to observe and follow the money trails. Therefore there are substantial gaps in our knowledge of what happens to the proceeds of counterfeiting.

### 3.3 Links to other crime and scenarios

42. Countries were asked to provide information on any identified links with other crimes, for example, money from other serious organised crime, including drug trafficking, invested in counterfeiting or perhaps proceeds from counterfeiting being used to finance other illegal activities.
43. The majority of the countries considered that illegal immigration and counterfeiting are not connected. However, there is some evidence that Chinese illegal migrants are involved in selling DVDs and other counterfeit products<sup>13</sup> and, given their very low pay, most of the profits arise for their gang bosses.
44. The comparison of the two maps in annex 6.1 highlighted similarities between trafficking routes of counterfeiters and of drug traffickers. The producer and consumer countries, the routes and the delivery patterns are to a great extent the same. The transshipment areas are also used in the same way.

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<sup>13</sup> Hsiao-Hung Pai, 2008, *Chinese Whispers: the True Story Behind Britain's Hidden Army of Labour*, Penguin.

45. According to the replies, there was no indication that counterfeit products are used to finance other illegal activities such as drug trafficking, arms or financing of terrorism.
46. One country believed that there is a connection between investment in counterfeit products and terrorism, where another country believed that investments in counterfeit products are linked to tax and duty fraud. Other than that, no other country has reported having identified a terrorism/IP connection. Variations might be expected in any event and to that extent, it seems questionable to discuss links with terrorism financing as a generic term.
47. However there was reported evidence from cases of the use of bribery and corruption, either of government officials to facilitate and reduce risks in the counterfeiting business or of accountants and bank officials as part of the laundering process of proceeds from counterfeiting.
48. Five scenarios have been identified which show how counterfeiting in relation to money laundering, organised crime and financing terrorism could be linked:

Organised crime groups involvement

**Scenario 1:** Funds derived from organised crime activities i.e. drug trafficking, prostitution, arms trafficking etc. are invested and “laundered” through the counterfeit industry. These funds are inserted into the market and appear to be legitimate. This scenario is extremely useful for organised crime group organisations since they insert proceeds from highly monitored offences into less monitored, and hence take advantage of the low risk and the high profits of the counterfeit industry.



**Scenario 2:** This is the vice-versa scenario, where money coming from the trading of counterfeit goods is used from organised crime groups in order to facilitate their actions. Most probably, in this case, the end sellers and the buyers of counterfeit products do not know the true destination of the profits raised from this kind of trading.



**Scenario 3:** Under this scenario, rather than simply being re-investment in crime, funds derived from organised crime activities are “laundered” through the counterfeit industry in order to hide their sources and make it harder to follow the money. Funds are then forwarded to terrorist cells in order to facilitate their actions. This scenario can take place only when organised crime group members and terrorist cells members are the same or at least cooperate with each other in order to facilitate the above flow of funds. This scenario suggests a direct relationship between organised crime and terrorism.

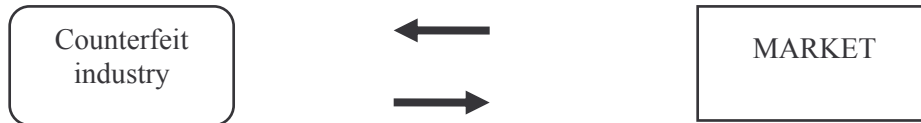


Funding terrorism

**Scenario 4:** In this scenario the funds coming from the sale of counterfeit products are then forwarded to terrorist cells. This is the scenario where terrorists are directly involved in the counterfeit industry. They co-ordinate the production, importation and trading of counterfeit goods (though the terrorists may simply be the recipients of donations – given freely or under pressure - from sympathisers involved in that business). The final buyer is not aware that he is directly financing the terrorist activities of a certain group.



**Scenario 5:** This is the simplest scenario where the funds coming from the selling of counterfeit products are then reinvested in the counterfeit industry. This scenario applies in all other four scenarios described above, since in every case, a portion of the profits should remain in the counterfeit industry to keep the business going or for expansion.



## 4 TECHNIQUES AND SELECTED CASES

### 4.1 Techniques used to launder money derived from counterfeit trading

49. There is little known difference in the ways that criminals and terrorists use the financial system and other systems to launder money derived from counterfeiting compared to other crimes like prostitution, drugs and arms trafficking. Though our knowledge is too imperfect to be confident about how common each method is, these range between the following:

- use of cash
- use of bank accounts (transit accounts)
- use of corporate vehicles
- use of non-banking instruments.

50. Also, one has to point out that these cases often have an international dimension. In addition to cash transactions, international transfers as well as front companies are frequently used. These transfers are often payments made to companies established abroad for counterfeit goods, in many cases originating from Asia.

#### 4.1.1 *Use of cash*

51. The use of cash appears to be a common technique. The origin of the money can be concealed through cash deposits and cash withdrawals can block the traceability of illegal money, thus complicating subsequent investigations.

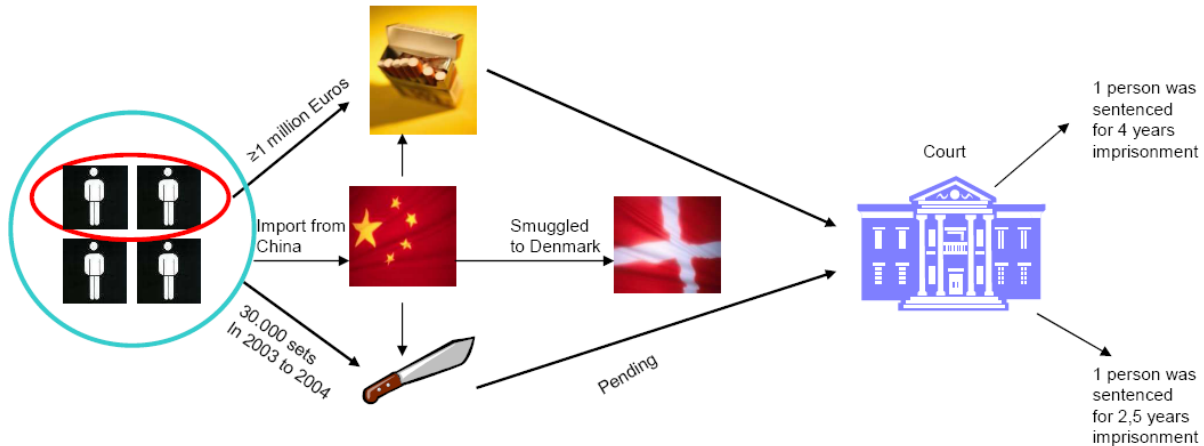
#### 4.1.2 *Use of bank accounts*

52. Whether or not there are specialist money launderers to whom any given counterfeit entrepreneur has access, bank accounts are used to transfer larger sums. These accounts are usually opened in the name of commercial companies, or to a lesser extent of natural persons, and are used for national or international money laundering transactions. Note here that although the sums below may calculate the value of the products on the basis that they are genuine, these will not be the amounts actually earned (gross of production and distribution costs) still less the profits from crime, since in counterfeiting like this, the goods are not sold as genuine at full market price.

**Case study 1: Counterfeit knives and cigarettes imported from China**

Facts:

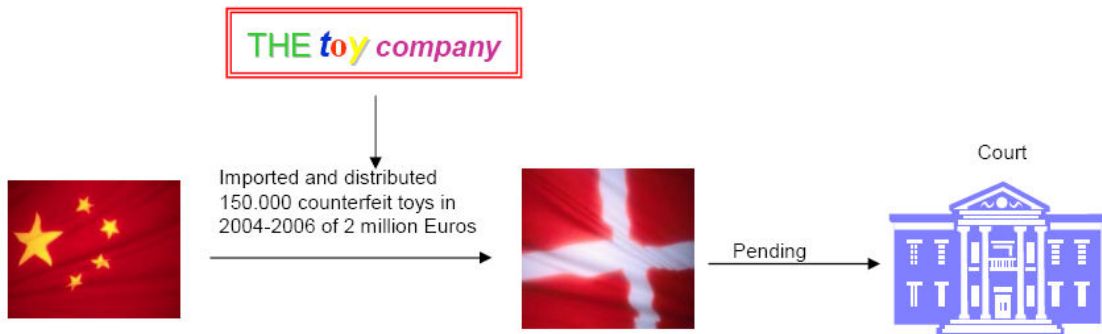
- Four persons imported and distributed counterfeit and pirated ‘Global’ brand kitchen knives from China via two legitimate Danish companies.
- They imported more than 30,000 thousand sets of knives in 2003 and 2004, whose value, if genuine, would have been several million Euros.
- Two of the four persons had also imported counterfeit cigarettes to a value of more than 1 million Euros.



Comments: All transactions went through legitimate channels and the persons charged were probably not involved in other major organised crime. The cases were split in two. The case with counterfeit cigarettes has been through the courts of first instance: one person was sentenced 4 years imprisonment and another 2½ years imprisonment for non-payment of import-duty. This case is under appeal. The knife-case has not come before the courts yet. The persons charged face up to 4 years imprisonment.

Source: Denmark

**Case study 2: counterfeit toys ordered online from a company in China**



Facts:

- The owner and manager of a legitimate import and sales toy company imported and distributed counterfeit and pirated toys from China.
- The toys were ordered online from the catalogue of products.
- From January 2004 to May 2006, the company imported around 150,000 toys. The value of

original products was around 2 million Euros.

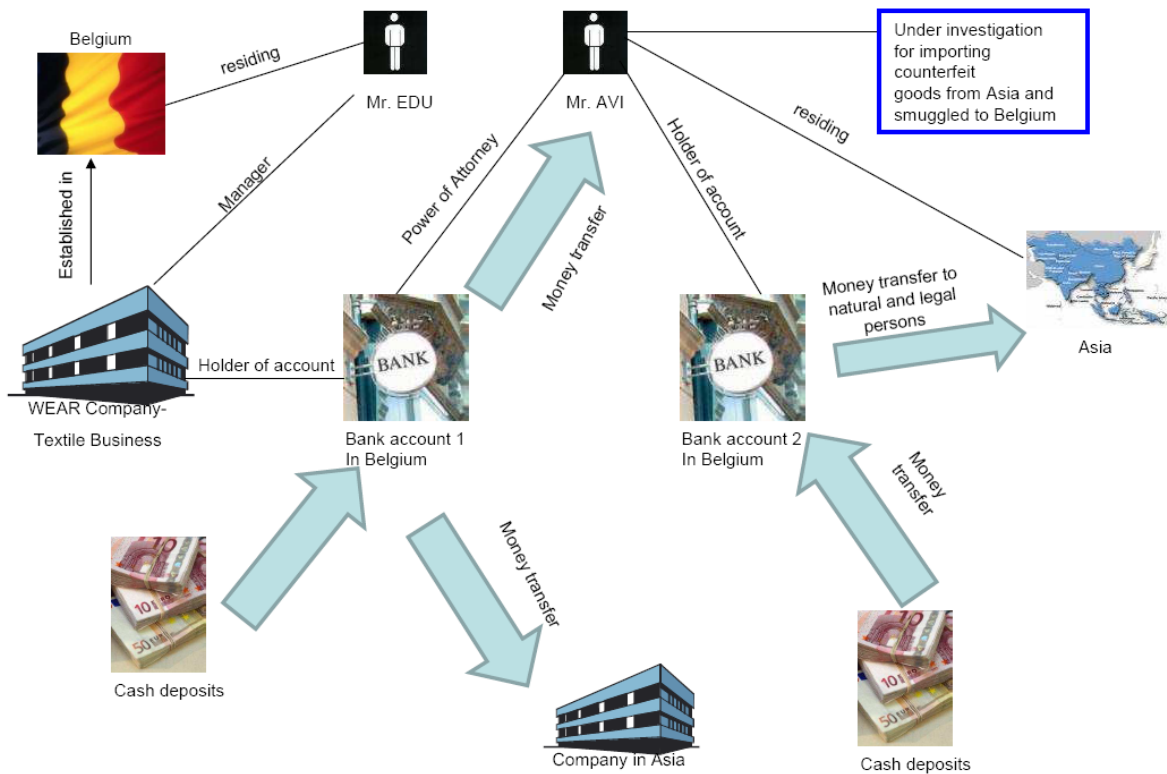
Comments: All transactions went through legitimate channels and the person charged was not involved in other organised crime.

*Source: Denmark*

53. The analysis of the bank files indicated that money launderers use transit accounts, in which cases the money never remains in the account very long. These accounts are credited by cash deposits, cheques or wire transfers. The debit transactions correspond to cash withdrawals, issuing of cheques or wire transfers. There is no legitimate economic justification for the money to be channelled through this type of account. The analysis of the accounts often shows that they were opened solely for this kind of transaction. Such a series of transactions is aimed at concealing the links between the money and its criminal origin.

**Case study 3**

**Counterfeit textile and transactions performed through a transit account**



Facts:

- WEAR, a wholesale textiles business company established in Belgium holds an account that was recently opened there.
- Mr. EDU residing in Belgium is the manager of this company. Mr. AVI residing in country T in Asia Minor, holds power of attorney on the account, despite the fact that he does not hold any officially known position in this company.
- Within a couple of months, several cash deposits were made into the account. A large part of the funds was transferred to a company in country T or to Mr. AVI personally.
- Mr. AVI also holds an account with the same bank as the textiles business company. During this

same period, several cash deposits were also made on his personal account followed by transfers in favour of natural persons and legal entities in country T.

- Mr. AVI is the subject of an investigation into counterfeit goods from country T. Counterfeit designer clothing was seized in a truck from country T as part of this investigation.

Comments: Making large cash deposits is a technique that is often used when laundering money to conceal the real origin of the funds and to mingle funds of illicit origin with funds of legal origin from the company's official activities. The fact that the account was recently opened in name of the company, into which only cash was deposited followed by international transfers out of the account, suggests that Mr. AVI uses the company's account as a channel for his financial transactions. The fact that Mr. AVI holds power of attorney on the company account might indicate that he is the beneficial owner or at least a trusted intermediary for the beneficial owner.

All of these elements indicate that Mr. AVI imports counterfeit goods from country T and uses the company to sell counterfeit goods and launder the profits from this sale.

*Source: Belgium*

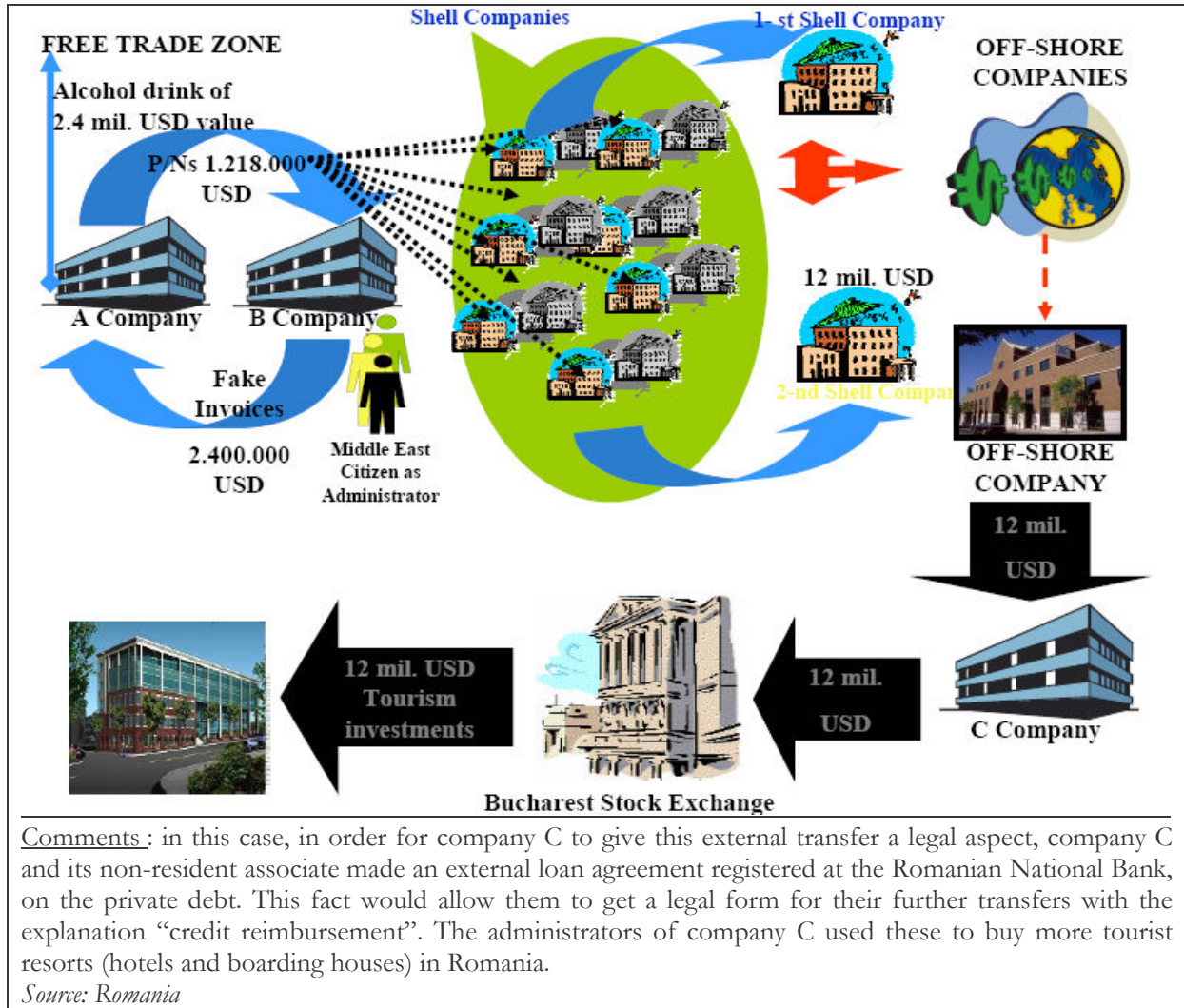
#### 4.1.3 *Use of corporate vehicles*

54. Case analysis revealed that corporate structures are set up as a cover to mix money originating from counterfeiting with money from legal trade activity. The financial system is used for legal and illegal business transactions as well as for laundering the proceeds of the illicit activities. The proceeds of these activities are then injected into the financial system to perform new business transactions.
55. Corporate vehicles are misused largely because they can offer the prospect of hiding ownership, purpose, funding, activities etc. The misuse of corporate vehicles mostly refers to the use of offshore companies and shell companies.
56. Companies set up and established in offshore centres are often used in money laundering transactions. Moreover, an individual money laundering scheme will often include more than one of these offshore centres.
57. A shell company is a legal entity having no assets or operations in the location where it is registered. Shell companies can be set up in onshore as well as offshore locations and their ownership structures can take several forms. Shares can be issued to a natural or legal person in registered or in bearer form. Some companies can be created for a single purpose or to hold a single asset. Others can be established as multipurpose entities.
58. The potential for anonymity is a critical factor in using shell companies. This use can serve to cloak the identity of the natural persons who actually own the legal entities. In particular, the practices of permitting corporate shareholders, nominee shareholders and bearer shares present a special challenge to determining beneficial ownership of shell companies.
59. The case below is a classic example where counterfeiting is combined with tax evasion, and the laundering is part of the processes of both. Note that there is nothing exclusive in this example to the counterfeiting trade: the technique could just as easily have been used for any other laundering predicate.

#### Case study 4: counterfeit of alcoholic drinks – use of shell companies, offshore centres – real estate investments

##### Facts:

- A and B are two companies whose activity is developed in the domain of production and sale of alcoholic drinks. The associates and the administrators of A and B companies are Romanian citizens. Company B's associates designated as administrator a non-resident citizen from a Middle East country for 39 days. Data from Police indicated that this foreigner was acting in Romania under 3 false identities, and that he was a member of a criminal network.
- The Romanian FIU received information from the Border Police that company A exported to a free zone an important quantity of alcoholic drinks to be packed and labelled. The control noticed that the export documents mentioned that the merchandise was "alcohol", but in reality the product was packed and labelled in bottles specific to "Ballantyne's Scotch Whisky". The representatives of the company A declared that the product was meant to be sold on the Romanian market.
- The tax police when controlling the headquarters of Company B found that the invoices issued by Company B to Company A were registered as being stolen and that the means of transport registered in the invoices were not proper for the transport of alcohol.
- It appeared that such "commercial operations" had been made by the two companies many times before and that after some deliveries, B company issued for A company a number of invoices (value 2.4 million USD), and A company paid partially the debt to B company by issuing Promissory Notes (P/N) (value: 1.218.000 USD). The loss to the state budget made by A company by not paying taxes was calculated at more than 8.300.000 lei (2.6 million USD), including the penalties.
- The request made by the Romanian FIU on the movements on the accounts and the documents they were based on revealed that the P/N were filled and endorsed at the same time (namely, at the issuing moment – in the primary market) and they were not completed respecting the specific columns, making them null and void according to the applicable legislation. This indicated that either the beneficiary was not interested in payment or he had already known that these titles were issued with an aim different to that declared (i.e. as "cover documents").
- The endorsement given by B company was made in favour of several companies which proved to be shell companies, and their associates and administrators were non-resident citizens.
- These shell companies together with other companies sent the money (9.656.000 USD and 2.344.000 USD) in favour of 2 other companies that also proved to be shell companies. The latter exchanged the sums from Romanian lei into USD and, based on false commercial and customs documents presented to the banks where they had opened accounts, transferred 12 million USD into an offshore jurisdiction.
- A few months after these transactions, C company (a Romanian company) became the beneficiary of an external loan for 12 million USD, the transfer being made by a bank situated in another offshore jurisdiction. The majority associates of that company is a foreign company registered in the second offshore jurisdiction (from where the money came), and the administrators of the company are the same Romanian citizens involved in A and B companies, shown above.



4.1.4 Use of non-banking instruments

- 60. Bureaux de change can be used to break the visible chain: they may also be needed to convert the proceeds to a currency of choice. In several Chinese counterfeiting operations, large sums were transferred back to China via money service businesses, both to pay debts to people trafficking ‘snakeheads’ and to fund substantial property development for families.

## 4.2 Terrorist financing techniques involving counterfeit products

### Counterfeit Products, Organised Crime and Terrorism

61. Various reports highlighted the existence of links between counterfeiting and piracy with terrorist financing, indicating that IP crime was becoming a preferred method of financing for a number of terrorist groups. This relationship was defined as taking two forms<sup>14</sup>:
- **Direct involvement**, where the terrorist group is implicated in the production or sale of counterfeit goods, and remits a significant portion of those funds for the activities of the group. Terrorist organisations with direct involvement include groups which resemble or behave like organised crime groups.
  - **Indirect involvement**, where sympathisers involved in IP crime provide financial support to terrorist groups via third parties
62. It has to be pointed out in the context of this study that the information gathered did not bring any evidence that it is either necessary or sufficient for terrorist finance, and few links outside Northern Ireland at the time of the IRA have been found in the UK to date. The cases in Europe to date do not permit any reasoned estimate of scale of terrorist financing linked counterfeiting.

### Conventional Crime versus Terrorism

63. There are some distinctions to be made with respect to money laundering and AML measures between conventional criminal activities and terrorism. The following comparisons are generalisations but are illustrative.

<b>Conventional Crimes Vs</b>	<b>Terrorism</b>
<ul style="list-style-type: none"> <li>• Dirty money to clean.</li> <li>• Deals in large sums</li> <li>• Money recycles from a criminal act back to the criminal owner, minus social and business expenses.</li> <li>• Sometimes complex laundering process.</li> <li>• Tracing is to find the money</li> <li>• Tracking is to find the criminal</li> </ul>	<ul style="list-style-type: none"> <li>• Clean and/or dirty money to fund illegal acts.</li> <li>• Often deals in small sums.</li> <li>• Money goes one-way, i.e. is withdrawn and spent.</li> <li>• Simple transfers are usually involved.</li> <li>• Tracing is to find those who furnish the money.</li> <li>• Tracking is often useless as money is withdrawn and used quickly, though sometimes financial investigation generates leads to collaborators.</li> </ul>

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<sup>14</sup> Interpol Report, 2003

#### 4.2.1 Use of the proceeds from counterfeiting to finance terrorist activities

64. As mentioned previously, there are a number of cases concerning terrorist financing through counterfeit products which were discovered by international police forces, financial intelligence units and customs services. Different terrorist organisations have been caught using the resale of counterfeit products to generate funds for their activities.
65. According to the Secretary General of Interpol, *“Police experience in Northern Ireland over a long period of time has shattered the myth that there is a clear demarcation between ideologically driven terrorism and the greed and commercialism behind organised crime. Instead the relationship between the two is symbiotic with both organised crime and terrorism feeding off each other. This extended not only to the sharing of vehicles and premises but also forgery, money laundering, development of anti-surveillance techniques and sharing of international contacts. In short the activities of terrorists and organized criminals are inextricably linked”*. IP crime was also described as a displacement activity for terrorists whilst on cease-fire enabling them to keep their skills, funding and contacts intact until a resumption of active service<sup>15</sup>.
66. The following cases provide examples of how the proceeds of counterfeit products are used for financing terrorist activities.

#### **Case study 5 : Terrorist financing and counterfeit cigarette trafficking**

In Northern Ireland the counterfeit products market is estimated to cost the economy in excess of US \$167 million. In 2002, the police seized in excess of US \$ 11 million in counterfeit products, which clearly was only a modest proportion of the total or the trade would not be profitable. It is known that paramilitary groups are involved in IP crimes, including counterfeit cigarette trafficking. It is unknown how much of the money generated by these counterfeiting operations goes to terrorist groups and how much is retained as criminal profit. After the peace, the sale of counterfeit goods continued by some of the same networks, though the funds no longer went to terrorist activities but rather to private profit. There are no reliable estimates of changes in the scale of the activities.

*Sources: Interpol<sup>16</sup> and Independent Monitoring Commission<sup>17</sup>*

#### **Case study 6 : Terrorist financing and various counterfeit consumer goods**

In Kosovo, a significant proportion of consumer goods, (CDs, DVDs, clothes, shoes, cigarettes and computer software) available for sale, are counterfeit. The sale of counterfeit goods occurs openly and there is limited enforcement against counterfeit products due to significant legal loopholes. Also there is a long-standing relationship between criminal organizations and local ethnic-Albanian extremist groups. This relationship is based on family or social ties. It is suspected that funds generated from IP crimes benefit both criminal organisations and extremist groups, insofar as the two are separable.

*Source: Interpol<sup>18</sup>*

<sup>15</sup> Counterfeiting Intelligence Bureau (<http://www.icc-ccs.co.uk/bascap/article.php?articleid=262>)

<sup>16</sup> <http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp#6>

<sup>17</sup> 17th Report, [http://www.independentmonitoringcommission.org/documents/uploads/17th\\_IMC.pdf](http://www.independentmonitoringcommission.org/documents/uploads/17th_IMC.pdf)

<sup>18</sup> <http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp#6>

67. Whilst it is not possible to estimate the level of funds derived by terrorists from IP crimes, Interpol indicates that it is clear that certain groups, including paramilitary terrorists in Northern Ireland and Hezbollah in the Lebanon, have most definitely benefited financially from these crimes. There seems little reason to suppose that this has stopped or will stop<sup>19</sup>, though in the Irish case, personnel appear to have switched from terrorist to ‘normal’ organised crime networks<sup>20</sup>. In both illustrations above, the paramilitary groups have a highly visible presence and large numbers of personnel to fund routinely: much of the proceeds may be spent as ‘salaries’ for the illicit army without having to be laundered or even ‘placed’ first. This does not make it any the less ‘terrorist financing’ but makes irrelevant AML controls other than those on transfers to the producers of counterfeits and to savings.

4.2.2 Use of cash

68. As for money laundering, the use of cash can allow concealment of the origin of the money and can block the traceability of illegal money, thus complicating subsequent investigations.

**Case study 7 : Terrorist financing – cash based transactions**

Interpol possesses information that indicates the following in relation to IP crimes and terrorist financing in Europe to radical fundamentalist networks. Sympathisers and militants of these groups may engage in a range of criminal activity including IP crimes. Sympathisers will indirectly pass a portion of the funds generated from their illicit activity to radical fundamentalist networks. The sympathiser passes money in the form of charitable giving or zakat (charitable giving based on a religious obligation in Islam) via Mosques, Imams or non-profit organisations that are sympathetic to radical fundamentalist causes. This money is eventually moved to the radical fundamentalist terrorist group. The transactions are predominantly cash-based smuggling or via underground banking, leaving no paper trail or way of verifying the origin or final destination of the funds.



Source: Interpol<sup>21</sup>

4.2.3 Use of bank accounts

69. The analysis unsurprisingly indicates that bank accounts are used to transfer sums without much complex layering. The analysis of the files regarding banking transactions indicates the use of transit accounts, in which cases the money never remains on the account very long.

<sup>19</sup> Counterfeiting Intelligence Bureau (<http://www.icccc.co.uk/bascap/article.php?articleid=262>)

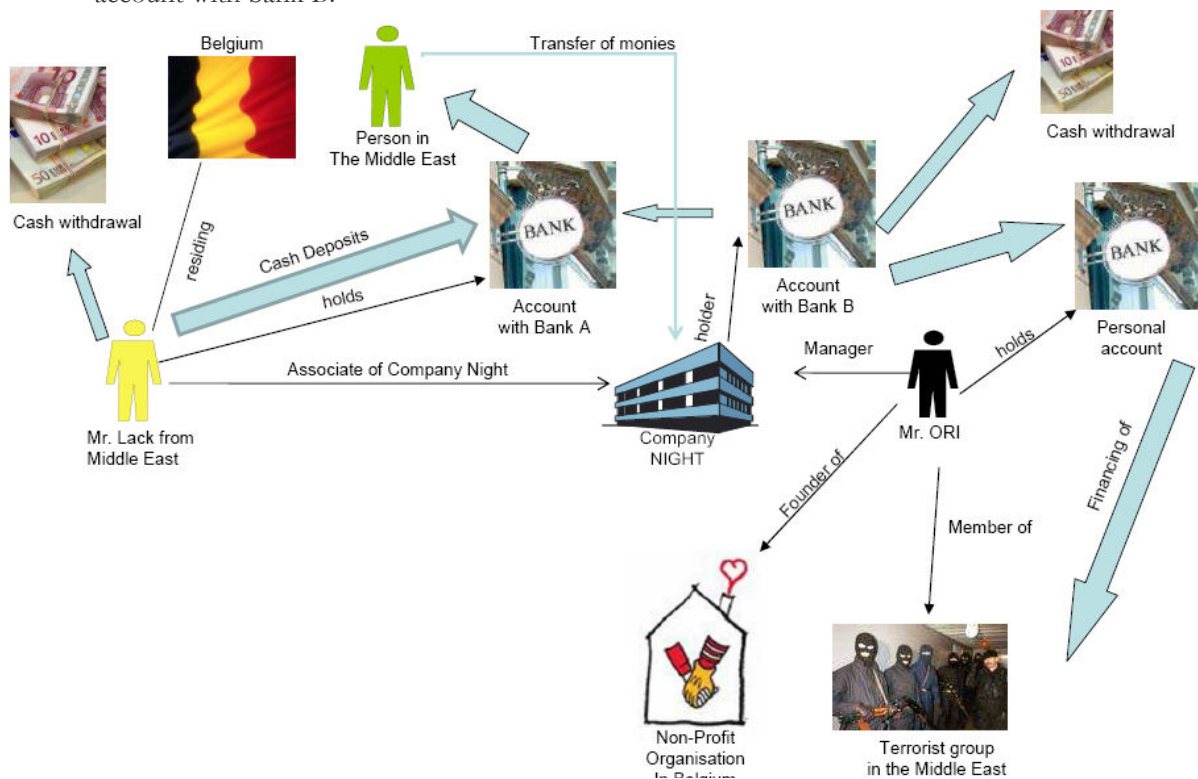
<sup>20</sup> 17<sup>th</sup> Report, [http://www.independentmonitoringcommission.org/documents/uploads/17th\\_IMC.pdf](http://www.independentmonitoringcommission.org/documents/uploads/17th_IMC.pdf) and previous biannual reports.

<sup>21</sup> Interpol (<http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp#6>)

**Case study 8 : terrorist financing transactions performed through a transit account opened in the name of a night shop**

Facts:

- Mr. LACK, a person from the Middle East residing in Belgium, deposited cash on his account with bank A and transferred it to a person in the Middle East. The vague explanation referring to helping his family did not allow determining the origin of the money and had attracted the bank's attention. Based on these suspicions, the bank disclosed to the Belgian FIU.
- The Unit was able to link bank A's disclosure with bank B's disclosure because of a request from the judicial authorities. This disclosure regarded the company NIGHT, active as a night shop. The balance of the account was withdrawn in cash or transferred to the manager's personal account, Mr. ORI.
- The Unit's analysis of the night shop's account showed that several transfers were debited to Mr. LACK with bank B. He was one of the associates of the company NIGHT. The money was subsequently withdrawn in cash by Mr. LACK. Furthermore it became clear that Mr. ORI was an active member of a terrorist organisation active in the Middle East. He was also the founder of a non profit organisation in Belgium for which he raised funds. Based on these elements it could be deduced that the money that Mr. LACK deposited in cash with bank A and then sent to the Middle East could correspond to the money that was originally debited from the night shop's account with bank B.



Comments : Given that Mr. LACK and Mr. ORI were linked to each other through the night shop, the money that Mr. LACK transferred to the Middle East was possibly used to finance activities of the terrorist organisation of which Mr. ORI was an active member. Mr. LACK's transfers were apparently intended to conceal the transactions because he was not directly related to this organisation. Police sources revealed that the night shop was known to it because of IP counterfeiting. The money from the night shop could partially originate from these, and the shop could be used for co-mingling them with funds of legal origin from the official activities of the night shop. This money could be partially or entirely used for financing terrorist activities of the organisation of which Mr. ORI was an active member. (Source: Belgium)

4.2.4 Use of international transfers and money remittances

70. In the context of terrorist financing, international transfers or money remittance through banks or exchange offices are frequent<sup>22</sup>, and this also applies where the sources of transferred funds are counterfeit products.

**Case 9 : Terrorist financing – counterfeit CDs – money remittance transfer**

Interpol is aware of a case in 2000 in Russia, where Chechen organised crime groups and terrorist organisations were benefiting from counterfeit good manufacturing and trafficking. Specifically, in 2000, a joint operation between Russian law-enforcement agencies and private industry resulted in the break-up of a CD manufacturing plant. According to the police officials involved, this counterfeit CD plant was a source of financing for Chechen separatists. The CD plant was run by Chechen organised crime which then remitted funds to Chechen rebels. The FSB (Russian Federal Security Service) estimated that the average monthly earnings of the criminal organisation are estimated to have been US \$ 500,000 - 700,000. A number of explosives and arms were also confiscated by the police during raids on the residences of the suspects.



Counterfeit CD  
Manufacturing Plant

Funding



A group of Chechen separatists pose with their weapons

A group of Chechen  
Separatists

Source: Interpol<sup>23</sup>

<sup>22</sup> FATF, Report on money laundering and terrorist financing typologies, 2003-2004, page 5.

<sup>23</sup> Interpol (<http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp#6>)

### 4.3 Techniques used in the counterfeit industry

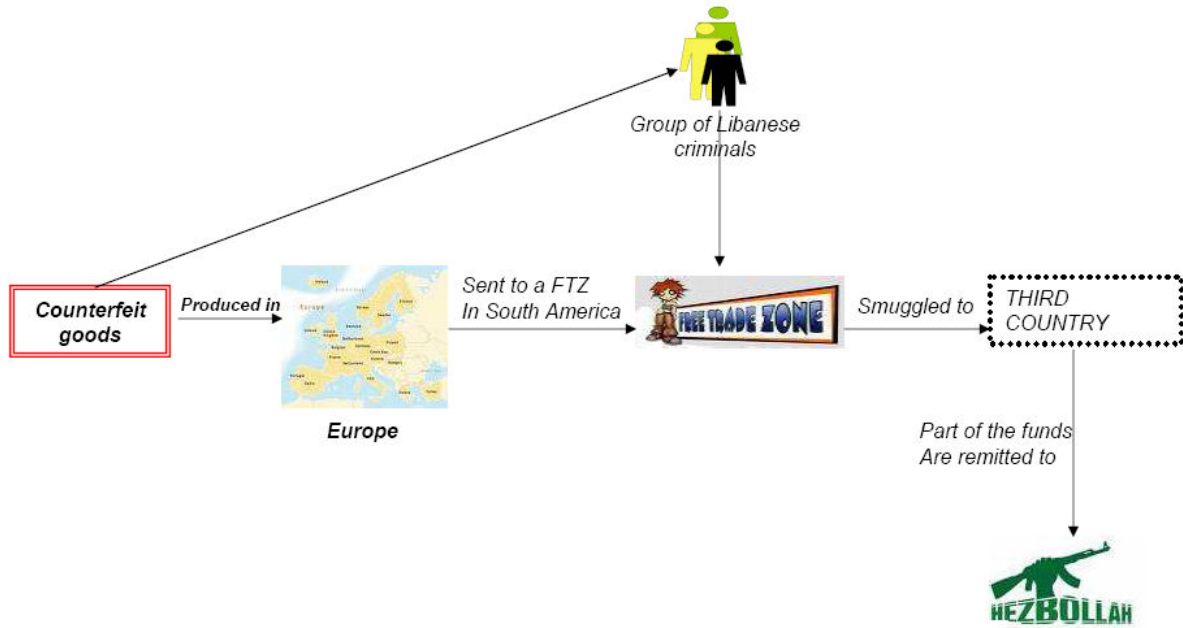
#### 4.3.1 Techniques related to the manufacture of counterfeit products

71. The large amounts of money invested by criminal organisations in industrial logistics (in order to increase both the quality and the quantity of production) today enable them to produce counterfeit or pirated products that are increasingly difficult to distinguish from the genuine ones. In some countries, factories built specifically to make or process counterfeit goods are an increasingly common sight, as are open air markets in which virtually the only goods sold are fakes<sup>24</sup>.

#### Case 10 – terrorist financing – counterfeit goods – free trade zone

Facts:

- funds generated from IP crime related activity may be remitted to Hezbollah
- Counterfeit goods produced in Europe are sent to a free-trade zone in South America by a group of Lebanese criminals sympathetic to Hezbollah
- The goods are smuggled into a third country to avoid import duties
- Goods are sold via a network of sympathisers and militants originating in the Middle East.



Comments : in this case, an unknown amount of money generated through this activity was suspected to be remitted to Hezbollah.

Source: Interpol<sup>25</sup>

<sup>24</sup> European Commission, Counterfeit and piracy, *Combating counterfeit and piracy* ([http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/combating/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm))

<sup>25</sup> Interpol (<http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp#6>)

#### 4.3.2 *Techniques related to the import-export of counterfeit products*

72. Counterfeiters can alter their tactics in trans-border transactions, in order to avoid detection. One example involves describing counterfeit products on customs lists in sufficiently vague terms that do not arouse suspicion. Other techniques include: breaking of shipments into smaller lots, some of which are shipped by express air carriers or by exporting unfinished products which are then labelled and packaged elsewhere. This, combined with the volume of trade passing through ports and taking into account free trade zones, poses significant challenges to customs authorities.
73. There are now few doubts regarding the implication of international criminal organisations in the worldwide trafficking of counterfeit and pirate goods. These organisations are now better structured and more professional, and at least some use the same techniques to move goods infringing IP rights across borders as they do for narcotics. Therefore, they must secure a route through which all types of traffic will pass: here containerisation is an important development in making all goods less transparent. Trans-shipment is of growing concern because fraudsters break routes to disguise the origin of the goods.
74. International traffickers often make use of free zones to trans-ship goods, and these free zones are fertile ground for importing and exporting counterfeit and pirated items. The lack of controls has made free trade zones an attractive mechanism for counterfeiters which might use them in three ways:
- Counterfeiters import products to the free trade zones, store them in warehouses and then re-export. Products passing through the zones allow the counterfeiters to “change” shipments and documents in ways that disguise their original point of manufacture or departure. Counterfeiters are also allowed to establish distribution centres for counterfeit goods, with little or no risk of intellectual property rights (IPR)-related enforcement actions being taken.
  - Counterfeiters import unfinished products and further process them in the free trade zones, by adding counterfeit trademarks and/or repackaging or re-labelling them. Finally, the products are exported as finished counterfeit products to other countries.
  - Free trade zones can be used for the complete manufacture of counterfeit products.
75. These generate opportunities for false pricing in the category of what is now termed trade-based money laundering, and the legitimate fronts make it harder for financial institutions to ascertain what is suspicious or not for AML purposes.

#### 4.3.3 *Techniques related to the supply of counterfeit products through Internet*

76. The growth and the use of the Internet as a platform for selling products has provided a new outlet that counterfeiters have been quick to exploit. Internet sales of counterfeit goods are an increasing problem. Around one third of the postal seizures made by EU customs in 2004 were internet related. The small quantities involved make the use of the simple and low cost destruction procedures now permitted under Article 11 of Council Regulation (EC) No. 1383/2003 of increasing significance<sup>26</sup>.

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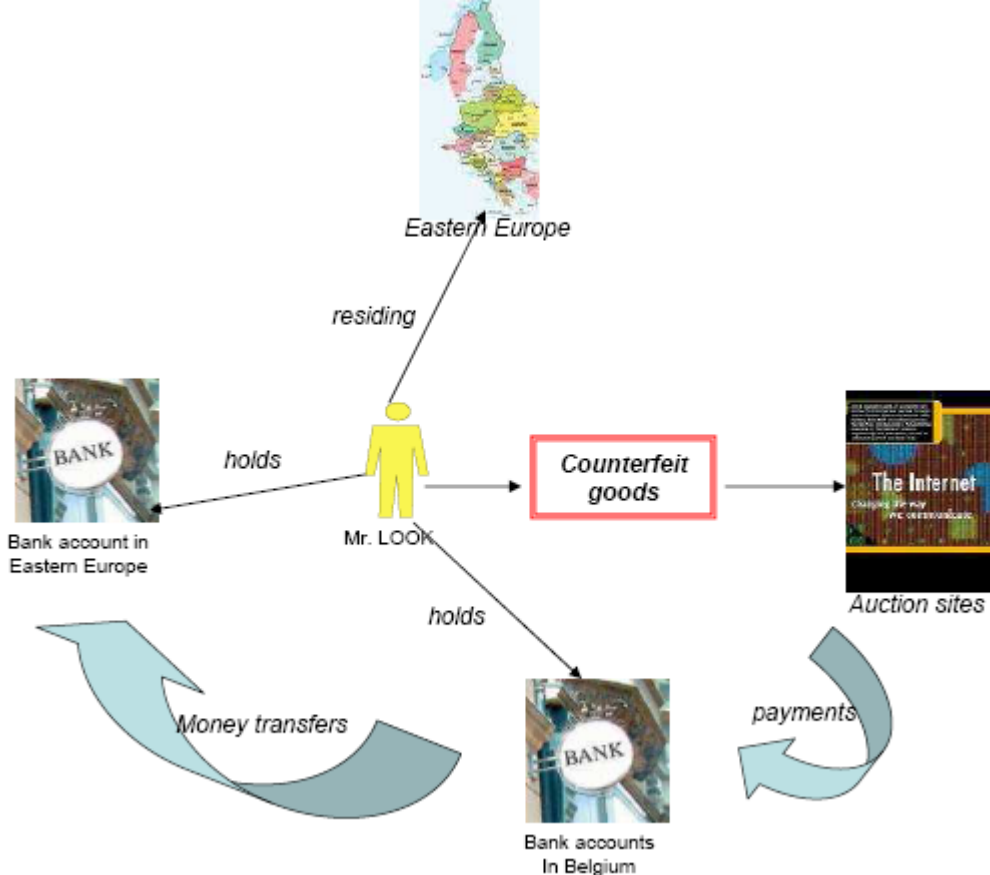
<sup>26</sup> Communication from the Commission to the Council, the European Parliament and the European economic and social committee on a Customs response to latest trends in Counterfeiting and piracy, COM(2005) 479 final.

77. Investigations revealed that some of the companies involved have websites used for selling goods below market value, which turned out to be counterfeit. The analysis demonstrates that the Internet is not used for money laundering itself – indeed, the payment process makes the Internet more transparent and therefore unsuitable for concealment - but for committing the predicate offence, i.e. counterfeit trade. With regard to distribution, sites for Internet selling and auction sites boost the sales of products.
78. Counterfeiters and pirates may sell their products by using the internet through:
- Auction sites which in many respects resemble open markets.
  - E-commerce sites that are organised along the lines of traditional stores.
  - Unsolicited commercial ‘spam’ email.
79. Internet sales not only generate a greater profit, but also circumvent the reluctance of many retailers – from morality and/or the expected risks and consequences of being caught – to sell goods they know to be counterfeit. (There are additional complexities in the ‘grey market’ of parallel trading, where it may be harder to know if the products are genuine or not.)
80. This has implications for money laundering since vendors need to be authorised by merchant acquirers transacting through global card schemes. Therefore they must also pass vetting for fraud risk purposes by banks that are liable for monitoring money laundering. This means that there is some paper trail for funds transfers. It is however possible to sell via eBay and other mechanisms that use PayPal, or to get purchasers to use money service businesses to by-pass PayPal (though direct payments to vendors carry greater risks to purchasers of being defrauded, and many would be cautious of sellers who were not highly rated. Furthermore this might be hard to do on an industrial scale). By contrast, markets and other settings can be (if they wish) cash only, generating the same problems of cash deposits or movement that other cash-based transactions have, but less monitoring by the state (and easier possibilities of tax evasion, though the latter creates an additional predicate offence for laundering).

### Case study 11 : Counterfeit textiles sold through the Internet

#### Facts :

- Mr. LOOK, a foreigner residing in Eastern Europe, opened a current and a securities account with a bank in Belgium and immediately after it was opened, the current account was credited with amounts between 20 and 70 Euros representing payments for articles sold on an auction site. In a few months time the total sum amounted to several thousands of Euros.
- The payments were mostly by order of persons from Western Europe. The communications referred to the sale of luxury brand textiles.
- The money was subsequently transferred to Mr. LOOK's account in his country of residence.
- There was no economic justification for opening bank accounts in Belgium nor for the transactions performed since the individuals did not have any ties with Belgium.
- Searches on the auction site learnt that Mr. LOOK used a different name and that the buyers had left behind negative comments about him, mentioning that the goods offered by Mr. LOOK were counterfeit goods.
- The amounts deposited on Mr. LOOK's account to pay for the articles on the auction site were particularly low for luxury items if we refer to the communications accompanying the payments.



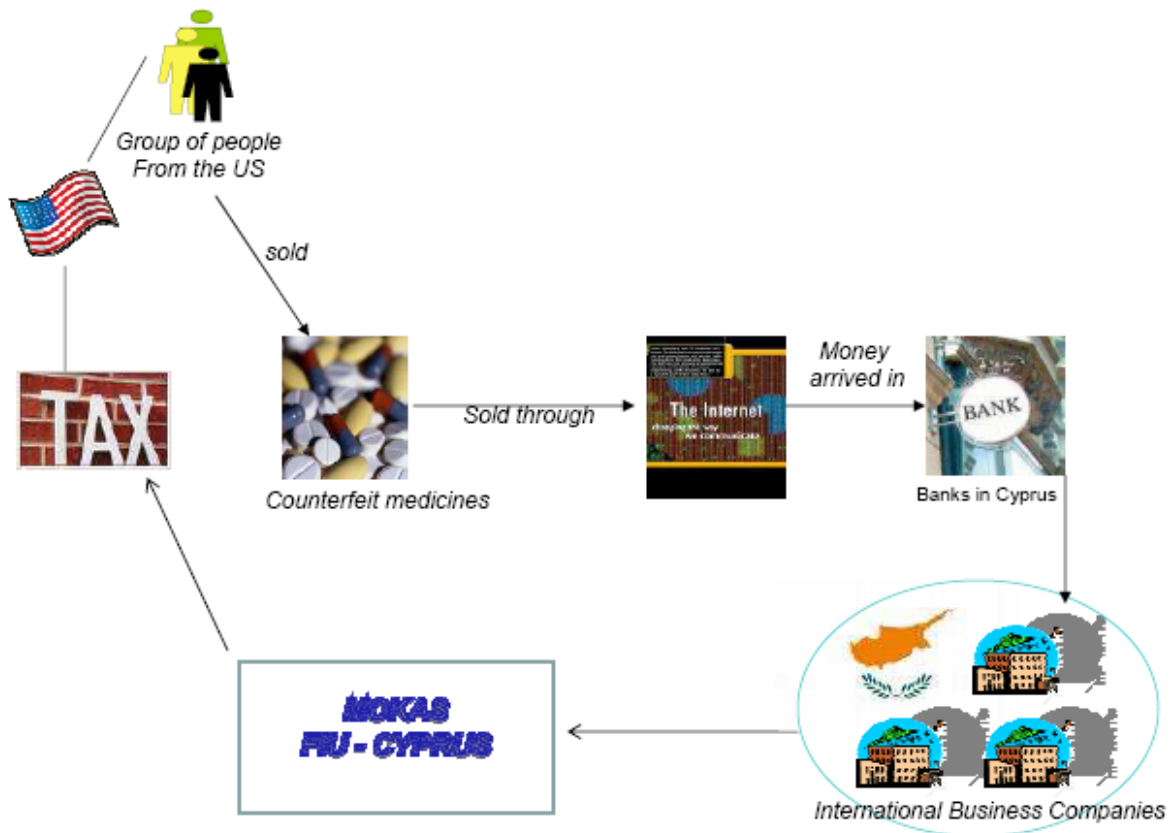
**Comments:** All these elements indicated that the person was involved in counterfeit trade through an auction site. The money was laundered by transferring to an account in his country of residence. Based on the information collected, CTIF-CFI reported this case file for money laundering related to counterfeit goods.

*Source: Belgium*

**Case study 12 : Counterfeit medicines sold through the Internet**

Facts:

- A group of people in the United States was illegally selling medicines through the internet.
- According to the US Authorities some of those medicines were suspected to be counterfeit.
- Money derived from the online payments of the customers arrived in banks in Cyprus.
- From analysis carried out it emerged that part of the funds was repatriated to the United States in order to cover several expenses of the suspected organisations i.e. salary payments, distributors and supplier payments.
- An accountant in Cyprus was assisting the organisation and he had power of attorney on those accounts in order to be able to make the transfers



Comments: The same group of people developed an online payment processing company to receive the funds from the credit cards of the customers and send them to Cyprus for the benefit of company accounts registered in Cyprus as International Business Companies. In co-operation with the US Authorities, the Cyprus Authorities identified those accounts and froze them. At the end, the money was sent back to US Tax Authorities.

*Source: Cyprus*

## 5 FINDINGS

81. The analysis of existing cases and information from external sources leads to a number of findings with respect to the laundering of proceeds from counterfeiting. At the outset, it should be noted that the research conducted by the project team encountered some limitations due to gaps in the information available in participating countries. It is nevertheless hoped that this research is able to contribute towards an improved understanding of the money laundering and terrorist financing vulnerability in relation to counterfeiting, and initiate, particularly in countries affected by counterfeiting, additional analysis and action on this issue.
82. Despite the absence of reliable figures for the global market in counterfeit and pirated goods, the fact that of counterfeiting is an important channel of criminal activity which appears to be on the rise, and its undoubtedly overall profitability, can only lead to the conclusion that it represents an increasingly important area of predicate crime that gives rise to money laundering and to the possibilities of laundering other more visibly criminal proceeds through 'mixed' licit and illicit outlets. Regretfully, the information gathered did not permit any reasoned estimate of the extent of terrorist financing -linked counterfeiting.
83. As with any other criminal activity, money laundering derived from counterfeiting is identified in all three stages of money laundering (the placement, layering and integration stages). The information gathered seems to indicate that there is little difference in the ways that criminals use the financial system and other systems to launder money derived from counterfeiting compared to other crimes. Identifying the money flow once it has entered into the financial system is crucial to identifying the associated money laundering. Suspicious transaction reports also play a crucial role.
84. The identified cases (see Section 4) provide some information on the common techniques used to launder the proceeds derived from counterfeit trading, terrorist financing techniques involving counterfeit products and also common techniques used in the counterfeit industry. From the data available, it appeared that cash payments, electronic payments and bank transfers are equally used, while cash money transfer services (via registered or unregistered money service businesses) are less preferred.
85. The analysis of cases also provided some indicators of possible involvement in laundering the proceeds from counterfeiting:
- Frequency of Paypal or Internet payments crediting bank accounts;
  - Individuals receiving Paypal or Internet payments and/or transferring funds who have no declared profession or low income jobs;
  - Money remittances to China or other Asian countries known to produce counterfeit goods;
  - Establishment of shell companies or transit accounts to facilitate laundering of proceeds derived from counterfeit industry (and no legitimate economic justification);
  - Cash payments using underground banking services;
  - Sale of counterfeit goods mixed with original goods;
  - Suspicious transaction reports from customs authorities identified companies/persons using importation trade documents when there is a suspicion of counterfeit products importation;
  - Prices of the goods abnormally low for branded goods to provide a cover for proceeds of counterfeiting and other crimes;
  - Bad criticism on chat lines and e-shopping websites about the quality of the goods sold online.

86. The growth of organised and transnational crime makes it essential to implement specific techniques to facilitate in-depth and effective investigations. The development and structuring of international networks (counterfeiting, drug trafficking, arms dealing, prostitution, money laundering, etc.) as well as the development of increasingly sophisticated criminal scenarios, slows down investigations and complicates the collection of evidence throughout the countries concerned, whose procedural rules and legal systems vary.
87. The general goal is to gain as much information as possible. Product counterfeiting investigations and the investigation of their money laundering trails are similar to any other investigation. Investigators might face difficulties during the audit trail, given the high level of cash involved and the fact that often any available documented material is destroyed or is fake. However, it should also be pointed out that law enforcement does not generally treat IP crime as a high priority crime. Investigations often tend to be focused on the seizure of counterfeit goods and do not focus on following the flow of money.
88. The drive against organised crime and money laundering has led to some investigations of finances that are generated through IP crimes. Further to these, the growing phenomenon of counterfeiting to fund lifestyles, savings and, in some cases, terrorist networks and families, have fused to a limited extent, and in only a few countries anti-money laundering and anti-terrorist financing..... The following special investigative techniques were considered to be relevant in this context:
- Communication/electronic interception and entry into the home and other premises or transportation vehicles for the purpose of creating conditions for communication interception under conditions and in a procedure established by law;
  - Inspection of and search of a computer system, seizure of a computer system or parts thereof or the electronic database;
  - Secret surveillance, following, and visual-sound recording of persons and items using technical devices;
  - Simulated purchase of items, simulated bribe-offering and simulated acceptance of a bribe;
  - Controlled delivery and transportation of persons and items;
  - Use of undercover agents for surveillance and gathering information or data;
  - Opening a simulated/undercover bank account in order to:
    - “Launder” money for a criminal organisation.
    - Receive counterfeiter’s directed funds.
    - Make a payment to be used as laundering evidence.
    - Retain illegal proceeds.
    - Send funds to a suspect’s bank account.
    - Identify the transfer methods and structure of illicit banking systems (Hawala, Chinese underground etc.).
    - Purchase counterfeit products via the internet.
    - Send money/funds to another country during an undercover operation.
    - Use an undercover credit card during an undercover operation.
  - Registering simulated legal entities or use of existing legal entities for purposes.
  - Use of informants.
  - Target criminal organisations using the undercover account.

89. The information gathered through financial investigations of money laundering (ML) through counterfeiting cases should be used further to build a more systematic profile of benefits and limitations of IP financial investigations.
90. Also the knowledge of the producing countries of counterfeit products and the routes taken by such illegal groups will assist in determining certain issues, one of which includes where and when payments were effected. In many instances, documents which are accompanying imported counterfeit products are found to be tampered with or false. Therefore, the below mentioned details would, if obtained, assist in the investigation of the predicate offence, if not of the laundering therefrom:
- The place and country where the counterfeit products were manufactured;
  - Port/country from where the counterfeit products were loaded;
  - How many ports of call/transshipments had the carrying vessel called in between the place where the products were loaded and the port of destination.
  - Whether there may have been any re-scheduling of the cargo's documents (bill of lading).
  - The cargo documents/manifests (their scrutiny could lead to identifying flows, mistakes, and inconsistencies. Even if there are no suspects involved because documents turn out to be forgeries and the consignee is fictitious, the data collected will help in other investigations. Counterfeiters and importers will look for alternatives.)
  - Who is the importer of the counterfeit products (identification of the person and/or company involved in the importation)
91. Evidence gathering in these types of cases should not only focus on searching for, seizing and destroying the illicit products (which is often the end result) but rather focusing on the entrepreneurial aspects of the business and gathering all records kept of the business: customers files, invoices, cash flows, e-mail exchanges stored on a hard drive etc. Such needs require communication to judges and investigators and ideally should be built into standard investigative protocols.
92. Also, investigations should lead to focusing on the organised nature of the criminality (attracting higher sentences upon reliable evidence) to build a comprehensive and accurate picture of the whole organisational structure.
93. Though it appeared that the suspicious transaction regime (STR) reporting system generated some inquiries, counterfeiting remains primarily a law enforcement issue. However, FIUs must play their part, and their role and expertise is crucial. In this context, several issues should be considered by the relevant authorities:
- in the analysis of suspicious transaction reports related to counterfeiting, a close co-operation should be established with any competent group/unit tasked with counterfeiting investigations (eg. through contact points)
  - there appears to be a need to develop information sharing between financial intelligence units, in particular with FIUs in countries known to produce counterfeit products, to address the laundering of the profits made by the producers of counterfeit goods;
  - also, it is highly important to raise awareness of reporting entities and their supervisors as well as of law enforcement and prosecutorial authorities on the links between counterfeit and ML/TF, methods and trends (e.g. through dissemination of judgments related to money laundering and counterfeiting cases, typologies, etc).
94. Enforcement concerning the importation, dealing and distribution of counterfeit products in many European countries is usually done by the Police or Customs and in many cases by both. Sharing

information and co-operating and co-coordinating operations will give law enforcement and customs and any other government agency involved more chance of success. Additionally, the private sector often has information about common factors in multiple jurisdictions that can help in prioritisation and evidence gathering. In many cases, the Police, the Customs Department and the FIUs may request assistance from their overseas counterparts in connection with documents, legal and natural persons, and audit trails that are connected with the illegal traffic. Useful information obtained can assist in intelligence gathering and the investigation itself.

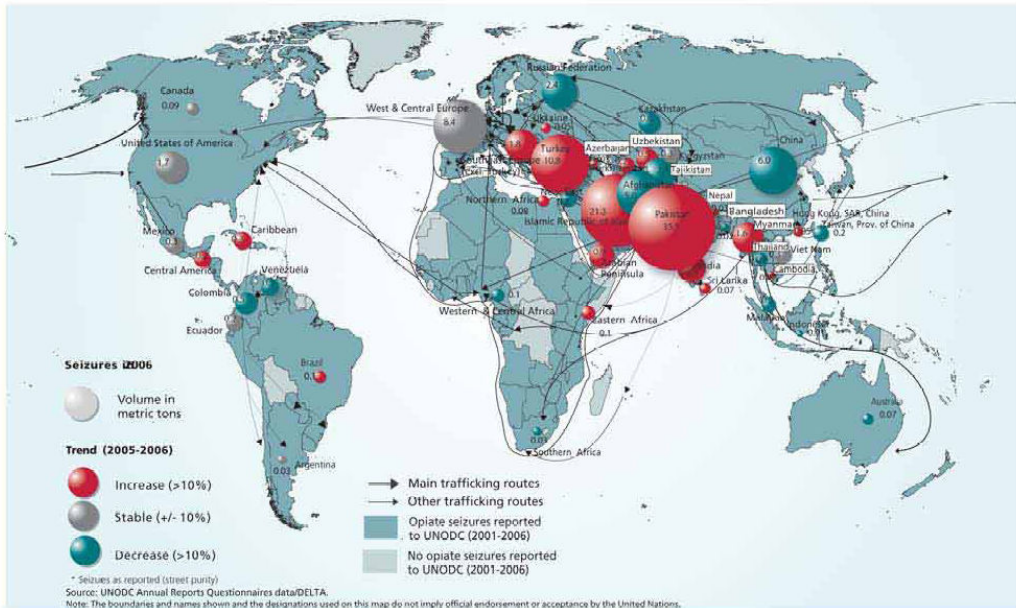
95. If certain relevant details are obtained and/or known, surveillance and controlled deliveries may be considered for use in any forthcoming operation. Successful operations will entail the seizure of the counterfeit items and the freezing/confiscation of the funds that emanated from previous illegal traffic. Sharing of confiscated funds should be encouraged whenever possible between local and overseas organisations that were engaged in the operation.
96. The role that anti-money laundering efforts can play in the general efforts to prevent and sanction IP crimes remains to be seen, but without a determined effort to collect, collate, and reflect upon the financial transfers involved, this potential is unlikely to be realised.

6 ANNEXES

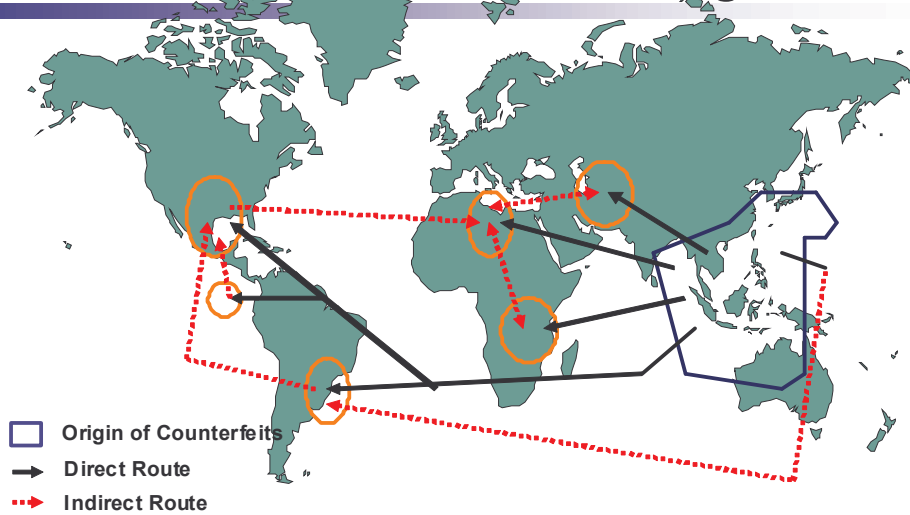
6.1 Trafficking routes (drugs/counterfeiting)

World Drug Report 2008

Trafficking in heroin and morphine, 2006 (countries reporting seizures of more than 10 kg)



## World Counterfeit Trafficking Route



Source: "Customs' Battle Against Counterfeiting and Piracy to Protect Intellectual Property"  
 European Commission [http://trade-info.cec.eu.int/doclib/docs/2005/march/tradoc\\_112031.pdf](http://trade-info.cec.eu.int/doclib/docs/2005/march/tradoc_112031.pdf) 4

## 6.2 Linking money laundering and counterfeiting throughout the processes and identifying the vulnerabilities in each stage of the process

97. This section provides a summary of issues identified by participants of vulnerabilities in the various phases of the process (detection – investigation – seizure - prosecution – conviction) which render difficult the establishment of linkages between counterfeiting and laundering.

### 6.2.1 Detection

- Lack of effective co-operation

98. The problem of counterfeiting and piracy is far too great to be solved solely on a governmental basis. Apart from the international co-operation that must be enhanced, another very important aspect is the improvement of co-operation and coordination between all the interested parties i.e.:

- Co-operation of businesses within a particular sector
- Co-operation between private and public sector
- Co-operation of authorities on a national level
- Co-operation of authorities on an international level

- Difficulties in information sharing

99. This may be the result of the reluctance of competent authorities (nationally and internationally) to share information. It may also result from the ambiguous delineation of the responsibilities of each authority on a national level, and their having other institutional or personal priorities.

- Difficulties in obtaining intelligence/information

100. Two factors are significant here. First, inadequate training of staff may render them unable to distinguish the original from the counterfeit products. Second, customers may not be aware of the social harm of counterfeiting and/or may be tolerant because they are getting goods cheaper.

- Use of the Internet and lack of audit trail

101. Distribution of counterfeit products through the internet is an undeniable fact. This in combination with the continuously increasing percentage of the population using the internet, and explicitly hinders the routine detection of counterfeit products in open markets. Setting up a website requires very little effort minimum cost and leaves nearly no audit trail. On the other hand, monitoring the internet is not an easily accomplished task. Thus the job of the people vested with the authority to combat those illegal activities is getting increasingly complicated.

- Expertise of the counterfeiters

102. Over the years, counterfeiters developed the skills and the expertise in manufacturing and trading of those products. Similar packaging, almost identical logos and the possible mixture of original products with counterfeit ones make the identification procedure more complicated.

### 6.2.2 Investigation

- Difficulties on transaction tracing
103. Informal methods of physically transferring funds, even though they are very costly and may pose increased risk, may be used due to the fact that they leave no paper trail. Moreover, underground banking systems (e.g. the Hawala System) and the use of money transfer services complicate the transaction tracing. The poor analysis of the existing information (leaving aside cases where there is poor knowledge and intelligence) and the use of cash in the business make ML investigations difficult.
- Difficulties in tracing the routes used
104. Changed or forged invoices, use of free trade zones, free movement of goods within the EU member states (especially in the Schengen area) cause difficulties in tracing the routes used.
- Willingness of the public to purchase counterfeit products
105. The attractive price, (in many cases less than 50 % of the original) in combination with fact that consumers are inadequately informed regarding the threat that substandard counterfeit products pose to their health (i.e. counterfeit pharmaceutical products, spare parts).
- National and international exchange of information at governmental and non governmental level
106. During the investigation, time is of vital importance. Time consuming procedures in intelligence exchange between competent authorities at all levels deprives law enforcement from acting promptly. However there are also cultural and resource constraints.
- Difficulties in cases of shipments and transfer of goods to or from non-cooperative countries, or countries without relevant legislation
  - Limited/ lack of attention, awareness and training
107. Counterfeiting appears in many countries to be given little attention/priority by police, customs or other relevant authorities. This limits the knowledge of competent authorities of the scale of the phenomenon, its association with organised crime, its implications as regards money laundering. This leads to a lack of focus in training programmes for investigators on this phenomenon, and inevitably lack of experience and expertise in this field.

### 6.2.3 Seizure

- Use of identification and authenticity labels
108. Many companies do not employ clear and strong identification and authenticity labels.
- Difficulties in distinguishing the original from the counterfeit products
109. As already mentioned above, the increasingly sophisticated counterfeiting and piracy businesses and the lack of use of appropriate security and authentication technologies combined with the lack of

adequate training make the identification and hence the seizure of counterfeit products very difficult.

#### 6.2.4 Prosecution

- Lenient legislation
110. For international co-operation to work effectively, there needs to be greater ‘approximation’ of legal frameworks within the Council of Europe. Legislation can never *per se* prevent crimes of counterfeiting and piracy. Some jurisdictions do not criminalise the purchase of counterfeit or pirated products.
- Ineffective enforcement of the law
111. Except for those who obey the law out of habit or belief, legislation is useless without effective enforcement. Enforcement activities must be focused at the point where the infringement originates, such as the place of manufacture and points of importation. Therefore, customs authorities must employ stricter and more immediate procedures against import, export and transit of counterfeit goods.
- Predicate offence – Money Laundering offence
112. The prosecution is usually focused on the predicate offence and does not go deeper to the laundering offence. However, one must not forget that the motive of counterfeiters is the profit. Therefore they need to be deprived of the illegal proceeds in order to effectively combat these illegal activities.
- Lack of evidence
113. Due to the vulnerabilities mentioned in the investigation part, the authorities often do not have the necessary evidence to prosecute counterfeiters.

#### 6.2.5 Conviction

- Lenient sanctions & limited number of convictions
114. As mentioned above, a number of obstacles may hamper successful prosecutions. Also, often, prosecution is focused on the predicate offence. As a result, except where fines are very large, counterfeiters are rarely prosecuted and convicted for money laundering or deprived of proceeds. In certain countries, sanctions are not strict enough to deter those who do not have a major legitimate business from engaging in crimes of counterfeiting and piracy.

### 6.2.6 *Confiscation*

- *Difficulties in identifying the real size of the proceeds or assets of offenders*
115. In most of the cases, the laundering offence is not even investigated, and thus no confiscation procedures can be applied, though there are some possibilities that compensation may be paid as part of a criminal sentence as well as in separate civil litigation.

## 6.3 **Additional findings regarding best practices to combat counterfeiting**

116. As it is no longer acceptable to ignore the myriad adverse costs to social welfare and economic development associated with the growth of counterfeiting and piracy, with or without money laundering, it is important to distil some best practices in relation to the laundering component of more general anti-piracy actions at a national and international level.
117. The best practices to be followed are focused on the following areas:

### 6.3.1 *Enhance legislation and enforcement*

118. It is vital to ensure that the legal framework – both national and international - provides for prompt, proportionate and dissuasive sanctions, strong enough in order to prevent piracy and counterfeiting. Trading in counterfeit goods must be checked to ensure that it is a predicate offence for money laundering investigation purposes.
119. Governments must be encouraged to further develop and clarify legal standards for the availability of civil remedies, including damages and their calculation, and procedural law.
120. Finally, efforts should be made to follow the money trail in the trade in counterfeit and pirated goods over the Internet, in collaboration with the card schemes.

### 6.3.2 *Increase the awareness of consumers and stakeholders generally*

121. Raising awareness is an important aspect of combating counterfeiting and piracy and needs to be pursued vigorously. Consumers should be adequately informed about the threats that substandard counterfeit and pirated products pose to their health and safety, and consumers and counterfeiters should be aware about the legal consequences of infringing IP rights or knowingly purchasing infringing products. Raising awareness could also have beneficial effects on consumer attitudes and behaviour towards counterfeiting and piracy.
122. Suspicious Transaction Reports related to counterfeiting should be passed to a competent group tasked with counterfeiting investigations.
123. Law enforcement agencies should raise awareness efforts in order to ensure that money laundering in relation to counterfeiting is dealt with as a serious crime.

124. Awareness-raising efforts should be focused on all the geographic, social, economic and demographic categories in order to develop tailor-made strategies to better combat this phenomenon.
125. Experiences by local entrepreneurs should be made available to public in newspapers and magazines in order to raise awareness that counterfeiting and the laundering through this industry are crimes that are growing in scope and magnitude with adverse effects.

### 6.3.3 *Improve co-operation and coordination – the key to success*

126. Counterfeiting and piracy are problems without borders. It is generally accepted that these global problems are too great to be solved by individual governments, business sectors or companies. Therefore, it will be critical to increase and improve the co-operation and coordination among and between these actors.

Firstly, it requires co-operation among the business corporations that are affected and specifically within the particular economic sectors that have been affected by counterfeiting and piracy.



Secondly, the private sector and the public sector need to work together in order to establish a common strategy.



Finally, there is need for cross-border co-operation. Prosecuting authorities need to cooperate internationally in order to collect the necessary evidential material.

127. Governments at international, national and regional level should be coordinated in order to accomplish successful combating of counterfeiting and the subsequent money laundering offence.
128. The private and public sector should work together against counterfeiting and piracy by establishing special units that their aim would be to facilitate co-operation among them by data collection on proceeds of crime movement and sharing of money-laundering information.
129. The World Customs Organisation<sup>27</sup> Customs Network (CEN)<sup>28</sup> and the Interpol Database on International IP Crime (DIIP) are examples of IP enforcement-related information databases. Development and establishment of such databases could be an effective tool for combating counterfeiting and piracy.
130. Intelligence information at the national and international level should be exchanged in order to better fight counterfeiting in relation to criminal networks and terrorism.

<sup>27</sup> The World Customs Organisation (WCO) is the only intergovernmental organisation exclusively focused on Customs matters. For more information, see <http://www.wcoomd.org>

<sup>28</sup> CEN (Customs Enforcement Network) links electronically all customs.

131. There are some promising signs of action on both the IP front and the AML front. Some international organisations have identified the increasing threat and reacted accordingly. In 2003, the Financial Action Task Force listed “counterfeiting and piracy of products” in its revised 40 principles for money laundering as one of the 20 minimum predicate crimes for money laundering. This presents a new dimension of AML compliance for financial institutions<sup>29</sup>. Interpol decided to develop a multi-agency working group, while Europol initiated a new Analytical Work File on intellectual property information.
132. The Business Alliance to Stop Counterfeiting and Piracy, which was launched in early 2005 under the auspices of the International Chamber of Commerce (ICC), is one of the more recent and comprehensive global initiatives launched by industry. It seeks to bring firms together to pursue a more unified approach to combating counterfeiting and piracy. As a consequence ICC urged the G8 leaders to take powerful actions against intellectual property (IP) crimes, and there has been concerted pressure since then.

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<sup>29</sup> A New Front-IPR Theft, Money Laundering and Terrorist Financing  
([http://www.pvrt.org/pdf/Financial%20Response/IPR/%20Theft%20and%20AML-CFT%20\\_IDSS\\_.pdf](http://www.pvrt.org/pdf/Financial%20Response/IPR/%20Theft%20and%20AML-CFT%20_IDSS_.pdf))

#### 6.4 General overview (relevant legislation, sanctions, cases)

This annex contains a sample of the information that was provided in the responses to the questionnaire regarding relevant legislation applicable and sanctions, competent authorities and investigations conducted. Not all respondents answered all questions.

Country	Relevant legislation <sup>30</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
<b>Armenia</b>	Law on Trademarks and Service Marks Code on Administrative Violations Law on Protection of Economic Competition Customs Code Criminal Code Art. 207, Art. 210, Art. 211, Art. 280 (patents among others), Art. 197 (trade mark) Civil Code	Art. 170.7/8/9 (excise stamps) administrative liability Fine: 500.000 AMD, If repeat offence 1.000.000 AMD. Fine: 300-500 min. salaries, or correctional_labour max. 2 years, or arrest max. 2 months	Police Prosecutor's Office	2 (01.01.2005-30.07.2007)	Counterfeiting
<b>Belgium</b>	Law of 15 May 2007 on the repression of counterfeiting and piracy of intellectual property rights (not yet entered into force) Council Regulation N° 1383/2003 of 22 July 2003 Penal Code	Art. 5 illicit trafficking in merchandise that violates an intellectual property right prison 3 months - 3 years or €500 - 500.000 Art. 8 - Special ones prison 3 months - 3 years & /or fine of 100 - 100.000 € Art. 505 CC - handling in illegal goods and money laundering - prison 15 d.-5 years &/or fine of 1.000 – 4.000.000 €, applicable to buyers too. Art.149.6 (patent, industrial design, trademark or geographical indication) fine or prison max. 3 years very imp. ones 6 m.- 5 years. Art. 208 (Trademarks) prison 6 m.-5 years	Police, Customs and Excise departments CITF-CFI (Belgian FIU)		
<b>Bosnia and Herzegovina</b>	Law on Industrial Property Official Gazette no. 3/02 & no. 82/02 Art. 137 Criminal Code		Indirect Administration, competent Prosecutor's Offices and Courts	15 (01.01-31.12.2006)	Infringement of industrial property

<sup>30</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>31</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
<b>Croatia</b>	Criminal Code Art. 229-231 (copyright), Art. 232 (Patent), Art. 285 (Design)	Fine or prison max. 3 years. ; very imp. ones 6 months.- 5 years. Art. 230.4 the holder of the products fine max. 100 daily incomes or prison max. 6 m	Ministry of the State Interior, Inspectorate and Customs	5.215 01.01.2002-31.12.2006	Violation of copyrights or of the rights of performing artist (11) Illicit use of an author's work or an artistic performance (3601) Violation of the rights of producers of audio or video recording and rights related to radio broadcasting (1065) Violation of patent rights (7) Infringement of industrial property rights and unauthorized use of another company's name (531)
<b>Cyprus</b>	Intellectual Property Law 59/76, last amendment 2006 (EC) No 1383/2003 of 22 July 2003 <sup>32</sup> implemented into the domestic legislation with the Law no. 133(I)/2006	fine max. CYP30.000 &/or prison for 3 years, if repeat offence fine max. of CYP35.000 &/or prison for 4 years 2. prison for max. 3 years &/or fine of max. CYP3000	Police and Customs		
<b>Denmark</b>	The Trademark Act Section 4 & 42 The copyright Act	Section 42 fine or prison for max. 1 years & legal persons may be subject to criminal liability. If there is an infringement too of the copyright law prison max. 6 years. Buyers are not punished	Customs on the EU border, police and prosecution service.	15(01.01-31.12.2006)	Counterfeit and piracy
<b>Estonia</b>	(EC) No 1383/2003 2. Customs Act (passed 13 April 2004, entered into force 1 May 2004) Penal Code (Passed 6 June 2001, entered into force 1 Sept. 2002)	copyright or pirated copies fine or prison max. 3 years, legal persons are punishable too, but not buyers	The police and the customs office		

<sup>31</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

<sup>32</sup> See the remark at the end of the table.

Country	Relevant legislation <sup>33</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
France	Intellectual Property Code (EC) n° 1383/2003 Customs Code	Brand names: Prison for 4 years & a fine of 400 000 € for detaining counterfeit goods for commercial purposes Prison for 3 years & a fine of 300 000 € for simple detention Prison for 5 years & a fine of 500 000 € in case of organised crime 2. Brand names: Fine max. twice the value of the goods, seizure of the mean of transport and the products and prison max. 3 years. In case of organised crime a fine max. 5 times the value of the goods and prison max. 10 years	Customs services, at local, regional and national level, and the TRACFIN (French FIU) which gives information to the public prosecutor and other competent authorities	14 (2006)	Counterfeiting in connection with smuggling
Latvia	Law On trade marks and references of geographical origin of 16 <sup>th</sup> June 1999 (came into force on 15 <sup>th</sup> July 1999) Law of copyright of 6 <sup>th</sup> April 2000 (came into force on 11 <sup>th</sup> May 2000) Law on agreement of Worldwide intellectual property organization (WIPO) on copyright of 3 <sup>rd</sup> February 2000 (came into force on 17 <sup>th</sup> February 2000) Code of administrative violations of 7 <sup>th</sup> Dec. 1984 (came into force on 1 <sup>st</sup> July 1985) Criminal law of 17 <sup>th</sup> June 1998 (came into force on 1 <sup>st</sup> April 1999)	Trade marks Section 166 fine 50-100 LVL with confiscation unlawful alcoholic beverages Section 170 for natural persons a fine of 250-500 Ls or an administrative arrest for max. 15 d. with confiscation; for legal entities fine of 100-1.000 LVL with confiscation. Section 166 Sale of forged commodities individual fine max. 50 LVL, legal person fine max. 1000 LVL with confiscation. According to Section 169 excisable goods fine 50 -500 LVL. with or without confiscation	Economic department of Police Central Criminal police department 5 <sup>th</sup> Unit (unit of combating turnover of unlawfully imported goods and other values to the internal market and special economic zones, illegal use and counterfeit of trademarks) and 7 <sup>th</sup> Unit (unit of protection of Intellectual property) Customs institutions.	127 01.01-31.12.2006	Violations of regulations of use trade marks (adm. violation - 39) Violation of provisions of turnover of excisable commodities (1) Violation of provisions of turnover of excisable goods (adm. violation - 10) Illegal activities with objects of copyright or related rights (adm. violation – 6)

<sup>33</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>34</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
Latvia (continued)		<p>Section 170 - purchase of illegal alcoholic beverages fine max. 100 LVL, or administrative arrest max. 10 d. with confiscation.</p> <p>Section 206 - Trade mark, other distinguishing mark or design sample prison max. 1 years or community service, or a fine max. 50 times the minimum monthly wage, very imp. or repeat offence ones prison max. 5 years, or a fine max. 80 times the minimum monthly wage.</p> <p>According to Section 221 - Violations of provisions of turnover of excisable commodities if repeat offence prison max. 2 years, or fine max. 60 times the minimum monthly wage, with or without confiscation, very imp. ones prison max. 5 years, or fine max. 100 times the minimum monthly wage, with confiscation.</p>			
Liechtenstein			The National Police and the Public Prosecutor		

<sup>34</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>35</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
Lithuania	<p>Patent Law (Records, 1994, No. 8-120)</p> <p>Law on the Legal Protection of Topographies of Semiconductor Products (Records, 1998, No. 59-1655),</p> <p>Law on Copyright and Related Rights (Records, 1999, No. 50-1598, new revision No.28 1125, 2003)</p> <p>Law on Trademarks (Records, 2000, No. 94-2844),</p> <p>Law on industrial design (Records, 2002, Nr. 112-4980)</p> <p>Code of Administrative Offences (Records, 1985, No. 11)</p> <p>(EC) No 1383/2003 of 22 July 2003</p> <p>Customs Law</p> <p>(Records, 2004, No. 73-2517)</p> <p>Several Orders of the Director General of the Customs Department under the Ministry of Finance</p> <p>Criminal Code (Records, 2000, No. 89-2741)</p> <p>Civil Code (Records, 2000, Nr. 74-2262).</p>	<p>Civil responsibility for IPR infringements</p> <p>copyright</p> <p>a fine 1000 - 2000 Litai (289,62 – 579,24 €) with confiscation, if repeat offence fine 2000- 3000 Litai with confiscation</p> <p>Copyright, Trademark, Patent and design:</p> <p>- for a natural person - public works, a fine, restriction of liberty, arrest or prison</p> <p>- for a legal person a fine or restriction of the legal person's activities, or liquidation of the legal person.</p>	<p>Police, Customs and State Border Security Service</p>	2	Counterfeit and piracy
Malta	<p>The Intellectual Property Rights (Cross Border Measures) Act Chapter 414</p> <p>The copyright Act</p> <p>The Trade Mark Act together with its subsidiary legislation.</p> <p>The Patent &amp; Designs Act together with its subsidiary legislation.</p> <p>The Enforcement of Intellectual Property Rights (Regulations) Act</p> <p>(EC) No 1383/2003 of 22 July, 2003</p> <p>Criminal Code</p>	<p>Trade Mark art. 72 prison max. 3 years. &amp;/or fine max. Lira 10,000</p> <p>art. 73 prison 2 years. &amp;/or fine max. Lira 5000</p> <p>art. 74 (1) (a) &amp;(b), 2(a) &amp;(b), (3) fine max. Lira 5000;</p> <p>Art. 75 (1) (a) &amp; (b), (2) (a) &amp; (b), (3) fine max. Lira 3000.</p> <p>Patent &amp; Designs. Art. 50 (1)(2) fine max. Lira 5000.</p> <p>Art. 298B(1) copyright</p> <p>prison 1 years or fine max. Lira 5,000 and confiscation.</p> <p>Chapter 414 IP Rights fine equivalent to double the value of the goods imported</p>	<p>The Economic Crimes Squad of the Malta Police Force and the IPR section of the Customs Department</p>	42 (01.01-31.12.2006)	Counterfeit and piracy

<sup>35</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>36</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
<b>Moldova</b>	Administrative Code Government regulations stopping production, distribution or sale of counterfeit and low-quality goods. Fruit growing Law Seed Law Spiritous liquors circulation Law Criminal code	Art. 103 Trees fine of 25- 70 conventional units (40 – 100 USD) Art. 152 logo fine of 300 - 500 MDL (25-40 USD) & confiscation Art. 152 logo of liquors fine of 50- 300 conventional units (75- 450 USD). Art. 216 if there is danger for human health fine of 850-1150 USD and confiscation	The Department of Standards, the State Sanitation Service, the State Veterinary Service and the Consumer rights State Service	251	Counterfeit
<b>Monaco</b>	Law No. 606 of 20 June 1955 on the protection of patents Law No. 1058 of 10 June 1983 on protection of trademarks	Art. 44 patent fine of FRF 24 000- 480 000. If repeat offence prison max. 6 m. and confiscation. Art. 23 trademark prison 6 m. – 3 years. and a fine Art. 24 lesser ones 3 m.-1 years. and a fine, both of them with confiscation. Art. 26 doubled penalties if it is a repeat offence Art. 360 trade secrets prison 6 m- 3 years & a fine Art. 362 trademark, design, patent, origin prison 3 m.- 1 years, very imp. ones 3 years. Art. 365 possession of counterfeit products prison 6 d.-1 m. & a fine	Republic market inspection and the Custom Directorate.		

<sup>36</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>37</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
<b>Montenegro</b>	Criminal Code Law on the Responsibility of Legal Persons for Criminal Acts (Official Gazette no. 2/27),	Art. 283 fine or prison max. 2 years and confiscation Art. 285 of imprisonment max. 3 years and a fine. Legal persons are criminally liable too.		20 (01.01-31.12.2006 – 9 persons; 01.01.2006-30.06.2007 -11 persons)	Unauthorized production Deceiving buyers Illegal trade Unauthorized use of an author's work or of an object of a related right; production and putting trade harmful products
<b>Poland</b>	(EC) No 1383/2003 of 22 July 2003 The Penal Code (Act of 6 June 1997 Penal Code, OJ 1997, No 88 item 553)	Art. 305 trade mark fine, restriction of liberty or prison max. 2 years. A lesser one only a fine but a very imp. one Prison 6 m - 5 years. And confiscation (art. 306) Art. 291. § 1 deprivation of liberty 3 ms and 5 years. Art. 291. § 2 a lesser one fine, restriction of liberty or deprivation of liberty max. 1 years. Art. 292. § 1 restriction of liberty or deprivation of liberty max. 2 years. Art. 292. § 2 Very imp. ones deprivation of liberty 3 m -5 years.	Police, Security Agency, Customs and Border Guards Internal Agency, Border Guards	6 (01.01.-30.06.2007)	Counterfeit

<sup>37</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>38</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
<b>Romania</b>	Law no. 84/1998 about "Marks and Geographic Indications" Government Ordinance no. 21/1992 about "Consumers' Protection" Consumer Code Law no. 296/2004, art. 9 Penal Code Chapter II "Offences against intellectual property".	Art. 83 Trade mark & geographical origin prison 3 months - 3 years or fine of 1.500 lei (500 € in equivalent) Art. 55 confiscation and close seller companies Art. 425 patent. Art. 426 circulation of counterfeit products Art. 427 Design Art. 428 patent Art. 429 integrated circuits topography. Art. 430 – trademarks and geographical origin. All the above mentioned are punished with prison 1 - 3 years or days-fine Art. 432 circulation of pirate merchandise is punished with prison 1- 5 years.	General Inspectorate of Border Police General Inspectorate of Police National Customs Authority Ministry of Public Order Ministry of Justice.	2501 (01.01-31.12.2006)	Violation of industrial property rights
<b>Slovenia</b>	Penal Code Art. 217, 237, 238 (Trade name, Pattern or Model) and 255	Prison, fine and confiscation. No penalty for buyers.	Market Inspectorate, Customs, Police	70	Counterfeit
<b>"The former Yugoslav Republic of Macedonia</b>	Law on Customs Measures for Protection of Intellectual Property Rights; Law on Industrial Property; Law on Copyrights and Other Related Rights; Law on Trade Criminal Code	Art. 157 author's rights fine or prison max. 1 years very imp. ones prison max. 3 years.& the very big ones 3 m. – 5 years Art. 286 invention or software fine or prison max. 3 years	Customs (Ministry of Finance), State Market Inspectorate (Ministry of Economy), inspection services (Ministry of Culture) and Ministry of Internal Affairs	174	Violation of intellectual property rights Violation of copyright and related rights

<sup>38</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

Country	Relevant legislation <sup>39</sup>	Sanctions	Competent authorities	No. cases investigated (period)	Criminal offence
Ukraine	Laws “On Right of intellectual property and allied rights”, “On distribution of copies of audiovisual products, phonograms, videogames, software, databases”, “On protection of rights for inventions and utility models”, “On protection of rights for sorts of plants”, “On protection of rights for topography of integrated circuit”, “On protection of rights for marks of products and services”, “On protection of rights for indications of origin of products” etc. Code on Administrative Offences Customs Code Criminal Code (Art. 176 establish responsibility for violation of incorporeal and allied rights, Art. 177 for violation of rights for invention, practical model, industrial model, topography of integrated circuit, sort of plant, rationalization proposal, Art. 229 for illegal application of trade and service mark, brand name, qualifying indication of the origin of product. Civil Code Vol. 4	Art. 51 fine 10- 200 untaxed incomes with confiscation Art. 345 fine 10- 100 untaxed minimum incomes with confiscation, officials of companies fine 30- 150 untaxed minimum incomes with confiscation If there is social dangerousness fine or prison max. 6 years, with confiscation	The Ministry of Interior, General Prosecutor’s Office, Security Service and State Tax Administration.	214	Smuggling

<sup>39</sup> For all of EU member States the Council Regulation (EC) N° 1383/2003 of 22 July 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 (OJ L 196, 2 August 2003) is directly applicable without requiring national transposition.

## 6.5 List of cases

- Case 1 – Counterfeit knives and cigarettes imported from China
- Case 2 – Counterfeit toys ordered online from a company in China
- Case 3 – Counterfeit textile and transactions performed through a transit account
- Case 4 – Counterfeit of alcoholic drinks – use of shell companies, offshore centres, real estate investments
- Case 5 – Terrorist financing and counterfeit cigarette trafficking
- Case 6 – Terrorist case and various counterfeit consumer goods
- Case 7 – Terrorist financing – cash based transactions
- Case 8 – Terrorist financing transactions performed through a transit account opened in the name of a night shop
- Case 9 - Terrorist financing : counterfeit CDS and money remittance transfers
- Case 10 – Terrorist financing –counterfeit goods – free trade zones
- Case 11 - Counterfeit textiles sold through the internet
- Case 12 – Counterfeit medicines sold through the internet

**6.6 Questionnaire**

Contact information (for follow up if necessary)	
Name	
Title	
Institution/ Agency	
Address	
Phone number	
Fax	
E-mail	

*Note: Please answer the following questions taking into account that the questionnaire refers but is not limited to the following types of products*

- Brand name clothing,
- perfumes,
- tobacco,
- spare parts (engine/car/aircraft spares),
- watches, accessories,
- sport-wear,
- photographic equipment,
- electronics,
- medicines,
- music & movies.

<b>1. General Situation</b>
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- 1.1. What is the extent to which counterfeiting are taking place within the borders of your country?
  - 1.1.1 Which are the principal types of products being counterfeited in your country?
  - 1.1.2 How are operations for counterfeiting products organised and financed?
  - 1.1.3 What is the profile of criminals/criminal organisations involved in the production, distribution or sale of counterfeit goods?
- 1.2. Is the logo identical to the logo of the original product?
- 1.3. Do you know the country of origin of the products? Which country appears to be prominent in such products in your country?
- 1.4. What is the price paid for such counterfeited products? Is there a marked price difference between the original and the counterfeit product?
- 1.5. Are such counterfeit products in high demand in your country? Why?

<b>2. Legal and institutional framework</b>
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- 2.1. Is there legislation in your country which prohibits the production and/or sale and/or importation of such products? If yes, please attach the most relevant provisions.

- 2.2. What sanction may be imposed if one is found guilty of importing such counterfeit goods?
- 2.3. What sanctions, if any, can be applied if one:
  - 2.3.1. is found producing counterfeit products;
  - 2.3.2. is found dealing in counterfeit products;
  - 2.3.3. is found buying counterfeit products.
- 2.4. Do you believe that these sanctions are adequate or considering the risk/profit ratio they give ground to criminals to launder money through counterfeit product industry?
- 2.5. Which law enforcement agencies deal with cases of counterfeit products?

<b>3. Statistics / Cases</b>
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- 3.1. If counterfeit products are prohibited in your country, is it possible to indicate with statistics:
  - 3.1.1. the number of cases investigated; and by which investigative body in your country?
  - 3.1.2. the number of persons involved in each case;
  - 3.1.3. the nationality of the persons involved;
  - 3.1.4. how many cases were prosecuted and for what;
  - 3.1.5. how many cases were successfully prosecuted stating also how many people were sentenced and
  - 3.1.6. estimated volume of the counterfeit products and/or profit from the trading of counterfeit products;
  - 3.1.7. the amounts of funds frozen, seized and confiscated;
- 3.2. Do you know which currency is favoured for the acquisition of counterfeit products from source countries? Are payments made in cash or are other banking instruments used? Are credit institutions used for payments?
- 3.3. Are counterfeit products bartered for other illegal items such as counterfeit currency or drugs? If the answer is in the affirmative please give details.
- 3.4. Did you identify any persons and/or organisations that invest proceeds derived from other illegal activities in companies that manufacture or trade counterfeit products? If yes, can you describe at least 1-2 of the most serious cases (i.e. the predicate offence, the amounts, the relationships etc)?
- 3.5. Have you investigated/analysed any case of money laundering involving counterfeit products? What money laundering techniques were detected? Do you know how funds coming from the sale of counterfeit products are inserted in the financial system? Are securities used or involved?
- 3.6. Are companies involved or used? If yes, please report about their jurisdiction and whether the companies' bank accounts are found in the same jurisdiction?
- 3.7. Do you know if counterfeit products and illegal immigration are connected? If the answer is in the affirmative, please elaborate.
- 3.8. Do you know whether counterfeit products are used to finance other illegal activities like drug trafficking, arms traffic or financing of terrorism? Do you have any concrete examples?
- 3.9. Is investment in counterfeit products linked to any other type of crime in your country and/or

profile of criminal organisation?

- 3.10. Is there any other information on this issue you would like to bring to our attention? Are there any investigators/law enforcement personnel in your country that may have something to contribute to this research? If so, please advise if they would be willing to participate in this work?

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