

GLOBAL TRADE AND SHIPPING OF COUNTERFEIT GOODS: CONTRIBUTION OF DIGITAL PLATFORMS AND EXPRESS SERVICES

- Subhradeep Saha* & Dr Ankit Awasthi**

Abstract

A market, not necessarily a physical location, is where the buyer and seller meet to exchange goods or services for money. Traditionally, a market has always been a physical location; however, with the advent of digital trade platforms, such as Amazon, Wish, Alibaba, etc, which function at a global level, the term 'market' is no longer restricted to a physical location, rather has also stretched to cyberspace, making it easier and more convenient for the buyers and sellers to meet. Just as expanding the 'market' to cyberspace has increased trade activity, such a rise in trade is also consistent with growing counterfeit trade. Global counterfeit trade has successfully adapted to the digital marketplace. The author has highlighted the role of e-commerce platforms in facilitating counterfeit trade. The author has also shown how counterfeit traders have shifted from selling non-deceptive counterfeit products to deceptive counterfeit products by employing certain methods that deceive the online purchaser. Further, counterfeit traders have taken advantage of small shipments to ship their products, instead of shipping fake goods in large shipments. This minimises the risk of seizure of those shipments by customs authorities. The author has established how small-scale shipping for products purchased from online retailers is making counterfeit shipments almost undetectable by customs authorities. The paper also highlights the flaws in international regulations and enforcement, along with the role played by free trade zones, which facilitate the smooth shipment of counterfeit products.

Keywords: *E-commerce, Fake Goods, Counterfeit Trade, Free Trade Zones and Small-Scale Shipping.*

* Student- B.B.A.LL.B. (H) @ Adamas University, Kolkata (W.B.)

** Asst. Professor (Sr. Scale) & Head @ Centre for WTO & WIPO Studies, SLT, HNLU, Raipur (CG)

INTRODUCTION

E-commerce platforms have revolutionised the concept of a ‘marketplace’. A market is no longer a physical location where buyers and sellers meet. In the modern context, with the advent of e-commerce platforms, the market, whether a physical location or a digital platform, is where the buyer and seller meet to conduct business. Such e-commerce platforms have made it significantly easier for consumers to get in touch with the sellers and purchase their desired products online. According to the data presented by the U.S. Department of Commerce, e-commerce retail sales accounted for USD 3,00,226 million, which is approximately 16.2% of all retail sales conducted within the first quarter of 2025.¹

The growth of retail sales through e-commerce platforms is consistent with the growth of the counterfeit trade. Even though counterfeit trade has existed prior to the emergence of e-commerce platforms and digital trade, such e-commerce platforms have provided a more viable and low-risk method of conducting such trade. Given that counterfeit trade is a criminal activity, counterfeit traders have to use deceptive techniques to ship their products from one place to another. Counterfeits are shipped by land, sea, and air, in large as well as small volumes. While shipping large volumes of such goods is more desirable for these traders for profit (lesser cost involved), shipping these goods in smaller volumes helps traders evade detection of these goods while importing them into the country.

What is counterfeiting of goods?

Counterfeit goods are essentially products that are manufactured by infringing intellectual property rights. The most common form of counterfeit goods is trademark infringement. Here, the manufacturer of such goods falsely applies the trademark² to said goods, without the assent of the proprietor of the trademark, for the purpose of imitating the original goods and deceiving the consumer so that they purchase the fake products instead of the original products. On the other hand, another common form of counterfeit product is copyright-infringed goods, such as pirated physical copies of any form of ‘work’.³

¹ US Census Bureau, “Monthly Retail Trade - Quarterly Retail E-Commerce Sales Report” *available at*: <https://www.census.gov/retail/ecommerce.html> (last visited on: October 3, 2025).

² The Trademarks Act, 1999, sec. 102(2).

³ The Copyright Act, 1957, sec. 2(y). *See also*, The Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 2 (1).

Counterfeit goods cannot be manufactured in all areas, and therefore, these goods are produced predominantly in certain countries and are then shipped globally. South Asian countries like China, Hong Kong (China), Vietnam, and Thailand are infamous for producing counterfeit goods and shipping them globally. Their biggest consumers are the EU and the United States of America. In the year 2013, imports of counterfeits and other pirated products into the European Union amounted to USD 116 billion, that is, 5.1% of all EU imports.⁴

In the pre-digital era, counterfeit traders used physical markets to sell such illicit goods, such as street vendors, flea markets, and other open-air markets. Here, word of mouth and other informal community networks played an important role in the local promotion and distribution of these goods. However, with the advent of the internet and digital platforms of trade, counterfeit traders got the freedom to list illicit goods as genuine products online, thus deceiving the consumer into buying said products. The consumer has no way of knowing whether he or she is purchasing a counterfeit product. This highlights the role played by e-commerce platforms as intermediaries in facilitating counterfeit trade.

As mentioned above, South Asian countries like China, Thailand, Vietnam, etc., are the biggest manufacturers of counterfeit goods. Traders from such countries use e-commerce platforms like 'shopee.com', 'wish.com', 'alibaba.com', etc. Counterfeiters open several seller accounts on these platforms; hence, when one account is shut down, the other remains functional, and the counterfeit traders are able to continue to carry out trade.⁵ Using e-commerce platforms such as the ones mentioned above enables the counterfeit traders to get in touch with the consumers directly. This allows them to use postal services and small parcels to ship counterfeit products directly to the consumer. Counterfeit traders use this administrative loophole to ship small parcels directly to customers from across the border. Statistics suggest that even if one parcel is withheld at customs, numerous others successfully reach their destinations. Therefore, the role of postal services and shipping companies is paramount in facilitating counterfeit trade in the digital era. Between the years 2011 and 2013, 63% of the total number of customs seizures of counterfeits and pirated goods

⁴ "Trade in Counterfeit and Pirated Goods," *OECD*, 2016 *available at*:

https://www.oecd.org/en/publications/trade-in-counterfeit-and-pirated-goods_9789264252653-en.html (last visited on: October 3, 2025).

⁵ "The Digital Dilemma" by Ani Khachatryan," *available at*: <https://digitalcommons.lmu.edu/elr/vol43/iss3/2/> (last visited on: October 3, 2025).

worldwide used postal services and courier routes.⁶ National postal services have traditionally enjoyed a monopoly in handling the movements of letters and parcels within a nation as well as across borders for many years. That being said, since market liberalization, that monopoly does not exist anymore. Private postal and courier services promise faster and more discreet shipment. This allows counterfeit traders to securely ship their products directly to the consumer who has purchased the said product through an e-commerce platform.

Shipping goods in smaller quantities reduces the risk of seizure, and the loss incurred on seizure is negligible because if a solitary shipment is seized hundred other shipments pass the customs check without being seized. This raises an important question concerning the role played by private postal and courier services in facilitating counterfeit trade across international borders. Further, the effectiveness of the techniques and methods used by customs authorities across the globe to detect such shipments is another issue that shall be dealt with in this paper.

The author deals with the role played by private postal and courier services and e-commerce platforms in facilitating cross-border counterfeit trade and the effectiveness of customs authorities in detecting those shipments.

LITERATURE REVIEW

According to Kennedy, counterfeiting has been around for several centuries; the internet and e-commerce platforms have led to significant shifts in the ways in which counterfeiting is committed. He explains that the internet has significantly reduced barriers to entry for counterfeit traders into the market and has allowed them to utilise legitimate trade and commerce in ways that were previously not possible, to carry out illicit trade.⁷

Benson and Simpson used the term “veils of legitimacy” to describe the ways in which counterfeit traders use legitimate business activities to mask the illicit counterfeit products

⁶ “Misuse of Small Parcels for Trade in Counterfeit Goods,” *OECD*, 2018 *available at*: https://www.oecd.org/en/publications/misuse-of-small-parcels-for-trade-in-counterfeit-goods_9789264307858-en.html (last visited on: October 3, 2025).

⁷ Jay P. Kennedy, “Counterfeit Products Online” *The Palgrave Handbook of International Cybercrime and Cyberdeviance* 1-24 (Springer International Publishing, Cham, 2019).

listed on e-commerce platforms.⁸ In support of this theory, Nguyen states that counterfeit traders build concerted ignorance claims by purposefully hiding behind legitimate business practices and legitimate business advertising. For example, it is quite common for counterfeit traders to steal legitimate images of original products and then use those images while listing counterfeit products in order to mask the fact that the listed product is, in fact, a counterfeit and not the original, thus deceiving the consumer.⁹ Further, Kennedy comments that every time counterfeit goods pass through the hands of a legitimate entity, such as a shipping company, an e-commerce platform, or a retail establishment, they gain “veils of legitimacy” because consumers rightly assign legitimacy to a product based upon where and how it was sold.¹⁰

According to the International Trademark Association (hereinafter mentioned as ITA), backed by Little, counterfeit traders use digital means, including e-commerce platforms, social media sites, and emails, to advertise their products directly to the consumer.

In a study published by the OECD, based on data for 2019, counterfeit trade and pirated products amounted to approximately USD 464 billion that year. Further, this study provides that imports of counterfeit products into the EU in 2019 amounted to approximately EUR 119 billion, which represents 5.8% of all EU imports.¹¹ In a previous study based on data from the year 2016, the volume of international trade in counterfeit products was approximately USD 509 billion.¹²

According to a press release by the OECD, counterfeit goods accounted for an estimated USD 467 billion globally in the year 2021 alone.¹³ This figure is a conclusion of a study

⁸ Michael L. Benson and Sally S. Simpson, *Understanding White-Collar Crime: An Opportunity Perspective*, (Routledge, New York, 2nd edn, 2014).

⁹ “Stolen Artwork Is All Over Amazon - And Independent Artists Want The Company To Do Something About It,” *available at*: https://www.buzzfeednews.com/article/nicolenguyen/amazon-counterfeit-art-sellers-fakes-copyright-infringement?utm_source=dynamic&utm_campaign=bfsharecopy (last visited on: October 3, 2025).

¹⁰ *Supra* note 7.

¹¹ “Global Trade in Fakes,” *OECD*, 2021 *available at*: https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html (last visited on: October 3, 2025).

¹² “Trends in Trade in Counterfeit and Pirated Goods,” *OECD*, 2019 *available at*: https://www.oecd.org/en/publications/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en.html (last visited on: October 3, 2025).

¹³ “Global trade in fake goods reached USD 467 billion, posing risks to consumer safety and compromising intellectual property,” 2025 *available at*: <https://www.oecd.org/en/about/news/press-releases/2025/05/global-trade-in-fake-goods-reached-USD-467-billion-posing-risks-to-consumer-safety-and-compromising-intellectual-property.html> (last visited on: October 3, 2025).

conducted by the OECD and the European Union Intellectual Property Office (hereinafter mentioned as EUIPO). It was found that the value of imports of counterfeit goods into the European Union (hereinafter mentioned as EU) was estimated to be around EUR 99 billion, which accounted for 4.7% of EU imports from the rest of the world in 2021. China and Hong Kong are the main provenance economies of counterfeit goods, followed by Turkiye.¹⁴

OECD states that, based on data from the year 2005, the global estimated value of counterfeit and pirated goods accounted for approximately USD 200 billion, which is about 2% of global trade.¹⁵

According to OECD-EUIPO, *“the trade routes of fakes are very complex. Counterfeit traders tend to ship counterfeit goods via multiple intermediary points. The transit points facilitate falsification of documents in ways that camouflage the original point of departure, establish distribution centres for counterfeit and pirated goods, and repackage or re-label goods. Additionally, while imports of counterfeit goods are, in most cases, targeted by local enforcement authorities, goods in transit are often not within their scope. This means that they are less likely to be intercepted.”*¹⁶

OECD-EUIPO explains why trade routes for shipping counterfeit goods are more complex. Firstly, there are many ports that are not directly connected to one shipping line. Hence, many shipments need to be broken down and shipped separately. Further, a change in the mode of transportation during the journey is another reason why counterfeit traders ship their products via such complex routes. This complexity is used to escape law enforcement, such as customs authorities. The in-transit operations, as explained above, are conducted in Free Trade Zones (hereinafter mentioned as FTZ). These are specialized economic zones created by the government in order to stimulate foreign direct investment and exports. FTZs are designated areas that lie outside the customs jurisdiction of the concerned country.¹⁷

¹⁴ “Mapping Global Trade in Fakes 2025” OECD and European Union Intellectual Property Office, 2025.

¹⁵ “The Economic Impact of Counterfeiting and Piracy,” *OECD*, 2008 available at: https://www.oecd.org/en/publications/the-economic-impact-of-counterfeiting-and-piracy_9789264045521-en.html (last visited on: October 3, 2025).

¹⁶ *Supra* note 12.

¹⁷ “Mapping the Real Routes of Trade in Fake Goods,” *OECD*, 2017 available at: https://www.oecd.org/en/publications/mapping-the-real-routes-of-trade-in-fake-goods_9789264278349-en.html (last visited on: October 3, 2025).

FIAS reports, “62% of the 2,301 zones in developing and transition countries, analyzed in the year 2008, were developed and operated by the private sector. The rise in the role of the private sector reflects the fact that developers can profitably operate such facilities. This, in turn, eliminates the burden of maintaining and regulating such zones from the government’s shoulders.”¹⁸ Further, WCO states that FTZs facilitate counterfeit traders in obscuring the real origin of cargoes, manipulating counterfeit product information, etc.¹⁹

Illicit goods can be shipped independently, separate from the licit goods. However, they can also be imported into the country by mixing them with licit goods. When shipped separately, larger volumes of these goods can be imported; however, such imports can also be easily detected. On the other hand, when mixed with licit goods, illicit goods are very difficult to detect.²⁰

OECD-EUIPO states, “many global customs seizures of IP-infringing goods (or counterfeit goods) occurred through small parcels, that is, through postal or courier routes. From the year 2011 to 2013, approximately 63% of the customs seizures of counterfeit and pirated goods worldwide were shipped via mail (i.e., via postal and courier routes), then increasing to 69% from the year 2014 to 2016.”²¹

Furthermore, OECD-EUIPO states, “in terms of the number of global customs seizures indicates that the size of shipments seized in mail or express, or other forms of small parcels tends to be very small... (Based on data between the years 2011 to 2013), 53% of the customs seizures of small parcels had only one item, 26% of them had two to ten items, and 21% had more than ten items.”²²

As per OECD-EUIPO, the number of FTZs within an economy is correlated with the value of its exports of counterfeit products. However, there isn’t necessarily a direct link between the two. For instance, a country like the USA has a large number of FTZs; however, the export of

¹⁸ Akinci James Gokhan, Crittle, “Special economic zone: performance, lessons learned, and implication for zone development” *World Bank* available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/343901468330977533> (last visited on: October 3, 2025).

¹⁹ ‘World Customs Organization, Illicit Trade Report 2014’ available at: <https://www.wcoomd.org/en/topics/enforcement-and-compliance/resources/publications.aspx>, (last visited on: October 3, 2025).

²⁰ Thorsten Staake, Frédéric Thiesse and Elgar Fleisch, “The emergence of counterfeit trade: a literature review,” 43 *European Journal of Marketing* 320-49 (2009).

²¹ *Supra* note 12.

²² *Supra* note 12.

counterfeit products from these FTZs is essentially non-existent. The report further states that sound compliance and strict oversight systems prevent trade in illicit goods from happening. That being said, the case of the USA is a unique one. There is a pattern that depicts that the economies with more FTZs are prone to large exports of counterfeit products. This report cited an equation to determine whether the existence, the number, or the size of FTZs in a given economy significantly increases the value of counterfeit trade. Results show that a 1% increase in the value of counterfeit exports from FTZs within an economy or country contributes to a 0.28% increase in counterfeit trade.²³

With the advent of e-commerce in respect to B2B and B2C transactions, there has been an unprecedented growth in smaller consignments crossing borders. Hence, under WCO guidelines, in case of de minimis consignments, it is stipulated that documents, that is, customs declarations, should be provided electronically. Further, in 2018, the WCO adopted a Cross-border E-commerce framework of standards to meet the challenges associated with the growing volume of B2B and B2C trade via e-commerce platforms. For the purpose of this paper, standard number 5 should be particularly focused on, which states that a mechanism should be developed for, (i) clearing shipments using simplified procedures and (ii) facilitating the immediate release of 'low risk' shipments.²⁴

As per the OECD, customs authorities use risk-assessment systems based on sender/receiver profiles, country of origin, declared value, and description inconsistencies; however, rapidly changing illicit networks have made informative risk profiling very difficult for customs authorities.²⁵ Further, according to Urciuoli, Hintsa & Ahokas, advanced electronic data is used by customs authorities to identify high-risk shipments. Other strategies include X-ray and image recognition technology, as well as post-clearance audit and retrospective investigation.²⁶

²³ "Trade in Counterfeit Goods and Free Trade Zones," *OECD*, 2018 available at: https://www.oecd.org/en/publications/trade-in-counterfeit-goods-and-free-trade-zones_9789264289550-en.html (last visited on: October 3, 2025).

²⁴ "Misuse of Small Parcels for Trade in Counterfeit Goods," *OECD*, 2018 available at: https://www.oecd.org/en/publications/misuse-of-small-parcels-for-trade-in-counterfeit-goods_9789264307858-en.html (last visited on: October 3, 2025).

²⁵ "Global Trade in Fakes," *OECD*, 2021 available at: https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html (last visited on: October 3, 2025).

²⁶ Luca Urciuoli, Juha Hintsa and Juha Ahokas, "Drivers and barriers affecting usage of e-Customs - A global survey with customs administrations using multivariate analysis techniques," 30 *Government Information Quarterly* 473-85 (2013).

As per the WCO SAFE framework of standards, there are five core elements to the SAFE framework. These elements offer insight into the methods employed by customs authorities across the world to detect counterfeit goods. Much emphasis has been given to advance electronic cargo information (hereinafter mentioned as AEI) requirements. This implies that information concerning customs declarations can be made available to the importing country well in advance of the arrival of the shipment. This would allow the customs authority of that country to assess the risk of the shipment and take precautions accordingly. Further, another core element of this framework suggests that customs authorities shall employ non-intrusive methods such as large-scale X-ray machines and radiation detectors.²⁷

ROLE OF E-COMMERCE PLATFORMS

E-commerce platforms have significantly increased retail sales across the world. Since the internet boom in the 1990s, Amazon and eBay were perhaps the first e-commerce platforms to come to the digital commerce market, following a B2C business model. Alibaba was another e-commerce platform that focused more on wholesale trade at first, by following a B2B business model. However, later they adopted a B2C model as well. That being said, the online retail market saw an unprecedented growth in the late 2000s and early 2010s due to the global usage of mobile phones and better access to the internet. Such growth was also reflected in the increase in trade of counterfeit goods across the world. This is further proven by the fact mentioned above that in the year 2005, global counterfeit trade accounted for USD 200 billion, which is 2% of global trade.²⁸ However, in a span of a decade, the global counterfeit trade value increased by approximately two and a half times, accounting for USD 509 billion in the year 2016.²⁹

There are various reasons why certain e-commerce platforms provide a safe and effective trade environment to counterfeit traders. In the pre-digital era, counterfeits were mostly non-deceptive. This means that the consumer could distinguish the difference between the counterfeit product and the original product.³⁰ Such non-deceptive products were mostly

²⁷ WCO SAFE framework of standards (Pg – 2, 2021), *available at*: <https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe-framework-of-standards.pdf?la=en&la=en&la=en&la=en>, (last visited on: August 26, 2025).

²⁸ *Supra* note 14

²⁹ “Global Trade in Fakes,” *OECD*, 2021 *available at*: https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html (last visited on: October 3, 2025).

³⁰ *Supra* note 7.

luxury items such as shoes, handbags, etc., sold through street vendors, open markets, shops and intermediate producers, and branded shops/chains. These products, despite being known counterfeits, were still appealing to the public due to their low price point and social status of being seen with such products. These counterfeit products were designed to appeal to the middle class or lower-middle class of society, who couldn't necessarily afford the original version of these products.³¹

Previously, luxury brands were more than just products with utility for the consumers; rather, they were symbols of privilege and status (they still are). This simple social dynamic associated with luxury brands drove the demand for counterfeit replicas of those brands, as the not-so-privileged class of society wanted a taste of the status enjoyed by the people at the top of the social pyramid. However, luxury brands tackled this issue by relocating production to low-cost countries and were able to reduce the cost of production of their products. Further, they introduced low-end models of their products so that their products can fall within the purchasing power of almost everyone in society.³²

Since demand for non-deceptive counterfeit products decreased, counterfeit traders pushed deceptive counterfeit products. These products were meant to be exact replicas of the original products in order to deceive the buyers into thinking that they are actually buying the real products at full price. While there still existed a market for non-deceptive counterfeit products, it is not possible to determine the demand because such demand does not exist. This is so because deceptive counterfeit goods are meant to replicate the original goods in such a manner that they deceive the consumer into thinking that they are purchasing the original goods. Therefore, the actual demand is for the original goods. Having a demand for deceptive counterfeit products would suggest that the consumers are purposely looking to be deceived, which does not make sense.³³

When it comes to selling deceptive counterfeit products in retail, there is always a risk that the consumer will recognize the counterfeit products. Here, e-commerce platforms provide the perfect solution to this issue. When purchasing online, consumers cannot examine the products physically before purchasing them. They rely on the information provided on the

³¹ OECD, 'The Economic Impact of Counterfeiting and Piracy', (2008).

³² Roberto Fontana, Stéphane J. G. Girod and Martin Králik, "How Luxury Brands Can Beat Counterfeiters" *Harvard Business Review*.

³³ *Supra* note 7.

platform by the seller and, at times, the reviews left by previous purchasers. Sellers of deceptive counterfeit goods on e-commerce platforms often use the “veil of legitimacy.”^{34 35}

The most common way consumers examine the goods online is by looking at the images of the product provided by the seller. However, it is very easy to simply provide images of the original product while actually selling the counterfeit version of that product. Using images of original products gives the listed counterfeit products a ‘veil of legitimacy’ as it protects the true nature of the goods, thus deceiving the consumers. Further, counterfeit traders use other legitimate information to mask the true nature of the products they are selling. This includes providing information regarding the product description that adds to the perceived legitimacy of the product. There is, however, one aspect that the sellers cannot control when selling counterfeit goods online, which is customer reviews. Customers often leave reviews of the product they purchased from an e-commerce platform. This is something that can very well expose the true nature of the counterfeit products listed online; however, counterfeit traders have figured out a clever way of tackling this barrier as well. In a rising trend, it is found that sellers, in order to boost the authenticity and image of their products, post positive reviews from bot accounts, thus overshadowing negative reviews of those products. Most e-commerce platforms, including Amazon, allow a user to post a review of the product without actually purchasing the product. This makes things even simpler for the sellers of counterfeit goods since they can easily rate and review their products positively from multiple user accounts without actually purchasing their own product. Such activities give the products a veil of legitimacy. It goes without saying that the veil of legitimacy creates deception regarding the authenticity of the product that is listed on an e-commerce platform. Simply by looking at the images and reviews of the product, both of which can be easily manipulated, as explained above. This highlights the fact that e-commerce platforms do play a facilitative role in the growth of the global counterfeit trade. Further, with the consistent rise in the number of e-commerce platforms, in the span of 11 years, that is, from 2005 to 2016, counterfeit trade across the world almost tripled in amount. Therefore, e-commerce platforms have provided counterfeit traders with a new approach to distribute and advertise their products with minimal risk involved. Hence, it could be said that even though e-commerce trade has proven to be an asset towards the growth of global trade, it has also certainly contributed to the growth of counterfeit trade on a global scale.

³⁴ *Supra* note 7.

³⁵ *Supra* note 8.

NATURE OF COUNTERFEIT PRODUCTS SOLD VIA E-COMMERCE PLATFORMS AND METHOD OF SHIPMENT

Counterfeit products that are sold on digital commerce platforms are luxury apparel. Apparels refer to any kind of product that an individual would wear or apply to his or her body, such as clothes, perfume, etc. As per the report published by OECD footwear, clothes, perfumes and cosmetics, and leather articles make up almost 70% of the total detentions related to online sales.³⁶ Most apparel products, like footwear, watches, leather articles, jewelry, etc., have mostly been shipped via mail. Hence, the use of small parcels and express services to ship counterfeit products is not a recent development.³⁷

SHIPPING COUNTERFEIT PRODUCTS

Counterfeits are shipped by land, sea, and air in large and small volumes. While shipping large volumes of such goods is more desirable for these traders for profit, shipping these goods in smaller volumes helps traders avoid detection while importing them into the country.

Prior to the emergence of e-commerce platforms and private postal and courier services, counterfeit products had to be sold in physical retail stores, and in order to do that, such products had to be imported into the country from the country of their origin through smuggling. There are two ways in which such counterfeit goods were shipped. Firstly, the counterfeit goods, after being manufactured, could be shipped independently by a dedicated distributor. On the other hand, these counterfeit goods could be mixed in the legitimate goods supply chain, so as to give it a veil of legitimacy. In any case, when such goods are shipped independently in large volumes, there is always a chance that those goods will be seized by the customs authorities of the respective nation. Therefore, in order to evade such seizures, distributors of counterfeit goods use complex trade routes. This means that the distributors ship these products via multiple transit points. This allows them to falsify documents

³⁶ “Misuse of E-Commerce for Trade in Counterfeits,” *OECD*, 2021 *available at*: https://www.oecd.org/en/publications/misuse-of-e-commerce-for-trade-in-counterfeits_1c04a64e-en.html (last visited on: October 3, 2025).

³⁷ “Misuse of Small Parcels for Trade in Counterfeit Goods,” *OECD*, 2018 *available at*: https://www.oecd.org/en/publications/misuse-of-small-parcels-for-trade-in-counterfeit-goods_9789264307858-en.html (last visited on: October 3, 2025).

regarding the original point of departure of these products.³⁸ For example, country 'A' is known for manufacturing counterfeit goods, and a shipment arrives in country 'B' from country 'A'. Hence, country 'B' would be more cautious and inspect the shipment more strictly. Therefore, in order to hide the origin of the counterfeit products, the goods are shipped via multiple transit points, simply to falsify the documents concerning the point of origin and give it a new point of origin. Further, these activities are conducted within FTZs. This allows the distributors to function without intervention from customs authorities.³⁹

That being said, with the advent of e-commerce platforms, the traders of counterfeit goods can sell their products even before physically shipping them. By listing the products online, the traders are able to ship small volumes of items via postal and courier services, directly to the buyer. In the early 2010s, the world witnessed a meteoric rise in the use of e-commerce platforms.⁴⁰ With the rise of e-commerce platforms in the early 2010s, 63% of all the seizures made by the customs authorities of counterfeit goods were couriers.⁴¹ This demonstrates the consistency between the use of postal and courier services to ship counterfeit items in small volumes across borders and the rise of the use of e-commerce platforms.⁴² This can be proven by the fact that shipments through the post accounted for 70.5% of total seizures made in the EU in the year 2015. However, the number of items shipped via post only accounted for 2.2%, with a total retail value of EUR 57,790,226. This shows that shipping smaller volumes of counterfeit goods via post is a common practice. On the other hand, express services also provide a similar functionality to counterfeit traders, while also allowing them to ship more items at once. Counterfeit traders commonly use express and courier services to ship listed products directly to the customer upon purchase.⁴³ There was a steady rise in counterfeit traders' use of express and courier services, based on the seizures between 2014 and 2018,

³⁸ Thorsten Staake, Frédéric Thiesse and Elgar Fleisch, "The emergence of counterfeit trade: a literature review," 43 *European Journal of Marketing* 320-49 (2009).

³⁹ *Supra* note 12.

⁴⁰ *Supra* note 4.

⁴¹ Thorsten Staake, Frédéric Thiesse and Elgar Fleisch, "The emergence of counterfeit trade: a literature review," 43 *European Journal of Marketing* 320-49 (2009).

⁴² *Supra* note 12.

⁴³ "Mapping the Real Routes of Trade in Fake Goods," *OECD*, 2017 available at:

https://www.oecd.org/en/publications/mapping-the-real-routes-of-trade-in-fake-goods_9789264278349-en.html (last visited on: October 3, 2025).

while there is a consistent and parallel drop in the usage of roads/vehicles, sea/vessels, railways, and air in shipping such counterfeit products.⁴⁴

ROLE OF FTZs

FTZs can be defined as neutral, stockaded zones where a shipper can unload its cargo, goods can be unpacked and repacked, goods can be reloaded into ships and be shipped to another country, under very liberal regulations and limited oversight. The purpose of FTZ is to encourage more international trade by boosting exports and imports.⁴⁵

Counterfeit traders do not ship their products directly from their country of origin. When a particular product is purchased from an e-commerce platform, that product is shipped from a different country than its original manufacturing country. This is to reduce the risk factor pertaining to examination by customs authorities. By storing the goods in FTZs in different countries, after transporting them through different ports and transit points, counterfeit traders mask the country of origin.⁴⁶ As mentioned above, counterfeit traders use complex routes to mask the original point of departure and ship their goods via multiple intermediary points in order to hide the origin of the goods and falsify documents.⁴⁷ These in-transit operations, including changing the routes, falsifying documents, storing goods, changing the medium of shipping, etc., are done in FTZs.⁴⁸ Therefore, it could be said that FTZs provide a safe place for counterfeit traders to store their products and freely ship them worldwide without being subjected to search and examination.

Rule of Origin

In simple terms, the rule of origin refers to a genealogical rule about the category of the merchandise. This rule is preferential, which means that depending on the genealogy of the

⁴⁴ Pavel Taraba, Eva Hoke and Jan Marada, "Means of Transporting Counterfeits to the European Union," 82 *Chemical Engineering Transactions* 289–94 (2020).

⁴⁵ Susan Tiefenbrun, "U.S. Foreign Trade Zones of the United States, Free-Trade Zones of the World, and their Impact on the Economy," 12 *Journal of International Business and Law* (2013).

⁴⁶ "World Customs Organization," available at: <https://www.wcoomd.org/en/media/newsroom/2015/december/the-wco-publishes-the-2014-illicit-trade-report.aspx> (last visited on: October 3, 2025).

⁴⁷ "The Economic Impact of Counterfeiting and Piracy," *OECD*, 2008 available at: https://www.oecd.org/en/publications/the-economic-impact-of-counterfeiting-and-piracy_9789264045521-en.html (last visited on: October 3, 2025).

⁴⁸ *Supra* note 12.

article or product, duty-free or other special treatment may be accorded to that article or product.⁴⁹

The nationality of the goods being imported into a country is the basis of how it is treated for tariff purposes. Hence, preferential rules of origin are the cornerstone of any customs union or Free Trade Agreement.

METHODS EMPLOYED TO DETECT SMALL PARCELS

All shipments being imported into an economy have to go through a customs check. Customs authorities ensure that the imports abide by the rules and regulations concerning taxes and tariffs. However, another major component is that the customs authorities have the power to seize IP-infringing goods or counterfeit goods being imported into the country.

As already discussed, with the advent of e-commerce platforms, cross-border B2C and B2B trade has witnessed unprecedented growth.⁵⁰ This means that the shipments arriving are often in the form of small parcels rather than in bulk. Therefore, major containers must be broken down into individual packages to conduct a thorough inspection of these small parcels. Therefore, the following strategies are primarily employed by customs authorities to detect possible illicit trade parcels containing counterfeit goods.

Risk-based targeting systems – risk-based assessments allow customs authorities to categorise certain shipments as low-risk, medium-risk, and high-risk. In principle, such categorization allows customs authorities to release low-risk consignments, focus more on high-risk consignments, and conduct inspections accordingly to detect possible counterfeit goods. Such risk assessment is based on various variables concerning the small parcels, such as their origin,⁵¹ profiles of the sender and receiver, declared value, and inconsistencies in description as declared by the sender of goods.⁵² The primary variable in this context is the country of origin. For instance, China is one of the primary economies that produces

⁴⁹ Raj Bhala, 'International Trade Law: Interdisciplinary Theory and Practice', 3rd edition, LexisNexis, 2014.

⁵⁰ "Trade in Counterfeit Goods and Free Trade Zones," *OECD*, 2018 *available at*: https://www.oecd.org/en/publications/trade-in-counterfeit-goods-and-free-trade-zones_9789264289550-en.html (last visited on: October 3, 2025).

⁵¹ Susan Tiefenbrun, "U.S. Foreign Trade Zones of the United States, Free-Trade Zones of the World, and their Impact on the Economy," 12 *Journal of International Business and Law* (2013).

⁵² "Misuse of Small Parcels for Trade in Counterfeit Goods," *OECD*, 2018 *available at*: https://www.oecd.org/en/publications/misuse-of-small-parcels-for-trade-in-counterfeit-goods_9789264307858-en.html (last visited on: October 3, 2025).

counterfeit goods and ships them worldwide.⁵³ Hence, any shipment arriving from China would be classified as a high-risk shipment. However, as explained above, counterfeit traders do not ship their goods directly from the country of origin. Rather, they ship their products from FTZs after transmitting the shipment from different transit points in order to mask the original point of departure of the goods.^{54 55} This ultimately increases the shipment cost of the goods; however, that cost is ultimately incurred by the consumer of the goods. Therefore, even though customs authorities employ risk-assessment strategies to profile shipments and conduct inspections accordingly, counterfeit traders have figured out a way to mitigate that process.

AEI declaration of shipment - A customs declaration is a formal statement submitted by the shipper/sender of goods about the various specifics of the shipment. This may include its description, weight, value, country of origin, details of the receiver, etc. Such a declaration is necessary so that customs authorities can determine whether the goods abide by the rules and regulations concerning taxes and tariffs. However, primarily, these declarations sent in advance of the arrival of the shipment allow customs authorities to classify shipments in terms of risk, based on the information provided in the declaration. That being said, such information can be manipulated.^{56 57}

The risk assessment of shipments is conducted based on the AEI data provided by the sender of goods. However, if the AEI data is misleading to begin with, the customs authorities can do little to assess the risk associated with the particular shipment properly. AEI data can be forged or manipulated in ways such as masking the original point of departure and breaking down large shipments into smaller shipments in FTZs.

GOOD FRAMEWORK: LACK OF ENFORCEMENT

The SAFE framework of standards provides a comprehensive guide to facilitate international trade while also ensuring that customs authorities function properly, detecting and seizing

⁵³ “Global Trade in Fakes,” *OECD*, 2021 available at: https://www.oecd.org/en/publications/global-trade-in-fakes_74c81154-en.html (last visited on: October 3, 2025).

⁵⁴ Susan Tiefenbrun, “U.S. Foreign Trade Zones of the United States, Free-Trade Zones of the World, and their Impact on the Economy,” 12 *Journal of International Business and Law* (2013).

⁵⁵ “Mapping the Real Routes of Trade in Fake Goods,” *OECD*, 2017 available at: https://www.oecd.org/en/publications/mapping-the-real-routes-of-trade-in-fake-goods_9789264278349-en.html (last visited on: October 3, 2025).

⁵⁶ *Supra* note 7.

⁵⁷ *Supra* note 8.

counterfeit goods. As discussed above, the framework suggests the sharing of AEI data prior to the arrival of the shipment so that the risk assessment of the cargo can be conducted properly. Further, the framework suggests that the sending nation (the nation from which the cargo/shipment is arriving) thoroughly inspects the outbound shipment before its departure and shares the report with the importing nation.⁵⁸

The execution of these protocols or suggestions is not effective enough across the globe. For instance, China is a known manufacturer and distributor of counterfeit goods across the globe. Chinese e-commerce platforms generate millions of small parcels daily, coming from countless individual sellers listed on these platforms.^{59 60} Therefore, managing the AEI data and conducting ‘SAFE’ outbound inspection on each small parcel is near impossible. Hence, the outbound inspection from China, concerning small parcels, is inefficient. Just like China, almost all nations that are known manufacturers and distributors of counterfeit products across the globe face similar issues.

Regulatory framework and methods employed by customs authorities are effective when it comes to large shipments, not *de minimis* consignments or small parcels. This is how the global counterfeit trade has witnessed a considerable amount of growth over the years. Further, most counterfeit products are associated with luxury brands. These fake goods are deceptive in nature, as explained above, and, therefore, are difficult to differentiate from the original products via X-rays, which is suggested by the SAFE framework. The SAFE framework does not encourage intrusive methods for the detection of such counterfeit goods.

Further, Article 60 of the Trade Related Aspects of Intellectual Property, 1994 states that *de minimis* imports may be excluded from the application of provisions of the convention designed to eliminate counterfeit trademarks and pirated copyright.⁶¹ Even though the convention was adopted in 1994, the entries only came into force in 2017, and even then, counterfeit trade through small parcels was not addressed, even though 63% of all seizures of

⁵⁸ *Supra* note 26.

⁵⁹ *Supra* note 12.

⁶⁰ “Global trade in fake goods reached USD 467 billion, posing risks to consumer safety and compromising intellectual property,” 2025 *available at*: <https://www.oecd.org/en/about/news/press-releases/2025/05/global-trade-in-fake-goods-reached-USD-467-billion-posing-risks-to-consumer-safety-and-compromising-intellectual-property.html> (last visited on: October 3, 2025).

⁶¹ Trade Related Aspects of Intellectual Property, 1994, art 60.

counterfeit goods and pirated goods by customs authorities were of small parcels in 2017.⁶² This shows a trend in only paying attention to large shipments as carriers of counterfeit items.

Customs authorities have the power to seize any shipment of all forms of consignments if those shipments infringe intellectual property rights. However, the problem arises when it comes to detecting those consignments. Large shipments can easily be recorded and searched, and are under stricter supervision as opposed to smaller shipments arriving through post or express services. Such a lack of supervision has allowed counterfeit traders to exploit this enforcement loophole. That being said, customs authorities are not to be blamed here. The volume of such small consignments is immense. Hence, it is not remotely possible to keep track of every single parcel and check them individually. Even with AEI data sharing, customs authorities still would have to go through the data individually to flag high-risk or suspicious parcels.

The value of counterfeit trade across the globe in 2021 was USD 467 billion; however, that value is only based on the number of seizures made by customs authorities. It does not account for counterfeit goods that have slipped under the radar of customs authorities. That value cannot be estimated.⁶³

More recently, the Memorandum of Understanding on the sale of counterfeit goods on the internet (hereafter mentioned as MoU) was introduced by the EU. It was first concluded in 2011 and then came into force in 2016. Article 7 of the MoU confers the primary responsibility for the protection and enforcement of any form of IPR on the respective rights owner.⁶⁴ It also confers responsibility on the internet platforms (e-commerce platforms) to provide a safe online environment for customers. Further, Article 11 of the MoU introduces Notice and Take-Down (hereafter mentioned as NTD) procedures, which will enable the right owner the ability to report to the internet platform any possible sale of counterfeit goods, as per their own belief in good faith.⁶⁵ That being said, there are only 16 rights owners and 11

⁶² "Misuse of Small Parcels for Trade in Counterfeit Goods," *OECD*, 2018 available at: https://www.oecd.org/en/publications/misuse-of-small-parcels-for-trade-in-counterfeit-goods_9789264307858-en.html (last visited on: October 3, 2025).

⁶³ *Supra* note 14.

⁶⁴ The Memorandum of Understanding on the sale of counterfeit goods on the internet, 2016, art 7.

⁶⁵ *Ibid* at art 11.

online platforms signatories to this treaty, which automatically limits the scope of this measure.⁶⁶

Further, the EU also introduced the Digital Markets Act and the Digital Services Act with the aim of harmonizing the relationship between online platforms and their customers by removing illegal elements from such platforms and conferring responsibility on the gatekeeper. As per Article 2 of the Digital Markets Act, the term ‘gatekeeper’ is defined as an undertaking for providing core platform services, which includes online intermediate services like NTD procedures.⁶⁷

That being said, various nations have employed effective measures to combat the present issue. For instance, Australia came up with the Smart Trademark Mechanism. Here, by using blockchain technology, businesses and consumers can determine whether the product that is listed online is authentic or a counterfeit. The product that is listed online contains a business-critical artefact, which can be in the form of a URL link or QR code. This would help the consumer verify the authenticity of the product by entering a unique product number/code into the government’s trademark registry portal.⁶⁸

The United Kingdom took steps to ban domains/e-commerce platforms that facilitated counterfeit trade, instead of identifying the counterfeit products on those platforms. Under the project Ashiko, referrals on websites that sold IP-infringing products were made to the London Police Intellectual Property Crime Unit. Upon undertaking due diligence on each referral, the particular domain is suspended.⁶⁹

CONCLUSION

The global counterfeit trade is a web operation that does not have a single source of origin. Therefore, it is necessary to understand the mechanics of counterfeit trade. As explained

⁶⁶ European Commission, “Signatories of the Memorandum of Understanding (MoU) on the sale of counterfeit goods on the internet”, 2024, *available at*: <https://ec.europa.eu/docsroom/documents/59214/attachments/1/translations/en/renditions/native>, (last visited August 26, 2025).

⁶⁷ Digital Markets Act, 2022, art 2.

⁶⁸ “Helping to better protect Australian businesses from counterfeiting | Ministers for the Department of Industry, Science and Resources,” 2018 *available at*: <https://www.minister.industry.gov.au/ministers/karenandrews/media-releases/helping-better-protect-australian-businesses-counterfeiting> (last visited on: October 3, 2025).

⁶⁹ “Police Intellectual Property Crime Unit (PIPCU),” *available at*: <https://www.cityoflondon.police.uk/police-forces/city-of-london-police/areas/city-of-london/about-us/about-us/pipcu/> (last visited on: October 8, 2025).

above, at the end of the day, counterfeit trade is just like any other form of business, that is, the exchange of goods for money, except the goods sold are violative of Trademark and Copyright laws. This means the trade of such goods is illegal by nature.

Trade in counterfeit products has shifted from the sale of non-deceptive fakes to deceptive fakes, with the advent of digital trade. E-commerce platforms have enabled counterfeit traders to reach consumers directly without involving a middleman. E-commerce platforms also allow counterfeit traders to put a 'veil of legitimacy' on their counterfeit products, which prevents the consumer from inspecting the listed counterfeit product properly, with the objective of deceiving the customer into thinking that he or she is purchasing an authentic product. Furthermore, mostly apparel or cosmetic counterfeit products are sold via these e-commerce platforms. Such products can be easily masked as authentic or legitimate products on e-commerce platforms by using images of an actual authentic product and also manipulating the customer reviews.

These products are then shipped directly to the purchaser via small parcels through mail or express services, which prevents the customs authority of the importing country from conducting a thorough examination of the shipment, as the shipment technically qualifies as a *di minimis* consignment. Customs authorities are more focused on larger shipments. Further, counterfeit traders ship their products via multiple transit points and utilise free trade zones to break larger cargo into smaller consignments and ship them separately. This technique, employed by the counterfeiters, causes major hindrances to the risk-assessment method used by customs authorities to detect IP-infringing goods.

Suggestions

According to the findings, modern counterfeit trade is mostly conducted through e-commerce platforms. As already discussed, counterfeit traders employ various tactics in order to demonstrate their product as genuine, and not fake.

- The global implementation of Article 7 and Article 11 of the MoU, 2011, can help with the situation, as it confers responsibility on the right owner and the intermediary to detect and take down product listings that might raise suspicions regarding the authenticity of the product,

- Further, intermediaries must compulsorily verify the trade licenses of prospective sellers before permitting them to sell via the intermediary's platform. This would prevent illicit traders from selling counterfeit products through digital trade platforms,
- Intermediaries must only allow online purchasers to review the product. This will help in preventing the falsification of the apparent authenticity of the product,
- The global implementation of Australia's 'Smart Trade Mark Mechanism' would help purchasers in verifying the authenticity of the product before purchasing it.